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Solving property issues of refugees and displaced persons

Report
Committee on Migration, Refugees and Population
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Summary

The displacement of millions of people worldwide presents a key human rights and humanitarian challenge. For both refugees and internally displaced persons (IDPs), the loss of homes and land presents a serious obstacle to durable solutions and the restoration of justice. The destruction, occupation and confiscation of abandoned property violate the rights of such persons, prolong their displacement and complicate peace-building efforts.

The restoration of legal rights and physical possession of properties through restitution, or the provision of equivalent properties or value though compensation, are essential forms of redress. The failure to provide such redress is a central factor perpetuating the displacement of over 2.5 million people in Europe. The Parliamentary Assembly therefore invites member states concerned to implement the "Pinheiro Principles" on Housing and Property Restitution for Refugees and Displaced Persons in the light of Recommendation Rec(2006)6 of the Committee of Ministers on internally displaced persons and relevant Council of Europe instruments. It calls on member states to provide restitution for the loss of access to property, including occupancy and tenancy rights, to provide adequate compensation for loss of such properties where restitution is not possible and to achieve these ends through rapid, accessible and effective procedures.

The Parliamentary Assembly invites the Committee of Ministers to instruct the relevant body of the Council of Europe to undertake a study examining European standards and practice related to restitution of the property of displaced persons in European post-conflict settings. The study should provide the basis for the development of detailed guidelines by the Committee of Ministers on how to provide effective remedies and redress for conflict-related loss of access and rights to housing, land and property in Europe.

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A. Draft resolution

1. The displacement of millions of people worldwide is one of the key human rights and humanitarian challenges of our time. For both refugees and internally displaced persons (IDPs) the loss of housing, land and property is the foremost challenge to the achievement of durable solutions to displacement.

2. As many as 2.5 million refugees and IDPs face this situation in Council of Europe member states, particularly in the North and South Caucasus, the Balkans and the eastern Mediterranean. Displacement in Europe is often protracted, with affected persons unable to return to or access their homes and land since the 1990s and earlier.

3. The destruction, occupation and confiscation of abandoned property violate the rights of the individuals concerned, perpetuate displacement and complicate reconciliation and peace-building. Therefore, the restitution of properties, meaning the restoration of rights and physical possession in favour of displaced former residents, or compensation, are forms of redress necessary for restoring the rights of the individual and the rule of law.

4. The Parliamentary Assembly considers that restitution is the optimal response to the loss of access and rights to housing, land and property because, alone among forms of redress, it facilitates choice between three "durable solutions" to displacement: return to one's original home in safety and dignity; local integration at the site of displacement; or resettlement either at some other site within the country of origin or outside its borders.

5. The Assembly recalls that Council of Europe instruments include several guarantees, notably Articles 6, 8, 13 and 14 of the European Convention of Human Rights, Article 1 of its Additional Protocol and Article 2 of its Protocol No. 4, Article 31 of the revised European Social Charter and Article 16 of the Framework Convention for the Protection of National Minorities.

6. The Assembly also draws attention to the Principles on Housing and Property Restitution for Refugees and Displaced Persons, the "Pinheiro Principles", elaborated by the United Nations and designed to provide guidance on how to address issues on redress for loss of property.

7. The Assembly refers to Recommendation Rec(2006)6 of the Committee of Ministers on internally displaced persons, which confirms the rights of IDPs to the enjoyment of their property and possessions and to repossess property left behind, failing which they should be provided with adequate compensation.

8. The Assembly emphasises that all member states must refrain from and prevent arbitrary displacement and dispossession and provide effective domestic remedies and redress where they fail to do so.

9. In the light of the above, the Assembly calls on member states to resolve post-conflict housing, land and property rights issues of refugees and IDPs, taking into account the Pinheiro Principles, the relevant Council of Europe instruments, and Recommendation Rec(2006)6 of the Committee of Ministers.

10. Bearing in mind these relevant international standards and the experience of property restitution and compensation programmes carried out in Europe to date, member states are invited to:

10.1. guarantee timely and effective redress for the loss of access and rights to housing, land and property abandoned by refugees and IDPs without regard to pending negotiations concerning the resolution of armed conflicts or the status of a particular territory;

10.2. ensure that such redress takes the form of restitution in the form of confirmation of the legal rights of refugees and displaced persons to their property and restoration of their safe physical access to, and possession of, such property. Where restitution is not possible, adequate compensation must be provided, through the confirmation of prior legal rights to properties and the provision of money or goods having a reasonable relationship to their full market value, or other forms of just reparation;

10.3. ensure that refugees and displaced persons who did not have formally recognised rights prior to their displacement, but whose enjoyment of their property was treated as de facto valid by the authorities, are accorded equal and effective access to legal remedies and redress for their dispossession. This is particularly important where the affected persons are socially vulnerable or belong to minority groups;

10.4. ensure that previous occupancy and tenancy rights with regard to public or social accommodation or other analogous forms of home ownership which existed in former communist systems are recognised and protected as homes in the sense of Article 8 of the European Convention on Human Rights and as possessions in the sense of Article 1 of the First Protocol to the Convention;

10.5. ensure that the absence from their accommodation of holders of occupancy and tenancy rights who have been forced to abandon their homes shall be deemed justified until the conditions that allow for voluntary return in safety and dignity have been restored;

10.6. provide rapid, accessible and effective procedures for claiming redress. Where displacement and dispossession have taken place in a systematic manner, special adjudicatory bodies should be set up to assess claims. Such bodies should apply expedited procedures that incorporate relaxed evidentiary standards and facilitated procedure. All property types relevant to the residential and livelihood needs of displaced persons should be within their jurisdiction, including homes, agricultural land and business properties;

10.7. secure the independence, impartiality and expertise of adjudicatory bodies, including through appropriate rules on their composition that may provide for the inclusion of international members. Sufficient funding must be provided to such bodies and relevant law enforcement bodies must be legally bound to enforce their decisions;

10.8. ensure the effectiveness of redress through restitution of, or, where necessary, compensation for the value of abandoned property by adopting the following measures:

10.8.1. compensation for non-pecuniary harm related to the circumstances in which displacement and dispossession occurred and were perpetuated;

10.8.2. compensation for harm suffered as a result of displacement and lack of access to abandoned properties, such as loss of income and costs that would not have been incurred but for displacement;

10.8.3. compensation for wrongful destruction or damage to immovable property or loss of significant movable property attributable to acts or omissions on the part of the authorities in whose jurisdiction the property is located;

10.8.4. assistance and reintegration measures to facilitate durable solutions, such as the establishment of conditions of security, reconstruction of homes and infrastructure at return sites and social and economic support to all displaced persons, regardless of whether or not they choose to return to homes of origin;

10.8.5. public acknowledgment of any responsibility for displacement-related human rights violations by the competent authorities, full investigation and disclosure of such violations and accountability for individual perpetrators;

10.9. ensure, where relevant, that effective remedies and redress for loss of access and rights to property are integrated into broader reparations programs for systemic human rights violations.

11. Member states directly affected by property claims related to displacement are:

11.1. invited to seek technical assistance from and co-operate with other member states as well as international organisations with relevant legal and technical expertise;

11.2. encouraged to work with academic and civil society actors, as well as national human rights institutions, to generate reliable information on the number and nature of property claims, formulate proposals for procedures to address such claims, monitor their implementation, identify obstacles and measures to address them, and disseminate information and legal advice to persons affected;

11.3. encouraged to consult directly with displaced persons and include them in the design and implementation of procedures and redress for property losses. Information on such procedures, including deadlines or other conditions for lodging claims, must be made available to all affected persons in a language they understand. It is of particular importance that such participatory processes seek out and take into account the views of vulnerable groups, such as female heads of household and minority groups, while respecting the security and right to privacy of all affected persons.

12. The United Nations High Commissioner for Refugees (UNHCR) and the Organization for Security and Co-operation in Europe (OSCE) are commended for highlighting displacement-related property issues in Europe within their respective mandates and are encouraged to continue and broaden their efforts to ensure the resolution of such property issues at national level.

B. Draft recommendation

1. Referring to its Resolution … (2010) on solving property issues of refugees and internally displaced persons, the Parliamentary Assembly considers that for both refugees and internally displaced persons (IDPs), the loss of homes and land presents a serious obstacle to achieving durable solutions in post-conflict situations and to restoring justice. Legal remedies against such loss are an essential component for restoring the rule of law in post-conflict situations. Such remedies, including the relevant redress and the mechanisms and procedures through which such redress is sought and implemented, are directly linked to stability, reconciliation, and transitional justice and are therefore indispensable elements for any constructive peace-building strategy.

2. The restoration of rights to and physical possession of properties through restitution, or the provision of equivalent properties or value though compensation, are essential forms of redress. The failure to provide such redress perpetuates the displacement of over 2.5 million people in Europe, particularly in the North and South Caucasus, the Balkans and the eastern Mediterranean and constitutes a breach of their human rights.

3. The Assembly therefore recommends to the Committee of Ministers that it instructs the relevant body of the Council of Europe to:

3.1. undertake a study that would examine existing standards and practice related to redress for the loss of access and rights to housing, land and property in favour of refugees and IDPs in European post-conflict settings, and the procedures and mechanism with which such redress is sought and implemented. IDPs and refugees should be fully involved in the study. The study should provide the basis for detailed guidelines and should focus on the following issues of particular relevance in the European context:

3.1.1. the nature of the obligation to provide restitution, the specific circumstances under which restitution may be deemed impossible and the criteria for deeming what level of compensation is adequate in such cases;

3.1.2. the modalities of providing redress for the loss of de facto possessions not formally recognised in law prior to displacement;

3.1.3. the modalities of providing redress for the loss of occupancy and tenancy rights;

3.1.4. criteria for ensuring rapid, accessible and effective procedures for claiming redress;

3.1.5. further measures of reparation, assistance and redress necessary to ensure that restitution procedures are effective and provide redress;

3.2. develop detailed guidelines on the basis of the aforementioned study on how to provide redress for conflict related loss of access and rights to housing, land and property in the European context, taking into account the United Nations Principles on Housing and Property Restitution for Refugees and Displaced (“Pinheiro Principles”) and Council of Europe instruments, as well as international human rights and humanitarian law.

4. The Assembly reiterates its recommendation to the Committee of Ministers to establish a new permanent committee within the Council of Europe with a mandate to examine issues concerning asylum and IDPs to replace the Ad hoc Committee of experts on the legal aspects of territorial asylum, refugees and stateless persons (CAHAR).

C. Explanatory memorandum by Mr Poulsen, rapporteur

1. Introduction

1. The displacement of millions of people worldwide by conflict, as well as, *inter alia*, situations of generalised violence, violations of human rights and natural or human-made disasters, has been recognised as one of the key human rights and humanitarian challenges of our time. For both refugees and internally displaced persons (IDPs), the loss of access and rights to housing, land and property is the foremost challenge to the achievement of durable solutions to displacement.

2. In Europe, the failure to provide legal redress with regard to this issue is a central factor perpetuating the displacement of some 2.5 million IDPs in Europe, as well as thousands more refugees.[1] Restitution and compensation measures for displaced persons have been attempted on the territory of at least nine member states of the Council of Europe. While some of these programmes have come to be seen as international precedents, others have been less successful and great inconsistencies persist related to their scope, effectiveness and level of implementation.[2]

3. The United Nations Guiding Principles on Internal Displacement confirm that displacement itself is "arbitrary" in situations in which it takes place in a manner incompatible with international human rights and humanitarian law.[3] Arbitrary displacement thus gives rise to violations of international obligations and must be treated as a phenomenon in need of remedy and redress. The process of housing, land and property restitution is a key component thereof and a precondition for bringing displacement to a permanent, sustainable and just end.

4. Restitution in the form of restoration of legal rights and physical possession of abandoned property is the optimal response to dispossession because it, alone among legal remedies, facilitates free choice between three commonly accepted "durable solutions" to displacement: return to one's original home or place of origin in safety and dignity; local integration at the site of displacement; or resettlement either at some other site within the country of origin or outside its borders. Housing, land and property restored through restitution can be either returned to and lived in or sold, leased or exchanged to support integration or resettlement elsewhere.

5. Legal remedies and redress for the arbitrary loss of access and rights to housing, land and property are also an essential component for restoring the rule of law in post-conflict situations. Such remedies and redress are directly linked to stability, reconciliation, transitional justice, governance, and economic development, and are therefore widely viewed as indispensable elements for any constructive peace-building strategy.

6. It is in the light of the above, that the rapporteur has prepared this report. The rapporteur took over the rapporteurship from Mr Nikolaos Dendias (Greece, EPP) in January 2009. As part of the preparations, between 8 and 10 June 2009, the rapporteur conducted a study visit to Bosnia and Herzegovina where he met with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Organization for Security and Co-operation in Europe (OSCE), as well as with local, national and international authorities, all of whom provided a great deal of valuable information. The rapporteur was also greatly assisted by an independent expert, Mr Rhodri C. Williams, whose study paper on the topic is the foundation of this report. The rapporteur would like to warmly thank all those mentioned for their valuable contributions.

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1. Internal Displacement Monitoring Centre, "Internal Displacement: Global Overview of Trends and Developments in 2008" (April 2009).
2. Internal Displacement Monitoring Centre, "Protracted Internal Displacement in Europe: Current Trends and Ways Forward" (May 2009), pp. 16-18.
3. The prohibition of arbitrary displacement includes displacement:
   a. a. When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
   b. b. In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
   c. c. In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
   d. d. In cases of disasters, unless the safety and health of those affected requires their evacuation; and
   e. e. When it is used as a collective punishment.

2. Solving the property problems of refugees and internally displaced persons: key issues

2.1. Restitution may not be sufficient

7. Restitution is seen as the preferred form of redress in the case of human rights violations involving property and possessions. The European Court of Human Rights has demonstrated an increasing tendency to express such a preference in property-related cases. However, durable solutions for refugees and displaced persons will inevitably require additional remedies beyond restitution. The most vulnerable refugees and displaced persons may never have had a formal title to property in their places of origin (for example, Roma) and will therefore require other solutions such as allocation of public housing and/or land.

8. For refugees and displaced persons whose properties were destroyed or badly damaged during their displacement, the restitution of title will need to be complemented with compensation in kind or cash so as to allow for the reconstruction or repair of their property. For those who never formally lost the right to their properties but who have been unable to benefit from the exercise of their property rights during their displacement, compensation for loss of income may need to be provided.

9. Furthermore, return and restitution may need to be accompanied by adequate social and economic policies to allow for the full reintegration of refugees and displaced persons. Similar policies may be needed to assist communities in affected return areas to "absorb" the returnees.

10. In a post-conflict situation, return and restitution efforts should be integrated into a broader transitional justice effort to provide redress to all victims of severe human rights violations. Reconciliation efforts are crucial for the reintegration of returnees.

2.2. Available state capacity and resources

11. It is important to consider already at the outset the available state capacity and resources to ensure a fair and expedient property restitution process. Regular courts will seldom have the capacity to deal with an additional caseload of restitution cases. It may be necessary to establish special property commissions that use streamlined administrative procedures to decide restitution claims expediently so as to provide redress quickly.

12. The capacity and resources of other state institutions that need to be involved in the property restitution process should be assessed at the outset and, where required, reinforced so that they do not hold up or delay the restitution process. This is of particular importance in respect of the enforcement of restitution decisions.

13. Sufficient resources should be allocated to train staff involved to be familiar with the rights of refugees and displaced persons and with human rights law and standards generally in order to provide adequate assistance.

2.3. Secondary occupancy

14. The properties of refugees and displaced persons are often occupied in their absence. While "secondary occupancy" should not delay or stand in the way of restitution, it is an important issue to consider at the outset of the restitution effort. Policies may need to be developed to ensure that secondary occupants who have no access to other housing options are provided with temporary or permanent housing after they leave the property they have been occupying. This is particularly relevant if there is a housing shortage. It is also important that rules and procedures are in place so as to deal with possible evictions in a way that respects the rule of law and that provides the persons subject to eviction with adequate safeguards and effective remedies.

2.4. Evidence and property records

15. The lack of documentary evidence and absence of property records should not prevent the restitution of property rights. Refugees and displaced persons may often not be in a position to present documentary evidence in support of their restitution claims. A property restitution process should use flexible evidentiary standards and all efforts should be made to assist refugees and displaced persons to obtain evidence.

16. Alterations of title or cadastral records concerning properties of refugees and IDPs which occurred during the period of displacement should be scrutinised for irregularities. Where indications exist that they were carried out without the consent of the refugees and displaced persons concerned, they should be given no legal effect. State authorities should protect the physical integrity of title and cadastral records throughout periods of conflict.

3. Legal standards

17. Rights to property, possessions, housing and homes have come to be recognised as integral for the exercise of many other rights. Without legal security in the enjoyment of one's most basic assets, the ability to live normal family lives, to participate equally in the life of the broader community and to pursue independent and voluntary economic activities is severely undermined. The importance of this complex of rights is reflected in their protection in international human rights standards, as well as in several soft-law instruments. These can be roughly broken down into two key areas: property and possessions, and housing and homes.

3.1. Property and possessions

18. The general right to "own property alone as well as in association with others" is protected in Article 17 of the 1948 Universal Declaration of Human Rights (UDHR). This provision sets out a flat prohibition against "arbitrary" deprivation of property, referring to expropriation or confiscation that lacks: 1. a basis in law; 2. fair procedures; 3. a public purpose; and/or 4. just and timely compensation.

19. The same basic protections are affirmed at the European level in Article 1 of Protocol No. 1 to the European Convention on Human Rights. The Court has clearly established that "possessions" protected under the Convention include not only property held in full title, but also individualised economic assets, such as bank account savings, shares in a company or legal claims arising from domestic laws.

3.2. Housing and homes

20. International law protects rights to residential property even in cases where the occupants do not enjoy legal title or formally lawful possession of such homes. The UDHR prohibits arbitrary interference with the home (Article 12) and sets out the right to adequate housing (Article 25). These rights are further protected by Article 17 of the 1966 Convention on Civil and Political Rights (CCPR), and Article 11 of the 1966 Convention on Economic, Social and Cultural Rights (CESCR), respectively. The United Nations committee which has the mandate to interpret the CESCR has stated that the right to adequate housing entails a guarantee of secure tenure to homes, meaning that those living there cannot be arbitrarily evicted even if they do not have ownership rights.[4] Similar protections are set out under Article 8 of the European Convention on Human Rights, which prohibits arbitrary interference with the home and Article 31 of the revised European Social Charter, which protects the right to housing.

3.3. Effective remedy

21. States are obliged under Article 13 of the European Convention on Human Rights, to provide effective remedies to parties harmed by states' failure to respect their obligations under the Convention. This applies when states directly violate the human rights of individuals within their jurisdiction, as well as when failing to take steps to prevent foreseeable violations by non-state actors.[5] The right to an effective remedy basically means that the person who claims to be the victim of a human rights violation, and who has an arguable case, must have a mechanism, for example a court, to which he or she can turn and which can provide redress. In the case of property issues of refugees and IDPs, the effective remedy, as will be discussed further in the following, has consisted not only in the access to courts, but also in the creation of specific commissions for dealing with property claims. It is normally the prerogative of the state to decide which form the redress should take.

4. United Nations Committee on Economic, Social and Cultural Rights, General Comment 4.

5. At the international level, see the UDHR, Article 8; ICCPR, Article 2; and the ICESCR, Article 2. At the European level, see the European Convention on Human Rights, Article 13; the revised European Social Charter, Parts I and 4(I).

4. Soft-law standards

4.1. Pinheiro Principles

22. The United Nations has led efforts to ensure more consistent and effective approaches to the problem at hand. One such initiative is the Principles on Housing and Property Restitution for Refugees and Displaced Persons. The United Nations Sub-Commission on the Promotion and Protection of Human Rights adopted these so-called "Pinheiro Principles" in 2005.[6]

23. This document is designed to provide practical guidance to states, United Nations agencies and the broader international community on how best to address the complex legal and technical issues surrounding remedies for loss of access and rights to housing, land and property. In doing so, the principles draw on established rules of international human rights law including rights to property, privacy in the home, adequate housing, freedom of movement and choice of residence, effective remedies and equality and non-discrimination.

24. Drawing on these authorities, the Pinheiro Principles assert a right to restitution, in the form of restoration of any housing, land or property of which displaced persons were arbitrarily deprived, or compensation where this is factually impossible as determined by an independent, impartial tribunal. States are encouraged to prioritise the right to restitution as redress for those deprived of their property and as a key element of restorative justice.[7]

25. The principles link the exercise of the right of restitution to the right of all refugees and displaced persons to return voluntarily to their former homes, lands and places of habitual residence, in safety and dignity. However, they note that the right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons.

26. The Pinheiro Principles provide recommendations on the establishment and implementation of restitution procedures, including guidelines on national procedures and mechanisms, accessibility of restitution procedures, consultation and the participation of affected persons, property records and documentation, the rights of tenants and other non-owners, the rights of secondary occupants of claimed property, legislative measures, the prohibition of arbitrary or discriminatory laws, enforcement of restitution decisions and compensation.[8]

27. The Pinheiro Principles also address the responsibility of the international community to promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity. They specifically recommend that international organisations should work with national governments, share expertise on the development of national restitution policies and programmes, help to ensure their compatibility with international law and relevant standards, and support the monitoring of their implementation.[9]

28. The rapporteur considers that the Council of Europe should endorse the Pinheiro Principles and develop guidelines to assist member states to implement them in the European context, taking into account the existing Council of Europe instruments.

4.2. Committee of Ministers recommendation on internally displaced persons

29. In light of the United Nations Guiding Principles on Internal Displacement and in follow-up to several recommendations of the Parliamentary Assembly,[10] the Council of Europe Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) produced a recommendation on internally displaced persons which was subsequently adopted by the Committee of Ministers.

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6. Principles on Housing and Property Restitution for Refugees and Displaced Persons ("Pinheiro Principles"), United Nations Doc. E/CN.4/Sub.2/2005/17.
7. Pinheiro Principles, Principle 2.
8. Pinheiro Principles, Section V.
9. Pinheiro Principles, Section VI.
10. Assembly Recommendation 1631 (2003) on internal displacement in Europe, Recommendation 1569 (2002) on the situation of refugees and internally displaced persons in the Federal Republic of Yugoslavia and Recommendation 1570 (2002) on the situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia.

30. Endorsing the United Nations Guiding Principles on Internal Displacement, Recommendation Rec(2006)6 of the Committee of Ministers on internally displaced persons clearly spells out that IDPs are entitled to the enjoyment of their property and possessions in accordance with human rights law (Principle 8): "In particular, internally displaced persons have the right to repossess the property left behind following their displacement. If internally displaced persons have been deprived of their property, such deprivation should give rise to adequate compensation."

5. The right to redress for loss of access and rights to property

31. The Assembly, drawing on international law and standards and the experience of property restitution and compensation programmes carried out in Europe to date, has invited the Committee of Ministers to make a number of recommendations to member states regarding redress for loss of access and rights to housing, land and property in the European context. As these recommendations would also provide an appropriate departure point for the proposed development of detailed guidelines on how to provide redress for the loss of property rights, the rapporteur considers that the Committee of Ministers should examine the issue of redress further.

5.1. A preference for restitution

32. Where human rights violations involve deprivations of rights in property and homes, redress should, whenever possible, consist of the restitution of the asset in question.[11] Restitution involves the physical restoration of possessions, with all the rights held to them previously. Where restitution is not possible under the circumstances (for example, the property in question has been destroyed), compensation in cash or in-kind (in the form of an equivalent home or property) can provide an alternative redress. In order to provide full redress, the above measures should be accompanied by compensation for other associated harms such as non-pecuniary damage, costs of reconstruction of destroyed properties and lost income.

33. Restitution is, however, not automatically prioritised over compensation in responding to human rights violations generally.[12] However, it is clearly seen as the preferred form of redress in the case of violations involving property and possessions, as reflected in both the United Nations guiding principles and the Pinheiro Principles.[13] Indeed, post-conflict property restitution is now viewed as an emerging right in itself. The Court has demonstrated an increasing tendency to express a preference for restitution in property-related cases, thus departing from its practice of deference to states parties regarding national implementation of its judgments.[14]

34. In a 2001 judgment, for instance, the Court ordered Romania to "return to the applicant the house and land at issue", or, "failing such restitution", provide specified compensation.[15] In a 2004 judgment concerning Poland, the Court found that an individual violation of Article 1 of the Additional Protocol to the Convention "originated in a systemic problem" affecting numerous claimants and ordered the respondent to take measures to "secure the implementation of the property right in questionin respect of the remaining … claimants or provide them with equivalent redress in lieu".[16] The Court has also ordered compensation to be paid in some cases in which the applicants to the Court had regained access to their property but required redress for harms arising from prior denial of access to their homes and lands over a number of years.[17]

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11. The general international law preference for restitution over compensation in the provision of legal remedies is derived from the law of state responsibility and affirmed in Articles 35 and 36 of the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts. As reflected in the "basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law" adopted by the United Nations General Assembly in March 2006, state liability for gross violations of human rights law is now understood as giving rise to an obligation to provide legal remedies to individual victims. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", UN Doc. A/RES/60/147.

12. United Nations Reparations Principles, paragraph 18.

13. See United Nations Guiding Principles on Internal Displacement, Principle 29.2; Pinheiro Principles, Principle 2.1.

14. See A. Buyse, "Post-Conflict Housing Restitution: the European Human Rights Perspective, with a Case Study on Bosnia and Herzegovina" (Intersentia, 2008), pp. 127-132.

15. The Court, *Brumarescu v. Romania* (just satisfaction), judgment of 23 January 2001 (Application No. 28342/95).

16. The Court, *Broniowski v. Poland*, judgment of 22 June 2004 (Application No. 31443/96).

17. See the Court, *Dogan and Others v. Turkey*, 29 June 2004 (Application Nos. 8803-8811/02, 8813/02 and 8815-8819/02).

5.2. Adequate compensation where restitution is impossible

35. Although the UN Guiding Principles on Internal Displacement do not more closely define the circumstances under which restitution may be considered impossible, Pinheiro Principle 21 limits this contingency to cases of factual impossibility "in exceptional circumstances, namely when land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal", as well as cases "when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation".

36. Pinheiro Principle 17.4 implies a restrictive view of the legal impossibility of restitution through the formation of subsequent private property rights on the part of secondary occupants. This provision stipulates that good faith third-party purchasers of abandoned property may be deemed entitled to compensation, but that particularly egregious cases of underlying displacement may be seen as giving rise to "constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases."

37. The Court has recently expressed a preference for restitution over compensation in a number of property-related judgments, as discussed above. In a 2005 admissibility decision concerning Turkey, the Court ruled that a legal mechanism set up to address property claims could not be viewed as providing an effective remedy for the purposes of the requirement of exhaustion of domestic remedies, in part because it precluded the possibility of restitution in favour of sole reliance on compensation.[18]

38. Annex 7 of the 1995 Dayton Peace Accords (DPA), which ended the conflict in Bosnia and Herzegovina, has been viewed as a precedent. This instrument not only affirmed the right of refugees and displaced persons to voluntary return to their homes of origin but also to "have restored to them property of which they were deprived in the course of hostilities … and to be compensated for any property that cannot be restored to them".[19] In practice, the impossibility of restitution was construed narrowly in Bosnia and Herzegovina with displaced persons encouraged to seek physical restitution of their property and then dispose over it as they wished upon resumption of possession. Compensation funds discussed elsewhere in Annex 7 of the DPA were, as a matter of policy, not funded by donors and therefore could not be implemented.

39. The UN Guiding Principles on Internal Displacement do not explicitly define "adequate compensation" for the purposes of Principle 29.2, but equate such compensation with other forms of "just reparations", implying that the goal of compensation, like that of restitution, should be to restore victims as closely as possible to the original situation before the violations occurred.[20]

40. The Court treats the provision of compensation as a factor in weighing the proportionality of interferences with property rights. While compensation need not be at full market value, it must be reasonably related to this standard with lower reimbursement justified through legitimate objectives of public interest.[21]

5.3. The obligation to provide redress notwithstanding political negotiations

41. In accordance with the UN Guiding Principles on Internal Displacement, states have the primary duty to provide protection and assistance to internally displaced persons within their jurisdiction and to establish the conditions for the achievement of durable solutions.[22] States should meet this duty through both their own efforts and the acceptance and facilitation of the services of international humanitarian actors and other appropriate actors.[23] Principle 2.1 notes that the guiding principles "shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction" and that such observance "shall not affect the legal status of any authorities, groups or persons involved".

42. The Court has repeatedly held that the obligation on authorities with jurisdiction over abandoned properties to respect property rights and provide legal remedies applies notwithstanding the existence or status of political negotiations meant to resolve conflicts that may have constituted the root cause of the

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18. The Court, *Xenides-Arestis v. Turkey* (admissibility), decision of 14 March 2005 (Application No. 46347/99).
19. General Framework Agreement for Peace in Bosnia and Herzegovina (14 December 1995), Annex 7, Chapter One, Article I.1.
20. The United Nations Reparations Principles, for instance, state that the purpose of reparations is "whenever possible, [to] restore the victim to the original situation before the … violations … occurred" (paragraph 19).
21. See, for example, the Court, *Pincova and Pinc v. the Czech Republic* (Application No. 36548/97); *Gashi v. Croatia* (Application No. 32457/05).
22. United Nations Guiding Principles on Internal Displacement, Principles 3, 25 and 28.
23. Ibid., Principle 25.

human rights violations concerned.[24] Where such redress is arbitrarily withheld, the Court has ordered the payment of "measures of compensation in respect of losses directly related to this violation" of displaced persons' rights.[25]

5.4. Recognition of de facto property rights

43. The requirement to give effect to rights in housing, land and property that are established de facto but not recognised *de jure* is related to the internationally recognised right to adequate housing. According to the United Nations Committee on Economic, Social and Cultural Rights, a key component of respect for this right is the provision of tenure security, or "legal protection against forced eviction, harassment and other threats" in homes, whether or not their residents own them.[26] As discussed above, comparable rights in the home and to housing are protected in the European Convention on Human Rights and the revised European Social Charter.

44. In displacement settings, Principle 16 of the Pinheiro Principles calls upon states to ensure that "the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognised within restitution programmes" and that holders of such rights are "able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights."

45. Recognition of de facto rights in housing, land and property is also an important component of the protection of indigenous and other minorities. This is reflected in the "particular obligation" asserted in Principle 9 of the UN Guiding Principles on Internal Displacement to protect against the displacement of "indigenous peoples, minorities … and other groups with a special dependency on and attachment to their lands". Pinheiro Principle 15.3 similarly encourages states to "recognise the rights of possession of traditional and indigenous communities to collective lands".

46. In the European context, wilful failure to recognise such rights on the part of displaced minority groups may raise issues under Article 16 of the Framework Convention for the Protection of National Minorities, which prohibits "measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities … aimed at restricting the rights and freedoms enshrined [in the Convention]".

47. The Court has ruled in a number of cases that formally invalid or even technically illegal property rights will be recognised as possessions protected under Article 1 of the Additional Protocol to the European Convention on Human Rights in cases in which the authorities have treated them as de facto valid or tolerated their exercise for a significant time period and no competing private interest is at stake.[27] Similarly, the Court has ruled that unchallenged rights to family homes and lands, including common lands, give rise to protected possessory interests even where they remain officially unregistered.[28]

5.5. Occupancy and tenancy rights

48. Displacement-related claims for the restitution of apartments held in occupancy and tenancy rights in formerly communist systems represent a challenge particular to the European context. Such rights were held by individuals, together with their family household, and entailed exclusive occupation of a specific apartment for a long or indefinite period of time, subject to obligations such as the payment of rent and/or contributions to housing funds and continuous use of the apartment for residential purposes barring justified grounds for absence.

49. While such apartments were almost undoubtedly homes in the sense of Article 8 of the European Convention on Human Rights, questions surrounding their status as possessions under Article 1 of the Additional Protocol to the European Convention on Human Rights may not be amenable to authoritative

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24. See the Court, *Cyprus v. Turkey*, judgment of 10 May 2001 (Application No. 25781/94); *Demades v. Turkey*, judgment of 31 July 2003 (Application No. 16219/90); and *Xenides-Arestis v. Turkey*, 22 December 2005 (Application No. 46347/99).
25. The Court, *Loizidou v. Turkey* (just satisfaction), 25 June 1998 (Application No. 15318/89), paragraph 31.
26. United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4 (1991), paragraph 8.*a*.
27. The Court, *Öneryildiz v. Turkey*, 30 November 2004 (Application No. 48939/99). This case did not concern property issues of refugees and internally displaced persons, but can be analogously applicable. See also *Gashi v. Croatia*, 13 December 2007 (Application No. 32457/05).
28. The Court, *Dogan and Others v. Turkey*, 29 June 2004 (Application Nos. 8803-8811/02, 8813/02 and 8815-8819/02), paragraph 139.

resolution by the Court. In most affected countries, systematic displacement-related confiscation of apartments held under such rights occurred before accession to the Council of Europe, preventing the Court from assuming jurisdiction over them.[29]

50. The political circumstances surrounding cancellations of occupancy and tenancy rights also throw into question the appropriateness of seeking an exclusively judicial determination of their status. It must be recalled that the nature of such rights underwent a profound transition throughout central and eastern Europe and the former Soviet Union during the 1990s – precisely at the time that many such rights were being cancelled in the context of ethnic conflict. For both economic and political reasons, it was a foregone conclusion at the time that the bulk of apartments held in such tenure would be privatised through sale on beneficial terms to their occupants. It is now a matter of record that privatisation in favour of sitting tenants at prices below market value is precisely what occurred, as a rule, throughout the region.[30]

51. Occupancy and tenancy rights arguably constitute possessions protected under Article 1 of the Additional Protocol to the European Convention on Human Rights even in the absence of a right to their eventual privatisation. In Bosnia and Herzegovina, for instance, a High Court set up under the Dayton Peace Accords with jurisdiction to apply the Convention found that occupancy rights constituted "possessions" in the sense of the Convention in their own right.[31] This understanding facilitated the systematic restitution of such rights in Bosnia and Herzegovina and Kosovo[32], as well as provisions of law in Georgia intended to provide remedies for the loss of analogous rights (see the case studies, below).

52. The argument for viewing occupancy and tenancy rights as protected possessions is strengthened by the observation that the near universal expectation of privatisation in the early 1990s arguably transformed these rights into a latent form of ownership. For instance, the Court has found protected possessions to be at stake in a number of cases involving interferences with occupancy and tenancy rights that occurred after legislation permitting privatisation was already in force.[33]

53. However, in situations where privatisation laws had not yet entered into force by the time that conflict forced occupancy and tenancy rights holders out of their apartments, the Court would not necessarily be able to take victims' expectation of future legislative privatisation rights into account, however well-founded they were. As a judicial institution, the Court is bound to focus on the circumstances of individual cases before it and the law in force at the time of alleged violations, rather than broader political and contextual factors.

54. In this context, the rapporteur submits that political bodies of the Council of Europe are well placed to articulate views on the legal weight to be accorded to occupancy and tenancy rights that take into account historical context and invoke member states' political as well as legal commitments to achieve greater unity, including by means of the maintenance and further realisation of human rights.

55. The failure to provide redress for wrongfully cancelled occupancy and tenancy rights is rightly seen as one of the key factors preventing a solution to protracted displacement situations in Europe.[34] As the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, noted in a recent address to the Committee on Migration, Refugees and Population, the failure to protect property left behind, including tenancy rights, is a factor "hindering IDPs in their efforts to resume their lives and remaining a serious source of grievance and a trigger-point for future conflict".[35]

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29. In the case that most directly raised this issue to date, the Grand Chamber of the Court accepted referral of the case only to effectively reverse admissibility decisions initially taken over four years earlier, enunciating a new and stricter rule on the Court's jurisdiction *rationae temporis*. The Court, *Blecic v. Croatia*, judgment of 1 February 2006 (Application No. 59532/00).

30. See, for example, United Nations Economic Commission for Europe, "Guidelines on Social Housing: Principles and Examples" (New York and Geneva, 2006), pp. 6-8.

31. See, for example, Human Rights Chamber for Bosnia and Herzegovina, *Kevesevic v. the Federation of Bosnia and Herzegovina*, 10 September 1998 (Case No. CH/97/46).

32. All reference to Kosovo, whether to the territory, institutions or people, in this text, shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

33. The Court, *Veselinski v. "the former Yugoslav Republic of Macedonia"*, judgment of 24 February 2005 (Application No. 45658/99); *Djidrovski v. "the former Yugoslav Republic of Macedonia"*, judgment of 24 February 2005 (Application No. 46447/99); *Teteriny v. Russia*, 30 June 2005 (Application No. 11931/03).

34. Protracted displacement in Europe is discussed at length in a separate report on "Europe's forgotten people: protecting the human rights of long-term displaced persons" (rapporteur: Mr Greenway, United Kingdom, European Democrat Group).

35. Walter Kälin, "Protracted Displacement in Europe" (statement to the Committee on Migration, Refugees and Population of the Council of Europe Parliamentary Assembly, 24 June 2009).

56. It is undeniable that apartments held in occupancy and tenancy rights were viewed as homes and valuable assets by thousands of persons who currently remain displaced; that their displacement in situations of armed conflict or human rights violations was involuntary; and that but for their displacement, many would have long since acquired full legal ownership of their apartments. Redress for these losses should be seen as a legal obligation and a benchmark of European integration in the spirit of the European Convention on Human Rights and the Copenhagen Criteria.

5.6. Rapid, accessible and effective procedures

57. The Pinheiro Principles call for the establishment of "equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims".[36] Principle 12.3 calls on states to take all necessary measures to support restitution processes, including the provision of adequate human and other resources. Principle 12.4 calls for flexible procedures and Principle 12.5 states that under exceptional circumstances, states should "request the technical assistance and co-operation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective remedies".

58. In order to assist domestic authorities in applying the UN Guiding Principles on Internal Displacement at the domestic level, the United Nations Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, initiated the drafting of a manual for law and policy makers.[37] Chapter 12 of the manual addresses protection of the property and possessions of the displaced, and sets out detailed recommendations related to the development of facilitated procedures for property restitution in the wake of large-scale dispossession.[38]

5.7. Further measures to ensure redress

59. Complementary forms of compensation for non-pecuniary harm, as well as loss of access and damage to properties, can be a crucial element in securing redress. The Pinheiro Principles note at Principle 21.2 that in some situations, "a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice." The jurisprudence of the Court also supports the provision of such supplementary forms of compensation, as well as measures in support of ending displacement and establishing accountability in situations of displacement related property violations.[39]

60. The UN Guiding Principles on Internal Displacement stipulate that national authorities have the primary duty and responsibility to "provide protection and humanitarian assistance to internally displaced persons within their jurisdiction" (Principle 3.1) as well as to "to establish conditions, as well as provide the means" that allow IDPs to achieve voluntary durable solutions (Principle 28.1).

61. With this in mind, the rapporteur outlines a few case study examples to illustrate property issues facing refugees and displaced persons in Europe. A more detailed analysis of the property issues facing refugees and displaced persons in the case study countries and other relevant member states could be carried out by the intergovernmental sector of the Council of Europe.

6. Case studies

6.1. Introduction

62. As of 2009, more than 2.5 million Europeans in 11 of the 47 member states of the Council of Europe continue to be deprived of their homes and possessions as the result of conflicts lasting decades, or for other reasons, without resolution or due to other factors that have forced people to leave their homes. The rapporteur has chosen a limited number of case studies. He has not attempted to cover all countries or

36. Pinheiro Principles, Principle 12.1.
37. "Protecting Internally Displaced Persons: A Manual for Law and Policy Makers", Brookings Institution – University of Bern Project on Internal Displacement (October 2008).
38. Ibid., pp. 176-181.
39. See, for example, *Dogan and Others v. Turkey*, in which the Court found a violation in part due to the failure of the Turkish Government to take steps to remedy the economic and social consequences of displacement; *Xenides-Arestis v. Turkey* (admissibility), in which the Court suggests that measures such as compensation for loss of movable property and non-pecuniary harm may be necessary in order to ensure the effectiveness of remedies for loss of access and rights to property.

regions in Europe where property issues remain. To do this would have greatly enlarged the report and changed the emphasis which seeks to deal with the principle property issues facing refugees and internally displaced persons, rather than the individual country situations.[40] The case studies he has chosen are on Bosnia and Herzegovina, Croatia, Georgia, Kosovo and Turkey.

6.2. Bosnia and Herzegovina

63. In Bosnia and Herzegovina ("Bosnia"), Annex 7 of the DPA[41] required the authorities throughout the country to undertake specific measures to facilitate the return of refugees and displaced persons, including restitution of property, compensation where restitution was not possible, and co-operation with a quasi-international Commission for the Real Property Claims of Refugees and Displaced Persons ("CRPC"). Annex 10 of the DPA created the Office of the High Representative to Bosnia and Herzegovina ("OHR"), with a mandate to monitor civilian implementation of the peace settlement.

64. Under international pressure, the authorities in both "entities" of Bosnia – the Muslim-Croat "Federation" and the Republika Srpska – passed laws in 1998 repealing wartime rules allowing the reallocation of abandoned property and creating procedures for the restitution of such properties to their pre-war residents. These laws were extensively amended by OHR decisions in 1999 and 2001 and their implementation was closely monitored through a joint international effort referred to as the "Property Law Implementation Plan" ("PLIP").[42]

65. The resulting restitution process was administrative rather than judicial and largely decentralised. Claims were received and processed by municipal or regional ("Cantonal") offices in the federation and by municipal offices of a central ministry in Republika Srpska. Decisions issued by the CRPC could be fed into this process as binding evidence in support of claims.

66. Upon the receipt of property restitution claims, Bosnian authorities were required to issue decisions and enforce them within timelines stipulated by law. Such decisions affirmed the rights of claimants to repossess their property and included a determination of whether secondary occupants were entitled to alternative accommodation. Legally, claimants were prioritised through entitlement to the return of their property according to legal deadlines regardless of whether alternative accommodation was provided to entitled secondary occupants. Secondary occupants could appeal decisions requiring them to vacate properties, but such appeals did not automatically suspend enforcement.

67. As in much of the rest of the former Yugoslavia, most rural or peri-urban houses in Bosnia were privately owned while urban housing took the form of apartments in social ownership. Residents of socially owned apartments held permanent tenancy/occupancy rights to them that were conditioned on continuous residential use. In 1998, a high court for human rights set up under Annex 6 of the DPA ruled that occupancy rights were possessions protected under the European Convention on Human Rights.[43]

68. Challenges to implementation of the restitution process included a number of special conditions imposed exclusively on pre-displacement occupancy right holders related to both the restitution and privatisation of their apartments. These were largely removed through legal amendments in 2001, effectively equating such apartments with private property for the purposes of restitution. Other challenges included failures to take basic steps to provide alternative accommodation and to evict politically influential occupants from claimed properties.

69. One important component of property restitution in Bosnia was the use of public information. The PLIP agencies contributed to a number of information campaigns meant to ensure that both claimants and secondary occupants were aware of their rights and obligations under the property restitution laws. The publication of updated monthly statistics tracking implementation in each municipality of Bosnia also facilitated an open, transparent process.

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40. The rapporteur has taken note that a great deal of country work has been done by other rapporteurs in the Assembly on IDP and refugee issues. For example, in 2006, Mr Cilevičs (Latvia, SOC) prepared a report on refugees and displaced persons in Armenia, Azerbaijan and Georgia (see Doc. 10835), and in June 2009, Mr Greenway (United Kingdom, EDG) prepared a report on Europe's forgotten people: protecting the human rights of long-term displaced persons (see Doc. 11942), following a visit to Azerbaijan and Armenia. For further information on the situation in these countries the reader is referred to these reports.

41. General Framework Agreement for Peace in Bosnia and Herzegovina (14 December 1995).

42. See "PLIP Inter-Agency Framework Document" (2000) and "New Strategic Direction" (2002).

43. Human Rights Chamber for Bosnia and Herzegovina, *Kevesevic v. the Federation of Bosnia and Herzegovina*, 10 September 1998 (Case No. CH/97/46).

70. The restitution process in Bosnia was largely completed in 2003, with nearly 200 000 homes, including a roughly equal number of private and socially owned properties, returned to their pre-war residents. This facilitated the return of some one million persons, or nearly half the population displaced by the conflict, to their original homes. At the end of 2003, national institutions formally assumed full responsibility for the return process in Bosnia.

71. As many as 22 000 Croatian Serbs and a significant number of Roma from Kosovo remain displaced in Bosnia. In recognition of the regional dimension of the displacement problem, Bosnia joined Croatia as well as the erstwhile Serbia and Montenegro in signing the so-called "Sarajevo Declaration" in January 2005, committing itself to resolving the remaining population displacement in the region by the end of 2006.[44]

72. A number of categories of property claimants were partly or wholly excluded from the restitution process on disputable grounds. These include persons who had initiated the process of privatising military apartments in the early 1990s as well as persons who missed early deadlines to claim socially owned property. In addition, displaced members of the Roma minority were disproportionately housed in social housing or informal settlements, both of which were largely excluded from the restitution process.

73. Insufficient reconstruction of destroyed homes remains a key obstacle to the achievement of durable solutions for many of the remaining displaced persons.[45] A revised strategy for implementation of Annex 7 of the DPA that is currently under discussion is meant to address this problem.

6.3. Croatia

74. Although obliged to "comply fully" with the return provisions of the DPA, Croatia is not a direct signatory to Annex 7 thereof.[46] Measures allowing for the restitution of privately owned homes were adopted through the repeal of wartime legislation allowing for reallocation of abandoned housing as well as the enactment of a Programme for Return in 1998, followed by further legal amendments in 2000 and 2002.

75. The restitution of privately owned homes was conceived of as a decentralised process run by municipal commissions. However, increasing involvement by the competent central-level ministry and the state prosecutor's office proved to be necessary over time in order to ensure consistent issuance and enforcement of decisions.[47]

76. The administrative restitution of some 20 000 private homes claimed by ethnic Serb owners has now been largely completed. A significant factor that delayed this process has been the prioritisation of secondary occupants over claimants, with the former protected from eviction for an open-ended period until alternative accommodation was provided. The delays entailed by this practice have been found to give rise to violations of the European Convention on Human Rights in a number of cases.[48]

77. Croatian Serbs still face obstacles to the enjoyment of their restituted private homes, including delays in processing some 7 500 family appeals for reconstruction assistance, failure to address claims for agricultural land in some areas, and, in a small number of cases, lawsuits from prior occupants of their properties for the cost of improvements made without their permission.[49]

78. In addition, the long delays experienced by many claimants prior to repossession of their private properties have given rise to claims for compensation for losses incurred during the period that claimants were arbitrarily denied access to their property. Although such cases have been resolved by friendly settlement to date, a more systematic approach may prove helpful in achieving legal certainty.[50]

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44. Declaration, Regional Ministerial Conference on Refugee Returns (Sarajevo, January 2005).
45. See, for example, "Representative of United Nations Secretary-General Concerned about Problems of Displaced Persons and Returnees in Bosnia and Herzegovina" (United Nations press release, 20 June 2008).
46. General Framework Agreement for Peace in Bosnia and Herzegovina (14 December 1995), Article 7 ("Recognising that the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace, the Parties agree to and shall comply fully with … the provisions concerning refugees and displaced persons set forth in Chapter One of the Agreement at Annex 7").
47. See, for example, International Crisis Group, "A Half-Hearted Welcome: Refugee Return to Croatia" (13 December 2002), pp. 13-15.
48. The Court, *Kunic v. Croatia*, judgment of 11 January 2007 (Application No. 22344/02); *Radanovic v. Croatia*, judgment of 21 December 2006 (Application No. 9056/02).
49. UNHCR Representation to Croatia, "Non-Paper on Remaining Obstacles to Return and Reintegration in Croatia" (November 2008).
50. See the Court, *Urukalo v. Croatia*, decision of 9 October 2008 (Application No. 6938/07); *Milak v. Croatia*, decision of 27 September 2007 (Application No. 33784/05).

79. Contrary to the practice in the rest of the region, no legal remedies have been offered for the estimated 30 000 Serb households stripped of occupancy/tenancy rights to socially owned apartments after fleeing during the conflict. Instead, those who are willing to return and do not have access to property elsewhere have been offered housing assistance.[51]

80. The process of providing housing care to Serb returnees whose socially owned apartments were confiscated during the conflict has been slow, with some 6 400 families still awaiting resolution of their claims. Many potential claimants for housing care in urban areas may have missed a 2005 claims deadline. Moreover, Croatia has yet to meet its undertaking under the 2005 Sarajevo Declaration to provide a "fair and just solution" for former occupancy right holders who do not intend to return to Croatia or otherwise cannot benefit from the housing care programme.[52]

81. The Court indicated in a 2006 ruling that complaints involving confiscations of occupancy rights in Croatia would be unlikely to fall within the Court's temporal jurisdiction.[53] However, the European Committee of Social Rights recently found a collective complaint against Croatia under the European Social Charter admissible.[54] The complaint alleges violations of the right of the family to social, legal and economic protection as well as discrimination in relation to Croatia's failure to provide a legal remedy for occupancy rights denied to its ethnic Serb minority.

82. On 30 March 2009, the United Nations Human Rights Committee found that the wartime termination of the occupancy right of a Croatian Serb family that fled from their apartment following death threats gave rise to violations of the rights to a fair trial, protection from arbitrary interference with the home and non-discrimination under the International Covenant on Civil and Political Rights.[55] The committee found Croatia to be under an obligation to provide "an effective remedy, including adequate compensation" to the affected family.

83. While concerns remain regarding durable solutions for many of the 300 000 ethnic Serbs displaced during the conflict, Croatia has largely reintegrated some 260 000 ethnic Croat internally displaced persons and integrated up to 120 000 Bosnian Croat refugees. Ethnic Croats were generally able to repossess both socially owned apartments and private homes in areas of Croatia they had fled during the conflict.[56] Likewise, Bosnian Croats were able to participate in Bosnian restitution programmes for socially owned apartments and private property without impediment.

6.4. Georgia

84. Upon its 1999 accession to the Council of Europe, Georgia pledged to "take the necessary legislative measures within two years of its accession and administrative measures within three years of its accession in order to permit restitution of ownership and tenancy rights or the payment of compensation for the property lost by people forced to abandon their homes"[57] during the 1990 to 1994 conflicts in the breakaway regions of Abkhazia and South Ossetia.[58]

85. In the course of internationally brokered negotiations to end the frozen conflicts in Georgia, formal commitments to permit the return of displaced persons to their home of origin and restoration of their properties have been undertaken between Georgia and both of the above-mentioned breakaway regions.[59]

86. The United Nations Security Council has reaffirmed the rights of persons displaced by the conflict in Abkhazia to return to their homes in numerous resolutions.[60] In October 2007 and in April 2008, the Security Council reaffirmed "the importance of [displaced persons'] return to their homes and property and that individual property rights have not been affected by the fact that owners had to flee during the conflict and that

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51. Internal Displacement Monitoring Centre, "Reforms Come Too Late for Most Remaining Ethnic Serb IDPs" (18 April 2006).
52. UNHCR Representation to Croatia, "UNHCR Croatia Briefing Paper" (September 2008).
53. The Court, *Blecic v. Croatia*, judgment of 1 February 2006 (Application No. 59532/00).
54. European Committee of Social Rights, *Centre on Housing Rights and Evictions (COHRE) v. Croatia* (decision on admissibility), 30 March 2009 (Complaint No. 52/2007).
55. United Nations Human Rights Committee, *Vojnovic v. Croatia* (views), 30 March 2009 (Communication No. 1510/2006).
56. Human Rights Watch, "Broken Promises: Impediments to Refugee Return to Croatia" (September 2003), pp. 32-34.
57. Georgia's application for membership in the Council of Europe, Assembly Opinion No. 209 (27 January 1999).
58. In this document, the terms "South Ossetia" and "Abkhazia" are used for readers' convenience, without prejudice to the Assembly's position on the territorial integrity of Georgia.
59. International Crisis Group, "Abkhazia: Ways Forward" (18 January 2007), pp. 18-19; "Georgia-South Ossetia: Refugee Return the Path to Peace" (19 April 2005), pp. 5-6.

the residency rights and the identity of these owners will be respected ….”[61] In May 2008, the United Nations General Assembly emphasised “the importance of preserving the property rights of refugees and internally displaced persons from Abkhazia, Georgia,” and called on member states “to deter persons under their jurisdiction from obtaining property within the territory of Abkhazia, Georgia, in violation of the rights of returnees.”[62] The Assembly, too, has considered this issue in two reports on the humanitarian consequences of the war between Georgia and Russia. It has called on Georgia, Russia and the de factoauthorities in South Ossetia and Abkhazia to “… take measures to effectively protect the property left behind by IDPs from both recent and previous conflicts with a view to securing restitution of such property in the future”.[63]

87. Georgia has consistently affirmed the right of persons displaced by the conflict to return and restitution of their homes in its laws and policies related to internal displacement.

88. Since 2006, the Georgian Ministry of Refugees and Accommodation has administered the My House programme, which seeks to register the rights of internally displaced persons from Abkhazia to specific properties left behind. Implementation of this programme has been incomplete due to lacking documentation and the non-co-operation of the Abkhaz de facto authorities.[64]

89. In December 2006, Georgia passed a law on property restitution and compensation in favour of persons displaced by the conflict related to South Ossetia.[65] This law foresees the creation of a commission, including international members, which would take binding decisions ordering restitution and compensation for immovable property lost during the conflict. Under Article 4 of the law, claimants could seek review of decisions cancelling occupancy and tenancy rights as well as loss of private property rights.[66] The law has yet to be implemented and has been rejected by the de facto authorities of South Ossetia.[67]

6.5. Kosovo[68]

90. United Nations Security Council Resolution 1244, adopted after the 1999 conflict in Kosovo, affirms the “right of all refugees and displaced persons to return to their homes in safety” and mandates the United Nations Mission in Kosovo (UNMIK) to assure “the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo”.[69]

91. Restitution in Kosovo is complicated by multiple property violations. Discriminatory laws before the 1999 conflict targeted Kosovo Albanians, causing them to lose their occupancy rights or resort to informal property transactions. The displacement of Kosovo Serbs after the conflict led to widespread occupation of their homes and lands by Kosovo Albanians. Since the conflict ended, new displacement has occurred and property left behind remains subject to looting, illegal expropriations and wrongful claims based on forged documents. Lack of co-operation with the Serbian authorities further complicates restitution and return.

92. The Housing and Property Directorate (HPD) was established in 2001 by UNMIK to restore rights to residential property, including occupancy rights, which were lost due to discrimination prior to the 1999 conflict and during the violent displacement that resulted from it. The HPD was replaced in 2006 by the Kosovo Property Agency (KPA), which enjoyed an extended mandate to address claims to agricultural land and business properties that had previously languished before overburdened Kosovo courts. Together, the HPD and KPA resolved 29 000 cases, issuing 17 500 decisions confirming property rights, and dismissing 2 500 claims. About 90% of claimants were Serbs whose property was illegally occupied by ethnic Albanians. The KPA is expected to address another 40 000 claims by 2010.

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60. See, for example, United Nations Security Council Resolutions 876 (1993); 971 (1995); 1036 (1996); 1287 (2000); 1364 (2001); 1393 (2002); 1427 (2002); 1462 (2003); 1494 (2003); 1524 (2004); 1582 (2005), and 1615 (2005).
61. United Nations Security Council, Resolutions 1781 (2007), paragraph 15, and 1808 (2008), paragraph 9.
62. United Nations General Assembly Resolution 62/249 (2008), paragraph 2.
63. Resolution 1648 (2009), paragraph 24.12. See also Resolution 1664 (2009).
64. Internal Displacement Monitoring Centre, “IDPs in Georgia Still Need Attention” (9 July 2009), p. 8.
65. Law on Property Restitution and Compensation for the Victims of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia, entered into force 1 January 2007.
66. Tenancy rights held under the 1983 Housing Code of the Georgian Soviet Socialist Republic were held for life with the ability to be passed on to heirs, but could be revoked by court order based on unjustified non-use of the apartment for six months or longer. See International Crisis Group, “Georgia-South Ossetia: Refugee Return the Path to Peace” (19 April 2005), pp. 5-6.
67. Internal Displacement Monitoring Centre, “IDPs in Georgia Still Need Attention” (9 July 2009), p. 8.
68. All reference to Kosovo, whether to the territory, institutions or people, in this text, shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
69. United Nations Security Council Resolution 1244 (1999), preamble and paragraph 11.k.

93. The HPD and KPA apply exceptional administrative procedures for property restitution. Claims are investigated through the conduct of interviews, searches of local property registries and verification of contracts. Should claimants request enforcement of decisions, secondary occupants are given thirty days to leave. Alternately, the claimant may request the KPA to put the property under its administration and collect rent on their behalf. This rental mechanism allows displaced rights holders to receive an income from their properties while holding the possibility of return open. In practice, its impact has been limited by non-compliance by secondary occupants.

94. Significant obstacles remain to the implementation of the KPA's mandate and the broader protection of property rights. Evictions have stopped in Serb-dominated areas in the north and looting and destruction of claimed properties continue with virtual impunity. The imposition of a short and poorly publicised deadline to make a claim with the KPA has also left many displaced persons with recourse only to slower judicial remedies.[70] Concerns also remain regarding expropriations of property belonging to IDPs without sufficient measures to inform and compensate those affected.[71] Recent legislation on expropriations may not contain sufficient guarantees that notice of such procedures will be accessible to affected persons in a language that they understand.

95. The lack of co-operation between authorities in Serbia and Kosovo undermines property restitution. Serbian authorities are in possession of most cadastres from Kosovo, leaving the KPA and local courts without independent access to such records. As a result of Kosovo's declaration of independence, Serbia suspended its co-operation with KPA offices in Serbia in June 2008, blocking verification of evidence, and forcing the suspension of many cases.[72] Lack of access to cadastral information has also exacerbated the problem of fraudulent land and property claims pursued in proceedings before domestic courts in which interested parties are often absent.[73]

96. Property-related claims also remain pending against components of the international civilian and military presences in Kosovo, including as many as 18 000 civil claims related to destruction of the private property of Kosovo Serbs in 2004. Although steps have been taken to provide a mechanism for the examination of alleged human rights breaches in Kosovo by international actors, it is not clear that they will provide an effective remedy in all property-related cases.[74]

97. The Roma Mahala reconstruction project in Mitrovica provides an example of co-operation between international and local actors to address loss of property by displaced members of the Roma minority despite their lack of formal pre-war ownership rights. In this case, the municipality provided land allowing the construction of apartments provided with a ninety-nine year lease on the site of beneficiaries' destroyed pre-war homes.[75] However, concerns remain regarding the protracted failure to move many other displaced Roma out of contaminated encampments.[76]

98. Restoring property rights does not automatically lead to durable solutions, or even allow return. Due primarily to ongoing security problems in minority return areas, only about 18 000 out of 250 000 persons displaced from Kosovo since 1999 have returned, and the number of sustained returns is reportedly much lower. It appears that many displaced persons seek to establish legal ownership of their former homes in order to rent or sell them.

99. The UNHCR has been tasked with supervising the safe and dignified return of refugees and displaced persons in Kosovo.[77] In exercising this responsibility, the UNHCR has observed significant problems and recommended a coherent systematic response to cover all issues related to housing, property and land, including access to adequate accommodation, effective responses to post-eviction security incidents, and reconstruction policies.

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70. Praxis, "Protection of Rights of Internally Displaced Persons: in Anticipation of a Durable Solution" (March 2009).
71. OSCE Mission in Kosovo, "Expropriations in Kosovo" (December 2006).
72. Praxis, "Protection of Rights of Internally Displaced Persons: in Anticipation of a Durable Solution" (March 2009).
73. OSCE Mission in Kosovo, "Litigating Ownership of Immovable Property in Kosovo" (March 2009).
74. See Council of Europe Commissioner for Human Rights, "Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo" (2 July 2009), paragraphs 66-80.
75. Internal Displacement Monitoring Centre, "Final Status for Kosovo – Towards Durable Solutions for IDPs or New Displacement Risk?" (10 December 2007), pp. 9-10.
76. Council of Europe Commissioner for Human Rights, "Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo" (2 July 2009), paragraphs 135-150.
77. United Nations Security Council Resolution 1244 (1999), Annex 2.

100. Currently, a wide range of different international and local actors deal with different property issues in Kosovo based on international human rights instruments, UNMIK regulations, the former Kosovo Standards Implementation Plan and the current European Partnership Action Plan. With the ongoing hand over of competencies from international to local authorities, the need for a central co-ordination and policy-making body is even greater in order to address inconsistencies.

6.6. Turkey

101. In July 2004, the Turkish Parliament adopted Law 5233 on the compensation of damages that occurred "due to the terror and the fight against terror".[78] The law grew out of some 1 500 cases brought against Turkey before the European Court of Human Rights by Kurdish internally displaced persons who alleged violations of their property rights related to their inability to return to their villages of origin in south-eastern Turkey and make use of their houses and land. The Court established that this had constituted a violation in a June 2004 ruling.[79]

102. Law 5233 provides compensation for certain defined losses including loss of movable and immovable properties; losses caused by injury, physical disability or death; and finally losses incurred as a lack of access to property, such as loss of farming revenue during displacement. Compensation is due irrespective of whether the loss was caused by the state or by a non-state actor. Compensation can be either in cash or in kind.

103. Law 5233 introduced a system of decentralised decision making on compensation claims through damage assessment commissions established at the provincial level. Each commission is chaired by a deputy provincial governor and composed of five civil servants and one lawyer appointed by the local bar association.

104. The law allows for flexibility related to the evidence necessary to bring claims and does not impose strict formal requirements for filing. Damage assessment commissions are empowered to appoint experts to assist with valuation, to carry out site visits and to request other public bodies including the police and security forces to provide information concerning claims pending before them. A valuation matrix was developed in order to assist the commissions in providing standardised compensation amounts for identified losses.[80]

105. Once a damage assessment commission has taken a decision, a proposed settlement is sent to the claimant. The claimants have thirty days to accept and sign the settlement. Once approved by the governor of the province, the compensation should be paid within three months. If the claimants reject the settlement, they may seek judicial remedies.

106. In 2006, the Court found that Law 5233 was capable of providing an effective domestic remedy, and that claimants to the Court were therefore required to claim before the damage assessment commissions before their claims could be found admissible before the Court. In September 2008, the Committee of Ministers decided to close examination of the issue of denial of access to property in Turkey in light of the Court's above-mentioned 2006 admissibility decision and insurances given by the Turkish authorities on the availability of a wide range of remedies for situations falling outside Law 5233.[81]

107. The Turkish authorities have actively informed the Court on the implementation of Law 5233. They have also invited the Representative of the United Nations Secretary-General on Human Rights of Internally Displaced Persons, Walter Kälin, to comment on the government's policies concerning displaced persons, resulting in changes to the law such as the extension of the filing deadline.[82]

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78. Law 5233, published in the Turkish Official Gazette on 27 July 2004.
79. *Dogan and Others v. Turkey*, op. cit.
80. "Compensation Matrix and Methodology for Compensation Matrix" (March 2007).
81. Council of Europe Committee of Ministers, Interim Resolution CM/ResDH(2008)69 (22 September 2008). The decision to close examination of the issue in Turkey on the basis of a decision on admissibility in *Icyer v. Turkey* appears to be part of a more general effort by the Court to encourage systematic domestic resolution of situations giving rise to large caseloads of claims. In an analogous decision related to Northern Cyrus in 2005, the Court ordered the respondent state to take steps necessary to resolve not only the immediate case, but also all similar pending applications, adjourning consideration of the latter in the meantime. *Xenides-Arestis v. Turkey*, 22 December 2005 (Application No. 46347/99), paragraphs 40 and 50.
82. W. Kälin, "Annual Report to the Human Rights Council", United Nations Doc. A/HRC/4/38 (3 January 2007), paragraph 20.

108. As of August 2009, 361 238 applications have been made to the damage assessment commissions, which have grown in number from 76 to 105. Over half of all claims have been decided, including 120 557 awards of compensation and 69 750 negative decisions. A total of 1 717 659 323 Turkish lira (YTL) has been awarded to date, of which YTL 1 068 137 805 have been paid out.

109. Concerns about Law 5233 remain. Observers have alleged that compensation awards have been set at a low level and noted that significant categories of claims such as those for non-pecuniary damages and displacement prior to 1987 are not addressed.[83] Indeed, the Court's decision itself has been criticised as premature, and is thought to have undermined confidence in the efficacy of the Court among Turkey's Kurdish people.[84]

110. Law 5233 provides compensation for lack of access to property rather than restitution per se. However, this appears to comport well with the nature of displacement in Turkey, in which property was often destroyed but rarely occupied by others. By all appearances, the small number of situations in which the presence of secondary occupants obstructs the exercise of displaced persons' rights can be addressed through ordinary domestic judicial remedies. Turkey's Return to Village and Rehabilitation project has facilitated the return of 25 000 families to villages in 14 provinces since its inception in 1994. However, Turkey has yet to fully disband paramilitary "Village Guard" units, which would facilitate voluntary return in safety and dignity.[85]

7. Conclusions and recommendations

111. The Parliamentary Assembly in the draft resolution invites the member states concerned to implement the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons in the light of the relevant Council of Europe instruments and Recommendation Rec(2006)6 of the Committee of Ministers on internally displaced persons. It calls on member states to provide restitution for the loss of access to property, including occupancy and tenancy rights; to provide adequate compensation for loss of such properties where restitution is not possible, as well as for other related harms; and to achieve these ends through rapid, accessible and effective procedures.

112. The Parliamentary Assembly in the draft recommendation further invites the Committee of Ministers to instruct the relevant body of the Council of Europe to undertake a study examining European standards and practice related to restitution of the property of displaced persons in European post-conflict settings. The study should focus on a series of key legal and operational questions of particular relevance in the European context, providing the basis for the development of detailed guidelines on how to provide legal remedies for conflict-related loss of access and rights to housing, land and property in Europe, taking into account the Pinheiro Principles, existing Council of Europe instruments and international law.

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83. See Internal Displacement Monitoring Centre, "Turkey: Need for Continued Improvement in Response to Protracted Displacement" (26 October 2009).

84. D. Kurban, O. Eröz den and H. Gülalp, "Supranational Rights Litigation, Implementation and the Domestic Impact of Strasbourg Court Jurisprudence: A Case Study of Turkey", JURISTRAS project report (2009), pp. 44-45.

85. See D. Kurban, A.B. Çelik and D. Yükseker, "Overcoming a Legacy of Mistrust: Towards Reconciliation between the State and the Displaced", TESEV and IDMC (May 2006), pp. 20-25, and "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey between 28 June and 3 July 2009", paragraphs 5 and 186.

Appendix – Dissenting opinion by Mrs Hajibayli (Azerbaijan, EPP/CD)

Rule 48.4[86]

Azerbaijan

The United Nations General Assembly and the Security Council have reaffirmed the inalienable right of the population expelled from Armenian-occupied Nagorno-Karabakh and surrounding regions of Azerbaijan to return to their native lands in safety and with dignity in their numerous resolutions. The Parliamentary Assembly of the Council of Europe also confirmed this right in its resolutions, in particular in Resolution 1416 (2005).

The issue of property restitution and compensation of land, housing and property of the displaced population expelled from the occupied territories of Azerbaijan remains an integral part of the negotiations between Azerbaijan and Armenia on the settlement of the conflict in and around the Nagorno-Karabakh region of Azerbaijan under the auspices of the OSCE Minsk Group.

The issue of property restitution is also included within the framework of the Return Plan currently being developed by the Government of Azerbaijan in co-operation with the UNHCR and other United Nations agencies in Azerbaijan for subsequent use in the event of settlement of the Nagorno-Karabakh conflict.

According to various sources, nearly all public infrastructure and private property in the occupied territories have been destroyed and creating proper conditions for return will take significant time and resources. Azerbaijan has preconditioned assessment, planning and co-ordination of restitution programmes on a permanent settlement of the conflict with Armenia including the liberation of all occupied territories and the return of the displaced population to their native lands.

The principles and conditions of property restitution have yet to be established and therefore the displaced population is currently unable to access effective remedies in relation to housing, land or property that has been arbitrarily occupied, sold, damaged or destroyed.

* * * * *

1. The present-day stage of the Armenian-Azerbaijani Nagorno-Karabakh conflict began at the end of 1987 with the attacks on Azerbaijanis in Khankandi and Armenia resulting in a flood of Azerbaijani refugees and internally displaced persons.

2. In 1988 and 1989, Azerbaijanis were forced to leave Armenia. During this period, at least 216 Azerbaijanis were killed and 1 154 people were wounded. The refugees from Armenia – eventually numbering 243 682 people – began to arrive in Azerbaijan.

3. At the end of 1991 and the beginning of 1992, the conflict entered a military phase. During this short period of time the whole Azerbaijani population of the mountainous Karabakh region was forced to leave their lands.

4. From 1992 to 1994, Armenian armed forces occupied administrative districts of the Republic of Azerbaijan populated only by Azerbaijanis as follows:

– 8 May 1992 – the Shusha district mainly populated by Azerbaijanis;

– 18 May 1992 – the Lachin district situated between the former Nagorno-Karabakh Autonomous Oblast (NKAO) and the Republic of Armenia;

– 2 April 1993 – the Kelbadjar district (between the former NKAO and Armenia, to the north of Lachin);

– 23 July 1993 – the Agdam district;

– 23 August 1993 – the Fuzuli district;

– 26 August 1993 – the Djabrail district;

– 31 August 1993 – the Gubadly district;

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86. Rule 48.4: “The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote.”

– 28 October 1993 – the town of Horadiz and Zangilan district.

5. On 30 April 1993, the United Nations Security Council adopted Resolution 822, demanding immediate withdrawal of all occupying forces from the Kelbadjar and other recently occupied areas of Azerbaijan.

6. On 29 July 1993, the United Nations Security Council adopted Resolution 853, which demanded "the immediate, complete and unconditional withdrawal of occupying forces involved from the district of Agdam and other recently occupied districts of the Republic of Azerbaijan".

7. On 14 October 1993, the United Nations Security Council adopted Resolution 874, which called for "immediate implementation of the reciprocal and urgent steps provided for in the CSCE Minsk Group's Adjusted Timetable, including the withdrawal of forces from recently occupied territories".

8. On 11 November 1993, the United Nations Security Council adopted Resolution 884, which condemned the occupation of Zangilan district and the town of Horadiz, attacks on civilians and bombardments of the territory of the Republic of Azerbaijan and demanded the unilateral withdrawal of occupying forces from the Zangilan district and Horadiz, and the withdrawal of occupying forces from other recently occupied areas of the Republic of Azerbaijan.

9. On 12 May 1994, agreement on cease-fire between the parties to the conflict entered into force.

10. Armed conflict in and around the Nagorno-Karabakh region of the Republic of Azerbaijan resulted in the Armenian occupation of almost one fifth of the territory of Azerbaijan; made 800 000 individuals, that is, approximately one out of every eight persons in the country an internally displaced person or refugee; 20 000 people were killed; 50 000 people were wounded or disabled; and more than 4 000 citizens of Azerbaijan are still missing.

11. The aggression against the Republic of Azerbaijan has severely damaged the socio-economic situation in the country. In the occupied territories, six cities, 12 town-type villages, 830 settlements, and hundreds of hospitals and medical facilities were burned or otherwise destroyed. As a result of aggression, hundreds of thousands of houses and apartments and thousands of community and medical buildings were destroyed or looted. Hundreds of libraries have been plundered and millions of books and valuable manuscripts have been burned or otherwise destroyed. Several state theatres, hundreds of clubs and dozens of musical schools have been destroyed. Several thousand manufacturing, agricultural and other kinds of factories and plants have been pillaged. The 100 kilometre-long irrigation system has been totally destroyed. Flocks of several hundreds of thousands of sheep and dozens of thousands of cattle have been driven out of the occupied territories to Armenia. About 70% of the summer pastures of Azerbaijan remain in the occupied zone.

12. The regional infrastructure including hundreds of bridges, hundreds of kilometres of roads and thousands of kilometres of water pipelines, thousands of kilometres of gas pipelines and dozens of gas distribution stations have been destroyed.

13. The war against Azerbaijan has also had catastrophic consequences for its cultural heritage both in the occupied territories and in Armenia.

14. According to preliminary data, the overall economic loss inflicted on the Republic of Azerbaijan as a result of Armenian aggression is estimated to be tens of billions of US dollars.

15. It should be noted that almost all Azerbaijani IDPs have had to flee from their homes in the occupied territories quickly, and without even thinking about their documents, which they have left behind together with all their properties and belongings, due to the military activities of the Armenian forces. It is impossible for Azerbaijani IDPs at the present time to get back any documents showing their properties and belongings which were left behind in the territory in question: this territory is under the effective control of the Republic of Armenia. In fact, no connection whatsoever exists with the local authorities in the occupied territories or with the Armenian authorities. Thus, the International Crisis Group has noted in its report on Nagorno-Karabakh in 2005 that "[n]o program has been established to allow refugees and IDPs to access official documents left in their original residences".[87] It may also be assumed that the relevant documents have been destroyed and burnt as a result of the military actions by Armenian soldiers during the seizure of the territory in question.

16. The peaceful enjoyment of possession within the meaning of Article 1 of the Additional Protocol to the European Convention on Human Rights should not be limited to the "ownership of physical goods". The Court has observed in its case law that "certain other rights and interests constituting assets can also be regarded

87. See "Nagorno-Karabakh: a Plan for Peace", Europe Report No. 167 of the International Crisis Group, 11 October 2005, p. 27.

as ‘property rights’, and thus as ‘possession’ for the purposes of this provision”. Any interference with this right is prohibited, except in the cases described in the second sentence of the first paragraph of this article. This means that unlawful limitation of the property rights constitutes a violation of Article 1 of the Additional Protocol.

17. Along with houses, plots of land as well as the right to use them are also included under the term “possession”. Even if the property of the displaced persons (that is, furnished houses, buildings, carpets and cars) has been destroyed/burnt down, they are still owners of their plots of land, that is, not only the plots of land which lie under their houses and other buildings (garage, cafe), and are entitled to get compensation for the loss of enjoyment of possessions.

18. In respect of the right to use the plots of land of the Azerbaijani IDPs from the occupied territories, the legal situation in respect of the property rights in Azerbaijan at the moment of expulsion of the Azerbaijani IDPs from the occupied territories in general ought to be explained. During the Soviet era, the state (the Soviet Union) had unexceptional ownership of land – as was declared in the 1937 Constitution of the Azerbaijan SSR and later in the constitution of 1978. Although land transactions were prohibited, plots of land were allotted to citizens for personal use and citizens had a right to use land plots allotted to them (Article 13 of the constitution of 1978).

19. The relevant procedure of allotting land plots was regulated by the 1970 Land Code of the Azerbaijan SSR and by the 1979 Regulation on Submission and Examination of Requests for Allocation of Land Plots for Personal Use in Azerbaijan SSR. In accordance with the provisions of these legal acts, the citizens were allotted plots of land for such purposes as individual housing and farming. Plots of land for individual housing were allotted to citizens in perpetuity for the purpose of using them for the construction of privately owned houses. The law on property in the Republic of Azerbaijan, which was adopted on 9 November 1991, made reference, for the first time, to land plots as the objects of possession of the citizens of the Republic of Azerbaijan.

20. According to this legal basis, the plots of land were allotted to the Azerbaijani IDPs in the places of their residence before they were expelled from there. Consequently, they have the right to use their plots of land and therefore the right to the peaceful enjoyment of their possessions in the occupied territories.

21. The right of the Azerbaijani IDPs to the peaceful enjoyment of their possessions – in particular the right to use their possessions – is violated by virtue of the continuous refusal of Armenia to allow them access to their possessions in the occupied territories of Azerbaijan.

22. The Azerbaijani IDPs have been denied access to their property and land since the period from 1992 to 1994, that is, since they were forced to flee from the occupied territories of Azerbaijan. Due to the continuous refusal by the Republic of Armenia, they still have no access to their possessions and have consequently lost all control over their property and are unable to enjoy their possessions.

23. In fact, Azerbaijani IDPs neither had, nor actually have, any possibility to enter the occupied territories. They are still physically prevented from visiting their home and from enjoying their possessions due to the deployment of Armenian military forces on the Line of Contact, landmines and occasional shootings on the Line of Contact. The continuing refusal of the Republic of Armenia to allow the Azerbaijani IDPs to return to the area and their homes and property is obvious.

24. Due to the fact that the Azerbaijani IDPs are prevented from entering the occupied territories of Azerbaijan and obtaining their possessions, especially their plots of land, their right to the peaceful enjoyment and use of their possessions is still violated by the Republic of Armenia. They lost control over all their possessions when they fled from their homes. As the Republic of Armenia does not grant any effective remedies in order to protect the rights of the Azerbaijani IDPs, they have no opportunity to apply to the Armenian authorities to be allowed to enter the occupied territories and to enjoy their rights. Moreover, the Azerbaijani IDPs have never received any compensation from Armenia for their loss of enjoyment of their possessions.

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Reporting committee: Committee on Migration, Refugees and Population

Reference to committee: Doc. 11427, Reference 3410 of 25 January 2008

Draft resolution and draft recommendation unanimously adopted by the committee on 9 December 2009

Members of the committee: Mrs Corien W.A. **Jonker** (Chairperson), Mr Hakki Keskin (1st Vice-Chairperson), Mr Doug Henderson (2nd Vice-Chairperson), Mr Pedro **Agramunt** (3rd Vice-Chairperson), Mrs Tina Acketoft (alternate: Mr Göran **Lindblad**), Mr Francis Agius, Mr Alexander van der Bellen, Mr Ryszard Bender, Mr Márton Braun, Mr André Bugnon, Mr Sergej Chelemendik, Mr Vannino Chiti, Mr Christopher **Chope**, Mr Desislav **Chukolov**, Mr Boriss **Cilevičs**, Mr Titus Corlăţean, Mr Telmo Correia, Mrs Claire Curtis-Thomas, Mr David **Darchiashvili**, Mr Nikolaos Dendias,Mr Arcadio Díaz Tejera (alternate: Mr Gabino **Puche**), Mr Vangjel Dule, Mr Tuur Elzinga, Mr Valeriy Fedorov, Mr Oleksandr Feldman, Mr Relu Fenechiu, Mrs Doris Fiala, Mr Bernard Fournier, Mr Aristophanes Georgiou (alternate: Mr Fidias **Sarikas**), Mr Paul Giacobbi, Mrs Angelika Graf, Mr John Greenway, Mr Michael Hagberg, Mrs Gultakin Hajibayli, Mr Jürgen Herrmann, Mr Bernd Heynemann, Mr Jean **Huss**, Mr Tadeusz **Iwiński**, Mr Zmago Jelinčič Plemeniti, Mr Mustafa Jemiliev, Mr Tomáš Jirsa, Mr Reijo Kallio, Mr Ruslan Kondratov, Mr Franz Eduard Kühnel, Mr Andros Kyprianou, Mr Geert Lambert, Mr Pavel Lebeda, Mr Arminas Lydeka, Mr Jean-Pierre Masseret (alternate: Mr Denis **Jacquat**), Mr Slavko Matić, Mrs Nursuna Memecan, Mrs Ana Catarina Mendonça, Mr Gebhard Negele, Mrs Korneliya Ninova, Mr Hryhoriy Omelchenko, Ms Steinunn Valdís Óskarsdóttir, Mr Alexey Ostrovsky, Ms Vassiliki Papandreou, Mr Jørgen **Poulsen**, Mr Cezar Florin **Preda**, Mr Milorad **Pupovac**, Mrs Mailis Reps, Mr Gonzalo **Robles**, Mr Branko Ružić,Mr Džavid Šabović,Mr Giacomo Santini, Mr Samad Seyidov, Mr Fiorenzo Stolfi, Mr Giacomo Stucchi, Mr László Szakács, Mrs Elke Tindemans, Mr Dragan Todorović, Ms Anette Trettebergstuen (alternate: Mr Øyvind **Vaksdal**), Mr Tuğrul **Türkeş**, Mrs Özlem **Türköne**, Mr Michał Wojtczak, Mr Marco Zacchera, Mr Yury Zelenskiy, Mr Andrej **Zernovski**, Mrs Naira Zohrabyan.

NB: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mr Neville, Mrs Odrats, Mr Ekström