

# A UNHCR perspective

by Guillermo Bettocchi with Raquel Freitas

*International efforts to uphold the rights of IDPs are bearing fruit at the normative level as well as in attempts to improve the institutional arrangements. So far, however, there are no agreed criteria nor mechanisms to address the question of when displacement ends.*

The issue at stake is to identify when international and national responsibilities end in terms of addressing the specific needs of IDPs, as compared to the population in general. What is required is consensus on the part of IDPs, humanitarian actors and the authorities on a strategy for pursuing solutions, monitoring the extent to which IDPs have 're-acquired' effective national protection, and phasing out programmes.

The cessation clause in refugee law can hardly be applied to IDPs by analogy. Internal displacement is a de facto situation and does not confer a legal status, as opposed to the case with refugees. The refugee law analogy would deprive IDPs of their rights as citizens in their own country. Further, the continued applicability of human rights and humanitarian law should be noted, even when there are no longer special needs related to displacement. Legally speaking, there is thus no need to formally declare the end of displacement. In countries such as Afghanistan or Angola, different waves of displacement also make this impractical. Additionally, in many circumstances, IDPs are less vulnerable than others who were unable to move.

## Free choices

As national citizens, IDPs are entitled to freedom of movement and residence. Forced displacement constrains the exercise of this freedom. It is only when the causes of forced displacement are removed and conditions for safe and dignified return are created that IDPs are in a position to truly choose where to live. Creating an enabling framework for return will allow IDPs to make informed choices. Here lies the impor-

tance of considering the 'end of displacement' in consultation with the displaced populations themselves. Solutions to their situation have to be voluntary, whether they stay, return or move elsewhere.

Once this is ensured, local settlement at the place of displacement or relocation to other areas will become true options that would end the 'state', not the 'status', of displacement. It is also crucial that options for solutions other than return home are not at the expense of IDPs' other rights as well as the rights of others (i.e. right to property) and that no undue push or pull factors are created.

## Sustainable solutions

Ensuring the voluntary nature of the solution is only the first step. In the specific case of refugees, for example, UNHCR has expressed "legitimate concern" for the **consequences** of return,<sup>1</sup> and for the promotion of comprehensive approaches that will ensure the sustainability and durability of return in conditions of safety, dignity and equality with other nationals, taking into account the specific needs of the different affected populations (including IDPs). Sustainable return happens when returnees' physical and material security is assured and when a constructive relationship between returnees, civil society and the state is consolidated. These parameters should apply to all persons affected by displacement (internally and externally) or who otherwise have suffered the consequences of conflict.

Returning refugees are of concern to UNHCR until they are fully (re)integrated into the local community, enjoy a normal livelihood in safety

and dignity and have equal access to protection from the national authorities. There are, however, no fixed indicators to measure 'full reintegration'.

## Measuring solutions

Sustainability of solutions should be assessed against agreed benchmarks drawn from applicable principles, including the Guiding Principles on Internal Displacement. Such assessment must involve all categories of persons affected, including returning refugees, IDPs and the local populations. Criteria on when displacement ends (i.e. when a solution has been attained) should be based both on **general** and **specific** considerations regarding the situation of the displaced.

The **general** assessment should contain an analysis of the political context, including peace agreements, democratic elections, reforms to the legal structure, amnesties, general respect for human rights and overall socio-economic conditions. It should assess: the causes of the break-down in national protection; the nature of the conflict and settlement (including their effect on the state's capacity for national protection); and the likely impact of the solution on the process of reconstruction and reconciliation.

Regarding the **specific** assessment, the gradual character of the reversal of the situation makes it difficult to establish strict criteria. The profile of the IDP population should be taken into account, as should the conditions in the areas of return, the prospects of property restitution, job opportunities, physical safety and access to basic living standards. Indicators of 'successful' reintegration are relative and can best be measured by comparing an individual's circumstances with those of neighbours or members of a nearby community.

Specific criteria for determining the end of internal displacement based on the achievement and sustainability of durable solutions must include:

- **Legal (re)integration:** land and property rights, or compensation;

protection against forcible return; non-discrimination and ability to exercise citizenship rights; freedom of movement;

- **Social (re)integration:** right to participate fully and equally in public affairs at all levels and have equal access to public services;
- **Economic (re)integration:** access to employment; self-sufficiency; capacity for achieving viable livelihoods through agricultural production, gainful employment and/or small businesses.

Given the complexity and multi-phased nature of displacement, a comprehensive approach should acknowledge that reintegration is a gradual process often running in tandem with national reconciliation processes and improvements in the economic, social and human rights fields as well as with measures promoting development.

In prolonged conflict situations, the individual's hope to return to his/her area of origin must be balanced with a) the prospects for security that would allow for a safe return and b) the individual's condition in the area where he/she is currently settled.

If conditions for return are not conducive and the individual has an acceptable level of integration in the area of current residence, the latter may be considered a 'durable solution' and a 'phasing-out' strategy thus defined. This will not, though, impede the exercise of the right to return of the individual, whenever s/he assesses that the conditions to do so are conducive.

An essential precondition to enable consolidation of peace, stabilisation, recovery and longer-term development is the removal of the root causes of displacement. Their elimination will, eventually, lead to the application of the cessation clause for refugees, implying that they are no longer in need of international protection. Returning refugees will, nonetheless, still require assistance for their reintegration, together with IDPs. Returning refugees will be of concern to UNHCR until such time that they fully enjoy the protection of their national authorities. Given the volatile nature of internal displacement, though, a separate assessment of the specific needs of the IDPs would be necessary, as they may have different material and non-material requirements.

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1. See Conclusion No 40 of UNHCR's Executive Committee.

2. In the repatriation to Afghanistan, monitoring in the areas of return assesses the situation of the different populations, including returning refugees and IDPs, involuntarily returned persons and the local populations. The aim is an integrated approach to returnee monitoring, addressing protection concerns of returnees and basic initial reintegration needs. Indicators relate to personal security, non-discrimination, recovery of land and other immovable property and the exemption from military services for one year after return.

*Communal centre for returnee IDP women and children, renovated by UNHCR, Tbilisi, Georgia.*

