

**Guidelines and Best Practices for the Restitution and Compensation
of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized
by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah)
Era between 1933-1945, Including the Period of World War II**

9th June 2010

Preamble

In developing a consensus on these legally non-binding but morally important guidelines and best practices listed below for restitution and compensation of immovable (real) property, the participating states recognize that there are differing legal systems and that states act within the context of their own laws.

1. Recalling our joint commitment in the Terezin Declaration, which we incorporate by reference herein, including recognizing the importance of restitution and compensation of Holocaust (Shoah) related confiscations made during the Holocaust (Shoah) era between 1933-1945 and as its immediate consequence, to create by June 30, 2010, under the aegis of the European Shoah Legacy Institute, a set of legally non-binding but morally important guidelines and best practices for the restitution and compensation, where it has not been done, of immovable (real) property confiscated or otherwise wrongfully taken by the Nazis, Fascists and their collaborators during the Holocaust (Shoah) Era, and without prejudice to applicable international law and obligations;
2. Acknowledging the immeasurable damage done to Jewish individuals and communities as well as to other victims of persecution by Nazis, Fascists and their collaborators when their private and communal immovable (real) property was confiscated;
3. Recognizing that only part of immovable (real) property confiscated during the Holocaust (Shoah) has been recovered or compensated;
4. Noting also that the protection of property rights is an essential component of a democratic society and the rule of law;
5. Mindful of the priority given in the Terezin Declaration to meeting the material and medical needs of Holocaust (Shoah) survivors and other victims of persecution by Nazis, Fascists and their collaborators, and mindful that these needs may, inter alia, be met through the restitution and compensation of immovable (real) property; including the use of proceeds from heirless property;
6. Recognizing the State of Israel's special moral role as a home for the largest number of survivors of the Holocaust (Shoah);
7. Noting the recent 65th anniversary of the end of WWII and defeat of Nazism and the subsequent end of persecution by Nazis, Fascists and their collaborators, we firmly believe that the formulation of the following guidelines and best practices marks a belated yet vital

step in partially redressing the terrible wrongdoing resulting from the Holocaust (Shoah), and will be of profound and lasting significance;

8. Noting that these guidelines and best practices do not relate to any measures taken with respect to immovable (real) property prior to 1933. Likewise noting that no new rights are created with respect to any claims against a property of a state outside its own territory;
9. Recognizing that for most Holocaust (Shoah) survivors and other victims of persecution by Nazis, Fascists and their collaborators, their own and their families' private immovable (real) property represented the principle source of their personal worth in assets and that for most communities communal immovable (real) property constituted the bedrock of the communities' collective assets:

Criteria for Guidelines and Best Practices

We Participating States, in conformance with the Terezin Declaration, endorse the following guidelines and best practices for the restitution and compensation of immovable (real) property confiscated or otherwise wrongfully seized in the course of persecutions perpetrated by the Nazis, Fascists and their collaborators during the Holocaust (Shoah) Era between 1933-1945, including the period of WWII, and as its immediate consequence. Countries may consider applying them as they develop their own national programs and legislation for addressing or revisiting the compensation and restitution of confiscated immovable (real) property. Our aim is especially to bring a measure of justice to Holocaust (Shoah) survivors as well as other victims of these persecutions, and their heirs during the period referenced above.

The following guidelines and best practices will also bring greater stability and value to immovable (real) property markets by assisting to settle and regularize property titles that are clouded or cloudable because of confiscations and other wrongful takings perpetrated during the Holocaust (Shoah) Era between 1933-1945 and as its immediate consequence.

- a) Restitution and compensation laws should apply to immovable (real) property which was owned by (i) religious or communal organizations, or (ii) private individuals or legal persons and then subject to confiscation or other wrongful takings during the Holocaust (Shoah) Era between 1933-1945 and as its immediate consequence.
- b) In accordance with these guidelines and best practices, immovable (real) communal property is property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches cemeteries, and other immovable religious sites which should be restituted in proper order and

protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes. Immovable (real) private property is property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

- c) Restitution and compensation processes should recognize the lawful owner or holder of other legal property rights as listed in property record files as of the last date before the commencement of persecution against them by the Nazis, Fascists and their collaborators during the Holocaust (Shoah) era between 1933 and 1945 including the period of WWII.
- d) The property restitution and compensation processes, including the filing of claims, should be accessible, transparent, simple, expeditious, non-discriminatory, inter alia by encouraging solutions to overcome citizenship and residency requirements, and uniform throughout any given country. Restitution and compensation procedures should not be subject to burdensome or discriminatory costs for claimants.
- e) Claimants should have unfettered and free access to all relevant local, regional, and national archives, including those in other countries, required to confirm the right of ownership and other legal property rights to immovable (real) property of victims of persecution by Nazis, Fascists and their collaborators.
- f) Decisions should be prompt and include a clear explanation of the ruling.
- g) Restitution of immovable (real) property should result in clear title to, not merely the use of, property belonging to victims and survivors of the Holocaust (Shoah) and their heir(s) as well as other victims of persecution by Nazis, Fascists and their collaborators. If former owners or their heir(s) are provided with genuinely fair compensation in lieu of restitution *in rem*, the current holder's title should be assured and no longer be clouded by the above mentioned victims' claims against ownership.
- h) Restitution *in rem* is a preferred outcome, especially for publicly held property. When *in rem* restitution is not feasible or not possible without expropriating third persons' property, other acceptable solutions may include substituting property of equal value or paying genuinely fair and adequate compensation. Transfer of property title or payment of compensation should be effected promptly.
- i) Privatization programs should not compromise claimants' rights, including the right to claim property confiscated or otherwise wrongfully taken by the Nazi and Fascist regimes, and their collaborators during the Holocaust (Shoah) era between 1933 and 1945, including the period of WWII, and its immediate consequence. At the same time, restitution laws should provide protections for current good faith occupants of restituted property.

- j) States are encouraged to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators. Heirless property is property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritance. The principles in Paragraph (i) should apply mutatis mutandis. From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.
- k) States are encouraged to adopt property regimes and processes consistent with the Terezin Declaration and equivalent to these guidelines and best practices, and to take guidance from those states which have already done so, with respect to all victims of persecution by the Nazis, Fascists and their collaborators during the Holocaust (Shoah) era between 1933 and 1945, including the period of WWII, and as its immediate consequence. States may contact each other on matters related to the process of restitution and compensation of property, and the legal rights of their Jewish citizens and Holocaust (Shoah) survivors and other victims of persecution by Nazis, Fascists and their collaborators. States are encouraged to exchange with each other their experiences in the areas of restitution and compensation of properties referenced under these guidelines and best practices.
- l) Foundations and other non-governmental organizations established jointly by local Jewish and non-Jewish communities and international groups, in particular the World Jewish Restitution Organization (WJRO), may assist claimants in the evaluation and preparation of claims and the management of restituted property confiscated or otherwise wrongfully seized by Nazis, Fascists and their collaborators and compensation payments with full transparency and accountability. States may also assist in the process of restitution and compensation of property without intervening in the judicial process of any other state.
- m) In order to review progress achieved on restitution and compensation of immovable (real) property, the European Shoah Legacy Institute will offer to host a conference in 2012.