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# Toward a Fair and Just Comprehensive Property Restitution Law in Poland

EVAN HOCHBERG\*

The World Jewish Restitution Organization (WJRO) is honored to be a sponsor of this important conference. WJRO is the representative of world Jewry in pursuing claims for the recovery of Jewish properties in Central and Eastern Europe and the former Soviet Union. As such, WJRO consults and negotiates with national and local governments for the return of Jewish communal property and heirless private property, as well as restitution of private property to Holocaust victims and their families. WJRO's member organizations are major Jewish international organizations in Europe, the United States, and Israel.<sup>1</sup> WJRO works closely with local Jewish communities throughout Central and Eastern Europe. In Poland, WJRO partners with the Union of Jewish Communities. Together with the Union of Jewish Communities, WJRO established the Foundation for the Preservation of Jewish Heritage in Poland.<sup>2</sup>

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1. The American Gathering of Jewish Holocaust Survivors and Their Descendants; American Jewish Committee; American Jewish Joint Distribution Committee (JDC); B'nai B'rith International; Center of Organizations of Holocaust Survivors in Israel; Conference on Jewish Material Claims Against Germany; Conference of European Rabbis / European Council of Jewish Communities; The Jewish Agency for Israel; National Coalition Supporting Eurasian Jewry; World Agudath Israel; World Jewish Congress; and the World Zionist Organization.

2. The Foundation for the Preservation of Jewish Heritage in Poland (FODZ) was founded in 2002 by the Union of Jewish Communities in Poland and the World Jewish Restitution Organization. FODZ's primary mission is to protect and commemorate the surviving sites and monuments of Jewish cultural heritage in Poland. FODZ is active where no Jewish community exists today or where distance from major urban centers or lack of sufficient financial resources makes it difficult for existing small Jewish communities to provide adequate long-term care and maintenance. *About Us*, FOUND. FOR THE PRESERVATION OF JEWISH HERITAGE IN POL., <https://fodz.pl/?d=3&l=en> (last visited Jan. 8, 2018).

## I. UNDERLYING PRINCIPLES OF PROPERTY RESTITUTION LEGISLATION

The following comments focus on the specific elements that should be included in any legislation that Poland may pass to address the restitution of property wrongfully seized during the Holocaust and/or nationalized by the Communist regime. First, however, it is important to note the key underlying principle that lays at the heart of this discussion: restitution is not simply about property, money, statistics, or legal rules. This is an issue that impacts all former property owners regardless of religion—both Jewish and non-Jewish people. At the same time, at WJRO, we regularly hear the poignant stories of Holocaust survivors and their families. Behind every property is a story of loss during the Holocaust and its aftermath. For many survivors and their families, their property is the only remaining physical connection to a life that was devastated during the Holocaust and its aftermath. Holocaust survivors and their families are looking for a sense of justice, and a means to reconnect to Poland and their family heritage.

## II. DIFFICULTIES FACING CLAIMANTS WITHOUT A COMPREHENSIVE RESTITUTION LAW

For years, WJRO has urged Polish governments across parties to pass comprehensive legislation to address private property wrongfully confiscated during the Holocaust and/or nationalized by the Communist regime.<sup>3</sup> Since 1990, the Polish government has proposed numerous draft laws regarding the restitution of confiscated private property, but has failed to enact any of these draft laws, and has never enacted a comprehensive law relating to immovable properties seized from private owners in the country during the Holocaust era and during the Communist era.<sup>4</sup> In 2012, the Polish government claimed that restitution legislation was unnecessary and insisted, rather, that claimants whose property was wrongfully seized should pursue their remedy via the Polish legal system.<sup>5</sup> As noted by WJRO during the 2012 European Shoah Legacy Institute Immoveable Property Review Conference, “bringing such a lawsuit places a claimant—including foreign, elderly applicants—on a complex, expensive and time-consuming path...

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3. See generally CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GER. & WORLD JEWISH RESTITUTION ORG., IMMOVABLE PROPERTY REVIEW CONFERENCE OF THE EUROPEAN SHOAH LEGACY INSTITUTE: STATUS REPORT ON RESTITUTION AND COMPENSATION EFFORTS (Nov. 2012), <https://wjro.org.il/cms/assets/uploads/2015/12/WJROImmovablePropertyConfRev-Nov232012.pdf>.

4. See *id.* at 17-18.

5. See *id.* at 18-19.

[t]here is no law in Poland which specifically covers and permits recovery of property seized during the Holocaust. Thus, it is most unlikely that litigation will bring a significant number of interested parties anything more than additional frustration and resentment.”<sup>6</sup> Indeed, in October 2017 the Polish government reversed course and proposed national legislation.<sup>7</sup>

Over the last year, WJRO has been reminded of the many roadblocks facing claimants as WJRO has worked hard to inform Holocaust survivors and their families that the City of Warsaw may extinguish their claims filed many decades ago under the Bierut Decree for property in Warsaw. Under the Decree of 26 October 1945 on the Ownership and Use of land in the area of the capital city of Warsaw (the “Bierut Decree” or “Warsaw Decree”) issued by the Communist authorities in Poland in 1945, the ownership of all properties within the prewar boundaries of Warsaw were transferred back to the City of Warsaw.<sup>8</sup> This included properties seized during the Holocaust by Nazi Germany from Jews who lived in Warsaw. The Warsaw Decree permitted the former owners of the nationalized property to apply for temporary ownership rights of the property. But the Communist authorities rejected or did not review most of these applications, and therefore, thousands of cases remained open. On September 17, 2016, Poland passed legislation (the “Warsaw Law”)<sup>9</sup> that further limits the rights of claimants to properties in Warsaw who filed claims under the Warsaw Decree.<sup>10</sup> The new law requires former owners of the property

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6. *Id.* at 19-20.

7. *See* Ustawa o zrekompensowaniu niektórych krzywd wyrządzonych osobom fizycznym wskutek przejęcia nieruchomości lub zabytków ruchomych przez władze po 1944 [Law to Compensate for Some of the Harm Done to Individuals as a Result Taking Over Real Estate or Movable Monuments by the Communist Authorities after 1944] (*draft*, Oct. 20, 2017) (Pol.) (“Since 1989, despite numerous legislative initiatives, a comprehensive solution to the so-called reprivatization problem, including compensation for both property seized and transferred to the State under statutes or decrees of 1944-1962, and contrary to those regulations, has not been adopted.”).

8. *See* Dekret z Dnia 26 Października 1945 r. o Własności i Użytkowaniu Gruntów na Obszarze m. st. Warszawy [Decree on Ownership and Use of Land in the Territory of the City of Warsaw of October 26, 1945] (1945 DZ. U. nr 50, poz. 279) (Pol.).

9. Ustawa z dnia 25 czerwca 2015 r. o zmianie ustawy o gospodarce nieruchomościami oraz ustawy - Kodeks rodzinny i opiekuńczy [Law on an Amendment to the Real Property Management Act and to the Law - Family and Guardianship Code of June 25, 2015 (Official Journal 2016 no. 1271)].

10. WJRO played a lead role in efforts to oppose this legislation. *See* Press Release, World Jewish Restitution Org., WJRO Welcomes Polish President’s Refusal to Sign Laws Limiting Warsaw Restitution Claims (Aug. 4, 2015); *see also* Stewart Ain, *New Pressure on Poland for Property Restitution*, N.Y. JEWISH WEEK (Aug. 12, 2015, 12:00 AM), <http://jewishweek.timesofisrael.com/new-pressure-on-poland-for-property-restitution/>. In July 2016, WJRO

or their families to come forward and prove their right to the property. Otherwise, they will lose all rights and the property will be transferred to the State Treasury or the City of Warsaw. Under the law, the City of Warsaw is required to publish an announcement of a property on its website and in a national and local Polish newspaper. Once the announcement is published, a property owner has six months to come forward. After six months, Warsaw authorities can dismiss the case and the property would be formally registered as belonging to the State Treasury or the City of Warsaw. Once a property owner files the necessary paperwork, the property owner has an additional three months to prove the right to the property.<sup>11</sup>

WJRO realized that the City of Warsaw was not doing enough to inform claimants of prior claims that had been filed with the City. Therefore, we embarked on our own campaign to inform and educate survivors and their families.<sup>12</sup> We even constructed our own database to help people try to identify whether they or their ancestor had filed claims.<sup>13</sup> We were overwhelmed by the response. Fourteen thousand

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submitted an *amicus curae* brief urging the Constitutional Tribunal to declare the new legislation unconstitutional for violating former owners' rights. The Tribunal upheld the law in a decision that reviewed WJRO's arguments. See Press Release, World Jewish Restitution Org., WJRO Disappointed with Decision by Polish Constitutional Tribunal on Law Limiting Warsaw Restitution Claim (July 27, 2016); see also Joanna Berendt, *Polish Court Limits World War II-Era Restitution Claims in Warsaw*, N.Y. TIMES (July 27, 2016), <https://www.nytimes.com/2016/07/28/world/europe/polish-court-limits-world-war-ii-era-restitution-claims-in-warsaw.html>.

11. See Law on an Amendment to the Real Property Management Act and to the Law - Family and Guardianship Code of June 25, 2016, *supra* note 9, art. 214b, ("1. In matters concerning the consideration of the applications referred to in Art. 7 section 1 of the Decree of 26 October 1945 on the Ownership and Use of Land in the Area of the Capital City of Warsaw, proceedings shall be discontinued if it is not possible to determine the parties to the proceedings or their addresses. 2. The grounds for the discontinuation referred to in section 1 arise when the authority summons the applicant and his/her legal successors, if any, to participate in the proceedings by means of an announcement, and no letter is received in the matter from the party apart from the application referred to in section 1. The authority shall issue a decision on discontinuation if, within six months from the date of announcement, no-one submits a claim concerning his/her rights or, after submitting such claims, fails to support them within the next three months or fails to indicate his/her address.").

12. In accordance with the Warsaw Law, the City of Warsaw publishes announcements of properties for which former owners must step forward and reactivate their claims on its website. However, each time the City publishes new announcements, it removes the prior announcements from its website. See *Ogłoszenia i Informacje – Sprawy Dekretowe [Announcements and Information -Decree Matters]*, BIULETYN INFORMACJI PUBLICZNEJ M.ST. WARSZAWY [CITY OF WARSAW'S PUBLIC INFORMATION BULLETIN], [https://bip.warszawa.pl/Menu\\_podmiotowe/biura\\_urzedu/SD/ogloszenia/default.htm](https://bip.warszawa.pl/Menu_podmiotowe/biura_urzedu/SD/ogloszenia/default.htm). (last visited Jan. 8, 2018).

13. See *Property Restitution in Warsaw: Information for Holocaust Survivors and their Heirs*, WORLD JEWISH RESTITUTION ORG., <https://wjro.org.il/our-work/property-restitution-in-warsaw/> (last visited Jan 8, 2018).

people visited our webpage and database on Warsaw and over eighty thousand people watched a short video we made.<sup>14</sup>

While our efforts were focused on property in Warsaw, we heard from hundreds of people who owned property in Warsaw and throughout Poland. They wanted to know if Poland had passed a law to enable them to file a claim after all of these years. They brought to us their story of loss and how their family's property was taken.

### III. KEY ELEMENTS OF RESTITUTION LAW

With this in mind, the key elements that should be included in Polish legislation for the restitution of private property fall within four categories: 1) what property should be covered, 2) who can file claims, 3) how will the restitution of property be implemented, and 4) what process should be established. These key elements are based upon WJRO's experience in other countries, and on the standards set forth in the Terezin Declaration on Holocaust Era Assets ("Terezin Declaration")<sup>15</sup> and the 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 ("Guidelines and Best Practices").<sup>16</sup> The Terezin Declaration was endorsed in 2009 by 47 countries, including Poland. It lays out principles to guide the restitution of property. The Guidelines and Best Practices, which was endorsed by 43 countries in 2010, reaffirms the Terezin Declaration, identifies restitution principles and provides detailed standards for countries to apply in their property restitution legislation and claims processes.<sup>17</sup>

#### *A. What Property Should be Covered*

Three issues are important to note when discussing what property should be covered by restitution legislation: 1) what time period should

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14. *See Database Helps Holocaust Survivors Reclaim Warsaw Property*, YNET NEWS (Dec. 6, 2016), <https://www.ynetnews.com/articles/0,7340,L-4889257,00.html>.

15. EUR. SHOAH LEGACY INST., TEREZIN DECLARATION ¶3 (June 30, 2009).

16. EUR. SHOAH LEGACY INST., 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 ¶2 (June 30, 2009).

17. *See id*; *see also International Consensus on Restitution of Holocaust-Era Property*, WORLD JEWISH RESTITUTION ORG., <https://wjro.org.il/our-work/international-declarations-resolutions/>.

be covered, 2) what locations should be covered, and 3) what type of restitution should be provided.

Legislation should cover property confiscated beginning in the Holocaust, and/or subsequently nationalized by the Communist regime.<sup>18</sup> Some Holocaust survivors were able to recover their property immediately after the war—before their property was then nationalized. However, many other Holocaust survivors were not able to regain their property after the Holocaust—either because of anti-Semitism, or because they had left the country to try to start a new life, or for other reasons.<sup>19</sup> As the Terezin Declaration provides, they too should be allowed to make a claim for their property taken during the Holocaust.<sup>20</sup>

Legislation should also be comprehensive and cover properties throughout Poland, including Warsaw.

In addition, the type of restitution should follow the model of other countries, such as Estonia,<sup>21</sup> Latvia,<sup>22</sup> Romania,<sup>23</sup> and others. For

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18. See TEREZIN DECLARATION, *supra* note 15, ¶3 (“Recognizing the importance of restituting or compensating Holocaust-related confiscations made during the Holocaust era between 1933-45”).

19. See Monika Krawczyk, *Restitution of Jewish Assets in Poland – Legal Aspects*, JUSTICE NO. 28, 24, 26 (Summer 2001) (“Most former owners lost their properties by reason of the Post-German and Deserted Properties Decree. Under this Decree any property (movable and immovable) which was not recovered by the original owners as of 1 September 1939, within 10 years (5 years in case of movables) of the year 1945, passed to the State.”); see also IMMOVABLE PROPERTY REVIEW CONFERENCE OF THE EUROPEAN SHOAH LEGACY INSTITUTE, *supra* note 3, at 19, (“Of course, in the 1945-1955 period during which claims were accepted, virtually no Jews, much less Jewish property owners, were left in Poland; most had been murdered, while few that did survive the war returned to or stayed in Poland. Thus, they could not recover their seized property pursuant to the decree in the time period specified. And, of course, during that time, Jewish Holocaust survivors were fully occupied with other, more immediate matters – such as searching for family members and friends, and trying to rebuild their lives, typically in foreign lands, with alien cultures and languages, bereft of their possessions. In sum, to require the survivors to return to Poland and claim their stolen property in what, often, was a hostile post-war environment was, too put it mildly, unrealistic.”)

20. See TEREZIN DECLARATION, *supra* note 15, ¶2 (“Noting the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution, the Participating States urge that every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property, which were part of the persecution of these innocent people and groups, the vast majority of whom died heirless.”); see also GUIDELINES AND BEST PRACTICES, *supra* note 16, at 2 (“(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”).

21. In Estonia, property was restituted *in rem* when possible, however there were a number of exclusions to restitution, including if the current owner was a purchaser in good faith. See, e.g., The Republic of Estonia Principals of Ownership Reform Act, pt. II, § 12 (1991). When not possible, compensation was paid by compensation vouchers, *id.* pt. 2, §§ 13, 17. Compensation

example, *in rem* restitution should be provided when possible, and when not, compensation should be fair.<sup>24</sup> In addition, if a substitute property must be provided, it should be equivalent in value.<sup>25</sup> At the same time,

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vouchers could be exchanged for other property subject to privatization as well as stocks, *id.* pt. 2, § 17.

22. Latvia enacted more than 20 privatization and denationalization laws between 1990 and 1992. Overall, the laws provided for *in rem* restitution, and when that was not possible, former owners were given substitute property or compensation vouchers. *See, e.g.*, Supreme Council Law of 30 October 1991 On the Return of Buildings to their Legal Owners ¶ 1 (1991) (Lat.) (“The previous owners or their heirs, regardless of their present citizenship, will have their ownership rights restored to buildings which were confiscated without compensation during the 1940’s – 1980’s.”); *see generally* European Shoah Legacy Inst., *Overview of Immovable Property Restitution/Compensation Regimes – Latvia*, in *IMMOVABLE PROPERTY RESTITUTION STUDY* (2016) (noting that “[i]n general, the restitution laws were meant to offer restitution *in rem* or compensation (via substitute property of equivalent value or vouchers) when *in rem* restitution was not possible.”); *see also* EUROPEAN SHOAH LEGACY INST., *THE GREEN PAPER ON THE IMMOVABLE PROPERTY REVIEW CONFERENCE 58* (2012) (“Latvia’s restitution legislation is liberal and the legal framework ensures the restitution of real estate properties regardless of the current citizenship and place of residence of a previous owner or heir.”).

23. *See, e.g.*, Law no. 10/2001 on the Legal Regime of Some Immobile Properties Taken Over Between March 6, 1945 and December 22, 1989 (Rom.) (“Chapter I, Art. 1(1) Buildings abusively taken over by the state, by the cooperative organizations or by any other legal persons between March 6, 1945 - December 22, 1989, as well as those taken over by the state on the basis of Law no. 139/1940 on the requisition and not returned, shall be restituted in kind under the terms of this law. (2) In cases where restitution in kind is not possible, equivalent remedies shall be imposed. Repairs by equivalent measures shall consist of compensation with other goods or services offered in equivalent by the entity invested in accordance with the present law with the settlement of the notification, with the consent of the entitled person, or compensation granted under the special provisions regarding the regime for the settlement and payment of damages related to immovable properties abusive.”); *see also* Law no.165/2013 on the Measures for the Completion of the Restitution in Kind or Equivalent of the Buildings Abusively Taken over During the Communist Regime in Romania (Rom.) (“Chapter I, Art. 1. (1) Buildings abusively taken over during the communist regime shall be returned in kind. (2) If the restitution in kind of the immovable properties abusively taken over during the communist regime is no longer possible, the only reparatory measure in equivalence to be granted is the point compensation provided in ch. III [Provision of compensatory measures]”); *see also* Law no. 103/2016 on the Approval of Government Emergency Ordinance no.21/2015 for Amending and Completing the Law no.165/2013 Regarding the Measures for Completing the Process of Restitution, in Kind or Equivalent, of Immovable Properties Abusively Taken Over During the Communist Regime in Romania (Rom.) (“Article 33 (4) shall be amended and shall have the following content: (4) The applications shall be analyzed in the order of their registration with the entities stipulated in par. (1). (1). By way of exception, priority shall be given to requests made by persons certified by entities designated by the Romanian State or by other Member States of the European Union as living Holocaust survivors at the time of publication in the Official Gazette of Romania Part I of this law.”).

24. *See* GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶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.”).

25. *See id.*



the law should protect current good faith occupants of restituted property.<sup>26</sup>

### B. Who Can File Claims

The second category of key elements that should be included in Polish legislation for the restitution of private property is who can file claims. All rightful owners, and their heirs, should be able to file claims regardless of current citizenship. Estonia<sup>27</sup> and Latvia,<sup>28</sup> for example, restored property rights regardless of citizenship. Discrimination against non-citizens is particularly unfair when many survivors left Poland to rebuild their lives after the Holocaust or because of postwar anti-Semitism. In other cases, the entire family still living in Poland was killed in the Holocaust and only heirs living outside of Poland survived.<sup>29</sup>

The question as to who can file claims should also guide the “how” —what process should be established. The surviving property owners are elderly, while the youngest Holocaust survivors are in their

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26. See GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶g (“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.”).

27. Estonia’s laws applied equally to citizens as to non-citizens, so long as the former owner was an Estonian citizen in 1940. See Eesti Vabariigi omandireformi aluste seadus [Principles of Ownership Reform Act of June 13, 1991] pt. II, § 7 (RT 1991, 21, 257) (Est.); see also European Shoah Legacy Inst., *Overview of Immovable Property Restitution/Compensation Regimes – Estonia*, in IMMOVABLE PROPERTY RESTITUTION STUDY (2016).

28. See, e.g., “The Republic of Latvia - Supreme Council Law of 30 October 1991 on the Return of Buildings to their Legal Owners,” ¶1 (“The previous owners or their heirs, regardless of their present citizenship, will have their ownership rights restored to buildings which were confiscated without compensation during the 1940’s – 1980’s”).

29. See TEREZIN DECLARATION, *supra* note 15, ¶3 (“We consider it important, where it has not yet been effectively achieved, to address the private property claims of Holocaust (Shoah) victims concerning immovable (real) property of former owners, heirs or successors ... in a fair, comprehensive and nondiscriminatory manner consistent with relevant national law and regulations, as well as international agreements.”); see also GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶ d, (“The property restitution and compensation processes, including the filing of claims, should be accessible, transparent, simple, expeditious, non-discriminatory [without] citizenship and residency requirements.”); see also IMMOVABLE PROPERTY REVIEW CONFERENCE OF THE EUROPEAN SHOAH LEGACY INSTITUTE, *supra* note 3, at 19 & 21 (noting that after the Holocaust, most of Polish Jewry had been murdered and the few who did survive the war did not return to or remain in Poland. Instead, during that time, they were busy “searching for family members and friends, and trying to rebuild their lives, typically in foreign lands, with alien cultures and languages, bereft of their possessions.” Furthermore, as a result of the annihilation of entire Jewish families in Poland, the remaining heirs were likely to reside outside of Poland as “property of countless Jewish families killed during the Holocaust passed to the possession of Poland and the country, albeit unintentionally, continues to benefit from such assets.”).

seventies.<sup>30</sup> Therefore, where Holocaust survivors and other property owners have already died, the claimants will be second, third, or even fourth generation heirs who will need more time to find documentation or prove succession.<sup>31</sup> In addition, every aspect of applications is more difficult for foreign claimants—including, for example, notice to find out about the opportunity to file a claim, or language barriers faced by applicants who are not fluent in Polish.<sup>32</sup>

### *C. What Process Should be Established*

The third category of key elements that should be included in Polish legislation for the restitution of private property is the “how” – what process should be established? There are five key issues that should be addressed for building an effective process for restitution: 1) notice to claimants of their ability to file a claim; 2) time to file claims, and speed in the processing of claims; 3) taxation imposed on restituted property; 4) simplicity; and 5) accessibility.

The government should widely publicize the enactment of legislation in order to provide adequate notice to potential claimants.

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30. See CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GER. & WORLD JEWISH RESTITUTION ORG., HOLOCAUST-ERA CONFISCATED COMMUNAL AND PRIVATE IMMOVABLE PROPERTY: CENTRAL AND EAST EUROPE 1, ¶ II.4 (June 2009) (noting that efforts by the local Jewish communities, together with the WJRO and other Jewish groups, to urge post-Communist Central and East European countries to enact restitution legislation and establish or improve existing claims processes has been a complex undertaking because, among other reasons, many former property owners are elderly) [hereinafter 2009 Report on Holocaust-Era Confiscated Communal and Private Immovable Property: Central and East Europe].

31. The children and other heirs of Holocaust survivors face significant challenges, in many cases, to establish their right to their family’s property because of the wide-spread destruction of documentation during the war. See IMMOVABLE PROPERTY REVIEW CONFERENCE OF THE EUROPEAN SHOAH LEGACY INSTITUTE, *supra* note 3, at 20, (“The processes of Nazification and Communization . . . involved the destruction of volumes of written documentation proving property ownership, line of inheritance, and birth certification . . . directed, especially in the case of Nazism, specifically against the Jews.”).

32. See 2009 Report on Holocaust-Era Confiscated Communal and Private Immovable Property: Central and East Europe, *supra* note 30 (“[M]any former property owners . . . live in foreign countries and have forgotten much critical information . . . which makes pursuing what is rightfully theirs a more difficult and expensive task.”); see also Press Release, World Jewish Restitution Org., City of Warsaw Releases Initial List of Properties Under Controversial Restitution Law (Feb. 22, 2017) (“It is critical that the Polish authorities take every possible step to identify and notify potential claimants . . . [i]t is unfair for claimants – particularly those who now live outside of Poland – to lose this last opportunity to reconnect with their past . . . [m]any of the claimants or their surviving heirs, do not know that they have the opportunity to pursue their claims seventy years later.”); see also GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶e, which recognizes the difficulty of filing property claims for all claimants, (“There should be unfettered and free access to all relevant local, regional, and national archives, including those . . . required to confirm the right of ownership and other legal property rights to immovable (real) property.”).

Publicity should include notice outside of Poland, including countries with significant Polish Diaspora communities. We have seen this issue over the last four months as the City of Warsaw has started to issue notices that can lead to the termination of individual claims filed up to seventy years ago.<sup>33</sup> The City published notices in Polish newspapers and on their website. It is highly unlikely that a claimant—or the claimant’s heirs—living outside of Poland would see this notice. And, indeed, we have found heirs of claimants who did not see the notice and did not know of their right to pursue these claims.<sup>34</sup>

Even those claimants who learn of their ability to file in a timely manner still need time to learn about the program, prepare their application, and prove succession. This requires a multi-year filing period. In addition, because of the age of Holocaust survivors and other elderly claimants, claims should be reviewed, and restitution or compensation should be provided, as quickly as possible. Romania, for example, passed a law last year requiring the restitution agency to review claims filed by Holocaust survivors first.<sup>35</sup>

Furthermore, restitution and/or compensation should not be taxed. Claimants who were denied use of their property for decades should not have to pay government taxes for restitution or compensation for the property.<sup>36</sup>

Moreover, the process itself should be as simple as possible, with claimants being able to file claims without hiring lawyers, interpreters, or other professionals, and accessible regardless of their financial means.<sup>37</sup>

Experiences in other countries have shown five specific ways to make the process simpler. First, there should be a centralized, special system of administrative agencies for processing claims, and an appeals

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33. *Announcements and Information - Decree Matters*, *supra* note 12.

34. *See id.*; compare with GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶ d, (“The property restitution and compensation processes, including the filing of claims, should be accessible, transparent . . . for claimants.”).

35. *See* Law no. 103/2016, *supra* note 23.

36. *See* TEREZIN DECLARATION, *supra* note 15, ¶ 2 (“The process of such restitution or compensation should be . . . neither burdensome nor costly to the individual claimant.”); *see also* GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶2 (June 30, 2009). (“The property restitution and compensation processes . . . should not be subject to burdensome or discriminatory costs for claimants.”).

37. *See* GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶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.”).

body or panel for claimants who are found ineligible upon initial review. A number of countries have established centralized administrative bodies.<sup>38</sup> This is more efficient than requiring claimants to go to court.

Second, the government should establish a webpage with full information about the claims process, with links to this information in several languages for the benefit of claimants living abroad.<sup>39</sup>

Third, documentary evidence should be accepted in the language of the applicant's country of origin, or in English. Claimants should not have to spend hundreds or thousands of dollars for translations.<sup>40</sup>

Fourth, claimants should have 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 property.<sup>41</sup>

Fifth, proving succession is a particular challenge for foreign claimants who have not gone through succession proceedings in Poland. If the need for additional proof is necessary, historians and experts could help resolve issues of succession. Therefore, evidentiary requirements for proving succession should be relaxed.<sup>42</sup>

#### IV. BENEFITS OF RESTITUTION

WJRO has found in other countries that restitution laws lead to a reinforcement of democratic principles, including respect for the rule of law and property rights. They also afford a sense of justice for people

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38. See, e.g., Law No. 247/2005 on Judicial and Property Reform [hereinafter 2005 Property Reform Law]. The law established a Central Compensation Board and the National Agency for Property Restitution ("ANRP") to deal with the claims and compensation process. The Central Compensation Board Compensation reviewed the awards issued by local authorities under the 2005 Property Reform Law to ensure their legality and made a determination on amount of compensation. The Central Compensation Board would then issue successful claimants a compensation certificate; see also Law no. 165/2013, *supra* note 23, art. 17, which established a National Committee for Real Estate Compensation, reporting to the Prime Minister's office. The National Committee is entrusted with completing the *in rem* restitution and compensation process, including validating or invalidating and ordering the issuance of restitution and compensation decisions. The National Committee was meant to replace the Central Compensation Commission, *id.* art. 18, ¶ 3; see also Zakon o vraćanju oduzete imovine i obeštećenju [Law on Property Restitution and Compensation] art. 51 (Official Gazette of RS no. 72/2011) (Serb.) ("The Agency for Restitution has been established for purpose of managing proceedings and deciding on claims for property restitution, as well as for purpose of paying cash fees and compensations, and for purpose of carrying out other activities determined by the Law.").

39. See GUIDELINES AND BEST PRACTICES, *supra* note 16, ¶d.

40. See *id.*

41. See *id.*

42. See *id.*

who were denied their property for decades.<sup>43</sup> In addition, there is an economic benefit to a country when certainty of title is achieved, thereby enabling the development of property that was previously in government hands or not in use.

Restitution has also been a way for countries to reconnect with their large diaspora communities now living around the world. This is a particular opportunity for Poland because of its over 1,000-year history of Jewish life. A large percentage of Jews living in the United States, Israel, Canada, and other parts of the world came from Poland.<sup>44</sup> Because so many of them are looking for an opportunity to reconnect to their roots in Poland, a restitution process has the potential to facilitate and renew that connection. With fewer Holocaust survivors and other original property owners alive to benefit from restitution or compensation, property restitution in Poland is an urgent issue. It is incumbent upon the legal community and others to bring together their expertise and creativity to help Poland move forward on this issue and bring a sense of closure and justice to Jewish and non-Jewish claimants.

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43. See, e.g., Berendt, *supra* note 10 (“Norman Trysk-Frajman, 86, a Holocaust survivor from Warsaw said of his family’s properties in Warsaw, ‘Our forefathers, who were slaughtered during the war, left it to us . . . it is rightfully ours and I cannot imagine that anyone in the world would disagree with this under normal circumstances.’”).

44. See *Jewish Heritage Initiative in Poland*, TAUBE FOUND. FOR JEWISH LIFE & CULTURE, <http://www.taubephilanthropies.org/jewish-heritage-initiative-in-poland> (last visited Jan. 15, 2018) (noting that eighty-five percent of American Jews have Polish roots).