



IASC FRAMEWORK ON DURABLE SOLUTIONS FOR INTERNALLY DISPLACED PERSONS

THE BROOKINGS INSTITUTION –
UNIVERSITY OF BERN
PROJECT ON INTERNAL
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and peacebuilding efforts and such efforts reinforce durable solutions.

Processes to support a durable solution should be inclusive and involve, on the basis of full equality, all parts of the displaced population, including women, children (in accordance with their age and level of maturity), persons with special needs and persons who are potentially marginalized.

What criteria determine to what extent a durable solution has been achieved?

A number of criteria determine to what extent a durable solution has been achieved. IDPs who have achieved a durable solution will enjoy without discrimination:

- Long-term safety, security and freedom of movement;
- An adequate standard of living, including at a minimum access to adequate food, water, housing, health care and basic education;
- Access to employment and livelihoods;
- Access to effective mechanisms that restore their housing, land and property or provide them with compensation.

In a number of contexts, it will also be necessary for IDPs to benefit, without discrimination, from the following to achieve a durable solution:

- Access to and replacement of personal and other documentation;
- Voluntary reunification with family members separated during displacement;
- Participation in public affairs at all levels on an equal basis with the resident population;
- Effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations.

QUICK REFERENCE GUIDE

The Guiding Principles on Internal Displacement stipulate in Principle 6 that “displacement shall last no longer than required by the circumstances”. Drawing on existing international law, the right of internally displaced persons to a durable solution is articulated in Principles 28-30.

1 What is a durable solution for internally displaced persons?

The specific needs and human rights concerns of internally displaced persons (IDPs) do not automatically disappear when a conflict or natural disaster ends. Nor do they fade away when people initially find safety from ongoing conflict or disaster. Rather, the displaced—whether they return to their homes, settle elsewhere in the country or try to integrate locally—usually face continuing problems, requiring support until they achieve a durable solution to their displacement.

A durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. It can be achieved through:

- Sustainable reintegration at the place of origin (hereinafter referred to as “return”);
- Sustainable local integration in areas where internally displaced persons take refuge (local integration);
- Sustainable integration in another part of the country (settlement elsewhere in the country)

QUICK REFERENCE GUIDE

The search for any of these durable solutions for IDPs should be understood as:

- A gradual, often long-term process of reducing displacement-specific needs and ensuring the enjoyment of human rights without discrimination;
- A complex process that addresses human rights, humanitarian, development, reconstruction and peace-building challenges;
- A process requiring the coordinated and timely engagement of different actors

2 What key principles should guide the search for durable solutions?

- The primary responsibility to provide durable solutions for IDPs needs to be assumed by the national authorities. International humanitarian and development actors have complementary roles.
- The authorities concerned should grant and facilitate rapid and unimpeded access to humanitarian and development actors that assist IDPs in achieving a durable solution.
- The needs, rights and legitimate interests of IDPs should be the primary considerations guiding all policies and decisions on durable solutions.
- All relevant actors need to respect the right of IDPs to make an informed and voluntary choice on what durable solution to pursue and to participate in the planning and management of durable solutions.
- An IDP's choice of local integration or settlement elsewhere in the country, in the absence of the option to return, must not be regarded as a renunciation of his/her right to return should that choice later become feasible.
- Under no circumstances should IDPs be

encouraged or compelled to return or relocate to areas where their life, safety, liberty or health would be at risk.

- IDPs seeking a durable solution must not be subject to discrimination for reasons related to their displacement.
- Likewise, populations and communities that (re-)integrate IDPs and whose needs may be comparable, must not be neglected in comparison to the displaced.
- IDPs who have achieved a durable solution continue to be protected by international human rights, and where applicable, humanitarian law.

3 How should a rights-based process to support a durable solution be organized?

National and local authorities, humanitarian and development actors need to work together to effectively support IDPs and set up a rights-based process so that:

- IDPs are in a position to make an informed and voluntary decision on the durable solution they would like to pursue;
- They participate in the planning and management of the durable solution so that their needs and rights are considered in recovery and development strategies;
- They have safe, unimpeded and timely access to all actors supporting the achievement of durable solutions including non-governmental and international humanitarian or development actors;
- They have access to effective mechanisms that monitor the process and the conditions on the ground; and,
- In situations of displacement resulting from conflict or violence, they are at least indirectly involved in peace processes



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FOREWORD


Protection for internally displaced persons ultimately entails ensuring a durable solution to their plight. Yet, the difficulties it takes to achieve durable solutions cannot be underestimated. Durable solutions are not simple solutions, because they are usually linked to larger struggles for peace, security, territorial control, equal treatment and an equitable distribution of resources. Concerted efforts involving multiple actors—Governments, international and non-governmental organizations and, most importantly, IDPs themselves—are required to gradually make progress.

This publication is the fruit of a long process. In 2001 the former Emergency Relief Coordinator turned to the former Representative of the Secretary-General on Internally Displaced Persons to provide guidance on how to determine when people should no longer be considered to be IDPs. An extensive inquiry was undertaken at the request of the Representative by the Brookings Bern Project on Internal Displacement and the Institute for the Study of International Migration at Georgetown University. And a series of broad-based consultations were held with governments, donors, international agencies and NGOs, civil society and IDP organizations, which in 2007 resulted in a pilot version of the framework on durable solutions.

Feedback received from organizations and from the field provided the basis for a thorough revision of the text, which was widely consulted with the field, with the members of the Inter-Agency Standing Committee (IASC), the member organizations of the Global Cluster Working Groups on Early Recovery and Protection and with the UNDG-ECHA Working Group on Transition.

The Framework, which was endorsed by the IASC Working Group in December 2009, addresses durable solutions following conflict and natural disasters. It describes the key human rights-based principles that should guide the search for durable solutions and establishes the criteria that determine to what extent a durable solution has been achieved. The Framework also offers examples of indicators that, if properly adapted to the local context, can inform efforts to monitor progress towards durable solutions.

We encourage humanitarian and development actors as well as national and local authorities to make use of this Framework in their efforts to support durable solutions and help IDPs resume normal lives, in safety and dignity.



John Holmes

Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator



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INTRODUCTION

Displacement is a life-changing event. While the often traumatic experience of displacement cannot be undone, internally displaced persons (IDPs) need to be able to resume a normal life by achieving a durable solution. As articulated in principle 28 of the Guiding Principles on Internal Displacement, IDPs have a right to a durable solution and often need assistance in their efforts. Guiding Principles 28-30 set out the rights of IDPs to durable solutions, the responsibilities of national authorities, and the role of humanitarian and development actors to assist durable solutions.

Principle 28 recognizes that the competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Securing durable solutions for the internally displaced is also in the State's best interests. Leaving IDPs in continued marginalization without the prospect of a durable solution may become an obstacle to long-term peace stability, recovery and reconstruction in post-crisis countries.

Facilitating durable solutions requires that all stakeholders, including national and local authorities as well as humanitarian and development actors, work together, identify the right strategies and activities to assist IDPs in this process, and set criteria that will help to determine to what extent a durable solution has been achieved.

Relevant Legal Principles: The Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement¹ address all phases of displacement (protection from displacement, protection and assistance during displacement and durable solutions) and set out the basic principles of a human rights-based approach to addressing internal displacement.

The Guiding Principles are based upon, reflect and are consistent with international human rights and humanitarian law. They have been recognized by the 2005 World Summit, the Human Rights Council and the General Assembly as "an important framework for the protection of internally displaced persons"

See General Assembly resolution 64/162, para. 11 & Human Rights Council resolution 6/32, para. 5.

¹ The Guiding Principles on Internal Displacement can be downloaded at www.brookings.edu/projects/idp/gp_page.aspx.

The present Framework on Durable Solutions for Internally Displaced Persons aims to provide clarity on the concept of a durable solution and provides general guidance on how to achieve it. This version of the Framework builds on a pilot version released in 2007, which the Inter-Agency Standing Committee welcomed and suggested be field-tested. The Framework was revised and finalized in 2009, taking into account valuable feedback from the field on the pilot version and subsequent drafts.

The revision process was led by the Representative of the Secretary-General on human rights of internally displaced persons working in close cooperation with the Cluster Working Group on Early Recovery and the Protection Cluster Working Group, in particular the United Nations High Commissioner for Refugees, the United Nations Development Programme, the Office for the Coordination of Humanitarian Affairs, the International Organization for Migration, the United Nations Children's Fund (UNICEF), the United Nations Environment Programme and the Internal Displacement Monitoring Centre. Support was also provided by the Brookings-Bern Project on Internal Displacement.²

PURPOSE AND SCOPE OF THIS FRAMEWORK

The purpose of this Framework is:

- ❖ to foster a better understanding of the concept of durable solutions for the internally displaced;
- ❖ to provide general guidance on the process and conditions necessary for achieving a durable solution; and
- ❖ to assist in determining to what extent a durable solution has been achieved.

The Framework aims to provide guidance for achieving durable solutions following internal displacement in the context of armed conflict, situations of generalized violence, violations of human rights and natural or human-made disasters.³ Being of a generic character, the Framework needs to be applied in light of the specific situation and context. It is complementary to more detailed

² The pilot version of this Framework was also based on input from the Institute for the Study of International Migration at Georgetown University.

³ Situations may of course overlap, in particular where disaster-induced displacement occurs in the context of complex emergencies. It is also increasingly evident that climate change exacerbates natural disasters and related displacement, even if not all disaster-induced displacement is related to climate change.

While this framework may provide some general guidance with regard to development-induced displacement, existing special guidelines on resettlement should be consulted. See, in particular, World Bank, Operational Policy on Involuntary Resettlement (OP 4.12, December 2001); Special Rapporteur on adequate housing, Basic Principles and Guidelines on Development-based Evictions and Displacement, (A/HRC/4/18, 2007); Asian Development Bank, Policy on Involuntary Resettlement, 1996.

operational guidelines adopted by humanitarian and development actors or national and local authorities.

The Framework primarily aims to help international and non-governmental actors to better assist Governments dealing with humanitarian and development challenges resulting from internal displacement. The Framework may also be useful for Governments of countries affected by internal displacement, who have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs, as well as for other stakeholders namely donors and IDPs themselves.⁴

This Framework is designed to assist those in the field in determining whether a durable solution to internal displacement has been found, depending on the context of the local environment. To augment the text of the document, examples have been placed throughout the text in colored boxes to denote relevant legal principles (green), further explanations of concepts (red), good practices towards finding durable solutions (blue), and possible indicators of progress towards achieving a durable solution (purple). The indicators listed in the purple boxes are not meant to be viewed as the only indicators of a durable solution, but as examples that may indicate progress towards a durable solution, depending upon the specifics of the local context.

⁴ In some situations, the Framework may also be relevant for de facto authorities controlling territory, whose acts are classified under international law as acts of the State to the extent that such authorities are in fact exercising elements of governmental authority in the absence or default of the official authorities, and in circumstances which call for the exercise of such authority. See article 9, Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session and commended to the attention of Governments by the General Assembly in its resolution 56/83.



WHAT IS A DURABLE SOLUTION FOR INTERNALLY DISPLACED PERSONS?

A durable solution is achieved when IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement.

A durable solution can be achieved through:

- ❖ Sustainable reintegration at the place of origin (hereinafter referred to as “return”);
- ❖ Sustainable local integration in areas where internally displaced persons take refuge (local integration);
- ❖ Sustainable integration in another part of the country (settlement elsewhere in the country).

The resolution of the immediate cause of displacement, e.g. because a peace agreement has been concluded or because floodwaters have receded, may create opportunities for finding durable solutions. However, it is usually not sufficient in and by itself to create a durable solution. Mere physical movement, namely returning to one’s home or place of habitual residence, moving to another part of the country or choosing to integrate locally often does not amount to a durable solution either (in particular after conflict).

1

Durable Solutions and Registration of IDPs

In some places, IDPs are registered for the purpose of providing them with assistance (e.g. food aid). The fact that they no longer require such assistance and can be de-registered for that purpose does not necessarily mean they have found a durable solution. From the perspective of international law, internal displacement is a factual state and, unlike in refugee law, there is nothing like a legal “IDP Status.”

IDP registration can be useful if registration is tied to specific and concrete goals, namely the provision of specific assistance. IDP registration or de-registration does not add to or take away from the person’s rights under international law, including the right to a durable solution.

See: Brookings-Bern Project on Internal Displacement, Protecting Internally Displaced Persons: A Manual for Law and Policymakers (2008), pp. 13-15.⁵

⁵ Available at: www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

Whatever the cause of internal displacement, or the option chosen by IDPs for their durable solution, IDPs will commonly continue to have residual needs and human rights concerns linked to their displacement. For example, IDPs who have physically returned to their place of origin may find that they are unable to rebuild destroyed houses or reclaim their land, because the disaster that displaced them has made the land unsafe for habitation or the land is now occupied by others. Persons opting for local integration may not find a job or a dwelling to rent because of discrimination against IDPs by the resident population or authorities. Those who settle elsewhere in the country may require humanitarian, developmental and financial assistance until they are able to access livelihoods, education and health services in their new location.

Also, durable solutions must not be exclusively understood as a return to one's former home and a re-establishment of the status quo before displacement. An IDP can find a durable solution away from his or her former home if that the person's displacement-specific needs are met and the person can enjoy his or her rights without displacement-specific discrimination.

IDPs who have achieved a durable solution may still face needs or human rights concerns that are not displacement-specific, e.g. when IDPs return or relocate to an area that was neglected and impoverished even before their displacement or where the wider population faces the same challenges as IDPs to participate in elections or other public affairs.

1

It is therefore important to determine whether the remaining needs or human rights concerns are related to the fact of having been displaced. The following criteria can help determine whether an IDP need or human rights concern is displacement-specific:

- ❖ **The need or human rights concern is the consequence of events causing displacement or resulting from displacement.** Examples: An IDP lost her birth certificate during flight or evacuation and needs a replacement document. A returning IDP cannot make a living because those who violently displaced him still occupy his land. An adolescent IDP girl placed with a host family is at risk of sexual violence.
- ❖ **The need or human rights concern results from the displaced person's absence from his or her home.** For example, a returning IDP needs food aid until the next harvest season because she could not cultivate her land because of displacement. Or, an IDP who resettled to another area is not on the voter registry because he was not present when the census took place.
- ❖ **The need or human rights concern is related to conditions in areas of return, local integration or settlement elsewhere in the country that pose an obstacle to the IDP being able to choose a durable solution.** For example, IDPs who fled a natural disaster cannot safely return to a flood-prone area until the authorities put in place dams or other appropriate disaster risk reduction measures. Or, there is a need to demobilize and disarm combatants, punish perpetrators and promote community reconciliation to allow

a displaced minority to safely return. Or IDPs are offered to relocate to a remote area, where no public services or adequate livelihood opportunities exist.

- ❖ **The need or human rights concern is a consequence of a problem disproportionately affecting IDPs, in particular if the problem results from discrimination.** For example, IDPs trying to integrate locally cannot find jobs despite a high level of employment among the resident population. Other IDPs become targets of hate crimes when trying to settle in certain areas.

A GRADUAL AND COMPLEX PROCESS

Securing a truly durable solution is often a long-term process of gradually diminishing displacement-specific needs, while ensuring that IDPs enjoy their rights without discrimination related to their displacement. A solution may become durable only years, or even decades, after the physical movement to the place of origin or place of settlement has taken place, or the decision to locally integrate has been made.

It is a complex process that involves multiple challenges:

- ❖ **A human rights challenge:** Finding durable solutions is about restoring the human rights of IDPs who have been affected by their being displaced, including their rights to security, property, housing, education, health and livelihoods. This may entail the right to reparation, justice, truth and closure for past injustices through transitional justice or other appropriate measures.
- ❖ **A humanitarian challenge:** In the course of achieving durable solutions, IDPs often have continuing humanitarian needs. They may need temporary shelter until destroyed houses are rebuilt, food rations until the first crops are available, or emergency health services until the health system has been re-established.
- ❖ **A development challenge:** Achieving durable solutions entails addressing key development challenges that are also identified by the Millennium Development Goals. These include providing access to livelihoods, education and health care in areas of return, local integration or other settlement areas; helping to establish or re-establish local governance structures and the rule of law, and rebuilding houses and infrastructure.
- ❖ **A peace-building or reconstruction challenge:** Achieving durable solutions after conflict, generalized violence and, in some cases, large-scale natural or human-made disasters may not be possible without local or even national political, economic and social stabilization.

A PROCESS REQUIRING THE COORDINATED AND TIMELY ENGAGEMENT OF DIFFERENT ACTORS

The range of actors that can support durable solutions including national and local authorities as well as humanitarian, development, human rights and international political actors,⁶ need to work together from the beginning of the process.

Humanitarian and development actors both have a role to play in supporting durable solutions. Effective coordination between humanitarian and development actors and the authorities is essential. National coordination structures such as a commission that convenes relevant authorities and their international and non-governmental humanitarian and development partners can ensure the effective distribution of responsibilities, ensuring a coherent and comprehensive strategy.

Good Practices: Coordination Mechanisms in Uganda

The Office of the Prime Minister's Department of Disaster Management and Refugees is charged with coordinating, monitoring and supervising the implementation of the national IDP policy in Uganda. Two national level committees, the Inter-Ministerial Policy Committee and the Inter-Agency Technical Committee, which may include members of the humanitarian community, are also responsible for policy formulation and oversight. At the local level, District Disaster Management Committees are tasked to implement the national policy.

1

See Brookings-Bern Project on Internal Displacement, Workshop on the Implementation of Uganda's National Policy on Internally Displaced Persons: Background Paper (2006).⁷

In this context, it is important to stress that development actors should assume their responsibility for and engage in early recovery and recovery strategies and activities that assist the authorities in addressing the needs and concerns of IDPs and can be carried over into longer-term development programming. Experience shows that early recovery is crucial. Investment in early-recovery expedites the achievement of durable solutions, avoids protracted displacement, stimulates spontaneous recovery activities within the affected population, including host and receiving communities, and helps prevent renewed displacement. Among early recovery priorities relevant for durable solutions are the re-establishment of local governance structures, State protection institutions (police, local courts etc.) and the most basic services (schools, basic healthcare, water and sanitation) – or where these already exist, their adaption to the specific needs of IDPs. It is also important that early recovery efforts provide individual IDPs with immediate and tangible assistance to reestablish their livelihoods and such programs should be initiated already as part of the humanitarian response.

⁶ International bodies such as regional organizations, the United Nations Peacebuilding Commission or peacekeeping and political missions, may have an important role to play in some contexts. To date, the Peacebuilding Commission has developed, in close cooperation with the Governments concerned, peacebuilding strategies on several countries emerging from conflict, and some of them address durable solutions for IDPs.

⁷ Available at www.brookings.edu/~media/Files/events/2006/0704_uganda/20060704_Uganda_bgpaper.pdf.

Donors supporting durable solutions should be prepared to provide funds for early recovery programs, which often receive insufficient attention even though they fulfill a life-sustaining and peace-building function.

What is Early Recovery?

Early recovery is a multidimensional process of recovery that begins in a humanitarian setting. It is guided by development principles that seek to build on humanitarian programs and catalyze sustainable development opportunities. It aims to generate self-sustaining, nationally owned, resilient processes for post crisis recovery. It encompasses the restoration of basic services, livelihoods, shelter, governance, security and rule of law, environment and social dimensions, including the reintegration of displaced populations.

See Guidance Note on Early Recovery, Cluster Working Group on Early Recovery, April 2008.



WHAT KEY PRINCIPLES SHOULD GUIDE THE SEARCH FOR DURABLE SOLUTIONS?

The Guiding Principles, and the international legal framework (international human rights law and, where applicable, international humanitarian law) from which they are drawn, set out the rights and responsibilities that must be respected in the search for durable solutions. All strategies and activities aimed at supporting the search for durable solutions have to be based upon these rights and responsibilities:

- ❖ **The primary responsibility to provide durable solutions for IDPs and ensure their protection and assistance needs to be assumed by the national authorities.**⁸ Whilst the operationalization of this responsibility may vary depending on the context, in practical terms, the national authorities need to ensure at a minimum that the necessary legal and/or policy frameworks are in place to secure the rights of IDPs, to establish effective government structures to coordinate the national and local response, to facilitate provision of humanitarian and development assistance, and to ensure that adequate funding, through national budgets as well as international aid, is allocated to support the process.
- ❖ **National and local authorities should grant international humanitarian and development actors, in the exercise of their respective mandates, rapid and unimpeded access to assist IDPs in finding a durable solution.**⁹ Although the primary responsibility to protect and assist IDPs rests with the authorities, international humanitarian and development actors have a complementary role.
- ❖ **The rights, needs and legitimate interests of IDPs should be the primary considerations guiding all policies and decisions relating to internal displacement and durable solutions.** Durable solutions are often linked to important issues of territorial integrity, sovereignty and security. Nevertheless, considerations based on the needs and vulnerabilities of IDPs and informed by international human rights standards should guide laws and policies on internal displacement at all times.

2

⁸ See Guiding Principle 28(1). De facto authorities that established effective control over territory have similar responsibilities without this implying legal recognition.

⁹ See Guiding Principle 30.

- ❖ **All relevant actors need to respect IDPs' rights to make an informed and voluntary decision on what durable solution to pursue.**¹⁰ They also have the right to participate in the planning and management of durable solutions strategies and programs.¹¹ IDPs determine, in light of the specific circumstances of their situation, whether to pursue return, local integration or settlement elsewhere in the country. There is no hierarchy among different types of durable solutions. A peace agreement may contain a policy of preference for one durable solution, but even in these cases the principle of freedom of movement remains valid and individual choices must be respected and supported. National and local authorities and humanitarian and development actors should base their durable solution programming on the actual preferences of IDPs and work towards providing them with a meaningful and realistic choice of durable solutions.
- ❖ **A person opting for local integration or settlement elsewhere in the country in the absence of a prospect of return does not lose the right to return once return becomes feasible.** Exercising the right to choose a durable solution requires that different options (return, local integration, settlement elsewhere) are available. IDPs, who have no prospect of return in the foreseeable future (e.g. due to unresolved territorial disputes or because a disaster has rendered land uninhabitable) will often choose to integrate locally for the time being while retaining the prospect of an eventual return. Supporting IDPs in normalizing their living situation at the site of displacement (helping them to find employment, their own home etc.) does not exclude the right to return. Rather, such support contributes to avoiding protracted displacement, enhances self-sufficiency and places IDPs in a stronger position to voluntarily return to their former homes at a later point. The decision to integrate locally or settle elsewhere in the country on a more permanent basis, even though return is feasible, does not preclude the person's freedom to later choose to move elsewhere, including to his/her original home.

2

Relevant Legal Principles: The Guiding Principles on Internal Displacement

Principle 15(d) states that:

IDPs have the "right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk."

- ❖ **Under no circumstances should IDPs be encouraged or compelled to return or relocate to areas where their life, safety, liberty or health would be at risk.** Policymakers often grapple with the question as to when conditions are conducive to begin assisting returns, local integration or settlement elsewhere in the country. This issue must not be confused

¹⁰ This right emanates from the right to freedom of movement and residence guaranteed by article 13(1) of the Universal Declaration of Human Rights and is also implicit in Guiding Principle 28. See the sub-section Voluntary and Informed Choice of a Location for a Durable Solution.

¹¹ See Guiding Principle 28 and the sub-section Participation of Internally Displaced Persons in the Planning and Management of Durable Solutions.

with the question of when a durable solution has been achieved. Practically speaking, not all conditions for durable solutions need to be in place for humanitarian or development actors or national and local authorities to begin assisting IDP return or settlement. However, even when return, local integration or settlement elsewhere in the country are entirely voluntary, they should not be promoted if they endanger the life, safety, liberty or health of IDPs or if a minimum standard of agreeable living conditions bearing in mind local conditions cannot be ensured. It is crucial to have constant monitoring, including independent monitoring, of conditions in return/relocation areas. Conditions at the site of displacement that may push IDPs to accept unsafe return or relocation also need to be monitored.

Exceptional Circumstances Requiring Support for Premature Returns

Usually returns should only be encouraged if there is a prospect of a durable solution. Temporary returns without the prospect of a durable solution can be used as a protection strategy in exceptional circumstances, namely where return would pose a lesser risk than continued presence at the site of displacement.

Humanitarian actors also grapple with the dilemma of whether to assist IDPs who spontaneously return or relocate even though they have been informed that conditions are not safe. In some scenarios, it might be appropriate to assist IDPs if this decreases the risks they face, while strictly abstaining from promoting such unsafe return or relocation.

2

- ❖ **IDPs, who return, integrate locally or settle elsewhere in the country must not be subject to discrimination, in particular for reasons related to their displacement.**¹² Non-discrimination is a cross-cutting principle that should guide the process of supporting a durable solution and the assessment to what extent a durable solution has been achieved. IDPs should neither be discriminated against on the basis of their displacement nor on grounds of their race, religion, gender, language, religion, political or other opinion, national or social origin, disability, age, marital and family status, nationality, or other status.
- ❖ **Similarly, populations and communities that (re-)integrate IDPs and whose needs may be comparable, should not be neglected.** The arrival and integration of IDPs will likely place a considerable burden on existing community services and resources. Ensuring a community-based approach that addresses the needs of IDPs and those receiving them may mitigate risks of tensions between the two populations, and support a more effective integration or re-integration of IDPs.

¹² Guiding Principle 29(1) states that “Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.”

Good Practices: Housing Programs for IDPs and Other Vulnerable Populations in Somalia

In Bossasso (Somalia) UN-Habitat, working together with the local authorities, has set up programs to construct low-cost housing for long-term displaced communities. Small community-based businesses, who receive the necessary training, supply locally available building materials. A certain percentage of houses built will be allocated to vulnerable local residents, identified in cooperation with the local authorities. The local authorities grant tenure security to all residents, the right to pass the housing on to lawful dependents and the right to transfer, sell or mortgage the property after fifteen years of continuous possession.

See *UN Habitat, Bossasso: First Steps towards Strategic Urban Planning (2009)*.

- ❖ **IDPs continue to be protected by national and international human rights and, where applicable, international humanitarian law, even after they have achieved a durable solution.**

HOW SHOULD A RIGHTS-BASED PROCESS TO SUPPORT DURABLE SOLUTIONS BE ORGANIZED?

Humanitarian and development actors, working closely with national and local authorities, should adopt a rights-based approach to supporting durable solutions that places IDPs at the center of the process. IDPs should be the primary actors in the process of finding the durable solution of their choice (and they generally are).¹³ A rights-based approach should ensure that:

- ❖ IDPs are in a position to make a voluntary and informed choice on what durable solution they would like to pursue;
- ❖ IDPs participate in the planning and management of durable solutions, so that recovery and development strategies address their rights and needs;
- ❖ IDPs have access to humanitarian and development actors;
- ❖ IDPs have access to effective monitoring mechanisms; and
- ❖ In cases of displacement caused by conflict or violence, peace processes and peacebuilding involve IDPs and reinforce durable solutions.

3

These five objectives derive from the rights and responsibilities set out in Section III. This section will explain in general terms what it takes to achieve them, without providing the detailed guidance of an operational manual.

VOLUNTARY AND INFORMED CHOICE OF A LOCATION FOR A DURABLE SOLUTION

National and local authorities and humanitarian and development actors need to provide IDPs with all the information they require to choose a durable solution, while also ensuring that IDPs can exercise this choice without coercion.

Relevant Legal Principles: African Union Convention for the Protection and Assistance of Internally Displaced Persons

Article 11 (2) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa stipulates that:

“States Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.”

¹³ In a number of cases, IDPs will pursue durable solutions spontaneously outside any planned processes.

Relevant information has to reach all parts of the IDP population, including women, children (in accordance with their age and maturity), persons with special needs and persons who are potentially marginalized (e.g. minority groups among the IDP population). The information has to be provided in a language and format understood by the IDPs, including those who are not literate. Where IDPs are in urban areas or dispersed, special efforts will be needed to ensure that they receive notice of consultations and information. At a minimum, the information conveyed should include:

- ❖ Assessments of the general situation in the community of origin or potential areas of local integration or settlement elsewhere in the country, including the political situation, safety and security, freedom of movement, amnesties or legal guarantees, the human rights situation, legal and other mechanisms to protect the rights of women, children, youth, minorities, the elderly, persons with disabilities, and the type and duration of assistance available to them. The assessments should include a realistic account of the risks of renewed displacement in potential areas of return, local integration or settlement elsewhere in the country and objective information on the existing protection and (disaster) risk reduction mechanisms in place. Information should be provided on the mechanisms put in place to ensure smooth (re-)integration within the resident population.
- ❖ The procedures for returning, integrating locally or settling elsewhere in the country, including information on reintegration packages, administrative regulations, and documentation requirements. In the case of return or settlement elsewhere in the country, IDPs will require practical information such as what items they can take with them, available transport, and arrangements for those with special needs.
- ❖ The conditions in places of return, local integration or settlement elsewhere in the country, including degrees of destruction, access to housing, land, livelihoods, landmine risks, employment and other economic opportunities; availability of public services (public transport, healthcare, education, means of communication, etc.); conditions of buildings and infrastructure for schools, health clinics, roads, bridges and sanitation systems; and assistance from national, international and private actors.

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Providing information through community assemblies involving men, women and children of a certain age and maturity (or small but inclusive groups of representatives where large assemblies are not possible) may be one effective way to convey information directly to all IDPs and thereby avoid privileging certain individuals. Public announcements through accessible mass media (e.g. radio) are particularly useful, in particular where IDP populations are dispersed, difficult to access or pursue durable solutions spontaneously.

Good Practices: Shortwave Radio Programs to Reach IDPs in Remote Areas

The Fondation Hironnelle, in partnership with the United Nations peacekeeping missions in Sudan and the Democratic Republic of Congo, operates radio stations (“Radio Miraya” and “Radio Okapi”) providing a mix of quality news and music in national and local languages. The stations’ shortwave broadcasts are accessible also in remote areas and provide valuable information to IDPs and other conflict affected populations on political and humanitarian developments that have an effect on their prospect to return or find other durable solutions.

See www.radiookapi.net and www.mirayafm.org.

To the extent possible, arrangements should be made for IDP representatives to visit and assess conditions for return or settlement elsewhere in the country. These “go and see” visits should include all parts of the IDP population, including women, children of a certain age and level of maturity, persons with special needs and persons who are potentially marginalized. The visits should include opportunities for consultation with populations residing in these areas to identify issues that may create conflict and the means to resolve them. Development and humanitarian actors should support national and local authorities in developing the capacity to adequately inform IDPs.

IDPs have to be given the opportunity to voluntarily choose a durable solution. In principle, a voluntary choice is based on an individual decision. However, in many settings it is acceptable and appropriate in the local context to have decision-making by family or by community. In such cases, women, children (in accordance with their age and level of maturity) and persons belonging to groups who have special needs or are potentially marginalized need to be fully included. Moreover, there should be individual support options for adults who have valid reasons to choose a different type of durable solution than their family or community (e.g. people who are too traumatized or vulnerable to return or others who would like to finish their education). The best interests of the child should be the primary consideration guiding durable solutions for children. The perspectives of children need to be heard and their views given due weight in accordance with their age and maturity.

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Good Practices: Surveys on Durable Solutions Sought by IDPs in Turkey

Turkey experienced significant internal displacement as a result of conflict with insurgency groups in its southeastern provinces during the early 1990s. One factor complicating a response was the fact that it took place during a period of rapid urbanization and high internal migration, leading to uncertainty regarding the number of IDPs and the distinction between them and economic migrants. In order to address the problem, the Turkish government requested the Institute of Population Studies of Hacettepe University to assess the future plans of IDPs as well as their current circumstances. The findings of the survey, which were released in December 2006, provided detailed information gained through a mix of qualitative and quantitative techniques.

In 2010, the findings of a second survey on the needs and perceptions of IDPs, based on more than 4000 interviews in 13 provinces, were released, providing national and local authorities with a sound empirical basis for the development of action plans to assist and protect internally displaced persons.

See *Institute of Population Studies, “Survey on Migration and Displaced Population”*.¹⁴

¹⁴ Available at www.hips.hacettepe.edu/tr/english/tgyona_eng.htm.

No coercion must be used to induce or prevent return, local integration or settlement elsewhere in the country.¹⁵ Coercion includes not only physical force, restrictions on freedom of movement, harassment or intimidation, but also tacit forms of coercion such as providing erroneous and deliberately misleading information, making assistance conditional on specific choices, setting arbitrary time limits to end assistance or closing IDP camps, collective centers, transitional shelters and other facilities before the minimum conditions conducive for returns, local integration or settlement elsewhere in the country¹⁶ are in place.

IDPs also have to have a meaningful choice, which is often linked to the availability of assistance. In principle, recovery and reconstruction efforts should focus on the type of durable solutions that IDPs wish to seek. Selective assistance for a particular solution or incentives tied to a particular durable solution are only acceptable if they are based on objective and serious reasons. Investments in return areas may, for instance, be favored if return has been accepted as a priority option in a peace agreement. One can also imagine a situation in which a group of IDPs cannot safely return to a flood-prone area, yet their local integration would overwhelm the local absorption capacity, so that the authorities give priority to supporting their settlement in the country. Relevant factors that may call for favoring certain locations for durable solutions over others include:

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- ❖ The wishes of the majority of IDPs;
- ❖ Priorities identified in a peace agreement that take into account IDPs' rights, needs and legitimate interests;¹⁷
- ❖ The local absorption capacity for integrating IDPs in areas of return, local integration or settlement elsewhere in the country;
- ❖ Differences between areas with regard to security and available protection mechanisms, including disaster risks;
- ❖ Differences between areas with regard to the availability of natural resources, sustainable livelihood and employment opportunities, infrastructure or public services;
- ❖ Environmental sustainability of the durable solution envisaged;
- ❖ The overall cost of supporting different options, bearing in mind available resources and pledged donor funds.

¹⁵ Guiding Principle 28 emphasizes that IDPs should be able “to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.”

¹⁶ See above section What Key Principles Should Guide the Search for Durable Solutions?

¹⁷ See paragraphs below on how IDPs can be involved in peace processes.

Durable Solutions and Environmental Sustainability

Where larger numbers of IDPs seek a durable solution in a particular area this has an impact on the local environment and natural resource base. Durable solutions can be negatively affected by environmental degradation and resource depletion leading to a crisis in long-term viability or creating a potential cause of conflict between IDPs and host communities. Durable solutions planning needs to therefore focus on the sound management of natural resources (e.g. fuel wood) and sustainable livelihoods.

There may be exceptional situations where the choice of a durable solution can be restricted because conditions are too unsafe to permit returns or settlement in a specific location. Freedom of movement and residence is a fundamental human right, but it can be restricted in narrowly defined circumstances. IDP return or settlement elsewhere in the country, may be prohibited where IDPs would still face serious risks to their life or health despite the best efforts of the authorities to protect them. Recurrent disasters, for instance, may make an area uninhabitable or seriously unsafe, even if all necessary and reasonable disaster risk reduction measures were to be adopted. Or the demining of a certain terrain might prove to be so difficult and costly that it might not be reasonable when compared with other post-conflict needs.

In situations of displacement resulting from serious violations of human rights, in particular ethnic cleansing, the authorities are under a strict obligation to protect IDPs from further violations and returns may not permanently be prohibited.

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Measures prohibiting or effectively denying freedom of movement and residence may only be imposed on the basis of law. Restrictions on settlement choices may only be instituted as a last resort and only as long as absolutely necessary to protect those affected from serious risks to their life, physical integrity or health. They must be applied without discrimination. IDPs must be informed and consulted in advance of imposing the restriction, including where evacuations are to become permanent relocations. The alternative settlement area provided to IDPs should offer comparable living conditions, livelihood opportunities and public services. Decisions must be communicated to IDPs in a language and format they can understand.

PARTICIPATION OF INTERNALLY DISPLACED PERSONS IN THE PLANNING AND MANAGEMENT OF DURABLE SOLUTIONS

IDPs must be consulted and participate extensively in the planning and management of the processes supporting a durable solution.¹⁸ All parts of the IDP population, including women, children (according to their age and maturity), persons with special needs and persons who are potentially

¹⁸ See Guiding Principle 28 and section: What Key Principles Should Guide the Search for Durable Solutions? For guidance on the methodology see, for instance, *The UNHCR Tool for Participatory Assessments in Operations* (2006).

marginalized, must be fully included. Local communities that receive IDPs and other affected populations also need to be consulted.

Relevant Legal Principles: The Guiding Principles on Internal Displacement

Principle 28(2) states that:

“Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.”

Processes to involve IDPs should respect existing social structures, forms of organization and decision-making processes within IDP communities, provided and to the extent that this does not prevent women, children (in accordance with their age and maturity), persons with special needs and persons who are potentially marginalized from being involved on the basis of full equality. Community meetings, social and other service delivery, feeding centers, skills training and income generating programs, and other environments in which the displaced gather can be used to ensure the full participation of IDPs in the planning and management of durable solutions. The involvement of civil society in outreach efforts, round-table discussions involving different stakeholders or facilitated dialogues between Government officials and communities may help ensure broader participation of IDPs and other affected populations and can help reduce stigma and prejudice that IDPs may encounter. IDPs who have spontaneously sought a durable solution also need to be consulted about continuing assistance or protection needs.

Special efforts also need to be made to consult IDPs on general legislative and policy proposals affecting their rights, legitimate interests and prospects to achieve a durable solution, e.g. laws on reconciliation and transitional justice or policies on disaster risk reduction.

The assessed needs and rights of all parts of the IDP population, including women, children, persons with special needs and persons who are potentially marginalized, need to be addressed in recovery and development strategies. In some cases it may be appropriate to elaborate IDP-specific strategies for recovery or development and corresponding legal frameworks. National and local authorities have the responsibility to take the lead in recovery and development processes. They should establish their leading role by setting priorities in the allocation of the budget at their disposal.

Good Practices: Municipal Action Plans in Serbia

In Serbia, the Commissioner for Refugees has encouraged municipalities with larger numbers of internally displaced persons and refugees to elaborate, in consultation with the displaced and resident population, local action plans to support the integration of displaced people. Each municipality that adopts an action plan receives a grant from the Commissioner for Refugees, which matches the funds the municipality provides from its own budget to the action plan.

See Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, [Follow-up Visit to 2005 Mission to Serbia and Montenegro](#), UN Doc. A/HRC/13/21/Add.1, para. 9.

Needs assessments and consultations with IDPs as well as with communities that have to integrate or re-integrate the displaced are essential to ensure that the specific needs and rights of IDPs are taken into account and that the efforts undertaken reinforce existing coping strategies of the displaced population.

In some situations, it may be appropriate to develop a displacement-specific strategy. This may be a national strategy, a strategy limited to certain displacement-affected areas or even a regional strategy that is jointly developed by several countries. In other cases, it may be appropriate to integrate the specific needs and rights of IDPs into general recovery or development strategies targeting a given area. Considerations for determining whether an IDP-specific or an area-based approach is more appropriate include:

- ❖ What is the proportion of IDPs among the overall affected population?
- ❖ Are there gross disparities between the situation of IDPs and the resident population in areas of return, local integration or settlement elsewhere in the country?
- ❖ Are the primary recovery or development concerns linked to internal displacement?
- ❖ To what extent do IDPs have needs that are different from those of the general population?
- ❖ How would an IDP-specific approach, as opposed to an area based approach, impact on reconciliation and the relationship between IDPs and the resident population?
- ❖ Are IDPs still in protracted displacement, while the general population has moved from recovery to development?

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Good Practices: Support for Local Integration of IDPs in Turkey

In Turkey, the southeastern province of Van launched an action plan on internal displacement in 2006. The plan was based on extensive consultation, not only with IDPs but other stakeholders such as district Governorates and other local authorities, non-governmental organizations (NGOs), private sector representatives, business and professional chambers, employer organizations and labor unions. The plan envisions the participation of IDPs in its implementation, not only as a means of improving the provincial response but also as an end in itself in order to reduce a “culture of dependency” and transform IDPs from passive recipients of state welfare into active citizens.

The Van Action Plan proposes to support local integration of impoverished IDPs through the “expansion of existing initiatives”: IDPs have made extensive use of Governorate of Van initiatives realized with the aim of increasing household welfare, including a food bank, a “Green Network” providing various social assistance services, micro-credit programs and the province’s Child Research Rehabilitation and Training Center.

See Brookings-Bern Project on Internal Displacement, Protecting Internally Displaced Persons: A Manual for Law and Policymakers (2008), pp. 34 & 92.¹⁹

¹⁹ Available at www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

IDP-specific strategies should also take into account the needs of resident populations who share the burdens of displacement. These include host communities and host families that took in and supported displaced families as well as communities that receive IDPs who return, locally integrate or settle elsewhere in the country.²⁰ Distinctions between groups of IDPs (e.g. IDP groups from different waves of conflict or IDPs who fled natural disaster as against those who fled conflict) must not be made unless the groups have different needs.²¹ All efforts should be made to ensure that IDPs receive reintegration support that is comparable to that provided to returning refugees and demobilized combatants to the extent that these groups have comparable needs.

A coordination mechanism, ideally one that builds upon existing coordination structures, should be set up to coordinate the implementation of the strategy and ensure that early-recovery efforts are carried over into long-term recovery, development and reconstruction programming.

In the case of disasters, it is important that post-disaster recovery and reconstruction plans also take into account specific needs of IDPs, which may differ from those of other affected populations. IDPs should participate in the design phase of such plans in accordance with the principles outlined above.

ACCESS TO ACTORS SUPPORTING DURABLE SOLUTIONS

- 3** National authorities should grant and facilitate safe, unimpeded and timely access to non-governmental and international humanitarian and development actors assisting IDPs to return, locally integrate or settle elsewhere in the country. International and national humanitarian and development organizations have an important role to play in assisting durable solutions. Access must not be arbitrarily denied, particularly when the authorities are unable or unwilling to provide the required humanitarian and integration or re-integration assistance themselves.

Relevant Legal Principles: The Guiding Principles on Internal Displacement

Principle 30 states that:

“All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration”.

²⁰ See also the above section What Key Principles Should Guide the Search for Durable Solutions? The Representative of the Secretary-General on the human rights of internally displaced persons refers in this context to “displacement affected communities” to underscore that internal displacement has repercussions that extend beyond IDPs and calls for the provision of assistance to a broader spectrum of beneficiaries.

²¹ Processes to register IDPs in order to give them access to reintegration support or special legal processes (e.g. property restitution) must be inclusive and not arbitrarily exclude displaced populations that fall under the descriptive definition provided by principle 2 of the Guiding Principles.

ACCESS TO EFFECTIVE MONITORING

National and local authorities, humanitarian and development actors should set up effective mechanisms to monitor the process of supporting durable solutions and determining what remains to be done to achieve a durable solution. Monitoring helps to ensure that conditions on the ground comply with this Framework and the international human rights standards upon which it is based, in particular with regard to safety, security and voluntary returns. Assessments should also include a gender analysis and take into account persons who have special needs or might be marginalized within the displaced population. Credible complaint mechanisms for IDPs and other affected populations can ensure that concerns can be brought to the immediate attention of the responsible national or local authorities.

In order to provide an objective and transparent basis for monitoring, the criteria set out in this Framework²² should be translated into indicators that are sensitive to the local context. The indicators should be developed in close cooperation between the authorities, humanitarian and development actors and after consultation with IDP communities. While it will often not be feasible to obtain reliable and disaggregated data in post-crisis situations, indicators can be based on data derived from surveys using small but representative population samples or assessments based on a qualitative methodology (focus group interviews etc.) and carried out by independent experts. Provided that disaggregated data is obtainable, indicators should be devised so as to show differences within the IDP population based on sex, age, ethnicity and other relevant categories.

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Good Practices: Monitoring Relocation in the Philippines

During the typhoon emergency in the Philippines in the fall of 2009, the Government emphasized relocation to achieve durable solutions for hundreds of families who could not return to their areas of origin. The Protection Cluster conducted a protection assessment exercise which included specific indicators for the relocation process drawn from the Framework for Durable Solutions, such as: whether or not IDPs' opinions were taken into account in planning and conducting the relocation process, and the level of access to basic services such as housing, water, health care, sanitation and basic education.

The assessment identified a number of difficulties, such as discrimination of relocated children at school because of being labeled as "squatters". The Protection Cluster and the Government are successfully using the findings of the assessment to find adequate policy solutions to these problems.

International monitoring bodies, national human rights institutions, non-governmental organizations and other independent observers should enjoy free and unimpeded access to areas of IDP return or settlement and to individual IDPs.²³ Scrutiny by independent actors complements the efforts of national and local authorities and humanitarian and development actors in monitoring their own work. Independent mechanisms should ensure the transparency of their work through public

²² See the section: What Criteria Determine to What Extent a Durable Solution has been Achieved?

²³ See Guiding Principle 30.

reporting. The scope of the monitoring work should be determined in memoranda of understanding signed by national and local authorities and the monitoring institution.

In situations of displacement resulting from conflict and generalized violence, it also needs to be ensured that peace processes and peacebuilding involve IDPs and reinforce durable solutions.

PEACE PROCESSES AND PEACEBUILDING MUST INVOLVE INTERNALLY DISPLACED PERSONS AND REINFORCE DURABLE SOLUTIONS

Where relevant, IDPs should participate in peace processes. Their rights, needs and legitimate interests need to be addressed in peace agreements and peace-building strategies emerging from these processes, which often predetermine whether and how durable solutions will be ensured. At the same time, durable solutions for IDPs may be a key element in building a lasting peace. Humanitarian and development actors have to analyze the linkages between conflict and displacement to understand how peace processes can strengthen the potential for durable solutions (and vice versa).

Good Practices: Durable Solutions as a Key Objective in Plans to Stabilize the Eastern Democratic Republic of the Congo

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The Government of the Democratic of the Congo and the United Nations launched coordinated plans to support security and stability in the conflict-affected eastern part of the country. The return and reintegration of IDPs and refugees, embedded in more comprehensive recovery efforts, was identified as one key component of these stabilization plans, along with the expansion of state authority, the improvement of the security situation, political dialogue and the fight against gender-based violence. In November 2009, a large Recovery and Stabilization Fund was set up to finance projects aimed to support these components.

See United Nations Stabilization and Security Support Strategy (UNSSSS, 2008). Government of the Democratic Republic of the Congo, Programme of Stabilization and Reconstruction of War-Affected Areas (STAREC, 2009).

All parts of the IDP population, including women, children (in accordance with their age and maturity), persons with special needs and persons who are potentially marginalized, should be involved in peace processes. IDPs should also be actively involved in the formulation and implementation of peacebuilding strategies.²⁴ If direct participation of IDPs in the peace negotiations is not possible or desirable, their indirect participation should be ensured. Humanitarian and development actors have an important role to play in advocating for the participation of IDPs and assisting their effective participation, including through training, community development and other appropriate means.

²⁴ See Integrating Internal Displacement in Peace Processes and Agreements (Brookings-Bern Project on Internal Displacement/United States Institute of Peace, 2010); see also Security Council resolution 1325 (2000) on women, peace and security.

Ensuring the Participation of Women in Consultations with IDP Communities

The identification, early in the peace process, of strategic entry points for women's participation can significantly heighten their access to the bargaining table and their impact on any agreement. Recommended actions include:

- ▶ Create a directory of women's civil society organizations through field-based consultations with women's groups and leaders, including internally displaced populations.
- ▶ Advocate with the negotiating parties and with IDP representatives for a minimum of 30 percent women's representation in their delegations.
- ▶ Work to facilitate meetings between women's groups, including displaced women (as part of broader civil society constituencies) and negotiating parties at various stages of the peace process.
- ▶ Support the establishment of a women's advisory committee to the negotiations process to include displaced women to track and advise the formal peace process.
- ▶ Ensure that consultative processes with displaced women feed directly into negotiations.

See: United Nations Development Fund for Women (UNIFEM), Securing the Peace: Guiding the International Community towards Women's Effective Participation throughout Peace Processes (New York: UNIFEM, October 2005).

Durable solutions should be a specific goal of peace agreements. Where a close relationship exists between conflict and displacement, the peace agreement should effectively address the specific needs of IDPs, including:

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- ❖ Safety and security;
- ❖ Housing, land and property issues;
- ❖ Reconciliation and peace-building;
- ❖ Post-conflict reconstruction; and
- ❖ Remedies for violations suffered.

Peace agreements should:

- ❖ use clear and consistent definitions pertaining to internal displacement;
- ❖ incorporate displacement-specific rights and protections that reflect the needs and legitimate interests of IDPs;
- ❖ specify the roles and obligations of relevant actors with regard to IDPs; and
- ❖ address the implementation process, including the participation of IDPs.

Good Practices: Engagement of Displaced Populations in the Guatemalan Peace Process

In the Guatemalan peace process, so-called “Permanent Commissions” (comisiones permanentes) composed of representatives of refugee communities were involved in direct negotiations between refugees and the government of Guatemala. This helped to ensure that the Guatemalan peace accords, which ended 36 years of armed conflict, took into account concerns of returning refugees and, to some extent, also IDPs seeking a durable solution.

See Acuerdo Suscrito entre los Representantes de los Refugiados Guatemaltecos en México y el Gobierno de Guatemala (8 de Octubre de 1992) and Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (6 de Junio de 1994).²⁵

Beyond or in the absence of a formal peace process, community reconciliation and confidence-building mechanisms are often necessary, in particular where IDPs and the resident population or different groups within the IDP population are seen as having been associated with opposing sides in the conflict, but now live side by side. In addition, conflict resolution mechanisms may be needed to resolve disputes that occur when IDPs seek to integrate or re-integrate into communities where there is competition over scarce resources, such as land or livelihood opportunities.²⁶

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²⁵ Available at (respectively): www.acnur.org/biblioteca/pdf/2417.pdf and http://www.brookings.edu/~media/Files/Projects/IDP/Laws%20and%20Policies/Guatemala/Guatemala_ResettlementAgreement.pdf.

²⁶ Competition over resources is also typical for post-disaster situations and there is often a need for conflict resolution mechanisms in such situations as well.

WHAT CRITERIA DETERMINE TO WHAT EXTENT A DURABLE SOLUTION HAS BEEN ACHIEVED?

The following eight criteria may be used to determine to what extent a durable solution has been achieved:

- ❖ safety and security;
- ❖ adequate standard of living;
- ❖ access to livelihoods;
- ❖ restoration of housing, land and property;
- ❖ access to documentation;
- ❖ family reunification;
- ❖ participation in public affairs; and
- ❖ access to effective remedies and justice.

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It will be necessary to apply the criteria bearing in mind the specific situation and context. Moreover, these criteria are interlinked and overlap (e.g. the restoration of land has a positive effect on livelihoods and an adequate standard of living). As noted above, under-pinning all of the eight criteria is the principle of non-discrimination—that IDPs are not discriminated against, neither on the basis of their displacement nor on other grounds.²⁷

Given the complexities and challenges of many displacement situations, these criteria often mark an ideal that may be difficult to achieve in the medium term. The criteria should therefore be seen as benchmarks for measuring progress made towards achieving durable solutions.

LONG-TERM SAFETY AND SECURITY

IDPs who have achieved a durable solution enjoy physical safety and security on the basis of effective protection by national and local authorities. This includes protection from those threats which caused the initial displacement or may cause renewed displacement. The protection of IDPs who have achieved a durable solution must not be less effective than the protection provided to populations or areas of the country not affected by displacement.

²⁷ See the section: What Key Principles Should Guide the Search for Durable Solutions?



While absolute safety and security may often not be achievable, IDPs must not be the subject of attacks, harassment, intimidation, persecution or any other form of punitive action upon return to their home communities or settlement elsewhere in the country. In addition, they must be protected from landmines, unexploded ordinances, small arms or other violence. Displacement and its social consequences also render women, boys and girls more vulnerable to exploitation, intra-family violence or sexual violence, which must be addressed.

Good Practices: Securing Early Returns in Côte d'Ivoire

In certain situations, arrangements can be made for the safe return of displaced persons even in the absence of a comprehensive peace agreement. In March 2005, the Guéré inhabitants of the village of Fengolo in the Ivory Coast fled inter-community clashes and took refuge in the nearby town of Duékoué. Under the Common Humanitarian Action Plan, the humanitarian organizations of the national team of the Inter-Agency Standing Committee, led by the Humanitarian Coordinator, encouraged the deployment of neutral forces in the village to stabilize the situation. They then proceeded to repair the houses and set up an emergency agricultural program and a social cohesion program, and provided food assistance and medical support for the population, which enabled about 975 people to return even before the conclusion of the March 2007 peace agreement.

See: Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Côte d'Ivoire, U.N. Doc. A/HRC/4/38/Add.2, para. 54.²⁸

IDPs who have achieved a durable solution also enjoy freedom of movement. They can freely leave their areas of settlement and return and come back. While certain movement restrictions to protect essential interests or the freedoms of others may be imposed on a temporary basis (e.g. curfews in tense security considerations), they must not be discriminatory or arbitrary. For example, travel restrictions that apply only to IDPs or the specific areas in which they live but not to the resident population would generally pose a serious obstacle to IDPs achieving durable solutions. 4

In the case of return to or settlement in disaster-prone areas, disaster risk reduction measures (early warning, preparedness, mitigation and adaptation) have been implemented to minimize, to the extent possible and reasonable, risks stemming from natural or human-made hazards. In many cases, it is not enough to rebuild the status quo before displacement since it offered insufficient protection. Instead, the national and local authorities and donors should be ready to make substantial investments to “build back better.” National and local authorities will need to take measures to reduce the vulnerability of IDPs and the general population from recurrent natural hazards or secondary hazards.

²⁸ Available at: www.brookings.edu/~media/Files/Projects/IDP/UN%20Reports/Mission%20Reports/A%20HRC%204%2038%20ADD2engl.pdf.

Good Practices: Disaster Risk Reduction and Early Warning Measures in Algeria and Bangladesh

Development of areas susceptible to flooding can be undertaken in accordance with zoning regulations designed to minimize residential development and to promote other uses, such as agriculture, which are less likely to endanger human life and homes. For example, Algeria's disaster management law provides for flood-risk maps setting out zones where no building at all is allowed and other lower-risk areas where building may be allowed if accompanied by special precautions against the effects of floods.

Bangladesh has instituted a cyclone warning system that mandates that the government begin providing initial warnings on the basis of meteorological predictions 24 hours in advance of a potential cyclone, announce a "danger stage" 18 hours in advance, and announce a "great danger stage" 10 hours in advance. The government also has entered into partnership with the Bangladesh Red Crescent Society and the International Federation of Red Cross and Red Crescent Societies to operate a "people-centered" cyclone preparedness program that employs radio broadcasts and 33,000 village-based volunteers using megaphones and hand-operated sirens to warn communities of impending storms.

See Brookings-Bern Project on Internal Displacement, Protecting Internally Displaced Persons: A Manual for Law and Policymakers (2008), pp. 54-55.²⁹

Efforts to promote the sustainable use of livelihoods and safeguard the environment (e.g. reforestation programs) can help prevent natural hazards from becoming human-made disasters.

- 4** Permanent relocation of IDPs to another area offering comparable living conditions may be required as a last resort, where minimum safety cannot be achieved, even if all necessary and reasonable disaster risk reduction measures are taken.³⁰

IDPs who have achieved a durable solution have full and non-discriminatory access to national and local protection mechanisms, including police, courts, national human rights institutions and national disaster management services. The primary responsibility for ensuring that IDPs do not face dangers to their physical safety and security rests with national and local authorities. They have to provide protection to the displaced, especially by addressing their particular protection needs. Although law enforcement and judicial systems in rural areas, or in countries in transition from conflict or severely affected by disasters may not yet be sufficiently developed or re-established, it is important that IDPs have the same level of access as the resident population in the area to national and local protection mechanisms. The establishment or reconstruction of effective courts and police in areas of return, settlement elsewhere in the country or local integration should be considered a priority.

Countries that experienced conflict or major natural disasters may temporarily need assistance from the international community in establishing safety and security. A gradual hand-over process, at the end of which national and local authorities assume full responsibility for protection, promotes durable protection. Protection that depends on the continued presence of international actors, namely peacekeeping forces, without a hand over strategy is generally not durable.

²⁹ Available at: www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

³⁰ See also the sub-section: Voluntary and Informed Choice of a Location for a Durable Solution.

Possible Indicators of Progress towards Achieving a Durable Solution: Safety and Security³¹

- Level of clearance of mines and unexploded ordnance on main roads, living areas and cultivatable land in sites of IDP return or settlement elsewhere in the country
- Degree of reduction of checkpoints or other special security measures
- That IDPs face no discriminatory or arbitrary restrictions of their freedom of movement
- Progress made in disarming, demobilizing and reintegrating former combatants
- Number of police stations and courts as well as trained police and judicial personnel deployed in IDP return or settlement areas compared to the national average or the local situation before displacement. The degree of access by IDPs to police and judiciary compared to the resident population. Frequency of police patrolling in IDP areas
- Number of reported acts of violence or intimidation targeting IDPs on the basis of their IDP or minority status
- Prevalence of violent crimes suffered by IDPs compared to crimes suffered by the resident population, the situation before displacement or the national average (as appropriate)
- Degree of continuation of spontaneous and voluntary returns to specific areas
- Reduction of the number of persons facing risks emanating from natural hazards
- Measures taken to reduce future risks
- Safety and security perceptions of IDPs seeking a durable solution³²

4

ENJOYMENT OF AN ADEQUATE STANDARD OF LIVING WITHOUT DISCRIMINATION

IDPs who have achieved a durable solution enjoy, without discrimination, an adequate standard of living, including at a minimum shelter, health care, food, water and other means of survival. An adequate standard of living requires that at a basic minimum IDPs have adequate access, on a sustainable basis, to:

- ❖ Essential food and potable water;
- ❖ Basic shelter and housing;
- ❖ Essential medical services, including post-sexual assault care and other reproductive healthcare;

³¹ These indicators are examples. Depending on the actual situation, some of them may be relevant while others are not. Users of this Framework also have to decide to what extent the quantitative data that some of the indicators require can be reasonably obtained. See in this regard also the above sub-section: Access to Effective Monitoring.

³² How IDP communities themselves perceive safety and security can help determine whether protection is effective, bearing in mind, however, that long-term exposure to violence and insecurity may have shifted perceptions of acceptable threat levels.

- ❖ Sanitation; and
- ❖ At least primary school education.

Minimum Core Requirements According to Economic and Social Rights

When it comes to economic and social rights, States have an obligation to ensure minimum essential living standards and have to prioritize the expenditure of their resources accordingly. In respect of the International Covenant on Economic, Social and Cultural Rights, the Committee overseeing its implementation has taken the view that “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.”

*See Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States Parties obligations (1990), para. 10.*³³

In this context, adequacy means that these minimum goods and services are:

- 4
- ❖ **Available** to the affected population in sufficient quantity and quality bearing in mind the local context. For instance, housing units may have to be reconstructed or newly constructed for IDPs seeking a durable solution, including where they locally integrate, settle elsewhere in the country or return, but did not have property prior to displacement.
 - ❖ **Accessible**, i.e. the goods and services (a) are granted without discrimination to all in need; (b) are within safe and easy reach and can be physically and financially accessed by everyone, including vulnerable and marginalized groups, and (c) are known to the beneficiaries. For instance, if essential food and potable water cannot be provided due to environmental degradation or soil contamination after a disaster, an adequate standard of living cannot be ensured.
 - ❖ **Acceptable**, i.e. the goods and services are culturally appropriate and sensitive to gender and age. Indigenous or nomadic people, for instance, often have special cultural traditions when it comes to food or housing.
 - ❖ **Adaptable**, i.e. goods and services are provided in ways flexible enough to adapt to the changing needs of IDPs.³⁴

National and local authorities have the principal responsibility to ensure that these core needs are met and must make the requisite budget allocations. They should also call upon humanitarian and development actors to assist in addressing these concerns where State resources are insufficient.

³³ Available at: www.unhcr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664?Opendocument.

³⁴ See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991): The right to adequate housing (art. 11(1) of the Covenant), para. 8; general comment No. 12 (1999): the right to adequate food (art. 11), paras. 8-13; general comment No. 15 (2002): the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), para. 12.

IDPs who have achieved durable solutions can access public services, including education, health-care, social housing and other welfare measures, on the same basis as members of the resident population with comparable needs.

Good Practices: Providing Schooling for Returnee Children in Bosnia and Herzegovina

In Bosnia and Herzegovina, in order to encourage returns of displaced minorities, the authorities acknowledged that it may be necessary to open a school in a return area despite there not being the minimum number of students as prescribed by the law. The Ministry of Education also agreed to gradually hire teachers from minority constituent peoples to teach all subjects in order to encourage voluntary durable solutions, including minority returns. Furthermore, agreements provide for the mutual recognition of school certificates and diploma.

See Brookings-Bern Project on Internal Displacement, Protecting Internally Displaced Persons: A Manual for Law and Policymakers (2008), pp. 232, 237 & 239.³⁵

Where there are large disparities between displacement-affected areas and other parts of the country (which could be a source of renewed tension and displacement) tangible commitments on the part of the authorities and partners should be made to progressively realize the economic, social and cultural rights of both IDPs and other affected populations. In many cases, it is necessary to “build back better” and address root causes of displacement to ensure that solutions are durable.

4

Possible Indicators of Progress towards Achieving a Durable Solution: Adequate Standard of Living

- Assistance programs in place to provide IDPs with essential food, potable water, basic shelter and essential health care
- Estimated number of IDPs who are malnourished or homeless
- Percentage of IDPs who do not have access to essential food, potable water, basic shelter or essential health care compared to the resident population, the situation before displacement or the national average, as appropriate
- Percentage of IDP children with access to at least primary education in adequate conditions and quality, compared to the resident population, the situation before displacement or the national average, as appropriate
- No legal or administrative obstacles preventing IDP children from going to school
- Rates of IDP children whose education was interrupted by displacement and who resume schooling
- Percentage of IDPs living in overcrowded housing/shelter, compared to the resident population, the situation before displacement or the national average, as appropriate
- IDPs do not face specific obstacles to access public services, assistance or remittances from abroad compared to local residents with comparable needs

³⁵ Available at: www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

ACCESS TO LIVELIHOODS AND EMPLOYMENT

IDPs who found a durable solution also have access to employment and livelihoods. Employment and livelihoods available to IDPs must allow them to fulfill at least their core socio-economic needs,³⁶ in particular where these are not guaranteed by public welfare programs.

Beyond this, access to livelihoods is a relative measure. Reintegration often occurs in circumstances of fragile economies and high unemployment affecting the entire population, including IDPs. It will not always be possible for all IDPs to gain employment or regain their previous livelihoods. However, IDPs must not face obstacles that prevent them from accessing employment and livelihoods on the same basis as residents (e.g. where IDPs are relocated to a remote area without affordable transportation to local labor markets).

There might be a need for positive preferential measures to help IDPs acquire new professional knowledge, adapt to new livelihoods and acquire new skills (for instance, where IDPs from a rural area locally integrate into an urban environment or where IDPs were excluded from the labor market for a long time). There is a particular obligation to provide alternative livelihood opportunities for IDPs who are being forcibly relocated by the authorities from high-risk areas.³⁷

4

Good Practices: Village House Program in Serbia

In Serbia, the Humanitarian Organization Divac is cooperating with the authorities and UNHCR in a project that encourages internally displaced families to find a village house that is for sale, in good condition and does not cost more than a certain fixed amount. The project finances and organizes the purchase of the home identified by the family. In addition, the beneficiary family receives equipment, start-up supplies and training to start a small business. Beneficiaries can choose among various livelihood options, e.g. a green house on their property to grow crops that can be sold in the local market.

*See Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Follow-up Visit to 2005 Mission to Serbia and Montenegro, U.N. Doc. A/HRC/13/21/Add.1, para. 10.*³⁸

Opportunities that IDPs had during displacement should be preserved to the extent possible. When displacement lasts over long periods of time or involves a rural to urban transition, it often alters the social dynamic within IDP communities. Women and young adults may have access to education or employment opportunities that were not available in their area of origin.

³⁶ See sub-section: Enjoyment of an Adequate Standard of Living without Discrimination.

³⁷ See sub-section: Voluntary and Informed Choice of a Location for a Durable Solution.

³⁸ Available at: www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

Good Practices: Access to Modern Technology for IDPs in Georgia

With the support of the private sector, the Ministry of Education, UNHCR and World Vision Georgia launched a project to establish Community Technology Access (CTA) centers to nine IDP settlements in Georgia. The CTA centers allow IDPs and host communities to use computer technology, including internet access, for education as well as business and livelihood purposes in order to enhance their self-reliance. Services provided will include computer literacy courses, entrepreneurship training and business centers, employment services, and career counseling.

Possible Indicators of Progress towards Achieving a Durable Solution: Employment and Livelihoods

- There are no legal or administrative obstacles to IDP employment or economic activity that the resident population does not face
- Unemployment among IDPs compared to the resident population, the situation before displacement or the national average, as appropriate
- Types and conditions of employment of the IDP population compared to the non-displaced population, including rates of informal-market employment and access to labor law standards, such as the minimum wage, as appropriate
- Poverty levels among IDPs compared to the resident population, the situation before displacement or the national average, as appropriate

4

EFFECTIVE AND ACCESSIBLE MECHANISMS TO RESTORE HOUSING, LAND AND PROPERTY

IDPs who have achieved a durable solution have access to effective mechanisms for timely restitution of their housing, land and property, regardless of whether they return or opt to integrate locally or settle elsewhere in the country.³⁹ These standards apply not only to all residential, agricultural and commercial property, but also to lease and tenancy agreements. The right to restitution or compensation extends to all displaced persons—including men, women and children—who have lost ownership, tenancy rights or other access entitlements to their housing, land and property, whether they have formal or informal titles or rights on the basis of mere uncontested use or occupation (e.g. people arbitrarily displaced from informal settlements). It also includes people who stand to inherit property from deceased family members (e.g. orphans). People with a special attachment to their land such as indigenous peoples require special attention.

³⁹ For more detailed guidance see Inter-Agency, Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Implementing the “Pinheiro Principles,” March 2007, also available at www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

Good Practices: Special Property Restitution Procedures in Bosnia and Herzegovina

The process of property restitution in Bosnia and Herzegovina was based on the passage of laws setting out special procedures to be applied by local property commissions in each municipality. Before the 1992–95 war, for instance, many owners of private property failed to register their rights in the cadastral records in order to avoid tax payments. The post-war restitution laws in Bosnia took this widespread practice into account by providing that private property could be claimed not only by registered owners but also by lawful possessors: “The owner of the real property declared abandoned shall have the right to file a claim for the return of the real property at any time. Exceptionally, claims for repossession of real property may also be made by persons who were in unconditional possession of the real property at the time it was declared abandoned.”

See Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property, Official Gazette of the Federation of Bosnia and Herzegovina, No. 11/98, Article 4.

4 The process through which restitution of housing, land and property and related compensation is carried out can be complex and time-consuming. It is not necessary for this process to be fully concluded before IDPs can be said to have found a durable solution. The determining factor is that they have access to an effective and accessible mechanism for property restitution and compensation (including, where needed, free legal assistance) and are able to reside safely and securely during the interim. In some cases it may be appropriate to establish special restitution and compensation mechanisms (e.g. a Land Claims Commission) while in others, existing institutions, including traditional property dispute mechanisms, may have the capacity to handle the caseload effectively and impartially.

Addressing housing, land and property rights issues requires a comprehensive perspective. In principle, restitution is the preferred remedy. But in some cases it may be more equitable, after weighing different interests, to compensate the displaced owner instead of restoring his or her property. Appropriate solutions should be found for persons whose tenancy rights have been compromised in the course of displacement. Alternative solutions should be found for temporary occupants of IDP property who face eviction in the course of property restitution, in particular if they are displaced persons themselves and occupy the property in good faith (e.g. negotiated tenancy agreements between occupants and IDP owners).

Relevant Legal Principles: The Guiding Principles on Internal Displacement

Principle 29(2) states that:

“Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property or possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Problems that women and children may face in obtaining recognition of their ownership or access to property need special attention, particularly where there are legal barriers to women or children inheriting property. Claims of particularly vulnerable groups of IDPs (e.g. families with many children or IDPs living in dilapidated collective centers) should be processed as a priority.

National laws need to be examined and, where necessary, revised to ensure that IDPs do not lose property rights on the basis of an unfair application of legal provisions on abandoned property or adverse possession. Finally, efforts should be made to ensure that restitution decisions in favor of IDPs are systematically enforced, with care taken to guarantee the safety, security and reintegration of IDPs after they re-possess their housing, land or property. It must be ensured that returnees without property rights as well as IDPs who locally integrate or resettle to areas where they do not own property still have access to basic shelter and housing.⁴⁰

Good Practices: Privatization of Collective Shelters in Georgia

In 2009, the Government of Georgia launched a revised Action Plan to implement its National Strategy on Internally Displaced Persons. Taking into account that many IDPs may not be able to return to their home areas in the foreseeable future, the plan foresees provision of durable housing to IDPs. In respect to IDPs accommodated in collective centers that meet minimum living standards and are government owned, the latter are offered self-privatization of their living unit for a symbolic price of 1 Georgian lari. For IDPs residing in collective centers that do not meet minimum living standards or who reside in private accommodation, the Action Plan envisages alternative durable housing options.

See State Action Plan for the Implementation of the National Strategy on Internally Displaced Persons (Government of Georgia Decree No 403), adopted on 28 May 2009.

4

IDPs who want to return to houses that have been destroyed have the possibility of having them rebuilt or, where this is impossible, to be provided with an alternative. In some cases, the authorities will have a legal obligation to rebuild the house because they are responsible for ITS destruction (for instance, where houses were destroyed during a military operation that violated international humanitarian law or due to a disaster because of the authorities' failure to adopt necessary and reasonable disaster risk reduction measures). In other cases, there is no obligation in a legal sense, but returnees still have to have their houses reconstructed to achieve a durable solution that provides an adequate standard of living.⁴¹

⁴⁰ See also above sub-section: Enjoyment of an Adequate Standard of Living without Discrimination.

⁴¹ Id.

Possible Indicators of Progress towards a Durable Solution: Protecting of Housing, Land and Property Rights

- Existence of effective and accessible mechanisms to resolve housing, land and property disputes relevant to displacement and steps taken to overcome the most common challenges to implementing housing, land and property rights
- Percentage of IDP land and property claims resolved and enforced; number of remaining claims; and estimated time required to resolve the remaining claims
- Percentage of IDPs remaining without adequate housing, reduction in this percentage over time and comparison with the percentage for the resident population or the national average, as appropriate⁴²
- Percentage of destroyed or damaged homes of IDPs adequately repaired; number of remaining houses to be repaired and estimated time required to repair the remaining houses⁴³
- IDPs have access to support programs (including access to credits) to restore or improve housing, land or property on the same basis as the resident population

In a number of contexts, it will also be necessary to look at the following four criteria to determine to what extent IDPs have achieved a durable solution.

4

ACCESS TO PERSONAL AND OTHER DOCUMENTATION WITHOUT DISCRIMINATION

IDPs who have achieved a durable solution have access to the personal and other documentation necessary to access public services, reclaim property and possessions, vote or pursue other purposes linked to durable solutions.⁴⁴ During the course of displacement, people often lose documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates, marriage certificates, voter identification cards, title deeds, school records and professional or academic certificates or social security cards. In other cases, IDPs may have never had documents or their documents were not recognized and this becomes a particular problem during their search for durable solutions (e.g. where an urban IDP who wants to integrate locally cannot apply for a job without a birth certificate or national ID card).

⁴² This is also a useful indicator for measuring progress regarding adequate standard of living (see above sub-section: Enjoyment of an Adequate Standard of Living without Discrimination).

⁴³ This indicator is also relevant for the previous sub-section (Adequate Standard of Living).

⁴⁴ A right to documentation is axiomatic to other human rights such as the rights to recognition before the law (art. 6, Universal Declaration), registration immediately after birth (art. 7, CRC), property and housing (arts. 17 and 25, Universal Declaration), education (art. 26 Universal Declaration) etc. See also Guiding Principle 20(2).

Good Practices: Use of Witness Statements to Establish the Identity of IDPs in Côte d'Ivoire

In Côte d'Ivoire the government undertook a civil registration exercise during the period 2007-08 aimed at providing everyone with a birth certificate and identity card. To be registered by the local magistrate acting in the presence of traditional authorities, it was sufficient to provide oral statements of two witnesses.

See Brookings-Bern Project on Internal Displacement, Protecting Internally Displaced Persons: A Manual for Law and Policymakers (2008), p. 165.⁴⁵

The competent national or local authorities need to facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain documents. Women and men have equal rights to obtain documents and women have the right to have documents issued in their own names. Separated and unaccompanied children also need to be provided with their own documents.

Relevant Legal Principles: The Guiding Principles on Internal Displacement

Principle 20 states that:

- Every human being has the right to recognition everywhere as a person before the law.
- To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
- Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

4

Where control over territory is divided, practical solutions for documentation need to be found. National authorities, for instance, may recognize papers provided by de facto authorities as prima facie factual proof of personal status without this implying legal recognition of the entities providing the papers.

⁴⁵ Available at: www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

Possible Indicators of Progress towards Achieving a Durable Solution: Ensuring Access to Documentation

- IDP women and men face no legal or administrative obstacles to obtain (replacement) birth certificates, national ID cards, voter identification cards or other personal documents relevant to the context
- Mechanisms to replace documents are accessible and affordable bearing in mind the local context
- Percentage of IDPs without birth certificates, national ID cards or other personal documents relevant to the local context compared to the resident population, the situation before displacement or the national average, as appropriate
- Mutual acceptance by Governments and de facto authorities of papers where control over territory is divided

FAMILY REUNIFICATION

4 IDPs who wish to reunite with family members from whom they were separated have been able to do so and can seek a durable solution together. Families separated by displacement should be reunited as quickly as possible, particularly when children, older persons or other vulnerable persons are involved. Where control over territory is divided, national and de facto authorities should cooperate pragmatically (e.g. through humanitarian actors or other impartial intermediaries) to allow for family reunification despite obstacles such as closed boundary lines.

For unaccompanied or separated children, family reunification will generally be in their best interests. However, prior to supporting reunification, an assessment needs to be made as to whether it exposes or is likely to expose the child to exploitation, abuse or neglect. This assessment should be based, inter alia, on information already verified by the competent national or local authorities. If there are reasonable grounds to believe that reunification exposes or is likely to expose the child to risks, a best-interest determination is required as to whether family reunification is indeed in the child's best interest. The authorities are responsible to provide protection until the child's family is found.

Good Practices: Avoiding Family Separation in Angola

Angola's Standard Operational Procedures for the Enforcement of Norms on the Resettlement of Displaced Populations requires the entity responsible for implementation of return and resettlement processes to "ensure that IDP populations not in condition to be transported for medical reasons remain in the location accompanied by their family members."

These Procedures also require the provincial entity responsible for social assistance and reintegration to identify children separated from their families. The entity is required to create a database with photographs of separated children and share information with other provinces in order to facilitate family reunification.

See Standard Operation Procedures for the Enforcement of Norms on the Resettlement of Displaced Persons as adopted by the Council of Ministers decree 79/02.

WHAT CRITERIA DETERMINE TO WHAT EXTENT A DURABLE SOLUTION HAS BEEN ACHIEVED?

Appropriate tracing is to be undertaken at the earliest possible time to establish the fate and whereabouts of missing relatives and to inform the next of kin of progress made in the investigation and the results obtained. In some cases, it may be impossible, despite the best efforts of the competent authorities and humanitarian actors, to find missing relatives. In these situations it may become necessary to establish special legal procedures to provide the next of kin with accelerated access to pensions and family property and to formalize or legalize care arrangements for unaccompanied and separated children that avoid, whenever possible, placing them in institutions.

Possible Indicators of Progress towards Achieving a Durable Solution: Family Reunification

- Mechanisms have been put in place to reunite separated family members. No movement restrictions prevent family reunification
- The number of internally displaced children or other dependent persons who have not yet been reunited with their families
- The number of persons without access to property/pensions due to a missing family member or other provider
- The number of unaccompanied and separated internally displaced children for whom a best interest determination is needed but has not been conducted

4

PARTICIPATION IN PUBLIC AFFAIRS WITHOUT DISCRIMINATION

IDPs who have achieved a durable solution are able to exercise the right to participate in public affairs at all levels on the same basis as the resident population and without discrimination owing to their displacement. This includes the right to associate freely and participate equally in community affairs, to vote and to stand for election, as well as the right to work in all sectors of public service.

Relevant Legal Principles: The Guiding Principles on Internal Displacement

Guiding Principle 29 (1), states that:

IDPs “who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced.”

Principle 22 (d), states that:

IDPs who remain displaced have the “right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right...”

In many cases this requires special measures to be implemented before return, local integration or settlement elsewhere in the country. Where large numbers of IDPs have not returned, it may be necessary to carry out voter registration and education programs in IDP sites, to make provisions for absentee ballots or set up special polling stations.

Good Practices: Transfer of Voter Registration in Sierra Leone

The 2002 elections in Sierra Leone included a “transfer of the vote” program in which displaced voters who returned to their homes of origin between the date they registered elsewhere and the date of polling were able to apply to vote at the place of their return. Given that the voter registration system was not computerized, returning voters were required to fill in a two-part form, with the local election commission keeping one half of the form in order to process the transfer and the returnee keeping the other half as proof of registration.

See *Electoral Laws Act (2002), Article 5(1)*.⁴⁶

Possible Indicators of Progress towards Achieving a Durable Solution: Participation in Public Affairs

- IDPs face no legal or administrative obstacles not faced by the resident population that prevent them from voting, being elected or working in public service
- The percentage of adult IDPs eligible and registered to vote in comparison to the resident population or the national average, as appropriate
- The percentage of adult IDPs participating in elections held in comparison to the resident population or the national average
- The percentage of IDPs among public servants and elected officials in comparison to the percentage of IDPs in the overall population

4

ACCESS TO EFFECTIVE REMEDIES AND JUSTICE⁴⁷

IDPs who have been victims of violations of international human rights or humanitarian law, including arbitrary displacement⁴⁸ must have full and non-discriminatory access to effective remedies and access to justice, including, where appropriate, access to existing transitional-justice mechanisms, reparations and information on the causes of violations.

All victims of violations of international human rights and grave breaches of international humanitarian law have a right to an effective remedy,⁴⁹ and of course, IDPs are no different in this regard. Effective remedies include equal and effective access to justice; adequate, effective and prompt repa-

⁴⁶ Available at: www.sierra-leone.org/Laws/2002-2.pdf.

⁴⁷ See also paras. 76–82 on the restitution of housing, land and property.

⁴⁸ Guiding Principle 6 sets out the right to be protected against arbitrary displacement and provides a non-exhaustive list of cases of arbitrary displacement.

⁴⁹ See International Covenant on Civil and Political Rights, art. 2, para. 3, and Universal Declaration of Human Rights, art. 8. While international humanitarian treaty law does not set out the right, it is recognized by 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 and recommended to member states by the General Assembly in its resolution 60/147.

WHAT CRITERIA DETERMINE TO WHAT EXTENT A DURABLE SOLUTION HAS BEEN ACHIEVED?

ration for harm suffered; and access to relevant information concerning violations and reparation mechanisms.⁵⁰

Relevant Legal Principles: The Guiding Principles on Internal Displacement

Principle 6 (2), states that:

The “prohibition of arbitrary displacement, includes displacement:

1. 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;
2. In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
3. In cases of large-scale development projects, which are not justified by compelling or overriding public interests;
4. In cases of disasters, unless the safety and health of those affected requires their evacuation; and
5. When it is used as a collective punishment.”

Securing effective remedies for the violations of international human rights and humanitarian law which caused displacement, or which occurred during displacement, may have a major impact on prospects for durable solutions for IDPs. Failure to secure effective remedies for such violations may cause risks of further displacement, impede reconciliation processes, create a prolonged sense of injustice or prejudice among IDPs, and thereby undermine the achievement of durable solutions. Thus, securing justice for IDPs is an essential component of long-term peace and stability.

4

In some situations, it is therefore necessary in order to achieve durable solutions to formally address past violations by holding perpetrators accountable, providing victims with reparations in a formal sense, (including compensation), and/or providing information on the causes of displacement. This would be particularly important in cases where IDPs became victims of war crimes or crimes against humanity, where they remain at risk from the perpetrators of violations or abuse, or where they themselves feel that formal justice must be done to enable them to physically, socially and emotionally overcome their displacement experience.

⁵⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 12.

Good Practices: Arbitrary Displacement as a Crime under the Colombian Penal Code

Acts of arbitrary displacement that amount to crimes against humanity or war crimes should be defined in domestic law as crimes and be liable to prosecution as such. Domestic law may go beyond that minimum standard, as exemplified by the Penal Code of Colombia:

“He who arbitrarily, through violence or other coercive measures directed against a sector of the population, causes one or several members of it to change his residency, will incur a [prison] sentence of 15 to 30 years, in addition to a fine of 500 to 2000 minimum salaries as determined by law, and a ban from public office for 5 to 10 years.

This definition [of forced displacement] does not cover population movements caused by the public forces when it is for the security of the population or for imperative military reasons, in accordance with international humanitarian law.”

See: Penal Code of Colombia (as amended on 6 July 2000), Article 284A.

4 Reparation may include: restitution that aims at restoring the situation prior to arbitrary displacement; compensation for economically assessable damage; rehabilitation (including medical and psychological care); and satisfaction, which needs to be given in so far as the violation cannot be made good by restitution or compensation⁵¹ and can take the shape of public acknowledgement of violations, official apologies, or judicial action against individual perpetrators.⁵² Reparations must adequately address the specific violations of rights suffered by IDPs with due attention paid to their nature, seriousness, scale and pattern. In some cases, simple, administrative and non-bureaucratic procedures (e.g. standardized compensation amounts for different types of lost assets) might be more appropriate than overly complex systems.

Humanitarian and development assistance received during or after displacement does not amount to compensation, although its fair and equitable allocation can contribute to community reconciliation and conflict prevention. There are a variety of ways to establish the causes of displacement, including through truth commissions. Restrictions on amnesties for international crimes imposed by national or international law must be respected at all times.

⁵¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts (see General Assembly resolution 53/86), art. 37.

⁵² See. Basic Principles and Guidelines on the Right to a Remedy and Reparation (General Assembly resolution 60/147), paras. 19-22. See also Draft Articles on Responsibility of States for Internationally Wrongful Acts (Assembly resolution 53/86), arts. 34-37.

Relevant Legal Principles: State Responsibilities in Natural Disaster

Article 12 (2) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa states that:

A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

In *Öneryildiz v. Turkey*, judgment of 30 November 2004 and *Budayeva and others v. Russia*, judgment of 20 March 2008 the European Court of Human Rights ordered States to pay compensation for having negligently failed to take appropriate measures to protect people from natural or human-made hazards.

In cases of disasters or non-State actors committing serious crimes, the authorities may still incur responsibility for having failed to provide adequate protection. In other cases, non-State actors committed crimes against IDPs despite the authorities' best efforts to protect them. Even in such cases, the authorities still need to take all possible steps, in accordance with due process guarantees and other human rights obligations, to ensure that perpetrators are held accountable and provide reparations. This may call for innovative measures, e.g. seizing and redistributing the assets of perpetrators who gained large personal profit from arbitrarily displacing others or requiring local perpetrators to help IDPs rebuild their destroyed houses and related infrastructure.

IDPs, including women, children (according to their age and maturity) and people who have special needs or are potentially marginalized, need to be fully informed about existing remedies and should be involved in their design, implementation and evaluation.

4

Information on existing remedies should be disseminated in a language and format IDPs can understand. Relevant institutions should be geographically, culturally and economically accessible. Mechanisms to provide remedies must be simple enough to allow access to all victims, regardless of education, social status, gender, age etc. and take into consideration the specific obstacles IDPs face, such as loss of documentation, trauma and fear of further victimization. Mechanisms must also be conflict-sensitive and designed to avoid creating divisions among the victim population or reinforcing existing social and economic inequalities.

Good Practices: Simplified Procedures to Obtain Compensation in Turkey

The Turkish Law on Compensation of Losses Resulting from Terrorist Acts and Measures Taken to Combat Terrorism provides for compensation for loss of immovable and moveable properties, animals, trees and agricultural products as well as physical injuries, disabilities and death. The valuation has been simplified by the adoption of a "matrix" allowing the calculation of standardized compensation awards for different types of assets (e.g. a fruit tree).

The Government also provides compensation to IDPs for losses resulting from denial of access to their properties while displaced. The commissions implementing the law are authorized to seek and accept any type of information or documents related to claims that could be relevant evidence.

See Law No. 5233 (2004) on Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism.

Involving IDPs also contributes to providing a greater sense of justice and dignity and helps in re-dressing the relationship between the victims and the State.

While national and local authorities have the primary duty and responsibility to provide IDPs with effective remedies for violations suffered, they may require support from international actors. Humanitarian and development actors may have an important role to play in advocating for access to justice and effective remedies, assisting States in meeting their obligations, training IDPs on their rights and assisting IDPs in appropriately participating in the design and implementation of relevant measures. It is important that actors undertake a careful analysis of the type, nature and patterns of violations that took place, the local political and social context and the particular aspirations of IDPs and other victims.

Possible Indicators of Progress towards a Achieving a Durable Solution: Reparations

- Existence of accessible mechanisms that have the legal mandate and actual capacity to provide IDPs with effective remedies for violations suffered, including violations committed by non-state actors
- Percentage of IDPs who consider that the violations suffered have been effectively remedied and a sense of justice restored
- Number or percentage of identified cases of displacement-related serious human rights violations or grave breaches of humanitarian law that result in effective and adequate reparation.



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