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Housing, land and property considerations as part of durable solutions for refugees and displaced persons

Motion for a recommendation
presented by Mrs JONKER and others

This motion has not been discussed in the Assembly and commits only the members who have signed it

1. One of the most serious problems faced by refugees and displaced persons in post conflict regions of Europe is the loss of housing, land and property during their displacement which seriously undermines their right to a durable solution, including safe and sustainable return to their former homes.
2. Moreover, the right to housing, land and property restitution or fair compensation is essential to the resolution of the conflict, post-conflict peace building and the establishment of the rule of law.
3. In view of the many unresolved restitution or compensation claims throughout the world, the United Nations have developed and endorsed a set of principles on housing and property restitution for refugees and displaced persons – the so called Pinheiro Principles – which are designed to provide practical guidance to states, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution.
4. The European Convention of Human Rights (ECHR) provides for the protection of property in Article 1 of its Protocol 1, which recognizes in substance a right of property enjoyed by all the individuals under the jurisdiction of the Council of Europe member states, including refugees and displaced. Other guarantees of the ECHR, including Article 6 (right to a fair trial), Article 8 (right to private and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) and Article 2 Protocol 2 (right to freedom of movement) as well as Article 31 of the revised Social Charter (right to housing) are also relevant in this context. The European Court of Human Rights has already dealt with a number of cases regarding property issues involving displaced persons.
5. Furthermore, the Recommendation Rec(2006)6 of the Committee of Ministers on Internally Displaced Persons – endorsing the UN Guiding Principles on Internal Displacement – clearly spells out that internally displaced persons are entitled to the enjoyment of their property and possessions in accordance with human rights law. 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.
6. In the light of the above, the Council of Europe is uniquely positioned to promote principles and guidelines that would help Council of Europe member states resolve post-conflict housing, land and property rights issues.

7. The Assembly, therefore, recommends to the Committee of Ministers to instruct the relevant body of the Council of Europe to:

- undertake a study which would examine the issues arising from the loss of property rights by refugees and IDPs (including the loss of tenancy and occupancy rights);
- identify best practices already applied in the Council of Europe member states;
- and develop guidelines on how to apply the Pinheiro Principles in the European context in the light of existing Council of Europe instruments.

8. Such a study would contribute to the implementation of the Rec(2006)6 of the Committee of Ministers on internally displaced persons.

*Signed*¹:

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