



# SEARCHING FOR SOLUTIONS

Lessons for Syria

THEMATIC REPORT



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## ACKNOWLEDGEMENTS

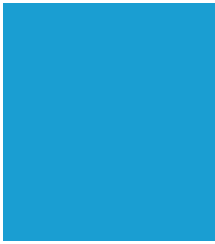
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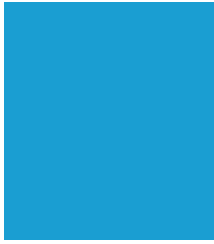
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Cover photo: On the top floor of a badly damaged building, Ahmed, 58, lives with his wife and family. Displaced by fighting, their home in Aleppo was destroyed. More families live on other floors. They rely on aid distributions and hang blankets and tarpaulin as makeshift walls to protect from the winter weather. © UNHCR/Susan Schulman, November 2017



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# INTRODUCTION

Since the outbreak of conflict in Syria in 2011, close to half the country's pre-war population has been displaced. Nearly 5.6 million people have sought safety abroad and another 6.1 million were living in internal displacement as of the end of 2017.<sup>1</sup> More than 7,600 people fled their homes every day in 2017 alone.<sup>2</sup> Despite being declared so-called de-escalation areas, some of the fiercest fighting since the start of the war has been taking place in Eastern Ghouta, Idlib and Homs.

Yet at the same time, with the Syrian government's territorial gains, returns risk becoming an increasingly politically expedient option for neighbouring countries hosting large numbers of refugees. Millions of people are also eager to go home. Around 655,000 internally displaced people (IDPs) and 66,000 refugees did return in 2017 – but for every one who did so, three were newly displaced.<sup>3</sup>

Durable solutions to displacement crises, whether internal or cross-border, are thought to be achieved by return, local integration or resettlement elsewhere. Yet durable solutions require more than a sustainable physical settlement in a given location. According to IASC's framework on durable solutions, they are 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."<sup>4</sup>

The framework identifies eight criteria to measure progress towards durable solutions: safety and security; an adequate standard of living; access to livelihoods; the restoration of housing, land and property; access to documentation; family reunification; participation in public affairs; and access to effective remedies and justice. This report focuses primarily on internal displacement, but given that returning refugees have many of the same needs as IDPs and often face the risk of further displacement, a holistic approach to durable solutions should integrate planning and policy for both populations.

Sustained efforts from the humanitarian and development communities will be needed to work toward meeting IASC's benchmarks in Syria. As made painfully apparent by ongoing hostilities in Idlib and the south of Syria, the country is far from safe. Sustained mili-

tary activity and unexploded ordnance put returnees' physical safety at very real risk. Widespread destruction also means that many are unable to return. Research conducted among IDPs in the south of the country found that almost 50 per cent of respondents' previous homes had been destroyed or damaged beyond repair.<sup>5</sup>

Damaged infrastructure damaged and curtailed services undermine people's ability to fulfil their basic rights. Less than half of Syria's health facilities are thought to be fully operational, and more than one in three schools damaged, destroyed or used for other purposes.<sup>6</sup> Many people have also lost their documentation during displacement, impeding their access to services that do still exist.<sup>7</sup>

In the absence of opportunities for sustainable reintegration and durable solutions, Syria's displacement crisis will continue. The situation may be further complicated by demographic changes incurred by the crisis that have the potential to exacerbate post-conflict tensions and disrupt return, local integration and resettlement.

In order to facilitate progress toward durable solutions, this literature review identifies lessons learned from other complex crises to inform future programming by examining pathways for durable solutions to displacement in Bosnia, Colombia, Iraq, Kosovo and Sri Lanka. The case studies were selected for their similarities with the situation in Syria, representing middle-income countries affected by conflict with functioning state institutions and varying degrees of political will to bring displacement to a sustainable end. More than 70 sources were examined, including reports from organisations such as IDMC, the Brookings Institution and the UN Refugee Agency (UNHCR), and academic papers in *Forced Migration Review* and other peer-reviewed journals.

Given the lack of certainty regarding Syria's future, the review's findings were analysed through the lenses of three possible developments: re-emergence of the centralised government; political decentralisation; and militarised federalism. The report provides a narrative overview of the displacement crisis and response in each case study location, from which readers will be able to draw clear parallels with the situation in Syria. The lessons learned are used to formulate recommendations for those working with communities affected by displacement.

# 1

# CONSOLIDATION OF A CENTRALISED GOVERNMENT

Given the territorial gains made possible in part through Russian support, the re-emergence of a centralised government is becoming an increasingly likely outcome of Syria's conflict.<sup>8</sup> Were this to happen, its chosen approach would have different consequences for the country's displaced population. A "negative peace" marked only by the absence of active conflict and a strongly militarised focus on security would be detrimental to durable solutions, while a "positive peace" that goes beyond physical security to address the social, economic and political drivers of conflict would facilitate them.<sup>9</sup> The situation in post-war Sri Lanka exemplifies the former situation, and the holistic efforts of the Colombian and Iraqi governments the latter.

## THE CASE OF SRI LANKA: NEGATIVE PEACE

Discrimination against Sri Lanka's ethnic Tamil population and its marginalisation by the country's Sinhalese majority resulted in decades of civil war between the government and the Liberation Tigers of Tamil Eelam (LTTE). The conflict displaced more than a million people, most of them Tamils, before the government won a decisive military victory in 2009. The end of hostilities did not, however, led to the end of displacement.

Following LTTE's defeat, the Sri Lankan president was quickly "hailed and self-styled as a warrior king who ... saved the Sinhala-nation from an endogenous Tamil threat".<sup>10</sup> The clear framing of the Tamil community as a continued threat justified the strengthening of the executive branch, and the government retained far-reaching emergency powers until 2011, including the appointment and removal of members of the country's human rights commission. Any perceived dissent on the part of human rights defenders and journalists was cracked down on severely, weakening civil society and reducing humanitarian space.<sup>11</sup>

## Post-war IDPs

The alleged security threat posed by the Tamil population, who were "essentially accused by the government, en masse, of being LTTE supporters or fighters", was used to justify the internment of more than 270,000 IDPs in highly militarised camps, the largest of which held more than 220,000 people, making it the largest IDP camp in the world.<sup>12</sup> Screening for LTTE affiliation identified an estimated 11,000 alleged former combatants, including children, who were sent to separate centres for "rehabilitation".<sup>13</sup>

Other IDPs remained confined to the overcrowded camps, which had few if any water, sanitation or health facilities. Child malnutrition was rife, and freedom of movement severely restricted. Reportedly, IDPs were only authorised to leave for urgent reasons such as emergency medical care, and often with a military escort.<sup>14</sup> In effect, "the displacement crisis was evaluated and managed as a security matter rather than as a humanitarian crisis in the eyes of the government and military."<sup>15</sup> Six months after the official end of the conflict, as many as 129,000 people remained confined to camps.<sup>16</sup>

Following the initial period of forced confinement, many IDPs were forced to return to their areas of origin. Around 470,000 people were recorded as having returned by 2012.<sup>17</sup> Few, however, were able to go back to their former homes, let alone achieve durable solutions. Return areas lacked adequate shelter, water, sanitation, basic services and livelihood opportunities, and no effective mechanisms were put in place to deal with complex housing, land and property (HLP) issues, including civilian and military occupation, conflicting claims and boundary disputes.<sup>18</sup> The continued military presence contributed to feelings of insecurity among returnees, whose freedom of peaceful assembly, freedom of movement and other civil rights were curtailed.<sup>19</sup>

As a result of military or state occupation ahead of planned development projects or the designation of "high security zones", tens of thousands of IDPs were

unable to return at all, and were moved instead to permanent resettlement sites. Many were forced or coerced into doing so, and little or no compensation was provided.<sup>20</sup> Similarly to many return areas, the resettlement sites lacked livelihood opportunities and basic services including healthcare, education and public transport.<sup>21</sup>

Few of those returned or resettled were able to achieve durable solutions, but they were deregistered as IDPs nonetheless, deflating official displacement figures.<sup>22</sup>

### Negotiating humanitarian space

Sri Lanka's displaced population was left with significant needs by the end of the conflict, but the government's victory was followed by a reduction of humanitarian space and restricted access to affected communities.<sup>23</sup> IDPs were generally provided with basic emergency assistance, but received little psychosocial support, legal counselling, family tracing and reunification or help with livelihoods.<sup>24</sup> Reportedly, the government even sought to restrict access for the International Committee of the Red Cross (ICRC), arguing that "as there is no longer active conflict in the country, ICRC's mandate does not apply."<sup>25</sup>

The Sri Lankan state also saw humanitarians as a threat to the country's post-war political order that clashed with resurgent ethno-nationalism, and professed them to be pro-LTTE because of their efforts to support the Tamil population.<sup>26</sup> Criticism of the government's treatment of IDPs by the traditional donor community and attempts to condition aid and investment on improvements prompted the government to turn to other donors such as China, with concerning repercussions: "The key implications for humanitarianism in Sri Lanka is that now the government is heavily reliant upon non-traditional donors with a firmly hands-off policy regarding the country's domestic affairs whilst, at the same time, the influence of those donors who are concerned about humanitarian issues has waned considerably."<sup>27</sup>

With a distinct approach to humanitarian aid informed by greater respect for sovereignty and a logic of cooperation superseding that of assistance, protection activities face the risk of being underfunded by non-traditional donors.<sup>28</sup> Chinese funding for Sri Lanka, for example, has been used predominantly for the construction of roads, bridges, power plants, ports and aviation.<sup>29</sup>

In the face of blatant disregard for IDPs' human rights and limited leverage, the international community was faced with a dilemma: "On the one hand, aid organisations are compelled to provide life-saving assistance to

IDPs who escaped the conflict zone severely traumatised and often with just the clothes on their back. On the other hand, it goes against basic humanitarian principles to assist and fund a government policy of illegal internment. But if the humanitarian community does not assist the IDPs, who will?"<sup>30</sup>

Efforts to investigate human rights abuses or criticise the government's treatment of IDPs were not tolerated, jeopardising humanitarian activities. As Médecins Sans Frontières (MSF) put it: "We may indeed be evicted for taking a strong stand on what we are seeing, but if we feel that there is an urgent need to speak out, this may be a risk worth taking."<sup>31</sup>

### A slow shift toward a more effective response

Opportunities to improve IDPs' situation and adopt a more comprehensive approach to peacebuilding were ignored at the national level in the initial post-war period. The 2011 Lessons Learnt and Reconciliation Commission (LLRC) report, which recommended that military presence "progressively recede to the background to enable people to return to normal civilian life", was largely disregarded in both policy and practice.<sup>32</sup> It took substantial pressure from the international community, including a visit by the UN high commissioner for human rights in August 2013, before the government added 53 LLRC recommendations to its national action plan.<sup>33</sup>

The situation only really started to evolve for IDPs following the election in 2015 of a new government that paid increasing attention to the pursuit of durable solutions. The adoption, six years after the end of the conflict, of a national policy on the issue marked a significant shift, recognising durable solutions as both "a human rights imperative and a critical step towards national reconciliation and peace consolidation".<sup>34</sup>

The 2016 policy recognises that many of those recorded as having returned have yet to achieve durable solutions and remain vulnerable as a result of their displacement, and it highlights the specific vulnerabilities of female-headed households, children, the elderly, people with disabilities, victims of sexual and other violence, and members of ethnic, religious, or social minorities. It also identifies concrete steps to be taken, including the release and return of occupied property and land, the resolution of claims and disputes, and support for sustainable livelihoods.<sup>35</sup>

The policy was the product of extensive consultation with stakeholders including IDPs and host communities, local officials, civil society and academia, and includes





Woman internally displaced since 1990. Her land in Jaffna district was released from military occupation in March 2015.  
Photo: IDMC/Anne-Kathrin Glatz, April 2015

measures for monitoring implementation, but more research is needed to determine its impact.<sup>36</sup> We estimate that at least 44,000 people were still living in internal displacement in Sri Lanka as of the end of 2016, and many of those previously deregistered as IDPs may still be struggling to reach durable solutions.<sup>37</sup>

## THE CASE OF COLOMBIA AND IRAQ: THE SEARCH FOR POSITIVE PEACE

Differences between Colombia and Iraq notwithstanding, both countries' governments have attempted to move beyond physical security in search of a more holistic, positive peace. Challenges remain, but political will at the national level is apparent in the creation of comprehensive legislation and policies to promote durable solutions for IDPs.

The economic marginalisation of low-income farmers in Colombia contributed to the emergence in the second

half of the 20th century of non-state armed groups which coalesced around a revolutionary political agenda for agrarian reform. Decades of conflict with government armed forces and associated paramilitary groups ensued, causing widespread displacement. A peace agreement was finally reached with the Revolutionary Armed Forces of Colombia (FARC) in 2016, but other armed groups remain active throughout the country. There were around 7.2 million IDPs in Colombia as of the end of 2016.<sup>38</sup>

The situation in Iraq is more complex still. Efforts to restore peace and stability following the fall of the Ba'athist government in 2003 were undermined by the eruption of sectarian violence in 2006 and 2007, and the emergence of the Islamic State in Iraq and the Levant (ISIL) in 2013. Following the end of combat operations against ISIL last year, the number of people returning to their areas of origin has surpassed the number displaced for the first time since the crisis erupted.<sup>39</sup> That said, as of March 2018, IOM estimated that there were still close to 2.3 million IDPs in Iraq.<sup>40</sup>



Photo: Ana Karina Delgado Diaz/NRC

### National response in Colombia

Colombia is often praised as having the world's most thorough legal framework on internal displacement. Its first law on the issue was adopted in 1997, preceding the adoption of the Guiding Principles on Internal Displacement, which were later placed on the same level as the national constitution.<sup>41</sup> Law 387 defines IDPs, sets up a national registry and lays down the basic principles that underpin the state's response. It also established the National System for Comprehensive Attention to the Population Displaced by Violence (SNAIPD) to help address and prevent internal displacement and facilitate IDPs' reintegration into society.<sup>42</sup>

Colombia's solid normative framework is supported by a strong judicial system and an engaged civil society.<sup>43</sup> Following complaints about the limited implementation of Law 387, the Constitutional Court's judgment T-025 of 2004 declared IDPs' situation unconstitutional and issued orders forcing the government "to develop

policies, establish institutions and commit resources to the millions displaced by conflict".<sup>44</sup> In addition to emergency assistance, this included longer-term reintegration support through income-generation projects, microenterprise opportunities and access to health, education and housing.<sup>45</sup>

In 2005, Álvaro Uribe's administration passed Law 975, better known as the justice and peace law, to guarantee the right of victims of "organised armed groups at the margins of the law" to truth, justice and reparations.<sup>46</sup> The real shift, however, came with the election of the country's current president, Juan Manuel Santos, and the government's willingness to recognise the state's role in the conflict and the extent of the harm caused.<sup>47</sup> Law 1448 of 2011, known widely as the victims' law, extends government assistance and reparations to all eligible victims of the armed conflict, and transforms the previous database on IDPs into a unified registry that also includes victims of homicides, disappearances and sexual and other violence.

Under Law 1448, the Unit for Comprehensive Attention and Reparation for Victims (UARIV) is tasked with overseeing registration, assistance and reparations for all victims of the armed conflict.<sup>48</sup> Given the unit's more than 4,500 staff, 99 service points, 20 regional headquarters and 10-year aid budget of \$30 billion, the government has made a "huge commitment to addressing the needs and upholding the rights of the victims of the conflict".<sup>49</sup>

The 2016 peace accord with FARC builds on this commitment, and includes ambitious objectives to achieve durable solutions through reparations, land restitution, development programmes, psychosocial support and a range of other measures.<sup>50</sup>

### National response in Iraq

Three "waves" of policies should be examined in Iraq, including those designed following the fall of Saddam Hussein, those established in response to sectarian violence, and those that address the displacement caused by the fight against ISIL. Each displays the government's willingness to resolve internal displacement, building on lessons learned from previous policies to work toward a more effective response.

After the toppling of Hussein in 2003, the newly formed government found itself in the unenviable position of having to seek remedies for his abuses. These included a decades-long policy of Arabisation under which Kurdish communities in northern Iraq were displaced to make way for Arab communities. To address property disputes arising from the return of those displaced by previous government policies, the Coalition Provisional Authority (CPA) established the Iraqi Property Claims Commission (IPCC) in 2004, which in turn was replaced by the Commission for the Resolution of Real Property Disputes (CRRPD) in 2006.

As of January 2009, 153,000 claims had been made through CRRPF, resulting in 67,000 decisions of which 30,000 were enforceable. Only 1,000 had been actually enforced, however, highlighting the limitations of a cumbersome quasi-judicial model in the face of such a large caseload.<sup>51</sup> CRRPF's scope was also limited. Neither did it address property destroyed under Hussein, nor did it consider issues arising after 2003 including the displacement of Arabs who had been settled in the region to make way for the mass returns of Kurds. To mitigate this drawback, Arab families who were settled in Kirkuk were offered financial compensation in exchange for voluntary relocation in 2007, and at least 7,000 families registered for the scheme.<sup>52</sup>

In the aftermath of two years of sectarian violence, the government devised a national policy on internal displacement in 2008. It was the product of extensive consultation with stakeholders including IDPs, host communities, NGOs and local authorities, and commits the government to mobilising sufficient resources and strengthening institutions to enable an effective response for IDPs and returning refugees.<sup>53</sup>

Consistent with the Guiding Principles and IASC's framework, the policy emphasises that durable solutions require "long-term security, restitution or compensation for lost property, and an environment that sustains the life of former displaced persons under normal economic and social conditions".<sup>54</sup> It promises "to improve the access of the displaced to basic services, to help them find employment, to protect them from evictions and violence, to assist them reclaim their property, and to encourage reconciliation between the different ethnic and religious groups upon return".<sup>55</sup>

In parallel to the national policy, decree 262 from the council of ministers and prime ministerial order 101 of 2008 promote property recovery through an inter-agency administrative process, drawing on the lessons learned from the previous quasi-judicial model to design a more pragmatic and efficient restitution system.<sup>56</sup> They set up return facilitation centres to resolve property issues and expedite the registration of returnees, who become eligible for a grant of around \$850. Squatters are required to vacate returnees' homes in exchange for six months' rental assistance worth \$1,500 or face prosecution.<sup>57</sup>

Policies since 2014 have focused on IDPs' needs, including the provision of a one-off payment of around \$840, housing loans for the poor, compensation for lost property and the ability to retain public employment in a different location.<sup>58</sup> The government's 2017 reconstruction and development plan reflects the language of the IASC framework, calling for "sustainable solutions including voluntary repatriation ... local integration based on long-term safety and security requirements, restoration and exercise of freedoms and rights" and the provision of "effective remedies and access to justice and participation in public affairs".<sup>59</sup>

### Implementation challenges

Despite their apparent commitment to addressing internal displacement, challenges in putting policies into practice have emerged in both Colombia and Iraq, the product of procedural issues such as capacity and resource gaps, and more complex structural considerations including security. The former are particularly apparent in terms

of property restitution in Iraq, as evidenced by CRRPD's slow enforcement of property claims.<sup>60</sup>

The appeals process for CRRPD decisions was also cumbersome. All appeals were reviewed by a single cassation committee of seven judges in Baghdad, leading to a significant bottleneck.<sup>61</sup> Decree 262 and order 101 resolved some of these issues by shifting from a quasi-judicial to an administrative process in 2008, but other procedural concerns remained, such as the documentation requirements for registration. The fact that many IDPs lack the documents required has restricted their access to the procedures.<sup>62</sup>

Capacity and resource gaps are most obvious in Colombia at the municipal level, where local authorities do not have the economic and administrative resources to implement national policies designed to address displacement, particularly when it comes to asset restitution, land allocation, income-generation programmes, housing subsidies and reparation and compensation processes.<sup>63</sup>

Colombia faces further difficulties in parts of the country where the state is virtually absent and non-state armed actors such as the National Liberation Army (ELN) and other criminal groups are still active, or where the state is viewed with suspicion because of previous grievances.<sup>64</sup> Armed groups' cooption and intimidation of local officials also impedes implementation in these areas.<sup>65</sup>

Security considerations have also undermined opportunities for durable solutions in both countries. People returning and claiming land restitution in Colombia face threats from illegal armed groups and powerful landowners opposed to process, and IDPs displaced from rural to urban areas are often subject to abuse and suspicion based on their perceived ties to FARC.<sup>66</sup> Meanwhile, few Iraqis are willing to return to areas in which they would be a sectarian or ethnic minority for fear of physical retribution and discrimination, including by local authorities.<sup>67</sup> Extortion, threats and attacks against recent returnees have been reported in Anbar province; in 2008, returnee families in Baghdad were targeted despite increased protection efforts including patrols.<sup>68</sup>

Many IDPs in Iraq say they would prefer to integrate locally, but policies continue to focus more on return.<sup>69</sup> As such, those who choose to remain in their places of refuge, often in urban areas, tend to be neglected and often find themselves at risk of further displacement. Housing shortages and property disputes have led to an increase in unplanned settlements, which fail to meet appropriate standards in terms of shelter, water and sanitation, and many IDPs lack the skills to compete in

the urban job market, which further heightens their vulnerability.<sup>70</sup>

This highlights the need for alternative livelihoods in urban areas, alongside efforts to promote the (re)development of rural areas of origin through the provision of services and employment opportunities to relieve urban congestion.<sup>71</sup> The Colombian government has committed to improving economic infrastructure and social services in rural areas previously controlled by FARC to address poverty and inequality, but given that two-thirds of IDPs live in urban areas and many are unwilling to return, there is also a clear need for an urban integration strategy.<sup>72</sup>

### External support for implementation

Similarities between Colombia and Iraq end when it comes to international responses. The impacts of the US intervention in Iraq have generated a sense of responsibility toward the country's IDPs.<sup>73</sup> The Iraqi government's limited resources have made international donor support all the more necessary. This need was enshrined in the 2008 policy on displacement, which states: "The complex nature of the displacement has meant any solution must extend beyond the Government and involve the wider international community."<sup>74</sup>

One effective example of cooperation is an inter-agency project set up by the UN and the government in 2009 to facilitate the return of people displaced by sectarian violence in Diyala governorate. The Diyala Return and Integration Initiative focused on shelter, infrastructure, services, livelihood and job creation, protection and reconciliation, and has since been replicated in other return areas.<sup>75</sup>

In Colombia, in contrast, international involvement has been more tentative given the strong political system and competent institutions. According to international responders interviewed by the Brookings Institution:

"The humanitarian architecture was designed for weak governments - cases where international actors basically substitute for the government. But ... the Colombian government is strong and has impressive capacity - although there are many parts of the country where victims of the conflict have had no contact with any state representatives for years. In fact, while the national government is strong, particularly in its legal, policy and programmatic capacity, there are many areas where state capacity remains weak and cases where municipal authorities are in collusion with non-state actors. In this context, international actors are well-positioned to raise human



Members of a family of 18 members sit in front of their tents in the Kilo 18 displacement camp. They have been confined to the camp for the last 10 months. Barred from leaving, an uncle was a member of ISIS and so they are not allowed to return home. Photo: NRC/ Melany Markham, October 2017

rights concerns affecting the lives of IDPs, particularly when IDPs do not perceive that the state is protecting their rights.”<sup>76</sup>

ICRC and other humanitarian organisations have played a significant role in assisting IDPs in parts of the country where the government is not present, but the international community’s role has been broadly limited to supporting the state through human rights advocacy and monitoring.<sup>77</sup> A review of the cluster approach in 2010 found little value added, highlighting the unsuitability of the existing humanitarian architecture for supporting progress towards durable solutions in Colombia.<sup>78</sup>

That said, Colombia’s Unique Comprehensive Plans (PIUs) provide a good example of more in-depth cooperation. First established in the south-western department of Nariño, they bring together IDPs, local communities, NGOs, government at the national, departmental and municipal level and UNHCR. The PIUs’ demand-led and participatory approach to durable solutions has since been expanded to several other departments, with a

full-time team dedicated to raising national and international funds.<sup>79</sup>

The PIUs, however, have been hampered by international donors’ financial cycles, leading to delays between the identification of needs and project implementation. This is a product of “tension between participatory, demand-driven and rights-based durable solutions and the inflexibility of current systems for policy design and financial disbursements”.<sup>80</sup> Furthermore, there are concerns that funding for Colombia will decrease now a peace agreement has been signed.<sup>81</sup>

# 2

# POLITICAL DECENTRALISATION

While it seems likely that Syria's centralised system of government will prevail, ongoing opposition from internal forces and members of the international community could preclude a decisive victory in the war and result in political decentralisation along sectarian lines.<sup>82</sup> This was seen in Bosnia and Herzegovina, where the Dayton Accords of 1995 led to the establishment of two distinct entities - the Federation of Bosnia and Herzegovina and Republika Srpska - delineated by an inter-entity boundary line.<sup>83</sup> Decentralisation aimed to balance political and ethnic interests, the objective being to "provide a framework for inter-ethnic accommodation, create channels for democratic contestation, and ultimately usher in peace and stability".<sup>84</sup> Widespread discrimination, however, affected decisions about returns and hampered progress toward durable solutions.

## THE CASE OF BOSNIA

Displacement in Bosnia was "a deliberate strategy aimed at altering the demographic character of disputed territory". More than half of the country's population fled their homes during the conflict: 1.2 million people sought refuge abroad, while a further 1 million were internally displaced.<sup>85</sup>

In order to reverse ethnic cleansing, the Dayton Accords emphasised the return of displaced populations to their areas of origin.<sup>86</sup> Annex VII states that "all refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina."<sup>87</sup>

Property restitution was seen as a mechanism for enabling returns, and was a key focus of early post-war efforts.<sup>88</sup> The Commission for Real Property Claims (CRPC) was set up to oversee restitutions with international supervision, and the Office of the High Representative (OHR), an ad hoc international institution, was established to monitor broader implementation of the

peace agreement.<sup>89</sup> More than a million returns have taken place, the majority in the first two years after the conflict.<sup>90</sup>

### Barriers to restitution and return

In many instances, local authorities were unwilling to evict members of the majority ethnic group or assist minority returns, at times actively undermining the latter through excessive documentation requirements or processing fees.<sup>91</sup> Legislation passed during the conflict added a further layer of complexity by allowing abandoned property to be temporarily allocated to new occupants. Such property was considered permanently abandoned if IDPs failed to resume use of it within a week of the end of the war, while refugees were given two weeks. The legislation was eventually abandoned, but occupants still refused to leave, the police were unwilling to cooperate in evictions and protesters further hindered the process.<sup>92</sup>

Opposition from local authorities was matched by the reluctance of some displaced people. Many were willing to return to areas "where their ethnic group was in the local majority and occupied key positions of authority", but minority returns were comparatively scarce in the initial years after the peace agreement. People were concerned about ongoing insecurity, harassment and discrimination, the latter leading to a lack of economic opportunities for minority groups in return areas.

The belief that local authorities would turn a blind eye to violations and abuses further undermined minorities' willingness to return.<sup>93</sup> The process was also complicated by poor conditions in returns areas, where challenges included lack of access to social services, limited infrastructure and electricity supplies, lack of jobs, unequal social protection mechanisms and the presence of landmines.<sup>94</sup> The peace agreement associated restitution with return, but in reality it contributed to alternative solutions, particularly for minority groups. Rather than returning, many "sold, exchanged or rented their repossessed property and opted to settle elsewhere".<sup>95</sup>

Nor did efforts to encourage return through restitution do much "for those who did not have their own prop-

erty or homes prior to the conflict, or, as in the case of many in the Roma minority, did not have recognized title to them.”<sup>96</sup> Other vulnerable groups, such as people with mental or physical disabilities, the elderly, those severely affected by trauma and female-headed households, also faced barriers to durable solutions, predominantly because of lack of income.<sup>97</sup> Two decades later, these groups are disproportionately represented among the country’s remaining 100,000 IDPs, including 8,600 particularly vulnerable people living in poor conditions in 159 collective centres.<sup>98</sup>

The situation in Bosnia makes it clear that restitution in and of itself is not enough to ensure that durable solutions are achieved. Other forms of reparation, such as legal assistance and social support services are also needed. It is widely acknowledged that “even for those who benefited from restitution, the effects of other human rights violations and the experience of displacement could not be addressed solely through repossession of their property.”<sup>99</sup>

### Strong and concerted response

Faced with the indifference and obstruction of certain Bosnian authorities, the Peace Implementation Council meeting in Bonn in 1997 gave OHR powers to make binding decisions and sanction officials found to be violating the peace agreement.<sup>100</sup> This was followed in 1999 by a property legislation implementation plan (PLIP) drafted jointly by UNHCR, OHR, the UN mission to Bosnia and the Organisation for Security and Cooperation in Europe (OSCE) to address the continued occupation of people’s homes.

PLIP included property legislation reforms to facilitate restitution as part of a uniform administrative process “heavily weighted in favour of claimants, who effectively needed to assert only their pre-war rights to the property”.<sup>101</sup> Secondary occupants, provided with temporary accommodation if unable to recover their own property, were targeted with an information campaign to facilitate restitution. The plan also provided for the training of housing authorities and the provision of resources for implementation of the property legislation.<sup>102</sup>

As a result of these efforts, 22 municipal officials found to have been obstructing restitution or condoning violence were removed from office in 1999.<sup>103</sup> Property restitutions were also facilitated and aided by the active monitoring of the international community. According to UNHCR, of more than 200,000 property claims lodged, 93 per cent were confirmed and implemented by mid-2005.<sup>104</sup> The international community’s interventionist approach also played a significant role:

“From an implementer’s perspective, repossessions would not have occurred so rapidly had the international community not applied continuous pressure, replaced negotiation with intervention, and in some instances substituted itself for the Bosnian authorities. Relying on local authorities to do what at the time they saw as against their best interests would have been overly idealistic and a waste of time.”<sup>105</sup>

Concerted national and international efforts led to an increase in minority returns starting in the early 2000s. In addition to the removal of public officials and the facilitation of restitution, efforts to improve security included “the patrolling by international peacekeeping and police forces, insistence on increased minority representation in the police forces, and sustained protection monitoring by international agencies and NGOs”.<sup>106</sup> Internationally escorted buses facilitated movement across the inter-entity boundary line, and international insistence led to common license plates across the Federation of Bosnia and Herzegovina and Republika Srpska, which reduced the risk of people being targeted during travel.<sup>107</sup>

Despite these efforts, continued displacement highlighted the need for additional measures to ensure the peace agreement was implemented. Goals and required actions were set out in 2002 in the Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement.<sup>108</sup> Concerns over the situation of vulnerable groups led to further revisions in 2010, calling for individualised solutions based on comprehensive profiling, and recognising that IDPs may prefer local integration or resettlement to return.<sup>109</sup> This led to efforts to build social housing for collective centre residents, funded by loans from the Council of Europe Development Bank.<sup>110</sup> As of the end of 2016, however, we estimated that more than 98,000 people were still living in internal displacement.<sup>111</sup>

# 3

## TENUOUS FEDERALISM

Coordinated intervention in Syria by external forces to preserve positions and interests could lead to a third situation, namely the militarised partition of the country into areas controlled by different groups.<sup>112</sup> Such a development would echo the situation in Kosovo, a territory whose internationally recognised independence continues to be rejected by Serbia and Russia.<sup>113</sup>

### THE CASE OF KOSOVO

Conflict erupted in Kosovo in 1998 between armed elements of the territory's majority Albanian population and the predominantly Serbian forces of the former Yugoslavia, which had historically controlled the region. The conflict led to the displacement of over one million Kosovo Albanians; then, following NATO airstrikes and



Returnees from a Roma neighbourhood in the northern city of Mitrovica, Kosovo. They were satisfied with their living conditions upon return, but the lack of employment opportunities led some residents to leave. Photo: IDMC/Nadine Walicki, December 2014



the withdrawal of Yugoslav troops, 250,000 non-Albanians fled their homes for fear of reprisals.<sup>114</sup> Ethnic tensions remained unresolved and erupted into violence again in 2004, when another 4,200 people were displaced.<sup>115</sup> By the end of 2016, it was estimated that there were 17,000 IDPs in Kosovo and around 200,000 people originally from Kosovo living in displacement in Serbia.<sup>116</sup>

Since the end of the conflict, the focus has been on returns. UN Security Council (UNSC) resolution 1244 of 1999 called for the establishment of “a secure environment in which refugees and displaced persons can return home in safety” under the mandate of the UN mission to Kosovo (UNMIK), which was tasked with ensuring “the safe and unimpeded return of all refugees and displaced persons to their homes”.<sup>117</sup> Ahead of Kosovo’s unilateral declaration of independence, the 2007 Ahtisaari plan for the settlement of the territory’s status reaffirmed the right of all IDPs and refugees to return and reclaim their property and personal possessions.<sup>118</sup>

Kosovo’s 2008 constitution states: “The Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possessions.”<sup>119</sup> The country also adopted a four-year communities and returns strategy in 2014, which aimed to promote the sustainable return of people displaced in Kosovo and beyond.<sup>120</sup>

Despite the focus on returns, which has arguably been to the detriment of other durable solutions, many people are still displaced. Only around 15,000 people returned from Serbia between January 2000 and December 2017, and only 5,800 returns are thought to have taken place within Kosovo.<sup>121</sup>

### Obstacles to durable solutions

Perhaps the most significant obstacle to durable solutions has been the lack of dialogue between the authorities in Pristina and Belgrade. Tensions over Kosovo’s status have limited collaboration and prevented the establishment of coordinated mechanisms.<sup>122</sup> Political uncertainty has also undermined people’s willingness to return, “with Kosovo Albanians fearing the possible return of Serb rule and Serb IDPs hesitating to go back before a final decision is made”.<sup>123</sup>

Freedom of movement is restricted across the region. The special rapporteur for IDPs’ human rights found in 2014 that “in the north of Kosovo, cars with license plates from Serbia have difficulty in entering certain

parts of the towns where Albanians are in the majority. Conversely, cars with license plates from Kosovo have similar difficulties in entering areas where Serbs are in the majority.”<sup>124</sup>

Most ethnic Serb IDPs in Kosovo live in the north, close to the border with Serbia, and rely on services provided by Belgrade, including education, health and policing.<sup>125</sup> Other non-Albanian IDPs tend to live in small ethnic enclaves, where their movement is restricted and they struggle to access services as a result.<sup>126</sup> Harassment and attacks against minorities peaked during the ethnically motivated violence of 2004 but have continued since, “including stoning of buses, destruction of grave sites and occupation, looting or destruction of properties”. There is little public condemnation of such incidents and perpetrators tend not to be prosecuted.<sup>127</sup>

Property restitution procedures have also been delayed. There were around 22,000 unresolved compensation claims in 2014, access to public services continued to be limited and economic prospects poor.<sup>128</sup> As we reported at the time, “some returned IDPs have fled again as a result of these conditions, which prevents the achievement of durable solutions.”<sup>129</sup>

IDPs in Serbia have access to social services, healthcare, education, employment, housing, justice and freedom of movement.<sup>130</sup> IDPs from Kosovo, however, receive less support than refugees and have serious difficulties exercising their rights as a result of discrimination and overly bureaucratic procedures.<sup>131</sup> To obtain status as an IDP and become eligible for social services, as many as 17 supporting documents are required.<sup>132</sup>

Lack of documentation contributes to the heightened vulnerability of Roma, Ashkali and Egyptian (RAE) IDPs in both Serbia and Kosovo. Many have never possessed documents because their births were not registered, and others had their papers lost or destroyed during the conflict.<sup>133</sup> Their “lack of documentation is a serious handicap to accessing rights, as persons who cannot prove their original residence cannot have access to IDP status.”<sup>134</sup> Without it, they struggle to access healthcare, education and other public services, and to resolve property restitution and compensation issues. Their lack of documentation also puts them at greater risk of statelessness.<sup>135</sup> These issues are further complicated by poor mutual recognition of documents issued by the Kosovo and Serbian authorities.<sup>136</sup>

RAE IDPs also tend to live in substandard conditions in informal settlements without water and electricity.<sup>137</sup> Their communities were already vulnerable before they were displaced, and displacement has heightened those vulnerabilities. “Roma IDPs are even worse off than

domicile Roma; the parts of the settlements they live in are in an even worse condition ... the jobs they do are more difficult and less paid, and their access to social services even more elusive."<sup>138</sup> It was estimated in 2015 that 92 per cent of Roma IDPs and 78 per cent of the Roma population as a whole were living below the at-risk-of-poverty threshold.<sup>139</sup>

### Shift to cooperation

The international community has taken steps to encourage cooperation between Pristina and Belgrade. UNMIK, the provisional authorities in Kosovo and the Serbian government signed a protocol in June 2006 to establish the preconditions for IDPs' voluntary and sustainable return to Kosovo.<sup>140</sup> Further progress was made thanks to EU-sponsored dialogue that started in 2011 and led to a number of agreements on practical issues relevant to IDPs, such as land and civil registries.<sup>141</sup> The European Union Rule of Law Mission in Kosovo (EULEX) also set up a mechanism to facilitate the exchange of legal documents, and UNHCR has been working with national authorities to reduce the number of undocumented Roma.<sup>142 143</sup>

Local elections in Kosovo in 2013 marked "a new era of cooperation and dialogue between Belgrade and Pristina".<sup>144</sup> The Serbian government not only encouraged IDPs to vote, but arranged transport to polling stations for IDPs living in Serbia, and the authorities in Pristina made postal voting arrangements for people displaced outside Kosovo.<sup>145</sup> Administrative barriers to participation remained, however - less than 35 per cent of those who registered to vote by post were approved to do so - and localised violence, voter intimidation and attempts to boycott polling were reported on election day.<sup>146</sup>

Despite these issues, Kosovo Serbs' increased political and ethnic representation increases their prospects of achieving durable solutions.<sup>147</sup> The EU-led negotiations also led to the approval in 2013 of controversial amnesty legislation designed to help reintegrate Kosovo Serbs by forgiving past resistance activities.<sup>148</sup> Serbia, however, continues to reject Kosovo's independence and regard it as the Autonomous Province of Kosovo and Metohija. The special rapporteur on IDPs' human rights noted in 2014 that "effective political leadership based on dialogue and cooperation" between Belgrade and Pristina was still needed to bring displacement to a sustainable end.<sup>149</sup>

The international community has played a significant role in promoting and encouraging progress toward durable solutions, which is unsurprising given that UNSC resolution 1244 placed Kosovo under UNMIK administration. UNMIK's role was gradually pared back as the new Kosovo authorities assumed increased control following the country's unilateral declaration of independence, but the international community maintains a strong presence through organisations such as EULEX and the NATO-led stabilisation force (KFOR).<sup>150</sup>

UN agencies also play an important role. UNHCR has been working to facilitate go-and-see visits to help IDPs make informed choices about whether to return, and the UN Development Programme (UNDP) supported the Sustainable Partnership for Assistance to Minority Returns to Kosovo between 2005 and 2010.<sup>151</sup> The EU remains a major donor as part of Kosovo's accession framework, granting €70.5 million (\$86.5 million) in 2016.<sup>152</sup> Its support, however, has been tailored more toward refugees than IDPs, particularly in terms of adequate housing.<sup>153</sup>



# CONCLUSION

As Syria moves toward one or a combination of the above situations, the international community will have to adapt its response swiftly to protect displaced people's rights and promote rapid progress toward durable solutions. This is particularly important for IDPs, who unlike refugees do not benefit from international protection.

Real and perceived security threats and concerns about discrimination and harassment are likely to limit returns among minority groups and those with perceived or actual engagement in anti-government activity, and changes in the country's demographic makeup as a result of the conflict have the potential to heighten such tensions. This has already been evident in forced population movements associated with local ceasefires, agreements such as the "four towns" deal, and government offensives in areas such as Eastern Ghouta and Aleppo.

Vulnerable groups, including the elderly, people with physical or mental disabilities, female-headed households and historically marginalised communities, will face particular challenges in achieving durable solutions. Lack of documentation will deeply exacerbate vulnerability, limiting their access to assistance and basic services, and undermining property restitution claims.<sup>154</sup> Restitution will be cumbersome given the scale of displacement, and the widespread destruction of property means compensation arrangements will need to be made so that those unable to reclaim their former homes can pursue alternative durable solutions. Given likely delays in processing property restitution claims, temporary housing solutions will also need to be provided.

Many displaced people are likely to want to try to re-establish their lives in Syria's towns and cities, which means that efforts will be needed to prevent the growth of unplanned urban settlements, ensure service provision in urban areas and help formerly rural populations compete in urban markets. This should be accompanied by the (re)development of rural areas in terms of infrastructure, livelihoods and services as a means of relieving pressure on urban areas.

The following observation is about Sri Lanka, but it clearly illustrates the potential for effective efforts towards durable solutions to contribute to longer-term peace:

"The failure to ... offer sustainable solutions for IDPs risks fuelling existing grievances and reinforcing the underlying mistrust between the Sri Lankan government and the Tamil minority population. Subsequently, ensuring durable solutions for these displaced persons is fundamental to the achievement of lasting peace ... By stimulating reconstruction the government can use the development process as a way of winning the 'hearts and minds' of the Tamil population. This will ensure that IDPs return to dignified conditions, and will reduce widespread grievances against the state."<sup>155</sup>

The international community will have an important role to play, but it will need to be mindful of the intricacies of whichever situation unfolds in Syria. Donors will have to think carefully about the flexible nature of their future financial support both for traditional humanitarian and development interventions and local-level participatory programming. They will also have to weigh the risks of making national-level funding conditional on respect for human rights, given that the government may turn to non-traditional donors instead.

Humanitarian organizations will need to determine whether the current architecture, including the Whole of Syria (WoS) structure, is adaptable to the shifting context in Syria, and they will have to balance the benefits of direct programme implementation against a maintained focus on principles and protection for the displaced. Both the humanitarian and development communities will have to work with national authorities toward durable solutions from the earliest stages of the response, in recognition of the fact that "addressing protracted internal displacement is not a purely humanitarian concern".<sup>156</sup>

# RECOMMENDATIONS

## ENHANCING PROTECTION ACROSS THE DISPLACEMENT CONTINUUM

### Enabling access to legal identity for all

- Facilitate rapid access to personal documents via a simplified administrative process based on flexible requirements, including the acceptance of reliable witnesses in lieu of supporting paperwork if necessary
- Ensure that personal documents are recognised by all parties nationwide, irrespective of place of issue

### Tackling vulnerabilities

- Mainstream vulnerability throughout programming to ensure that the elderly, people with disabilities, female-headed households, traditionally marginalised

groups and others are not left behind in protracted displacement

- Adopt a needs-based approach to programming for communities affected by displacement, including vulnerable hosts, in order not to undermine social cohesion
- Negotiate access to IDPs in camp and non-camp settings, ensuring provision of humanitarian services including healthcare, nutrition, water and sanitation, psychosocial support and family tracing and reunification
- Promote freedom of movement for IDPs in camps including for family reunification and medical care
- In parallel to promoting the regeneration of rural areas, establish income-generating programmes and vocational training opportunities in urban settings, with a focus on preparing people displaced from rural areas to compete in urban markets



Zayd\* and his wife and two children made the very dangerous journey from Deir Az Zour in Syria and arrived at a displacement camp after walking for more than three days. They are contemplating returning to Deir Az Zour soon. "We don't have much money in the camp, and can't make a living here. I want my children to go to school, and to study. This generation has lost the main thing in life; education. A number of people are illiterate." Photo: NRC/Issie Cobb \*Name changed to protect identity

### Addressing housing, land and property issues

- Establish effective mechanisms based on an expedient administrative process with flexible requirements to facilitate property restitution or compensation for prewar occupants, including tenants
- Recognising that property restitution has the potential to cause further displacement, provide alternative accommodation for current occupants pending the restitution of their own pre-war property or other permanent solutions
- Ensure that property restitution is not conditional on return, allowing people to use compensation or proceeds from the sale or rental of their restored property to fund other durable solutions if so desired
- Clear unexploded ordnance ahead of any potential returns, and ensure that people who may decide to return spontaneously are informed about the risk posed by such devices
- Promote dialogue between returning and host populations at the grassroots level, enabling participants to identify common problems and solutions to enhance social cohesion

### POLICY DEVELOPMENT AND IMPLEMENTATION

- Advocate for the voluntary, safe and dignified return of refugees and IDPs to be considered under the same legal and policy framework, acknowledging their shared need for durable solutions
- Ensure that efforts to facilitate returns are mirrored by support for local integration for IDPs unwilling or unable to return, irrespective of the demand for return
- Provide capacity and resources for municipalities to ensure that national policies for durable solutions are implemented at the local level in a non-discriminatory manner
- Support cooperation across relevant international organizations to harmonize data collection and monitoring of displacement trends and intentions

### RESPONSIBLE HUMANITARIAN DONORSHIP

- Support participatory, demand-driven and rights based durable solutions programmes at the local level, either through direct financial support or assistance that meets donors' funding requirements
- Ensure that financial support committed by traditional and non-traditional donors for recovery efforts is conditional on respect for human rights and unrestricted humanitarian access
- Commit longer-term support which bridges ongoing humanitarian responses to displacement with efforts towards durable solutions and reconstruction.

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