



RESOLUTION 1708 (2010)

Solving property issues of refugees and internally displaced persons

Parliamentary Assembly

Origin - Assembly debate on 28 January 2010 (8th Sitting) (see Doc. 12106, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Poulsen). Text adopted by the Assembly on 28 January 2010 (8th Sitting)..

- 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 property – that is, 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 on Human Rights (ETS No. 5), Article 1 of its Protocol No. 1 and Article 2 of its Protocol No. 4, Article 31 of the revised European Social Charter (ETS No. 163) and Article 16 of the Framework Convention for the Protection of National Minorities (ETS No. 157).*
- 6. The Assembly also draws attention to the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles) 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 property and the provision of money or goods having a reasonable relationship to their 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 Protocol No. 1 to that 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 damage related to the circumstances in which displacement and dispossession occurred and were perpetuated;

10.8.2. compensation for damage 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 had they not been forced to leave;

10.8.3. compensation for wrongful destruction or damage to immovable property or loss of significant moveable 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 their 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 for which individual perpetrators should be held to account;

10.9. ensure, where relevant, that effective remedies and redress for loss of access and rights to property are integrated into broader reparation programmes for recurrent 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 with 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 loss. 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.