

FORMER-CITIZENSHIP RESTITUTION: A PROPOSAL FOR AN EQUITABLE RESOLUTION OF CONFISCATED LITHUANIAN PROPERTY

By: Cheryl E. Stovall*

Abstract

The success of a developing nation has historically been measured in terms of economic growth. That measure fails to consider, however, the importance of justice as a measure of development. This article explores the idea that restitution of property is an important social justice that is necessary for a developing nation to achieve growth. The rationale for restitution is to “make up” for past injustices by restituting expropriated property to its former owners. After the fall of Communism, most of the Eastern European states recognized the importance of identifying those who were entitled to restitution of property previously nationalized under a socialist regime. But, those states also systematically identified those who would not be entitled to restitution – *former* citizens - thus perpetuating an injustice. Many former citizens of Eastern Europe who fled the Baltic States (Lithuania, Latvia, and Estonia) fearing persecution, were never compensated for the theft of their property by the Soviets, since most had long since emigrated and were no longer citizens with valid claims to their former properties. Consequently, the importance that is placed on restitution as development in the Baltic States is limited to the extent that it does not infringe on the traditional goal of development – economic growth. A brief discussion will follow about why Lithuania’s failure to grant restitution to former citizens constitutes an injustice that will serve to hinder its future economic development

* J.D. candidate, Chicago-Kent College of Law, Illinois Institute of Technology, 2011; B.S., Management Information Systems and Accounting, San Jose State University, 2002. The author wishes to thank Professor Bernadette Atuahene for her inspiration and assistance in writing this comment. She would also like to thank W. Douglas Craig, Eric S. Pruitt, James G. Parker and Jamie Rubin for their invaluable assistance in editing this comment. Lastly, she wishes to thank Douglas T. Mason for his love and support.

until rectified. A development debt for human restoration swap is proposed as the means by which Lithuania can rectify the injustice while simultaneously achieving economic growth.

Table of Contents

	INTRODUCTION	2
I.	A BRIEF HISTORY OF THE SOVIET OCCUPATION OF LITHUANIA.....	5
	a. Soviet Expropriation of Property	6
	b. Independence and Continuity of Pre-Soviet Regime Property Rights ..	7
II.	LITHUANIA'S PROPERTY INSTITUTIONS.....	8
	a. Law on Land.....	8
	b. Law on Restitution	10
	c. Extent of Restitution.....	11
	d. Land Reform Act	12
	e. Administrative Structure of Restitution Law and Land Reform Act ..	13
	i. Administration of Claims	13
	ii. Land Registry	14
III.	RESTITUTION AS DEVELOPMENT.....	15
	a. Increasing the Class of Potential Claimants	15
	b. Former Citizens.....	16
	c. Citizenship and Nationality.....	17
	d. Former-Citizenship Restitution Explored.....	18
	e. Dual-Citizenship is not the Solution.....	20
IV.	REFORMING THE LAW ON RESTITUTION	23
	a. Maintaining the Status Quo Means Uncertainty of Title	23
	b. Development Debt for Human Restoration Swap	24
	CONCLUSION	26

Introduction

The need for development in post-communist states is undisputed. What *is* disputed is the means for best achieving that development. One can view development from at least two perspectives: achieving economic growth or achieving justice. With a focus on economic growth, the typical measurements of success include a nation's Gross Domestic Product (GDP), personal income, technological advances, and level of industrialization.¹ In an influential book, Hernando de Soto argues that a nation's dead capital stunts its economic growth because physical assets are not being used to raise capital.² Unlocking the dead capital needed to bolster a slumping economy, de Soto argues, is achievable through property titling programs.³ More specifically, de Soto argues that property can be used to generate capital by enabling its owner to use the property as collateral for borrowing money to fund other enterprises.⁴ Based on this premise, focusing development on the privatization of land could provide the opportunity for a post-communist nation, such as Lithuania, to recover the material wealth lost when property was nationalized. This theory requires certainty of land title, however, as a necessary component.⁵

A critical issue then becomes whether restitution is incompatible with economic growth because of the certainty of title that economic growth requires.⁶ On that note, an alternative, or

¹ See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999).

² See generally HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000).

³ *Id.*

⁴ *Id.* at 40.

⁵ Donald C. Clarke, *Economic Development and the Rights Hypotheses: The China Problem*, 51 AM. J. COMP. L. 89 (2003) (discussing the notion that enforceable laws (including property law) are not required to achieve economic growth. The article offered China as an example where economic growth was achieved despite the fact that most Chinese nationals felt their legal rights were unenforceable).

⁶ See Kiril Stanilov, *THE POST-SOCIALIST CITY: URBAN FORM AND SPACE TRANSFORMATIONS IN CENTRAL AND EASTERN EUROPE AFTER SOCIALISM*, 191-214 (2007) (discussing whether restitution programs actually facilitate economic growth or whether they operate to hinder it); Tom Allen, *Restitution and Transitional Justice in the European Court of Human Rights*, 13 COLUM. J. EUR. L. 1, 13-27 (2006) (arguing that the European Court of Human Rights (ECHR) is reluctant to recognize the restitution of property as a fundamental human right because of "fear that reviving old titles would interfere with reconstruction in [the] post-transition world." Noting also that "there is no sensible argument that the revival of property rights would amount to an injustice so extreme that a court should

perhaps complimentary, argument for a means to achieving development is one of expanding substantive freedoms.⁷ Nobel laureate Amartya Sen argues that if the goal of development is freedom (which includes rectifying social injustices), then a violation of freedom will hinder development, among other things.⁸ Confiscation of property without just compensation is a severe human rights injustice⁹ and in order to achieve development, a nation must adequately rectify such injustice.¹⁰

If land titling is to serve as the basis for economic growth and development, then it follows that justice can only be achieved if the process by which land is obtained is equitable. Imagine a situation in which a person's land was wrongfully taken without payment or just compensation, and that someone other than the rightful owner now holds legal title to that land. In such a case, neither certainty of land title nor justice has been achieved. The person who has not received just compensation for the wrongfully expropriated land will continue to suffer an injustice until such time that the situation has been rectified. Furthermore, such land continues to be burdened with the possibility that a competing claimant may one day obtain the right to reclaim ownership of the land. Thus, to achieve development, a developing nation must implement a restitution program that addresses property induced violations of all individuals (current and former citizens alike) to ensure justice and ultimately to stabilize land titles. This approach recognizes that nations must take into account moral considerations when planning a development strategy.

disregard them.” Restitution of confiscated property is arguably the most important step a former communist nation can take to successfully transition into a market economy).

⁷ Sen, *supra* note 1, at 3.

⁸ Sen, *supra* note 1, at 4 (discussing major sources of unfreedoms: “poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states,” economic poverty, hunger, lack of adequate shelter, medicine, and clothing; denial of civil and political liberties and “restrictions on the freedom to participate in the social, political and economic life of the community.”)

⁹ See Allen, *supra* note 6, at 28.

¹⁰ Bernadette Atuahene, *Property Rights & The Demands of Transformation*, 31 MICH. J. INT'L. L. 765, 768 (2010) (discussing the potential for backlash when past land theft is not timely addressed noting, however, that where there is no threat of backlash, land theft should still be remedied on moral grounds).

In this context, “restitution” shall mean the reassignment of wrongfully lost property rights to former owners or their descendants.¹¹ Beginning in 1940, the Soviet Union undertook to confiscate nearly all land belonging to the Lithuanians, who were then either deported to Siberian labor camps or enlisted in the Red Army.¹² Moreover, during the brief period of German occupation of Lithuania between 1940 and 1944, the Nazis confiscated land belonging to the Lithuanian Jews without compensation and redistributed that land to non-Jews.¹³ Upon declaring independence, Lithuania was the first of the Baltic States¹⁴ to implement a restitution program to facilitate its transition from a nationalist system of landholding instituted under Soviet rule back to a civil law system of landholding that incorporated restituting land expropriated during the Soviet occupation.¹⁵

I. A Brief History of the Soviet Occupation of Lithuania

The Republic of Lithuania is a post-communist country located in Eastern Europe that in 2004 joined the European Union.¹⁶ Prior to declaring its independence on March 11, 1990,

¹¹ See Kiril Stanilov, THE POST-SOCIALIST CITY: URBAN FORM AND SPACE TRANSFORMATIONS IN CENTRAL AND EASTERN EUROPE AFTER SOCIALISM, *supra* note 6, at 191 (2007) (“One method of privatization is through restitution, i.e., the reassignment of wrongfully lost proprietary rights to former owners. Among the countries carrying out such transitions, Poland and Germany represent two extreme cases.”)

¹² Nicolas J. Gutierrez, Jr., *Righting Old Wrongs: A Survey of Restitution Schemes for Possible Application to a Democratic Cuba*, 4 U. MIAMI Y.B. INT’L L. 111, 113-14 (1995) (noting that “legislation returning property to its former owners in the Baltics is resulting in one of the most sweeping transfers of real estate in history, as heirs re-examine the time period during which Soviet authorities confiscated virtually everything belonging to their parents or grandparents and then either deported them by the hundreds of thousands to gulags in Siberia for forced labor or conscripted them into the expansionist Red Army.”)

¹³ *Id.* at 116 (“The property reclamation law’s restriction that claims may only be made by current Lithuanian citizens gives rise to an additional caveat to the restitution issue, since many Lithuanian Jews had their property seized by the Nazis and redistributed to non-Jewish Lithuanians, during the period of World War II in which Germany wrestled control of the Baltics from the Soviet Union between 1940 and 1944.”)

¹⁴ Latvia, Lithuania and Estonia.

¹⁵ See generally William Valetta, *Completing the Transition: Lithuania Nears the End of its Land Restitution and Reform Program*, 11 FAO LEGAL PAPERS ONLINE (2000), <http://www.fao.org/Legal/prs-ol/lpo11.pdf> (describing Lithuania’s land restitution and reform movement).

¹⁶ See Lithuania Country Profile 2009: The Economist Intelligence Unit Limited at 11 (2009) (“Since joining the EU in 2004 Lithuania has continued to focus on further economic and infrastructural integration with the rest of the EU.”)

Lithuania was occupied by the former Union of Soviet Socialist Republics.¹⁷ Lithuania came under Soviet rule on June 14, 1940, following a military invasion led by Josef Stalin (“Stalin”) pursuant to the Molotov-Ribbentrop Pact, and remained occupied for over fifty years.¹⁸ Once occupied, Stalin led a communist revolution that began the systematic and progressive destruction of the fundamental human rights of the people of Lithuania.¹⁹ The Soviet Union forced Lithuania into a “Treaty of Mutual Assistance,” thereby allowing the Soviets to maintain military bases in Lithuania and causing Lithuania to lose its status as a neutral power.²⁰

A. Soviet Expropriation of Property

After the Soviet Union confiscated Lithuania’s property, Stalin initiated a nationalization agenda with the goal of transforming Lithuania into a socialist state.²¹ To effectuate this goal, the Soviets imposed a new concept of “ownership,” in which ownership of property or assets was vested in “the community.”²² This “ownership” eliminated the right “to possess, use and control goods in accordance with [one’s] own interests and by [one’s] own free will.”²³ This resulted in the confiscation or expropriation of almost all individual and state-owned property in Lithuania to the Soviet Union. Although Lithuania resisted Soviet occupation and was treated by several

¹⁷ See Dainius Zalimas, *Legal Issues on the Continuity of the Republic of Lithuania*, 2 HAW. J. L. & POL. 73, 87 (2006) (discussing how “the USA, Germany and France addressed both Lithuania and the Soviet Union calling for peaceful bilateral negotiations,” and that “the 1991 recognition of the restoration of the independence of the Republic of Lithuania was, in essence, declaratory.”)

¹⁸ *Id.* at 76 (it has been argued that this pact was invalid because it violated international law and that “[c]onsequently, the USSR had not obtained any sovereign rights to Lithuania from the Molotov-Ribbentrop Pact and thus there was no lawful justification for its aggression against Lithuania in 1940.”)

¹⁹ See *Id.* at 76-77.

²⁰ *Id.* at 76.

²¹ *Id.* at 77.

²² Andrei A. Baev, *Civil Law and the Transformation of State Property in Post-Socialist Economies: Alternatives to Privatization*, 12 UCLA PAC. BASIN L.J. 131, 133 (1993-1994) (stating that “in socialist countries, which began their post-revolutionary socialist reforms with the country-wide nationalization of private property, the term ‘ownership’ has been assigned a special economic characteristic and a specific meaning. In these countries, the ownership of capital is vested in ‘the community.’ As a practical matter, this means that ownership rests in the hands of those who enjoy political power.”)

²³ *Id.* at 132.

other states as being “an occupied state” it could not exercise “its sovereign rights including the legal title to its territory” until regaining independence in 1990.²⁴

B. Independence & Continuity of Pre-Soviet Regime Property Rights

In 1990, when Lithuania declared its independence, it also declared that Lithuania would resume an existence identical to that of the pre-war Republic of Lithuania.²⁵ This was coined “historical continuity” and projected the idea that, because Lithuania considered itself an occupied state, rather than a member of the Soviet Union, it resumed its national identity from the point before that identity had been “interrupted by the Soviet takeover in 1940.”²⁶ In so doing, Lithuania passed the Law on the Reinstatement of its May 12, 1938 Constitution, thereby confirming the continuity of the rights of the people as they existed under *that* constitution.²⁷ The Constitutional Court also resumed unchanged, confirming in its decision of May 27, 1994, “the continuity of the legal rules concerning the right to property, arising from the 1938 and earlier Lithuanian Constitutions.”²⁸ Furthermore, Lithuania recognized the continuity of nationality.²⁹ In an April 1994 decision, the Court held that “persons who had been nationals of the Republic of Lithuania before 15 June 1940 and their descendants were the citizens of

²⁴ Zalimas *supra* note 19, at 84 (explaining that “according to the principle of *ex injuria non oritur jus*, even though the USSR had occupied all the territory of Lithuania, the Republic of Lithuania continued to exist as a subject of international law”); *See also* Ruta M. Kalvaitis, *Citizenship and National Identity in the Baltic States*, 16 B.U. INT’L L.J. 231, 235 (1998) (“Most Western governments, including the United States, did not recognize the forcible incorporation of the Baltics into the Soviet Union and continued *de jure* recognition of their independence up to 1991 when full diplomatic (*de facto*) recognition was extended.”)

²⁵ Zalimas *supra* note 19, at 86 (notably, Lithuania also “unilaterally undertook to respect and fulfill all international obligations arising from the universal treaties for the protection of human rights and from the universal treaties for the protection of human rights from the United Nations Charter and multilateral treaties regulating diplomatic affairs.”)

²⁶ Nicolas J. Gutierrez, Jr., *Righting Old Wrongs: A Survey of Restitution Schemes for Possible Application to a Democratic Cuba*, 4 U. MIAMI Y.B. INT’L. 111, *supra* note 14, at 115 (1995).

²⁷ Zalimas, *supra* note 19, at 83.

²⁸ *Id.* at 90.

²⁹ *Id.*

Lithuania *ex officio*.”³⁰ In tandem with reinstating the property and nationality rights guaranteed under its previous laws, Lithuania also quickly began to enact new laws on the restitution of nationalized property.³¹ Nationalized property shall mean any real property that was confiscated from the Lithuanian people by the Soviet Union between 1940 and 1950.

II. Lithuania’s Property Institutions

For nation-building, achieving economic growth and justice are often seen as competing goals. These goals are not, however, mutually exclusive. Restitution of property is one of several tools former communist nations utilize to transition from authoritarian rule to a market based economy.³² With these objectives in mind, in 1992, Lithuania embarked on the most progressive land transformation program of any of the Baltic States. The goals of Lithuania’s land restitution and land reform program were 1) to dismantle the collective farms and urban estates organized under the Soviet regime, 2) to return to citizens their confiscated farmland and forest lands, and 3) to create private ownership of residential and other urban lands.³³ However, because the law on property as it existed under the Soviet occupation did not allow for the private ownership of land, Lithuania also drafted fundamental laws defining the concept of ownership.³⁴

³⁰ *Id.*

³¹ See Gutierrez, Jr., *supra* note 14, at 114.

³² See Kiril Stanilov, THE POST-SOCIALIST CITY: URBAN FORM AND SPACE TRANSFORMATIONS IN CENTRAL AND EASTERN EUROPE AFTER SOCIALISM, *supra* note 6, at 191-214 (2007).

³³ William Valletta, *The Hesitant Privatization of Lithuanian Land*, 18 *FORDHAM INT’L L.J.* 198, 224 (1994) (in this article, Valletta expresses the Lithuania governments’ concern with rushing to create a market economy. He points out that while the Lithuanian citizens desire to be given land quickly, and that by giving that land, the country can “unlock” its value and create capital, a better approach would be to ease into it. The government has created a system of “hesitant privatization” by creating a system of land ownership in which the government maintains quasi-control over the land consistent with its policies on environmental protection and appropriate land management. The system is called the “Law on Land” reform. It divides all of the land into three categories: (1) exclusive state-owned land for public facilities; (2) privately-owned land (can be held jointly); and (3) State Land Fund lands that are available for private purchase, lease, or other temporary use. Moreover, the government must approve the use for which the lands will be operated. The four major categories of land use are: (1) agriculture, (2) forest, (3) preservation, and (4) other uses including housing, commerce, and industry).

³⁴ *Id.* at 199.

A. The Law on Land

Article 23 of the Constitution of the Republic of Lithuania states that, “[p]roperty shall be inviolable. The rights of ownership shall be protected by laws. Property may be taken over only for the needs of society according to the procedure established by law and shall be justly compensated for.”³⁵

The key term in the Constitutional provision of Article 23 is “rights of ownership.”³⁶ In 1994 Lithuania enacted the Law on Land establishing a basic definition of the term “ownership” as providing the “authority to manage the owned land and dispose of it without violating the laws of the Republic or the rights or legitimate interests of other persons.”³⁷ The “right to ownership” however, was an entirely different concept than “ownership.” On May 27, 1994, Lithuania’s Constitutional Court clarified that property nationalized by the Soviet authorities since 1940 was “under the *de facto* control of the State.”³⁸ Consequently, although former owners were entitled to “ownership” of land under the Law on Land, they lacked the “rights of ownership” until such time that a competent authority made a final decision to restitute the property or to provide compensation.³⁹ What this means ultimately, is that former owners do not possess any ownership rights in their wrongfully expropriated land until the Lithuanian government formally grants such right.

Lithuania adopted two laws setting forth the administrative and policy framework by which citizens could obtain ownership of land.⁴⁰ Lithuania also provided the procedure by which

³⁵ *Lietuvos Respublikos Konstitucija* [Constitution] Oct. 25, 1992, art. 23 (Lith.), available at <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

³⁶ *Id.*

³⁷ See William Valetta, *Completing the Transition: Lithuania Nears the End of its Land Restitution and Reform Program*, 11 FAO LEGAL PAPERS ONLINE, *supra* note 17, at 10 (2000), <http://www.fao.org/Legal/prs-ol/lpo11.pdf> (internal quotations omitted).

³⁸ *Aleksa v. Lith.*, 2009-Eur. Ct. H.R. 1169.

³⁹ *Id.*

⁴⁰ See Valetta, *supra* note 17, at 2.

citizens could make application for the return of farmsteads, estates, and other commercial and industrial property that had been nationalized between 1940 and 1950 provided that the land had remained substantially unchanged since 1940.⁴¹

B. Law on Restitution

The Law on The Procedure and Conditions for Restoration of Rights of Ownership to Existing Real Property (“Law on Restitution”), enacted on June 18, 1991, provided for two forms of restitution – the return of the property in-kind or for its compensation if physical return was not possible.⁴² Compensation for land that was not returned in-kind was limited to property of equivalent value or pecuniary compensation (vouchers or monetary compensation).⁴³ This partial reparation principle was a product of Lithuania’s effort to balance the political and social demands of a nation struggling to transform after more than 50 years of authoritarian rule.⁴⁴ Some citizens who failed to receive the return of their property in-kind questioned whether the Law on Restitution contradicted the provision in Article 23 of the Constitution requiring that land owners be “justly compensated” for the expropriation of their land by the State.⁴⁵ The Lithuanian Constitutional Court has held, however, that fair compensation in lieu of the return of property in-kind is consistent with its constitutional protection of property.⁴⁶

⁴¹ *Id.* at 3 (this meant that with respect to urban land, the current occupant of any building constructed after 1940 on the land could keep that land irrespective of previous ownership. Regardless of whether the land was occupied, if it had been built-up after 1940, the original owner was not entitled to restitution – in that case the building was available for purchase and ownership of the underlying land would be transferred to the purchaser. If, however, a building had existed on the land *prior* to 1940 *and* remained substantially unchanged, the building and the land could be restituted to its previous owner subject to any lease agreements for persons occupying the building).

⁴² On July 1, 1997, the Law on the Restoration of Citizens’ Ownership Rights to Existing Real Property repealed the Law on Restitution.

⁴³ See Valetta, *supra* note 17, at 2-3.

⁴⁴ See Aleksa v. Lith., 2009-Eur. Ct. H.R. 1169, *supra* note 40.

⁴⁵ *Id.*

⁴⁶ *Id.*

C. Extent of Restitution

The Law on Restitution provided for the restitution of land and buildings that had been confiscated by the Soviet regime between 1940 and 1950 to *citizens*⁴⁷ and their descendents. Restituted property included “agricultural⁴⁸ and forest land, independent homes, residential buildings, commercial and industrial buildings, and reasonably sized plots of land surrounding residential, commercial, and industrial buildings.”⁴⁹ Citizens applied for restitution of land by submitting to the district Land Reform Service office a standard form and including proof of identify as a descendent of a former owner.⁵⁰ Claimants were also required to submit proof of the location of the land, its size, and the legal rights of possession of the requested land.⁵¹ In most cases, this proof was easily satisfied by reference to land books that had existed prior to 1940.⁵² In that situation, a claimant needed only to show proof of descent from a land owner noted in the book.⁵³ In districts where land books had been lost, the proof of size, location, and ownership of land was established through purchase and mortgage agreements retained by family members, bank archives, and other documents filed with national offices.⁵⁴ If those documents could not be

⁴⁷ See Valetta, *supra* note 16, at 5.

⁴⁸ *Id.* at 12 (regardless of the size of the original parcel owned, restituted farmland could not exceed eighty hectares, of which fifty hectares or more could not be cropland and ten hectares or more could not be forest land. The stated reason for this limitation was to maximize the rural population. Prior to 1994 only those citizens who were willing to farm the land or to lease it for farming purposes, could receive their previously held agricultural land. If after two years the Lithuanian government determined that the land was not being used for farm purposes, the Law on Restitution provided that it could be seized by the State and sold to a citizen willing to use it for farm purposes. This policy was implemented to ensure that agricultural production would not be significantly disrupted during Lithuania’s period of transformation. The law was amended in 1994 to provide that a state agency could not take the land for failure to farm it to provide “the essential security of long-term land tenure, which was necessary if land was to serve as the basis of long-term investment and as collateral for mortgage loans.”)

⁴⁹ William Valetta, *The Hesitant Privatization of Lithuanian Land*, 18 FORDHAM INT’L L.J. 198, *supra* note 35, at 202 (1994).

⁵⁰ Valetta, *supra* note 17, at 5.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

obtained, a claimant could request to bring local elderly people before the district board to testify to the situation before 1940.⁵⁵

D. Land Reform Act

Lithuania enacted the Land Reform Act (“Act”) on July 25, 1992 (shortly after the Law on Restitution) to address the practical concerns and requirements for managing both the transfer of restituted land and the privatization of all remaining land. The Act provided as follows:

Article 6. The Privatization of Land⁵⁶

1. Persons who are citizens of Lithuania under the laws of the Republic of Lithuania, who have documentation of their citizenship, and who are permanent residents of the Republic of Lithuania, shall have the right to private ownership of land.
2. In the implementation of land reform, land shall be acquired by either restoring the right to ownership, or by purchasing the land.

The grandchildren of the former owners of land shall receive land without payment if, on the day of enforcement of the Law of the Republic of Lithuania on the Procedure and Conditions for the Restoration of Ownership Rights of Citizens to Surviving Immovable Property, the child would have had the ownership right restored is dead, and if the grandchildren, pursuant to the provisions of Article 4 of that Law, are tilling the land or return to farm the land. (Repealed 16 January 1992).

In addition to restituted land, the Act provided for the allocation of all remaining land, including “parcels needed for public facilities; lands which are to be preserved in their natural state to protect environmental, historic, archaeological, or other features; and lands for which no claims have been made or proven.”⁵⁷ Land was divided into three categories: 1) land retained by the State for public use, retention of resources, and natural preservation; 2) restituted land; and 3)

⁵⁵ *Id.*

⁵⁶ Republic of Lithuania Law on Land Reform available at <http://www.litlex.lt/Litlex/Eng/Frames/Laws/Documents/72.HTM>

⁵⁷ William Valletta, *The Hesitant Privatization of Lithuanian Land*, 18 FORDHAM INT’L L.J. 198, *supra* note 35, at 206 (1994).

any residual land.⁵⁸ Residual land was held by the State Land Fund charged with granting certain parcels of land without payment, selling parcels, and leasing parcels to commercial agricultural, cooperative and industrial entities as well as to citizens for housing.⁵⁹ Each parcel of land was subject to designation of a specified land-use as either agriculture, forest, economic, or residential, pursuant to Article 22 as follows:

Article 22: The Marking of Land Plots and the Distribution of Land Ownership Documentation

In coordination with the land reform plans for the organization of land exploitation, the State Institute of Land Exploitation Organization shall mark the boundaries of the land plots, and shall prepare documentation of land ownership or land usage rights.⁶⁰

Leased land was not subject to the citizenship requirements of landholding. Notably, in 1996 Lithuania lifted its restriction limiting land ownership to citizens.⁶¹

E. Administrative Structure of Law on Restitution and Land Reform Act

i. Administration of Claims

In February of 1992, the Department of Land Management (“DLM”), a subsidiary agency of the Agriculture of Ministry, was created by Government Decree to supervise the transfer of all urban and rural land parcels.⁶² Specifically, the DLM supervised the activities of the local urban and rural land management boards charged with handling land claims within their respective

⁵⁸ *Id.* at 207.

⁵⁹ *Id.*

⁶⁰ See Republic of Lithuania Law on Land Reform, *supra* note 58.

⁶¹ See Valetta, *supra* 17, at 11.

⁶² *Id.* at 3 (in 1997 the DLM became the Department of Land Management and Law (“DLML”). The DLML brought under its direct control the staff attorneys who had previously assisted the local land boards. The State Cadaster Enterprise and the Ministry of Agriculture were combined to create the State Land Cadaster and Register (“SLCR”) responsible for the record-keeping function of all land and real property. Lastly, the Mortgage Registry was created to register land and real property mortgages).

cities or districts.⁶³ Lithuanian citizens filed land applications in the local offices of the Land Reform Service where local board members made preliminary decisions on restitution claims, grants, leases, and land sales.⁶⁴ Restitution claims for house lots and urban land were submitted to the Ministry of Construction and Architecture.⁶⁵ Restitution claims for commercial and industrial real property were submitted to the specific ministry controlling the affected land and building.⁶⁶

Preliminary decisions on claims were reviewed by a district board with authority to render a final decision.⁶⁷ Before a final decision was officially rendered all applications were forwarded to the legal office of the central Ministry of Agriculture for confirmation that the proofs submitted met the legal requirements for restitution.⁶⁸ Attorneys employed by the Justice of Ministry were on staff to review restitution applications and to assist with the preparation of legal documents to facilitate the transfer of land ownership.⁶⁹

ii. Land Registry

After applications for restitution were approved and legal title to land had passed, land parcels were registered with the State Cadaster Enterprise, another subsidiary agency of the Ministry of Agriculture, which was supervised by the Land and Real Property Cadaster Division.⁷⁰ Each land parcel registered with the State Cadaster included its full land description and location as well as any easements, leases, or mortgages burdening the land and its particular use designation.⁷¹ The land's initial value was also recorded with the State Cadaster, along with

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

⁷¹ *Id.* at 6.

current market value, and all succeeding transactions involving the parcel of land.⁷² Importantly, the state guaranteed, and continues to guarantee, the accuracy of the legal title.⁷³

The procedures for filing restitution claims and other land requests opened the door for the creation of private services to assist the applicants.⁷⁴ Private organizations were formed to assist citizens with collecting the necessary documents to prove restitution claims.⁷⁵ Real estate brokers emerged to assist citizens with competing titles to land and to resolve issues of leases and servitudes running with the land.⁷⁶ Property appraisers also began to be employed to assess land value.⁷⁷ Since citizens relied on the use of private services to facilitate restitution applications rather than relying on state specialists, the entire process for a restitution application between 1994 and 1995 was six months to a year.⁷⁸

III. Restitution as Development

A. Increasing the Class of Potential Claimants

After the collapse of communism the main objectives of reform were to privatize property, transition to a market economy, and to provide citizens with a means to achieve a better standard of living.⁷⁹ Thus, to achieve these goals, like many of the Eastern European states, Lithuania adopted a restitution policy which limited restitution claims to citizens.⁸⁰ Admittedly, it is difficult to justify why a developing nation like Lithuania should extend restitution claims to former citizens who have taken up residency abroad since doing so could create expensive

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 4.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 6.

⁷⁹ Mariana Karadjova, *Property Restitution in Eastern Europe: Domestic and International Human Rights Law Responses*, 29 REV. CENT. & E. EUR. L. 325, 348 (2004).

⁸⁰ *Id.*

obligations that the state is likely unable to satisfy,⁸¹ and would transfer critically needed resources out of the state. Limiting the class of potential claimants, however, does not heal the wounds of those persons who are actively denied restitution. For that reason, a critical issue to explore is whether extending restitution to former citizens, thereby rectifying all injustices, is an essential element of economic growth that can be accomplished by reforming Lithuania's Law on Restitution. Extending restitution demonstrates a state's commitment to protecting human rights, strengthens democratic institutions, encourages cross-border integration,⁸² and ultimately strengthens property titles - all things facilitating economic growth and social reform.⁸³

B. Former Citizens

Article 51 of Lithuania's first Constitution, the Constitution of 1938, provided the legal protection of property rights at the time of the Soviet takeover of Lithuania. Under Article 51, a governmental taking was illegal if a property owner was dispossessed of his or her property without compensation.⁸⁴ After declaring its independence Lithuania reinstated the Constitution of 1938, along with the protection of property rights the Constitution provided. Following a short period of political instability, Lithuania enacted the Constitution of 1992 which guaranteed all Lithuanian citizens extensive social⁸⁵ and economic rights, including substantial property rights. It cannot be disputed, however, that former citizens and their heirs were deprived of their property, not because of the new Constitution, but as a consequence of Parliament's adoption, and the court's application, of the Law on Restitution which limited restitution claims to citizens.

⁸¹ *Id.* at 349.

⁸² *Id.* at 335.

⁸³ *Id.*

⁸⁴ *See* Constitution of the Republic of Lithuania, *supra* note 37.

⁸⁵ Article 41 of the Constitution guarantees students "who are good at their studies" education at State schools of higher education free of charge.

Based on the adoption of the restitution law, the authorities allowed the nullification of property titles that had been confiscated from former citizens who were deported to Siberia or fled persecution during the Soviet occupation, in order to satisfy the restitution claims of current citizens and to satisfy the needs of the State. The question of the compensation for the property owned by former citizens has not been decided under Lithuanian civil law.

C. Citizenship and Nationality

In international law, there is a distinction between the concept of “citizenship” and “nationality.” According to the International Law Commission (“ILC”), citizenship denotes a person’s civil status within a state while nationality reflects his or her national identity.⁸⁶ Nationality is obtained either by *jus soli*—conferral of nationality based on birth within the nation, or by *jus sanguinis*—conferral of nationality based on descent, regardless of place of birth.⁸⁷ Both principles play a fundamental role in Lithuanian nationality law.⁸⁸ Many former citizens who were either deported to Siberia or who fled for fear of persecution lost their legal status as “citizens” by virtue of their displacement. In reality neither they, nor their descendants lost their national identity as Lithuanians by means of loss of citizenship. According to Section 2 of Article 17 of the Lithuanian Law on Citizenship (Law on Citizenship), a person of Lithuanian origin is one “whose parents or grandparents, or one of the parents or grandparents are

⁸⁶ See Kalvaitis, *supra* note 26, at 14.

⁸⁷ See generally Research in International Law, Harvard Law School, The Law of Nationality, 23 AM. J. INT’L L. 11, 27-29 (Spec. Supp. 1929).

⁸⁸ Article 12 of the constitution states that “[c]itizenship of the Republic of Lithuania shall be acquired by birth and other grounds established by law. With the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time. The procedure for the acquisition and loss of citizenship shall be established by law.”

Lithuanians and the person himself admits that he considers himself Lithuanian.”⁸⁹ Furthermore, the Law on Citizenship provides for the “retention” of the “right to citizenship” for persons (and their children) who had previously resided in Lithuania but who are now living abroad. The retention policy was incorporated to allow former residents the ability to maintain their bond with Lithuania so that they would “not be severed from the Lithuanian nation.”⁹⁰ Yet, exercising the “right to citizenship” is not the superior means by which justice can be achieved.

D. Former-Citizenship Restitution Explored

It was not until the fall of communism that the issue of restitution became prominent,⁹¹ and to this day a uniform approach to restitution has not been developed.⁹² Certainly, the confiscation of property without just compensation is not the only type of human rights violation that can occur and there is no common ground on how to address the issue. Some argue that providing restitution for an uncompensated taking of property taking does not actually achieve justice.⁹³ Others argue, however, that a commitment to human rights through restitution is necessary to

⁸⁹ Law of the Republic of Lithuania on Amending the Law on Citizenship, 17 September 2002 No IX-1078 (as new version of 15 July 2008 No X-1709) [http://eudo-citizenship.eu/NationalDB/docs/LITH%20Citizenship%20Act%20\(consolidated%20version,%20English\).pdf](http://eudo-citizenship.eu/NationalDB/docs/LITH%20Citizenship%20Act%20(consolidated%20version,%20English).pdf)

⁹⁰ Egidjus Kuris (2010), EUROPEAN UNIVERSITY INSTITUTE: EUDO CITIZENSHIP OBSERVATORY, COUNTRY REPORT: LITHUANIA 19, <http://eudo-citizenship.eu/docs/CountryReports/Lithuania.pdf>.

⁹¹ Bernadette Atuahene, *From Reparation to Restoration: Moving Beyond Restoring Property Rights to Restoring Political and Economic Visibility*, 60 SMU L. REV. 1419, 1432 (2007) (discussing that while restitution is an issue in post-communist states, it is not only example. Other transitional states deal with restitution of property confiscated during slavery, colonialism, apartheid, war, social unrest, and state confiscations for a “purported social purpose.”)

⁹² See Allen, *supra* note 6, at 2 (“The question of restitution came to prominence with the collapse of communist states, although it has also been an issue in other transitions. At the national level, there has been no uniformity in the approach to restitution, except that to the limited extent that none of the European states has attempted to entitle everyone who unlawfully or unjustly lost property under the old regime to restitution of their property.”)

⁹³ *Id.* at 5 (raising the question whether victims of other human rights violations such “as torture, detention, or the denial of freedom of religion or association” can be restored to their pre-injury status, and if not, why then should one expect to be restored with respect to a property violations).

restore an individual's dignity⁹⁴ and to restore their relationship to the community.⁹⁵ "Citizenship" defines the "basic human equality associated with . . . full membership of a community" granted by the state.⁹⁶ Yet an individual's fundamental bond with society transcends that legal construct⁹⁷:

A relationship between government and the governed that turns on citizenship can always be dissolved or denied. Citizenship is a legal construct, an abstraction, a theory. No matter what the safeguards, it is at best something given, and given to some and not to others, and it can be taken away. It has always been easier to think of someone as a noncitizen than to decide that he is a nonperson, which is the point of the *Dred Scott*⁹⁸ case. Emphasis on citizenship as the tie that binds the individual to government and as the source of his rights leads to a metaphysical thinking about politics and law, and more particularly to symmetrical thinking to a search for reciprocity and symmetry and clarity of uncompromised rights and obligation, rationally ranged one next and against the other. Such thinking bodes ill for the endurance of free, flexible, responsive, and stable institutions of a balance between order and liberty. It is by such thinking, as in Rousseau's *The Social Contract*, that the claims of liberty may be readily translated into the postulates of oppression.⁹⁹

Not only did former Lithuanian citizens lose their land and the right to government protection, they no longer belonged to the Lithuanian community (their country of origin), therefore, losing an essential characteristic of human life.¹⁰⁰ A law limiting restitution only to citizens oppresses former citizens by attaching to them the stigma of being outsiders from a community to which

⁹⁴ *Id.* at 4-5 (noting the ethical arguments that restitution "demonstrates a commitment to human rights and property that spans generations, and that restitution is necessary to restore the individual's dignity and reinstate them in social and economic life.")

⁹⁵ See Atuahene, *supra* note 93, at 1442-47 (defining "reparation" as restoring past rights in property in a way that does not operate to rebuild an individual's relationship to society versus "restoration" which emphasizes the return of property while at the same time "emphasizing rebuilding a relationship to society through asset-based choices.")

⁹⁶ T.H. Marshall, *Citizenship and Social Class and Other Essays*, 8 (1950).

⁹⁷ Rogers Brubaker, *Citizenship As Social Closure; Citizenship and Nationhood in France and Germany*, 21 (1992) (explaining that citizenship is more than just residency in a state: "Yet citizenship is not a mere reflex of residence; it is an enduring personal status that is not generated by passing or extended residence alone and does not lapse with temporary or prolonged absence. In this respect the modern state is not simply a territorial organization but a membership organization, an association of citizens.")

⁹⁸ 60 U.S. 393 (1857) (the U.S. Supreme Court held that free blacks in the U.S. were not citizens of the United States); The Civil Rights Act of 1866, ch. 31, §1, 14 Stat. 27 (1866) (current version at 42 U.S.C. § 1981) enacted shortly thereafter provided that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.")

⁹⁹ Alexander M. Bickel, *The Morality of Consent*, 53-54 (1975).

¹⁰⁰ See generally Hannah Arendt, *The Origins of Totalitarianism* (1951).

they once belonged. Because individuals internalize the values expressed by the laws of their community, and generally obey those laws out of an internal respect, oppressive feelings are perpetuated amongst current citizens' toward former citizens.¹⁰¹ By changing its Law on Restitution, Lithuania has the opportunity to welcome former citizens back into its community and eliminate ostracism. Thus, restitution regardless of citizenship is needed to restore dignity to former citizens, and to reinstate them "as full participants in the social, political and economic life of the community."¹⁰²

E. Dual-Citizenship is not the Solution

Lithuania's perpetuation of property induced injustices based on the arbitrary notion of "citizenship" is fundamentally unjustified. Dual-citizenship is currently prohibited under Lithuania's Constitution except in very exceptional circumstances.¹⁰³ There has been substantial debate about whether Lithuania (and other members of the European Union) will, or should, allow for dual-citizenship (that is accepting the citizenship of a member state without renunciation of a prior allegiance). With dual-citizenship a foreseeable possibility, former Lithuanian citizens (or their decedents) may one day be able to obtain Lithuanian citizenship and make an application for restitution. Should this occur, Lithuania will be forced to adjudicate

¹⁰¹ Yoshinobu Zasu, *Sanctions by Social Norms and the Law: Substitutes or Complements?*, 36 J. LEGAL STUD. 379, 379-80 (2007).

¹⁰² See Allen, *supra* note 6, at 9 (arguing that the European Court of Human Rights interprets Protocol 1 of the Convention to require that states be prohibited from "arbitrary confiscation" which is satisfied so long as "an interference with property is justified only if it is both lawful and proportionate to a legitimate aim," thus concluding that the substantive content of the Protocol is not to achieve justice but to further the rule of law).

¹⁰³ See Kuris, *supra* note 92 (on June 30, 2008, a new version of the Law on Citizenship was adopted by the Seimas as an attempt to re-open the door for dual citizenship but was struck down by the President on July 11, 2008. This came as a surprise given the President's personal history as an emigrant and former dual citizen of Lithuania and the USA along with "his public statements that he would like to see every ethnic Lithuanian wherever he or she lives abroad able also to be a Lithuanian citizen." The Lithuanian President presented the Seimas with a new unambiguous law in March 2009 that if it becomes law would allow for dual citizenship of persons who had departed from Lithuania (were deported or were refugees or emigrants) prior to March 11, 1990 (the day of restoration of independence) and acquired citizenship of the state of their new residence. For those who emigrated after that date, the possibility of dual citizenship will be denied).

claims between current land owners and former land owners that will undoubtedly upset land titles. More importantly, however, it would be unreasonable and a violation of international law to require former citizens who lost property because they were driven out of the country, to return and obtain citizenship in order to receive restitution.¹⁰⁴ As Egidijus Kuris so poignantly stated:

Extending the concept of dual citizenship should not be the answer. “Lithuanian citizenship policy cannot be, without serious reservations, considered as ‘a means to right historical wrongs,’ because most of the wrongs which Lithuanians see as historical ones can in no way be ‘righted.’ These wrongs include the deportation of a significant part of [the] population to faraway regions of the USSR (e.g. Siberia, Kazakhstan), the loss of lives during the Second World War, emigration to the West, and territorial losses. . . . The disarray of the fundamentals of the economic system and the social structure, imposed by the occupation, as well as the essential changes in the way of life, also, can not be ‘righted’ by means of citizenship policy The restitution of property nationalized by the Soviets, for instance, was linked to citizenship. Although restitution laws have been amended many times (and the restitution is not yet over), the underlying principle that nationalized private property is returned to citizens alone prevails. One could also speculate that citizenship policy is aimed at a “Lithuanisation of Lithuania,” as for some time citizenship was not restored to former Lithuanian citizens of non-Lithuanian ethnic background who repatriated to their ethnic homelands. The relevant statutory provisions allowing this were recognized as discriminatory and unconstitutional.”¹⁰⁵

In the case of former citizens, their qualifications as societal members should not correspond to any legally defined immigration status, but rather refer to the actual reality that those people once lived and worked in a place to which they naturally developed a set of attachments, and if given the opportunity, are likely to make that country an important part of their existence.

¹⁰⁴ See Allen, *supra* note 6, at 25-6 (in the case of *Simunek v. The Czech Republic*, UN Doc. CCPR/C/54/D/516/1992 (Communication No. 516/1992) (July 19, 1995) available at http://www.bayefsky.com/pdf/101_czechrepublic061.pdf, the United Nations Human Rights Committee held that Article 26 of the International Covenant on Civil and Political Rights (ICCPR), prohibiting discrimination, was violated because of “the discriminatory effect of limiting the statutory right to restitution to resident nationals.” The ICCPR “regarded the restitution law itself as an ‘affirmation’ of the discriminatory acts of the old regime, and hence it treated the earlier violation of the right against discrimination as a continuing violation.”)

¹⁰⁵ See Kuris, *supra* note 92.

Reintegration through restoration¹⁰⁶ can serve as the threshold obligation of the state to recognize those who belong to the community socially, regardless of whether or not they have been expressly accepted by law. A brief discussion is needed to distinguishing between a restitution program aimed at “reparation” and one aimed at “restoration.” Reparation is aimed at providing compensation that does not emphasize restoring a person’s relationship with society.¹⁰⁷ Restoration on the other hand, focuses on restoring a person’s relationship to society through meaningful choices.¹⁰⁸ Lithuania’s current restitution of property in-kind or monetary compensation when physical return of the land is not possible is an example of a reparation program, not of restoration.

Choice is important because one cannot presume whether or not people want their land returned, or even want to return to Lithuania for that matter.¹⁰⁹ Instead, a creative remedy needs to be contemplated such that a disposed person has the option of receiving restoration in a way that satisfies his or her unique desire.¹¹⁰ This type of approach “places dispossessed individuals in control of their own lives and communities will go a long way toward reintegrating people back into the social contract”¹¹¹ For this reason, restoration, as opposed to reparation (compensation without choice), is the key not just to providing compensation, but to reintegrating former citizens of Lithuania back into the community.

¹⁰⁶ See Atuahene, *supra* note 93, at 1470 (noting that “[t]he reintegration process of disposed individuals and communities is facilitated when they are allowed to choose how they are compensated and given viable asset-based options to choose from.”)

¹⁰⁷ *Id.* at 1444.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 1467.

¹¹⁰ *Id.* at 1468.

¹¹¹ *Id.* at 1469.

IV. Reforming the Law on Restitution

A. Maintaining the Status Quo Means Uncertainty of Title

Guaranteed land titles, it is argued, have the maximum potential for generating the capital needed for economic growth because they protect the expectations that investors and traders have in those land titles from arbitrary confiscation.¹¹² Presumably, by maintaining the current property status quo, existing land titles will be guaranteed.¹¹³ But, so long as the possibility for a competing claim remains, those land titles will be subject to future upset. Former citizens (or their heirs) may decide to return to Lithuania one day, obtain (or re-obtain) citizenship, and reclaim their property or the property of their ancestors thus temporarily upsetting land titles. On a purely international basis, a national standard for restitution may one day be recognized due in part to the dramatically changing global landscape. Thus, international intervention on behalf of individuals may one day be the norm, and such intervention could include protection of individuals against property related injustices, requiring just compensation for wrongfully expropriated land that could temporarily upset title. Furthermore, although Lithuania currently allows for dual-citizenship in very limited circumstances, with increased globalization, Lithuania may find that dual-citizenship is a means of securing a wealth of foreign capital, and as such that it would make sense to lift the restriction on dual-citizenship. This could open the possibility for claimants to obtain dual-citizenship (as opposed to forgoing their current citizenship for Lithuanian citizenship) and make application for property to which they are heirs. Given these uncertainties, it makes sense that Lithuania undergo to transform the Law on Restitution now while it is in the nation's control.

¹¹² Bernadette Atuahene, *Property and Transitional Justice*, 58 UCLA L. REV. DISC. 65, 72 (2010).

¹¹³ *Id.* Although this applies where a restitution program has not yet been implemented I feel that it can also be used where a restitution program has already been implemented but needs to be re-evaluated.

B. Development Debt for Human Restoration Swap

Human rights concerns are a relatively new concept by which nation states owe certain obligations to all other states to respect the human rights of all persons, regardless of nationality.¹¹⁴ Reforming the Law on Restitution to rectify property related human rights injustices will face important tests, to be sure, including the reopening of old wounds. But the reexamination will both conform to, and is confirmed by globalization, in which territorial restrictions are no longer justified. Fundamental changes in the world provide a unique opportunity for Lithuania to rethink its traditional norm disfavoring restitution to former citizens, and to forge a new way of thinking upon which other nations can model their restitution programs.

Recognizing that Lithuania is a developing nation lacking the necessary resources to satisfy its potential obligation under a reformed restitution program, I propose a Development Debt for Human Restoration Swap (“Swap”) as a solution to the twin crisis of Lithuania’s development debt and property induced injustices. Swap would operate to decrease Lithuania’s development debt while simultaneously investing in the development of the nation. Lithuania did not inherit any debt after the collapse of communism—all of its debt was incurred during its period of independence.¹¹⁵ In the early 1990s when Lithuania was developing its transition strategy, rather than developing a “home grown” approach, it accepted the ideology of Western thinkers on how best to transition.¹¹⁶ In exchange for implementing “cookie cutter programs” the nation received loans from various NGOs including the World Bank and International Monetary Fund, causing

¹¹⁴ Kenichi Ohmae, *THE END OF THE NATION STATE: THE RISE OF REGIONAL ECONOMIES* 68 (1995).

¹¹⁵ Zaneta Karazijiene, *Modeling of the Effect of the Public Sector Borrowing on the Lithuanian Economy*, 30 (2009).

¹¹⁶ See generally Daniel Berkowitz, et. al., *The Transplant Effect*, 51 *AM. J. COMP. L.* 163 (2003) (the authors of this article examined the consequence of transplanting a legal system. They found that a transplant is most effective when the receiving country develops reform initiatives that consider the unique demands of the country).

Lithuania, and many other countries, to become severely indebted to those organizations.¹¹⁷ Lithuania's growing debt shows that each year more of its state budget is allocated toward covering old debt, rather than investing in "education, social sphere or other projects."¹¹⁸ As the debt continues to grow, the nation's resources will continue to be redirected to the repayment of the debt rather than allocated for developing the national economy.¹¹⁹ Through Swap Lithuania would work with the various NGOs that funded the development of the nation to secure a loan forgiveness program that would decrease Lithuania's interest debt by every dollar that is redistributed in satisfaction of a restitution claim.¹²⁰ This is a novel concept but one that would highlight the NGOs commitment to development as more than just economic growth.

The reformed Law on Restitution should allow current and former citizens to receive restitution in-kind, but likewise, entitle those who opt not to become land owners, to choose an alternate form of compensation. It might be helpful to offer an approximate time limit on claims for restitution in-kind, setting an expectation of closure for competing land titles. The time limit may seem excessively long, but the function it is supposed to serve should be clear. Furthermore, the determination of alternative compensation should be made with the participation of various members of society (not just government officials) as well as former citizens in order to reach a just consensus. Former citizens should have the ability to direct their own destiny and use the instrument of restitution to achieve that end. Thus the options for

¹¹⁷ Katharina Pistor, *Patterns of Legal Change: Shareholder and Creditor Rights in Transition Economies*, 1 EUR. BUS. ORG. L. REV. 59 (2000) (discussing how the laws in developing nations closely reflect those of the countries offering the legal assistance).

¹¹⁸ See Karazijene, *supra* note 117.

¹¹⁹ *Id.*

¹²⁰ Philippe Diaz, *The End of Poverty?*, Cinema Libre Studio, 2009. It is argued that the reason developing countries are unable to rise from poverty is because of the enormous debt they owe to non government organizations including the International Monetary Fund and the World Bank. Rather than accept the charity of others (which is not actually charity), the poor want justice. They want land. They want access to the means to better their lives and their community. It was presented in this documentary that to achieve justice, international debts should be forgiven, tax laws should be amended, land should be restituted to those willing to work it, and natural resources should not be privatized.

restitution should include funding for schools, ethnic communities, religious establishments or other associations of almost infinite variety. By utilizing Swap, Lithuania can decrease its external debt, rectify past wrongs, and provide security for land titles.

Conclusion

Hundreds of thousands of Lithuanian citizens were forced to flee the Baltic State with nothing, to escape property seizures and political pressure exercised by the Soviet regime. The confiscation of property clearly violated their human rights. Consequently, once Lithuania undertook its program of land distribution it needed to create a restitution and compensation policy that would correct the past wrongdoing of claims by existing citizens and the potential property claims from those former citizens who fled. Rather than implementing a gradual system that provided restitution to former citizens, thus incorporating important social considerations, Lithuania implemented a fairly rapid land distribution program focused on privatizing land and economic development.

The lack of redress for former Lithuanian citizens is saddening. Given the inequities in the current restitution law, Lithuania should consider a new legal framework through which to address confiscated property claims that incorporates an equitable restitution policy for all victims of the Soviet regime, not just citizens.