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JUSTICE: DEALING WITH THE PAST  
IN ARMENIAN-AZERBAIJANI  
CONFLICT

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# **INTRODUCING TRANSITIONAL JUSTICE: DEALING WITH THE PAST IN ARMENIAN-AZERBAIJANI CONFLICT**

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# The Property Restitution Process after the Second Karabakh<sup>1</sup> War: Challenges and Opportunities

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**Eviya Hovhannisyan, Nika Musavi**

*(parallel articles with joint introduction and conclusion)*

Immediately during and after the cessation of war, urgent problems arise from the destruction of property and the displacement of populations. The loss of one's property (home, land, and livestock) is often one of the most painful personal consequences of armed conflict. In vulnerable post-conflict societies, such a loss not only causes a flow of displaced people but can also cause a deep socio-political crisis and a resumption of hostilities (Fitzpatrick and Fishman 2014, 263-264). Restitution of housing, land, and property related to forced displacement; war damage; and destruction is at the core of many political debates on transitional justice, affecting the actions of local governments, civil society, and the international community (Williams 2007, 1-5).

This study focuses on the socio-legal aspects of property restitution after the Second Karabakh War. Firstly, the existence and content of the right to property restitution are examined through the lens of transitional justice. Second, specific problems in the institutional and bureaucratic spheres are

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<sup>1</sup> In the text, the author uses the toponym "Nagorno-Karabakh" in the main text according to the Guidelines of Caucasus Edition, the term "Republic of Artsakh" when referring to the structures of the self-declared and unrecognized state, and the terms used in the original when citing an outside source.

addressed. Third, the study focuses on the application of property restitution in practice, using a case study as an example.

The study will attempt to answer the following questions. Does transitional justice provide a sufficient basis for understanding how best to respond to property claims following military conflict? Does a rights-based legal framework used in transitional justice provide adequate reparations for property damage in different socio-cultural and historical trajectories? What kind of reparation/assistance programs for lost property are applied in an unrecognized state experiencing wartime?

## **Transitional Justice and Property Rights in Karabakh**

*Eviya Hovhannisyan*

As an area within transitional justice, victim restitution has become a dynamic area of social and academic research in recent years. The term “victim reparations” is often associated with property compensation and mediated reconciliation. In reality, contemporary debates on victim reparations encompass a much wider range of issues. The literature on reparations covers several academic disciplines, the most prominent of which are law and social sciences (Miller and Kumar 2007, 5).

The relationship between property rights and transitional justice is still evolving. The housing land and property norms, upon which restitution rights for refugees and displaced people are based, are found widely throughout international, regional, national, and local law as well as within the legal articles of human rights law, humanitarian law, refugee law, criminal law, constitutional law, and civil law. Some of the specific rights clearly enshrined within these articles include the right to voluntary return to one’s country, the right to adequate housing, the right to be protected against forced eviction, the right to privacy and respect for the home, and the right to freedom of movement (Sharp 2014).

Large-scale restitution attempts can be particularly problematic in contexts of customary and other informal property rights, where documents are missing, opportunists abound, secondary occupation is common and some period of time has passed. The challenge is compounded in contexts where demographic change in support of political agendas has occurred, historical claims emerge, identity-based attachments to land exist, and grievances at not being able to return to

one's lands are acutely felt. Post-conflict property rights are increasingly addressed through the technical and bureaucratic process of mass claims restitution and state humanitarian aid programs. The technical process by itself cannot adequately deal with the effects of mass forced resettlement, which ranges from forms of ethnic cleansing to resettlement caused by war (Martin-Ortega 2013).

However, for transitional justice to make a significant contribution to the transition of property rights, a number of issues need to be addressed. At one end of the range are elements that are difficult to measure and manage: perceptions, impressions, feelings, and beliefs not only about justice but also about home, security of tenure, etc. Then come the more tangible physical realities of borders, infrastructures, and physical resources such as water, minerals, land, vegetation, and structures. These need to be engaged with elements of policy, legislation, and enforcement. Finally, there are the technical realities of titles, acts, registers, and cadasters, as well as the computational, bureaucratic, and financial systems required to manage them. It is the interaction of all these elements in a highly volatile country situation that constitutes the area of transitional justice in the field of property rights. Therefore, while there might exist a common normative ground in international law on the right to remedy and reparation, the sociopolitical context of each country attempting to establish a reparations program will play a decisive role in shaping the conceptual framework upon which the program is based—and this is a highly contested process.

Unfortunately, property rights do not usually return to their pre-conflict state and mode of functioning, which lay the foundations for economic and societal recovery. In fact, property ownership is the main reason for the onset of conflict in many contexts, such that a return to the pre-conflict situation can renew the conditions for conflict. Although the term 'transitional justice' implies that post-conflict societies go through an intermediate phase between the beginning of change (end of war, change in forms of governance) and a period of stability (post-war reconstruction, new form of governance), the process of property restitution in a transitional context is often delayed. Generally, post-conflict recovery and reconstruction scenarios assume that property rights either recover themselves or are merely artifacts of a legal system that can be easily (re-)constructed through development efforts, including securing and

enforcing registers, titles, deeds, demarcations, maps, and cadasters. However, property rights undergo a significant post-conflict transition along with the rest of society. Forced resettlement, expropriation, cleaning up of territories in various forms, return processes, issues of secondary occupation, and land grabbing all require considerable time for reconciliation (Unruh and Abdul-Jalil 2021, 2).

Property rights are not easily changeable, manageable, reconfigurable components of social interaction. On the contrary, property rights in the post-conflict period are complicated, contested, and often heavily burdened with historical baggage (Garcia-Godos 2008, 112-113). Property rights are deeply rooted in societal and political interactions. After the First Karabakh War, the properties left vacant by those who had perished, fled, and been forcibly displaced had been allocated mainly for the use of Armenian refugees from Azerbaijan and Karabakh Armenians. However, they were also given to those not necessarily displaced or local but simply politically well-connected: war veterans, the families of fallen soldiers, young families from Armenia, etc. This is particularly the case as conflict and property rights are confused spatial practices that produce a tangle of land-related grievances, dislocation, expropriation, damage, destruction, divisiveness, and fraud. It is therefore very difficult to unravel this tangled history of property rights after the First and Second Karabakh Wars, as it is intertwined with social ties, multiple relocations of people, nationalist discourses, and local understandings of the right to reparations for lost property.

#### *Institutional and bureaucratic issues during property restitution in Karabakh*

Following the First Karabakh War, the de jure unrecognized but de facto independent Nagorno Karabakh Republic began to establish its own institutional and bureaucratic systems, which were in many ways linked to the Armenian bureaucratic system. On December 10, 2006, the constitution was adopted by referendum, according to Chapter 2 of which the basic human and civil rights and freedoms in Karabakh were defined (Ministry of Foreign Affairs Republic of Artsakh 2006). Although the latter is not accepted under international law, of particular interest to our study are Chapter 2, Article 47 – “Right to Citizenship of the Republic of Artsakh”, Article 60 – Right to Property, Article 62 – “Right to Compensation for Damage”, and Article 76 – “Restrictions on Basic Rights

and Freedoms in Time of Emergency or Martial Law” (Ministry of Foreign Affairs Republic of Artsakh 2006). It is still an open question to what extent international law is applicable in Karabakh and other unrecognized states.

The majority of the population of the former Nagorno-Karabakh Autonomous Oblast (NKAO) and surrounding territories was affected by the conflict, which left both a trail of human rights violations and a high level of social destruction and distortion of public life. In the aftermath of the second war, it is evident that there are many institutional, legal, and bureaucratic problems relating to the reparation of property lost during the war. Armenians in Nagorno-Karabakh continue to suffer from very low levels of social trust and confidence in public and political institutions.

One of the first and foremost important issues relates to the transfer of territory from one state entity to another. This raises the rhetorical question of who is obliged to pay compensation for the lost property to the displaced population from these territories: the losing side or the winning side (or maybe a third party)? The Second Karabakh War brought into focus the return of Azerbaijani displaced persons from the late 1980s and early 1990s, who, according to the statements by President Aliyev, should return to their homes in the recaptured territories (Rferl 2021). Thus, the tangle of problems around the issue of compensation for lost property is becoming increasingly complicated.

Compensation for lost property is linked to a number of other issues related to the status of Nagorno-Karabakh and the citizenship and constitutional rights of its population. As there are no diplomatic relations between Armenia and Azerbaijan—and the Republic of Artsakh, as well as its predecessor, the Republic of Nagorno-Karabakh, was never recognized—each state (recognized or not) resolves the issue of compensation for lost property in its own way, without any discussion or possible mutual assistance. The situation was different during the first war, with the Soviet state being to a lesser extent involved in the resettlement of Armenians and Azerbaijanis. In most cases, resettlement took place on an individual level. When it became clear that the conflict between the two Soviet republics was escalating, Armenians and Azerbaijanis started looking for houses and flats that could have been exchanged. Gradually, the phenomenon took on a considerable scale. Everywhere, Armenians and Azerbaijanis were exchanging houses,

signing agreements, and drawing up property exchange documents to sell and buy houses in relocation areas. The resettlement process was gradual; people from both sides traveled for almost four years (1988-1991), taking their property, arranging documents, selling their houses, and continuing to care for their relatives' graves, etc. (Huseynova, Hakobyan and Rumyantsev 2012). This continued until both republics, Armenia and Azerbaijan, were almost entirely rid of representatives of 'undesirable' ethnic groups. Thus, some Armenians from Azerbaijan were able to exchange dwellings with Azerbaijanis from Armenia (figure 1.). Others were able to sell their property in Azerbaijan and use the proceeds to buy a house in Armenia. Some, having lost everything, moved to Armenia or Nagorno-Karabakh hoping for help from relatives and then the Soviet state. Nevertheless, this took place when there were still relations between Soviet states and individual ties between populations within the USSR.

The second and no less important problem relates to the documentation of property. The Armenians residing in Nagorno-Karabakh are citizens of the Republic of Armenia and have passports indicating "Republic of Artsakh" residency (Hakobyan 2019; Nagorno-Karabakh Republic Government Resolution 1999). The Republic of Artsakh, a state with no international recognition, could not provide documents on property rights to its residents who have been de jure citizens (not full citizens) of the Republic of Armenia. The Republic of Artsakh, in turn, as a non-recognized state, could not issue its own passport or grant internationally recognized citizenship. The question of property ownership is more problematic because, under international law, ownership certificates for Nagorno-Karabakh residents had to be issued by the state entity on whose land the property de jure is located.

Finally, the third problem relates to the development of the Republic of Artsakh's state assistance programs in Nagorno-Karabakh for Armenians displaced as a result of the Second Karabakh War. Here the problem of defining these programs arises — that is, whether they are programs for the return of lost property, compensation for lost property, or humanitarian assistance programs. Although state assistance programs are rhetorically termed as 'restitution programs,' according to the interviews with Nagorno-Karabakh authorities, formally these are support programs aimed at helping the local population overcome the consequences of the war. Both assistance and restitution programs calculate the quantity and

value of lost property according to cadastral data and assessments, as well as information from village councils and city administrations.

After the first and second Karabakh wars, we could observe how the Republic of Armenia and the Republic of Azerbaijan accused and sued each other before the European Court of Human Rights and the International Court of Justice (Secretariat of the Committee of Ministers, Council of Europe 2016). In its most recent lawsuit, filed on September 16, 2021 against Azerbaijan, the Republic of Armenia argues that the Republic of Azerbaijan must make reparation for the damage caused by the internationally wrongful acts, including: “by way of restitution, allowing the safe and dignified return of displaced Armenians to their homes and the restoration or return of any Armenian cultural and religious buildings and sites, artifacts or objects; providing additional forms of reparation for any harm, loss or injury suffered by Armenians that cannot be fully compensated through restitution, including by providing compensation to displaced Armenians until they are safe to return to their homes” (International Court of Justice 2021). Thus, we can see that neither of the conflicting sides has an interest in calling the humanitarian assistance provided to displaced people (DPs) ‘compensation,’ as compensation should be provided by the party that caused the damage, which could be used as an accusation that the other side is taking responsibility for starting the war. The announced programs are therefore victim assistance programs, not reparation programs for lost property. Moreover, the Armenian side has not granted any status to the DPs, which makes it impossible for them to receive any assistance outside of Nagorno-Karabakh. The main purpose of this is a policy of keeping the population in Nagorno-Karabakh, which is what the assistance programs aim for, so that as many Armenians as possible remain on this territory.

#### *A state support program for the reparation of the lost property in Nagorno-Karabakh*

Although state support programs are financially limited, they are relatively systematic and regularly updated according to the needs of the affected population. These programs are funded from the budgets of the Republic of Artsakh, the Republic of Armenia, and the All-Armenian Fund (Hayastan All Armenian Fund 2021). In general, the assistance program aims to help displaced persons with housing and to pay a certain amount of money for lost land plots, movable property, and livestock.

On March 10, 2021, a republican commission for recording and assessing war damage to property belonging to the state, communities, and legal and natural persons of the Republic of Artsakh was established by a decree of President Arayik Harutyunyan (The Government of the Republic of Artsakh. 2021a. 2021a). The process of purchasing and renovating flats and houses in the regions of Nagorno-Karabakh, except the city of Stepanakert, was initiated in April 2021 to provide housing for families left homeless and/or persons who died or were declared permanently disabled as a result of the Second Karabakh War. In order to provide housing for the latter, a housing fund is being formed, which includes the construction of apartment buildings in Stepanakert providing some 1,200 flats (Figure 2.) and the construction of at least 20 new residential districts (Figure 3.) in the rural areas of Nagorno-Karabakh. The project will provide more than 2,297 dwellings, which are estimated to benefit displaced persons from more than 36 communities. In addition, more than 1,100 flats in the primary market and more than 1,500 flats in the secondary market in Nagorno-Karabakh, including Stepanakert, will be purchased by the housing fund. The maximum purchase price of 1 square meter of housing from the primary market is set at 360 thousand Armenian Drams (about 750 USD) (The Government of the Republic of Artsakh 2021b), which is almost close to the cost of flats in Yerevan. Each member of the beneficiary family is given an area of about sixteen square meters in a renovated furnished flat or house with an adjacent plot of land. Assuming an average of 4-5 members in each family, the housing to be provided by the program would be around 65-80 square meters, at a cost of around 55,000 USD. Housing will be provided to the beneficiaries of the assistance program with the right of non-refundable use for ten years, after which the same housing will be granted to the beneficiary by the Government of the Republic of Artsakh. An exception is made for displaced persons, whose housing will be provided until they return to their permanent place of residence in the territories taken by Azerbaijan and, in case it is not possible, the aforementioned principle of ten-year rent-free tenure is applied.

The assessment and recording process of the rest of the lost property is mainly based on the collection of systematized information on the types and sizes of the latter and the socio-demographic data of the displaced families: “The first area of assistance is public buildings: warehouses,

shops, etc., the second is vehicles, the third is freight equipment (such as construction machinery), the fourth is property owned by legal entities (mostly businesses), the fifth is cattle, and the sixth is orchards” (Suren Galstyan, Chairman of the Cadastre and State Property Management Committee of the Republic of Artsakh, interview, 6 August, 2021). Determining lost registered immovable property by type and size is easier as the electronic data of the cadastral service of Nagorno-Karabakh has been preserved. Here the main problem arises in relation to unregistered land and constructions, which, due to tax evasion strategies by their owners, have no legal proof apart from the verbal assertions by local principals and fellow villagers. When assessing a land plot, for example, it is also important to evaluate the plants on it, which can affect the status of the land considerably—grassland, pasture, perennial gardens, arable land, homesteading land, etc.: “A recently planted orchard less than two years old is valued at two million drams per hectare by the state assistance/compensation program. The same orchard three years old or more is valued at three million drams per hectare. For a vineyard up to two years old - 2.5 million drams, for three and more years - 3.5 million drams. Trellis cultivation is more expensive and more complex. There is no assistance/compensation provided for pastures, homesteading and arable lands. But there is no complete documentation for all this. In many cases, people used to change the preliminary designation of the land, such as planting orchards on arable land, but they did not officially change the designation on the documents to avoid paying taxes, and it is now difficult to prove that a person had an orchard in Hadrut instead of an arable plot.” (Aram Badalyan, Head of Plant Breeding and Plant Protection Department of the Ministry of Economy and Agriculture of the Republic of Artsakh, interview, 5 August, 2021). There is another problem regarding unregistered property: “In the nineties, in seven districts around Karabakh, mainly in the communities of Askeran, Martakert and Kashatagh, where Armenians were resettled, no land title documents were issued by the Artsakh government and the State Cadastre Service, but they were allowed to use the land for agricultural purposes without compensation and indefinitely. These people now faced the fact that they had no documented title to their property. This was primarily due to the fact that the Artsakh government did not want to allow these people to privatize their houses, so that they could not sell them and leave Artsakh” (Suren Galstyan, Chairman of the Cadastre and State Property

Management Committee of the Republic of Artsakh, interview, 6 August, 2021).

Another problem is the insecurity of the borderlands for habitation and farming on the newly established line of contact. Many landowners argue that they should also receive the same support as DPs because they cannot farm their lands due to the fear of shelling (Caucasian Knot 2021): “This is also relative. A person may not want to cultivate his land; he wants to get money from the state for his plot. So he says he is afraid to farm there. And fear in such cases is an immeasurable and relative category because at the same time his neighbor is farming his land” (Suren Galstyan, Chairman of the Cadastre and State Property Management Committee of the Republic of Artsakh, interview, 6 August, 2021). To partially address this problem, although not officially mandated, Russian peacekeepers perform various security tasks in the region, including providing safety for civilians during agricultural, farming, and construction work (Ministry of Defense of the Russian Federation. 2021).

More problematic is the question of the socio-demographic data of the displaced families and those who are entitled to the state support programs. In the case of families where the property has not been registered, only the husband (if he is alive) or, if it has been registered, the family member in whose name it is registered, may be entitled to a certificate of lost property. Here, many specific problems arise concerning registration of marriages in rural areas, joint ownership of land in large families and inheritance rights, participation or desertion from the war, etc. For example, in cases where a husband has gone missing during the war, wives must provide a reference note from the Human Rights Defender in the Republic of Artsakh in order to be able to receive financial support from the state. In another example, if a husband is prosecuted for desertion, his close relatives (spouse and children) are deprived of any state support for lost property. “After the collapse of the Soviet Union, when privatization started, villages were allocated 5-6 thousand square meters of land per person. In the land ownership certificates of one family, all the co-owners were marked. Everyone in the family was registered there, even the grandparents. This is why, for example, when people died 20-30 years ago, no one from the family in distant villages went to draw up inheritance documents, following the principle ‘well, it's our land, we cultivate it.’ And everyone in the village knows that it is their land and no

one has any claims. There have even been cases where only one owner of the land has already died, so his/her inheritance now needs to be proved through the court, all these cases need to be proved in court, and this is a long process. Many people therefore disinherit in order to avoid litigation” (Hayk Khanumyan, Minister of Territorial Administration and Infrastructures of the Republic of Artsakh, interview, 7 August, 2021). Due to these various issues, many cases are now being investigated and are in the local court. It is not uncommon for people lacking the relevant knowledge and not wanting to get involved in legal proceedings to simply refuse any assistance. There are many examples of people trying to take advantage of the chaotic situation by creating fake property documents for themselves in order to take advantage of assistance programs: “I believe that the property rights of these people should be protected regardless of whether they have registered their property or not. But the government believes that this contains very big risks. To give you an example, the number of unregistered livestock at the moment is claimed to be 4,000 head, which is not in line with reality. Yes, many are taking advantage of this situation. The dilemma for us now is that we should either leave all the lost unregistered property unassisted, or ignore the number of fraudsters and provide assistance to all claimants.” (Gegham Stepanyan, Human Rights Ombudsman of the Artsakh Republic, interview, 6 August, 2021)

A separate problem is assistance for lost movable property (farm animals, vehicles). In particular, the practice of avoiding the registration of farm animals in order to evade taxes is widespread. Another problem is that some types of animals, such as poultry, pigs, bees, and fish are not considered farm animals/movable property and their loss is not subject to state financial support. On the contrary, it is much easier to provide state assistance for lost vehicles, as this movable property is almost entirely registered with the Traffic Police and the data is maintained in an electronic archive.

Each unit of lost property, each family case requires its separate documentation, there are long queues of war-affected people at the registration and evaluation offices, and the judicial system is in a state of collapse due to the large number of lawsuits. All these problems in general make it very difficult and slow down the implementation of assistance

programs for the affected population, which has been living in difficult social and psychological conditions for more than a year.

## **Azerbaijan: “The Great Return” instead of the Return of Property**

*Nika Musavi*

After the first Karabakh war, the total number of forcefully displaced persons (FDPs)<sup>2</sup> among the Azerbaijani population—according to the United Nations—amounted to about 750,000 people, including people from Karabakh itself and seven adjacent districts, as well as people from Armenia. At that time, the early 1990s, they were settled in tent cities, dormitories, administrative buildings, and even decommissioned train cars in Baku and other regions of Azerbaijan. The construction of social housing and the resettlement of these people in normal apartments and houses began much later and continued until the second Karabakh war. During this time, some of the FDPs managed to get housing on their own. At the moment, this process has been suspended and some of the FDPs who have been waiting for housing from the state will not receive it now. Instead, they, like other IDPs, are promised/offered to return to their native lands (or rather, the territories that came under the control of Azerbaijan following the Second Karabakh war; this is a significant part of the former Nagorno-Karabakh Autonomous Region and seven adjacent districts).

According to Rovshan Rzayev, the chairman of the State Committee for Affairs of Refugees and Internally Displaced Persons, a survey conducted among IDPs showed that about 70% of them want to return to their homeland (Akhmedov 2021). But it should be borne in mind that over the past 30 years, the original composition of FDPs has changed greatly both quantitatively and "qualitatively"—at least one generation has managed to change and a significant part of those who are now considered as FDPs left Karabakh in early childhood or were born after the war.

The authorities do not say anything specific about this, but, as far as we can understand, FDPs who have already managed to get housing from the

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<sup>2</sup> The official structures of Azerbaijan use the term "internally displaced persons" (IDPs) when referring to people resettled from Karabakh and "refugees" about the Azerbaijani population displaced from Armenia.

state will keep it, even agreeing to move to Karabakh. But if they refuse to move, they will definitely lose their relevant status and all their benefits (Zerkalo.az. 2021).

Emin Aliyev is an internally displaced person from Aghdam. He is currently is over 50 and has lived in Baku for a long time working as a driver. But when asked by officials whether he wants to return, he answered positively. However, the man is not sure about his two elder sons, who were born in the capital: "They grew up in Baku, they have their own lives here. I don't think they will want to move. I won't insist, of course, I will let them decide for themselves" (interview, 28 May, 2021).

Back in February 2021, president Ilham Aliyev said that only those displaced persons who intend to live there permanently will be provided with housing in the returned territories. The president said, "People will have to sign a statement that I, such and such, am going to go to such and such district, such and such village, and live there. For that, we will address financial and all other issues. Otherwise, I do not want to predict, but I know what may happen. In fact, let me tell you more—the liberated lands are not summer cottages for those who live in Baku. This will not happen—that's for sure. We will exercise rigorous control over who lives there in general, so that those who want to go there could do that, and we will create all the conditions for them" (Azerbaijan State News Agency 2021a).

But the main thing is that it is still completely unclear when the return will begin, on what principle new houses and apartments will be given to the displaced people to replace the lost ones, and how the issue with the changed composition of families will be resolved, etc. There is a "Great Return" ("Böyük Qayıdış") program that was initiated by the Committee for Work with Refugees and Internally Displaced Persons long before the second Karabakh war, after the so-called "April clashes" in 2016. The program was engaged in planning the return of displaced persons to Karabakh and its environs when it becomes possible. But at the moment, even the government, apparently has no clear plan in place.

So far, mine clearance and restoration of infrastructure (primarily communications) are being carried out in the territories returned to Azerbaijani control. Most of the settlements have been destroyed, so they will have to be rebuilt almost from scratch and this is already the next

stage of the "Great Return" alongside the development of agriculture, production, and job creation in these territories, without which their settlement is meaningless and impossible. Taking all this into account, experts agree that, in reality, the process of returning displaced persons can only begin in the next five to ten years.

Another snag is that at the time of the first Karabakh war—that is, during the transitional period between the USSR and independence—other forms of land ownership were still operational in the territory of Azerbaijan. In 1996, land reform was carried out in Azerbaijan, as a result of which agricultural land was transferred to the private ownership of rural residents. For obvious reasons, this did not affect Karabakh and now it is necessary to carry out a similar reform there as well. For this, first, a unified cadastral registration of real estate (including settlements) and accurate land accounting (in quantity and quality, by categories and lands) must be carried out, a land cadastre must be created, a digital topographic map of the region developed.

In the meantime, the relevant authorities are simply interviewing internally displaced persons for their family composition and compiling a list of real estate and other property left by them. Quoting Article 6 of the Law of the Republic of Azerbaijan "On the Status of Refugees and Internally Displaced Persons", human rights activist Eldar Zeynalov says that this law allows IDPs to raise the issue of compensation for material and other damages, apply to the court for protection of violated rights, and return to their former place of residence. "The state is obliged to compensate for this damage," the human rights activist emphasizes.

At the same time, Article 14 of the same law states that IDPs lose their status "when they return to their usual place of residence or grant them another place of residence free of charge in the amount determined in this region; if this is not possible, they are provided with housing at the level determined by a special decision of the State." That is, either the person will "return to his usual place of residence" (having registered there) or he/she will be provided with housing in another place (and not necessarily in the same amount that he/she had). But, taking into account Article 6, the IDP may insist on returning to their old place of residence.

Zeynalov notes that the possibility of IDPs building or buying a house/apartment has nothing to do with returning and they are not

deprived of the status of an IDP. "However, it is clear from the public statements of the authorities that IDPs who already have comfortable housing in a new ("temporary") place will be resettled in the second place, and priority will be given to those who now live in dormitories and temporary shelters" (interview 4 April, 2022). However, at the moment, this law can generally be considered outdated, since no amendments and additions have been made to it so far that take into account the results of the second Karabakh war and the new realities created by it.

As noted above, a separate and unique category consists of Azerbaijanis who managed to exchange their housing with Armenians between 1988 and 1991. This happened both at the individual level and at the level of entire villages. Thus, they partially managed to compensate for the property they left behind when they relocated from Armenia to Azerbaijan. However, since their places of origin are on the territory of the Armenia, the "Great Return" program will not apply to them. Generally, this category of people and their stories rarely appear in the socio-political discourse about forcibly displaced persons (except as successful but non-representative examples of self-organization).

At the moment, it is somewhat safe to say that almost none of the settlers will be able to return to their native villages and reopen their old houses. During the restoration of settlements, smaller villages are likely to be merged with those larger. These villages themselves will be completely different from before the war. In particular, it is planned to build new "smart" cities and villages instead of the previous settlements (Azerbaijan State News Agency 2021b). "It will be impossible to refuse the provided housing, since the status of IDPs after the provision of housing by the state in the place of former residence or the same area will, in any case, be automatically lost and the person will lose the temporary housing and benefits that he/she has now," says Eldar Zeynalov.

In November 2021, it was reported that the building of the first such "smart village" was had been almost completed in the Zangilan district, consisting of 200 private houses, four social buildings, a school for 360 students, and a kindergarten for 60. The settlement of the smart village was announced for January 2022, but has not yet begun (Ali 2022).

Vafa Farajeva's family lived in the railway village of Minjivan in the Zangelan district. Vafa was 17 years old when they had to leave Minjivan,

becoming internally forcefully displaced persons. For the next 22 years, the family lived in a basement in Baku, until 2018 they were finally given housing. "We had a three-room apartment in Minjivan, which our parents received from the state as a teacher of a railway school. Now that house is destroyed—I saw its ruins myself when I went to Minjivan in January 2021" (interview 23 April, 2022). After the second Karabakh war, the Farajeva's family was summoned to the local executive authorities and asked to make a list of all the lost real estate, as well as other property, including furniture and household appliances. "We have not preserved the documents for the apartment, but they are in the archive since it was housing issued by the state. They promised us that they would compensate everything, although they did not explain in what form. And although enough time has passed, there is no news on this score yet. When I try to find out something, the officials answer: 'Wait, everything will be fine.'" In the relevant survey, the Farajeva's family indicated that they wanted to return and live in Minjivan and have not agreed to relocate to any other place in Karabakh.

Eldar Zeynalov says that, theoretically, FDPs can raise the issue of compensation for the difference between the value of the lost property and the one provided upon return, although it is difficult to say by what method this compensation can be calculated, taking into account the past 30 years. In any case, documents regarding lost property are required. If these documents are lost, they must be restored through the central archive or the court. Any other evidence that the court will accept can be used to confirm ownership: witness statements, photos against the background of the house, satellite images of the area, etc.

## **Conclusion**

The vast majority of policy statements on conflict resolution and displacement fail to clarify (or else completely ignore) the complex issue of what is meant by reconciliation, the return of displaced people, and the restitution of lost property. Greater clarity must be provided by recognizing that biased definitions of reconciliation cannot simply be imposed on affected communities. Proponents of transitional justice and restitution should be clear and modest in their expectations, avoiding the idealization of return as a manifestation of reconciliation.

In the case of Azerbaijan, the question of property restitution to the Armenian population after the Second Karabakh War has not yet been raised at all since the status of Karabakh as such is not discussed by the Azerbaijani authorities and the very possibility of the return of the Armenian population to the territories taken over by Azerbaijan after the conflict is currently under question (as is the truce, for it is unclear when and on what terms it will be concluded). On the other hand, the Armenian authorities in Karabakh, due to the difficult political situation and unwillingness to fulfill their own responsibilities to protect the rights of the local Armenian population, are often unable to fully resolve issues of assistance and, in particular, compensation for the lost property.

As for the Azerbaijani population, the Azerbaijani authorities paint very bright and at the same time very dim prospects for them. For the IDPs from the first Karabakh war to return to Karabakh fully, not only the construction of settlements but also at least the creation of jobs, the restoration of agriculture and infrastructure, etc. are needed. So far all this exists only in the form of plans on paper and types of pilot projects. At the same time, given that in 30 years most IDPs have already settled in Baku, Sumgait, and other cities, they have had some kind of housing issued by the state or else bought/built it independently. The hypothetical return is therefore not so much practical as symbolic for them. It is not a pressing need but an opportunity (that came up rather unexpectedly) to start life anew in their "historic homeland." Accordingly, the authorities feel no need to rush and no one will hurry them.

The Second Karabakh war crisis has exposed the fact that the lack of a legal basis for documentation, the impossibility of applying international law, and the many shortcomings of the bureaucratic systems in both Armenia and Azerbaijan deeply complicate assistance and reparations programs for war victims. At the moment, there is no real solution to this problem; the situation is only exacerbated by Karabakh's unresolved status. At the same time, new houses and infrastructure are being built in Karabakh and the adjacent districts (part of which has come under Azerbaijani control). People are linking their future to the territory with no real guarantee that all may be lost again.

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