

Benchmarks for Durable Solutions for Internally Displaced Persons

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Internal displacement ‘shall last no longer than required by the circumstances,’ the Guiding Principles on Internal Displacement stipulate. It is now well recognized that to be internally displaced is to be exposed to a range of particular risks and vulnerabilities. Bringing an end to this precarious plight is critically important. However, because a premature end to displacement can have serious ramifications, there has to be an understanding of how to define and realize this end in a manner that respects the safety and security of the displaced.

Currently, there is no consensus as to when to stop considering someone as an internally displaced person (IDP). The benchmarks elaborated in this document are intended to provide guidance primarily to the humanitarian actors.

Because identification as an IDP does not confer a special status under international law there is no cessation clause as for refugees. For some, internal displacement ends only upon the reversal of displacement, that is, upon IDPs’ return to their place of origin. In many cases, such return can occur only when the causes of the displacement have been resolved. However because return is not always possible or even desired by IDPs, this can lead to a situation where internal displacement holds little prospect of ever ending, and instead is an “identity” passed down from one generation to the next, which can impede their integration and even undermine their rights. At the other extreme, internal displacement may abruptly be deemed to have ended. It may, for instance, be in the interest of a government to claim there are no longer any IDPs in the country, in an effort to give the appearance of a return to normalcy and to direct international scrutiny elsewhere. Or, resources may dictate who is considered an IDP, with displacement “ending” when funding ends. The rush to end a specific focus on IDPs may lead to some

¹ This document has two flowcharts annexed to it, both entitled “Annex- Benchmarks for Durable Solutions for IDPs – Flowcharts”

² At the request of the UN Office for the Coordination of Humanitarian Affairs (OCHA), the Representative of the UN Secretary-General on Internally Displaced Persons (RSG) Francis Deng began the process of developing a set of benchmarks to provide guidance on determining when an individual should no longer be considered to be in need of protection and assistance as an internally displaced person. To develop the benchmarks, the RSG, in cooperation with the Brookings-Bern Project on Internal Displacement and Georgetown University’s Institute for the Study of International Migration, later joined by the Internal Displacement Monitoring Centre of the Norwegian Refugee Council, hosted three meetings to gain the input of international organizations, governments, nongovernmental organizations and experts on internal displacement. The organizers also commissioned case studies that were published in a special issue of *Forced Migration Review*. The project is being completed under the guidance of the current RSG, Walter Kalin. For meeting reports, see www.brookings.edu/fp/projects/conferences/contents.htm). For the *Forced Migration Review* special issue, see www.fmreview.org/FMRpdfs/FMR17/fmr17full.pdf).

being left behind and overlooked for assistance or to IDPs' particular protection needs being neglected, without having found a durable solution.

Three types of durable solutions to internal displacement exist: return to the place of origin, local integration in the areas in which IDPs initially take refuge or settlement in another part of the country, the latter two being termed "resettlement" by the Guiding Principles on Internal Displacement.³ Displacement ends when one of these durable solutions occurs and IDPs no longer have needs specifically related to their displacement. This does not mean that they may not continue to have a need for protection and assistance, but their needs would be no different from other similarly situated citizens. Having found a durable solution, formerly displaced persons continue to have all of the rights of citizens and may be eligible for international assistance on the same basis as others in the country. The fact that a person is no longer being considered an IDP shall have no repercussions for the enjoyment of her or his citizen's and human rights, including the right to seek redress/compensation, or the right not to be discriminated against because of having been displaced. The end of displacement is the full restoration and enjoyment of a person's human rights, in a non-discriminatory manner vis-à-vis citizens who were never displaced. While this may seem utopian, an analysis of the individual's access to rights needs to take place for each situation.

Internal displacement does not generally end abruptly. Rather, ending displacement is a process through which the need for specialized assistance and protection diminishes. Sometimes, for long periods after return, those who have been displaced may find themselves in markedly different circumstances and with different needs than those who never left their home communities. For example, claims to their property may not be adjudicated immediately, leaving them without shelter or a means of livelihood in places of return. Similarly, those who settle elsewhere may require humanitarian and financial aid until they are able to obtain shelter and employment in their new location. Even in the context of a durable peace agreement, insecurity may continue to pose problems for uprooted populations, particularly if there are resentments and conflicts between IDP returnees or (re-)settled populations and the already resident population. Under these circumstances, even if the people have returned, they still have residual displacement related problems and are therefore of concern.

The right of IDPs to make informed and voluntary decisions as to whether they want to return, or settle and integrate at the place where they found refuge or elsewhere, is one of cornerstones of the Guiding Principles, underpinned by human rights law⁴, and must be ensured. Though freedom of movement is a fundamental human right, it can be restricted and the right to determine where one lives is not absolute. There may be situations in

³ Guiding Principles 28-30 spell out the rights of IDPs and responsibilities of competent authorities relating to return, resettlement and reintegration. Since former IDPs should not be disadvantaged relative to those who are still displaced, the Guiding Principles relating to protection from displacement, protection during displacement, and humanitarian assistance apply, where appropriate, after return or resettlement.

⁴ This freedom to choose is guaranteed by the right to liberty of movement and freedom to choose one's residence (Art. 12 International Covenant on Civil and Political Rights).

which national authorities may determine that conditions are too unsafe to permit return or settlement in a specific location (for example, a natural or manmade disaster or development project has made an area uninhabitable). However, every effort should be made to ensure that the decision to choose a durable solution is voluntary and that the decisions of individual IDPs whether to return home or settle elsewhere must be respected and facilitated.

Determining that displacement has ended has both subjective and objective aspects. IDPs may continue to see themselves as displaced long after national authorities and international observers may determine that their situation has been resolved using a set of objective criteria. Conversely, IDPs may see their displacement at an end upon returning home, even though a more objective analysis would indicate that they remain vulnerable as persons who have been previously uprooted and who would continue to need protection and assistance as returnees/resettled persons.

The purpose of these benchmarks is to assist international agencies and non-governmental organizations (NGOs) and the displaced themselves to determine whether durable solutions to internal displacement have been found and, if not, to identify what is still required towards reaching that goal. They also help organizations with specific activities to assist and protect IDPs to determine if an individual's displacement remains a reason for deserving special attention or whether the responsibilities should be handed over to other actors—for example, the government or development agencies. The benchmarks provide guidance on more transparent decision-making criteria for the international organizations and NGOs in its relations to governments, to donors and to the displaced and for planning purposes with regard to assistance and defining objectives and goals. This would more clearly determine the rationale for involvement in a situation and also to potential disengagement. The benchmarks pertain to those displaced by conflict, human rights abuses and natural or manmade disasters. They also may provide guidance to those displaced by development projects although in such situations return most often is not possible and, in addition, special guidelines on resettlement exist⁵.

To determine whether and to what extent a durable solution has been achieved it is necessary to examine both the *processes* through which solutions are found and the actual *conditions* of the returnees/resettled persons. In general, it is important to consider whether 1) the national authorities have established the conditions conducive to safe and dignified return or resettlement; 2) formerly displaced persons are able to assert their rights on the same basis as other nationals; 3) international observers are able to provide assistance and monitor the situation of the formerly displaced; and ultimately, 4) the durable solution is sustainable. It is important to note that there is no clear or magic formula for deciding that displacement or the need for assistance has ended. Rather, the totality of the situation must be assessed and consultation with all relevant stakeholders, are be part of the process.

⁵ See World Bank, Operational Policy on Involuntary Resettlement OP 4.12 Involuntary Resettlement, December 2001 for more information about the processes to be followed in cases of development-induced displacement.

The benchmarks are presented in two sections. First are the processes through which durable solutions are determined to have been achieved, and second are the conditions that mark a durable solution to displacement.

I. Processes

Participation of the Displaced⁶

IDPs are able to make an informed decision as to whether to remain where they are, return to their home communities, or (re)settle elsewhere in the country.

At a minimum, information needed to make an informed decision includes:

- General situation in the origin or resettlement community, including the political situation, safety and security, freedom of movement, amnesties or legal guarantees, human rights situation, legal and other mechanisms to protect the rights of women, children, youth, minorities, older people, type and duration of assistance available to them, etc. This includes objective information as to whether the causes of displacement have been resolved, and if they have not been resolved, a realistic assessment as to the prospects for resolution and the efficacy of risk reduction mechanisms in place. Information should also be provided on what mechanisms have been put in place in order to ensure a smooth (re-)integration of the IDPs with the local population.
- The return and (re)settlement procedures, including information on what items the IDPs can take with them, what documents they will need, what type of transport will be available, what arrangements if any have been made for those with special needs, what if any reintegration package will be provided, any necessary administrative requirements to stay where they are, etc.
- The conditions on return or (re)settlement, including access to housing, land, livelihoods, employment and other economic opportunities; availability of public services (public transport, healthcare, education, etc.); conditions of buildings and infrastructure for schools, health clinics, roads, bridges and sanitation systems; and assistance available from national, international and private agencies.

The information should be in a language understood by the IDPs.

IDPs, including women, minorities and others who may not have representation⁷, participate fully in planning for return or resettlement. To ensure full and appropriate participation of the internally displaced in planning, such participation in decisions may take place in the context of community meetings, social and other service delivery, feeding centres, skills training and income generating programs, and other environments

⁶ Principle 28.2 requires 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.”

⁷ In line with international human rights law, durable solutions for displaced children must be in the best interest of the child.

in which the displaced gather. Involvement of staff of NGOs in outreach may help ensure broader participation. In urban areas where internally displaced persons have spontaneously relocated, special efforts will be needed to ensure that they receive notice of consultations and gain access to information. Those who have spontaneously returned or resettled should also be consulted about continuing assistance or protection needs. The use of mass media may be the most effective way to reach spontaneously settled individuals.

To the extent possible, arrangements have been made for IDP representatives to visit and assess conditions for return or resettlement. These visits should include women and men as well as a broad representation of ethnic, racial, religious and political groups. The visits should include opportunities for consultations with populations already residing in the potential return or resettlement communities in order to identify issues that may lead to conflict.

No coercion—including physical force, harassment, intimidation, denial of basic services, or closure of IDP camps or facilities without an acceptable alternative—has been used to induce or to prevent return or resettlement. As stated above, there may be situations in which national authorities are justified in determining that return is impossible, at least for the time being or in the near future. For the most part, however, the use of coercive measures to prevent or induce return or resettlement undermines the principle of voluntariness, which is essential to ensure the protection of the rights of IDPs.⁸ As stated in the *Handbook for Applying the Guiding Principles*, “Internally displaced persons have the rights to be protected against forcible return to or resettlement in any place where their life, safety, liberty, and/or health would be at risk. Just as the principle of non-refoulement (the prohibition against forced return to their home countries) is the most important right for refugees, protection from forced returns is also essential for protecting internally displaced persons. This principle has particular import for internally displaced persons because it is the loss of their ability to remain in their original homes that characterizes their plight. Further depriving them of their right to seek safety adds even greater injury to them.”

Role of the National Authorities⁹

National authorities have taken appropriate measures to consult with IDPs and ensure their full participation in decisions regarding return or resettlement. In particular, the authorities concerned shall endeavor to involve those affected, particularly women but also minorities, in the planning and management of their return or (re)settlement.

⁸ 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.”

⁹ Guiding Principle 28.1 states that “Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons 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.”

National authorities have taken appropriate measures to establish conditions, as well as provide the means, to enable IDPs to return voluntarily, in safety and dignity, or to resettle voluntarily in another part of the country and to facilitate the (re)integration of returned or resettled IDPs. The primary responsibility for ensuring that IDPs do not face dangers to their physical safety and security rests with national authorities. Countries in transition from conflict or natural disasters may need assistance from the international community (see below) in establishing such conditions.

In practical terms, the responsibility of national authorities includes: taking measures to ensure respect for human rights and humanitarian law; providing safe transit for internally displaced persons; and offering adequate assistance and protection of physical safety upon relocation. In conflict situations, practical measures include seeking peaceful resolution of conflicts; where appropriate, national authorities may need to pay special attention to landmines and unexploded ordinance that may pose a danger to IDPs and/or disarm militias or civilians carrying arms. In the case of natural disasters, national authorities will need to take measures to reduce vulnerability of returnees and the general population from future disasters.

National authorities grant and facilitate safe, unimpeded and timely access of humanitarian organizations and other relevant actors to assist IDPs to return or resettle.¹⁰ International and national humanitarian organizations and other relevant actors can play an important role in assisting return or resettlement and reintegration. In some cases, memorandums of understanding signed by national and local authorities, UN officials and representatives of the internally displaced may be a useful way to spell out the understandings and obligations of all parties involved in finding solutions to the displacement. Humanitarian organizations and other appropriate actors can also play an important role in assessing the safety and security of internally displaced persons who have returned or resettled. Assessments should take into account gender-specific violence and exploitation connected to displacement as well as threats specific to children and to other groups with particular protection concerns.

II. Conditions

Physical safety and security¹¹

Formerly displaced persons do not suffer attacks, harassment, intimidation, persecution or any other form of punitive action upon return to their home communities or resettlement in other locations. Attacks or other acts of violence against internally displaced persons are prohibited in all circumstances. Evidence that former IDPs are not subject to such attacks or other punitive actions is an essential condition that a durable solution has been achieved. In the case of conflict situations, it is

¹⁰ Guiding Principle 30 specifies 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.”

¹¹This freedom is guaranteed by the right to life (Art. 6 of the International Covenant on Civil and Political Rights)

particularly important to determine that former IDPs are not physically endangered by landmines, unexploded ordinances, small arms or other violence perpetrated by combatants.

Legal protection before the law¹²

Formerly displaced persons are not subject to discrimination for reasons related to their displacement. This provision has two components. First, displacement ends when returnees and resettled persons do not face discrimination because they had been displaced in the past. Second, for the solution to be sustainable, displacement can be said to have ended only if the reasons that induced past and may induce future displacement have ended. These include discrimination based on race, religion, nationality, ethnicity, membership in a particular social group, political opinion or gender.

Formerly displaced persons have full and non-discriminatory access to national and sub-national protection mechanisms, including police and courts. Although law enforcement and judicial systems in rural areas, or in countries in transition from conflict or severely affected by disasters, may not be sufficiently developed, it is important that IDPs have access on a par with other residents to national protection mechanisms and progress be made towards establishing effective courts and police in areas of return and resettlement.

Formerly displaced persons have access to personal documentation, which typically is needed to access public services, to vote and for administrative purposes. To give effect to the right for internally displaced persons to recognition before the law, it is important that the formerly displaced have access to documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. Women and men have equal rights to obtain such necessary documents and have the right to have such documentation issued in their own names. Such documentation in fact should be issued earlier, as soon as an IDP needs them.¹³

Formerly displaced persons have access to mechanisms for property restitution or compensation regardless of whether they return or settle in the area where they found refuge or a new location.¹⁴ These standards apply to all residential, agricultural and commercial property. The right to restitution or compensation extends to all displaced persons--including men, women and children--who have lost ownership of or access to their property, whether they have formal or informal titles. It also includes those who stand to inherit property from deceased family members who were displaced. The process through which property restitution and compensation is made can be complex

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.

¹³ Guiding Principle 20 spells out the rights of IDPs to documentation.

¹⁴ Guiding Principle 29.2 spells out the responsibilities of competent authorities regarding property restitution and compensation.

and may take time. It is not necessary for it to be fully achieved before IDPs are determined to have found a durable solution if they have access to procedures for property restitution and compensation, including traditional property dispute mechanisms, and are able to reside safely and securely during the interim. It should be emphasized that those determined to have found durable solutions do not lose their claim to restitution or compensation because their displacement has ended – property rights, like all human rights, remain in effect an entitlement of former IDPs. Alternative solutions should be found for temporary occupants of IDP property who are being evicted in the course of property restitution, in particular if they are displaced persons themselves. Appropriate solutions should be found for persons who lost their tenancy rights in the course of displacement. The problems that women may face in obtaining recognition of their ownership or access to the property need special attention, particularly where there are legal barriers to female inheritance of property.

Economic, Social and Cultural Reintegration¹⁵

Formerly displaced persons enjoy without discrimination an adequate standard of living, including shelter, food, water and other means of survival. National authorities have the principal responsibility to ensure that those who return or resettle have access, on a sustainable basis, to essential food and potable water, basic shelter and housing, and essential medical services and sanitation. Humanitarian organizations may be called upon to help ensure that these basic needs are met. Initially, IDPs may have needs for assistance to obtain the means of survival that differ significantly from that of the resident population. However, if adequate attention is being paid to their specific situation, the needs of IDPs are likely to resemble that of other residents over time. To the extent that the needs merge, the continuation of IDP-specific programs would not be appropriate. It should be emphasized, however, that since the formerly displaced retain their rights, along with other citizens, to an adequate standard of living, development programs to help them achieve such a standard will be warranted.

More specifically, formerly displaced persons will have access without discrimination to:

- **Employment opportunities and income generation.** Return and resettlement often occur in circumstances of high unemployment and fragile economies. This benchmark does not mean that all formerly displaced persons must be employed before considering displacement to have ended. Nor does it require that IDPs regain their previous livelihood. Rather, displacement ends when IDPs have no barriers to employment and income generation opportunities that relate specifically to their displacement.
- **Basic public services, including education, health services and pensions.** Similarly, the key to determining whether IDPs have such access is whether there are barriers related to their displacement that bar them from using services that are available to other residents of the community. Replacement of

¹⁵ Guiding Principle 28 states “[Competent] authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.” Guiding Principle 29.1 specifies that returnees and resettled persons “shall have the right to ... have equal access to public services.”

personal documentation, as noted earlier, is often essential in order for IDPs to regain access to public services.

Formerly displaced persons have been able to reunite with family members if they choose to do so. Families separated by displacement should be reunited as quickly as possible, particularly when children are involved.

Political Rights¹⁶

Formerly displaced persons are able to exercise the right to participate fully and equally in public affairs. 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 participate in public affairs, and have access to public institutions, in a language they understand.

Prepared by: RSG for Human Rights of IDPs - March, 2007

¹⁶ Guiding Principle 29.1 specifies that internally displaced persons “shall have the right to participate fully and equally in public affairs at all levels” upon their return or resettlement. IDPs also have this right while displaced (see Guiding Principle 22 (d)).