

VICTIM COMPENSATION

INTRODUCTION

This chapter presents the core elements of mechanisms used to compensate victims of violence in post-conflict states. This chapter also identifies such mechanisms in the 2006 Darfur Peace Agreement (DPA) and presents sample language for any future agreement.

Civilians residing in conflict areas face the risk of displacement, loss of property, assault, injury, and loss of life. Refugees and internally displaced persons often leave behind their homes and much of their accumulated possessions. Others may suffer debilitating injuries or loss of life because of direct violence.

A central element in post-conflict situations is thus compensation for injury, death, and material hardships. Victim compensation programs in post-conflict areas frequently reimburse victims who lost homes and other property left behind. Compensation for victims provides an element of justice to the victim, provides them with the means to rebuild their lives, offers official acknowledgement of the harm committed against them, and serves as deterrence to potential future violators.¹

The international conventions that address victim compensation include the International Convention Relating to the Status of Refugees,² Universal Declaration of Human Rights,³ and the International Covenant on Economic, Social, and Cultural Rights.⁴ Highlighting the importance the international

¹ UNITED STATES INSTITUTE OF PEACE, RWANDA: ACCOUNTABILITY FOR WAR CRIMES AND GENOCIDE, *available at* <http://www.usip.org/pubs/specialreports/early/rwanda1.html#fn14> (last accessed Sept. 20, 2007).

² Convention relating to the Status of Refugees, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, *available at* http://www.unhchr.ch/html/menu3/b/o_c_ref.htm (last accessed Sept. 20, 2007).

³ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3rd Session, 1st plenary meeting, U.N. Doc A/810 (Dec. 12, 1948), *available at* <http://www.un.org/Overview/rights.html> (last accessed Sept. 20, 2007).

⁴ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, U.N. Doc. A/6316 (Dec. 16, 1966), 1966, *available at* http://www.unhchr.ch/html/menu3/b/a_cescr.htm (last accessed Sept. 20, 2007).

community places on victim compensation, in 2005 the United Nations Commission on Human Rights called for providing victims of international humanitarian law violations with “equal and effective access to justice . . . reparation for harm suffered [and] . . . access to relevant information concerning violations and reparation mechanisms.”⁵

CORE ELEMENTS

Types of Compensation

Internally displaced persons, refugees, and other people injured during armed conflicts may suffer serious physical, mental, and material damage or loss. Compensating these victims, helps bring closure to the conflict and helps restore the victim to their pre-conflict situation. Compensation cannot bring complete restoration, but it may give victims a starting point from which to rebuild their lives. Compensation schemes may focus on property restitution, monetary compensation for injuries or death, or other rehabilitation programs to assist victims of humanitarian crises.

Some programs offer wide-ranging compensation that covers restitution for injury or death, loss of property, and even environmental damages. For example, the United Nations Compensation Commission, established to compensate victims from Iraq’s invasion of Kuwait, bases its criteria for compensating victims on an international legal claim that Iraq was liable for “any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals, and corporations” due to the hostilities.⁶

Other programs may focus specifically on property issues.⁷ In Kosovo, the property agency resolved disputes relating to the loss of property rights resulting from “armed conflict.”⁸ In the Republic of Georgia, a 2007 law provides for

⁵ Commission on Human Rights, Resolution 2005/35, sec. 11, U.N. Doc. E/CN.4/2005/L.10/Add.11 (April 19, 2005), *available at* <http://www1.umn.edu/humanrts/instreet/res2005-35.html> (last accessed Sept. 13, 2007).

⁶ United Nations Security Resolution 687, para. 16, U.N. Doc. S/RES/687 (April 08, 1991), *available at* <http://www.fas.org/news/un/iraq/sres/sres0687.htm> (last accessed Sept. 20, 2007).

⁷ For more information, see the chapter on Property Restitution of this guide.

⁸ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. II, sec. 3, UNMIK/REG/2006/50 (October 16, 2006), *available at*

property restitution to compensate victims who lost property or suffered damage because of a defined internal conflict.⁹

Other programs may seek to redress specific injustices by compensating victims of certain crimes. The German “Remembrance, Responsibility and Future” Foundation disbursed five billion dollars in compensation to about 1,614,000 Holocaust survivors.¹⁰ The foundation compensates victims for the “severe injustice” the National Socialist State inflicted on “slave laborers and forced laborers, through deportation, internment, exploitation . . . and a large number of other human rights violations.”¹¹ Specifically, this law offers compensation to victims held in concentration camps, deported from their homelands, or who “suffered property loss as a consequence of racial persecution.”¹² The German Foundation allows compensation for specific cases of personal damages, injuries, property loss, and death.¹³

Negotiated Agreements

Compensation programs are often the result of negotiated agreements between some combination of factional, provincial, state, and international entities with an interest in the outcome of the program. The agreements establish the rights of individuals to restitution, establish a mechanism to administer the compensation, and set forth the process for applying for restitution.

http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_50.pdf (last accessed Sept. 20, 2007).

⁹ Law of Georgia “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia,” art. 1, Jan. 1, 2007, *available at* http://www3.brookings.edu/fp/projects/idp/Georgia_PropertyLaw.pdf, 2006 (last accessed Sept. 12, 2007).

¹⁰ BUREAU OF EUROPEAN AND EURASIAN AFFAIRS, UNITED STATES DEPARTMENT OF STATE, REPORT TO CONGRESS: GERMAN FOUNDATION “REMEMBRANCE, RESPONSIBILITY, AND THE FUTURE,” (2005), *available at* <http://www.state.gov/p/eur/rls/rpt/44484.htm> (last accessed Sept. 20, 2007).

¹¹ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” Preamble, BGBl. 2001 I 2036 (2001) *available at* http://www.compensation-for-forced-labour.org/pdf/Foundation_law_consolidated_E.pdf (last accessed Sept. 12, 2007).

¹² The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” sec. 11 (1), BGBl. 2001 I 2036 (2001).

¹³ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” sec. 11, BGBl. 2001 I 2036 (2001).

Intra-state Agreements

During the peace process, following civil unrest in a state, the parties to the unrest may negotiate compensation for those displaced or otherwise affected. The Dayton Peace Accords in 1995 set forth an agreement between the constituent parts of Bosnia and Herzegovina. The Accords called on the Federation of Bosnia and Herzegovina and the Republika Srpska to provide for restitution and a right to return to their homes.¹⁴ Specifically, the intra-state agreements mandated the return of property or payment of just compensation to displaced persons and refugees, established a commission to oversee the program, and incorporated a process for administering claims.¹⁵

Internationally Established Agreements

The international community may also call for and establish methods of victim compensation. To redress the losses of civilians from the invasion of Kuwait, the United Nations Security Council called for the creation of the United Nations Compensation Commission.¹⁶ The resolution established Iraqi liability, created a fund to pay for compensation, a commission to administer claims, and called on the Secretary General to oversee the fund and commission's operation.¹⁷ The Iraqis accepted the terms of this resolution and their responsibility for damage in a subsequent letter.¹⁸

Domestic Agreements with International Cooperation

States can establish compensation programs on their own initiative, however creating a fair program both in actuality and as perceived can be difficult. In June 1998, the Croatian Parliament passed the Programme of Return and Accommodation of Expellees, Displaced Persons and Refugees (Return

¹⁴ Dayton Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons (1995), available at <http://www1.umn.edu/humanrts/icty/dayton/daytonannex7.html> (last accessed Sept. 12, 2007).

¹⁵ Dayton Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons (1995).

¹⁶ United Nations Security Resolution 687, U.N. Doc. S/RES/687 (Apr. 8, 1991).

¹⁷ United Nations Security Resolution 687, sec. E, U.N. Doc. S/RES/687 (Apr. 8, 1991).

¹⁸ UNITED NATIONS COMPENSATION COMMISSION, INTRODUCTION, available at <http://www2.unog.ch/uncc/introduc.htm> (last accessed Sept. 20, 2007).

Programme),¹⁹ in cooperation with United Nations High Commissioner for Refugees and the Organization for Security and Cooperation in Europe. The Return Programme originally established local housing commissions to oversee the return of occupied private properties to their pre-war owners.²⁰ Following legislative changes in August 2002, the Ministry for Public Works, Reconstruction, and Construction and its Directorate for Expellees, Returnees, and Refugees assumed the role of the housing commissions.²¹ This resulted in central government responsibility for the return of occupied properties.

Likewise, in January 2007, the Georgian government implemented a permanent state law to govern victim compensation for property lost fifteen years earlier during the 1989-1992 civil conflict. The law “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia”²² was the result of a commitment the Georgian government made upon joining the Council of Europe to facilitate property restitution.²³ Due to the law's recent enactment its full implications remain unknown.

Unilateral Agreements

¹⁹ EUROPEAN PARLIAMENTARY ASSEMBLY, RECOMMENDATION 1406 (1999), RETURN OF REFUGEES AND DISPLACED PERSONS TO THEIR HOMES IN CROATIA, 14th Sitting, *available at* <http://assembly.coe.int/Documents/AdoptedText/ta99/erec1406.htm> (last accessed Sept. 20, 2007).

²⁰ UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, REPORT OF MR. JIRI DIENSTBIER, SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA, THE REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA, sec. II (B), U.N. Doc. E/CN.4/2000/39 (Dec. 28, 1999), *available at* <http://www.unhchr.ch/Huridocda/Huridoca.nsf/43a37fa863140065c12565c90030b1f6/de390068dbb1fa7c80256893004213fb?OpenDocument#II> (last accessed Sept. 20, 2007).

²¹ ORGANIZATION FOR SECURITY AND CO-OPERATION AND UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 4TH REPORT ON ISSUES OF PROPERTY REPOSSESSION UNDER THE JULY 2002 AMENDMENTS TO THE LAW ON AREAS OF SPECIAL STATE CONCERN (Oct. 10, 2003), *available at* http://www.osce.org/documents/mc/2003/10/1931_en.pdf (last accessed Sept. 20, 2007).

²² Law of Georgia “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia,” January 01, 2007.

²³ INTERNATIONAL CRISIS GROUP, GEORGIA-SOUTH OSSETIA: REFUGEE RETURN THE PATH TO PEACE, p. 2, European Briefing No. 38, Tbilisi/Brussels (Sept. 19, 2005), *available at* http://www.crisisgroup.org/library/documents/europe/caucasus/b038_georgia_south_ossetia_refugee_return_the_path_to_peace.pdf (last accessed Sept. 20, 2007).

Finally, agreements involving victim compensation may result from a unilateral decision of an international organization or state. In 1999, the United Nations Security Council established the Interim Administrative Mission in Kosovo (IAM).²⁴ The United Nations Security Council charged the Interim Administrative Mission in Kosovo with performing “basic civil administrative functions” and aiding the return of displaced people to their homes.²⁵ In fulfilling this mandate, the IAM formed the Kosovo Property Agency to resolving property ownership and property use disputes that resulted from armed conflict and the dislocation of people from their property.²⁶

Similarly, but owing to internal forces, the German government, in 2000, undertook to compensate victims of forced labor and other crimes during the period of National Socialist rule. The Law on the Creation of a Foundation ‘Remembrance, Responsibility, and Future’ created a foundation to compensate former forced laborers during the Nazi era in Germany, and to promote education and justice.²⁷ A board of trustees composed of appointees from the German government, governments that accepted large numbers of Jewish migrants, and international organizations, select a board of directors to govern the foundation.²⁸

Compensation Commissions

Compensation commissions administer claims and distribute funds according to policy guidelines established by their implementing agreements, laws, or orders. Commissions may be composed entirely of nationals from different countries than those involved in claims, international members and local members jointly, or entirely of local members. Local commissions are usually composed of representatives of the parties in conflict.

²⁴ Security Council Resolution 1244, sec. 10, U.N. Doc. S/RES/1244 (June 10, 1999), *available at* <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement> (last accessed Sept. 20, 2007).

²⁵ Security Council Resolution 1244, sec. 11 (b) and (k), U.N. Doc. S/RES/1244 (June 10, 1999).

²⁶ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. II, sec. 3.1, UNMIK/REG/2006/50 (Oct. 16, 2006), *available at* http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_50.pdf (last accessed Sept. 20, 2007).

²⁷ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” BGBl. 2001 I 2036 (2001).

²⁸ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” BGBl. 2001 I 2036 (2001).

International Commissions

An internationally directed compensation commission allows the provision of victim compensation with or without the cooperation of the perpetrating government or parties. An international commission may run under the direction of an international organization, and include representatives of the international community in the structure of its governance. For example, a Governing Council, composed of representatives of the Security Council members, headed the United Nations Compensation Commission, charged with handling claims resulting from Iraq's invasion of Kuwait.²⁹ The Governing Council was responsible for establishing overall policy for the Compensation Commission. The commissioners and Secretary General nominated and Governing Council appointed secretariat, carried out the day-to-day operations.³⁰

International-Domestic Commissions

Another model combines both state or provincial level actors and international actors in the governance of a compensation commission. In Kosovo, for example, the United Nations set up the Kosovo Property Agency, which is composed of a supervisory board, an executive secretariat, and a property claims commission.³¹ As originally conceived, the Kosovo Property Agency would aid the courts in carrying out their adjudication of property disputes.³² Seven months after its creation, the United Nations issued a regulation "provisionally providing

²⁹ The Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 19 of Security Council Resolution 687 (1991)*, para. 5, delivered to the Security Council, U.N. Doc. S/22559 (May 02, 1991), available at <http://www.fas.org/news/un/iraq/sres/sres0687.htm> (last accessed Sept. 20, 2007).

³⁰ The Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 19 of Security Council Resolution 687 (1991)*, para. 5, 11, 12, delivered to the Security Council, U.N. Doc. S/22559 (May 02, 1991).

³¹ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. II, sec. 2, UNMIK/REG/2006/50 (Oct. 16, 2006).

³² United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. I, sec. 2.1, UNMIK/REG/2006/10 (Mar. 4, 2006).

for the resolution of claims . . . without such claims being referred to the courts.”³³ This gave the Kosovo Property Agency full authority to settle property claims of returning refugees and internally displaced persons. That said, the domestic courts retained jurisdiction over property claims, and could hear claims at the request of a claimant.³⁴ Further, the Supreme Court of Kosovo retained jurisdiction over the appeal of Property Claims Commission decisions.³⁵

Contrary the Kosovo model, where the international community imposed a compensation scheme on a state, in Germany, the state government reached out to the international community when it created the Foundation “Remembrance, Responsibility and Future.” Its establishing law created a Board of Trustees composed of various German government and civil society representatives, as well as representatives of countries that were impacted by the National Socialist’s crimes, and members of various international organizations.”³⁶ This 27-member board established the rules of procedure for the Foundation and appointed the Board of Directors that runs day-to-day operations.³⁷ Further, the Board of Trustees, “decides on all fundamental matter that have to do with the tasks of the Foundation,” including decisions regarding the Foundation’s projects, establishing guidelines for using resources, and enabling partner organizations to draw on Foundation Funds in a fair manner.³⁸ Endowments and gifts from German industry and the German Federal Government created the Foundation’s capital fund for compensation payments.³⁹

³³ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, Introduction, UNMIK/REG/2006/50 (Oct. 16, 2006).

³⁴ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. II, sec. 3, UNMIK/REG/2006/50 (Oct. 16, 2006).

³⁵ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. II, sec. 3, UNMIK/REG/2006/50 (Oct. 16, 2006).

³⁶ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” Section 5, BGBl. 2001 I 2036 (2001).

³⁷ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” sec. 5 (2), (7) and sec. 6 (3), BGBl. 2001 I 2036 (2001).

³⁸ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” sec. 5 (5-7), BGBl. 2001 I 2036 (2001).

³⁹ The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” sec. 3, BGBl. 2001 I 2036 (2001).

A 2007 law in the Republic of Georgia lays the framework for the Commission on Restitution and Compensation as a stand-alone institution responsible for returning property, providing an equal substitute property, or providing compensation.⁴⁰ The Commission is composed of nine members divided equally between international representatives, Georgians, and Ossetians.⁴¹ The commission members from the domestic parties ensure the representation of their party's views, while the international representatives impartially mediate disputes.

Domestic Commissions

Finally, in some situations state or local governments, without direct international involvement in their governance, establish and lead compensation commissions. In Croatia, for example, the initial Reform Programme left the determination of housing disputes to local housing commissions. In August 2002 centralization of responsibility in the Ministry for Public Works, Reconstruction and Construction and its Directorate for Expellees, Returnees and Refugees, occurred and dramatically increased the refugees or internally displaced persons compensation rate. This resulted in the faster processing of claims, an increased construction of temporary housing, and the purchase of occupied houses for reallocation

While not establishing a separate commission, the Argentinean government passed a law in 1994 that provided for reparations for families of victims of the military regime that ended in 1983.⁴² By law, victims' families that already reported to the National Commission of the Disappeared or who reported to the Office of Human rights were entitled to a payment "equivalent to 100 months at the salary level of the highest-paid civil servant."⁴³ This law followed an earlier

⁴⁰ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. I, art. 5 (2) and ch. II, art. 6 (2), Jan. 1, 2007.

⁴¹ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. II, art. 9 (3), Jan. 1, 2007.

⁴² Law No. 24 411 (Argentina, 7 Dec. 1994)

⁴³ TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, REPORT OF THE REPARATION AND REHABILITATION COMMITTEE, vol. 6, sec. 2, ch. 3 (2003), *available at* <http://www.info.gov.za/otherdocs/2003/trc/> (last accessed Sept. 25, 2007).

law, passed in 1987, that provided \$140 per child of a disappeared parent until the age of twenty-one at an estimated cost of \$2-3 billion dollars.⁴⁴

Processes for Applications and Obtaining Compensations

While procedures differ, compensation commissions generally accept claims from victims or victims' representatives. The claims process typically requires those seeking compensation to make a fact-based claim, and may require a hearing or other quasi-judicial action before a decision. Depending on their structure, compensation commissions may take a more adversarial approach or more cooperative approach to addressing a claimant's request for compensation. The compensation commission may accept claims directly from the individual, or it may require governments or other organization to submit claims. Additionally, the compensation commission may disburse funds directly to individuals or to subsidiary organizations, outside organizations, or governments charged with disbursal.

Direct Compensation

Compensation commissions that directly handle claims generally have set procedures for the processing of claims, as well as an appeals process for claimants to pursue. The Kosovo Property Agency provides an example of the process for applying for and obtaining compensation. Claimants first submit a claim to the Executive Secretariat, which processes the claim before giving it to the Property Claims Commission.⁴⁵ The Executive Secretariat then notifies other parties with a legal interest in claimed property so that all the parties may participate in the proceedings.⁴⁶ If a claim is incomplete, is outside the Claims Commission's jurisdiction, or was previously resolved, the Claims Commission must dismiss the claim.⁴⁷

⁴⁴ TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, REPORT OF THE REPARATION AND REHABILITATION COMMITTEE, vol. 6, sec. 2, ch. 3 (2003).

⁴⁵ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. III, sec. 9, UNMIK/REG/2006/50 (Oct. 16, 2006).

⁴⁶ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. III, sec. 10, UNMIK/REG/2006/50 (Oct. 16, 2006).

⁴⁷ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. III, sec. 11.4, UNMIK/REG/2006/50 (Oct. 16, 2006).

The Kosovo Property Claims Commission's decisions "may include, but are not limited to eviction, placing the property under administration, a lease agreement, seizure, and demolition of unlawful structures, and auction."⁴⁸ The Claims Commission may request further written information or hold a hearing, "including witnesses and experts," regarding a claim, before issuing its legally binding decision.⁴⁹ The decision of the Claims Commission is subject to appeal to the Supreme Court of Kosovo.⁵⁰ The linking of a claims commission, especially one established by an international organization, to a domestic court provides the domestic government with a sense of control. This sense of control adds to the legitimacy of the commission's decisions.

Direct victim compensation also occurs in the Republic of Georgia. The process begins with the Bureau of the Commission on Restitution and Compensation assisting claimants in the preparation of their complaints.⁵¹ The Commission on Restitution and Compensation may request and receive information from any "national and legal person or state institution" in Georgia to aid in its work, including the resolution of a claim.⁵² The process for resolving a dispute begins with submission of a claim that details the claimant's name, information on the damaged property, a request for restitution of residence or other property or equivalent compensation, and any relevant evidence.⁵³ After filing, the claim comes before the committee for a proceeding and adjudication, which may

⁴⁸ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. V, sec. 15, UNMIK/REG/2006/50 (Oct. 16, 2006).

⁴⁹ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. III, sec. 11.6-11.8, UNMIK/REG/2006/50 (Oct. 16, 2006).

⁵⁰ United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. IV, UNMIK/REG/2006/50 (Oct. 16, 2006).

⁵¹ Law of Georgia "on Property Restitution and Compensation for the Victims of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. II, art. 14 (1), Jan. 1, 2007.

⁵² Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. II, art. 18, Jan. 1, 2007.

⁵³ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. III, art. 25, Jan. 1, 2007.

request additional evidence, and then makes a final decision.⁵⁴ The Georgian General Administrative Code outlines the proceedings and rules governing the resolution of a claim.⁵⁵

The Commission on Restitution and Compensation can provide for the return of property to its original owner, including the eviction of any secondary occupant. If the secondary occupant was unaware of the illegality of their occupancy, they may also receive compensation.⁵⁶ Alternatively, the claims commission may substitute a property for destroyed property or even as a last resort pecuniary compensation.⁵⁷ The Georgian State Budget, grants, donations from other governments, international and non-governmental organizations, and private persons fund the Commission's activities.⁵⁸

Disbursal to Other Entities

Instead of directly accepting applications for compensation from victims, compensation commissions may seek to disburse funds to intermediate entities that are more able to address the needs of individuals. In the case of the United Nations Claims Commission, only governments and international organizations can submit claims to the commission.⁵⁹ The Secretariat established a claims classification

⁵⁴ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. III, art. 27, Jan. 1, 2007.

⁵⁵ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. III, art. 27, para. 1, Jan. 1, 2007.

⁵⁶ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. IV, art. 29 (2), Jan. 1, 2007.

⁵⁷ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. IV, art. 29 (4-6), Jan. 1, 2007.

⁵⁸ Law of Georgia "on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia," ch. V, art. 33 (3), Jan. 1, 2007.

⁵⁹ United Nations Compensation Commission Governing Council, Decision taken by the Governing Council of the United Nations Compensation Commission at the 27th Meeting, Sixth session held on 26 June 1992, art. 6, U.N. Doc. S/AC.25/1992/10 (June 26, 1992), *available at* http://www2.unog.ch/uncc/decision/dec_11.pdf (last accessed Sept. 20, 2007).

system to ensure similar treatment for similar claims.⁶⁰ A panel composed of three commissioners would hear claims, read the evidence, request additional information, if needed, and determine the amount of an award if any.⁶¹ The Governing Council could review all of the commissioners' decisions.⁶²

A compensation commission may also rely on "partner organizations" to handle claims and disburse money to victims. The German Foundation legislation establishes a list of eligible people who were in concentration camps, forcibly deported, or "suffered property lost as a consequence of racial persecution."⁶³ Partner organizations in Warsaw, Moscow, Kiev, Minsk, the German-Czech Future Fund in Prague, the Jewish Claims Conference in New York, and the International Committee of the Red Cross in Geneva then worked on behalf of the Foundation and disbursed funds to individual claimants.⁶⁴ The partner organizations determine the appeals process for claims, but they are "subject to no outside instruction," thereby making the claims process entirely outside the jurisdiction of national or international courts.⁶⁵

DARFUR PEACE AGREEMENT

The Darfur Peace Agreement (DPA) acknowledges the importance of victim compensation calling for "special attention to displaced and war-affected

⁶⁰ United Nations Compensation Commission Governing Council, Decision taken by the Governing Council of the United Nations Compensation Commission at the 27th Meeting, Sixth session held on 26 June 1992, art. 17, U.N. Doc. S/AC.25/1992/10 (June 26, 1992).

⁶¹ United Nations Compensation Commission Governing Council, Decision taken by the Governing Council of the United Nations Compensation Commission at the 27th Meeting, Sixth session held on 26 June 1992, sec. IV, U.N. Doc. S/AC.25/1992/10 (June 26, 1992).

⁶² United Nations Compensation Commission Governing Council, Decision taken by the Governing Council of the United Nations Compensation Commission at the 27th Meeting, Sixth session held on 26 June 1992, sec. IV, U.N. Doc. S/AC.25/1992/10 (June 26, 1992).

⁶³ The Law on the Creation of a Foundation "Remembrance, Responsibility and Future," sec. 11 (1), BGBl. 2001 I 2036 (2001).

⁶⁴ Otto Graf Lambsdorff, the German government's commissioner for the foundation, on the Establishment of the Foundation "Remembrance, Responsibility and Future," delivered the following speeches during the first reading of the legislation, April 14, 2000, *available at* <http://www.germany.info/relaunch/politics/speeches/041400.html> (last accessed Sept. 20, 2007).

⁶⁵ The Law on the Creation of a Foundation "Remembrance, Responsibility and Future," sec. 19, BGBl. 2001 I 2036 (2001).

persons.”⁶⁶ Central to this effort, the DPA provides for the return of property and reintegration assistance, “including rights to land and compensation for losses or damages or both sustained as a result of the conflict.”⁶⁷

The DPA establishes a hierarchy of commissions to aid returning refugees and internally displaced persons. The overall responsibility for such persons falls on the Darfur Rehabilitation and Resettlement Commission,⁶⁸ which is to establish Property Claims Committees to adjudicate disputes in both rural and urban areas.⁶⁹ The Property Claims Committees’ membership is representative of the geographic area in which they have jurisdiction, but otherwise regulated by law.⁷⁰ The Property Claims Committee can determine their own procedures in their use of mediation and “traditional dispute resolution mechanisms.”⁷¹

The Compensation Commission is to coordinate its work with the Property Claims Committees and is to refer property disputes to the Committees.⁷² The Darfur Rehabilitation and Resettlement Commission is responsible for resolving disputes that arise between the Compensation Commission and the Property Claims Committees, which cannot be reconciled through consultation between the two.⁷³

The Darfur Compensation Commission is a component of the Transitional Darfur Regional Authority.⁷⁴ The Senior Assistant to the President, who is to represent Darfur, proposes the head of the Darfur Compensation Commission to the President of Sudan for approval.⁷⁵ The Compensation Commission is to be independent and impartial in dealing with “claims for compensation by people of

⁶⁶ Darfur Peace Agreement, art. 17, para. 108, May 5, 2006, *available at*, http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept. 20, 2007).

⁶⁷ Darfur Peace Agreement, art. 17, para. 108.

⁶⁸ Darfur Peace Agreement, art. 18, para. 118.

⁶⁹ Darfur Peace Agreement, art. 21, para. 197.

⁷⁰ Darfur Peace Agreement, art. 21, paras. 198 and 197 (c).

⁷¹ Darfur Peace Agreement, art. 21, para. 197.

⁷² Darfur Peace Agreement, art. 21, para. 204.

⁷³ Darfur Peace Agreement, art. 21, para. 204.

⁷⁴ Darfur Peace Agreement, art. 6, para. 50 (h).

⁷⁵ Darfur Peace Agreement, art. 8, para. 66 (e).

Darfur who have suffered harm, including physical or mental injury, emotional suffering or human and economic losses, in connection with the conflict.”⁷⁶

Returning people have the right to property restitution or compensation for the loss of their property.⁷⁷ Compensation, however, is limited to situations where restitution of property is impossible.⁷⁸ The DPA establishes principles of victim compensation, including international, national and customary law, “if restitution is impossible other compensation shall be provided,” compensation is distinct from criminal punishment, and “the capacity of the perpetrator or perpetrators to pay monetary compensation.”⁷⁹

The restitution procedures, which the relevant commissions are to establish, are to be “simple, accessible, transparent and enforceable,” and the overall claims process is to be “just, timely accessible, free of charge, and age and gender sensitive.”⁸⁰ The Compensation Commission can set its own rules of procedure “based on international principles and practices, national law, and customary law and practices”; further the Commission may set up local branches or specialized entities to carry out its mandate.⁸¹ The powers of the Compensation Commission include making binding awards, using “traditional or customary laws and practices,” apportioning liability between perpetrators, and determining the time within which compensation shall be paid.⁸²

Mechanisms for the review and enforcement of the Compensation Commission decisions is left undetermined, as the presidential decree creating the Compensation Commission is to determine the Mechanisms.⁸³

The Compensation Commission is to pay awards out of the Compensation Fund to which the Government of Sudan has pledged an immediate US \$300 million contribution.⁸⁴

⁷⁶ Darfur Peace Agreement, art. 21, para. 209.

⁷⁷ Darfur Peace Agreement, art. 21, para. 194.

⁷⁸ Darfur Peace Agreement, art. 21, para. 196.

⁷⁹ Darfur Peace Agreement, art. 21, para. 205.

⁸⁰ Darfur Peace Agreement, art. 21, para. 195.

⁸¹ Darfur Peace Agreement, art. 21, para. 203.

⁸² Darfur Peace Agreement, art. 21, para. 206.

⁸³ Darfur Peace Agreement, art. 21, para. 209.

⁸⁴ Darfur Peace Agreement, art. 21, para. 210-213.

SAMPLE LANGUAGE

Article XXX

Principles of Compensation

- (1) On the principle that any violation of human rights entitles the victim to obtain redress and imposes on the State the duty to make reparation,⁸⁵ victims shall have the following rights:
 - (a) All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since [date] and to be compensated for any property that cannot be restored to them.⁸⁶
 - (b) Compensation for any direct loss, damage, including environmental damage and the depletion of natural resources, as a result of the hostilities in the province since [date].⁸⁷

Article XXX

Formation of a Commission

The Government of Sudan shall convene a commission to determine the extent of violations of human rights that occurred in the conflict leading up to this peace agreement. The commission shall be charged with providing conclusions and recommendations and implementing a national policy of compensation and assistance for the victims of human rights violations.⁸⁸

⁸⁵ This language is drawn from the Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca, para. 19, Dec. 12, 1996, *available at* http://www.usip.org/library/pa/guatemala/guat_961212.html (last accessed Sept. 20, 2007)

⁸⁶ Language is from the Dayton Peace Accords. Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons, art. 1, Dec. 14, 1995, *available at* <http://www1.umn.edu/humanrts/icty/dayton/daytonannex7.html> (last accessed Sept. 12, 2007). The Arusha Peace and Reconciliation Agreement also contain similar language guaranteeing first a return of property, and compensation where that is impossible. Arusha Peace and Reconciliation Agreement, Protocol IV: Reconstruction and Development, art. 8, 28 Aug. 2000, *available at* http://www.usip.org/library/pa/burundi/pa_burundi_08282000_toc.html (last accessed Sept 20, 2007).

⁸⁷ This language is drawn from UN Security Resolution 687, April 1, 1991, *available at* <http://www2.unog.ch/uncc/resolutio/res0687.pdf> (last accessed Sept. 20, 2007).

⁸⁸ This language is drawn from paragraph 19 of the Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca, Dec. 12, 1996.

OR

The Parties hereby establish an independent Compensation Commission. The Commission shall have its headquarters in [location] and may have offices at other locations, as it deems appropriate.⁸⁹

Article XXX

Functions of the Commission

- (1) The Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.⁹⁰
- (2) The Commission shall have the competence to receive and register and have the competence to resolve, subject to the right of appeal to the [court or appeals entity, independent and subject to no outside influence⁹¹] the following categories of victims of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between [dates]:⁹²
 - (a) Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights; and

⁸⁹ This language is drawn from the Dayton Peace Accords Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons, Dec. 14, 1995, art. 7.

⁹⁰ This language is drawn from Peace Agreement Between the Government of Liberia (GOL), The Liberians United for Reconciliation and Democracy (LURD), The Movement for Democracy in Liberia (MODEL) and the Political Parties, 18 Aug. 2003, *available at* http://www.usip.org/library/pa/liberia/liberia_08182003_toc.html (last accessed Sept. 20, 2007). Similar language is also present in the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999, *available at* http://www.usip.org/library/pa/sl/sierra_leone_10301996.html (last accessed Sept. 22, 2007).

⁹¹ This language is drawn from The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” Section 19, BGBl. 2001 I 2036 (2001) *available at* http://www.compensation-for-forced-labour.org/pdf/Foundation_law_consolidated_E.pdf (last accessed Sept. 20, 2007).

⁹² Language is drawn from United Nations Interim Administration Mission in Kosovo, Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, ch. II, sec. 3, UNMIK/REG/2006/50 (Oct. 16, 2006), *available at* http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_50.pdf, (last accessed Sept. 20, 2007).

- (b) The immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization⁹³

Article XXX

Distribution of Funds/Claims Process

The Commission shall establish its own rules, regulations, and procedures for disbursing the funds to victims.

OR

- (1) Resources of the Compensation Commission Fund, that serve the purpose of the Compensation Commission, will be allocated to partner organizations. They are to be used for one-time payments to persons eligible pursuant to Section [XXX], as well as for covering the personnel and non-personnel expenses of the partner organizations.⁹⁴
- (2) Claims for payments from the monies envisaged are to be addressed to the partner organization. Determinations concerning these payments shall be made by a commission to be formed under this partner organization. The commission shall consist of one member each to be named by the [organizations or governmental entities] and a chairperson to be chosen by those two members. The commission shall establish supplemental principles concerning the content and procedure of its determinations, insofar as these are not already established under this Law or the by-laws. The commission shall rule on the submitted applications within a year after expiration of the application deadline.⁹⁵

⁹³ Language is from Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, *available at* <http://www.ohchr.org/english/law/pdf/victims.pdf> (last accessed Sept. 20, 2007).

⁹⁴ This language is drawn from The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” Section 9(1), BGBl. 2001 I 2036 (2001).

⁹⁵ This language is drawn from The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” Sec. 9(6), BGBl. 2001 I 2036 (2001). The United Nations Compensation Commission also does not handle claims directly from individuals, but rather from governments and international organizations. Decision taken by the GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION AT THE 27TH MEETING, SIXTH SESSION HELD ON 26 JUNE 1992, S/AC.26/1992/10, art. 5, (June 26, 1992).