

“Future directions for the protection of IDPs through domestic law and legally binding regional and sub-regional instruments”

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Chair of PACE Committee on Migration, Refugees and Population**

At the Conference "Ten Years of Guiding Principles on Internal Displacement – Achievements and Future Challenges"

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Dear Minister,
Distinguished guests and participants,

It is my honour to address this important Conference on behalf of the Parliamentary Assembly of the Council of Europe. The 47-member state Council of Europe and in particular our Parliamentary Assembly have in the course of the last 10 years put a considerable amount of effort into promoting the UN Guiding Principles. We have also developed our own instruments in order to provide a better protection for internally displaced persons. This conference is therefore a welcome opportunity to share with you some of our ideas and concerns for the directions we would like our member governments to take in finding durable solutions for the victims of forced displacement.

Naturally, I'll concentrate on Europe.

First, where do we stand today?

Looking at figures, eleven of the 47 Council of Europe member states¹ have a population of approximately 2.5 million internally displaced persons. With the exception of Turkey and Cyprus, most of these people fled their homes some 15 years ago as a result of conflict arising from rejected independence claims and territorial disputes.

Some of these conflicts have been resolved, following the intervention of the international community; others have been "suspended". But, alarmingly, despite all international efforts, only a few hundred thousand have found a durable solution to their displacement over the past decade, and most of these people have rebuilt their lives elsewhere than their areas of origin.

Contrary to all expectations, the number of IDPs in Europe has not drastically decreased. Only a fortnight ago, our

¹ These include: Armenia, Azerbaijan, Bosnia & Herzegovina, Croatia, Cyprus, Georgia, Macedonia, Moldova, Russia, Serbia and Turkey

Parliamentary Assembly adopted a resolution on the consequences of the recent conflict between Georgia and Russia. This recent war has created 128,000 "new" internally displaced, of whom around 35,000 are likely to be prevented from going back to their homes in the near future. There are also recurrent upsurges of violence in the South-East provinces of Turkey, causing new displacements rather than allowing the government proceed with its return policies. Northern Caucasus remains explosive...

So, somewhere our efforts and policies have failed. Despite international human rights and humanitarian norms becoming increasingly more elaborate. If to add that the future decades are predicted to bring increased numbers of environmentally induced displacement, then the outlook appears rather bleak.

Where has it gone wrong? And where could future efforts be focused?

Regarding the legal dimension, most European states concerned have established domestic normative frameworks for internal displacement within the last decade. However, remarkably, only three countries - Azerbaijan, Georgia and Turkey - have brought their IDP-related legislature explicitly in line with the provisions of the Guiding Principles. By paradox, these are the countries with least prospects of return of their IDP populations in the near future because of lack of political solutions. At the same time, the IDP situation has improved best in the Balkans, which like Macedonia or Bosnia & Herzegovina have been subjected to internationally negotiated and monitored agreements and are now advanced in EU integration.

At policy level, nearly all countries concerned have introduced national strategies. However, there still persists a wide gap between legislation and practice, especially at local level. In some cases, the authorities have severe economic problems and are unable to meet internally displaced persons' need for protection and assistance, even if the will is there. In other cases, governments clearly lack the necessary political will to protect and help displaced persons.

There is no question that the primary responsibility for protecting displaced persons lies with governments and local authorities. It is at this level that the difference will finally need to be made. Thus national authorities need to be urged to devote resources, expertise and political will to address the specific vulnerability of IDPs. But the international community also has a part to play in improving protection for displaced persons.

An important development is the concept of 'Responsibility to protect, or sometimes better known as R2P. It's intellectual co-father is the respected Norwegian Mr. Jan Egeland, winner of one of the 2008 Roosevelt four freedom Awards. This UN-concept relates to the responsibility of states to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It is of paramount importance to follow the debate on

this very issue. And to us, we should link this R2P idea with the fate and situation of the millions of IDPs. We need to relate the issue of IDPs with the collective responsibility to protect, internationally, regionally and above all nationally.

The Council of Europe and its Parliamentary Assembly Committee on Migration, Refugees and Population, which I represent, have long taken an interest in the issue of displaced persons. We have adopted various recommendations and resolutions: on the one hand, on general issues such as internal displacement in Europe or education of refugees and internally displaced persons, and on the other hand, on the humanitarian situation of the displaced populations in Turkey, Russian Federation and CIS countries, South-Eastern Europe and the South Caucasus. Currently we are in preparation of reports on "solving property issues of refugees and internally displaced persons" as well as on the humanitarian consequences of the recent Georgia-Russia conflict.

In 2003, our recommendation on internal displacement in Europe specifically instructed the Committee of Ministers of the Council of Europe to examine the situation of displaced populations in member countries concerned, paying particular attention to the compliance of national legislation in force with the Guiding Principles.

As a result of our direct "pressure", in 2006, the Council of Europe Committee of Ministers developed a set of 13 recommendations to member states on internally displaced persons, on the basis of the UN Guiding Principles and the existing standards of the Council of Europe.

This Committee of Ministers Recommendation does more than just restate the UN Guiding Principles. It underlines the binding obligations undertaken by the Council of Europe member states that go beyond the level of commitments reflected in the UN Guiding Principles.

Ladies and gentlemen

All internally displaced persons, by virtue of the fact they are human beings and, usually, civilian victims of armed conflict, are entitled to the full range of protection provided for under international humanitarian law and human rights law. European IDPs enjoy an additional protection mechanism: we have a binding instance empowered to enforce the countries to live up to their obligations.

All Council of Europe member states have acceded to the **European Convention on Human Rights and its additional protocols**, which constitutes the most highly effective legal tool for the protection of IDPs in Europe, and which supercede any national legislation. As IDPs remain under the protection of their own country, they are entitled to the same rights as any other person. In particular, in accordance with Article 1 of the ECHR, they must be able to exercise the rights and freedoms defined in the Convention.

Thus each individual IDP under the jurisprudence of a Council of Europe member state is protected by the ECHR and has the right to appeal to the European Court of Human Rights in Strasbourg. Since mid-1990s when Russia, the Balkan and South Caucasus states joined the Council of Europe, the Court of Human Rights has issued several judgments relating to internal displacement in the region. It has ruled against Turkey in a large number of cases, particularly in judgments regarding property destruction and disappearances. There is an increasing number of Chechen cases waiting for judgment. Last year, the Court ordered Russia to pay the owners of an estate in a Chechen village for its occupation and damage by Russian police units. There are also several cases pending concerning the denial of property restitution in northern Cyprus or Russia. The recent war in Georgia has already brought more than 1700 individual appeals to the court as well as an inter-state appeal launched by the Georgian authorities against Russia. At the same time, many of you know that the Strasbourg Court's efficiency is being hampered by one member state's refusal to ratify Protocol 14 of the European Convention of Human Rights that would allow diminishing the enormous backlog and proceed to speedier treatment of cases. This is a great concern to us for the future.

Besides the Convention, there are other Council of Europe instruments that are binding to the signatory states. These include the European Convention for the Protection of National Minorities, the Revised Social Charter, the European Convention on the Exercise of Children's Rights or the European Convention on Action against Trafficking in Human Beings. Both the Council of Europe and its Parliamentary Assembly have their mechanisms to monitor the countries' obligations under these instruments.

Of particular importance is the little known and much under-used protection mechanism provided by the European Social Charter, whereby international non-governmental organisations which have consultative status with the Council of Europe and are listed as having standing with the European Committee of Social Rights, can submit collective complaints irrespective of whether the organisations concerned come under the jurisdiction of any of the State Parties to the Social Charter. A first IDP-related complaint against Croatia on the grounds of discrimination against the ethnic Serb population displaced during the war was registered two months ago. Unfortunately of our focus countries, only Croatia and Cyprus have agreed to the collective complaint mechanism. However, once more South-Eastern and East European countries join this mechanism, it will provide good means to hold member states accountable of the observance of social rights of IDPs.

Dear Participants,

Ten years after the introduction of the UN Guiding Principles, the problem of IDPs is far from being eradicated on the European soil. There have been legislative improvements at national level and the Guiding Principles and the Council of Europe Committee of Ministers recommendation are to a certain extent followed, but we're only half way as yet. We need to

encourage states to step up the implementation of the legislation in place and to observe human rights to the letter. We need to empower their Ombudsmen to deal more actively with IDP issues.

At regional level, IDPs have the additional protection under the Convention of Human Rights. And yet, I believe that there is a further need for an elaboration of an additional legal instrument at European level to address the specific vulnerabilities and assistance needs of the IDPs. My committee will certainly avail itself to work towards this end.

But legal mechanisms alone have their limits. They cannot provide protection if the root causes of displacement are not tackled and eradicated. We ought not to be under any illusion: as long as inter-ethnic tensions continue to exist, until national minorities feel they can live in complete safety with full respect for their rights, until the countries which have suffered these terrible conflicts become stable, peaceful, prosperous democracies..., in short, until lasting political solutions are found, any long-term solution to the problems of displaced persons will be difficult to deliver.

It is therefore of paramount importance that our member states join and implement such instruments as the Framework Convention for the Protection of National Minorities, the European Convention of Regional and Minority Languages and the European Social Charter and promote in their societies values of pluralist democracy, human rights, tolerance and the rule of law.

Here we have to seriously question ourselves whether we have done enough as the international community. I remain convinced, for example, that the recent ethnic cleansing in the Russia-controlled zone in Georgia could have been prevented, had the international community been willing to wake up to breaking the customary status quo and actively engage itself in finding a solution for a peaceful, safe and timely return of the 240, 000 IDPs from Abkhazia.

Therefore, let me conclude by saying that we need to enhance the impact of the Guiding Principles to reach all countries' relevant legislation; we need binding instruments to hold states and their governments accountable for their breaches of human rights, but above all we need to end the ostrich politics and search for peaceful, diplomatic and win-win solutions that would help the displaced communities return to their homes or be restituted properly.

And finally I want to repeat myself by saying that we have to create a wider basis for the UN-R2P principle and should link it with the fate and situation of the millions of IDP's.

Thank you!