

**Durable Solutions to
Displacement in Kachin and Northern Shan
States**

Guidance note on Standards and Principles

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1. Objective

The Report of the UN Secretary-General on Peace-Building in the Immediate Aftermath of Conflict identifies key actions to be taken in an immediate post-conflict period, including in the reintegration of returnees¹. In addition, the SG Policy Committee Decision of 4 October 2011 on Durable Solutions calls on the Resident/Humanitarian Coordinator to lead the development of a Strategy for Durable Solutions for displaced people in consultation with national authorities and partners. Taking the SG Report and the SG Policy Committee Decision as our point of departure and by adapting the IASC Framework on Durable Solutions for Internally Displaced Persons to the context in Kachin, the purpose of this document is to:

- a) Agree on a common HCT position on durable solutions in Kachin and northern Shan States
- b) Set out the principles under which durable solutions can be attained in Kachin and northern Shan;
- c) Identify the conditions to be met before durable solutions for displaced people in Kachin and northern Shan can be facilitated, promoted and organised.

2. Key Concepts

Internally displaced persons:

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, who have not crossed an internationally recognised state border.²

Whereas the definition of an IDP is a factual description as opposed to a legal definition, the legal framework around the protection of IDPs is slowly transitioning from soft law to hard law. IDPs have the same rights and privileges as other persons with the same established rights and privileges in Myanmar, however they require additional attention given their heightened vulnerability as a broad population.

Some people among the displaced population, based on their vulnerability, have special needs to be met. Such people would include, for example, women without support, single-headed households, children, people with disabilities and persons over 60 years.

Durable solutions to displacement:

The Guiding Principles on Internal Displacement stipulate that 'displacement shall last no longer than required by the circumstances'. Drawing on existing international law, the right of internally displaced persons to a durable solution is articulated in Guiding Principles 28-30. This has been further spelled out in the IASC Framework on Durable Solutions for Internally Displaced Persons³.

¹A/63/881-S/2009/304

²*Guiding Principles on Internal Displacement.*

³UN Doc. A/HRC/13/21/Add.4 (2010).

Finding a durable solution to displacement is a gradual and often long-term process of reducing displacement-specific needs, not an event. A durable solution can be achieved through:

1. Return and sustainable reintegration: Return to prior residence from which the IDP was forced to flee or leave (place of origin or habitual residence).
2. Settlement elsewhere and sustainable integration there: in the Kachin context, this includes movement to areas with which an IDP is linked by reason of his or her history, but does not preclude movement to another area.
3. Sustainable local integration: integration in the areas where IDPs have taken refuge.

A combination of the three options can also lead to a durable solution. Therefore, an initial local integration should not affect a right to return or movement to another place. It is also recognised that any durable solutions will have to go hand in hand with early recovery efforts, therefore close coordination and joint assessments and planning is recommended.

When is a durable solution achieved?:

A durable solution is achieved when formerly displaced persons no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their rights without discrimination⁴. 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.

3. Principles

The protection of displaced persons, including providing them with a durable solution and ensuring effective recovery and reintegration into communities, is first and foremost the responsibility of the Government of Myanmar at all levels.

The international humanitarian and development community has a complementary role to support the Government and other local actors in its efforts in line with the principles set out in this guidance note. In order to be able to effectively provide this support, continuous and unimpeded access is necessary to areas where IDPs have sought refuge as well as to areas where they return or seek a durable solution.

The overall guiding principle for national and international actors in providing a durable solution is to give primary consideration to the needs, rights and legitimate interests of the displaced persons themselves, taking into account considerations such as age, gender, diversity and the environment.

The process: Any durable solution for displaced persons must primarily be based on a voluntary and informed decision and occur in safety and dignity. Voluntariness in decision-making implies that a decision to return, settle elsewhere or integrate locally is self-determined from a number of viable options. The right of displaced persons to make informed and voluntary decisions as to whether they want to

⁴IASC Framework on Durable Solutions, p. 6, para. 8.

return, or settle and integrate in the place where they found refuge or elsewhere, is one of the cornerstones of the *Guiding Principles on Internal Displacement*, and must be ensured. The right to freedom of expression includes the giving and receiving of information. The Government and agencies must make every effort to ensure that people have the information they need to make an informed and voluntary decision, and to be meaningfully involved in decisions that affect their future. Programmes of assistance to the displaced persons should be based on evidence of needs, gathered through participatory assessment. In developing the options for durable solutions, the displaced populations should be broadly consulted and not only be provided with options. In accordance with Security Council Resolution 1325 on Women, Peace and Security, any return or resettlement process must ensure consultation with women in particular to ensure that they are durable.

Support and assistance should not focus exclusively on IDPs or returnees. The HCT will have an area-based approach in which assistance is provided to both IDPs/returnees, the host communities and other affected people with an emphasis on conflict sensitive programming, broader recovery and social cohesion. In order to facilitate a smooth transition and peaceful reintegration, capacity building of local governance structures will be prioritized.

The conditions: The conditions conducive to safe return of displaced people, as well as for local integration or resettlement elsewhere (relocation), are generally defined by three elements of “safety”: physical, material and legal safety. In the Kachin and Northern Shan context, at minimum, the following factors constitute important benchmarks to analyse whether the conditions are conducive to safe and voluntary return of displaced persons, their local integration or resettlement.

Physical safety

- ✓ Removal of mines and UXO
- ✓ Effective mine risk education
- ✓ Cessation of armed conflict
- ✓ Withdrawal of armed forces/groups from civilian settlements
- ✓ Community based conflict prevention mechanisms that helps facilitate dialogue and cohesion
- ✓ Cessation of forced labour/recruitment
- ✓ Cessation (or end of impunity for) of gender-based violence
- ✓ Freedom of movement
- ✓ Family re-unification

Material safety (adequate standard of living)

- ✓ Access to food and nutrition support
- ✓ Access to water and sanitation
- ✓ Access to sustainable livelihoods and markets
- ✓ Access to education
- ✓ Access to health and nutrition care
- ✓ Availability of housing
- ✓ Availability of response services particular for the needs of women and girls (including GBV and Sexual Reproductive Health services)

Legal safety

- ✓ Amnesty for those associated with non-state armed groups
- ✓ Access to justice
- ✓ Rule of law, including community-based protection mechanisms

- ✓ Documentation and citizenship
- ✓ Restitution or compensation for lost property and access to respective mechanisms
- ✓ Access to new land with security of tenure (documentation)

4. Current context

Immediate concerns

The conflict in Kachin and northern Shan states resumed in June 2011 and over three years on, up to 100,000 people have been driven from their homes, with extensive damage to their livelihoods and infrastructure in these areas. The humanitarian situation is set out in the 2014 Myanmar Strategic Response Plan and will not be repeated at length here.

As of July 2014, some 98,000 IDPs remain in camps or with host families in Kachin and Northern Shan states. Following renewed fighting between the Government Army and Kachin Independence Army in late 2013 and April 2014 new and secondary displacements were reported. The recent fighting affected some 14 villages and four IDP camps on the borders between Kachin state, Northern Shan state and China, forcing thousands of people to flee. The resumption of hostilities represented a serious deterioration in the overall humanitarian situation, primarily due to the increased military presence and proximity to conflict.

Humanitarian access remains a key protection concern. As of June 2014, over 50 per cent of the displaced people live in areas beyond Government control, where international organisations have limited access. Sustained and unimpeded access to the potential areas of settlement, resettlement and return would be required for the international community to provide support for durable solutions.

Other key protection concerns include: children becoming increasingly vulnerable to trafficking, smuggling and underage recruitment, separated and unaccompanied children; gender-based violence (including sexual violence, human trafficking, forced marriage and physical violence) and in this regard few services available for GBV survivors; increased presence of combatants in close proximity and at times in civilian concentration points including IDP camps, as well as contamination from land mines and UXOs; and, difficulties in obtaining civil documentation and legal services with regard to land and property rights.

Peace prospects and implications for displaced persons

Peace talks resumed on 4 February 2013, de-escalating tensions and reducing the intensity of conflict. On 30 May 2013, the Myanmar Government and the Kachin Independence Organization (KIO) in the presence of UN and Chinese diplomatic observers signed an agreement to start a political dialogue, de-escalate all fighting, continue talks on the repositioning of troops, and for the KIO to open a technical office in Myitkyina. The seven-point agreement included a commitment by the Parties “to continue to undertake relief, rehabilitation, and resettlement of the Internally Displaced Persons (IDPs) in consultation with each other”. While this is a positive development, the recent fighting as well as the fighting that took place in April 2014, between KIO and the Tatmadaw and Ta’ang National Liberation Army (TNLA) and the Tatmadaw are causing new tensions in the peace process.

Small numbers of temporary or partial returns have been seen in some camps, particularly for IDPs who are relatively close to their places of origin. These displaced groups may travel to their homes during the day when it is felt safe to do so, salvaging assets or maintaining livelihoods activities, but returning to camps at night. Most IDPs express a desire to return when it is safe and practical to do so, yet they continue to face threats from sporadic violence and occupation of their places of origin by combatants and a lack of trust in the peace process. Lack of livelihoods and damaged shelters are also factors that compromise their ability to pursue a durable solution. Additionally, premature return, while being unsafe also threatens to further expose IDPs to trauma, and further threaten their psychosocial wellbeing.

The Government has taken the initiative to propose options for the resettlement of some IDPs, such as the resettlement in Pa La Na in May 2014. The international community is engaging with the Government (in particular the Kachin State Government) to assess these initiatives and identify where it could support. **The same approach is needed in the areas beyond Government control in discussion with the KIO.**

A technical working group on durable solutions is under formation in Kachin, with the purpose of establishing a platform where all actors will work together to advise the Kachin Government on planning, implementation and follow up of sustainable solutions for IDPs, in accordance with international standards and principles. The members of the technical working group will have the representation of key entities of the Government and national NGOs as well as members of the UN and International NGOs. The group will be chaired by the State Minister for Social Welfare and the secretariat will be the Relief and Resettlement Department and UNDP. The Technical Working Group will be a platform for coordinated planning, assessment and response and will provide an important space for dialogue between the Government, local NGOs and the UN/INGOs. **In line with this initiative consideration will be given on how best to engage with the KIO in the joint planning.**

5. Planning Durable Solutions

The HCT will take a careful and balanced approach towards return of displaced populations. It will be cautious about return being used for political means, leading to premature or involuntary return, while being prepared for eventual return. In general, most IDPs are hoping for return but they do not see conditions conducive with continuing military presence, existence of land mines, and lack livelihoods as well as basic services like education and health, which pose major concerns. Lack of capacity within the Department of Social Welfare and the NGO community to manage and respond to complex cases including violence, family separation and sexual exploitation, put the most vulnerable groups at higher risk.

With the primary objective of providing immediate humanitarian assistance for the displaced population, the HCT's work will be supported by the following elements:

(1) Engagement and support to Government authorities in this process will be essential in order to strengthen capacity of local actors to provide durable solutions in a way that ensures the principles laid out in this document are met. Durability of available solutions can only be achieved if the Government is supported in its leading role and its institutional capacity is strengthened. The

currently discussed Technical Working Group, under the leadership of the government will become the focus of coordinated support of assistance from the UN/INGOs.

(2) The communities themselves, both IDP and host communities will need to be consulted in a meaningful manner to further understand the barrier to return and how these can be overcome. The community must have both a sense of trust in the process and ownership over the process to ensure success.

(3) National NGOs working in Kachin State have played a central role in the response since the very beginning of the conflict. They will be key in the development of any strategy for durable solutions and its implementation. The international community will continue to work closely with the Joint Strategy Team for the Humanitarian Response in Kachin and Northern Shan States⁵ in all respects, to ensure local capacities are supported and strengthened and activities are undertaken in a sustainable manner.

(4) Inter-agency coordination, including through clusters and sectors, will continue to be strengthened in the Kachin context. Early recovery coordination mechanisms will be linked to the planning and implementation of any durable solutions in Kachin.

⁵ Joint Strategy Team for the Humanitarian Response in Kachin and Northern Shan States represent the following national NGOs: BRIDGE, Kachin Baptist Convention (KBC), Kachin Relief and Development Committee (KRDC), Kachin Women Association (KWA), Kachin Development Group (KDG), Karuna Myanmar Social Services (KMSS), Metta Development Foundation, Shalom Foundation and Wunpawng Ninghtoi (WPN).