

DURABLE SOLUTIONS: PRINCIPLES AND PROCESS

IDPs' protection is based on international legal and policy frameworks. They are applicable in national jurisdictions through international customary law and the international obligations countries accept when they ratify human rights treaties, the 1949 Geneva Conventions and their optional protocols on international humanitarian law (IHL). In many countries, IDPs' protection is also enshrined in the constitution and in national laws and regulations.

International standards specific to IDPs' protection have also been developed based on protection principles and obligations enshrined in supranational law.

- ❖ **The Guiding Principles on Internal Displacement** restate and interpret provisions of human rights law and IHL. They also incorporate principles of refugee law, illustrating their relevance to IDPs' protection and assistance. They are widely adhered to, and form an important secondary source of international law. They have been the basis of many countries' national legal and policy frameworks, they are referred to in the Kampala Convention and they are an attachment to the Great Lakes Pact's protocol on IDPs.¹ The protocol requires that state parties pass legislation to incorporate the Guiding Principles into their domestic frameworks. The principles cover all phases of displacement and the response to it, and part five refers to durable solutions.
- ➔ Principle 6.3 sets out the concept that underpins the pursuit of durable solutions: "Displacement shall last no longer than required by the circumstances". As explained in the accompanying annotations, prolonged displacement constitutes an illegitimate or disproportionate restriction of the right to freedom of movement.
- ➔ Principle 28.2 and 29 recognise IDPs' right to a durable solution and the fact that they often need help to achieve them.

Facilitating durable solutions requires that all stakeholders - primarily national and local authorities, but also humanitarian and development actors- work together to identify strategies and activities to help IDPs bring their displacement to a sustainable end, and to establish criteria to determine the extent to which durable solutions have been achieved.

- ❖ **The Kampala Convention** : the African Union Convention for the Protection and Assistance to IDPs (Kampala Convention) is the world's first continental instrument that legally obliges AU governments to protect and assist IDPs, and it restates the validity of the Guiding Principles. It adopts a comprehensive approach that envisages different roles for various responders across all phases of displacement, including the achievement of durable solutions. Adopted in 2009, it came into force on 6 December 2012.

¹ The Kampala Convention is formally known as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; the Great Lakes Pact as the Pact on Security, Stability and Development in the Great Lakes Region

- Article 11 obliges state parties to seek lasting solutions to displacement by promoting and creating the conditions for voluntary and sustainable return, local integration or settlement elsewhere in the country to take place in safety and dignity. It recognises IDPs' right to a free and informed choice, and obliges state parties to consult them about the settlement options available. It also recognises the need to establish simplified procedures for the resolution of property disputes, with particular emphasis on communities that have a special attachment to, or dependency on their land.
- ❖ **The IASC framework on durable solutions** clarifies their concept and provides general guidance on how to achieve them.²
 - According the framework, durable solutions are achieved when IDPs **no longer have specific assistance and protection needs linked to their displacement and can exercise their human rights without discrimination related to it.**
 - It also establishes principles governing the pursuit of durable solutions and criteria to determine progress towards them.
- ❖ **The UN secretary general's 2011 decision on durable solutions** sets out a new global approach and specific responsibilities "to support the delivery of durable solutions for IDPs and refugees returning to their country of origin".³ It recognises that primary responsibility for resolving displacement rests with the state, but focuses on improving international responses.
 - An accompanying framework reaffirms the core principles of programming for durable solutions and identifies interventions in three main areas:
 - Social and economic recovery
 - Protection, security and rule of law
 - Governance and social cohesion
 - The secretary general's decision makes the UN resident coordinator or humanitarian coordinator responsible for leading the development of a durable solutions strategy "in consultation with national authorities and other partners". Where present, the inter-cluster working group on early recovery should serve as a coordinator at the country level.

In **Côte d'Ivoire**, the Humanitarian Coordinator appointed in December 2013 - and who also serves as the Resident Coordinator - decided to prioritise the development of a durable solutions strategy as part of his responsibility to support a smooth transition from relief to development. The compact he agreed with the emergency relief coordinator has five objectives, including to "support transition efforts, focusing on resilience programming and leading on a comprehensive durable solutions strategy".

² The framework is formally known as the IASC Framework on Durable Solutions for Internally Displaced Persons

³ The decision is formally known as the Secretary General's Decision on Ending Displacement in the Aftermath of Conflict

The process of achieving durable solutions is complex and involves many responders across the humanitarian and development sectors.

Achieving durable solutions is a gradual, complex and often long-term process that involves addressing human rights, humanitarian, development, reconstruction and peace-building challenges. As such, it requires coordinated and timely engagement by a wide range of stakeholders from the outset.

Principles that guide the pursuit of durable solutions

According to the IASC framework:

- The primary responsibility for the achievement of durable solutions lies with the state.
- National and international actors from the humanitarian and development sectors have a complementary role to play and should be given rapid and unimpeded access to IDPs.
- IDPs' needs, rights and legitimate interests should be the primary consideration, and should guide all laws and policies on internal displacement.
- IDPs' right to make an informed and voluntary choice about their settlement options should be respected, as should their right to participate in the planning and management of strategies and programmes that facilitate durable solutions.
- IDPs should not be discriminated against on the basis of their displacement, or their race, religion, gender, language, religion, political or other opinion, national or social origin, disability, age, marital and family status, nationality or other status.
- A community-based approach should be adopted that addresses the needs of both IDPs and their hosts, which in turn reduces the risk of tensions arising and facilitates (re)integration.

In 2006, **Georgia** established a commission to develop a state strategy on IDPs, which was adopted in February 2007. IDPs' representatives were actively involved in the four working groups engaged in process, on legal issues, housing, economic activities and social protection. Two of the eight seats on the commission were designated for civil society organisations (CSOs), two for international representatives and four for government ministries. The CSO representatives were drawn from organisations that support IDPs. The strategy that resulted has ten guiding principles, the second of which determines that IDPs should participate in decision-making and the planning and implementation of the activities it envisages, and that they should be regularly updated about all aspects of the action plan.

Ensuring a voluntary, safe and dignified process

Guiding Principle 28.1 sets out IDPs' right "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".

- The concept of a **voluntary process**, in which IDPs' decisions are well informed and freely made, is vital to effective programming for durable solutions.
- The need for **safety** is self-evident. The concept, however, includes not only physical but also legal and material safety. The box below details guidance published by the UN Refugee Agency (UNHCR) in 2004 for the repatriation and reintegration of refugees, but it is equally applicable to IDPs.
- According UNHCR's 1996 handbook on voluntary repatriation, **dignity** means that displaced people are "not manhandled, that they can return unconditionally and if they are doing so spontaneously they can do so at their own pace, that they are not arbitrarily separated from family members and that they are treated with respect by the authorities and full acceptance by the national authorities, including the full restoration of their rights".

Components of safety

UNHCR Handbook for Repatriation and Reintegration Activities (2004)

Physical safety

- Ebb of violence and intimidation;
- Steps taken towards re-establishment of police, judiciary and human rights agencies; Absence of mines and unexploded ordinances; and
- Improved overall security

Legal safety

- Removal of legal and administrative barriers to return;
- Legislation related to enabling legal framework to ensure, inter alia, citizenship, amnesty, property, registration, documentation and return; and
- Existence of mechanisms to redress HRs abuses, including independent judiciary.

Material safety

- Access to means of survival and basic services in early stages of return (shelter, water, health and education) and access to employment opportunities;
- Non-discriminatory access to services (health services, education, etc.);
- Development of absorption capacity in areas of return; and
- Promotion of economic self-reliance and income-generating activities.