Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 15219
09 February 2021

The protection of victims of arbitrary displacement

Report[1]
Committee on Migration, Refugees and Displaced Persons
Rapporteur: Mr Fabien GOUTTEFARDE, France, Alliance of Liberals and Democrats for Europe

Summary

National laws and policies, as well as international law, must address, prevent and prohibit population displacement in particular when civilian populations are targeted in armed conflicts. In its most heinous form such displacement is perpetrated for the political purpose of displacing an ethnic group, which is euphemistically referred to as ethnic cleansing. The perpetrators of such displacement should be prosecuted, and protection should be provided to the victims and survivors. National laws should ensure the transposition of international standards and these should be implemented. It is also important for international law as well as practice on the issue to evolve.

Although many displaced persons remain within their countries, many become international refugees. The processing of their asylum applications should take into account their specific circumstances and the seriousness of the displacements concerned.

1. Reference to Committee: Doc. 14548, Reference 4389 of 25 June 2018.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation: 5
C. Explanatory memorandum by Mr Fabien Gouttefarde, rapporteur 6
1. Introduction 6
2. Arbitrary displacement of persons 6
3. International standards 7
3.1. Arbitrary displacement by armed conflicts 7
3.2. Arbitrary displacement by terrorism and violence 9
4. National courts 9
5. Asylum proceedings of arbitrarily displaced persons 10
6. Co-operation 10
6.1. Political action and awareness 10
6.2. Security co-operation 10
6.3. Law enforcement co-operation 11
6.4. Financial assistance 11
6.5. Co-operation with non-governmental organisations 11
7. Conclusions 11

A. Draft resolution[2]

1. The Parliamentary Assembly is deeply alarmed by estimations of the United Nations High Commissioner for Refugees that nearly 80 million persons have been displaced by force globally, most of them being displaced inside their country. Africa suffers particularly due to armed conflicts, terrorism and general violence, causing extremely high numbers of victims of arbitrary displacement many of whom seek refuge in other countries in Africa and sometimes in Europe.

2. Arbitrary displacement occurs where the civilian population is targeted intentionally in armed conflicts and their homes and civilian infrastructure are destroyed. In its most heinous form, such displacement is perpetrated for the political purpose of displacing an ethnic group from a conflict area, which is euphemistically referred to as ethnic cleansing. Arbitrary displacement often also enables the aggressor to expropriate and exploit natural resources in the wake of an armed conflict or to pursue criminal activities to generate financial benefits, such as through the smuggling of drugs, oil, weapons or stolen cultural goods.

3. Recalling its Resolution 2214 (2018) "Humanitarian needs and rights of internally displaced persons in Europe", the Assembly strongly regrets that nearly 2.8 million Europeans are internally displaced persons according to estimates by the Internal Displacement Monitoring Centre in Geneva. In addition, many Europeans are refugees in other countries, in particular Ukrainians who fled the war in eastern Ukraine and the Crimea. More recently, the conflict over the Nagorno-Karabakh region has brought new waves of displaced persons.

4. The Assembly welcomes that many European countries have granted asylum to millions of persons forcibly displaced from their home country, primarily from outside of Europe. Turkey, for example, received approximately 3.5 million Syrians, and Germany hosts more than one million refugees from Syria and other countries.

5. Recalling that Nadia Murad, a Yazidi woman kept in slavery and victim of inhuman and degrading treatment by Daesh in northern Iraq, received the Václav Havel Human Rights Prize of the Assembly in 2016, the Assembly strongly condemns the use of all forms of sexual violence as a weapon in armed conflicts. Sexual violence must never be a weapon of warfare and has to be punished severely by law.

6. In this context, the Assembly reminds member States of the Council of Europe of the relevant legal standards and obligations protecting civilian populations against arbitrary displacement, which have been recognised as general principles of public international law in the statutes of the International Military Tribunal at Nuremberg, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda. In addition, the Statute of the International Criminal Court (ICC) spells out the prohibition to arbitrarily displace civilian populations and qualifies such acts as war crimes and crimes against humanity. Therefore, the Assembly calls on member States to:

6.1. sign and ratify the Statute of the ICC, if they have not yet done so, and closely co-operate with the ICC in prosecuting and punishing arbitrary displacement of civilian populations;

6.2. consider creating specific international criminal tribunals for prosecuting and punishing arbitrary displacement where action by the ICC cannot be pursued;

6.3. introduce in their national law the principle of universal jurisdiction of national courts regarding war crimes and crimes against humanity which are forms of arbitrary displacement;

6.4. establish truth commissions in accordance with Resolution 1613 (2008) "Use of experience of the 'truth commissions'".

7. Recalling the United Nations Guiding Principles on Internal Displacement of 1998 and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the Assembly calls on member States to:

7.1. co-operate closely with the African Union in the framework of the Kampala Convention in the prosecution and punishment of arbitrary displacement of civilian populations in Africa;

7.2. implement the United Nations Guiding Principles on Internal Displacement of 1998 in their national law.

---

2. Adopted unanimously by the committee on 2 December 2020.

8. Recalling the European Convention on Human Rights (ETS No. 5, the Convention), the Assembly calls on each member State to prosecute and punish through all avenues available under national and international law any violations of human rights committed by third parties abroad against persons who have subsequently received international protection status in the respective member State. Member States should also assist victims in seeking legal redress where violations have occurred. Arbitrary displacement and other related war crimes and crimes against humanity could typically violate:

8.1. the right to life under Article 2 of the Convention;

8.2. the prohibition of torture under Article 3 of the Convention;

8.3. the right to liberty and security under Article 5 of the Convention;

8.4. the protection of private and family life under Article 8 of the Convention;

8.5. the protection of property under Article 1 of the first Protocol to the Convention.

9. Aware that arbitrary displacement has the objective of, generating financial benefits for those perpetrating such displacement, the Assembly calls on member States to increase their efforts in the search and seizure of proceeds from crimes committed in the wake of armed conflicts, in accordance with:

9.1. the United Nations Convention against Transnational Organized Crime;

9.2. the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.(ETS No. 141) and its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);

9.3. the Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221).

10. Given that the prosecution and punishment of arbitrary displacement requires effective law enforcement co-operation at international level, the Assembly calls on member States to:

10.1. respect their obligations under the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30);

10.2. respond to requests for extradition under the European Convention on Extradition (ETS No. 24);

10.3. closely co-operate with other member States in identifying and combating terrorist organisations which commit arbitrary displacement.

11. Aware of the serious personal impact of arbitrary displacement upon victims, the Assembly calls on member States provide assistance to victims of such displacement through:

11.1. accelerated asylum procedures in accordance with its Resolution 1471 (2005) “Accelerated asylum procedures in Council of Europe member States”;

11.2. special medical and psychological care;

11.3. action for family tracing and the enabling of family reunification;

11.4. the prosecution of crimes committed against victims.

12. An effective protection of civilian populations against arbitrary displacement through an armed conflict may require the multilateral provision of security through the deployment of police or military forces. Therefore, the Assembly invites member States to contribute to such deployment through:

12.1. a mandate of the UN Security Council;

12.2. co-operation with the internationally recognised government of a State affected by an armed conflict;

12.3. bi- or multilateral co-operation agreements, such as the Statute of the North Atlantic Treaty Organization or the common foreign and security policy of the European Union.

B. Draft recommendation[3]:

1. The Parliamentary Assembly refers to its Resolution … (2021) "The protection of victims of arbitrary displacement" and emphasises the importance of European co-operation in the protection against arbitrary displacement, in particular through prosecuting and punishing such displacement and offering protection to victims.

2. Therefore, the Assembly recommends that the Committee of Ministers:

2.1. prepare guidelines for member States on universal jurisdiction of national courts for arbitrary displacement and other war crimes or crimes against humanity;

2.2. strengthen law enforcement co-operation among member States and with non-member States regarding the prosecution and punishment of arbitrary displacement;

2.3. call on member States to sign and ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), and closely co-operate with non-member States in this field;

2.4. invite member States to contribute to the Trust Fund for Victims established in accordance with Article 79 of the Statute of the International Criminal Court, and establish co-operation of the Council of Europe with the Trust Fund for Victims residing in Europe.

3. Adopted unanimously by the committee on 2 December 2020.

C. Explanatory memorandum by Mr Fabien Gouttefarde, rapporteur

1. Introduction

1. Displacement is a wide concept and covers individuals and families forced to move because of conflicts, wars, natural disasters and other reasons. However, within this group of persons, there are those whose displacement is not just a question of the circumstances in which they find themselves, but it is also the goal of a State or non-State actor, in other words the deliberate intention of a third party. This affects the nature of the displacement, the seriousness of it and the likelihood of return. At its most heinous, it might be ethnic cleansing, but it might also have other substantive objectives, such as the elimination of political opposition, the conquest of land and the obtaining of possessions including natural resources.

2. As the consequences are highly serious, it is important that national laws and policies as well as international law are able to tackle these situations and prohibit, prevent and prosecute such deliberate displacement and provide protection to the victims and survivors. While there is a myriad of provisions in national laws and practices and also in international law, it would be necessary to bring these together in order to have a clear framework for dealing with what has been referred to under international law as “arbitrary displacement of persons”.

3. In this context and in this report, I therefore propose looking at cases of arbitrary displacement in the world, including in Europe, by armed conflicts, terrorism and generalised violence. Different legal frameworks at national and international levels should be examined and recommendations be provided regarding gaps that exist on these frameworks. Such gaps should be filled through a comprehensive and comprehensible framework to prohibit, prevent and prosecute such displacement and provide protection and compensation to the victims and their families.

4. In the framework of the preparation of this report, I had hoped to visit Turkey, which hosts the largest number of persons displaced from Syria, as well as Greece where most Syrian refugees pass through on their way to the European Union. The Covid-19 pandemic and very reduced possibilities for travel made these visits impossible. However, I am grateful to the national delegations of both countries for having responded in writing to questions.

2. Arbitrary displacement of persons

5. In order to understand the context and scope of arbitrary displacement it is first necessary to understand the context and scope of displacement in general and also asylum. Armed conflicts, extreme violence and massive violations of human rights force many people to leave their homes every year. In its latest Global Trends Report, the United Nations High Commissioner for Refugees estimates that 79.5 million people were forcibly displaced in 2019 globally, which constitutes an increase of more than 10 million people compared to 2018.[4] For Europe, the Internal Displacement Monitoring Centre estimates nearly 2.8 million internally displaced persons.[5] Out of the 612 700 first-time asylum applicants in the European Union in 2019,[6] nearly 300 000 were granted protection by European Union member States.[7] There have been some 150 000 new asylum applications in the European Union in the first quarter of 2020.[8] Non-European Union member States also host many displaced persons, in particular Turkey which registered 3 604 910 displaced persons from Syria.[9] Displacement has become much more widespread and a persistent phenomenon where persons are displaced for many years or even decades.[10]

6. Many displaced persons become international refugees, but the majority remain displaced within their own country. The present report uses the term “victims of arbitrary displacement”, including both internally displaced persons as well as international refugees. In fact, this term shall be understood as defined in the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 2009 (Kampala Convention).[11] The decisive factor is that persons have intentionally and arbitrarily been forced to leave their home against their will and their interest, in particular as an objective of an armed conflict.

---

4. www.unhcr.org/globaltrends2019/.
5. www.internal-displacement.org/database/displacement-data.
6. https://ec.europa.eu/eurostat/documents/2995521/10554400/3-20032020-AP-EN.pdf.
7. https://ec.europa.eu/eurostat/documents/2995521/10774018/3-27042020-AP-EN.pdf.
8. https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report.
9. https://data2.unhcr.org/en/situations/syria/location/113.
10. www.unocha.org/sites/unocha/files/Reducing%20Protracted%20Internal%20Displacement.pdf.

7. In order to combat arbitrary displacement effectively, it is necessary to protect the victims and prohibit such displacement, prosecute its perpetrators and prevent perpetrators benefitting from their actions. The effective implementation of international law should therefore also be used for the seizure of any proceeds or material gains from arbitrary displacement of persons.

8. People can also be compelled to leave their home due to disasters, be they human-made or natural disasters. Such cases are not the focus of this report, as they lack an element of intention and arbitrariness. Such displacement might also be an indirect consequence of conflicts, as in Yemen where the ongoing armed conflict puts more than 10 million people at risk of starving.[12]

9. The fate and suffering of displaced persons often go unnoticed in Europe, unless they try to enter our member States. There are many countries and regions around Europe where large-scale arbitrary displacement is ongoing. Within Europe, people were arbitrarily displaced in the wake of the dissolutions of the USSR as well as former Yugoslavia, but also in Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia and Ukraine, which are the countries that have seen the largest numbers of displaced persons.

10. The humanitarian needs and rights of internally displaced persons in Europe have been addressed in Assembly Resolution 2214 (2018) and the report by our colleague Mr Killion Munyama (Poland, EPP/CD). Therefore, the present report does not intend to duplicate this work but focuses on the protection of victims of arbitrary displacement under international law. Humanitarian action for refugees and migrants in countries in North Africa and the Middle East is being addressed in the report by our colleague Lord Alexander Dundee (United Kingdom, EC/DA), and thus adds a complementary and related aspect.

11. As an organisation upholding human rights and the rule of law, the Council of Europe and its member States must join international action to protect victims of arbitrary displacement under international law. At the same time, international law must guide member States which are active in protecting the population of another country against violence and displacement, such as under the mandate of the United Nations. The objective of my report is to clarify the legal requirements and possibilities for protecting the millions of people against their arbitrary displacement and prosecute perpetrators.

3. International standards

3.1. Arbitrary displacement by armed conflicts

12. Since the establishment of the International Military Tribunal in Nuremberg at the end of the Second World War, the act of deportation of civilians in the wake of war is recognised as either a war crime if it is directed against the population of an occupied territory, or a crime against humanity if deportation is perpetrated otherwise.[13]

---

11. Under Article 4 of the Kampala Convention: “All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:

a) Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;

b) Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;

c) Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;

d) Displacement caused by generalized violence or violations of human rights;

e) Displacement as a result of harmful practices;

f) Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected:

g) Displacement used as a collective punishment;

h) Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.”

Article 6 stipulates: “States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.”

Under Article 3.1, State Parties shall: “(g) Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law; (h) Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts”.

https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa.

12. https://reliefweb.int/report/yemen/yemen-humanitarian-update-covering-16-23-january-2019-issue-2.

13. Article 6 (b and c) of the Charter of the International Military Tribunal in Nuremberg, www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf.

13. Article 147 of the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War and Article 85 (4.a) of the Additional Protocol No. I to the Geneva Conventions have transferred this rule from customary international law into universally recognised treaty law. Under Article 49 (1) of the Fourth Geneva Convention, "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." Article 17 of the Additional Protocol No. II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts prohibits the forced movement of civilians.

14. Article 7 of the Statute of the International Criminal Court stipulates that it is a crime against humanity to displace persons by expulsion or other coercive acts from the area in which they are lawfully present. Article 8 of this Statute stipulates that the deportation, transfer or displacement of civilian population is a war crime. Before the creation of the International Criminal Court, Article 5 (d) of the Statute of the International Criminal Tribunal for the former Yugoslavia and Article 3 (d) of the Statute of the International Criminal Tribunal for Rwanda declared the deportation or transfer of civilian population a crime against humanity.

15. Through resolutions, the UN Security Council has condemned instances of arbitrarily displacement of civilian populations in Council of Europe member States, for example in Azerbaijan,[14] Bosnia and Herzegovina,[15] Cyprus[16] and Georgia,[17] as well as outside Europe in Burundi[18] and Sudan.[19] However, procedures in the UN Security Council have sometimes been paralysed by a veto of States directly or indirectly involved in an armed conflict leading to population displacements.[20]

16. In 1998, the representative of the United Nations Secretary-General on internally displaced persons, Mr Francis Deng, presented to the United Nations Commission on Human Rights the Guiding Principles on Internal Displacement, which specifically address arbitrary displacement. I am grateful for the co-operation of Ms Cecilia Jimenez-Damary, United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons, who addressed our committee on 16 October 2020.

17. In addition to prohibiting the displacement of civilian populations and establishing that all persons have a right to be protected against arbitrary displacement, Article 7(5)(a) the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)[21] prohibits also displacement carried out by members of armed groups, defined as "dissident armed forces or other organized armed groups that are distinct from the armed forces of the State".

18. While acts of war have been declared officially by belligerent parties in the past, modern warfare seems to avoid such declarations of war. Instead, public-private military contractors, mercenaries and local war lords play an increasing role. One example is that of Daesh mercenaries[22]. From a legal point of view, such outsourcing or sub-contracting cannot prevent a State's liability through para-military action of armed groups.[23]

19. Forcible displacement of persons is a violation of the European Convention of Human Rights.[24] In its Grand Chamber judgment in the case of *Chiragov and Others v. Armenia* (Application No. 13216/05), the European Court of Human Rights confirmed that a violation of the Convention continued as long as displaced persons were not able to exercise their rights under the Convention, irrespective of whether the original act of displacement had occurred before a member State acceded to the Convention.

---

14. United Nations Security Council Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993).
15. United Nations Security Council Resolutions 713 (1991), 819 (1993) and 824 (1993).
16. United Nations Security Council Resolutions 193 (1964) and 360 (1974).
17. United Nations Security Council Resolutions 849 (1993) and 1808 (2008).
18. United Nations Security Council Resolution 1545 (2004).
19. United Nations Security Council Resolution 1591 (2005).
20. https://news.un.org/en/story/2019/09/1046802.
21. https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa.
22. www.ukrinform.net/rubric-society/3055644-ukrainian-court-convicts-foreigners-who-sent-isis-mercenaries-to-syria-iraq.html,
https://www.aa.com.tr/en/africa/russia-keeps-sending-mercenaries-to-fight-for-haftar/1901177,
https://thearabweekly.com/reports-shed-light-mercenaries-terrorists-sent-turkey-libya.
23. See for example the judgment of the International Court of Justice in the case "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)", www.icj-cij.org/en/case/70/judgments.
24. https://rm.coe.int/handbook-costas-paraskeva-eng/168076087f.

20. In addition, Articles 3 and 4 of the Protocol No. 4 to the European Convention on Human Rights (ETS No. 46) prohibit the individual or collective expulsion of nationals or the collective expulsion of aliens, respectively.[25] Article 13 of the International Covenant on Civil and Political Rights prohibits the unlawful expulsion of an alien who is lawfully in the territory of a State Party.

3.2. Arbitrary displacement by terrorism and violence

21. Terrorists often receive material, logistical or financial support from abroad, including from foreign governments. In such circumstances, it is therefore difficult to separate terrorist action from foreign paramilitary or mercenary activities. Where States support terrorism in another country, those States must be held liable for illegal consequences including population displacements.

22. In 1977, the Council of Europe opened for signature its European Convention on the Suppression of Terrorism (ETS No. 90), which has been up-dated by its Additional Protocol (ETS No. 190) and subsequently complemented by the Convention on the Prevention of Terrorism (CETS No. 196) and its Additional Protocol (CETS No. 217). Besides other legal standards developed by the Council of Europe for combating terrorism,[26] the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) can be a strong tool, because it helps to cut financial support for terrorists.

23. Within its Common Foreign and Security Policy, the European Union established under its Common Position 2001/931/CFSP a list of persons, groups and entities involved in terrorist acts, with a view to the freezing of their financial assets and enhanced measures related to police and judicial co-operation.[27]

24. Generalised violence can occur also at a genuinely internal level inside a country. History has seen a great number of ruthless dictators who arbitrarily displaced parts of their own population, often on ethnic grounds or for political reasons.

25. Ethnic cleansing has become a sad term used in international humanitarian law and politics to describe the targeted change of the demographic composition of a territory on ethnic grounds.[28] Besides armed aggression, targeted violence has been used in blatant cases of ethnic cleansing, including sexual violence. The United Nations published a report showing that sexual violence has frequently been used as a means of warfare, despite international action against such atrocity.[29]

26. We will remember the fate of Nadia Murad who, like thousands of Yazidi women in Iraq, had been captured and subjected to extreme sexual violence and death threats by the terrorist organisation Daesh.[30] Through its Václav Havel Human Rights Prize of 2016, the Assembly honoured the brave struggle of Nadia Murad who had escaped to Germany. She subsequently received the Nobel Peace Prize in 2018.[31]

27. Similar atrocities have been and are committed by Boko Haram terrorists in the Lake Chad region,[32] where hundreds of thousands of people have been displaced.[33]

4. National courts

28. National courts have become more active in protecting victims of arbitrary displacement by prosecuting perpetrators of crimes against humanity or other crimes committed in armed conflicts or terrorism.

29. As far as own nationals are concerned, national courts have obvious jurisdiction. For example, national courts in Belgium,[34] the Netherlands[35] and Norway[36] prosecute own nationals involved in terrorist fighting abroad. In addition, national courts have prosecuted foreigners who were found on their territory, for example in Germany[37] and Spain.[38]

---

25. www.echr.coe.int/Documents/FS_Collective_expulsions_ENG.pdf.
26. www.coe.int/en/web/counter-terrorism/conventions.
27. www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/.
28. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129.
29. https://news.un.org/fr/story/2020/07/1073341.
30. www.dailysabah.com/mideast/2017/05/11/first-study-on-yazidi-genocide-by-daesh-reveals-human-tragedy.
31. www.nobelprize.org/prizes/peace/2018/murad/55705-nadia-murad-nobel-lecture-2/.
32. www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7363&lang=2&cat=134.
33. https://dtm.iom.int/chad; https://dtm.iom.int/cameroon; https://dtm.iom.int/niger; https://dtm.iom.int/nigeria.
34. www.lemonde.fr/international/article/2017/02/13/un-djihadiste-belge-condamne-pour-un-assassinat-commis-en-syrie_5079160_3210.html.
35. www.dutchnews.nl/news/2017/11/mother-who-took-her-children-to-syria-found-guilty-of-aiding-terrorism/.

30. Universal jurisdiction over war crimes or crimes against humanity is recognised in several countries in Europe, for instance in Finland, France, Germany, the Netherlands, Spain and Sweden. While the concept of universal jurisdiction will help avoid impunity for crimes leading to arbitrary displacement of persons, such trials face a number of practical difficulties. Witnesses have to be heard by national courts, but those witnesses might fear retribution against their families who are still within the reach of the perpetrators. The accused perpetrators might not appear or be represented before a national court.

31. The European Union and the African Union initiated work on universal jurisdiction in 2008, which led to a joint expert report in 2009.[39] In 2018, the European Parliament held an expert work shop on "Universal jurisdiction and international crimes: constraints and best practices", the proceedings of which are published in a report of the European Parliament.[40] It becomes apparent from such work, that universal jurisdiction can be a powerful legal tool for avoiding impunity.

32. The Assembly addressed this subject in its Resolution 1785 (2011) and Recommendation 1953 (2011) on the obligation of member and observer States of the Council of Europe to co-operate in the prosecution of war crimes. The Council of Europe can indeed be a suitable forum to advance universal jurisdiction among its member States.

33. In addition, national courts should become more involved in seizing the material gains made by persons responsible for the displacement of persons. Seizing illegal money and attaching possessions can be an effective manner to avoid that war lords and mercenaries exploit the displacement of persons.

5. Asylum proceedings of arbitrarily displaced persons

34. Arbitrary displacements of persons generally occur in widely known situations with high media attention. Therefore, victims of arbitrary displacement could typically be identified in simplified asylum procedures. Member States should be able to classify countries where arbitrary displacements occur. In 2009, the Council of Europe published guidelines on human rights protection in the context of accelerated asylum procedures.[41]

35. Victims of arbitrary displacement should receive specific attention and care which takes account of their particular situation. In addition, law enforcement authorities should take evidence and prosecute perpetrators of such displacements.

6. Co-operation

6.1. Political action and awareness

36. Besides legislative action for the protection of arbitrarily displaced persons, political action can be taken in various guises, whether through the work of Foreign Ministries, or awareness raising in and outside of parliaments.

37. Based on such facts, political action should be mobilised in national parliaments and by governments. International co-operation should be sought to halt and counter arbitrary displacements and their consequences.

6.2. Security co-operation

38. Some member States are actively present in areas where people are displaced by an armed conflict or terrorism. For example, European Union member States participate in joint peacekeeping missions, such as in co-operation with the United Nations.[42]

---

36. www.newsinenglish.no/2018/01/19/islamist-guilty-of-terror-recruiting/.
37. www.dw.com/en/syrian-victims-of-torture-testify-in-german-court/a-53699921.
38. www.theguardian.com/world/2017/mar/27/spanish-court-syria-state-terrorism-assad-regime-mrs-ah.
39. http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208672%202009%20REV%201.
40. www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU(2018)603878_EN.pdf.
41. https://rm.coe.int/16806aff8b.
42. https://peacekeeping.un.org/en/reinforcing-un-eu-strategic-partnership-peace-operations-and-crisis-management-priorities-2019-2021.

39. Besides their primary military function, personnel of peacekeeping missions can also be witnesses in trials of crimes against humanity or war crimes. Such additional potential functions require awareness-raising and training of personnel as well as close co-operation between the various national missions deployed in a given area.

6.3. Law enforcement co-operation

40. National law enforcement authorities and courts should co-operate closely in cases regarding displacement where there are possible crimes against humanity or war crimes involved. The International Criminal Court can only deal with a small fraction of cases. Therefore, much of the judicial work must be done at national level.

41. This includes also effective co-operation and mutual legal assistance in restricting foreign funding of militia, mercenaries or terrorists, in accordance with the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of the Council of Europe.

6.4. Financial assistance

42. The European Union is a major donor for humanitarian aid to displaced persons globally.[43] In addition, many member States provide technical and other assistance individually as well as financial aid. The report by our colleague Lord Dundee on humanitarian action for refugees and migrants in countries in North Africa and the Middle East will focus on this subject.

43. In accordance with article 79 of the Statute of the International Criminal Court, States parties established in 2004 a Trust Fund for Victims, which has programmes aimed at combating the harm resulting from genocide, crimes against humanity, war crimes and aggression. Council of Europe member States should support this fund.

44. In addition, member States can protect against arbitrary displacement if they require relevant action from countries receiving financial assistance, in particular co-operation in the fight against arbitrary displacement, national prosecutions and effective co-operation with the law enforcement authorities of donor countries.

6.5. Co-operation with non-governmental organisations

45. Governments and parliaments depend on relevant information from experts on the ground. Humanitarian assistance to displaced persons is often provided by NGOs in the field. Therefore, it is essential co-operate closely with humanitarian NGOs and civil society experts in areas where arbitrary displacement in being perpetrated.[44]

7. Conclusions

46. The Assembly can have a key role firstly in making the issue of arbitrary displacement better known and more widely accepted in international law, and in mobilising political action and ensuring that national law and practice is effective in preventing arbitrary displacement of persons, tackling the damages suffered by survivors, and enabling prosecution of the perpetrators.

47. National legislation should effectively implement Council of Europe standards and public international law. International law, norms and standards need to be brought together to create greater clarity on this issue.

48. The processing of asylum applications of arbitrarily displaced persons should take account the particular circumstances and severity of such displacements.

---

43. https://ec.europa.eu/echo/aggregator/categories/2_en.
44. www.researchgate.net/publication/287823503_The_compromised_brokers_NGOs_and_displaced_populations_in_east_Africa.