

Restitution and Land Markets

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Definition

Restitution is process by which land and other property that was forcibly removed is restored or compensation provided.

- Response to unjust enrichment
- Response to a breach of human rights

Why restitution is important

- Impact on property markets
- Socio-political consequences

Impact on property markets

- Results in redistribution of wealth
- Undermines previous good title and destroys value
- One of creators of private land markets with privatisation – transfers of land from state to previous owners

Socio-political consequences

- Reverses specific violations of human rights whereby individuals were deprived of property
- Enables perpetrators of abuses to make reparation
- Enables the displaced to return home
- Can bring closure to conflict

Unjust enrichment occurs when

- Collectivisation;
- Forced sales at below market prices;
- The dispossession of the vanquished in a war, civil war or internal conflict by the victors;
- The dispossession of those branded as the enemies of the state or of society;
- Ethnic cleansing;
- Colonisation;
- Treaties in which land transfer was not the result of informed consent.

Restitution policies are concerned with:

- a) rectifying expropriations where no, or inadequate, compensation was paid;
- b) situations where the expropriation was discriminatory;
- c) situations where the expropriation was unjust.

European Convention for Protection of Human Rights and Fundamental Freedoms

Article 1 Protocol 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law

Stages in restitution

Determining the policy for restitution eg which claims to recognise.

The verification of claims.

The recovery of the physical property or the receipt of compensation.

Taking over the management of the restored property or that property which has been provided in compensation by the owners or their heirs and successors in title.

Issues in restitution

- Choice of date for recognition of claims – issue of successive expropriations - date undermines later claims – disregarding of earlier ones
- How to deal with those in actual possession eg compensation for improvements made
- Compensation for changes in conditions made since dispossession – no blight notices
- Limitations on claims
- Specific recovery or compensation?
- Fragmentation of property between heirs

Conclusions

- Restitution is a response to human rights violations that have resulted in unjust enrichment and dispossession
- Form of delivery of justice to victims
- Significant practical problems in making the policy work
- Victims sometimes see it as blood money rather than justice