

**Property Restitution in Transitional Justice:**

**Ukraine and Comparative Perspective**

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## I. Introduction

Home is where the heart is, and many have had theirs torn from them, often perpetually separated from the lands they considered the center of their universe. From persecution and systematic removal by political authorities to fleeing blood-soaked conflicts that destabilized entire regions, people across the world have been driven out and had their property seized. They are then replaced by those more favored by the incoming regime or by others who take advantage of their absence. Opportunities to return often arise only when the political climate shifts toward reconciliation, with many rightly seeking restitution of property that was once theirs. Determining whether this is sound policy depends on its effect on the reconciliation and reconstruction of the community.

The restitution of property rights and return to the original owner is a justified venture when it redresses historical grievances, does not instill injustice or inequality within the community, and is carried out in a manner that supports international human rights standards. It is especially warranted in cases where the state has a direct economic interest or bears responsibility for the original displacement. However, restitution becomes problematic when it risks unearthing past injustices in a way that perpetuates division within the community or undermines social cohesion.

Time is another critical factor in the viability of property restitution. As decades pass, the property in question becomes deeply intertwined with the identity and livelihood of new occupants. Multiple generations may come and go before conditions, such as regime change or social pressure, create the opportunity for restitution. At that point, returning property to its

original owner may do more harm than good, especially if it displaces individuals for whom the property has become a primary home or asset. In such cases, restitution may undermine the very goals of reconciliation and equity it purports to serve.

Restitution is, in essence, a form of redistribution. But in certain contexts, restoring the previous order may simply reset society to a system that was already unjust. Amid the upheaval of the Russian Revolution, the Bolsheviks seized power and laid the foundations for what would become the Soviet Union. Citizens were stripped of their property, with all ownership rights subsumed by the state. Yet Imperial Russia was hardly a model of justice: aristocrats, the imperial family, and the Orthodox Church owned the lion's share of land, while the peasantry, though technically holding about half of the arable land, was relegated to poor-quality plots under a deeply inequitable system.<sup>1</sup> Restituting property in such a context would risk re-entrenching the very inequalities that fueled revolution in the first place.

Striking the right balance between redressing historical grievances and protecting against the systematic violation of property rights is crucial when evaluating the claims of both the displaced and the current occupants. Restitution, even when instituted with righteous intent, can perpetuate division and feed societal tensions. There is also a clear economic dimension: restitution is more favorable when it can be achieved without impoverishing the current occupant or stripping them off a substantial asset. Ultimately, property restitution must be guided by a commitment to justice that is forward-looking, not merely restorative. It must

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<sup>1</sup> Jason Long & Joseph Ferrie, *Institutional Change and the Persistence of Power: The Origins of Inequality in a Transition from a Redistributive to a Market Economy* (Williams Coll. Econ. Dep't Working Paper No. 2013-02, May 2013),

weigh the moral imperative to right historical wrongs against the practical need to preserve social cohesion and economic stability. In doing so, it must ask not only what is owed to the past, but what is required for a just and equitable future.

In Ukraine, the prospect of restitution is complicated by shifting borders, destruction of property, and the entanglement of new claims over seized assets. As millions have been displaced by war and occupation, questions about the restoration of homes and land to their rightful owners echo the dilemmas faced by countries such as Post apartheid South Africa, genocide in Bosnian Herzegovina, communism in Czechoslovakia and ethnic tensions in Kosovo. The lessons from earlier regimes, where restitution sometimes risked perpetuating historical injustices or destabilizing fragile communities, underscore the need for a nuanced approach that balances the rights of the displaced with the realities faced by current occupants. Ultimately, Ukraine's path toward reconciliation and reconstruction will depend on crafting policies that honor the principle of justice without reigniting old divisions, drawing on both international legal frameworks and the lived experiences of societies that have grappled with similar challenges in the past.

## **II. Legal Foundations of Property Restitution**

### Pinheiro Principles

International standards for property restitution have been laid out in the "Principles on Housing and Property Restitution for Refugees and Displaced Persons", colloquially known as

the Pinheiro principles.<sup>2</sup> Developed in 2005 by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, these principles are designed to address the widespread and complex issues of property loss and displacement resulting from conflict, discrimination, and disasters. According to Article 1, the scope and application were designed to aid national and international actors to be able to facilitate proper legal and technical assistance in the application of housing, land, and property restitution.<sup>3</sup> Developed in 2005, these key principles inform how the United Nations has recommended approaching the process of property restitution and reparations.<sup>4</sup>

Within the doctrine is the right to housing and property restitution, mandating that a legal framework to achieve this goal must be established that is consistent with international human rights and humanitarian law.<sup>5</sup> Restitution is to be conducted without discrimination with Women's equal right to ownership and inheritance. Establishment of effective restitution mechanisms, accessibility of restitution procedures, and Prioritization of national legal procedures require coordination and cooperation.<sup>6</sup> Preservation and restoration of housing, in addition to property records, and the accessibility of documentation for claimants. Once implemented, there should be third-party monitoring to ensure that the rights of individuals are not further compromised.

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<sup>2</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles), UN Sub-Commission on the Promotion and Protection of Human Rights, June 2005 | UNHCR

<sup>3</sup> Id

<sup>4</sup> Id

<sup>5</sup> Id

<sup>6</sup> Id

Displaced persons must be able to voluntarily return in safety and dignity, with Freedom of movement, choice of residence, and peaceful enjoyment of that property. They should guarantee protection from future displacement, political persecution, and timely resolution of claims. When it is not feasible, refugees and displaced people should be afforded monetary compensation and given alternative accommodation. Implementation and monitoring of restitution processes.<sup>7</sup> The Pinheiro Principles emphasize that the voluntary nature of return is paramount, displaced persons should not be coerced or pressured to return to unsafe or unstable conditions. When physical restitution is not feasible due to destruction, occupation, or other insurmountable barriers, refugees and displaced people should be afforded fair and adequate monetary compensation and, where possible, alternative accommodation.<sup>8</sup> These remedies must be sufficient to allow displaced people to rebuild their lives with dignity and security.

Preservation and restoration of housing, along with property records, and the accessibility of documentation for claimants are critical for the success of restitution programs. Practical measures may include the digitization of records, the establishment of dedicated restitution offices, mobile units to reach remote populations, and public awareness campaigns to inform displaced people of their rights and available procedures.<sup>9</sup> Once implemented, these programs should be subject to independent, third-party monitoring to ensure that the rights of individuals are not further compromised and to build trust in the restitution process.

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<sup>7</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles), UN Sub-Commission on the Promotion and Protection of Human Rights, June 2005 | UNHCR

<sup>8</sup> Id

<sup>9</sup> Id

Monitoring mechanisms enables the identification and rectification of systemic issues, such as corruption, discrimination, or inefficiency, and provides an avenue for displaced persons to seek redress in cases of procedural errors or abuses.

### Refugee Convention & IDPs

Article 1 of the 1951 Convention defines a refugee as someone who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it."<sup>10</sup>

Internally displaced persons (also known as "IDPs") are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border."<sup>11</sup> IDPs represent one of the most vulnerable groups in conflict and post-conflict settings, as they remain within their country's borders and are often subject to ongoing instability, lack of access to humanitarian aid, and limited legal protections compared to refugees.<sup>12</sup> Their displacement is typically characterized by

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<sup>10</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137. <https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>

<sup>11</sup> Office of the High Comm'r for Human Rights (OHCHR), Special Rapporteur on the Human Rights of Internally Displaced Persons

<sup>12</sup> Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

uncertainty, loss of livelihoods, disruption of social networks, and challenges in accessing basic services such as healthcare, education, and secure housing.<sup>13</sup> The plight of IDPs frequently falls under the responsibility of their national governments, which may lack the resources, capacity, or political will to provide effective protection and durable solutions.<sup>14</sup>

### UNGA 60/47

Article thirty five of the Articles on the Responsibility of States for Internationally Wrongful Acts defines restitution as “the re-establishment of the situation that existed before the wrongful act was committed.”<sup>15</sup> According to United Nations General Assembly resolution 60/147 “*Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred.”<sup>16</sup>

### III. Comparative Case Studies and State Responsibility

The role of state responsibility and transitional justice is central to the effective implementation of restitution programs. States have the primary obligation to provide remedies for violations of housing, land, and property rights, including through the establishment of specialized bodies, legal aid services, and mechanisms for appeal and review. The integration of transitional justice approaches, such as truth commissions, reparations programs, and legal reforms, can help address the broader historical and structural causes of

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<sup>13</sup> U.N. High Comm’r for Refugees (UNHCR), Internally Displaced People

<sup>14</sup> *Id*

<sup>15</sup> Responsibility of States for Internationally Wrongful Acts, United Nations, 2001, U.N

<sup>16</sup> [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law | OHCHR](#)

displacement and property loss. Successful restitution processes depend on political will, adequate funding, and international support, particularly in post-conflict societies where resources are stretched and institutions may be weak. Ongoing monitoring, transparent reporting, and engagement with civil society and affected communities are key to ensuring that property restitution contributes not only to the redress of individual grievances but also to the broader goals of reconciliation, peacebuilding, and sustainable development.

Prime examples of countries that have undertaken property restitution and Truth commission programs include the Czech Republic, South Africa, Bosnia, and Kosovo, with the latter still adjudicating many unresolved claims. State seizure of property during communist regimes and the displacement of entire communities during conflicts provide particularly instructive cases of the redistribution and return of property, especially in regions such as Eastern Europe. Transitional justice is often challenging in these cases because numerous mechanisms and interests must be considered. Each country may have experienced different events that led to its respective programs, but all arose from culturally and ethnically charged disputes and conflicts.

In the Czech Republic, efforts were grounded in the principle of redressing state-led expropriation, but they also raised difficult questions about citizenship, generational change, and economic feasibility. Bosnia and Kosovo focused on international oversight and the application of human rights standards to the restitution of property.<sup>17</sup> The fundamental difference is the Frankenstein nature of Bosnia-Herzegovina and its internal division. South

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<sup>17</sup> Rhodri Williams, *The Global Right to Restitution*, in Vu Dinh & Edwards, *Transitional Justice* (extra excerpts), ChartaCourse,

Africa and Rhodesia, modern-day Zimbabwe, were all apartheid states with wealthy whites owning most of the land and other minorities being repressed. South Africa focused its efforts to redress historical injustices and restore the rights of those discriminated against during apartheid. Zimbabwe has focused on economic issues and the return of its white farmers to boost the agricultural community. Each has had certain degrees of success and failure, leaving a legacy that translates into the framework of the next regime of restitution and reconciliation.

### **Bosnia-Herzegovina: Annex Seven and the CRPC**

In the aftermath of some of the bloodiest times in Europe since the Second World War, Bosnia-Herzegovina, a former republic of Yugoslavia, was left destroyed and arguably more divided than ever. Between the siege of Sarajevo and mass atrocities in places such as Srebrenica, over ninety-five thousand deaths have been documented, representing roughly two percent of its prewar population.<sup>18</sup> In addition, over two million people were displaced during the conflict's duration, making it one of the largest humanitarian crises in history.<sup>19</sup> It serves as a key example of where strong international intervention and respect for human rights principles have been implemented.

This conflict represents one theatre in the saga of the dissolution of Yugoslavia, which saw individual republics call for independence from Belgrade in quick succession. Ethnic integration had worked on a sustainable basis under the care of Josip Broz Tito, the leader of Yugoslavia, until he died in 1980; however, within a decade, the solidarity had succumbed to economic stagnation and instability, ultimately unraveling into a web of nationalist conflicts.

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<sup>18</sup> Bosnia-Herzegovina - Every Casualty Counts

<sup>19</sup> Id

Centralization of power under Milosevic and the rise of Serbian nationalism were the main drivers for separatist tensions in each of the republics of the former Yugoslavia.

The Dayton Accords, signed in Dayton, Ohio, ended the hostilities between Yugoslavia, alongside Republika Srpska, and the Muslim and Croatian communities of Bosnia. The official title was “The General Framework Agreement for Peace in Bosnia Herzegovina”, a complex mosaic and a Frankenstein monster born from the mechanisms of international law under the auspices of the United Nations.<sup>20</sup> The ethnic division within Bosnia-Herzegovina became the political framework of a nation welded together with dissimilar and incompatible elements in the name of peace, a complex system of governance that is unique to Bosnia-Herzegovina. A fault line runs through the country, ready to send shockwaves that will reverberate throughout Europe. That line is the border of Republika Srpska and the Federation of Bosnia, which are the two entities that make up Bosnia-Herzegovina.<sup>21</sup> This framework could arguably be on the same level of a bad example of international constructs as the two state solution in Israel and Palestine.

Property rights and restitution are covered by Annex Seven of the Dayton Accords, emphasizing the ability and rights of refugees and displaced persons to return to their former homes. This was the keystone to fundamentally addressing property rights and restitution in Bosnia Herzegovina in the aftermath of the war. The provisions of Annex Seven are designed to uphold international standards and ensure that the process is both equitable and effective.

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<sup>20</sup> Hans van Houtte, Commission for Real Property Claims of Displaced Persons and Refugees, in Max Planck Encyclopedia of International Procedural Law (Oxford Univ. Press, 2020)

<sup>21</sup> General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, 35 I.L.M. 75.

Article one highlights the mission and the desired effect that the section should have and is one of the eleven that were included.

Article I: Rights of Refugees and Displaced Persons states that “All refugees and displaced people 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 1991 and to be compensated for any property that cannot be restored to them.”<sup>22</sup> These provisions collectively articulate the mission and intended impact of Annex Seven, ensuring that the rights of refugees and displaced persons are protected and that remedies are available for losses incurred during the conflict. Eleven articles exist within annex seven each pairing with the international standard of reconciliation and restoration of property or equivalent solutions.

Annex Seven further established the Commission for Real Property Claims (CRPC), a pivotal body tasked with the adjudication and resolution of property claims arising from the conflict. The CRPC operated with a mandate to process claims efficiently and impartially, aiming to restore property to rightful owners or, where restitution was not feasible, to ensure just compensation.<sup>23</sup> This institution was designed to be accessible to all claimants, regardless of their ethnic background, and functioned under international oversight to bolster confidence in the process and deter discriminatory practices. The success of the CRPC in Bosnia and Herzegovina underscores the importance of dedicated, transparent mechanisms in post-conflict property restitution, setting a precedent for similar initiatives in other divided societies. The

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<sup>22</sup> General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, 35 I.L.M. 75.

<sup>23</sup> Hans van Houtte, *Commission for Real Property Claims of Displaced Persons and Refugees*, in *Max Planck Encyclopedia of International Procedural Law* (Oxford Univ. Press 2020)

lessons learned from its implementation, such as the necessity of robust legal frameworks, public outreach, and ongoing monitoring, would inform subsequent restitution efforts, including those undertaken in South Africa, where the transition from apartheid demanded innovative approaches to redress historic injustices and pursue national reconciliation.

### **South Africa: Land Restitution Act & Truth and Reconciliation Commission**

With the end of apartheid, South Africa embarked on a landmark journey toward restitution and reconciliation to address decades of dispossession and exclusion. During this period, the government of South Africa established the Restitution of Land Rights Act. The intended scope was “To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.”<sup>24</sup>

It established the Commission on the restitution of land rights and detailed the framework and functions of the organization.<sup>25</sup> The Commission receives and processes land restitution claims, assists claimants, investigates and mediates disputes, and reports outcomes to the Court. It prioritizes urgent or large-scale claims, advises alternative relief, monitors implementation of Court orders, and may seek legal action to prevent land deals that

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<sup>24</sup> Restitution of Land Rights Act 22 of 1994 (S. Afr.).

<sup>25</sup> Id

undermine restitution. It also informs the public and does whatever is necessary to finalize claims efficiently.<sup>26</sup>

The Truth and Reconciliation Commission (TRC) emerged in South Africa's fragile post-apartheid dawn, a legal and institutional experiment crafted by the Promotion of National Unity and Reconciliation Act No. 34 of 1995. In the wake of an era defined by systematic violence and exclusion, the commission's mandate was both ambitious and precarious: to excavate the full record of gross human rights violations between 1960 and the threshold of democracy, to illuminate not only the wounds but the context and motivations behind them.<sup>27</sup> Promotion of National Unity and Reconciliation Act No. 34 of 1995 The TRC's design was itself a mechanism of compromise, restorative rather than punitive, offering a conditional amnesty to perpetrators who made full disclosure of politically motivated acts, while simultaneously affording victims a public forum to reclaim their dignity through testimony and to seek reparations.<sup>28</sup>

The Commission's objectives were to promote national unity and reconciliation by: (a) establishing a full picture of gross human rights violations from 1 March 1960 to the cut-off date, including causes, context, and perspectives of victims and perpetrators; (b) facilitating amnesty for those who fully disclose politically motivated acts; (c) determining victims' fate, restoring their dignity through testimony and recommending reparations; and (d) compiling a comprehensive report with findings and measures to prevent future violations. • Balancing justice and economic development<sup>29</sup>

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<sup>26</sup> Restitution of Land Rights Act 22 of 1994 (S. Afr.).

<sup>27</sup> Promotion of National Unity and Reconciliation Act No. 34 of 1995 §§ 19-22

<sup>28</sup> Id

<sup>29</sup> Id

This process, while lauded for its transparency and scale, was fraught with the tensions inherent in any attempt to balance justice, truth, and the requirements of national reconciliation. The TRC excavated thousands of stories from beneath the nation's surface, granting voice to the silenced and a measure of accountability to those previously untouchable. For some, it was a cathartic reckoning; for others, the amnesty provisions represented an abdication of justice, a necessary evil to prevent the collapse of an already fragile new order.<sup>30</sup>

Ultimately, the legacy of South Africa's restitution and reconciliation efforts is complex, at once a blueprint for transitional justice and a reminder of its limitations. The TRC's model has inspired similar initiatives abroad, yet the deeper structural wounds of apartheid remain only partially addressed. The pursuit of truth, justice, and economic development is ongoing, underscoring the need for durable institutions and policies that balance redress with the realities of nation-building. South Africa's experience stands as both lesson and challenge for other societies grappling with the aftermath of systemic injustice.

One specific lesson from South Africa's case is that achieving transitional justice requires more than just establishing truth commissions or legal frameworks, it demands sustained institutional commitment and policies that address both individual and structural harms. While the Truth and Reconciliation Commission (TRC) provided a model for restorative justice and inspired similar efforts globally, South Africa's experience demonstrates that reconciling a nation after systemic injustice is a long-term process that must confront deep-seated inequalities and social divisions. Durable institutions and inclusive policies are essential to

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<sup>30</sup> Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge Univ. Press 2001); Antje Krog, *Country of My Skull* (Random House 1998)

balance redress, promote healing, and support nation-building. In essence, transitional justice efforts must not only seek accountability and truth but also foster meaningful economic and social transformation to truly address the legacies of past injustice.

### Kosovo: HPD/KPA and ethnic tensions

Kosovo offers both a post-conflict and regime change model, revolving around the privatization of socially owned enterprises and the return of property to displaced persons in the war.<sup>31</sup> The Nation's legal and political framework tells a compelling story of transformation from an autonomous province within ex-Yugoslavia, Serbia to an independent state divided along ethnic lines. Its turbulent past culminated in the 1999 conflict between the Serbians and Albanians of the region, a war that saw former neighbors engage in displacement and genocide.<sup>32</sup> It resulted in a huge societal and demographic shift that fundamentally altered the political and civil landscape.

After the war, Kosovo was placed under international administration via UNMIK and UN Security Council Resolution 1244. It currently operates under its 2008 constitution that ensures minority rights and looks to create a state aligned with European values.<sup>33</sup> One of the unique features of its constitution is the incorporation of international human rights within article nineteen, ceding supremacy to international agreements above its own laws.<sup>34</sup> In addition it reserves multiple seats for minority representation within government, but there have been a

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<sup>31</sup> Rhodri Williams, *The Global Right to Restitution*, in Vu Dinh & Edwards, *Transitional Justice* (extra excerpts), ChartaCourse,

<sup>32</sup> Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford Univ. Press 2000).

<sup>33</sup> *Id*

<sup>34</sup> Constitution of the Republic of Kosovo, June 15, 2008.

variety of difficulties in particular with the Serbian population. They have refused to engage in the modern framework for the state of Kosovo, in favor of parallel systems of governance and judiciary.<sup>35</sup>

The Housing and Property Directorate (HPD) and later the Kosovo Property Agency (KPA) were established to handle mass claims and implement international standards, particularly the Pinheiro Principles.<sup>36</sup> These principles emphasize the right of displaced persons to return to their homes and lands and provide a framework for restitution grounded in human rights, non-discrimination, and voluntary return.<sup>37</sup> Kosovo's restitution process has been fraught with ethnic tension, weak enforcement, and the challenge of balancing justice for returnees with the rights of current occupants. What has occurred is the movement of the Serbian minority to regions such as Mitrovic in the north and withdrawal from society and state institutions. Rather than moving into their old property, those claimants who are awarded a judgment stating that they are the rightful owners of the property have typically sold it to the occupant.<sup>38</sup> This is due mostly to the existence of tensions between communities in addition to security concerns when living amongst other ethnic groups.

A land swap has been proposed by both Kosovo and Serbia, but such a move is rejected by the international community as an unviable solution.<sup>39</sup> This may be the most practical reality

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<sup>35</sup> Org. for Sec. & Co-operation in Eur., *Mission in Kosovo, Parallel Structures in Kosovo 2006–2007* (2007),

<sup>36</sup> Anneke Rachel Smit, *Housing and Property Restitution and IDP Return in Kosovo*, 18 *Int'l J. Refugee L.* 1 (2006).

<sup>37</sup> U.N. Sub-Comm'n on the Promotion & Prot. of Hum. Rts., *Principles on Housing and Property Restitution for Refugees and Displaced Persons*

<sup>38</sup> Org. for Sec. & Co-operation in Eur., *Mission in Kosovo, Challenges in the Resolution of Conflict-Related Property Claims in Kosovo* (June 2011),

<sup>39</sup> Mak, Ryan. "An Evaluation of the Proposed Serbia-Kosovo Land Swap Deal and Its Potential Status under Applicable International Law," 17 *Can. J. Eur. & Russian Stud.* 45, 45–63 (2024),

as ethnic Albanians and Serbians have become settled in specific regions where they are each the increasingly the majority such as Serbians in North Mitrovica. Advocates argue that such an arrangement might solidify borders along demographic lines, potentially reducing friction. Yet, the idea has faced nearly universal rejection from the international community, including the European Union and United States, who fear it could undermine the principle of multiethnic coexistence, incentivize further territorial claims, and provoke instability throughout the Balkans.<sup>40</sup> Within Kosovo and Serbia, themselves, the proposal remains deeply controversial and politically sensitive, raising concerns about mass population movements, property rights, and the precedent it might establish for other contested regions. To date, no formal agreement or process has ever been implemented toward a land swap, and discussion of the concept continues to expose rather than resolve the complex realities of post-conflict identity, sovereignty, and regional security.<sup>41</sup>

Kosovo is a prime example of an attempt to align with a set of values and establish a post conflict framework that has essentially collapsed or existed in a limbo state that refuses to meaningfully progress. Its institutions exist in a state of stagnation, caught between international oversight and domestic resistance. Despite adopting the euro and sustaining practical relationships with neighboring countries, even Serbia at times, Kosovo is chained to its complex past and prevented from moving forward. The unresolved issues of property restitution, ethnic division, and political stalemate continue to hinder reconciliation and sustainable development. While international actors advocate for multiethnic coexistence and

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<sup>40</sup> Mak, Ryan. "An Evaluation of the Proposed Serbia-Kosovo Land Swap Deal and Its Potential Status under Applicable International Law," 17 *Can. J. Eur. & Russian Stud.* 45, 45–63 (2024),

<sup>41</sup> *Id*

democratic reform, the region remains vulnerable to renewed tensions and unable to fully transition into a stable, self-sufficient state. Kosovo's experience underscores the profound challenges of post-conflict recovery, especially when external pressures and internal fractures persist.

Kosovo has been able to effectively move on from much of its troubled past in a de facto manner whether it receives the recognition it deserves on the world stage. As the world turns its attention to other conflict zones plaguing the modern landscape, the ongoing conflict in Ukraine presents a new and urgent test for transitional justice and property restitution. The devastation and displacement wrought by Russia's invasion are shadows of many of the dilemmas faced by Kosovo. This time however, the humanitarian cost and level of crisis far eclipses even the totality of the Yugoslav conflicts. Russia's invasion of Ukraine is on a far larger scale and with even higher stakes for regional and global stability. The lessons learned from Kosovo's struggles highlight the importance of robust institutions, inclusive policies, and international cooperation in addressing the aftermath of war. These are core principles that highlight the future generation of restitution as Ukraine confronts its own path to recovery and reconciliation in the coming decades after the fighting concludes.

## **V. Contemporary Conflicts and Emerging Challenges in Ukraine**

February 24<sup>th</sup>, 2022, Russia began a bombardment of Ukrainian cities, subsequently invading in multiple directions, with the stated goal of capturing Kyiv and subjugating Ukraine.<sup>42</sup> President Vladimir Putin Designated it a special military operation and claimed that the regime in Kyiv was under a Nazi Ideology that needed to be purged.<sup>43</sup> Moscow could not live with the prospect of Kyiv have pulled away from its orbit and What was supposed to be a three-day ordeal has transformed into a four-year long war practically frozen along the line of contact. Fierce Ukrainian Resistance and western allied support have stabilized the situation and allowed Ukraine to even liberate certain regions in the subsequent years.

Moscow and its forces have perpetrated numerous war crimes and acts of genocide, unleashing a humanitarian catastrophe of unprecedented scale, one that eclipses even the horrors of Yugoslavia's dissolution and stands as the gravest crisis Europe has faced since the Second World War. These range from the destruction of the Kakhovka Dam and devastation along the Dnipro<sup>44</sup>, the occupation and militarization of the Zaporizhia Nuclear Plant<sup>45</sup>, and the atrocities committed in Bucha and Irpin.<sup>46</sup> Respect for international law and rules of engagement is void in the Russian military, with it having prevented many humanitarian corridors called on by organizations such as the Red Cross.

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<sup>42</sup> Holly Ellyatt, Russian Forces Invade Ukraine, CNBC (Feb. 24, 2022)

<sup>43</sup> Id

<sup>44</sup> Suriya Evans-Pritchard Jayanti, Kakhovka Dam Collapse Threatens Europe's Largest Nuclear Plant, Atlantic Council (June 8, 2023)

<sup>45</sup> Int'l Atomic Energy Agency, IAEA Report Highlights Two Years of Efforts to Prevent an Accident at Ukraine's Zaporizhzhya Nuclear Power Plant (Sept. 4, 2024)

<sup>46</sup> Office of the UN High Commissioner for Human Rights, "Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions" (OHCHR Thematic Report, Dec. 2022)

Since the onset of the full-scale invasion, Russia has occupied about one-fifth of Ukrainian territory and has driven millions from their homes in a brutal campaign that has leveled entire cities such as Bakhmut and Mariupol.<sup>47</sup> This advance has been dramatically slowed almost to a halt, leaving Russia only to make gains by extreme attritional warfare, only able to capture less than one percent of Ukrainian territory in its 2025 campaign.<sup>48</sup> In their desperation, they have effectively locked the conflict into an almost forever war that is likely not going to result in a win for either side.

#### Current displacement and property claims

This conflict is characterized by the evolution of drone warfare, with both sides deploying hundreds of thousands of them for various tasks such as logistics, surveillance and attacking targets. Nightly raids against Ukrainian civilian infrastructure such as hospitals and apartment complexes have become common tactics employed by the Russian military, in addition to the usage of a variety of missiles.<sup>49</sup> Hundreds of missiles and drones overwhelm air defenses and aim to destroy houses, hospitals and energy infrastructure.<sup>50</sup> These can be especially brutal during the winter months as energy demand surges, and it leaves many individuals freezing and without power. According to a report by the Institute for the Study of War, Russian forces launched 495 total missiles and drones against Ukraine overnight on December 12 to 13, 2025, heavily targeting energy infrastructure across the country.<sup>51</sup> The most susceptible regions are the capital region of Kyiv, Mykolaiv, Kherson, Zaporizhia and Kharkiv

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<sup>47</sup> Institute for the Study of War, Russian Offensive Campaign Assessment, December 9, 2025,

<sup>48</sup> Id

<sup>49</sup> ACAPS, Ukraine: Energy Infrastructure Attacks Updated Outlook and Impact During the 2024–2025 Cold Season (Feb. 19, 2025)

<sup>50</sup> Id

<sup>51</sup> Institute for the Study of War, Russian Offensive Campaign Assessment, December 13, 2025,

which are near the front lines, and the Lviv region which is a major hub for coordination with western countries.<sup>52</sup>

The ongoing conflict in Ukraine has generated a substantial population of internally displaced persons (IDPs). Widespread displacement has occurred as a direct result of the Russian military's persistent targeting of civilian infrastructure, particularly in regions near active front lines. This pattern of attacks has forced many Ukrainians to abandon their homes and seek refuge in safer areas within the country. In addition to those uprooted by the destruction of residential neighborhoods and critical infrastructure, there are also individuals who have fled territories currently under direct occupation. These people have moved to comparatively secure regions of Ukraine, seeking safety and stability away from the immediate threats posed by ongoing hostilities and occupation. This forces communities in the western regions of Ukraine to swell their populations and support more people than they may have capacity for.

According to data collected by the United Nations High Commissioner for Refugees (UNHCR), there were an estimated three and a half million instances of internal displacement as of 2025.<sup>53</sup> Every advance made by Russian armed forces further intensifies the strain on Ukraine's government, its citizens, and the national economy, compounding the challenge of responding to the displacement crisis. Beyond those displaced internally, the crisis has also contributed to a substantial diaspora, with Ukrainian citizens spreading across the globe in

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<sup>52</sup> ACAPS, Ukraine: Energy Infrastructure Attacks Updated Outlook and Impact During the 2024–2025 Cold Season (Feb. 19, 2025)

<sup>53</sup> U.N. Sub-Comm'n on the Promotion & Prot. of Hum. Rts., Principles on Housing and Property Restitution for Refugees and Displaced Persons.

search of refuge and stability. Six million nine hundred thousand Ukrainians exist in this global diaspora, with over a million in Germany alone.<sup>54</sup> This underscores how broad the crisis is, encompassing the entirety of Europe and almost all European states.

Since 2022 over two million six hundred thousand housing units have been destroyed due to the war, a number that only continues to grow by the day.<sup>55</sup> According to data collected by the IOM General Population Survey (GPS), over five million dwellings have been damaged during the conflict, with the greatest impact being felt in frontline oblasts such as Kherson, Kharkiv and Donetsk. Eighty-six percent of which are primary homes, a figure that exacerbates the ability of returnees to rebuild their lives.<sup>56</sup> This creates a baseline for how many are going to need to be replaced or compensated for in a post-war environment. In addition to destruction of property, another issue of practices by the Russians to betray safety protocol and endanger entire regions could influence the ability of Ukraine to rebuild.

The environmental devastation caused by the destruction of the Kakhovka Dam and the occupation of the Zaporizhia Nuclear Power Plant demonstrates how the conflict in Ukraine extends beyond immediate human suffering, creating long-term challenges for returning populations. These actions have not only altered the landscape and threatened agricultural livelihoods in regions like Kherson but have also introduced new layers of risk and instability for those hoping to rebuild their lives. Such environmental and infrastructural crises are intertwined with broader questions about property restitution, the return of displaced persons, and the lessons that can be drawn from similar post-conflict situations around the world. Destruction of the Kakhovka dam isn't just an act of destruction, it is

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<sup>54</sup> Statista, Number of Ukrainian Refugees 2025, by Country

<sup>55</sup> International Organization for Migration (IOM), Ukraine

<sup>56</sup> Id

an effective measure of ecocide, transforming the environment along the southern Dnipro River. Most notably in the region of Kherson, returnees have had trouble returning to their farms due to increasing desertification caused a lack of enough water to reach parts of the region.<sup>57</sup>

In 2022 the Russian military occupied the Zaporizhia Nuclear power plant, with the goals of both wiring it to the Russian power grid, in addition to holding all of Europe hostage by inciting provocations to destroy it. As the largest of its kind in Europe, the fallout would be catastrophic. Beyond the immediate environmental devastation, these actions have created long-term risks for public health, agriculture, and regional stability. Subsequent lack of water to the cooling towers has exacerbated the ongoing threat to the Zaporizhia Nuclear Plant, leaving communities living in fear of a potential nuclear disaster, complicating relief efforts and further discouraging displaced residents from returning home.

#### Lessons from Bosnia, South Africa, and Kosovo

For a modern ongoing conflict such as the Russo-Ukrainian war, it is imperative to establish a strong and effective policy based on past programs and the nuances related to that conflict. Examining Russia's legal justifications for the annexation of several regions, such as Crimea and the Donbass, and its impact on Ukrainian property rights. Many possible outcomes exist for the cessation of hostilities, and plans must consider the most extreme outcomes, from full annexation by Russia to the complete de-occupation of Ukraine. The international community should be prepared to implement a property restitution program that will likely

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<sup>57</sup> Business & Human Rights Resource Centre, Ukraine: Kherson Watermelon Farmers Are Faced with Threats of Russia's War as Drones Destroy Crops (Aug. 2025)

involve many people not being able to return to their homes or being driven out in favor of the Russian Occupiers. Crimea is already an example of Russia favoring the resettlement of Russians into former Ukrainian territory.

Washington, Kyiv and Moscow have all attempted to resolve the matter through diplomatic negotiations, however there are both complexities and simplicities that prevent outcomes such as a ceasefire or cessation of hostilities. Negotiations have drawn maps that would cede Donetsk and Luhansk oblasts to the Russian Federation, establish a demilitarized zone and let Russia continue de facto control over Zaporizhia and Kherson.<sup>58</sup> One of the most recent devised twenty-eight points that demonstrates the complexity of peace frameworks in theory and those that are practical. There also exists a fundamental question of where the line of control will be placed, likened to a tourniquet tearing off the southern and eastern limbs of Ukraine.<sup>59</sup>

Such arrangements have profound implications for both the displaced population and the broader prospects for property restitution and reconciliation in the aftermath of the conflict. They ignore many cultural and historical implications in addition to economic and political considerations. Deals like the ones devised by the Trump Administration in addition to calls from Moscow would be an effective capitulation of Ukraine despite its continued capacity to resist.<sup>60</sup> The frameworks devised do not consider the demographic and humanitarian cost of such an agreement. It is effectively treating the lives and property of millions who live within

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<sup>58</sup> Trump Administration, Trump 28 Point Ukraine–Russia Plan (Nov. 20, 2025),

<sup>59</sup> Id

<sup>60</sup> Id

those regions as arbitrary and unimportant. The less land afforded to Ukraine post war the harder it will be on the remaining communities to house the internally displaced.

The standard to turn to when evaluating a framework for restitution and tentative return would be the Dayton Accords signed in 1995 that ended the Bosnian war. Parallels already exist, as the United States is once again playing the role of a major mediator, aiming to broker a peace deal between the conflicting parties. The Dayton Accords themselves are often cited as a model for post-conflict resolution due to their success in halting widespread violence and establishing mechanisms for property restitution and the return of displaced persons. However, the realities on the ground in Ukraine reveal profound complexities that echo those faced in Bosnia. There lies the enhanced likelihood of a negotiated settlement that draws a ceasefire and cessation of hostilities yet leaving peace unresolved.

The Bosnian experience teaches that while international intervention can stabilize a situation and create a framework for restitution, deep-seated grievances, ethnic divides, and competing claims to property and land often persist long after the ink on a peace treaty dries. Over time, these unresolved fractures could reignite, fueling new cycles of discord and instability. In Ukraine's case, an agreement modeled on Dayton may bring a ceasefire, but without comprehensive reconciliation and robust enforcement. Russia might have the threat of future conflict remains, underscoring the need for a holistic approach that goes beyond merely stopping the war to address the underlying issues fueling displacement and division. Rather than resolving the underlying tensions, such a settlement may merely freeze divisions in place.

A key question in this scenario is whether Moscow will respect the terms of any treaty signed at the end of hostilities regardless of how successful they are in their goals. Russians have already shown that they do not respect the rights of the Ukrainian population in the regions that they occupy and that they will not respect humanitarian norms. The international community needs to ensure that in these scenarios that there is fair compensation for the transfer of ownership for individuals who find themselves on the opposite side of the border as their property or have had it seized. Even though the Pinheiro Principles call for the ability of individuals to return to their homes, it must be considered the sheer destruction and likelihood of economic ruin that many cities in eastern Ukraine are in.<sup>61</sup> Prospects of living under an extreme authoritarian regime also diminishes the value of returning to homes that are now in ruins.

Barriers to restitution exist in tandem on the legal and practical fronts, presenting increased challenges to displaced persons and future returnees. Almost ten percent of households lack the proper documentation to demonstrate home ownership, an issue that is compounded by the increasing destruction of many municipalities especially in frontline and occupied regions.<sup>62</sup> In addition, four Hundred and ninety thousand individuals have not registered their ownership with the state register of property rights.<sup>63</sup> Practical effects of war exacerbate the issue for many due to having to leave their homes with only essentials and losing their documents to damage and destruction. The most vulnerable to this are the elderly

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<sup>61</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles), UN Sub-Commission on the Promotion and Protection of Human Rights, June 2005 | UNHCR

<sup>62</sup> International Organization for Migration (IOM), Ukraine

<sup>63</sup> Id

and households in rural communities, which may not have had robust administrative services or records and are often overlooked when distributing aid.<sup>64</sup>

The country is currently unequipped to deal with mass property claims and lacks a centralized body to oversee uniform implementation. Establishing an agency akin to the Kosovo Housing and property Directorate would be a step in the right direction, one organization that can establish cohesive policy that can be standardized and applied nationally. Through things like the eVidnovlennia program which was launched in 2023, Ukraine is attempting digitally powered state administered initiatives to attempt to quell the tide.<sup>65</sup> Its effectiveness has been stifled but there has been relief sent to at least one hundred thousand families across the country.<sup>66</sup> Ukraine's Ministry for Communities, Territories and Infrastructure Development has developed another program in tandem with the World Bank to provide funding and support for rebuilding destroyed homes and infrastructure.<sup>67</sup>

Despite these initial efforts, the scope and complexity of housing restitution demand a more robust and scalable infrastructure, especially as new waves of displacement and destruction compound the challenges. Ukraine's fragmented property records and varying local administrative capacities further underscore the need for a unified, transparent approach capable of efficiently processing claims and minimizing the risk of fraud or inequity. Drawing lessons from past transitional justice models, such as those employed in Bosnia and Kosovo,

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<sup>64</sup>International Organization for Migration (IOM), Ukraine

<sup>65</sup> 2 years of eVidnovlennia: over 100 thousand families received compensation | Ministry for Development of Communities and Territories of Ukraine

<sup>66</sup> Id

<sup>67</sup> Ministry for Communities, Territories & Infrastructure Dev. of Ukraine, MinRozvytku and World Bank Discuss Work on Housing Policy Strategy and Implementation of Project HOPE (Oct. 2025)

Ukraine must prioritize the creation of an independent, legally empowered institution that coordinates with regional governments and leverages digital tools to increase accessibility for claimants nationwide. By investing in integrated databases, legal support for vulnerable populations, and clear communication with affected communities, Ukraine can work toward restoring property rights, rebuilding trust, and laying the groundwork for sustainable recovery even as the conflict continues to evolve.

Language rather than ethnicity is the driving wedge between Ukrainians, originating from the Soviet Union and Russian imperial policies of forcing Ukrainians to speak Russian especially in the major cities.<sup>68</sup> Like in Kosovo, this divide in the population has created two distinct sides, one that wants to remain within an authoritarian sphere under the auspices of Russia, and another that seeks deeper integration with democratic values and hopes to become a member of the European Union. Primarily Ukrainian speakers feel more aligned with the west and Europe whereas Russian speakers have a higher tendency to favor a continued existence in the ex-Soviet sphere.

The trend in Ukraine has been one of rejection of the Russian language and embracement of speaking only Ukrainian to break from the shackles of centuries worth of oppression. Ukraine drafted a law in 2019 that mandated that professional services be offered in Ukrainian only. It has been recorded that shortly after the start of the war, almost half of Ukrainians began speaking just Ukrainian.<sup>69</sup> The southern and eastern oblasts such as Zaporizhia, Kherson and Donetsk traditionally spoke mostly Russian or a creole of the two

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<sup>68</sup> GlobalTeachIn, Ukrainian Language Policy Post 2009: A Systematic Review (2025),

<sup>69</sup> Liudmyla Pidkuimukha, Identity Speaks: How Language Ideologies Are Reshaping Ukraine,

languages.<sup>70</sup> This has been a source of mistrust and division within the country, with Russian being seen as the enemy language.

Considering Ukraine's deep linguistic and social divisions, the establishment of a Truth and Reconciliation Commission could serve as a vital mechanism for healing and bridging divides, much as it has in other post-conflict societies. The South African TRC, for example, helped to confront historical injustices, foster dialogue between disparate groups, and promote restorative justice after decades of apartheid. Ukraine faces a unique blend of challenges, stemming not only from the legacy of Russian imperial and Soviet policies but also from the ongoing war and forced displacement. These nuances are ones that require a tailored approach to each issue as the scars come in different sizes and time frames.

A Ukrainian reconcito would need to address the trauma caused by language suppression, forced assimilation, violent conflict, and division within its own society, while also facilitating the restoration of property rights and the reintegration of displaced populations. This commission should prioritize transparency, inclusivity, and trauma-informed processes, ensuring that voices from both sides of the divide are heard and respected. By learning from global models yet adapting them to Ukraine's specific context, a TRC could help foster national unity, restore trust, and lay the foundation for a durable peace and social cohesion.

## VII. Conclusion

Home may be where the heart exists, but for many they must carry home with them, facing prospects of never being able to return. From past atrocities to modern humanitarian

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<sup>70</sup> Liudmyla Pidkuimukha, *Identity Speaks: How Language Ideologies Are Reshaping Ukraine*

crises and wars, people are driven from the life that they knew, often replaced by those favorable to the new regime or occupiers. Violence against civilians has been constant throughout history despite modern attempts to establish international norms against it. This creates massive amounts of internally and externally displaced populations that have their lives erode into one of survival and deprivation of any crumb of a quality existence. The current environment may be an indication that the international community needs to confront its current policies and actions and devise a more robust and practical system.

Restoring property rights and facilitating the return to rightful ownership is a legitimate and necessary pursuit when it addresses historical wrongs, upholds fairness and equality within communities, and aligns international human rights principles. Such measures are particularly appropriate when the state holds a direct economic stake or bears responsibility for the initial displacement. Yet, restitution must be approached with caution, if implemented in a way that revives old wounds or deepens community divisions, it can threaten social harmony and undermine the broader goals of justice and reconciliation. This then creates the environment for another humanitarian crises especially if the previous one was not adequately rectified with a future proof plan.

There is a broad array of lessons and frameworks that can be derived from previous regimes that have availed themselves of reconciliation, restoration, and restitution. South Africa's case, for example, demonstrates that achieving transitional justice requires more than just the creation of organizations, laws, and sound policy. The requirements involve a sustained commitment to addressing both structural and individual harm that might undermine the system going forward. In Bosnia and Herzegovina, the lesson was predicated on transparent

mechanisms dedicated to the facilitation of restitution and transitional justice, emphasizing the necessity of public trust and impartial administration. Kosovo's experience further illustrates the importance of establishing robust institutions, such as the Housing and Property Directorate, which served not only to standardize claims processes but also to address the practical realities of displacement and contested ownership. These examples collectively underscore that successful transitional justice is not simply a matter of legal architecture, but of ongoing engagement, adaptability, and the willingness to grapple with the complex legacies of conflict.

Given these challenges, any future restitution and transitional justice regime must be crafted with a focus on transparency, enforceable legal guarantees, and mechanisms that can adapt to the realities on the ground, including the likelihood that many rightful owners may never return to their homes. The international community, in partnership with Ukrainian authorities and civil society, should prioritize the establishment of robust claims processes and independent adjudicatory bodies capable of resolving complex land disputes and ensuring due process. Equally important is the integration of trauma-informed support and reconciliation initiatives to help communities heal and rebuild trust amid demographic upheaval.

Sustainable models for compensation, whether through financial reparations, alternative land allocations, or long-term social support, will be essential to address the material and psychological losses suffered by displaced people. A truth and reconciliation commission should be established to heal the wounds of the past and heal the divisions that have erupted in the present conflict. Ultimately, aligning restitution efforts with international

human rights standards while remaining responsive to local conditions offers the best prospect for balancing justice, stability, and the long-term reintegration of affected populations.

The pursuit of transitional justice, restitution and reconciliation should be understood as transcending a simple legal or administrative exercise, but within the framework of a moral commitment to rebuilding and rehabilitating societies fractured by violence and displacement. The lessons of Bosnia, Kosovo, and South Africa remind us that durable peace is only feasible to achieve when justice is in tandem with practicality and communities are equipped with the means and trust to facilitate the goal and reclaim their dignity. For Ukraine and other nations facing similar upheaval, the path forward lies in designing systems that are transparent, adaptable, and rooted in human rights, while also attentive to the lived realities of those who may never return to the homes they lost. By embracing this balance of principle and pragmatism, the international community can help transform restitution from a source of renewed division into a foundation for healing, stability, and a shared future.

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