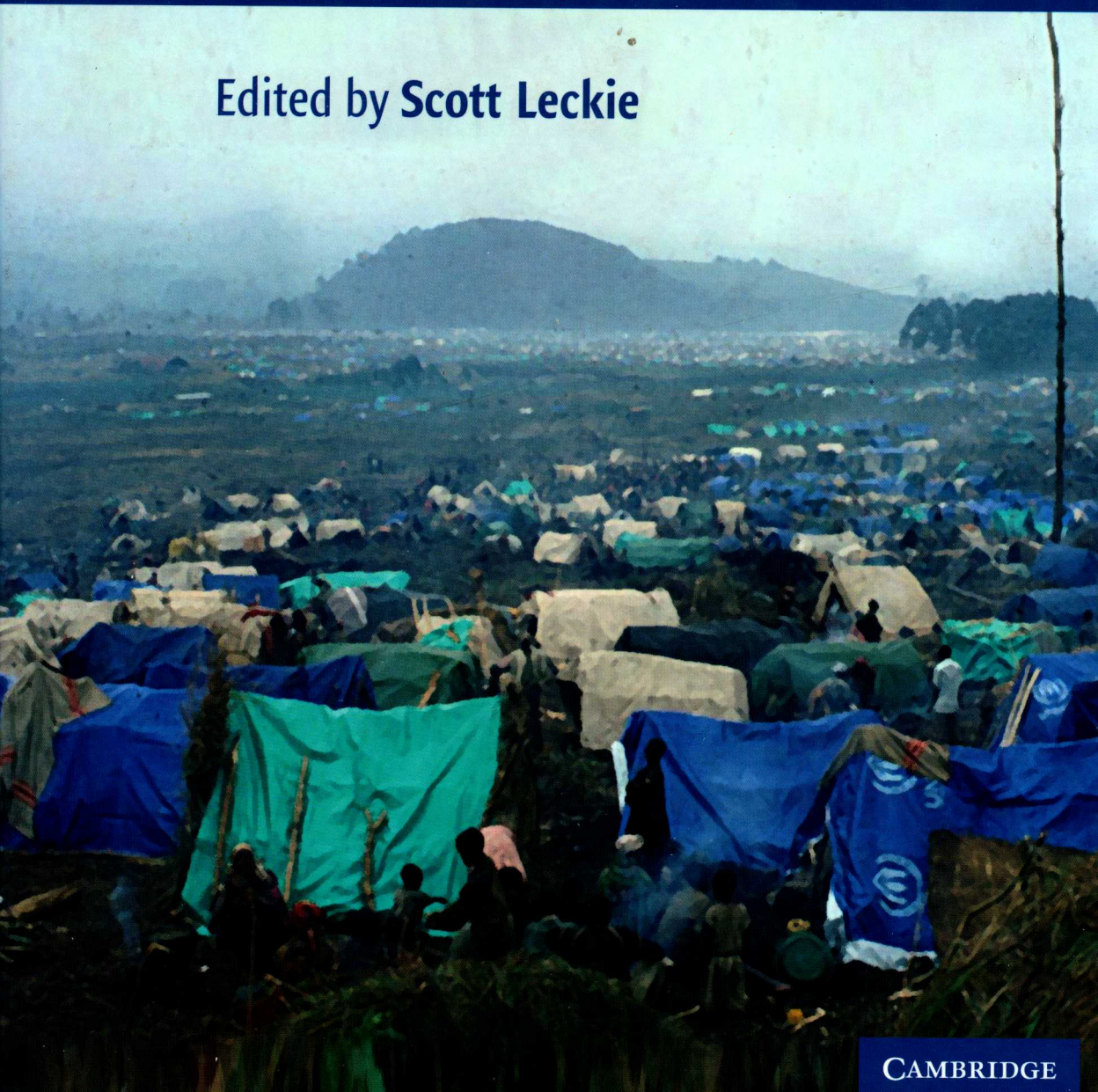


Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons

Laws, Cases, and Materials

Edited by **Scott Leckie**



CAMBRIDGE

Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons

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SCOTT LECKIE

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Centre on Housing Rights and Evictions (COHRE)

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HOUSING, LAND, AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS

The legal recognition of the housing, land, and property rights of refugees and displaced persons has expanded steadily in recent years as the realization has grown that securing these rights will be beneficial to long-term peace, stability, economic vitality, and justice.

This volume contains more than 240 of the laws, cases, and materials that have been adopted during the past century that accord those unjustly and arbitrarily displaced from their homes and lands with rights: not simply to return to their countries or places of origin, but to return to the original home, land, or property from which they were initially forced to flee.

The breadth of the restitution standards found within this volume, combined with selected examples of case law and other materials, is a clear indication that a right to housing, land, and property restitution for refugees and displaced persons has emerged within the global legal domain.

Scott Leckie is an international human rights lawyer and advocate. He is active in many fields, including economic and social rights, housing rights, forced evictions, housing and property restitution rights for refugees and displaced persons, human rights issues in postconflict and postdisaster situations, and business and human rights.

ALSO BY SCOTT LECKIE

United Nations Peace Operations and Housing, Land and Property Rights: Proposals for Reform (ed., 2007)

Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons, Volume 2 (ed., 2007)

Legal Resource Guide on Economic, Social and Cultural Rights (ed., with Anne Gallagher, 2006)

Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons (ed., 2003)

National Perspectives on Housing Rights (ed., 2003)

When Push Comes to Shove: Forced Evictions and Human Rights (1995)

Destruction by Design: Housing Rights Violations in Tibet (1994)

From Housing Needs to Housing Rights (1992)

For all of you . . .

Blameless

Yet punished, condemned

To everyone but you . . . nameless

Gazing

Eyes of hope, worn by fear

And yet

Longingly,

The edges of a smile lurks

Dreams of home

Perpetually near

Acknowledgments

Although the preparation of a book with such sparse narrative as this may seem a quick and easy task, the ultimate completion of this volume – as they somehow always do – took far longer than originally envisaged. As it turned out, accessing, reviewing, selecting, and finally bringing together some of the literally thousands of possible standards on restitution issues was far more complex than initially foreseen at the time of the enthusiastic outset of this process.

Putting together a volume of this size and scope alone would have been truly daunting, and without the generous contribution of considerable time and energy by many friends and colleagues, it surely would have never seen the light of day.

First off, special thanks are due to Jessica Marasovic of the Centre on Housing Rights and Evictions (COHRE), who helped me itemise and access many of the standards found in this volume. Her computer-savvy ways and constantly upbeat spirit greatly assisted throughout the preparation process. Thanks also to Dima Yared for her efforts and to Rhodri Williams, who provided some of the more difficult-to-access texts concerning Bosnia-Herzegovina.

I am very thankful to the Board of Directors of COHRE, most notably our chairperson, John

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And thank you, too, to the many extraordinary people whom I met and who assisted me in so many important ways along the arduous and far too lengthy road that was required to bring this book to fruition. I was fortunate enough to have worked on this volume in a number of my favourite countries – Australia, Cambodia, Canada, Palestine, Switzerland, and Thailand – and offer anonymous thanks to the dozens of friends and other colleagues in these and other places who helped out in important but often unknown ways.

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Scott Leckie
Bangkok, 6 August 2006

Preface

This volume contains some 240 of the most important international, regional, and national standards and judicial decisions recognising and addressing the many complexities associated with the housing, land, and property restitution rights of refugees and displaced persons. Many additional laws, cases, and materials on these themes are also in place throughout the world, but the selection found here attempts to provide an accurate and reasonably detailed picture of the current state of affairs with respect to these rights set within their various normative contexts.

The texts included within this book – that can be seen as collectively forming the normative basis for the right of refugees and displaced persons to have restored to them the housing, land, and property rights they held at the time of their displacement – stretch back ten decades to the Hague Conventions of 1907. Throughout the past century, numerous standards have been proposed, discussed, and ultimately approved on restitution, both internationally and at the national level. Over time, these documents have become increasingly specific, in the process refining the precise rights to housing, land, and property restitution enjoyed by those forced by circumstances beyond their control to flee their homes and lands.

In many respects, 2005 was witness to a high point of international standard-setting on these issues, with two vitally important new restitution standards being approved by United Nations (UN) bodies that considerably augment the housing, land, and property restitution rights of refugees and displaced persons. In August 2005, the '*Pinheiro*' *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (see Section 1.15 for the full text) were approved by the UN Sub-Commission on the Protection and Promotion of Human Rights. The '*Pinheiro*' *Principles* provide

the most comprehensive and consolidated international norm outlining the rights of refugees and displaced persons to have restored to them all of the housing, land, and property rights they held before their displacement.

In December 2005, the UN General Assembly adopted the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law* (see Section 1.16 for the full text), which further strengthens the rights of those forced from their homes to achieve a proper remedy for these abuses through the process of restitution. Together, these two new norms exemplify both the level of specificity that has been reached in the international recognition of these rights, as well as indicating the considerable seriousness now accorded these rights by the global community.

While much of the twentieth century was rather unkind to the prospect of housing, land, and property restitution, during the past two decades millions of people throughout the world have been able to formally exercise their housing, land, and property restitution rights and return home, from Tajikistan to Kosovo, from Mozambique to Liberia, and from Bosnia-Herzegovina to South Africa and beyond. Many of the standards contained in this volume were key ingredients in the creation of conditions that led to their eventual return home. These standards have not, alas, been taken seriously in every context they should have been applied, and as a result many tens of millions of refugees and displaced persons with existing, legally recognised, and fully legitimate restitution rights are unable to exercise them because of resistance by States and others responsible for the original displacement, many of which, in fact, are due to arbitrary, discriminatory, and unfair national laws specifically designed to prevent the exercise of housing, land, and property restitution rights.

A Note on the Contents

This volume is intended to be a reference tool and consolidated source of *selected* international, regional, and national legal standards, nonlegal materials, and case law concerning the housing, land, and property restitution rights of refugees and displaced persons. This book is designed to assist those working with people asserting restitution rights – lawyers, refugee and IDP advocates, government officials, UN staff members, fieldworkers, and others – to easily access various types of standards recognising these rights within a single guide.

The volume does not provide analysis of the various standards, nor does it explain their nature, legal standing, or relative normative value. For those readers wishing to explore these issues, they may wish to review Part Five, which provides the citations of a wide range of books, articles, and other analyses of housing and property restitution issues. Most, if not all, of these standards are accessible on the Internet, and readers wishing to reference or otherwise use any of these norms are urged to examine these online to ensure that any updates, amendments, repeals, or other changes are adequately understood.

With one or two notable exceptions, every effort has been made to not include texts that have subsequently been repealed or substantially amended. However, given the frequent changes incorporated into domestic legislation, readers are again urged to confirm the current status of the national laws included in the volume before referencing them in any official manner. In one instance – that of Iraq – even though the standard contained in Section 12.4 resulted in the repeal of one of the regulations preceding it, it was felt important to retain the repealed standard to give readers a sense of the type of restitution regulations occupying powers, in this instance the United States, have proclaimed during their contentious occupation of this sovereign nation.

In the interests of preventing repetition and excessive length, considerable effort was made during the compilation of this volume to limit the number of particular types of standards, most notably relevant General Assembly resolutions and nonrefugee-specific national restitution legislation. The General Assembly, for instance, very rightly adopts essentially the same series of

resolutions each year in support of the housing, land, and property restitution rights of Palestinian refugees, but this volume only includes several of the more important pronouncements in this regard, including the most recent such series of resolutions approved in 2005.

In terms of national law, a concerted effort was made to only include a select few examples of domestic legislation regulating restitution efforts in formerly communist countries. Restitution programmes were carried out in many such countries; however, given that the emphasis in this book is on the housing, land, and property restitution rights held explicitly by refugees and displaced persons, it was felt that noting *some* of the restitution laws in Eastern Europe and elsewhere would suffice in revealing the nature of these laws, how they are formulated, and, ultimately, how they differ with and or are similar to restitution laws specifically designed to benefit refugees and the displaced.

A Note on Organisation

Part One includes ten sections, each of which contain *international* texts addressing a wide variety of restitution themes. Section 1 includes sixteen international standards under international humanitarian law, international human rights law, international criminal law, international refugee law, the international law of state responsibility, and specific restitution standards.

Section 2 contains excerpts from fourteen peace agreements concluded since 1991, which explicitly or implicitly recognise housing, land, and property restitution rights for those displaced as a result of the conflict concerned. Peace agreements do not yet systematically address these issues, yet a pattern is emerging whereby constructively addressing housing, land, and property rights concerns within a rights-based peace-building process is increasingly seen as a major component of sustainable peace, reconciliation, economic viability, and overall political stability.

Twenty voluntary repatriation agreements concluded between United Nations High Commissioner for Refugees (UNHCR) and various governments are included in Section 3. Such agreements increasingly include reference to housing, land, and property issues as the international community comes to embrace the notion that successful

peace-building can only take place when these issues are properly and justly addressed.

UNHCR's role in strengthening restitution norms for refugees has been a vital one and, in recognition of this, beyond the agreements found in Section 3, five additional UNHCR texts are included in Section 4.

Section 5 includes full texts and excerpts of thirty-nine resolutions adopted by the UN Security Council since 1967 that affirm and reaffirm the crucial nature of protecting the housing, land, and property restitution rights of refugees and others forcibly displaced from their homes and lands.

Similarly, the UN General Assembly has addressed restitution issues since its inception, and as a result, scores of resolutions have been approved by this body, thirty-three of which are included in Section 6 of this volume.

The UN human rights machinery has also become increasingly involved in efforts to promote the housing, land, and property rights of refugees and displaced persons, and various resolutions and other standards approved by the Commission on Human Rights (now "Human Rights Council"), Sub-Commission on the Protection and Promotion of Human Rights, and several human rights treaty bodies are included in Sections 7–9. Section 10 contains two relevant standards approved by expert bodies, which address or are relevant to restitution themes.

Part Two provides several *regional* standards that address housing, land, and property restitution issues in Africa, the Americas, Europe, and the Middle East.

Part Three of the volume contains forty *national* laws and other statements enshrining housing, land, and property restitution rights. Laws from the following sixteen countries are provided: Afghanistan, Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Colombia, Estonia, Georgia, Germany, Iraq, Kosovo, Romania, Rwanda, South Africa, and Tajikistan.

Part Four contains selected case law from four adjudicating bodies: the Permanent Court of International Justice, the International Court of Justice, the UN Human Rights Committee, and the European Court on Human Rights. Readers should note that although most of the cases included essentially support the contention that refugees, displaced persons, or other human rights vic-

tims possess housing, land, and property rights, in some instances cases have been included that are more nuanced or even nonsupportive of such perspectives.

Finally, Part Five provides a selected bibliography of various publications addressing different dimensions of the housing, land, and property restitution question.

Readers should note that the various documents found in this book have been organised in descending order, with each section beginning with the oldest documents and ending with the newest.

A Note on What Is Not Included

Although not as numerous as laws in support of restitution rights, many countries have adopted legislation consciously designed to *prevent* the exercise of housing, land, and property rights by refugees and displaced persons. Israel's absentee property laws, Bhutan's nationality laws, housing laws in Croatia, Rwandan legislation on refugee return, and many other pieces of existing law remain in place at the national level in spite of the clear preponderance of normative evidence found in this volume that those displaced from their homes have a right to return to and repossess those homes.

The texts of such laws are not included in the present volume, although the idea of systematically compiling these antirestitution laws into a separate volume may have considerable merit, and anyone wishing to make a positive contribution to the restitution question may well consider undertaking such an exercise.

A Note on Sources

As noted, most of the documents included within this volume are available electronically on the Internet, with the exception of voluntary repatriation agreements and some of the national laws outlined here. Full texts of those available online can best be accessed through the following Web sites:

- (1) <http://un.org> for Part One – Section 1 (International Standards), Section 5 (UN Security Council), Section 6 (UN General Assembly), Section 7 (UN Commission on Human Rights), Section 8

- (UN Sub-Commission on the Protection and Promotion of Human Rights), and Section 9 (UN Human Rights Treaty Bodies) and Part Four – Sections 2 and 3;
- (2) <http://www.usip.org/library/pa.html> for Part One – Section 2 (Peace Agreements);
- (3) <http://www.unhcr.org/cgi-bin/texis/vtx/rsd> for Part One – Section 3 (Voluntary Repatriation Agreements) and Section 4 (UN High Commissioner for Refugees);
- (4) <http://www.worldcourts.com> for Part Four – Section 1 (Permanent Court of International Justice); and
- (5) <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database> for Part Four – Section 4 (European Court of Human Rights).

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