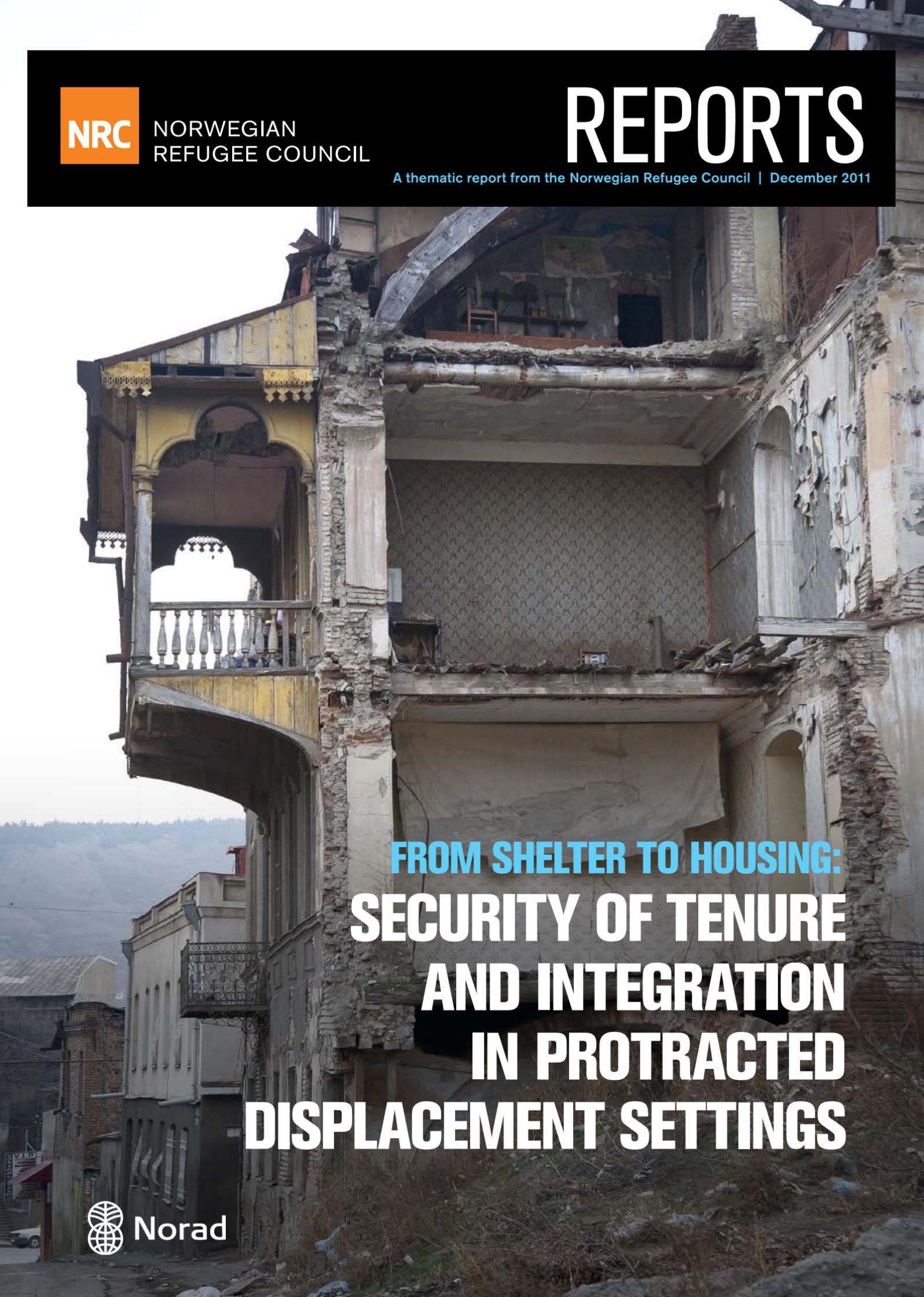




NORWEGIAN
REFUGEE COUNCIL

REPORTS

A thematic report from the Norwegian Refugee Council | December 2011



**FROM SHELTER TO HOUSING:
SECURITY OF TENURE
AND INTEGRATION
IN PROTRACTED
DISPLACEMENT SETTINGS**



Norad



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This report is based on an extensive review of the literature on the right to security of tenure, protracted displacement and local integration. It additionally draws on a seminar held with NRC's ICLA staff in Oslo on June 21, 2011 and research trips to Georgia (on May 5-6 and from June 28 to July 1, 2011) and to Lebanon from May 22-27, 2011. The author wishes to express his heartfelt gratitude to the staff of the NRC offices in both Georgia and Lebanon for facilitating meetings with key interlocutors and sharing their own insights and experience.

THE NORWEGIAN REFUGEE COUNCIL

The Norwegian Refugee Council (NRC) is an independent, humanitarian non-governmental organisation which provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide. To learn more about the NRC and its programmes, please visit our website: www.nrc.no

INFORMATION COUNSELING AND LEGAL ASSISTANCE

The primary objective of the Information Counselling and Legal Assistance (ICLA) is to enable beneficiaries in forced displacement contexts to access relevant mechanisms to claim and exercise their rights. Support is provided to enable beneficiaries to: 1) prevent primary or secondary displacement; 2) claim and exercise their rights during displacement; and 3) reach durable solutions to displacement.

The activities focus primarily on four areas:

- housing, land and property (HLP) rights
- legal identity
- procedures for refugee status determination
- procedures for registration of internally displaced people.

NRC's ICLA activities support refugees, IDPs and returnees through the provision of information, counselling, legal assistance, collaborative dispute resolution, capacity building, and advocacy activities.

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EXECUTIVE SUMMARY

Since the early 1990s humanitarians have called attention to the importance of rights to housing, land and property (HLP) in providing durable solutions for both internally displaced persons (IDPs) and refugees. In recent years, attention has shifted from well-established principles on the restitution of pre-displacement homes and lands to situations of protracted displacement, in which unresolved conflicts rule out both restitution and voluntary return. Even in settings in which the full range of durable solutions can be exercised, many displaced persons opt for local integration rather than return and reintegration in their places of origin. In both cases, this has led to emergence of a new set of HLP issues related to legal security of tenure at the site where displaced people take refuge. The concept of security of tenure involves legal protection against forced evictions, harassment and other threats to residents and users of property, whether or not they own it.

Attention to rights issues such as security of tenure has led to the emergence of a new sector of humanitarian activity – exemplified by the global Information, Counseling and Legal Assistance (ICLA) programme developed by the Norwegian Refugee Council (NRC). A central focus of such interventions has been assisting displaced persons to secure HLP rights. For both refugees and IDPs tenure security has emerged as a particularly critical aspect of shelter during displacement and in the search for durable solutions. Many, and perhaps most, of the world's displaced persons now find themselves in situations of protracted displacement in which denial of security of tenure indefinitely perpetuates their vulnerability, violates their rights and reduces the likelihood that they have sufficient resilience to sustainably return home, should the opportunity arise.

Encouragingly, some countries such as Georgia have committed themselves to guaranteeing tenure security to the displaced. The results of these initiatives can provide both encouragement and practical lessons for humanitarian advocates for the displaced as well as national authorities that have not yet taken such steps. However, even in settings where durable integration of refugees is not an option, responsiveness to host community concerns is still of paramount importance in achieving any degree of tenure security. Some degree of benefit to host communities from humanitarian programming is accepted and even encouraged.

For humanitarians, addressing tenure security issues in situations of protracted displacement is key to resolving the lingering humanitarian vulnerability of the long-term displaced, encouraging self-reliance and facilitating durable solutions. However, the promotion of tenure security presents challenges that reflect the evolving nature of humanitarian response:

- **Securing tenure** for displaced persons entails advocacy, technical capacity building, monitoring and even litigation based on human rights standards. While this development is a logical and positive outcome of humanitarians' embrace of rights-based approaches in the 1990s, it implies the need to develop deep substantive expertise in human rights norms and further develop partnerships with human rights actors.
- **Promotion of tenure security** in protracted displacement settings frequently assumes a *de facto* development character, particularly where the long-term displaced are provided with permanent housing solutions. While such activities clearly stand to benefit from coordination with development actors, the practical implementation of such early recovery approaches presents challenges for humanitarians.

- **Promotion may be ineffective** in situations where the displaced share insecurity with broader displacement-affected communities. This consideration militates in favour of the trend toward adoption of more inclusive beneficiary concepts by humanitarian agencies.

Calls for security of tenure for displaced persons are supported by both human rights law and contemporary development standards. The most important human rights norm guaranteeing security of tenure is the right to adequate housing. This belongs to the social and economic category of human rights and requires states to take steps to ensure access to housing that meets certain basic criteria: these include affordability and habitability, along with legal security of tenure. Tenure security involves both 'positive' undertakings by states and the 'negative' obligation to refrain from forced evictions.

Human rights norms on security of tenure are reinforced in a number of important respects by development standards. Where such standards regulate the involuntary resettlement of communities in furtherance of development objectives, they recognise the need to provide appropriate legal protection to the entire spectrum of tenure forms ranging from private property to squatters' rights. Development actors also underscore the benefits of legally recognising existing forms of tenure rather than assuming that only the transfer of ownership rights can provide tenure security. Such approaches emphasise self-reliance and encouraging communities to formalise their tenure status and upgrade their neighbourhoods at a pace determined by their own needs and capacities.

Tenure security is crucial to the protection of both IDPs and refugees. Standards on IDPs clarify that tenure security should already be a component of humanitarian shelter provision in the early stages of displacement and is a crucial component of durable solutions.

The *1951 Refugee Convention* includes measures meant to ensure refugee access to property and housing. The situation of refugees differs from that of IDPs in that their ability to choose local integration as a durable solution is contingent on the consent of their host state. However, this does not mean that states can deny refugees security of tenure. In the case of both IDPs and refugees, the right to secure tenure applies fully in the sense that neither group can be discriminated against on the basis of their displacement. Thus, any distinction made between IDPs or refugees and non-displaced persons in the exercise of this right would have to be justified on reasonable and objective grounds. In cases in which IDPs and refugees face particular obstacles to achieving tenure security, the non-discrimination rule requires that special measures be taken to overcome these barriers.

Perhaps the most important conclusion to be drawn from the case-studies of Lebanon and Georgia is that security of tenure for displaced persons should be promoted by humanitarians both as a goal in itself and as a means to achieve durable solutions. Arguments that tenure security is a goal worth fulfilling, regardless of the current conditions for achieving durable solutions, range from the normative to the pragmatic. At the normative level, the International Covenant on Economic Social and Cultural Rights (ICESCR), which guarantees the right to security of tenure, is widely ratified and states' obligations in this regard are well-understood. Sections I and II of this report describe how applying this right gives rise to immediate obligations on states to prevent discrimination in its enjoyment, including on grounds of residence (e.g. internal displacement) and nationality (including refugee or asylum-seeker status). Moreover, states are also obliged to take steps to ensure security of tenure, including providing legal protection against forced evictions, facilitating self-help activities in the area of housing, avoiding deliberately retrogressive measures and targeting housing plans and programmes to the needs of the most marginalised, including displaced persons.

State observance of the right to security of tenure becomes a matter of particular humanitarian concern in protracted displacement settings. In the absence of durable solutions, the failure of states to allow security of tenure indefinitely perpetuates the humanitarian misery of displaced persons stranded in *ad hoc* shelter and discourages self-reliance. By contrast, extending sufficient tenure security to encourage displaced persons to engage in self-help and incrementally improve the adequacy of their own housing situations can remove the stigma, dependency and vulnerability associated with displacement, even in situations where displacement itself persists.

At the most pragmatic level, focusing on security of tenure as an end in itself can allow a degree of functional integration even in situations in which formal integration – as a durable solution – is not politically feasible. Here, the distinction between IDPs and refugees is of critical importance. While indefinitely denying IDPs the possibility of local integration would be a violation of their human rights, decisions on the local integration of refugees are still recognised as a matter of discretion for their host-states.

In situations in which local integration is an available durable solution, security of tenure is integral to its achievement. This is most explicitly the case with regard to IDPs. Inclusion of non-discriminatory enjoyment of the right to an adequate standard of living (including housing and secure tenure) is a core criteria in the recent *Framework on Durable Solutions*. However, the same logic clearly applies in refugee settings, as reflected in the inclusion of both housing rights and rights to acquire property in the catalogue of protections for recognised refugees set out in the *1951 Refugee Convention*. In both cases, the establishment of secure and defensible legal rights to a permanent home where displaced persons initially found shelter is one of the most symbolically and practically meaningful elements of local integration.

In both protracted displacement and durable solutions settings, one of the key advantages of a security of tenure analysis is its adaptability to the housing situations of the displaced as they actually exist, rather than as they should ideally be. It is important to recall that all forms of tenure merit the baseline legal protection necessary to prevent forced evictions. While property ownership is the most obviously secure form of tenure, the full spectrum of tenure forms requiring protection includes rental accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. In all these cases, it may be permissible to evict displaced residents from their homes, but only subject to legal guarantees preventing this taking place in a discriminatory or otherwise arbitrary manner.

In terms of rights-based protection, the initial challenge is simply to find out what type of tenure exists for displaced persons and consider what legal measures would be necessary to avert immediate threats to it while incrementally providing greater prospective security.

Moving beyond preventing forced evictions to promoting the ‘positive right’ aspects of security of tenure presents greater conceptual challenges. Such steps may be a necessary factor of addressing vulnerability related to housing both in protracted situations and in facilitating durable solutions. A simple example of the importance of positive measures to promote tenure security is provided by the work of NRC and its humanitarian partners in Georgia to promote formation of condominiums by IDPs in privatised collective centres. The durability of housing solutions achieved in the course of privatisation is contingent on the ability of IDPs to manage vital common property, the neglect of which might endanger the security of residents and the viability of their homes.

INTRODUCTION

Since the early 1990s humanitarians have called attention to the housing, land and property (HLP) rights of persons displaced by conflict and other crises. Advocacy for HLP rights was based on the recognition that securing access to adequate housing and land was crucial to both the immediate and long-term ability of displaced persons to meet some of their most basic shelter, protection and livelihood needs in a manner that encouraged self-reliance rather than dependence. By the late 1990s, the dominant model for giving effect to HLP rights in humanitarian settings involved the restitution of properties that displaced persons had left behind. *The Pinheiro Principles*, formulated in 2005 asserted a post-conflict right to restitution as both a legal remedy for arbitrary displacement and a precondition for durable solutions, including return to homes of origin.¹

In a growing number of cases of protracted displacement, unresolved conflicts and persistent insecurity have ruled out both property restitution and voluntary return.² Even in settings in which durable solutions are possible, many displaced persons opt for local integration rather than return and reintegration in their places of origin. In both cases, a new set of HLP issues emerge related to legal security of tenure at the place of displacement. In international practice, security of tenure has been defined as “legal protection against forced eviction, harassment and other threats.”³

The role of humanitarians in displacement situations involving the loss of HLP rights has evolved rapidly but not without some controversy and confusion.⁴ It is clear that traditional delivery of temporary emergency services is, on its own, no longer sufficient. Many humanitarian organisations have adopted the explicitly rights-based approach promoted in documents such as the UN *Guiding Principles on Internal Displacement*, and have attempted to restructure their work in a manner that takes into account both the protection risks and opportunities that inherently accompany aid provision.⁵ Likewise, the most authoritative guidelines on humanitarian assistance now reflect the assumption that humanitarian aid provision must proceed from relevant human rights standards.⁶ The rights-based approach has infused traditional humanitarian programming in areas such as shelter provision or camp management. This is reflected in new concerns related to accountability and participatory approaches to the planning and delivery of

- 1 U.N. Sub-Commission on Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, U.N. Doc. E/CN.4/Sub.2/2005/17.28 June 2005. <http://www.unhcr.org/refworld/category,LEGAL,UNSUBCOM,,,41640c874,0.html>
- 2 Protracted displacement of both refugees and internally displaced persons (IDPs) raise particular challenges for humanitarians. Two events in 2011 exemplify attempts to develop more effective responses to protracted internal displacement by exploring the possibilities of local integration as a solution. See, Brookings-LSE Project, IDMC and NRC, IDPs in protracted internal displacement: Is local integration a solution? Report from the Second Expert Seminar on Protracted Internal Displacement, 19-20 January 2011, Geneva, May 2011. <http://www.internal-displacement.org/thematics/durable-solutions/2nd-expert-seminar-on-protracted-internal-displacement> and also Brookings-LSE Project, Resolving Internal Displacement: Prospects for Local Integration, June 2011 http://reliefweb.int/sites/reliefweb.int/files/resources/fullreport_163.pdf
- 3 UN Committee on Economic Social and Cultural Rights, General Comment 4 (1991), paragraph 8 (a). <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e>
- 4 A controversy of particular relevance to this report involves the extent to which displaced persons should automatically be seen as of humanitarian concern and whether international attention to displacement – whether within or across borders – has resulted in the neglect of vulnerable non-displaced populations. While some concerns remain, it is now generally accepted that displacement gives rise to particular humanitarian concerns and requires effective responses. For background on this debate, see Erin Mooney, “The Concept of Internal displacement and the Case for Internally Displaced Persons as a Category of Concern,” *Refugee Survey Quarterly* 24 (3) (2005), 9-26.
- 5 U.N. Commission on Human Rights, The Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998) <http://www.idpguidingprinciples.org/>. The Guiding Principles imply that the provision of basic humanitarian assistance is required as a matter of human rights obligations as well as humanitarian law (Principle 18). The Guiding Principles also encourage humanitarians to “give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard” (Principle 27). For more detailed guidance on the incorporation of protection approaches into humanitarian action, see Hugo Slim and Andrew Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies*, Overseas Development Institute, 2005. <http://www.alnap.org/resources/guides/protection.aspx>.
- 6 The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (Sphere Standards), 2011. <http://www.sphereproject.org>.

aid. However, perhaps the clearest signal of the new approach has come in the form of efforts to legally empower displaced persons. This has led to the emergence of an entirely new sector of humanitarian activity, as embodied by the global Information, Counseling and Legal Assistance (ICLA) programmes developed by the Norwegian Refugee Council (NRC). A central focus of programmes such as ICLA has been assisting displaced persons secure HLP rights.⁷

Respect for human rights and the adoption of special measures to overcome obstacles to their enjoyment are both central to protection during displacement and to the achievement of durable solutions. This is most clearly reflected in internal displacement settings, where rights-based protection has been an integral part of international responses since the early 1990s. The recently adopted *Framework for Durable Solutions for Internally Displaced Persons* defines durable solutions largely in terms of non-discriminatory enjoyment of human rights.⁸ Refugee protection under the *1951 Refugee Convention* largely predates the universal acceptance of human rights. However, the fact that human rights law applies to non-citizens means that respect for human rights has become both an important component of international protection for refugees and an element of durable solutions.⁹ For both refugees and internally displaced persons (IDPs), respect for HLP rights and tenure security has emerged as a particularly critical issue in relation to shelter during displacement as well as durable solutions.

Situations of protracted refugee and IDP displacement have become a matter of increased concern in recent years, in part because they blur the line between ordinary protection during displacement and durable solutions, thus complicating humanitarian shelter provision. For refugees, UNHCR's Executive Committee has defined protracted refugee situations as those that have lasted more than five years, "without immediate prospects for implementation of durable solutions".¹⁰ The scope of the protracted refugee problem is enormous – nearly two-thirds of the world's refugees have remained in states of virtual limbo in poor and developing host-states for decades. However, the possibilities of addressing these issues are limited not only by persistent obstacles to return in countries of origin but also by the perception of hosting states that allowing meaningful local integration would pose a threat to their sovereignty.¹¹ Protracted internal displacement is characterised by stalling of processes to find durable solutions, leading to marginalisation and impoverishment affecting millions of IDPs in thirty-five countries.¹² Such protracted situations were identified by Walter Kälin, the former Representative to the Secretary General (RSG) on the Human Rights of IDPs, as one of the key remaining challenges in addressing internal displacement.¹³ As with refugee situations, protracted internal displacement is typically characterised by political obstacles to both return and local integration:

7 Ingunn Sofie Aursnes and Conor Foley, *Property restitution in practice: The Norwegian Refugee Councils' experience* April 2005. <http://sheltercentre.org/library/property-restitution-practice-norwegian-refugee-councils-experience>

8 UN Human Rights Council, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Addendum – Framework on Durable Solutions for Internally Displaced Persons, UN Doc. A/HRC/13/21/Add.4, 29 December 2009. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/100/49/PDF/G1010049.pdf?OpenElement>. The Framework was endorsed by the Inter-Agency Standing Committee Working Group in December 2009.

9 As noted in a set of commentaries by Displacement Solutions, a prominent HLP rights NGO, rights reserved to recognised refugees under Chapters II to V of the Refugee Convention (sometimes referred to as the "Refugee Bill of Rights") often require little more than non-discriminatory treatment in relation to other non-citizens. This protection is strongly enhanced where, as in the case of the right to housing, strong international human rights norms exist that can bypass the minimum protections in the Refugee Convention. Displacement Solutions's Brief Commentary by Displacement Solutions on Article 21 (Housing) of the 1951 Refugee Convention (undated), 6 and 14. http://www.displacementsolutions.org/files/documents/Article21_Brief_Commentary.doc. By contrast, in areas where human rights norms remain weak or tenuous, such as the right to property, the corresponding protections in the Refugee Convention remain highly relevant. Displacement Solutions, Brief Commentary by Displacement Solutions on Article 13 (Movable and Immovable Property) of the 1951 Refugee Convention (undated).

10 UNHCR Executive Committee, Conclusion on Protracted Refugee Situations, No. 109 (LXI) – 2009, 8 December 2009, preamble. <http://www.unhcr.org/4b332bca9.html>

11 James Milner and Gil Loescher, "Responding to protracted refugee situations: Lessons from a decade of discussion", Refugee Studies Centre Forced Migration Policy Briefing 6, January 2011. <http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCP6-RespondingToProtractedRefugeeSituations.pdf>

12 Brookings-Bern Project on Internal Displacement, "Expert Seminar on Protracted IDP Situations", 2007, 2. See also, Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2008, 2009*. <http://www.internal-displacement.org/idmc/website/resources.nsf/%28httpPublications%29/0605361027488A28C12575A90042305B?OpenDocument>

13 UN Human Rights Council, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, UN Doc. A/HRC/13/21 (05 January 2010), para. 74. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-21.pdf>

In conflict situations, political factors are often the primary cause of protracted displacement with parties to the conflicts not willing to achieve peace, which would allow the displaced to return. Even after major hostilities have ceased, resolution of the underlying conflict is often frozen and [IDPs] are at risk of being manipulated as pawns. They cannot return, because they are seen as being associated with the enemy. At the same time, they are often prevented from integrating locally, because political decision makers calculate that continued pressure to return will uphold their territorial claims.¹⁴

In protracted displacement situations in which the authorities are determined to prevent local integration, IDPs and refugees are frequently denied legal guarantees of security of tenure, or the ability to use HLP resources without fear of arbitrary interference and harassment. This can involve denying displaced persons the right to acquire property or even restricting their ability to repair, improve or remain in homes they have established in camps or other designated settlements. In the worst case, populations that may have already been violently uprooted from their homes of origin may face renewed forced evictions', in violation of international law, from their places of shelter. Denial of security of tenure is in itself a violation of human rights and one that negatively affects access to many other rights, particularly those related to health and livelihoods. Such tactics may not only have the (in some cases, intended) effect of preventing local integration, but they also reduce the self-reliance of displaced persons, rendering their return less likely to be sustainable should the opportunity arise. Even in cases where governments promote security of tenure for displaced persons, measures intended to transform their living situation (rather than simply supplement it with stronger legal recognition) can actually have a detrimental effect if they are not undertaken based on close consultation and a sound understanding of relevant human rights and development standards.¹⁵

For humanitarians, addressing tenure security issues in situations of protracted displacement is a crucial means of resolving the lingering humanitarian vulnerability of the long-term displaced and encouraging self-reliance. Measures to allow IDPs to normalise their living situation are now relatively well accepted as a means of facilitating local integration. They frequently place primary emphasis on tenure security to homes.¹⁶ Although refugee settings are complicated by the fact that refugees, as non-citizens, do not usually enjoy a right to freely choose local integration, UNHCR's policy of encouraging self-reliance to prepare refugees for a durable solution, regardless of where that durable solution may be found, is welcome.¹⁷ In both situations, rights-based approaches are generally seen as the most effective means of providing security of tenure, given the relatively strong support and detailed criteria for the right to adequate housing set out in international human rights law.

On the other hand, while efforts to facilitate security of tenure in situations of protracted displacement are increasingly recognised as an integral element of humanitarian action, they also highlight the challenges of rights-based humanitarian response. In countries such as Georgia NRC and other humanitarians have long since moved beyond familiar humanitarian terrain to undertake functions more typical of human rights. This includes monitoring evictions and mobilising the beneficiaries of collective centre privatisation programmes to protect their rights through the formation of condominium associations (groups of IDPs formally registering collective private ownership of blocks of flats). It also involves the practicalities of coordinating with responsible government actors and development agencies in settings where humanitarian programming has begun to transition into development cooperation.

Protracted displacement situations present particular risks of long-term dependence and marginalisation. Humanitarian programming in such settings frequently takes on a *de facto* development character, as in

14 UN Human Rights Council, January 2010, para. 75.

15 As discussed in Section III, below, the implementation of policies intended to promote the integration of IDPs in Georgia provides an example of such risks in practice.

16 UN Human Rights Council, January 2010, para. 76.

17 Milner and Loescher, 2011, p.19.

cases where the long-term displaced are provided with permanent housing solutions.¹⁸ In the context of the UN-led humanitarian reform process, recognition of the longstanding need to improve coordination of relief and development programming resulted in the formation of a Cluster Working Group on Early Recovery (CWGER).¹⁹ The concept of 'early recovery' has been defined as "a multidimensional process guided by development principles that begins in a humanitarian setting, and seeks to build on humanitarian programmes and catalyse sustainable development opportunities."²⁰ Key early recovery concerns include transitional shelter and the reintegration of displaced persons.²¹ Accordingly, the CWGER has initiated a process of providing guidance to humanitarians on HLP issues in post-conflict settings.²² Despite this recent attention to the nexus between humanitarian and development work, however, the practical implementation of early recovery (in matters ranging from field coordination to funding) still presents challenges for humanitarians.

A further issue raised by humanitarian involvement in work on tenure security in protracted displacement settings is the extent to which this may imply the adoption of more inclusive beneficiary concepts. Humanitarian agencies such as NRC have traditionally tended to directly target displaced persons. As a protection consideration it has long been accepted that communities hosting displaced persons should also benefit from humanitarian assistance, at least to the extent necessary to prevent resentment of aid to displaced persons from presenting a protection risk. In addition, humanitarian observers have noted that the sacrifices made by local communities in hosting displaced communities may place them in situations of genuine humanitarian vulnerability as well. This has led to recommendations that both humanitarian and early recovery assistance target entire displacement-affected communities, encompassing both the displaced and surrounding communities.²³ These rationales are no less applicable in protracted displacement settings and, arguably, take on additional force as *de facto* integration processes such as inter-marriage, economic interactions or mixed residential patterns make it increasingly difficult to distinguish the displaced from surrounding non-displaced communities.²⁴ The principle that support to refugees in protracted displacement should also benefit host communities is relatively well-accepted.²⁵ As noted by the former RSG Walter Kälin's in his final report to the UN Human Rights Council, these arguments are now well-accepted in internal displacement settings as well:

18 In Serbia, humanitarian agencies that arrived in the 1990s to provide assistance to Croatian and Bosnian refugees as well as IDPs from Kosovo have become implementing partners in programmes to build or finance the purchase of permanent housings. Rhodri C. Williams, "Protracted Internal Displacement in Serbia", in Brookings-LSE Project, *Resolving Internal Displacement: Prospects for Local Integration* (June 2011).

19 The CWGER is chaired by UNDP and has both humanitarian and development agencies as members. See, <http://onerresponse.info/GlobalClusters/Early%20Recovery/Pages/default.aspx>.

20 Cluster Working Group on Early Recovery (CWGER), *Guidance Note on Early Recovery*, April 2008, p.9. <http://ochanet.unocha.org/p/Documents/Guidance%20note%20on%20Early%20Recovery.pdf>

21 *ibid.* p.9. All early recovery programming is meant to be guided by relevant human rights standards. p.28.

22 Global Land Tool Network, CWGER and UN-HABITAT, *Land and Conflict: A Handbook for Humanitarians* (Draft, September 2009). http://postconflict.unep.ch/humanitarianaction/documents/02_03-04_03-08.pdf. The Handbook proceeds from a cautious, 'do no harm' approach ("In both emergency and early recovery settings, humanitarians are generally advised to seek the advice of land tenure experts wherever necessary. Humanitarians should avoid being forced into the role of adjudicating land disputes on an *ad hoc* basis or taking other similar steps that could potentially undermine the rights and obligations of individuals and communities. Such actions raise significant "do no harm" risks, not least by threatening to undermine both the perceived impartiality of humanitarian workers themselves and the authority of any existing formal or traditional land dispute adjudication bodies.") p.7.

23 In a recently updated handbook on responding to internal displacement for humanitarians in the field, the Global Protection Cluster Working Group notes that "operational guidance referring to IDPs should generally be understood to include not only IDPs but also other affected populations". See Global Protection Cluster Working Group (GPCWG), *Handbook for the Protection of Internally Displaced Persons* (March 2010), 1 (note 1).

24 For example, those displaced by the 1989-2003 conflict in Liberia are thought to make up as much as half of the current population of the capital, Liberia. They are hard to distinguish from non-displaced residents of the city's numerous informal settlements. See Rhodri C. Williams, "Beyond Squatters' Rights: Durable Solutions and Development-Induced Displacement in Monrovia, Liberia", NRC Thematic Report (May 2011). http://www.nrc.no/arch/_img/9568756.pdf

25 Milner and Loescher, 2010, p.16. The authors note that the emphasis placed on the burdens refugees place on host-communities tends to obscure "the potential benefits associated with the prolonged presence of refugees and refugee assistance programmes."

Host communities and host families often end up assuming considerable burdens due to the influx of displaced persons, which may create social tensions and further protection concerns. In this respect a concept of “displacement-affected communities” is helpful in recognizing that not only displaced communities but also communities which host or (re)integrate them are affected by internal displacement. The Representative has consistently encouraged donors and humanitarians to expand their focus and extend protection and assistance to a broader spectrum of beneficiaries. Such activities should go beyond delivering humanitarian aid and include development interventions to strengthen basic infrastructure such as water and sanitation and basic services such as health and education, and increase food security and the availability of shelter. Such interventions may be less costly in the long run and would not only help to address the needs of the displaced but, at the same time, contribute to the development of areas and communities receiving them.²⁶

This report seeks to analyse how evolving responses to tenure insecurity in settings involving protracted displacement or durable solutions are likely to affect the rights-based model of humanitarian assistance practiced by organisations such as NRC. It begins with a review of the relevant international standards related to security of tenure, focusing on the human right to adequate housing, but also reviewing relevant trends in development and urban planning standards. The next section describes the applicability of these frameworks to displacement settings, including both internal displacement and refugee situations. These general observations are then tested against two case-studies based on analysis of both national policies and NRC programming. The first case-study describes the situation of Palestinian refugees in Lebanon, where political resistance to any measures implying local integration has virtually blocked meaningful steps toward security of tenure. The second examines tenure security issues for IDPs in Georgia, where the government is committed to addressing their housing rights but has opted to do so primarily through a programme of privatising collective centres that has had mixed short-term effects and does not provide a clear roadmap for tenure security for IDPs living outside such centres. The report ends with a set of general conclusions and recommendations meant to contribute to the evolution of policy in this key emerging area of humanitarian activity.

²⁶ UN Human Rights Council, January 2010, para. 49.



1.

INTERNATIONAL STANDARDS ON SECURITY OF TENURE

In rights-based humanitarian activities, human rights standards are a natural first point of reference. A number of human rights standards exist related to security of tenure. Because they are grounded in broadly accepted human rights conventions, they provide a strong basis for advocacy in displacement settings that draws on obligations already undertaken by most countries. In addition to human rights standards, development actors have promoted guidelines on both minimising the effect of involuntary resettlement and increasing the tenure security of vulnerable individuals and groups. These development standards are not binding in the sense of human rights rules, but they do present complementary policy arguments and concrete guidance for addressing tenure insecurity.

HUMAN RIGHTS STANDARDS

Security of tenure is one of the most important aspects of the human right to adequate housing. Housing rights fall within the category of economic and social human rights, as opposed to those of a civil and political nature. Social and economic rights are often conceived of as 'positive', in the sense that their fulfillment requires government authorities to affirmatively undertake measures in favour of individuals. By contrast, civil and political rights are often described as 'negative' in the sense that they focus on actions that government authorities must refrain from taking. An example of this difference in practice involves comparing the right to adequate housing with a right it is frequently associated with, the right to property. The right to adequate housing is primarily positive. For it involves steps the authorities should take to assist individuals in accessing housing and improving its adequacy. The classic right to property is negative in the sense of requiring authorities to avoid interfering with property rights – unless doing so is necessary to an important public purpose.²⁷

The right to adequate housing is protected as a component of the broader right to an adequate standard of living in Article 11 (1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).²⁸ The Covenant's provisions are not only broadly accepted but have also been clarified through the issuance of numerous authoritative interpretations – *General Comments* – by the UN Committee on Economic, Social and Cultural Rights (UN CESCR). CESCR has issued two *General Comments* relating to the right to housing. In 1991 the first defined the right in broad terms as “the right to live somewhere in security, peace and dignity”.²⁹ It set out seven essential factors by which the ‘adequacy’ of housing in any given situation could be judged. Six of them – availability of services; affordability; habitability; accessibility; location and cultural adequacy – relate to the nature of the housing itself. The seventh, however, relates security of tenure to the legal relationship between the housing and its occupants. Legal security of tenure is defined as guaranteeing “legal protection against forced eviction, harassment and other threats.”

As with the other ICESCR-protected social and economic rights, the right to adequate housing is meant to be implemented “progressively” by states “to the maximum of [their] available resources”.³⁰ The progressive approach to the fulfillment of positive rights contrasts with the immediate obligation on states to ‘respect’ negative rights – by refraining from violating them through their own actions – as well as to ‘protect’ their exercise by taking reasonable measures to prevent foreseeable violations by non-state actors. This difference is further highlighted by the fact that states are explicitly required to provide effective legal remedies – usually through access to proceedings before an impartial adjudicator – when civil and political rights are violated. By contrast, no explicit right to a remedy exists with regard to social and economic rights, fueling a persistent debate about whether they were, by their very nature, averse to being ‘justiciable’ – capable of being decided by a court of law.

27 For instance, Article 17 of the Universal Declaration of Human Rights (UDHR) (<http://www.un.org/en/documents/udhr/>) sets out the basic right to “own property alone as well as in association with others” and enjoins state authorities to refrain from interfering with such property rights: “No one shall be arbitrarily deprived of his property.”

28 International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Doc. A/6316 (1966). Article 11 (1) of the ICESCR requires states parties to the Convention to “recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

29 UN CESCR, General Comment 4 (1991), paragraph 7.

30 ICESCR, Article 2 (1).

The UN CESCR has taken pains to counteract the perception that the principle of progressive implementation leaves states with an entirely free hand to decide whether, when and how to give effect to economic and social rights. In its third *General Comment* in 1990, the Committee noted that social and economic rights give rise to two immediate obligations of state conduct.³¹ First, states are obligated to ensure that social and economic rights are exercised without discrimination.³² Second, they must take steps to implement these rights “by all appropriate means”, including not only the adoption of legislation giving effect to such rights but also by guaranteeing their justiciability through the provision of effective domestic remedies when they are violated.³³ The Committee went further to identify a number of obligations ‘of result’ related to the performance of states in promoting social and economic rights. These include moving as quickly as possible toward the fulfillment of such rights, refraining from any deliberately retrogressive measures that undermine their achievement, providing “minimum essential levels” of observance of these rights under all circumstances, and affording vulnerable members of society special protection “even in times of severe resources constraints”.³⁴

The right to security of tenure – as a component of the right to adequate housing – must be understood in this context. As a ‘positive’ economic/social right it entails a number of obligations. Perhaps most importantly, enjoyment of the right to tenure security may not be made subject to any form of discrimination.³⁵ The right to be free from discrimination in enjoying security of tenure is underscored by the fact that equal housing rights are protected by two other global human rights treaties, namely the Convention on the Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³⁶

A second immediate obligation of states in regard to the right to housing is the duty to “take immediate measures” to confer legal tenure security to persons and households lacking it.³⁷ Examples of such measures include introducing legal protections against arbitrary or ‘forced’ evictions discussed further below. Notably, this protection is not limited to homes held in formal ownership or leasehold. The right to security of tenure extends to a broad spectrum of tenure forms including “rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.”³⁸

The wide range of tenure forms protected by the right to security of tenure serve to distinguish it from the right to property. In accordance with international human rights law, property rights that have been recognised by the state must be protected, in the sense that they cannot be interfered with (in the case of expropriation proceedings, for instance) without a public purpose, fair process and compensation.³⁹ While officially recognised property ownership thus represents the most secure form of tenure, the right to security of tenure also extends to homes occupied in accordance with less categorical rights (e.g., leasehold) or no officially recognised rights at all (e.g., residence in informal settlements). The right to

31 UN CESCR, General Comment 3 (1990). <http://www.unhchr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664?Opendocument>

32 *ibid.* para 1.

33 *ibid.* para 1C. The Committee also noted that further administrative, financial, educational or social measures may be necessary in any given case. (paragraph 7).

34 *ibid.* paragraphs 9-12.

35 UN CESCR, General Comment 4 (1991), paragraph 6. <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e>

36 CERD requires states-parties to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . economic, social and cultural rights, in particular . . . the right to housing” at Article 5 (e) (iii). CEDAW (http://www.unifem.org/cedaw30/about_cedaw/) requires states to guarantee women “equal rights to conclude contracts and to administer property” (Article 15 (2)), as well as to respect the equal right of rural women to “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications” (Article 14 (2) (h)).

37 UN CESCR, General Comment 4, paragraph 8 (a). Such steps should be based on genuine consultation with affected persons and households. *Id.*

38 UN CESCR, General Comment 4, paragraph 8 (a).

39 The right to property is weakly supported at the global level. While it was included as Article 17 of the UDHR (“(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property”), it was not reproduced in either the ICCPR or the ICESCR. However, the right to property has been more firmly established at the regional level, in particular through its inclusion as Article 14 of the African Charter on Human and Peoples’ Rights; Article 21 of the American Convention of Human Rights, and Article 1 of Protocol One to the European Convention of Human Rights.

property can also protect non-residential forms of property such as land. Although the right to adequate housing does not explicitly include land, commentators have expressed the view that secure tenure to land should properly be seen as a precondition for the meaningful exercise of both the right to housing and the right to food.⁴⁰ The UN CESCR recognised this link early on in its first *General Comment* on the right to adequate housing:

Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement[.]⁴¹

Key recommendations proposed by the UN Committee on Economic, Social and Cultural Rights include the following:

- Tenure security must be provided to all without discrimination.
- The right to tenure security must be secured by all appropriate means, including the adoption of legislation and the provision of effective remedies for its violation.
- The right to tenure security must be fulfilled as quickly as possible without any deliberately retrogressive measures that undermine its achievement.
- Vulnerable members of society are due special protection even in times of severe resources constraints.
- States must not prevent (and should support) under-housed groups from engaging in 'self-help', or initiatives to organise and manage their own housing.
- States should adopt housing policies based on consultation with marginalised groups that emphasise not only tenure security, as well as other factors such as affordability and habitability and give particular consideration to the needs of marginalised groups.
- States must request international cooperation and assistance in cases in which fulfilling the right to adequate housing is beyond their capacity and resources.

A further duty under the right to adequate housing is the obligation to abstain from other negative practices such as arbitrarily obstructing under-housed groups from engaging in 'self-help' or initiatives to organise and manage their own housing.⁴² More broadly, states should adopt housing policies based on consultation with marginalised groups that emphasise not only tenure security, but also achievement of the other factors related to adequacy of housing, such as affordability and habitability.⁴³ In doing so, they should consistently give "particular consideration" to the needs of social groups living in unfavorable conditions.⁴⁴ As with progressive implementation of all other social and economic rights, states are required to request international cooperation and assistance in cases in which the cost of fulfilling the right to adequate housing is beyond their maximum resources.⁴⁵

The right to tenure security is somewhat unusual among social/economic rights in the sense that in addition

40 The current UN Special Rapporteur on the Right to Food, Olivier De Schutter, has frequently asserted this link. See, UN General Assembly, Report of the Special Rapporteur on the Right to Food, UN Doc. A/65/281, 11 August 2010. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/482/30/PDF/N1048230.pdf?OpenElement>

41 UN CESCR, General Comment 4, paragraph 8(e):

42 *ibid.* paragraph .

43 *ibid.* paragraph 12.

44 *ibid.* paragraph 11.

45 *ibid.* paragraph 10. Article 2 (1) of the ICESCR requires states to "take steps, individually and through international assistance and co-operation" to achieve the fulfillment of social and economic rights. See also, UN CESCR, General Comment 2 (1990).

to the positive rights aspects listed above, it also has the characteristics of a negative, civil/political right. While the UN CESCR has clearly identified what states *should do*, in the form of legal guarantees to provide security of tenure, it has also identified what they *must refrain from doing*, in the form of carrying out 'forced evictions' in violation of such guarantees. Forced evictions were described as "incompatible with the requirements of the Covenant" in 1991,⁴⁶ and defined in a separate *General Comment* six years later:

The term 'forced evictions' ... is defined as the permanent or temporary removal against their wills of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.⁴⁷

Forced evictions are, as such, a violation of the right to legal security of tenure. Where forced evictions take place, it is presumably either because the state has failed in its positive obligation to adopt legal measures guaranteeing tenure security or because such measures have not been respected or properly applied. However, in cases where the positive right to tenure security is examined in terms of its negative corollary – the right to be free from forced evictions – this can allow for a legal analysis of state actions. This is similar to that applied in cases of alleged violations of civil and political rights.⁴⁸ In such cases the "proportionality analysis" typically used to identify violations of civil and political rights is clearly applicable.⁴⁹

Specifically, where evictions take place in a manner that interferes with the right to security of tenure, they must be found to be violations of this right if they either (1) were not 'lawful' in the sense of being permissible under domestic law; (2) were not necessary to the achievement of an important public purpose; or (3) were not undertaken in a 'proportional' manner, or one that strikes a fair balance between the burden such measures place on individual rights-holders and the benefit they provide to the broader public interest.⁵⁰ In practice, meeting these requirements involves adopting a number of concrete procedural protective measures.⁵¹ In particular:

- Evictions and resettlement of communities should only be undertaken a) where necessary in order to achieve an important public purpose and b) as a last resort after all other reasonable means of achieving this purpose have been ruled out.
- Communities affected by evictions should be consulted in advance with the aim of not only securing their informed consent but, where possible, their active participation in developing and implementing a sustainable resettlement plan.
- Prior notice must be given of all planned evictions, which should not be scheduled until such time as all preparations have been made for the resettlement process, and any relocation site is fully habitable.
- Persons affected by evictions should have access to complaints mechanisms and effective legal remedies.
- Evictions may not be undertaken in a manner involving arbitrary or excessive use of force nor under conditions that jeopardise the life or health of affected persons.

46 UN CESCR, General Comment 4, paragraph 18.

47 UN CESCR, General Comment 7 (1997), paragraph 3. <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument>

48 The Committee points out that the right to be free from forced evictions is similar in practice to an established civil/political right, namely the right under Article 17 (1) of the International Covenant on Civil and Political Rights to be protected against arbitrary interference with the home. UN CESCR, General Comment 7, paragraph 8.

49 See Rhodri C. Williams "International Standards Governing Evictions from Public Property", International Network to Promote the Rule of Law Consolidated Response 10-010, (September 2010).

50 UN CESCR, General Comment 7, paragraph 14.

51 *ibid.* paragraphs 11-15. See also, UN High Commissioner on Human Rights, Basic Principles and Guidelines on Development-based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, UN Doc.A/HRC/4/18.

These protections should be applied in virtually all settings involving evictions in order to safeguard the 'negative' aspect of the right to secure tenure. As such, they contrast strongly with the discretion governments enjoy in identifying measures to fulfill the 'positive rights' aspects of tenure security, which can vary greatly depending on policy and contextual factors.

DEVELOPMENT STANDARDS

Human rights standards related to legal security of tenure are reinforced in a number of important respects by corresponding development standards. Indeed, the concept of 'security of tenure' has been a point of convergence between parallel human rights and development discourses that have often failed to connect with each other meaningfully in the past. Although development standards cannot be the primary point of reference for rights-based humanitarians, they are increasingly relevant in settings of protracted displacement, where, as pointed out above, humanitarian action frequently takes on a development character and development programming may have important implications for the achievement of durable solutions.⁵² Development standards also help to reinforce human rights standards in at least three key respects.

First, development standards provide further guidance on preventing forced evictions in situations where the involuntary resettlement of households or entire communities is undertaken in furtherance of development objectives. While a number of regional development banks and other development organisations have developed policies on involuntary resettlement, the most influential guidelines were produced by the World Bank in 2001.⁵³ While such documents are based on policy considerations, rather than binding human rights commitments, they serve a common goal of ensuring that measures justified by the public good are not undertaken in a way that unnecessarily disadvantages those whose rights are most directly affected. They do so based on the acknowledgment of humanitarian vulnerability – in the form of 'economic and social risks' related to resettlement – of precisely the same nature as those faced generally by displaced persons pending the achievement of durable solutions:

...involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost.⁵⁴

Development standards underscore one of the key principles of the right to security of tenure – that legal security must be provided in relation to the entire spectrum of tenure forms ranging from private property to squatters' rights. Although guidelines such as the World Bank's only require compensation to be paid for properties deemed 'assets' under domestic law, resettlement assistance also extends to addressing both "loss of shelter" and "loss of income sources or means of livelihood" as part of an overall effort "improve [affected persons'] livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels".⁵⁵ Moreover, the World Bank policy requires that all possible alternatives to displacement be considered in every case and dictates particular protection for indigenous groups and

52 See, Rhodri C. Williams, "Beyond Squatters' Rights: Durable Solutions and Development-Induced Displacement in Monrovia, Liberia", NRC Thematic Report, May 2011.

53 World Bank, Operational Policy 4.12 (OP 4.12) - Involuntary Resettlement, 2001 <http://siteresources.worldbank.org/INTFORESTS/Resources/OP412.pdf>. Other similar policies have been issued by the Organisation for Economic Cooperation and Development (OECD), the Asian Development Bank (ADB), the African Bank for Reconstruction and Development (ABRD) and the Inter-American Development Bank (IDB).

54 *ibid.* paragraph 1.

55 *ibid.* paragraphs 2 (c) and 3 (a).

others “who may not be protected through national land compensation legislation”.⁵⁶ In general, development standards also tend to reinforce the idea that secure tenure must extend beyond housing to take in land, particularly where land resources are necessary for subsistence and livelihoods.

Development standards related to urban planning provide a useful perspective on the relationship between tenure security and ownership rights. In a 2003 handbook on security of tenure UN-HABITAT pointed out that while freehold ownership may be the most legally protected form of tenure, it is not the only form of tenure that can provide legal security.⁵⁷ HABITAT notes that lease arrangements can fulfill the basic requirements of providing sufficient security to allow individuals to invest in land and property without fearing evictions and may even facilitate access to credit.⁵⁸ While full ownership may provide even greater security and less ambiguous collateral for loans, it is also expensive and presents risks to groups not used to disposal of formal property rights.⁵⁹ This underscores the notion that it is more important for states to ensure an appropriate degree of tenure security to all *existing* forms of tenure than to seek to convert them into ownership rights. While residents of informal settlement are clearly not entitled to the same level of protection from eviction as owner-occupiers, this does not mean that they are not entitled to any legal protection at all. For instance, as set out in the World Bank standard on resettlement, even non-owners are entitled to both procedural protections (such as notice, consultation and complaint mechanisms) and to concrete assistance to address the loss of their homes and the threat to their livelihoods arising from resettlement.

Even in cases where the current housing situations of vulnerable communities are clearly inadequate and insecure, development best practice calls for *incremental* approaches to improving their situation.⁶⁰ Such communities should have opportunities to both formalise their tenure status and upgrade their communities (for example, through connections to public utility networks) at a pace that is determined by their own perceived needs and capacities. Delaying the introduction of full ownership rights until communities feel prepared to exercise them can have an important protective function. For instance, beginning with long-term use rights or rental agreements that do not allow occupants to sell their properties can avoid the risk that vulnerable people are bought out at inappropriately low prices. Public information and community organisation is important to ensure that such rules are understood and respected and that attempts to sell such property are not simply undertaken informally.

Development standards often emphasise the need for participatory and community-based approaches in addressing tenure security issues. In cases of evictions, for instance, the World Bank policy goes beyond the mechanical requirement of consultations with affected persons to call for instances of involuntary resettlement to be viewed as sustainable development projects in themselves, with affected persons afforded “opportunities to participate in planning and implementing resettlement programmes.”⁶¹ In terms of the positive right to security of tenure, the UN CESCR has mentioned the importance of both basing housing policies on meaningful consultations and allowing ‘self-help’ initiatives to flourish but did not elaborate on the latter concept.⁶² By contrast, UN-HABITAT begins with the observation that such self-help is a central driver of fulfillment of the right to housing, with “most shelter in the developing world ... supplied through informal land development.”⁶³ This observation also clarifies a development-related link between tenure security and other key criteria for the human rights adequacy of housing, such as access to services and habitability. Put simply, where sufficient security of tenure exists that residents believe that they will enjoy the benefits of their investment, even poor people will invest in making their homes more habitable.

⁵⁶ *ibid.* paragraphs 2 (a), 8 and 9. See also, World Bank, Operational Policy 4.10 – Indigenous Peoples, July 2005.

⁵⁷ UN-HABITAT, Handbook on Best Practices, Security of Tenure and Access to Land, 2003. <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=1587>

⁵⁸ *ibid.* p.21.

⁵⁹ *ibid.* pp.26-28.

⁶⁰ *ibid.* pp.8-9.

⁶¹ World Bank, Operational Policy 4.12, paragraph 2 (b).

⁶² UN CESCR, General Comment 4, paragraph 10.

⁶³ UN-HABITAT, Handbook on Best Practices, p.46.



2.

SECURITY OF TENURE IN DISPLACEMENT SETTINGS

Legal security of tenure is an important criterion in meeting humanitarian needs and fulfilling the human rights of displaced persons during displacement and subsequently. This is broadly true of both IDPs and refugees. However, the role of tenure security in rights-based approaches to protecting and assisting these two groups differs significantly in practice due to the different nature of their protection under international law. The difference is less pronounced in situations of ongoing displacement in which durable solutions are not yet contemplated. Here, although a separate set of rules operates for many refugees, it has arguably been superseded in principle by the human right to adequate housing. This applies without distinction to both nationals and legally resident non-nationals.

SECURITY OF TENURE FOR IDPS AND REFUGEES

From the moment of displacement, shelter is one of the most accepted and integral parts of the basic package of humanitarian goods and services intended to alleviate the suffering of both IDPs and refugees.⁶⁴ However, as humanitarian agencies have adopted an increasingly rights-based approach, there have been demands to provide shelter which are justified on the basis of human rights, as well as humanitarian law and practice. This trend is perhaps best reflected in the Sphere Project handbook on humanitarian response, which explicitly grounds its recommendations on shelter and settlements in the requirements of the right to adequate housing.⁶⁵ An antecedent to this approach can be found in the *Guiding Principles on Internal Displacement*, which not only reprise the standard formulation of states' obligation to facilitate humanitarian assistance in Principle 25 but also imply an individual right to such assistance by associating its basic elements – including “basic shelter and housing” – with the right to adequate housing in Principle 18.⁶⁶

In international refugee law limited protections of the rights to housing and to acquire property are included in the in Chapters II-V of the *1951 Refugee Convention*. Given that the underlying purpose of these protections was to prevent refugees from being excluded from access to housing and protection under domestic tenancy laws, it is fair to conclude that they have largely been superseded through nearly universal acceptance of the human right to adequate housing since its inclusion in the 1966 ICESCR.⁶⁷ In light of the inconsistent inclusion of the right to property, in particular, in international human rights law, rules on access to property for refugees in the *1951 Convention* cannot be discounted.⁶⁸ However, the right to adequate housing serves to protect many refugees in many situations where human rights are applicable but Chapter IV of the Convention does not apply, either because the country in question has not ratified it or because of the status of the refugee population involved. As noted below, the *1951 Refugee Convention* cannot be applied in favour of Palestinian refugees in Lebanon but the ICESCR is applicable.⁶⁹

An important issue in applying the right to adequate housing in favour of refugees is the question of the extent to which the rights under the ICESCR are applicable to non-nationals on the same basis as nationals. Here, as noted by Displacement Solutions, ICESCR's language is inclusive, with social and economic rights to be granted to “everyone” and discrimination in the enjoyment of such rights forbidden on a broad and open-ended range of grounds including “national or social origin”.⁷⁰ The only exception is found in a rule that developing countries “with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.”⁷¹ However, this exception can generally be presumed not to apply to refugees. Seen

64 The other core components of humanitarian aid are generally considered to be food and non-food items, water and sanitation and essential medical services. Other services such as education, training and legal advice are increasingly prominent in aid provision.

65 The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (Sphere Standards) 2011, p.243.

66 This linkage between humanitarian shelter and the right to adequate housing in responding to the needs of IDPs is elaborated in further guidance on applying the *Guiding Principles*. See, e.g., Global Protection Cluster Working Group (GPCWG), *Handbook for the Protection of Internally Displaced Persons (IDP Handbook)* (March 2010), p.235.

67 Displacement Solutions, *Brief Commentary on Article 13, p.2 and Brief Commentary on Article 21, pp.1-6*.

68 For recognised refugees, Article 13 of the 1951 Convention stipulates “treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.” Article 21 of the Convention sets out a similar rule in relation to housing.

69 Lebanon ratified the ICESCR on 3 November 1972.

70 ICESCR, Article 2 (2).

71 *ibid.* Article 2 (3).

in historical perspective, it represents a hangover from colonial circumstances that, as such, “should be interpreted narrowly”.⁷²

UN CESCR has itself asserted an implied right to be free from discrimination on the basis of nationality, noting that the rights under the Covenant “apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”⁷³ The anti-discrimination rule in the ICESCR allows a degree of protection of refugee housing rights considerably beyond those in the *1951 Refugee Convention* – which guaranteed only treatment no less favourable than that accorded to other non-nationals. In light of the UN CESCR’s interpretation, any distinction between even nationals and non-national refugees in the exercise of the right to adequate housing would have to be justified on “reasonable and objective” grounds in order to avoid a finding of discrimination.⁷⁴ UN CESCR has applied similar reasoning to prohibit discrimination against IDPs on the basis of their place of residence.⁷⁵

The principle of non-discrimination provides a subtly powerful argument for undertaking special measures to ensure the right to adequate housing for both refugees and IDPs. It is now well accepted that the non-discrimination rule not only forbids the differential treatment of similarly situated persons but also implies the need for special measures in favour of groups suffering as a result of particular obstacles to the exercise of their rights.⁷⁶ Based on the observation that “displacement consistently results in specific, severe vulnerabilities and harms for those affected, such as the loss of homes, livelihoods, and social networks”, the *Guiding Principles* are, at their heart, a listing of the type of special measures needed to allow those affected to exercise their rights on a non-discriminatory basis with the non-displaced population.⁷⁷ Against the background of their common loss of whatever housing rights they previously enjoyed, refugees and IDPs share a crucial need for affirmative measures providing tenure security and protecting them from forced evictions during displacement.

Efforts to ensure that displaced persons enjoy security of tenure should be based on the application of the above vulnerability analysis not only as between displaced and non-displaced populations but also within displaced groups. Keeping in mind the special prohibition against discrimination in enjoyment of the right to housing on the basis of race and gender described above in Section I, it is particularly important to identify and address obstacles to security of tenure affecting women and ethnic minorities within larger displaced populations.⁷⁸ This approach is most clearly set out in the *Guiding Principles*, which must be “applied

72 Specifically, this rule was portrayed as an effort “to end the domination of certain economic groups of non-nationals during colonial times.” The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), paragraph 43. Displacement Solutions has also noted that this exception cannot be applied to the “core content of the most basic rights set out in the Covenant” (Displacement Solutions, Brief Commentary on Article 21, p.8). The authors note that the extent to which housing rights qualify as such core content has yet to be fully clarified. However, the emphasis placed by UN CESCR on the right to adequate housing as a provision “of central importance for the enjoyment of all economic, social and cultural rights” indicates that the exclusion of non-nationals would be inherently problematic. UN CESCR, General Comment 4, paragraph 1.

73 UN CESCR, General Comment 20 (2009), paragraph 30. <http://www.unhcr.org/refworld/docid/4a60961f2.html>

74 The UN CESCR applies a proportionality test in assessing differential treatment, meaning that such treatment will not be found to amount to discrimination if it is justified and undertaken through reasonable and proportional measures. UN CESCR, General Comment 20, paragraph 13.

75 Discrimination in the enjoyment of social and economic rights on the basis of residence – including internal displacement – is also implicitly forbidden under the ICESCR. UN CESCR, General Comment 20, paragraph 34.

76 Regarding social and economic rights, for instance, see UN CESCR, General Comment 20, paragraph 9.

77 Guiding Principle 1 (1) states that IDPs “shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country” and prohibits discrimination against them in the enjoyment of these rights and freedoms “on the ground that they are internally displaced”. See also, Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008), pp.16-17. http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx

78 Obstacles to security of tenure for women should be identified in the context of a broader gender analysis. While access to property rights and security of tenure tends to be a particular obstacle for women and girls, such an analysis should be open to the identification of tenure security issues affecting men and boys as well. See, Inter-Agency Standing Committee, *Women, Girls, Boys and Men: Different Needs, Equal Opportunities – Gender Handbook for Humanitarian Action*, 2006. http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-subside-tf_gender-gender

without discrimination of any kind....”⁷⁹ They further clarify that the application of this principle requires positive measures in favour of particularly vulnerable groups *within* displaced populations:

Certain [IDPs], such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of households, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.⁸⁰

SECURITY OF TENURE AND DURABLE SOLUTIONS

The recent association of humanitarian shelter with the right to adequate housing is not entirely unproblematic. In humanitarian terms, the starting point for shelter programming has involved explicitly temporary measures meant to address immediate humanitarian needs. Thus, while humanitarians have responded to calls to improve the conditions of shelter (including attention to security of tenure), this has not automatically entailed planning for the contingency that *ad hoc* shelter solutions might become permanent – for such shelter is commonly associated with the attainment of durable solutions. However, given that social and economic rights such as adequate housing are meant to be fulfilled progressively through continuous steps, the nature of their relationship with a presumptively temporary model of humanitarian shelter is not self-evident in practice. The resulting ambivalence is reflected in the introduction to the Sphere Handbook’s guidelines on shelter and settlements, which are portrayed as laying the ground for the attainment of adequate housing without entirely fulfilling the right on their own:

The minimum standards in this chapter are not a complete expression of the right to adequate housing as defined by the relevant international legal instruments. Rather, the minimum standards reflect the core content of the right to adequate housing and contribute to the progressive realisation of this right.⁸¹

In setting out practical steps that can be taken to provide shelter, the Sphere Standards are cognisant of the fact that humanitarian settlements may experience a number of fates, varying from discontinuation in the case of return to movement to different locations as well as upgrading into permanent settlements. The Sphere Project accordingly recommends progressive steps to improve adequacy in a manner that corresponds to the emphasis in both human rights and development guidelines on encouraging household self-help:

As initial shelter responses typically provide only a minimum level of enclosed space and material assistance, affected populations will need to seek alternative means of increasing the extent or quality of the enclosed space provided. The form of construction and the materials used should enable individual households to maintain and incrementally adapt or upgrade the shelter to meet their longer-term needs using locally available tools and materials....⁸²

79 Guiding Principles, Principle 4 (1).

80 *ibid.*, Principle 4 (2).

81 Sphere Standards, p. 244.

82 *ibid.* .

Ultimately, a dilemma involved in applying the right to adequate housing in humanitarian shelter settings is that this requires humanitarians to plan such shelter virtually from the outset of a displacement crisis in a manner meant to facilitate eventual durable solutions. Information on likely durable solutions is likely to be speculative and incomplete at such an early stage, but this may not matter. As noted in the 2008 IDP manual, the only housing solutions that shelter actors directly control and enjoy responsibility for are those capable of being implemented locally at the site of displacement:

...the competent authorities in displacement settings should strive to meet relevant minimum standards (in the form of national safety or habitability rules and international guidelines), both by continually seeking to provide better housing alternatives and by following timelines for improving, upgrading, or replacing the least adequate forms of shelter occupied by IDPs. In all situations, IDPs should be afforded maximum choice in terms of both the types of shelter options available to them and their location.... Wherever possible, competent authorities should support and facilitate 'self-help' by IDPs willing and able to take steps to house themselves.⁸³

As the repeated emphasis on self-help implies, decisions by displaced persons to invest in the improvement of their shelter during displacement may include a tacit recognition of the possibility of local integration as a durable solution. However, this relationship remains ambiguous due to the nature of local integration itself, which "differs from return and settlement elsewhere in that it does not always involve physical movement and IDPs may not always make a conscious choice to integrate locally at a certain point in time."⁸⁴ Given the political sensitivities surrounding local integration of IDPs and refugees in many protracted displacement settings such ambiguity may be constructive. It is important to recall that tenure security is typically a precondition for households' willingness to engage in voluntary self-help housing improvement, but that it does not amount to local integration on its own.

In internal displacement settings, tenure security and adequate housing are necessary, but not sufficient preconditions for the achievement of durable solutions.⁸⁵ In protracted refugee situations, tenure security is not formally linked with durable solutions but is clearly relevant to the emerging policy emphasis on encouraging self-reliance.⁸⁶ Even in refugee situations where host states have set policy on controlling or permitting local integration, blanket denial of security of tenure to refugees as a means of discouraging local integration would be virtually impossible to square with contemporary understandings of the right to adequate housing – these included freedom from forced evictions, as well as the right to be free from discrimination. Such measures would be even more obviously wrongful in internal displacement settings, where IDPs are generally presumed to be citizens entitled to equal enjoyment of their rights *vis-à-vis* their non-displaced peers.

As stated above, legal of security of tenure is a concept that protects many types of tenure forms from ownership to squatter's rights. However, while formal ownership is undoubtedly the most legally secure form of tenure, it is important to recall that it is not a precondition for tenure security. From a Do No Harm perspective, the vulnerability and uncertain prospects of protracted refugees and IDPs may militate against tenure security solutions involving the immediate transfer of ownership rights. Such rights should not be arbitrarily or discriminatorily denied to displaced persons. The purchase of property should be available to displaced persons with the means. The use of 'incremental tenure' approaches in displacement can

83 Brookings-Bern Project on Internal Displacement, IDP Manual, p. 30.

84 Brookings Institution, IDMC and NRC, IDPs in protracted displacement: Is local integration a solution? Report from the Second Expert Seminar on Protracted Internal Displacement, May 2011, p.6. http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1132.pdf

85 Non-discriminatory access to an adequate standard of living (including housing) is only one of four criteria for the achievement of durable solutions applicable in all situations (a further four are to be applied depending on context). See, Framework on Durable Solutions for IDPs, Section V.

86 In its Conclusion No. 109 (LXI) - 2009, the Executive Committee of the UNHCR "[u]rges States, UNHCR and other partners to continue pursuing proactive measures in a manner that reduces dependency, promotes the self-sufficiency of refugees towards enhancing their protection and dignity, helps them manage their time spent in exile effectively and constructively and invests in future durable solutions" (paragraph j).

provide IDPs with “legal rights to the housing they are allocated that serve to protect them from forced evictions at all times and that become stronger with length of residence. This can afford IDPs in protracted displacement situations with the possibility to seek full ownership.”⁸⁷

Incremental tenure solutions may bring additional advantages as a means of securing tenure in protracted displacement settings. For instance, solutions that do not immediately transfer full ownership may help to reassure donors or taxpayers asked to foot the bill for meeting the long-term housing needs of displaced persons without a guarantee that this investment will be sufficient to bring about a durable solution to their displacement. As described in a recent report on protracted displacement in Serbia, for instance, donor funding is being sought for permanent housing solutions for IDPs from Kosovo as the Serbian government has yet to embrace local integration as a durable (as opposed to merely ‘interim’) solution.

...facilitating meaningful integration requires more than merely renouncing restrictions that prevent IDPs from exercising their rights. Rather, interim integration measures may have significant costs and consequences. In Serbia, the most effective means of ‘improving living conditions’ [for IDPs] has proven to be subsidised access to housing. Although such an approach promises to be both sustainable and cost-effective in comparison to the administration of collective centres, it was developed as a means of providing permanent durable solutions for refugees and is no less expensive when applied as an ‘interim’ measure for IDPs.⁸⁸

Such concerns may be heightened when, as in the case of Serbian IDPs from Kosovo, the possibility of restitution or compensation for properties left behind in the course of displacement exists but the extent to which such remedies will be fully implemented remains unclear. Simply put, if long-term humanitarian shelter needs are best met by providing permanent housing solutions, should displaced beneficiaries be required to pay for these solutions in case their former assets are restored to them directly or through compensation?

Incremental tenure approaches may ease such concerns by providing security of tenure without actual ownership at first. The possibility of transfer of ownership is left open for such time when it may be more evident whether displaced persons are likely to receive remedies for lost assets and which durable solutions are likely to be feasible and preferred by displaced beneficiaries of housing assistance.

87 Brookings-Bern Project on Internal Displacement, IDP Manual, pp. 141-2.

88 Williams, Protracted Internal Displacement in Serbia, p.99.



3.

SECURITY OF TENURE IN REFUGEE SETTINGS: LEBANON

The situation of Palestinian refugees in Lebanon may represent one of the most difficult displacement situations in the world in terms of access to rights, if not in terms of absolute humanitarian misery. While Palestinian refugees in Lebanon are not starving, many of them have lived for generations in situations of “appalling social and economic conditions”.⁸⁹ The plight of Palestinian refugees can only be understood in the context of the instability of the Lebanese state, which suffered protracted civil war between 1975 and 1990, as well as regular Israeli military incursions and interventions in 1978, 1982-2000 and 2006. Unlike ordinary Lebanese citizens, generations of Palestinian refugees living in Lebanon have been denied the enjoyment of basic human rights including the right to adequate housing.⁹⁰

Although the Lebanese government insists that the international community has the primary responsibility for assisting Palestinian refugees, the legal framework it has put in place to prevent their local integration

⁸⁹ Amnesty International, *Exiled and suffering: Palestinian refugees in Lebanon*, 17 October 2007, p.1. <http://www.amnesty.org/en/library/info/MDE18/010/2007>

⁹⁰ Lebanon ratified the ICESCR, which includes the right to adequate housing, on 3 November 1972.

leaves little scope for Palestinians to improve their own situation through access to education, employment and homes where they can live in basic dignity and security. The complexity of the situation is reflected by the fact that many of the Palestinian refugees themselves are staunchly opposed to any measures that would risk compromising their expressed intent to return to their homes of origin in what is now Israel. In this context, the right of Palestinian refugees in Lebanon to security of tenure is particularly jeopardised due to the intuitive association between the acquisition of land and housing rights and integration. The right of Palestinian refugees to engage in formal transactions related to land and property was severely curtailed by legislative amendments in 2001.

The full negative impact of this change was revealed in the aftermath of 2007 fighting that destroyed the Nahr el-Bared refugee camp in northern Lebanon as well as adjacent neighbourhoods. Three months of conflict between the radical militant group, Fatah Al-Islam, and the Lebanese Armed Forces destroyed the camp and nearby areas. Palestinian residents found themselves faced with severe obstacles to donor-funded reconstruction of homes they had occupied for decades. In responding to this situation, humanitarians have proceeded with some caution. While the official policies of the Lebanese authorities toward Palestinian refugees are in apparent violation of the country's human rights obligations, challenging them head on risks triggering heated, and possibly counter-productive, political debates. Perhaps more to the point, these policies are only selectively enforced. In the area of housing, this means that Palestinian refugees frequently enjoy significant subjective security of tenure based on local informal arrangements and understandings, even if they have no objective, legal basis for such security. This presents humanitarians with a dilemma. If they act to support subjective security of tenure without challenging the constraints presented by the formal policy framework, their work may heighten the risk to displaced persons should the formal framework be strictly applied (as has been the case in the aftermath of the Nahr el-Bared conflict). However, challenging restrictive rules directly may also jeopardise the tacit understandings that allow the achievement of even a minimum degree of security of tenure for Palestinian refugees.

BACKGROUND

Lebanon is a relatively young state, having been created as a French protectorate at the end of World War I and attaining independence only in 1943. From the country's birth the Lebanese political system has revolved around a largely unwritten system (known as confessionalism). Designed to maintain peace between the country's numerous faith groups through a guaranteed distribution of political posts to their representatives it has created a situation in which it has never been possible to hold a national census for fear of upsetting the status quo.

In 1948, Lebanon received an influx of 140,000 Palestinian refugees displaced by the Arab-Israeli war. They were housed in 15 camps that were provided with basic services from 1949 onwards by the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA). Although part of the rationale for the placement of Palestinian refugees in camps was to facilitate control of their activities and prevent their mixing with the rest of the population, some Palestinian refugees were quickly able to find work as seasonal labourers, especially in southern Lebanon. In some cases, groups of Palestinian agricultural workers established largely informal settlements at locations near workplaces that came to be referred to as 'gatherings'. These are collections of homes built without official permission and left largely unserved by the Lebanese state or UNRWA. NRC conducted the first comprehensive survey of Palestinian gatherings in Lebanon, including those adjacent to official UNRWA camps.⁹¹

Although some Lebanese politicians have frequently professed solidarity with the Palestinian cause, the

⁹¹ Palestinian refugees neglected in "gatherings", The Electronic Intifada, 19 May 2009 <http://electronicintifada.net/content/palestinian-refugees-neglected-gatherings/8241>

presence of the Palestinian refugee population in Lebanon has always been perceived as a potential threat to the country's security.⁹² Palestinian refugees throughout the Middle East were radicalised by the 1967 Six-Day War, and in 1969 the Palestinian Liberation Organisation (PLO) exerted pressure on the Christian political elite in Lebanon to both recognise its right to attack Israel from Lebanese territory and concede basic social and economic rights to Palestinian refugees. The resulting Cairo Agreement⁹³, together with the movement of the PLO leadership to Beirut in 1970, intensified existing tensions between Christian, Muslim and Druze political factions in Lebanon, helping to spark the outbreak of the Lebanese civil war in 1975. During the civil war, the PLO in Lebanon took control of parts of Beirut and the south, consolidated its control of the camps via Popular Committees (PCs) and nurtured a formidable military capacity. However, the Israeli invasion and occupation of southern Lebanon in 1982 led to massacres of Palestinian refugees, the destruction of several camps and the flight of the PLO leadership to Tunis.⁹⁴ Throughout the 1980s, Syria gained influence in Lebanon and sponsored Shi'a Muslim paramilitary groups that frequently clashed with the largely Sunni Palestinian refugees.

In 1989, the Taif Agreement ended the Lebanese civil war, ushering in a new political accommodation between the country's sects. Constitutional amendments resulting from the Taif accord included a prohibition on *tawteen* (granting of citizenship/ permanent settlement) for Palestinian refugees in Lebanon.⁹⁵ During the 1990s, Palestinian refugees were shunned by Lebanese politicians for their perceived role in starting the civil war. The Syrian authorities, who exerted a great deal of *de facto* control over Lebanon, encouraged allied Palestinian factions to take over control of the 12 camps remaining after the civil war, further weakening the PLO and its leading faction, Fatah.⁹⁶ The February 2005 assassination of Lebanese Prime Minister Rafiq Hariri and the eventual subsequent withdrawal of Syrian forces from Lebanon led to a reengagement between Lebanese politicians and the Palestinian leadership in Lebanon – now split between Fatah and the PLO on one hand, and Hamas and allied Islamist factions on the other.⁹⁷ The new policy of engagement was represented by the October 2005 creation of the Lebanese-Palestinian Dialogue Committee (LPDC), an inter-ministerial government body with a mandate to address the living conditions of Palestinian refugees.⁹⁸

The period between the outbreak of the civil war and the founding of the LPDC saw a number of significant developments related to the tenure security of Palestinian refugees. Despite the destruction of three refugee camps during the war and the natural growth of the registered Palestinian refugee population to over 450,000⁹⁹ the Lebanese authorities have neither granted permission for expansion of the existing 12 camps nor the establishment of any further camps. The resulting overcrowding has inevitably led to deteriorated living conditions in the camps, which is made worse by inadequate infrastructure and sporadic restrictions on bringing construction materials into the camps. In 2007, Amnesty International noted that at least one camp had a higher population density than Hong Kong or Mumbai, accusing Lebanese policies of violating Palestinians' right to adequate housing "on a grand scale."¹⁰⁰ As a result of the limited number of spaces available to a growing population, an informal housing market has evolved in many camps and gatherings, with unofficial rules governing sale and even rental enforced by Popular Committees. PCs usually maintain records of transactions. The manner in which this system emerged is described in the case of a Beirut gathering in a 2008 legal analysis commissioned by the NRC:

92 International Crisis Group (ICG), "Nurturing Instability: Lebanon's Palestinian Refugee Camps" ICG Middle East Report No. 84, 19 February 2009, p.4. <http://www.crisisgroup.org/en/regions/middle-east-north-africa/israel-palestine/084-nurturing-instability-lebanons-palestinian-refugee-camps.aspx>

93 See: <http://www.lebanese-forces.org/lebanon/agreements/cairo.htm>

94 ICG, 2009, p.5.

95 Lebanese-Palestinian Dialogue Committee (LPDC), Lebanon and Palestinian Refugees: Policy Foundations and Milestones, 2005-2009, 2010, p.6. <http://www.cep-lb.org/pdf/LPDCReport20052009English.pdf>

96 ICG, 2009, p.6. Palestinian factions backed by the Syrians were even permitted to maintain military bases outside the camps.

97 *ibid.* p.7.

98 LPDC, Lebanon and Palestinian Refugees, p.3. The other three components of the LPDC's mandate are putting an end to the Palestinian armed presence outside camps, regulating Palestinian weapons inside camps and studying the possibility of establishing representative relations between Lebanon and Palestine.

99 <http://www.unrwa.org/etemplate.php?id=253>

100 Amnesty International, Exiled and suffering, p.5.

... in the late 1980s, units were occupied by people in need for accommodation and evacuated whenever this need ceased to exist, without any compensation, sale or any other form of profit from occupation. In this case, occupation is transitory and exclusively connected to humanitarian need. With the scarcity of units, occupation began to gain economic value. Over time, ... inhabitants established their homes, families, invited relatives and friends to, at first, occupy vacant units and later to rent or purchase units With the acceptance of the right to concede occupation (sell) and the separation from the concept of 'need', the inhabitants' position regarding ownership began to transform. In parallel with the arrival of people who are not able to purchase units, (e.g. Syrian workers) the right to transfer occupation for a limited period of time (lease) became a common and accepted practice.¹⁰¹

Unsurprisingly under the circumstances, the number of gatherings has increased. Early gatherings have taken on a quasi-permanent nature, together with new gatherings founded during the civil war to house refugees fleeing from fighting that damaged and destroyed official camps. In about 12 cases, camp populations have spilled over into adjoining land or neighbourhoods. This sub-category of gathering is referred to as 'adjacent areas' (AAs) and often tend to function as informal extensions of the camps that gave rise to them.¹⁰² AAs have tended to form in a variety of ways. In the case of the Tallet el Mankoubin AA in Tripoli, for instance, residents simply squatted on vacant privately-owned land near the established Beddawi camp after having fled camps in southern Lebanon during the 1982 Israeli invasion.¹⁰³ By contrast, the Nahr el Bared AA north of Tripoli developed as a result of residents of the adjoining Nahr el Bared camp gradually purchasing vacant property and building on it.¹⁰⁴ Overall, 40,000 people, or almost ten percent of all Palestinian refugees, live in about 43 gatherings nationwide.¹⁰⁵ Unlike camp residents, refugees living in gatherings have no right to access services provided by UNRWA. In practice, however, UNRWA often makes services available to gatherings to the extent that resources allow. For instance, residents of gatherings near Tyre interviewed for this report indicated that their children are able to attend schools run by UNRWA.

Part of the growth of Palestinian gatherings in the last decades resulted from an increased interest of Palestinians refugees in buying land and building on it, as in the case of the Nahr el Bared Adjacent Area (AA).¹⁰⁶ However, in many cases, such purchases were undertaken legally but remained informal due to the failure of Palestinian purchasers to register the sales with the government's Real Estate Registry, a step necessary for such transactions to be enforceable against third parties.¹⁰⁷ In many cases, non-registration took place simply in order to avoid taxes and bureaucratic requirements and had few repercussions at the time for purchasers.¹⁰⁸ Even in long-established gatherings in south Lebanon, registered ownership was very rare – one respondent had undertaken the process solely because it was a condition imposed by a scrupulous employer in exchange for selling the land. The quasi-legal situation of many Palestinian purchasers is often exacerbated by their failure to adhere to planning rules. For instance, the land in the Nahr el Bared AA can only be used for low-density construction in accordance with the plan for the area but has in fact been heavily built up.¹⁰⁹ Crucially, respect for planning codes and the "absence of infractions on the entire plot" are preconditions for the issuance of construction permits.¹¹⁰

101 Nizar Saghih and Rana Saghih, *Legal Assessment of Housing, Land and Property Ownership Rights, Transfers, and Property Law related to Palestinian Refugees in Lebanon*, October 2008, p.40. http://www.nrc.no/arch/_img/9388660.pdf

102 UN-HABITAT and UNDP, *Investigating Grey Areas: Access to Basic Urban Services in the Adjacent Areas of Palestinian Refugee Camps in Lebanon*, 2010. <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3080>

103 -ibid. p. 85.

104 Saghih and Saghih, p.44.

105 Robert Beers, *Housing, Land and Property Practices in the Palestinian Gatherings in Lebanon* (unpublished report for NRC, January 2011, p.10.

106 Saghih and Saghih, p. 44. The authors note that many Palestinians, having experienced a half-century of dispossession, view the acquisition of land as "directly related to dignity."

107 ibid. p.23.

108 ibid. pp.51-52.

109 ibid. p.6.

110 ibid. p.27.

Until 2001, the spectrum of informal, quasi-legal and fully-registered property rights held by Palestinian refugees in their homes afforded not only a subjective sense of security of tenure but also the possibility of incrementally attaining progressively greater objective, formal protection. This state of affairs changed dramatically in April 2001 with the passage of legislation amending an earlier presidential decree on acquisition of property in Lebanon by non-citizens (the '2001 amendments'). It stated:

No real right of any kind may be acquired by a person who does not carry a citizenship issued by a recognised state or by a person if such acquisition contradicts with the provisions of the Constitution relating to the prohibition of permanent settlement (*tawteen*) of Palestinians.¹¹¹

The effect of the 2001 amendments was to drive virtually all Palestinian tenure to property into informality or outright illegality. In banning the acquisition of real rights, the amendments not only prohibited future purchases but also the registration of property rights based on existing sales contracts where registration had not previously occurred. Leases over ten years in duration were also banned along with sales. Perhaps most dramatically, the amendments prohibited the inheritance of registered property rights from titular holders to their heirs. In practice, this meant that even those with fully perfected title to their homes could only enjoy them during their lifetime. After their deaths, ownership would become a *waqf*, an inalienable religious endowment found across the Muslim world. .

In light of the fact that most Palestinians had engaged only minimally with the formal rules on property and tenure prior to 2001, it was unsurprising that the 2001 amendments did not immediately make an appreciable difference to either their subjective sense of tenure security or their use of their homes. However, for humanitarian organisations such as NRC that participated in the reconstruction of southern Lebanon after the 2006 Israeli invasion, the issue of Palestinian insecurity of tenure was especially highlighted by the difficult housing circumstances in Palestinian gatherings. Efforts to carry out rehabilitation work in the gatherings were met with significant obstacles: these included issuance of construction permits, requirements that only temporary construction materials be used and risks that the resulting value added to properties "may encourage third parties to seek to remove refugees from the land."¹¹²

The full extent of the problem posed by the 2001 amendments was not revealed until the aftermath of a May 2007 conflict between government forces and Islamic militants who infiltrated the Nahr al Bared camp. The fighting destroyed all the buildings in the camp and many of those in the adjacent area, displacing some 27,000 residents, most of whom fled to the nearby Beddawi camp.¹¹³ In the wake of the fighting, the Lebanese government took the unprecedented step of expropriating the camp and setting up a special security regime with checkpoints for both entering the camp and its adjacent area. The heavy security presence is thought to have both discouraged the return of refugees to their homes and the resumption of contact with neighbouring Lebanese communities that had previously been both cordial and economically beneficial for all.

In the wake of the conflict a group of Palestinian volunteers came together to develop a reconstruction master plan for the camp and adjacent area to allow reconstruction of its social fabric.¹¹⁴ The resulting Nahr al Bared Reconstruction Committee (NBRC) faced severe obstacles, including the destruction of a register of property transactions within the camp previously kept by the Popular Committee, lack of documents establishing ownership in the adjacent area, and the dispersal of the population of both areas.

111 *ibid.* p. 20, citing Article 1 of Presidential Decree 11614 of 1969, as amended by Law No. 296 of 2001.

112 Beers, p.11.

113 IDMC and NRC, Lebanon: No new displacement but causes of past conflicts unresolved, 30 December 2010, p.6. <http://www.internal-displacement.org/countries/lebanon>

114 Interview, NBRC member, Tripoli, Lebanon, 24 May 2011.

A donor conference for the reconstruction of the camp in June 2008 delivered meagre results. Skepticism of government promises to rebuild the camp deepened.¹¹⁵ Trust between refugees from Nahr al Bared and the authorities reached an all-time low when a rumour was circulated that camp residents would be allowed to return only if they agreed to reoccupy their homes on the basis of user agreements that could be revoked for violations of the law.¹¹⁶ Although such a rule has not been imposed, the rumour underscored the extent to which the system of informal transactions previously used in the camps had failed to provide meaningful security of tenure that could command recognition in Lebanese law.

Despite these issues, the NBRC negotiated permission from the authorities to rebuild the main camp according to its original layout, but with changes for purposes of security and public hygiene.¹¹⁷ Accordingly, the dimensions of the camp were painstakingly measured through intensive consultations with displaced residents. Although tensions with the Popular Committee eventually led to a diminished role for the NBRC, reconstruction work proceeded under the auspices of UNRWA. The first houses were only delivered to displaced camp residents in September 2011. There is currently a good deal of optimism that the camp will be reconstructed in full, but with considerable delay. Some estimate that the entire process may take another five years or more. Residences are handed back to residents without any formal explanation of the legal basis for their continued stay there, but the Popular Committee has resumed registering informal transactions in the camp.

The adjacent area to the Nahr el Bared camp has remained largely in limbo. Although the NBRC began a process of reconstructing a master plan for the adjacent area using the same methodology as in the camp, this process has never been completed. In the meantime, residents whose properties were destroyed or damaged have generally been unable to apply individually for permits to repair or rebuild. As set out above, most residents of the adjacent area had purchased the land they built on but had failed to register their purchase or to exploit it in accordance with planning codes. Because the 2001 law prevents subsequent registration of property, owners of damaged properties in the adjacent area who failed to take this step prior to its passage have little recourse. In practice, the only means by which homes could be reconstructed was through negotiations undertaken by humanitarian donors such as NRC to obtain permission to undertake basic rehabilitation. Although such tactics have allowed for the reconstruction of many damaged homes, those which were destroyed have remained off-limits. In the words of one humanitarian official, “our focus has been on minimising legal implications; we started with the least damaged homes and went as far as we could.”¹¹⁸

For Palestinian refugees, the Nahr el Bared conflict has demonstrated with blunt clarity the extent to which the 2001 law has shifted their position from informality into outright illegality. The result has been a “permanent state of anger and anxiety” with some Palestinian refugees expressing the belief that the aim of the 2001 law was not to prevent local integration but to actively force Palestinians to emigrate to third countries by depriving them of the right to live in dignity in Lebanon.¹¹⁹ For humanitarian organisations, the Nahr el Bared aftermath has revealed the potential fragility of attempts to improve the habitability of refugee housing without legal guarantees of security of tenure. For NRC, for instance, this episode has been pivotal in a recent decision to launch a new ICLA programme in Lebanon. The virtual impossibility of compliance with Lebanese law governing Palestinian refugees’ tenure to their homes has ensured that almost every step undertaken in ordinary shelter work has had significant legal implications.

The housing situation for Palestinian refugees can only be understood in the context of a broader Lebanese

115 ICG, *Nurturing Instability*, pp.12-13.

116 Interview, NBRC members, Beirut, Lebanon, 25 May 2011.

117 Interview, NBRC member, Tripoli, Lebanon, 24 May 2011. Such deviations included reworking the street plan so that military vehicles could pass unobstructed and allowing greater light and ventilation.

118 Interview, humanitarian official, Beirut, Lebanon, 27 May 2011.

119 Saghie and Saghie, p.60.

legal framework that has generally restricted social and economic rights for Palestinian refugees, including restrictions on the right to work and practice certain professions as well as access to social security and higher education.¹²⁰ One observer noted that such stringent restrictions of fundamental social and economic rights single Lebanon out: most other countries hosting Palestinian refugees have long since allowed Palestinian refugees to enjoy economic and social rights even if they continue to restrict their exercise of civil and political rights.¹²¹ The Lebanese authorities have been criticised by various human rights treaty bodies for these restrictions. They continue to justify them by arguing that responsibility for the Palestinian refugees ultimately lies with the international community, as embodied by UNRWA, as well as the Israeli state.¹²² Indeed, there is principled agreement between the Lebanese authorities and the Palestinian refugee community that measures entailing *tawteen* would be in contradiction of the right of return asserted by Palestinian refugees to their original homes of origin. However, in practice, Palestinian refugees in Lebanon have been highly critical of restrictions on their economic and social rights and welcomed initiatives to ease them.¹²³

There appears some scope for change. Some softening of the provisions of the 2001 amendments was initially contemplated as part of a package of legislation adopted to improve the living conditions of Palestinian refugees in August 2010. Ultimately, the changes were limited to amendments to the labour and social security laws.¹²⁴ According to several observers, the outcome was both positive - in the sense that both the government and the opposition appeared to recognise the urgency of improving the situation of Palestinian refugee – but also negative as Christian parties (both in the government and opposing it) argued tenaciously and successfully to prevent revision of the 2001 amendments from being included in the package.¹²⁵ Meanwhile, the Lebanese-Palestinian Dialogue Committee (LPDC) (a body established by the government in 2005 to overview state policy regarding Palestinian refugees)¹²⁶ has taken up the property issue. It is currently initiating an investigation into the practical aspects of a number of key issues identified in an earlier legal analysis. Final findings and recommendations are expected by the end of 2011.¹²⁷

A PLO representative interviewed for this report noted that the right to property ownership represented one of the movement's two current priorities, along with the right to work in professional associations.¹²⁸ The official rejected concerns that property ownership would lead to integration ("no citizenship, no *tawteen*") and stated that the optimal solution to the current property issue would be the revocation of the 2001 amendments.

120 See, Amnesty International, *Exiled and suffering*.

121 Interview, humanitarian official, Beirut, Lebanon, 27 May 2011.

122 See, e.g. UN General Assembly, Report of the Working Group on the Universal Periodic Review: Lebanon, UN Doc. A/HRC/16/18 (12 January 2011), paragraphs 9 and 14.

123 See paragraph 24 (Palestine comments on the Lebanese national report to the Universal Periodic Review by criticising Israel for denying the right of return and self-determination but welcoming amendments to the Lebanese labour law providing greater access to the labour market.)

124 Committee for Employment of Palestinian Refugees in Lebanon (CEP), Newsletter (Fall 2010). <http://www.cep-lb.org/pdf/issuen5.pdf>

125 Interview, humanitarian official, Beirut, Lebanon, 27 May 2011.

126 <http://www.lpdc.gov.lb/HomeLPDC.aspx?lang=en-us>

127 Interview with LPDC officials, 27 May 2011. The legal study and its initial recommendations on six key problematic areas it identified have not been published. The LPDC representatives interviewed for this report noted that they have had a difficult time collecting information on Palestinian refugees' property issues and conceded that part of the difficulty may stem from the fact the LPDC has not yet disclosed its own analysis and recommendations for approaching the problem.

128 Interview, PLO official, 27 May 2011.

ANALYSIS

It is nearly impossible to conceive of meaningful *legal* security of tenure for Palestinian refugees in Lebanon as long as the 2001 amendments remain in force. In addition to representing an arbitrary interference in Palestinian property rights, the amendments appear to qualify as a violation of the right to adequate housing in almost every imaginable respect. Perhaps most obviously, by explicitly referring to the constitutional discouragement of *tawteen*, the amendments clearly discriminate against Palestinians on the basis of national origin, not only *vis-à-vis* Lebanese citizens but even *vis-à-vis* other non-citizens. As discussed above in section II, discrimination on the basis of national origin, including refugee status, is a violation of Lebanon's obligations under the ICESCR, barring the existence of "reasonable and objective" reasons for imposing such measures.¹²⁹ This is also a key point taken up by the UN Committee on the Elimination of Racial Discrimination (CERD) in addressing the 2001 amendments in its 2004 concluding observations on Lebanon:

The Committee urges the State Party to take measures to ameliorate the situation of Palestinian refugees with regard to the right to enjoyment of the rights protected under the Convention [on the Elimination of Racial Discrimination], and at a minimum to remove all legislative provisions and change policies that have a discriminatory effect on the Palestinian population in comparison with other non-citizens.¹³⁰

Beyond their discriminatory nature, the amendments are also clearly a deliberately retrogressive measure, raising particular concerns in relation to Lebanon's obligations under the ICESCR.¹³¹ In other words, instead of taking affirmative measures to provide greater tenure security to one of Lebanon's most marginalised populations, the 2001 amendments consciously set out to undercut whatever tenure security Palestinian refugees had managed to acquire. However, even if the 2001 amendments were not both discriminatory and deliberately retrogressive, they would still almost certainly pose a violation of the right to security of tenure by virtue of the fact that they represent such a clearly disproportionate means of achieving the aim that the Lebanese authorities assert for them, namely preventing local integration of Palestinian refugees in Lebanon.¹³²

While it is clear that the question of local integration of refugees remains a sovereign decision to be made by states, it is not nearly as self-evident that an essentially blanket denial of legal security of tenure is a necessary measure to prevent integration. While restrictions on naturalisation and voting rights might be justified to this end, for example, denying the right to live in a home with basic dignity to third generation refugees is harder to portray as a proportional measure. In defending the 2001 amendments before the UN CERD, the Lebanese government appears to acknowledge the overly sweeping nature of the amendments in asserting (with questionable accuracy) that they "do not apply retroactively and that Palestinians' right to inherit remains in force."¹³³

Although procedural possibilities exist to challenge the amendments in Lebanese courts it is not clear that such an approach would necessarily have the desired effect of improving tenure security. One reason for caution in challenging the amendments is their highly charged political significance. One humanitarian official interviewed noted that the Palestinian property issue in Lebanon raises two negative

¹²⁹ UN CESCR, General Comment 20, paragraph 13.

¹³⁰ UN CERD, Concluding observations of the CERD: Lebanon, UN Doc. CERD/C/64/CO/3 (28 April 2004), paragraph 12.

¹³¹ UN CESCR, General Comment 3, paragraph 9: "Moreover, any deliberately retrogressive measures . . . would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."

¹³² UN CERD, Seventeenth periodic reports of States parties due in 2004: Addendum – Lebanon, UN Doc. CERD/C/475/Add.1 (25 February 2004), paragraph 57.

¹³³ UN CERD, Concluding observations: Lebanon, paragraph 12.

connotations.¹³⁴ First and most obviously, removing the amendments would intuitively renew fears of *tawteen*. Although the Lebanese authorities frequently justify this concern with reference to the potential for integration to compromise the Palestinian right of return, an underlying fear is the potentially destabilising effect it could have on Palestinian politics. As noted, the number of Palestinian refugees registered with UNRWA now exceeds 450,000. Many estimate that they are thus about a tenth of the resident population of Lebanon, though some point to the high level of (often clandestine) Palestinian emigration.¹³⁵ The naturalisation of even part of this population – overwhelmingly Sunni and disproportionately young – into Lebanon's unstable sectarian mix would have unpredictable consequences, for there is no provision for changing the confessional basis of the governance system.

A further negative connotation of the Palestinian property issue is its association with a domestic debate in Lebanon over land sales and confessionalism. Christians in Lebanon are particularly concerned about losing control over areas they have traditionally inhabited through the sale of land to Muslims. Some Christian politicians have gone as far as to call for a moratorium on land sales between members of different confessional groups. Fear of loss of land is one of the few issues that unite Christian parties in both the current governing coalition and the opposition. As a result of these concerns, Christian and Shi'a politicians insisted on the inclusion of the 2001 amendments limiting Palestinian rights in a legislative package otherwise meant to encourage foreign investment.¹³⁶ The strength of these concerns is also reflected in successful efforts to exclude relaxation of the 2001 amendments from a package of reforms that provided Palestinians with greater employment and pension rights adopted in August 2010.

Concerns regarding both *tawteen* and land sales are based on questionable assumptions. In the case of integration for instance, the link to tenure security is far more tenuous than that to naturalisation or political rights. In terms of land sales, Palestinian populations are not typically in areas where Christian land is felt to be at stake nor should the amounts of land at stake be threatening to any group. However, from a protection viewpoint, it is not clear that drawing sustained, high profile attention to the issue would necessarily be helpful for Palestinian refugees. Political discourses surrounding *tawteen* and land are frequently emotive and symbolic. For Palestinian refugees this has meant that although there is little chance of successfully revoking the 2001 amendments, it is equally unlikely that they will be rigorously enforced throughout the country under current circumstances.

In this light, Palestinians can generally still be said to enjoy considerable subjective security of tenure despite the 2001 amendments and the aftermath of the 2007 Nahr el Bared conflict. This *de facto* tenure security appears to flow from a number of linked factors. On one hand, sustainable arrangements are often established at the local level between Palestinian refugees, private landlords and local authorities. For example, the NRC shelter programme has frequently carried out basic rehabilitation work in settlements near Tyre on the basis of agreements between beneficiaries, landlords and local authorities. These allow residents of rehabilitated to stay on for a minimum time period so as to enjoy the benefit. While it is unclear whether or not such agreements would actually be enforceable by courts of law, the crucial fact in southern Lebanon is that voluntary compliance by the parties has been high. However, there is a risk that informal arrangements may engender corruption, which could in turn exacerbate the situation of the most marginalised refugees who may not have the resources to pay informal taxes or rents.¹³⁷

134 Interview, humanitarian official, Beirut, Lebanon, 27 May 2011.

135

136 ICG, 2010, , p.17, footnote 143.

137 Beers, 33.

Another largely unspoken guarantee of *de facto* tenure security to Palestinian refugees is the risk of unrest and public embarrassment should it not be respected. For instance, a representative of the refugee community in the Tallet el Mankoubin gathering dismissed the possibility that a pending court order to vacate the land might be enforced in view of the residents' stated intentions to uniformly engage in non-violent resistance. One staff member of a humanitarian agency noted that the most effective means of promoting the right to adequate housing for Palestinian refugees may be to "push the *haram* button" by simply pointing out the shamefully undignified housing conditions that still prevail six decades after displacement.¹³⁸

In view of the manifest incompatibility of the 2001 amendments with Lebanon's human rights commitments and the events in Nahr el Bared relying on *de facto* tenure security may not be satisfactory. Indeed at the local level, the drastic consequences in situations where informal tenure security breaks down for individual Palestinian refugees underscores the fundamental insecurity of the current system for all. For instance, in the case of a Palestinian gathering in which NRC recently carried out basic rehabilitation, a local landlord had sent the police to stop work on any houses.¹³⁹ Although the same landlord allegedly owned other houses in the gathering, works were allowed to proceed everywhere else. No explanation was given and the NRC was required to withdraw the house from the project. As a result, the occupant, a middle-aged woman and her paralysed husband, live in miserable circumstances and survive in part through charity from neighbours.

The work of NBRC may point the most promising way forward. By encouraging Palestinian refugees to document their ownership and manage it through communal structures, the NBRC has aspired to demonstrate both the legitimacy of Palestinian property rights and the desire and preparedness of the community to engage in formalisation and legalisation.¹⁴⁰ In practice, such approaches may also offer a basis for greater community organisation that could provide a form of corporate legal protection and advocacy for individuals facing evictions. By reinforcing the formal and institutional elements of an informal system of tenure security, the NBRC approach may provide an optimal response in the event of either of the likely outcomes for Palestinian refugees in Lebanon. If the 2001 law is eventually revoked, the experience of Palestinian refugees in documenting and managing their informal tenure should smooth the way for unproblematic formalisation. If the law is not revoked, then community organisation would, nevertheless, offer individuals greater bargaining power in seeking to improve their housing conditions and avoid arbitrary evictions.

¹³⁸ Interview, humanitarian agency staff member, Beirut, Lebanon, 23 May 2011. *Haram* here refers to the shame associated with allowing Palestinian refugees to live in such miserable circumstances.

¹³⁹ Interview, residents in a gathering near Tyre, southern Lebanon, 26 May 2011.

¹⁴⁰ Interview, NBRC activists, Beirut, Lebanon, 25 May 2011.



4. SECURITY OF TENURE IN INTERNAL DISPLACEMENT: GEORGIA

Internal displacement in Georgia has taken place in two waves, with an 'old' caseload of IDPs living in protracted displacement since the early 1990s after conflicts in the breakaway regions of Abkhazia and South Ossetia and a smaller 'new' caseload displaced primarily from South Ossetia in the course of the 2008 Russo-Georgian War. After a long period of active official discouragement of local integration by IDPs, the Georgian government brought to power by the populist 2003 Rose Revolution has relaxed its stance. It has taken steps to provide durable housing solutions for the displaced without prejudice to their right to return. In taking this step, Georgia has set an important precedent for many other countries struggling to accommodate the current needs of IDPs while simultaneously seeking to ensure that an eventual negotiated end to the conflict that displaced them respects their rights to return and to receive remedies for the loss of their homes and property. Current Georgian policy explicitly reflects the

understanding that allowing the integration of IDPs will increase their self-reliance, ensuring that they have the livelihood skills and capital to make any eventual voluntary return sustainable.

The current Georgian effort to provide durable housing solutions for IDPs represents a bold departure from past policies designed to promote meaningful integration and a return to self-reliance. In addition to improving the situation of IDPs, the policy also aims to return some state-owned properties occupied by IDPs to their original public use, while stimulating investment by allowing the market sale of others. As a result, current programmes to house IDPs have been adapted to a process of privatising state property ongoing since the 1990s. While policy of the current Georgian government represents a clear improvement over its corrupt and chaotic predecessors, it retains a tendency toward centralised decision-making that frequently restricts the possibilities for effective consultation. The process of privatising collective centres in favour of their IDP residents has reflected these issues, for better and for worse. While some IDPs have clearly benefited, the legal situation of many others – including some of the most vulnerable IDPs – remains ambiguous and insecure. Furthermore, the new policy framework provides almost no concrete proposals on addressing the housing needs of the half or more of all IDPs tenuously accommodated in private dwellings rather than collective centres.

Humanitarian responses to the housing situation of IDPs in Georgia have included elements of both supporting and monitoring the work of the competent authorities for shelter and integration issues – particularly the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (typically referred to as the MRA).¹⁴¹ In contrast to the Lebanese government's unyielding stance on measures perceived as facilitating the local integration of Palestinian refugees, the Georgian government has committed itself fully to measures to provide durable housing solutions to IDPs. However, the privatisation-based approach adopted for achieving this goal is problematic in a number of respects and has not consistently been implemented in a transparent and consultative manner. As a result, a degree of vigilance is required on the part of international humanitarians in order to ensure that programmes jointly designed with their national interlocutors to provide greater tenure security to IDPs do not inadvertently have the opposite result.

BACKGROUND

As noted in a recent study by NRC's Internal Displacement Monitoring Centre, internal displacement in Georgia is both protracted and recent. The bulk of Georgia's IDPs belong to the so-called 'old caseload', comprising some 233,000 persons displaced by fighting in the breakaway regions of Abkhazia and South Ossetia in the years following Georgia's 1991 declaration of independence from the Soviet Union.¹⁴² For about a decade following the displacement of these communities, they were actively prevented from local integration through measures such as restrictions on their voting rights, ability to acquire property and insistence on providing separate educational facilities. These measures were seen as necessary to ensure that all IDPs would return at such time as Georgian sovereignty was restored over their homes in the breakaway regions. From an early stage, about half the old caseload IDPs were accommodated in 'collective centres' comprising both state-owned facilities (typically hotels or schools) and privately-owned buildings, while the other half found shelter with relatives or in the private rental market.

The *Law of Georgia on Internally Displaced Persons* (passed in 1996¹⁴³) defined internal displacement

¹⁴¹ <http://mra.gov.ge/main/ENG>

¹⁴² Nadine Walicki, "Part Protracted, Part Progress: Durable Solutions for IDPs Through Local Integration in Georgia", in Brookings-LSE Project, Resolving Internal Displacement: Prospects for Local Integration, June 2011. http://reliefweb.int/sites/reliefweb.int/files/resources/fullreport_163.pdf

¹⁴³ The Law remains in force as amended in June 2006 and October 2010. While the earlier amendments changed a number of substantive provisions, the latter merely reflected a change in the name of the MRA, which is responsible for its implementation.

primarily in relation to conflict. It created an IDP status based on a determination process and subject to cancellation on limited grounds including the restoration of Georgian jurisdiction over the breakaway territories. The Law obliged the Georgian state to provide temporary accommodation as well as free utilities to IDPs and to assist with a number of other benefits for IDPs, including the payment of a low but mandatory monthly IDP allowance. The right to accommodation under Article 5 of the Law includes strong protections of tenure security, including an unconditional state obligation to provide IDPs with "temporary residence" and allow housing disputes to be settled by court procedure. Pending the "restoration of Georgia's jurisdiction on the respective part of the territory of Georgia," IDPs may not be evicted from their temporary residences except:

- a. on the basis of a written agreement with the IDP
- b. when a new place of residence is allocated which will not represent a worsening of the IDP's current housing situation
- c. in case of *force majeure* or catastrophes when appropriate compensation is provided for in accordance with the general rulesd. when the space is occupied illegally in violation of the law.¹⁴⁴

Privatisation of state-owned property has been ongoing since 1992 but relatively few buildings containing collective centres have been sold. In cases where private owners have purchased collective centres, the presence of IDPs has traditionally been treated as an outstanding liability. While many private owners of properties used as collective centres have simply allowed IDPs to remain there, others seeking to develop the properties have negotiated with resident IDPs over compensation to buy them out, in accordance with Article 5 of the IDP Law.¹⁴⁵ In other cases, the corrupt and non-transparent nature of the early privatisation process means that neither IDPs in collective centres nor the MRA may be aware of the fact that a private claimant exists. In all cases, however, the living conditions in collective centres have remained notoriously inadequate (in some cases, even after partial renovations by humanitarian organisations). Although the MRA generally has paid for utilities, many collective centres are unfit for human habitation and located far from livelihood opportunities.

In 2003, the Rose Revolution that swept current President Mikhail Saakashvili to power presented an opportunity to shift IDP policy toward allowing integration. Such proposals were based on the recognition that protracted displacement was exacerbating the misery of IDPs even as negotiations failed to produce any immediate prospect of return to the breakaway regions. By late 2005, when the then-RSG, Walter Kälin undertook a mission to Georgia, the new government had already stated its intent to adopt an IDP policy permitting integration.¹⁴⁶ Already at this early stage, the process envisioned was connected with Georgia's privatisation programme:

The Government has, in cooperation with the United States Agency for Development, already begun to privatise collective accommodation currently occupied by IDPs, by offering them real estate at a comparatively low price, in order for them to subsequently transform it into private accommodation or income-generating facilities such as hotels.¹⁴⁷

¹⁴⁴ Law of Georgia on Internally Displaced Persons, Article 5 (4). The translation is based on both the English version of this law available (available at http://www.brookings.edu/~media/Files/Projects/IDP/Laws_and_Policies/Georgia/Georgia_IDPLaw_2006.pdf) and the version cited in the European Court of Human Rights' decision in *Saghinadze v. Georgia*, discussed below. The lack of an authoritative English translation of legal texts such as the 1996 Law has led to debates over the scope of this article.

¹⁴⁵ For at least one of NRC's ICCLA implementing partners, representation of IDPs in negotiations over compensation from private owners wishing to develop their property has been a significant element of their overall caseload. Interview, Social Programs Foundation, Tbilisi, Georgia, 28 June 2011.

¹⁴⁶ Commission on Human Rights, Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kälin – Addendum: Mission to Georgia, UN Doc E/CN.4/2006/71/Add.7, 2006, paragraph 18. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/101/77/PDF/G0610177.pdf?OpenElement>

¹⁴⁷ This initial programme of collective centre privatisation was not widely implemented and differed in several respects from the current privatisation programme, which is mandated by decrees and regulations issued in 2008 and subsequently.

In his mission report, Dr. Kälin recommended improving the living conditions of IDPs through measures of local integration, on the understanding that these would increase the self-reliance of IDPs and hence the sustainability of any eventual return.¹⁴⁸ The means of achieving this goal focused heavily on housing, including both permanent housing solutions for the most vulnerable IDPs and adequate interim housing conditions, along with the closure of collective centres, for all others.¹⁴⁹ These recommendations were borne out a year later in the *2007 State Strategy for IDPs*.¹⁵⁰ The strategy pursued both integration and return, on the understanding that encouraging the former – in the form of “decent living conditions” and self-reliance of IDPs – was a means of promoting the sustainability of the latter, when political conditions allowed.¹⁵¹ The 2007 Strategy includes measures related to training and employment and calls for the integration of IDP children into the regular school system as well as a long-term process of providing social services based on actual need – as measured by ordinary means-testing – rather than IDP status alone.¹⁵² The Strategy placed housing issues front and centre, noting that “the lack of real estate – their own house or land – or other means of production represents one of the most characteristic features of the lives of IDPs, and the hindering factor for their achieving self-reliance.”¹⁵³

Although the Strategy noted the tenuous situation of IDPs accommodated in the private sector, its substantive proposals for improving housing conditions relate exclusively to the privatisation of collective centres.¹⁵⁴ Specifically, the Strategy calls for a programme to close collective centres by returning some to public use, vacating others with commercial value (“of special importance to the state”) against compensation for their residents, and allowing subsidised “self-privatisation” by IDPs of centres “not of special importance to the state.”¹⁵⁵ Although the Strategy does include general guarantees for all IDPs regarding protection from arbitrary evictions and provision of financial assistance in purchasing housing if they did not have a place to live, these measures are not elaborated upon.¹⁵⁶ In this sense, the Strategy reflects a clear and consistent government emphasis on privatisation as a primary driver of local integration. Other means of providing durable housing solutions have been piloted but have not received the same level of resources and attention. Examples of alternatives to privatisation include pilot programmes to provide social housing to socially vulnerable groups including IDPs, as well as to provide IDPs vouchers meant to assist them in purchasing their own housing.¹⁵⁷

While the adoption of the Strategy was clearly an important step, the government demonstrated little urgency in applying it. Drafting an *Action Plan* for its implementation was only concluded in July 2008 (only weeks before the August 2008 conflict with Russia). The housing provisions of the Strategy remained largely inactive, although evictions from collective centres also ceased during this period.¹⁵⁸ As the situation of the

148 *ibid.* paragraph 56.

149 *ibid.*, paragraphs 55 (b) and 57 (b) (ii).

150 Decree #47 of the Government of Georgia, On Approving of the State Strategy for Internally Displaced Persons – Persecuted (“IDP Strategy”), 2 February 2007). [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/CC4E01DED8D97366C12575A60031A7](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/CC4E01DED8D97366C12575A60031A7)

151 *ibid.* p.2. There may be indirect connections with the case of Palestinian refugees in Lebanon. According to one interlocutor, a factor in the Georgian government’s decision to allow integration may have been a conversation between a former UNHCR head and a politician close to the President, in which the latter was informed that Georgia faced a choice between doing things the “German way” (e.g., nearly complete integration after only a few generations of some 15 million ethnic Germans expelled from Eastern Europe at the end of World War II) or the “Arab way” (e.g., the destabilising failure to permit significant integration of Palestinian refugees in the Middle East over many decades). Interview, international humanitarian official, Tbilisi, Georgia 28 June 2011.

152 IDP Strategy, p. 11.

153 *ibid.* p. 4.

154 *ibid.* pp.4-5. In identifying problems affecting IDPs, the Policy notes the overall absence of a housing policy in Georgia, the inadequate conditions of the 45% of IDPs accommodated in collective centres and general lack of information about the conditions faced by the 55% accommodated privately.

155 *ibid.* p. and p.10.

156 *ibid.* p.10. The policy states that “transfer of residences into private ownership will be especially encouraged, though this option shall not take place automatically. Participation and contribution of IDPs in this process is a precondition for their purchasing of flats.”

157 The social housing programme has been piloted by the Swiss Development Cooperation Agency and is described in more detail below. Housing voucher programmes have been piloted by the Urban Institute. See <http://www.urban.org/centre/idg/projects/pdescrip.cfm?ProjectID=328>.

158 IDMC, Georgia: IDPs in Georgia still need attention, 9 July 2009, p.7 ([http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/B0CAED10033D3B77C12575EE0041349C/\\$file/Georgia_Overview_Jul09.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/B0CAED10033D3B77C12575EE0041349C/$file/Georgia_Overview_Jul09.pdf)). Evictions from collective centres became problematic in 2006 when as many as 2,200 IDPs were evicted from collective centres in the region of Adjara alone. NRC, Evictions Case: Georgia, (unpublished draft), p.2.

old caseload IDPs gradually took on an almost exclusively development character, humanitarian organisations such as NRC contemplated withdrawal. However, all of this changed with the August 2008 Russo-Georgian war, which led to the temporary Russian occupation of territory outside the breakaway regions, Russian recognition of the breakaway regions as independent states and the displacement of some 22,000 ethnic Georgians who had previously managed to remain within enclaves within both regions.¹⁵⁹

This military setback galvanised the government to redouble its efforts to integrate both the new and old caseloads. Initial *ad hoc* measures were taken to provide those in the new caseload with permanent housing solutions. These included the placement of 18,000 new IDPs in housing units in purpose-built new settlements (comprising both tracts of newly constructed cottages and vacant apartment blocks refurbished for this purpose) to which the recipients were promised full ownership. In addition, the government disbursed compensation payments of about USD 10,000 per household to a further 4,000 persons.¹⁶⁰ Returning to Georgia for a follow-up visit in October 2008, RSG Kälén noted that the integration of the old caseload IDPs remained the “biggest challenge” for Georgia and recommended that the implementation of a revised Action Plan, taking into account the new IDPs, be treated as an “absolute priority”.¹⁶¹

In January 2009, the government adopted a decision to implement the 2007 Strategy by identifying collective centres for privatisation by their old caseload IDP occupants.¹⁶² One month later, President Saakashvili signed a decree allowing collective centre occupants to privatise their accommodation for the “symbolic price” of one Georgian Lari, and ordering the MRA and Ministry of Economic Development to “carry out all necessary activities under the laws of Georgia to implement this decree.”¹⁶³ In May 2009, IDP status under the 1996 IDP Law began to be accorded to those displaced in August 2008, effectively putting the new caseload IDPs in an equivalent situation – in terms of both status and expectations of housing ownership – with those old caseload IDPs entitled to privatisation of their collective centre places.¹⁶⁴

The Georgian Government’s decisive response to its newly exacerbated displacement crisis after the 2008 war has been, by and large, a positive development. Housing was quickly provided for the bulk of the new IDPs, while the long-established plan to provide ‘durable housing solutions’ via privatisation to old caseload IDPs housed in collective centres was given new impetus. However, these developments also highlighted some negative governance trends identified by observers of post-Rose Revolution Georgia. For instance, a broader tendency toward informal and non-transparent decision-making was reflected in the fact that the powerful Minister of Internal Affairs is rumored to have taken the decision to begin construction of cottage settlements for new IDPs without even informing MRA.¹⁶⁵ Similarly, the privatisation programme to which IDPs’ durable housing solutions were now linked had previously missed ambitious timelines and been accused of failing to provide advance consultation, consistent disclosure of information or accountability for irregularities.¹⁶⁶ Finally, concerns regarding broader failures to respect property rights continue to arise, including in one case where ownership of land was allegedly transferred to long-term users and subsequently revoked without compensation.¹⁶⁷

159 Walicki, *Part Protracted, Part Progress*, p. 63. Initially as many as 138,000 people were displaced by the fighting but the majority were able to return shortly after it ended.

160 IDMC, “Georgia”, p.7.

161 Human Rights Council, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Addendum – Mission to Georgia, UN Doc. A/HRC/10/13/Add.2, 13 February 2009, p.3. <http://www.unhcr.org/refworld/country,,UNHRC,MISSION,GEO,,49b7c0172,0.html>

162 Ordinance #4 of the Government of Georgia, On Approval of the Program of Activities Deriving from the State Strategy on IDPs, 12 January 2009.

163 Decree #62 of the President of Georgia, Privatisation through Direct Sale of the State-Owned Property and of property of the Tbilisi Self-Governing Entity, 2 February 2009.

164 IDMC, “Georgia”, 7. This step was already envisioned in an Annex to the State Strategy adopted in December 2008 as Governmental Decree #854.

165 Till Bruckner, “Decision-Making and Georgia’s Perpetual Revolution: The Case of IDP Housing”, *Caucasian Review of International Affairs* 3 (2), Spring 2009, p.175.

166 See, e.g., Green Alternative and ‘Article 42 of Constitution’, *Aggressive State Property Privatisation Policy or “Georgian-Style Privatisation”*, Open Society Institute and Soros Foundations Network, May 2007. <http://www.greenalt.org/webmill/data/file/publications/Privatizeba-Eng4.pdf>

167 Association Green Alternative, GYLA, Georgian Regional Media Association and Transparency International Georgia, “Problems related to the Protection of Property Rights: The case of the village Gonio”, March 2011.

Notwithstanding such issues, the international community has provided significant support to the privatisation programme. For instance, the approach taken by the NRC ICLA programme in Georgia has evolved considerably since its inception in 2002.¹⁶⁸ While the direct provision of legal assistance to displaced clients through local implementing partner NGOs remains a priority, staff in the main office in Tbilisi have participated in the development and monitoring of policies on IDP integration, particularly through provision by its Protection and Advocacy Advisor of technical advice to the MRA and its partners on privatisation issues.

Under Georgian Law, any block of flats with more than two private owners can qualify as a condominium.¹⁶⁹ By formally registering as a condominium, IDPs can access a number of benefits including municipal co-financing programmes for maintenance and improvements.¹⁷⁰ Since early 2009, the ICLA programme has assisted IDPs eligible to privatise their apartments to exercise their legal right to form condominium associations.¹⁷¹ This initiative is meant to ensure the durability of solutions provided through privatisation by mobilising IDP communities to invest in the often-dilapidated common facilities of the buildings they jointly own.

Broader coordination between international humanitarians and national actors intensified with the initiation by UNHCR of a Working Group on Privatisation to monitor the process.¹⁷² An even wider constellation of international actors participate in an MRA-led Steering Committee set up to operationalise the State Strategy on IDPs.¹⁷³ The Steering Committee eventually subsumed the Working Group (which was transformed into an MRA-led 'Technical Expert Group' on privatisation), providing a unified forum for discussion of the housing allocation process. The Steering Committee has also overseen the work of a number of technical expert groups tasked with drafting regulations to implement the policy. The first of these was Government Decree #403 setting out a revised *Action Plan* for implementation of the 2007 *State Strategy on IDPs* including a durable housing programme to speed the integration of IDPs.¹⁷⁴ Last updated in June 2011, the current plan calls for three phases of activities.¹⁷⁵

The first phase of the programme calls for collective centres eligible for IDP privatisation to be first renovated and then transferred to the ownership of those residents that have accepted the offer of privatisation by signing purchase agreements.¹⁷⁶ The second phase was meant to address the housing needs of both collective centre residents who did not wish to purchase their spaces and IDPs housed by the private sector.¹⁷⁷ The third phase involves payment of one-time financial assistance to IDPs not in need of help with housing, as a prelude to the final shift from status-based to needs-based assistance.¹⁷⁸ The original *Action Plan* set highly ambitious deadlines for each phase, which were extended in the Revised Plan, but may yet

168 NRC Georgia, Information, Counseling and Legal Assistance, undated.

169 Law on Condominiums, Article 3 (a), Article 11 (1) and (2).

170 Interview, Head of Rustavi Korpusi Project, Rustavi, Georgia, 30 June 2011. Municipal co-financing programmes were originally developed to help ordinary Georgians care for common property in apartment blocks where they had privatised their own socially-owned apartments. In Rustavi, the second municipality to adopt such a programme after Tbilisi, between 10 and 15% of beneficiaries are IDPs.

171 NRC ICLA Programme, Condominiums in Georgia, presented at Conference on Durable Housing Solutions: Shelter, Privatisation, Condominium" Tbilisi, Georgia, 5 May 2011.

172 The Working Group comprises UNHCR, the MRA, the Ministry of Justice, the National Agency of the Public Registry, NRC, the Danish Refugee Council (DRC), the Georgian Young Lawyers' Association (GYLA) and the Municipal Development Fund (MDF). Working Group on Privatisation, Annual Privatisation Report: February-December 2009 (undated)

173 See Government Decree #575 of 11 May 2010 regarding the amendment to Government Decree #403 of 28 May 2009, Adoption of the *Action Plan* for the Implementation of the State Strategy on IDPs during 2009-2012, Section 5 ("Management and Coordination").

174 Government Decree #403 of 28 May 2009, Adoption of the *Action Plan* for the Implementation of the State Strategy on IDPs during 2009-2012 ("First Action Plan").

175 The most recent amendments to the Decree consisted of relatively minor changes and additions. Because the text of the updated Decree was not available on the MRA website at the time of writing, this report relies on the text of the previous version, namely Government Decree #575 of 11 May 2010 Regarding the amendment to Government Decree #403 ("Revised Action Plan").

176 Government Decree #575, Section 2.1.

177 *ibid.* Section 2.2.

178 *ibid.* Section 2.3.

turn out to be too ambitious.¹⁷⁹ Phase one, which was initially meant to end in 2010, is ongoing while the modalities and resources for carrying out phases two and three have yet to be clearly identified despite an implementation deadline in 2012.¹⁸⁰

Delays and setbacks in the implementation of phase one have resulted in part from the need to coordinate the activities of several government agencies, along with international donors and international and local monitors. However, virtually every step in the privatisation process has proven to be more complicated, controversial and time-consuming than originally envisioned. Some of the key sticking points have included the rehabilitation of collective centres, the process of selecting such centres for IDP privatisation, and their management once privatised.

While rehabilitation of collective centres began very quickly, complaints have emerged about rushed and poorly carried out repairs, problematic renovations that actually made conditions worse and lack of follow-up.¹⁸¹ Virtually no rehabilitation has taken place in Tbilisi, officially as a result of a policy of prioritising refurbishment outside the capital in view of their lower real estate values.¹⁸² Given that the overwhelming bulk of IDP privatisations have taken place in Tbilisi, this means that most apartments sold to their occupants have been entirely unrefurbished.¹⁸³ By late 2009, a *Guidance Note on Rehabilitation* was adopted, providing detailed standards meant to ensure the adequacy of 'durable housing solutions' provided to IDPs, both in cases of privatisation and the provision of new or converted apartments to those ineligible or uninterested in collective centre privatisation.¹⁸⁴ The document regulates minimum space per inhabitant, habitability standards and availability of utilities. However, it was adopted after the bulk of collective centre rehabilitation had already been completed and has therefore had a relatively limited impact. The fact that no recourse was provided for IDPs whose living space had already been renovated in a manner inconsistent with the *Guidance Note* appears to have added to the frustration of many IDPs.¹⁸⁵

Selection of eligible collective centres for IDP privatisation has turned out to be a protracted and complicated process. Collective centres are to be excluded from privatisation in cases in which they are either "collapsing" (e.g., too deteriorated to be worth renovating), of "strategic importance to the state" (e.g., likely to be attractive to investors), or necessary for another public use (such as educational facilities). In practice, many IDPs have received no information on when and whether their collective centre will be considered for privatisation and what the outcome is likely to be.¹⁸⁶ Although a technical assessment of collective centres for risk of 'collapse' has been initiated, it is yet to be completed. No mechanism currently exists for ensuring that either the unsafe conditions of some collective centres or simply the needs of IDPs are prioritised in decisions on housing allocation.¹⁸⁷ Lists of collective centres cleared for privatisation by the MRA must traverse a lengthy vetting process led by the Ministry of Economic Development (MED) before being authorised by signature of the President.¹⁸⁸ Even after formal approval, delays often occur before the National Agency of the Public Registry becomes involved to formally register the resulting ownership rights.

179 The Public Defender of Georgia, Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia: Reporting Period January-July 2010 (undated), p.17.

180 In the meantime, the government has embarked on a new revision of the *Action Plan* for the period of 2012-14, thus foreshortening the current *Action Plan* to a new end date in 2011. Email correspondence, NRC Georgia, October 2011.

181 Walicki, Part Protracted, Part Progress, pp.71-2.

182 Interview, MRA official, Tbilisi, Georgia, 30 June 2011.

183 About 85% of IDP households that have fully privatised their collective centre spots are located in Tbilisi. Working Group on Privatisation, "Annual Privatisation Report: 2010", August 2011.

184 Guidance Note on Standards for Rehabilitation, Conversion or Construction Works for Durable Housing for IDPs ("Guidance Note on Rehabilitation"), endorsed by the Government in October 2009.

185 Email correspondence, IDMC, 14 July 2011.

186 The Public Defender of Georgia, "Report on the Human Rights Situation of IDPs", pp.37-83.

187 Interview, MRA official, Tbilisi, Georgia, 30 June 2011. This concern was highlighted by UNHCR in its observations on recent relocations of IDPs to a new settlement in Poti. UNHCR, "Observations on Process of Relocation of IDPs to the New Settlement in Maltakva, Poti", September 2011.

188 Interview, MED official, Tbilisi, Georgia, 06 May 2011.

This results in situations such as that prevailing in the city of Gori, where one-third of all collective centres housing old caseload IDPs are undergoing or have undergone rehabilitation but the actual privatisation process has yet to be formally initiated in any of them.¹⁸⁹ A list of collective centres under consideration for privatisation was published in the *2009 Privatisation Report*. Only in August 2011 was the report updated with a new and more comprehensive list of centres to be privatised.¹⁹⁰ Concerns about the pace of the process are highlighted by the fact that only one of the 35 objects listed for privatisation in the 2009 list has formally been approved.¹⁹¹ Meanwhile, although it was previously assumed that ‘new settlements’ comprising cottages and refurbished apartment buildings for 2008 IDPs would automatically be treated as eligible for privatisation the MRA is now considering limiting this right for residents without formal IDP status or with access to their original homes.¹⁹²

Management of privatised collective centres has been complicated by several factors. Many residents have refused to participate. For instance, in the 324 collective centres reported as privatised in the *2009 Privatisation Report*, just over one-third of all households had not signed purchase agreements.¹⁹³ The reasons for not privatising vary from cases in which families missed official explanations of the programme or were not fully represented for signing contracts to principled refusals on grounds that their space is too small or inadequately furnished. Anecdotally, it is well-accepted that the movement of IDPs between different shelter solutions and changes in family size have left some IDPs in a position to privatise space far in excess of their needs, while others complain of both overcrowding and poor conditions.

Advocates for IDPs have noted that the spaces many IDPs have been offered to privatise are not in compliance with the minimum space and other requirements of the October 2009 *Guidance Note on Rehabilitation*. The government’s position has been that those refusing to privatise may remain in collective centres until other solutions become available in the context of phase two of the Action Plan, but that their concerns cannot be addressed in the interim.¹⁹⁴ The resulting phenomenon of “partial privatisation” and “mixed buildings” has complicated efforts to organise new owners in order to ensure the collective maintenance of common facilities such as roofs, entrances and stairwells. Confusion over whether partially privatised collective centres can qualify as condominiums and how IDPs who refuse to buy should be represented have inhibited condominium development.¹⁹⁵

Perhaps the most problematic issue to arise in the implementation of phase one of the *Action Plan* has been the question of evictions from temporary shelter not included in the privatisation programme and relocation of the occupants. Attention was first drawn to the issue by a series of evictions from collective centres in Tbilisi during the summer of 2010. These affected as many as 1,100 IDP households and took place without adequate consultation or notice and little informed choice of alternative accommodation.¹⁹⁶ At the time, international monitors had already been in discussions with Georgian authorities over the drafting of a set of *Guiding Principles, Criteria and Procedures Governing the Process of Durable Housing Allocation* (“Guiding Principles on Allocation”), which were endorsed by the government in June 2010. This text sets out criteria for the allocation of newly built or converted housing to those IDPs ineligible

189 Interview, UNHCR, Gori, Georgia, 29 June 2011. Of 48 collective centres in Gori, 12 have been fully refurbished and four partially. In some cases, the rehabilitation work was concluded over a year prior to the interview.

190 Working Group on Privatisation, *Annual Privatisation Report: 2009*, pp.11-12; “Annual Privatisation Report: 2010” (adopted in August 2011).

191 Email correspondence, NRC Georgia, 15 July 2011.

192 Interview, MRA official, Tbilisi, Georgia, 30 June 2011.

193 Working Group on Privatisation, *Annual Privatisation Report: 2009* pp.6-7. Of 10,712 households in 324 collective centres, 6,945 (65%) had signed a purchase agreement by December 2009 and 3,767 had not.

194 Interview, MRA official, Tbilisi, Georgia, 30 June 2011.

195 Danish Refugee Council, *Monitoring the Process of Setting Up of Condominiums in Privatised Collective Centers*, November-December 2009, p.24.

196 Amnesty International, *Georgia: Adequate housing for internally displaced persons remains a concern*, 4 October 2010. <http://www.amnesty.org/en/library/asset/EUR56/006/2010/en/d78a4e6f-e4fd-4ee5-95f4-4ab3e9531396/eur560062010en.html>

to participate in collective centre privatisation.¹⁹⁷ However, although this document rules out coercion in principle, stresses informed decision-making and highlights the “primary objective” of offering IDPs relocation options “within the current displacement area”, its operational provisions focus only on the allocation of alternative housing to IDPs rather than the mechanics of evicting them from their current temporary residence.

In August 2010, the Georgian authorities agreed to a moratorium on further evictions pending the development of “guidelines governing the eviction and relocation of internally displaced persons, in consultation with representatives of local and international organisations.”¹⁹⁸ One month later, the Steering Committee for the State Strategy on IDPs adopted the *Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions* (“SOPs on Evictions”). The SOPs clarified the role of the MRA as providing information to the Ministry of Internal Affairs on whether buildings due for eviction had “collective centre status” or were inhabited by any persons who were registered as IDPs, and giving or withholding its consent to the evictions accordingly.¹⁹⁹ The document does not refer overtly to international standards and observers have noted that its drafting primarily involved the synthesis of national legislation that in and of itself provided “few protections for tenants under threat of eviction.”²⁰⁰ Nevertheless, the SOPs are clearly meant to avert further accusations of forced evictions. They set out a number of procedural protections that are not explicitly grounded in domestic law. These include a requirement that alternative housing be complete before evictions proceed, guaranteed access of IDPs to “aid programs and services rendered by the state and humanitarian and development actors”, and an obligation to allow unimpeded access to eviction sites for NGO and international monitors.²⁰¹

The *SOPs on Evictions* were put to the test in January 2011, when a new set of evictions in Tbilisi went forward shortly after having been postponed. While there was general consensus that this round of evictions marked an improvement over the previous summer, observers noted that the SOPs had not been observed in certain key respects.²⁰² Perhaps most notably, monitors were not granted access to the actual evictions, notice procedures were flawed and problems arose related to compensation.²⁰³ The issue the new evictions highlighted most clearly was that which in principle was addressed in the June 2010 *Guiding Principles on Allocation* – namely whether apartments located not only far from Tbilisi but also without immediate access to basic services could serve as adequate alternative housing for IDPs facing evictions.²⁰⁴ In the course of the January 2011 evictions, for instance, of 534 affected households, 214 qualified for offers of alternative housing but only 21 accepted.²⁰⁵ Most observers attributed this low acceptance

197 The Guiding Principles on Allocation match IDP households to available units based on both the nature of their ineligibility to privatise their current space (e.g. due to the ‘threat of collapse’ of its structure or to actual or intended privatisation by private investors) as well as their personal characteristics (including objective factors of vulnerability such as disease or disabilities, as well as war veteran or victim status and, in some cases, the fact that they have been housed in private accommodation).

198 Amnesty International, “Georgia: Adequate housing for internally displaced persons remains a concern, 4 October 2010. <http://www.amnesty.org/en/library/asset/EUR56/006/2010/en/d78a4e6f-e4fd-4ee5-95f4-4ab3e9531396/eur560062010en.html>

199 According to Sections 6.1 to 6.3 of the SOPs, MRA “will in principle refuse to grant permission” to the Ministry of Internal Affairs to vacate collective centres barring exceptional circumstances including “risk of collapsing”, the “interests of the state” (e.g., potential investor interest) or the unsuitability of the building for conversion into permanent housing. In the case of temporary shelter assigned by MRA in the immediate wake of the 2008 conflict, even if the building is not recognised as a collective centre, “the granting of consent [by MRA] is dependent on the fact whether the IDP was provided with [a durable housing solution] or monetary compensation.” Section 6.5 sets out the type of housing solutions and assistance that should be provided to various categories of IDPs facing eviction.

200 Transparency International Georgia, IDP Evictions – explaining the real issues, 24 January 2011.

201 SOPs on Evictions, Section 5 (“Guiding Principles for the Process”).

202 UNHCR observed “marked improvement of the relocation process as compared to the situation in summer 2010.” UNHCR Tbilisi, UNHCR observations on the resumption of the IDP relocation process .February 2011.

203 The Public Defender of Georgia, Rights of Internally Displaced Persons in Georgia, Annual Report 2010 (unpublished extract from forthcoming English translation), pp.5-6.

204 A “primary objective” of the Guiding Principles on Allocation is to offer IDPs “durable housing solution within their displacement municipality/city”. Freedom of choice between return, integration and resettlement elsewhere in the country is also stressed.

205 *ibid.* p.9. The 193 families refused alternate housing are thought to have sought housing solutions with relatives or in the private housing market in Tbilisi, with many of them likely to wait for future offers of durable housing solutions in Tbilisi. Of the 21 households that accepted, 19 moved, in every case to locations in eastern Georgia.

rate to the fact that the only alternative housing on offer was in distant rural areas in eastern and western Georgia, often without access to local health clinics and school facilities.²⁰⁶

Commenting on the January 2011 evictions, Transparency International alleged that most of those faced with take-it-or-leave-it offers of alternative housing in distant areas were old IDPs. Previously accommodated in the private sector, they had taken advantage of the *ad hoc* temporary housing solutions offered to those displaced in 2008 by also moving in.²⁰⁷ The alternative housing is only meant as a last ditch protection against homelessness, and private sector IDPs' long-term needs are to be met through the provision of durable housing solutions once the second phase of the *Action Plan* eventually begins. However, while such an analysis accurately describes the current state of affairs as viewed through the lens of the SOPs on Evictions, this does not guarantee that the SOPs themselves are in full accordance with Georgia's obligations under the ICESCR and other human rights treaties it has ratified. The Public Defender's Office of Georgia made this point forcefully in its *2010 Annual Report*:

It is clear that re-allocation is a very painful process for the IDPs. It is technically impossible to provide all IDPs with housing solutions in Tbilisi. However, the main priority for the state should be the creation of minimum necessary living conditions for IDPs. Adequate living conditions do not include only an adequate living space. There are also other aspects that should be taken into account. Adequate housing must be habitable. It must be in a location which allows access to employment options, health care services, schools, child-care centres and other social facilities.²⁰⁸

In a similar vein, RSG Kälin noted the importance of ensuring conformity with international standards as the SOPs were being drafted. He noted that IDPs evicted from collective centres should be offered "reasonable options for alternative accommodation" and that evictions should not disrupt access to livelihoods, education and health care, nor "destroy the modest standards of living that people have achieved."²⁰⁹ The Danish Refugee Council has found that IDPs in private accommodation, in particular, have often lived in the same location for as long as a decade. Resettlement would thus disrupt established social networks and risk severe economic repercussions.²¹⁰ In this light, the ongoing policy of the government to steer donor-funded construction and rehabilitation of housing for IDPs to the western regions of Georgia has raised concerns that political goals such as the economic development of cities such as Poti and Batumi may be in tension with the humanitarian imperative to facilitate voluntary durable solutions for IDPs.

Given failure to clearly enunciate how phase two of the IDP *Action Plan* is to be funded or carried out, there is a risk only the current privatisation phase will be completed. As pointed out by the Public Defender of Georgia, "[the] decision of IDPs to refuse government offers [of alternative housing] will significantly increase [the] number of IDPs in [private accommodations], and it is absolutely plausible the expectations of IDPs will not meet the government offers in the future as well and this might bring the implementation of the *Action Plan* in a deadlock."²¹¹ In such a scenario, the clear majority of Georgia's IDPs, including those living in private accommodation and many of those now housed in collective centres ineligible for privatisation, may find themselves with no clear prospect of either tenure security or a durable solution nearly two decades after their displacement.

²⁰⁶ *ibid.* p. 7.

²⁰⁷ Transparency International Georgia, IDP Evictions. Some questions remain regarding whether 'old caseload' IDPs were offered any alternative housing at all or simply summarily evicted. Email correspondence, NRC Georgia, 15 July 2011.

²⁰⁸ The Public Defender of Georgia, Rights of Internally Displaced Persons in Georgia, p.9.

²⁰⁹ UN Expert on IDPs Supports Efforts to Find Durable Solutions for the Internally Displaced in Georgia, 16 September 2010. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10337&LangID=E>

²¹⁰ Danish Refugee Council, Survey reports on privately accommodated IDPs in the Samegrelo Region and Tbilisi, January 2011, p 3. [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/2510CC7D040D1B2BC12578D40051D9E9/\\$file/DRC+PA+Report+Merged+Final.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/2510CC7D040D1B2BC12578D40051D9E9/$file/DRC+PA+Report+Merged+Final.pdf)

²¹¹ The Public Defender of Georgia, Rights of Internally Displaced Persons in Georgia, p.9.

ANALYSIS

The Georgian authorities' effort to provide long-term security of tenure to IDPs through durable housing solutions has much to recommend it for:

- It represents a determined effort to facilitate the local integration of IDPs who remained virtually segregated from their non-displaced compatriots less than a decade ago.
- It has been implemented in a manner meant to lead to roughly equal outcomes for new and old IDPs, although some in the latter group complain that they were forced to wait so long for benefits that fell to the new IDPs almost immediately.²¹²
- Though heavily supported by international funding and capacity-building, the chosen modality of privatisation does allow the Georgian authorities to make a significant contribution to its financing, at least in terms of foregone revenues.²¹³

The extent to which the activities undertaken under the *2007 State Strategy on IDPs* and the 2011 revised *Action Plan* are sufficient to provide security of tenure for IDPs and contribute to broader durable solutions is contingent on addressing a number of both substantive and procedural issues. A main issue is the direct association of durable solutions with privatisation. By proceeding from the idea that IDPs living in state property should be given ownership rights, this approach provides no conceptual guidance on what to do about the majority of IDPs who do not live in state property.²¹⁴ As a result, the overall approach to integration has, in effect, been driven by supply rather than demand. Rather than identifying the most vulnerable categories of IDPs and adapting the method of providing durable housing solutions to their specific needs, the government has identified an expedient means of providing durable housing solutions and made it available to those IDPs who happened to be conveniently located to take advantage of it.

As a result, there is little scope for humanitarian principles such as impartiality (the targeting of aid to where the need is greatest) to underpin what is essentially a humanitarian project. A number of studies on the situation of IDPs in private accommodation have been inconclusive on whether this category is more or less vulnerable than those in collective centres. The conventional wisdom has traditionally been that IDPs in private accommodation had more resources than those in collective centres but less security of tenure. A recent DRC survey noted that IDPs in private accommodation live in a wide variety of housing situations and are "therefore a much more diverse and complex group than IDPs in collective centres."²¹⁵ To complicate the picture further, the survey found that the housing needs of this category of IDPs do not necessarily correlate to the type of tenure they have to their property: owner-occupiers may suffer as a result of poor housing conditions.²¹⁶

Nevertheless, while it is clear that many of the most vulnerable IDPs may live in private accommodation, the identification of these groups and their particular needs is not an obvious priority for an integration process

²¹² Interview with IDPs in collective centres in Tbilisi, Georgia, 1 July 2011.

²¹³ As reflected in the *2009 Privatisation Report* for instance, the state not only "pays the symbolic price on behalf of IDPs and bears all costs related to the registration of the ownership right with the . . . Public Registry" but has also taken legislative steps to forgive IDPs taxes they would otherwise have to pay for the transfer. Working Group on Privatisation, *Annual Privatisation Report: 2009*, p.4.

²¹⁴ This state of affairs is reflected in the contrast between the specific procedures and activities to be carried out during the first, privatisation phase of the *Action Plan* and the much vaguer provisions of the second phase, where the needs of IDPs in private accommodation are to be met.

²¹⁵ DRC, *Survey reports on privately accommodated IDPs in the Samegrelo Region and Tbilisi*, January 2011, p.3. [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/2510CC7D040D1B2BC12578D40051D9E9/\\$file/DRC+PA+Report+Merged+Final.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/2510CC7D040D1B2BC12578D40051D9E9/$file/DRC+PA+Report+Merged+Final.pdf)

²¹⁶ This circumstance has been confirmed in the course of NRC's shelter work in western Georgia. Here IDPs evicted from privately-owned collective centres have frequently been most in need of construction materials. In many cases, they received enough compensation to purchase a home but not enough to renovate it to a decent standard. Email correspondence, NRC Georgia, 15 July 2011.

that addresses collective centre residents first as an inherent feature of its link with privatisation. A related factor that clouds the humanitarian nature of the integration exercise in Georgia is a lack of clarity over the relationship between the humanitarian objectives related to integrating IDPs and the economic objectives of privatisation. As noted, MRA is currently undertaking a technical assessment of collective centres in order to establish which fall into the category of ‘collapsing’ and must therefore be closed without privatisation. However, the ministry does not have any plans to draw up a prioritised list of such centres based on their condition in order to ensure that residents are resettled out of structurally unsound or dangerous centres first.²¹⁷ Failure to affirmatively prioritise humanitarian rationales for closing collective centres may ultimately send unsettling signals given that one of the grounds for not allowing IDPs residents to purchase (other than the threat of collapse) is in situations where the collective centres in question are seen as attractive for outside investors.²¹⁸

Beyond the issue of mixed messages, the decision to secure tenure by transforming the use rights of IDPs in collective centres into ownership rights has encountered many of the same fundamental problems that have beset analogous titling programmes in ordinary development settings. As elsewhere, for instance, unanticipated technical complications and the necessity of coordination between multiple government agencies have led to long delays in implementation and uncertainty on the part of beneficiaries. The process of asserting new grounds and procedures for the eviction of IDPs in post-2008 policy documents has undermined the more unambiguous legal protection of security of tenure that previously existed for all collective centre residents under Article 5 of the 1996 IDP Law. The strength of the latter protection was highlighted in a recent decision regarding IDP housing in Georgia in which the European Court of Human Rights found that the safeguards against forced evictions built into the IDP Law were of a nature that gave rise to property rights recognised under the *European Convention on Human Rights*.²¹⁹

In light of this finding, the provisions in the *SOPs on Evictions* allowing the MRA to modify this general protection based on an administrative finding on whether “the building in question has [collective centre] status or not” may prove problematic in several respects.²²⁰ The obligations set out in the IDP Law provide no clear basis for distinguishing between “collective centres” and any other form of accommodation. They simply require the Georgian authorities to secure “temporary accommodation” for IDPs and resolve housing disputes “through the Court procedure” and in respect of certain protections against arbitrary evictions.²²¹ Thus, distinguishing between collective centres and other accommodation provided to IDPs in the SOPs does not have any obvious basis in law. Second, it is not clear that the situation justifies this distinction. Typically, the initial residents of even “unofficial” collective centres were sent to live in them by MRA or other authorities who subsequently paid their utility bills.²²² Likewise, the presence of some displaced persons not officially accorded IDP status under the 1996 Law or of those registered IDPs previously in private accommodation who moved in without permission does not necessarily distinguish such “temporary shelters” from collective centres where populations can be similarly mixed.²²³

217 Interview, MRA official, Tbilisi, Georgia, 30 June 2011.

218 Interview, Ministry of Economic Development official, Tbilisi, Georgia, 6 May 2011.

219 European Court of Human Rights, *Saghinadse and Others v. Georgia* (judgment on merits), App. No. 18768/05 (27 May 2010). The Court notes that the IDP Law “recognised that an IDP’s possession of a dwelling in good faith constituted a right of a pecuniary nature. Thus it was not possible to evict an IDP against his or her will from an occupied dwelling without offering in exchange either similar accommodation or appropriate monetary compensation” (paragraph 107).

220 SOPs on Evictions, point 3.1.1.

221 IDP Law, Article 5 (3) and (4).

222 Residents of a settlement in a pre-school building in Gori, interviewed on 29 June 2011 stated that they had been directed to these kindergartens by the local authorities at the end of 2008, that other IDPs had already been in residence there, and that the local authorities paid their utilities bills. However, the kindergarten in question along with 18 others in similar use by IDPs were classified as “temporary shelters” rather than collective centres by MRA and had until recently been the subject of eviction plans in accordance with the SOPs. Interview, UNHCR, Gori, Georgia, 29 June 2011.

223 For instance, most residents of privatised collective centre interviewed in the course of this research noted the presence of non-IDP families who had benefited from renovation programmes and been allowed to remain but not to privatise their spaces.

Given the lack of a clear legal basis for substituting the protections in the IDP Law with those set out in the SOPs, plans to secure IDPs' long-term tenure through granting them property title appear to have fostered tenure insecurity, at least in the short-term. The delays and uncertainty attending the overall privatisation process have exacerbated these concerns. IDPs are left to face an indefinite period without concrete information on whether, when and where they will be permitted to acquire a permanent home. Pending the provision of such information, IDPs have little incentive to invest in the type of activities that would foster integration and self-reliance.

The decision that providing full ownership of homes would provide the best guarantee of tenure security was probably inevitable in Georgia (as in many other post-socialist contexts) but requires some caution. There is little doubt that private ownership is seen as the most secure and desirable form of tenure for Georgian IDPs. However, the scramble to acquire private property can lead to a zero-sum approach that threatens the viability of the collective housing solutions that are almost inevitable in former collective centres and urban settings more generally. This was reflected in the lack of trust that some IDPs have expressed toward the development of condominiums to provide for the upkeep of common facilities, viewing them as simply a way of extracting money from them.²²⁴ Similar attitudes on the part of both IDPs and non-displaced beneficiaries have been one of the main obstacles to a social housing programme piloted by the Swiss Development Cooperation Agency.²²⁵

The privatisation programme's focus on securing tenure by achieving a new state-private ownership (rather than simply protecting and building on the current housing status of IDPs) cuts against the grain of emerging best international practice – including facilitation of incremental tenure forms that can grow in formality and strength in accordance with the perceived needs and capacities of residents.²²⁶ In the worst case, this focus on future privatisation may actually reduce the current tenure security of those who have not yet registered ownership. This includes IDPs awaiting a decision as to whether their collective centres will be privatised or those who have chosen not to sign privatisation contracts because they are not satisfied with their current amount of space. In the latter case, for instance, even if MRA is not able to provide more appropriate durable housing solutions until phase two of the *Action Plan* is initiated, it might nevertheless be possible to provide more secure tenure by simply issuing a document to such households confirming their situation and stating that they are entitled to remain in their current apartments pending further developments.²²⁷

Substantive concerns related to the privatisation-oriented mode of housing provision chosen by the Georgian authorities are exacerbated by ongoing procedural issues. These relate in particular to what many IDPs see as a lack of transparency and consultation as well as the failure to develop effective, routinised coordination among the various government actors involved in the process. These factors particularly undercut tenure security for the large majority of IDPs who still (1) have a real opportunity to participate in privatisation but do not know if it is in their best interests; (2) are waiting to see if their accommodation will be eligible for privatisation or (3) will not be able to participate because they are in private accommodation. These gaps are particularly problematic in cases where generalised tenure insecurity results in specific threats of eviction. In such cases, procedural gaps such as failures to provide full notice or complete information on the reasons for the necessity of the eviction, the availability of complaints procedures and the location and conditions of alternative housing can undermine the proportionality of such measures. This, in turn, poses the risk that such measures will be found to be forced evictions in violation of Georgia's human rights obligations.

224 Interviews with collective centre residents and NRC staff, Rustavi, Georgia, 30 June 2011.

225 Interview, Swiss Development Cooperation Agency, Tbilisi, Georgia, 1 July 2011.

226 UN-HABITAT, *Handbook on Best Practices, Security of Tenure and Access to Land*, 2003, pp.8-10 and 16-19 (on regularisation of informal tenure).

227 This idea was suggested by an NRC staff member in a conversation on 30 June, 2011.

In providing durable housing solutions, the Georgian authorities have frequently failed to exploit the utility of written information in raising public awareness and public confidence in the process. This gap was identified early in NRC ICLA monitoring of the work of mobile teams from the national registry agency: they had neither received written instructions to guide their registration activities in collective centres nor were initially able to provide IDPs with any written material describing the process.²²⁸ The Georgian Public Defender's Office (PDO) has also noted that many of the complaints it has received regarding privatisation involve MRA's failure to provide written responses to their queries: "It is rather common [that] IDPs state that they have addressed the Ministry regarding a particular issue, and have for months waited for a response in vain."²²⁹

Concerns about lack of information are also reflected in the general level of dissatisfaction with consultative processes related to privatisation. Despite the fact that one of the main areas of focus for the Working Group on Privatisation has been the development and communication of public information, the widespread perception among collective centre residents interviewed for this report in Gori, Rustavi and Tbilisi was that they had been left without sufficient information or advice.²³⁰ IDPs generally appeared to feel that they were neither consulted adequately in decisions affecting them nor invited to participate meaningfully in planning and implementing process related to privatisation. In the case of evictions carried out in 2010 and 2011, for instance, no specific reasons for the evictions were given at the time, and no official confirmation of the current use of the vacated buildings has been provided.²³¹ Anecdotally, IDMC has noted a direct connection between the level of local satisfaction with the privatisation process and the level of information provision and consultation by official actors:

Most IDPs received no information from municipal government officials, and had little or no information on the housing options available. They had no confidence in the government and said they felt that any efforts were only made in the interest of winning support at election time. ... The exception was Tskaltubo, where IDPs said that government officials had visited them and explained both the plans to relocate them and the resettlement options available. Those officials also gave IDPs the opportunity to state their preference as to a location for resettlement. Most, but not all, of the IDPs in Tskaltubo seemed relatively well-informed and confident about the choices they had made as a result.²³²

Lack of consistent consultation and responses to individual queries is coupled with a broader failure to provide affirmative public information. This is perhaps most clearly reflected in the fact that the annual report on privatisation for 2010 by the Privatisation Working Group was only finalised in August 2011. It would be theoretically possible in the meantime for the government to simply publish regularly updated statistics on collective centres under consideration and approved for privatisation, as well as the percentage of apartments privatised by purchase agreement and registered in each privatising collective. However, this has not been done. In an interview, an MRA representative explained that the compilation of such information was impossible, as the relevant information was in different formats and in the possession of different government agencies.²³³

228 Working Group on Privatisation, Annual Privatisation Report: 2009, p.8.

229 The Public Defender of Georgia, Report on the Human Rights Situation of IDPs, p.16.

230 Working Group on Privatisation, Annual Privatisation Report: 2009, p.3.

231 Anecdotally, it is thought that the affected buildings may have simply been left vacant. Email correspondence, NRC Georgia, 15 July 2011.

232 Walicki, Part Protracted, Part Progress, pp.72-73.

233 Interview, MRA official, 30 June 2011.

Other, more targeted information dissemination activities would enhance IDPs' sense of tenure security. It remains unclear why it has not been possible to publish an updated list of collective centres that have been recommended for privatisation by the MRA but are still awaiting Cabinet approval. The procedures in the *SOPs on Evictions* requiring case-by-case MRA confirmation of whether buildings scheduled for evictions are official collective centres or not is similarly difficult to justify. A great deal of uncertainty could be avoided if the MRA could simply post an official list of collective centres and other forms of temporary accommodation, limiting the inquiries necessary in any cases of pending evictions to, for instance, whether any of the exceptional circumstances for allowing evictions existed (in the case of listed official collective centres).

While compilation of official data undoubtedly raises logistical challenges, it can be achieved through the dedication of resources and institutionalised coordination. For instance, international monitors and local authorities in Bosnia collaborated to publish monthly updated statistics on property restitution in each of the country's municipalities for nearly five years; observers credit publication with both legitimising and speeding the process.²³⁴ In Georgia, coordination between the public agencies involved in the privatisation process appears to remain at a very basic level. In an interview, an MRA official noted that he has weekly meetings with the Ministry of Economic Development and frequent contact by telephone with interlocutors at the Ministry of Justice.²³⁵ However, there is not a regular institutionalised working-level meeting involving all the above ministries as well as other relevant actors such as the Ministry of Internal Affairs and the National Agency of the Public Registry. Such coordination mechanisms could be expanded to include IDP representatives, as well as NGOs and international partners. This would create the preconditions for far more effective collection and dissemination of information, consultation and participatory policy-making and implementation.

Failure to develop such basic coordination structures indicates a tendency to avoid setting clear policy objectives and priorities that in turn muddles humanitarian and economic development goals and undermines potential for providing durable housing solutions. As Transparency International wrote in the wake of the January 2011 evictions in Tbilisi:

While we have been critical of aspects of this process, we must also acknowledge the scale and complexity of the issue. Unfortunately, one of the biggest shortcomings of the process has been the government's failure to publicly acknowledge this complexity or to explain how and why it makes decisions on issues such as eviction, monetary compensation and priorities for housing allocation. Pragmatic considerations of cost and scale may have driven the process, but few understand this, and one unavoidable downside of a cost effective approach is that the most vulnerable families do not necessarily benefit first. More effective public communication about decisions would go a long way towards allaying the public's concerns.²³⁶

²³⁴ An archive of Bosnia's monthly restitution statistics from 2000 to 2004 can be found (under the heading Property Law Implementation Statistics) at <http://www.ohr.int/plip/>.

²³⁵ Interview, MRA official, 30 June 2011.

²³⁶ Transparency International Georgia, IDP Evictions.

A final procedural issue involves persistent local shortcomings in preparation and follow-through that have frequently added unnecessary complications to the process. Most, if not all of these problems would be far less significant if a more consistent approach to provision of information and consultation were adopted. For instance, NRC ICLA monitors have noted that deviations have periodically arisen between the registered space recorded in purchase agreements and that occupied by IDP beneficiaries.²³⁷ If the registration process included clearer and more consistently applied procedures to ensure that IDPs understood what space was covered by each contract and confirm that it corresponded to their living area, such problems might be avoided. Ideally, such procedures might even be undertaken jointly by IDPs as a first step toward the development of a condominium association. This might also provide a means of developing better understandings of the concerns IDPs harbour toward the privatisation process, particularly those related to equitable living spaces.

These concerns were exemplified in a collective centre visited in the course of researching this paper. A family of five had refused a privatisation offer of an inadequately small single room which was in any case claimed by their neighbour who believed that she had privatised it but had only received a title document for the room she and her granddaughter occupied next door.²³⁸ Other coordination problems are more straightforward .. One example is another collective centre in Tbilisi where individual electric meters had been installed during refurbishment but the municipality had failed in its obligation to immediately install new wiring, leaving some 30 resident families without electricity or any information on when it might be restored for over two months.²³⁹

²³⁷ Working Group on Privatisation, Annual Privatisation Report: 2009, p.8.

²³⁸ Interview, collective centre residents, Rustavi, Georgia, 30 June 2011.

²³⁹ Interview, collective centre residents in Tbilisi, Georgia, 1 July 2011. One interviewee noted that the electricity company had expressed frustration over the loss of revenues involved due to the fact that IDPs remained unable to access electricity during this period.



5. CONCLUSIONS AND RECOMMENDATIONS – HUMANITARIAN SUPPORT TO SECURITY OF TENURE

Perhaps the most important conclusion to be drawn from the case-studies of Lebanon and Georgia is that security of tenure for displaced persons should be promoted by humanitarian actors both as goal in itself and as a means to achieve durable solutions.

The arguments for treating tenure security as a goal worth fulfilling regardless of the current conditions for achieving durable solutions range from the normative to the pragmatic. At the normative level, the International Covenant on Economic Social and Cultural Rights (ICESCR), which guarantees the right to security of tenure, has been widely ratified and states' obligations are well-understood.²⁴⁰ As described above (sections I and II), the applicability of this right gives rise to immediate obligations upon states to prevent discrimination in its enjoyment, including on grounds of residence (e.g. internal displacement) and nationality (including refugee or asylum-seeker status). Moreover, states are also obliged to take steps to ensure security of tenure. These include providing legal protection against forced evictions; facilitating self-help activities in the area of housing; avoiding deliberately retrogressive measures and targeting housing plans and programme to the needs of the most marginalised, including displaced persons.

State observance of the right to security of tenure becomes a matter of particular humanitarian concern in protracted displacement settings. In the absence of durable solutions, the failure of states to allow security of tenure indefinitely perpetuates the humanitarian misery of displaced persons stranded in *ad hoc* shelter and discourages self-reliance. By contrast, extending sufficient tenure security to encourage displaced persons to engage in self-help and incrementally improve the adequacy of their own housing situations can remove the stigma, dependency and vulnerability associated with displacement, even in situations where displacement itself persists.

At the most pragmatic level, focusing on security of tenure as an end in itself can allow a degree of functional integration even in situations in which formal integration – as a durable solution – is not politically feasible. Here, the distinction between IDPs and refugees is of critical importance. While indefinitely denying IDPs the possibility of local integration would be a violation of their human rights, decisions on the local integration of refugees are still recognised as a matter of discretion for their host-states.

In situations in which local integration is an available durable solution, security of tenure is integral to its achievement. This is most explicitly the case with regard to IDPs, as reflected by the inclusion of non-discriminatory enjoyment of the right to an adequate standard of living (including housing and secure tenure) as one of the core criteria in the recent *Framework on Durable Solutions*.²⁴¹ However, the same logic clearly applies in refugee settings, as reflected in the inclusion of both housing rights and rights to acquire property in the catalogue of protections for recognised refugees set out in the *1951 Refugee Convention*.²⁴² In both cases, the establishment of secure and defensible legal rights to a permanent home where displaced persons initially found shelter is one of the most symbolically and practically meaningful elements of local integration.

In both protracted displacement and durable solutions settings, one of the key advantages of a security of tenure analysis is its adaptability to the housing situations of the displaced as they actually exist, rather than as they should ideally be. It is important to recall that all forms of tenure merit the baseline legal protection necessary to prevent forced evictions. While property ownership is the most obviously secure form of tenure, the full spectrum of tenure forms requiring protection includes “rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.”²⁴³ In all these cases, it may be permissible to evict displaced residents from their homes, but only subject to legal guarantees preventing this taking place in a discriminatory or otherwise arbitrary manner. In terms of rights-based protection, the initial challenge is simply to find out what type of tenure exists for displaced persons and consider what legal measures would be necessary to avert immediate threats to it while incrementally providing greater prospective security.

²⁴⁰ As of the publication of this report, the ICESCR had been ratified by 160 states, only seven fewer than the International Covenant on Civil and Political Rights (ICCPR).

See the UN Treaty Collection, Chapter IV: Human Rights: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

²⁴¹ Framework on Durable Solutions for IDPs, Section V.

²⁴² See Displacement Solutions, Brief Commentary on Article 21 and “Brief Commentary on Article 13.

²⁴³ UN CESCR, General Comment 4, paragraph 8 (a).

Moving beyond preventing forced evictions to promoting the 'positive right' aspects of security of tenure presents greater conceptual challenges for humanitarians. However, such steps may be a necessary factor of addressing vulnerability related to housing both in protracted situations and in facilitating durable solutions. A simple example of the importance of positive measures to promote tenure security is provided by NRC partnership with other humanitarians to promote the formation of condominiums by Georgian IDPs in privatised collective centres. This work is based on the insight that the actual durability of housing solutions achieved in the course of privatisation is contingent on the ability of IDPs to manage vital common property, the neglect of which might endanger the security of residents and the viability of their homes.²⁴⁴

NRC ICLA support to condominium formation in Georgia exemplifies the three broader concerns related to humanitarian engagement with tenure security issues raised in the introduction above. One question relates to the increasing convergence between human rights and humanitarian work. Here, from the perspective of a rights-based humanitarian organisation, NRC staff in Georgia shared a number of concerns regarding work on condominiums. Perhaps most obviously, this work primarily benefited those who had already managed to take advantage of the privatisation process and were therefore far less obviously vulnerable than, for instance, IDPs in private accommodations. However a related issue was whether NRC risked implicitly legitimising alleged human rights violations (in particular in the form of forced evictions) through its participation in supporting the broader privatisation and housing allocation process.

Clearly, any humanitarian activities related to land and housing risk such complicating factors as unclear ownership or competing claims. While it is one thing for humanitarian agencies to rely on government guarantees of human rights compliance, it is another matter for humanitarians themselves to come to be perceived as guarantors of the human rights compliance of government actors. Even in the first case, humanitarian agencies are now encouraged to exercise due diligence – for instance by seeking confirmation from neighbouring communities that no local claims exist on land that government actors have allocated for humanitarian purposes based on an assertion of public ownership. When humanitarian agencies take an active role in monitoring state actions (such as evictions) in order to assess their compliance with human rights standards, a new level of expertise is clearly called for.

A further issue raised by the condominium programming is related to the link between humanitarian programming and development work. Here, work on condominiums has involved developing expertise in issues not ordinarily relevant even to provision of legal advice in typical humanitarian settings. A final issue relates to the extent to which tenure security activities should benefit communities of people who are not displaced but, nevertheless, affected by displacement. In the case of condominiums, this issue was most directly raised by the fact that non-displaced families frequently lived in collective centres subject to privatisation by IDPs. The ambiguous status of such families – who were often allowed to remain but barred from privatising – was a complicating factor in condominium formation. More generally however, official support to IDP condominiums tended to be available as part of a broader programme supporting condominium formation for all Georgians that had privatised previously state-owned apartments since the early 1990s.²⁴⁵ In other words, the risks faced by IDP privatisers were not necessarily related to their displacement but were to a large degree shared with the entire population of Georgian privatisers, all of whom at the time lacked the expertise and capacity to maintain the common property they had become responsible for.

²⁴⁴ Interview, NRC staff, Tbilisi, Georgia, 30 June 2011.

²⁴⁵ Interview, Head of Rustavi Corps Project, Rustavi, Georgia, 30 June 2011.

DISPLACEMENT-AFFECTED COMMUNITIES

As noted earlier, there are a number of compelling reasons for including displacement-affected communities in humanitarian programming. These range from the security risks posed by resentful host communities excluded from aid programmes to the fact that the sacrifices involved in hosting displaced persons may give rise to genuine humanitarian needs. In the context of tenure security, it is crucial to recall that the integration of displaced persons (whether permanent or temporary) is typically not only into a physical space in the form of housing but also into a community and social networks.

Even in settings such as Lebanon, where durable integration of Palestinian refugees is clearly not an option, responsiveness to host community concerns is still of paramount importance to achieving any degree of tenure security. Some degree of benefit to host communities from humanitarian programming is accepted and even encouraged. This is reflected in NRC work on rehabilitation of housing in gatherings in southern Lebanon. Close coordination with local municipalities has been crucial to receiving permission to undertake rehabilitation projects.²⁴⁶ One of the most worrisome outcomes of the 2007 Nahr el Bared conflict is the extent to which it replaced mutually beneficial relations between Palestinian refugees and the local host community (as measured in both economic interactions and intermarriage) with mutual suspicion.²⁴⁷ Even if the complete rehabilitation of damaged and destroyed housing in the Nahr el Bared adjacent area could be achieved and a degree of tenure security restored, it is not clear that this would restore the degree of economic self-reliance previously enjoyed by residents of the adjacent area without an improvement in relations with the local non-displaced community.

The situation of IDPs residing in private accommodation in Georgia provides an example of difficulties distinguishing the housing and tenure security needs of segments of displaced populations from those of the broader urban or rural poor. While there is a good degree of variation in the tenure security situation of privately accommodated IDPs, their dispersal into the non-displaced population makes it difficult to identify the most vulnerable or generalise about their housing needs.²⁴⁸ In this situation, the vulnerability of such IDPs is clearly exacerbated by the fact that the state has yet to develop either accurate information or adequate policy responses to tenure insecurity or homelessness for the non-displaced majority population that privately accommodated IDPs coexist with.²⁴⁹ The *2007 State Strategy on IDPs* explicitly contemplates a shift from providing aid based on IDP status to prioritising aid based on need. It seeks to provide it by including IDPs in broader social welfare programmes, rather than continuing IDP-specific *ad hoc* programmes indefinitely. However, the *Action Plan* for implementing the Policy delays action on both implementing this shift and providing durable housing solutions to IDPs in private accommodation pending the delayed completion of the current 'phase one' activities related to collective centre privatisation.

Although IDPs have been included in a recent pilot programme to provide social housing in Georgia, the lack of any tradition of administering such housing highlights the risk that little in the way of either a housing policy or housing assistance will be available for the most tenure insecure in Georgia, whether displaced or not, in the near future.²⁵⁰ Indeed, current social welfare policies simply assume that all Georgians have secure tenure to housing, for example by making social assistance contingent on recipients having a current address.²⁵¹ In sum, the situation of privately accommodated IDPs in Georgia presents a situation

²⁴⁶ Interview, staff of NRC office in Tyre, Lebanon, 26 May 2011. Although NRC effectively negotiates with the authorities to rehabilitate such structures on behalf of their owners and based primarily on consultations with Palestinian Refugee occupants, this practice is clearly acquiesced in by owners who almost never object to NRC's activities.

²⁴⁷ ICG, 2010.

²⁴⁸ DRC, Survey reports.

²⁴⁹ The Public Defender of Georgia, Annual Report – 2009, 2009, pp.160-164 ("Right to Adequate Housing").

²⁵⁰ Interview, Swiss Development Cooperation Agency, Tbilisi, Georgia, 1 July 2011.

²⁵¹ The Public Defender of Georgia, Annual Report – 2009, p.161.

in which a key long-term response envisioned for IDP tenure insecurity comes in the form of application of generally available housing support measures that are currently manifestly inadequate. Under such circumstances, it is almost inevitable that humanitarian efforts to achieve tenure security for IDPs may come to focus on promoting more effective general measures to respond to the common housing problems experienced by both IDPs and surrounding communities.

This has clearly been the case in Serbia where donor-funded projects on social housing meant primarily to promote the integration of vulnerable displaced persons were accompanied by a systematic effort to reform the general regulatory framework for addressing housing need, regardless of displacement.²⁵² In Serbia, the delegation of authority over the allocation of social housing to municipal authorities based on 'local action plans' also encouraged the inclusion of both displaced and non-displaced beneficiaries based on considerations of which categories of individuals and households were most vulnerable in the local context.²⁵³ In the case of the recent pilot social housing projects sponsored by the Swiss Development Cooperation Agency in Georgia, however, the government has rejected proposals to develop a housing policy and failed to act on a set of amendments to the Law on Social Assistance drafted by a mixed working group of international actors and national ministry representatives.²⁵⁴

In protracted displacement situations where little capacity exists for affirmatively developing and implementing housing policies, by contrast, humanitarians may find themselves grappling with situations in which IDP integration into informal settlements has become an effective means achieving durable solutions. This has been the case in Liberia, for instance, where IDPs and their host communities alike are threatened by the prospect of evictions in the course of post-conflict slum clearance and development efforts.²⁵⁵ Under such circumstances, the durability of solutions achieved by IDPs in informal settlements will typically be contingent on the level of legal protection the entire community living in the settlement is accorded. The situation may be somewhat less clear in cases where poor households who are not necessarily displaced gravitate to settlements housing displaced persons. For instance, one Palestinian gathering in southern Lebanon has also been settled by an estimated fifty Roma families. While these families live under visibly worse circumstances than their Palestinian refugee neighbours, they are not known to be displaced and humanitarians have no clear mandate to address their needs.²⁵⁶

RECOMMENDATIONS

A. Displacement-affected communities:

- Humanitarian policies for responding to displacement should continue to be assessed. It is important to understand the impact of extension of assistance and protection measures to displacement-affected populations where doing so is necessary to respond to humanitarian needs caused directly by the presence of displaced persons.
- In addressing tenure security issues for displaced persons, it is crucial to identify which factors causing tenure insecurity result solely from displacement and which are shared with elements of the non-displaced population.

²⁵² Williams, *Protracted Internal Displacement and Integration in Serbia*, p.97. International donors and monitors provided technical advice to the Serbian government that resulted in the passage of a Law on Social Housing in 2009 as well as the founding of a National Agency for Social Housing.

²⁵³ *ibid.*

²⁵⁴ Interview, Swiss Development Cooperation Agency, Tbilisi, Georgia, 1 July 2011. In part as a result, the lack of dedicated local and national capacity has required international donors to maintain an active role in the beneficiary selection process.

²⁵⁵ Williams, *Beyond Squatters' Rights*.

²⁵⁶ Visit to a gathering, Quasmieh, Lebanon, 26 May 2011. The Roma families lived in unshaded and unimproved tin shacks with no foundations and no visible connection to utilities or other services.

- In cases in which the tenure insecurity of displaced persons is shared with surrounding non-displaced populations (or can best be addressed through generally applicable measures), humanitarian should contribute to the promotion of such measures to the extent that their mandate, capacities and expertise allow. Such efforts should be undertaken in coordination with other relevant actors, particularly the competent national authorities as well as relevant development actors.
- In some cases, few immediate options may exist for displaced persons other than housing solutions in informal settlements where both tenure insecurity and inadequate housing conditions may prevail. In such conditions, humanitarian efforts to promote tenure security may need to initially focus on preventing forced evictions of such communities, in accordance with international law and standards.

B. Development and early recovery

- Many humanitarian activities blur the line between assistance and development. This is particularly true of shelter programmes in protracted displacement settings where, in the absence of voluntary durable solutions, providing permanent housing with tenure security may be the only viable means of definitively addressing the humanitarian vulnerability associated with loss of pre-displacement homes. In situations in which humanitarian legal advice activities such as the NRC ICLA programme become involved, they may find themselves required to address development questions as well. This dynamic is exemplified by NRC's ICLA programming in Georgia, which has shifted focus to take in non-traditional issues such as the mobilisation of integrating IDPs to form condominiums for the administration of common property. While the reorientation of traditional humanitarian work to address such contingencies raises difficult issues, it is increasingly recognised as an important and even necessary development.
- It is important to recall that in contexts where local integration remains politically sensitive, development work on behalf of displaced persons is likely to raise the same sensitivities. Like the concept of tenure security itself, development work need not necessarily imply local integration but is, nevertheless, intuitively associated with it. In refugee law, for instance, the principal UNHCR Executive Committee conclusion on protracted displacement concedes the right of host states to refuse local integration to refugees, but, nevertheless, asserts the importance of supporting refugee initiatives related to economic development. In promoting refugee self reliance, the Executive Committee "[u]rges States, UNHCR and other partners to continue pursuing proactive measures in a manner that reduces dependency, promotes the self-sufficiency of refugees towards enhancing their protection and dignity, helps them manage their time spent in exile effectively and constructively and invests in future durable solutions."²⁵⁷ In other words, even where integration is not an option, development work should not be ruled out but must be promoted as an investment in refugee communities' resilience rather than their permanent presence.
- The difficulties of early recovery work in settings where local integration of refugees is categorically prohibited are reflected in Lebanon. Many international and national interlocutors interviewed for this report privately conceded that it was virtually a contradiction in terms to speak of humanitarian assistance to third-generation refugees. In Lebanon, as elsewhere, development work on behalf of Palestinian refugees remains sensitive. In Palestinian gatherings in southern Lebanon, for instance, sustainable approaches to rehabilitation of houses are essentially prohibited through measures seeking to prevent humanitarian agencies using such permanent construction materials as concrete.
- However, even in situations such as Georgia where early recovery approaches and economic self reliance of displaced persons are officially encouraged, these issues raise important challenges for humanitarians. Perhaps most obviously, development approaches entail a degree of specialisation that may be beyond the capacity of many humanitarians. For instance, work on tenure security in the context of local integration in Georgia has raised the need to understand technically complex matters

257 UNHCR Executive Committee, Conclusion No. 109 (LXI) - 2009, paragraph j.

such as the legislative rules governing formation of condominium associations, eligibility criteria for co-financing repairs to the common facilities of apartment buildings, and principles governing the introduction and administration of social housing programmes. While humanitarians can often play an important role in ensuring that the formation and implementation of such policies take into account the particular needs of displaced persons and others in humanitarian need, the primary responsibility must fall to state actors, supported by targeted international expertise of a more explicitly development nature.

- The early recovery approach should facilitate partnerships of humanitarian and development actors around issues of mutual concern such as tenure security. For humanitarians it is particularly important that such partnerships include an element of handover at the point where the humanitarian rationale for engaging in such work has become attenuated. As one humanitarian actor in Georgia wryly put it, “even if integration is into the same standard of misery as the general population, it must be seen as integration.” In other words, ensuring that displaced persons are able to enjoy no less a standard of living – including in the area of tenure security – than the rest of the population involves defensible humanitarian activities. By contrast, while humanitarians have an important role to play in initiating activities to raise the general standard of living for both IDPs and surrounding communities – and ensuring that IDPs are able to participate and benefit from them – these activities rapidly merge into more purely development-oriented work.

C. Early recovery:

- Humanitarians should not hesitate to undertake development-oriented activities as long as they lie within their mandate and capacities and are undertaken in consultation with displacement-affected communities and in coordination with other humanitarian and development actors.
- Humanitarians should consider making active use of development standards related to both safeguards for evictions and involuntary resettlement and positive access to land, housing and secure tenure. Such guidelines may be particularly helpful in situations in which reliance solely on human rights standards may not be sufficient to achieve security of tenure. This may be the case, for instance, in settings where human rights advocacy faces concerted political resistance or political actors are more receptive to discussions focused on economic development. In all situations in which the World Bank or other institutions with resettlement policies are involved in projects, such policies should be applied.
- In protracted displacement situations where measures of local integration are possible as well as in durable solutions settings, humanitarians should actively seek partnership with relevant development actors, including national authorities, donor states and institutions and international development agencies. Security of tenure provides an excellent starting point for early recovery-oriented collaboration, as it is a matter of explicit concern for both development actors and for humanitarians concerned with the shelter needs of displaced populations.
- Humanitarians engaged in early recovery-oriented work on tenure security should be less concerned with trying to identify bright-line rules for distinguishing where humanitarian roles stop and development roles start than with coordination to ensure some type of handover, with the results of humanitarian programming to promote tenure security clearly understood and, where relevant, continued or built upon by national and international development actors.

HUMAN RIGHTS AND HUMANITARIAN ACTION

The fact that humanitarian agencies have nearly universally adopted a rights-based approach does not make them human rights actors, *per se*. While rights-based analysis should be a key tool for planning and implementing programming, humanitarian agencies do not have a free-floating mandate to defend human rights nor do they necessarily have the capacity to do so. Just as humanitarians are encouraged to arrive at sensible and coordinated divisions of labour with development counterparts in early recovery settings, a great deal of potential exists for greater coordination with human rights institutions and organisations in order to ensure an appropriate focus on protecting the rights of the displaced and other persons of concern to humanitarians.

One positive example of this has been the coordination between NRC's ICLA programme in Georgia and the Public Defender's Office, a national human rights institution. Interlocutors in Lebanon tended to reflexively dismiss the potential for human rights arguments to make a difference in the region based on the view that Western toleration of the Israeli occupation of the Occupied Palestinian Territories has undermined the credibility of human rights law. Lebanon has announced plans to found a national human rights institution and many observers conceded that the potential of human rights-based arguments to shift the debate on security of tenure for Palestinian refugees has yet to be fully explored.²⁵⁸ In this sense, the new ICLA programme currently being rolled out in Lebanon may come at an opportune time.

A note of caution is called for in both situations. The risks of human rights-based promotion of tenure security in Lebanon are more obvious. Given the near universal concerns about local integration (both on the part of the Lebanese authorities and Palestinian refugees themselves), political arguments are likely to continue to weigh at least as heavily as those based on human rights. Faced with an existing system that arbitrarily denies Palestinians tenure security and property rights but is not uniformly enforced and the long and resource intensive effort likely to be required to achieve a binding condemnation of this system (which may in any case not be implemented), human rights actors in Lebanon do not face an enviable choice.

While the Georgian authorities are more responsive to human rights concerns, engagement by humanitarians carries risks. Perhaps the most obvious concerns arise in relation to the participation of humanitarians in fundamentally human rights-based work such as contributing to the drafting of the 2010 *SoPs on Evictions* or actually monitoring the manner in which evictions are carried out. Without direct expertise on the plethora of standards and international decisions governing security of tenure and forced evictions, humanitarian organisations may have a difficult time guaranteeing that agreed procedures and practices are fully in compliance with international law. However, having assented to the promulgation of such procedures and participated in their implementation, they may provide the authorities with an unwarranted degree of legitimacy in cases where forced evictions actually occur.

In all cases, decisions to pursue human rights-based avenues of recourse should be based on thorough consultations with displaced persons. A somewhat surprising commonality between Georgia and Lebanon has been the reluctance of displaced persons in both settings to challenge adverse legislation and practices through means such as litigation. In Georgia, for instance, even IDPs evicted in apparent violation of domestic and international standards have not lodged formal complaints, allegedly out of conviction that they may negotiate better terms with MRA by adopting non-confrontational tactics.²⁵⁹ Similarly, Palestinians effectively dispossessed by the 2001 Law restricting their property rights have almost uniformly chosen to

²⁵⁸ International Service for Human Rights, *Regional rivalries overshadow discussion of Human Rights in Lebanon*, 23 November 2010. <http://www.ishr.ch/archive-upr/963-regional-rivalries-overshadow-discussion-of-human-rights-in-lebanon>

²⁵⁹ Interview, humanitarian official, Tbilisi, Georgia, 6 May 2011.

ignore it rather than challenge it directly.²⁶⁰ While there may be grounds to believe that such choices are irrational or that individuals would decide differently if provided with complete information, it is crucial that actors seeking to mobilise displaced persons to undertake human rights-based challenges to the status quo should first seek to understand fully why such approaches have not previously prevailed.

Recommendations on human rights: In order to ensure a consistent rights-based approach to humanitarian programming, it is imperative to carry out a baseline analysis of which human rights treaties apply in the country concerned and what standards they include in areas of humanitarian concern such as tenure security. Such an analysis should build on the findings of both domestic human rights institutions and monitors and international human rights treaty-bodies and mechanisms that have issued decisions or conclusions on the compliance of the country concerned with its human rights obligations.

- While human rights should always be a primary component of analysis of programming by humanitarians, they should not necessarily be the sole consideration in implementation. Measures such as advocacy for human rights-compliant legislative reform or litigation based on the invocation of human rights standards may prove to be effective tactics for promoting the rights of displaced people in some settings. However, humanitarians must retain discretion to choose means that are not explicitly rights-based where these appear most likely to achieve rights-compliant outcomes for persons of concern.
- As in development settings, humanitarians should actively seek both national and international partners with mandates and capacity to engage directly in human rights advocacy work. Such partnerships should seek to build on synergies between human rights and humanitarian work in order to both improve humanitarian response and increase overall understanding and respect for human rights.

²⁶⁰ Saghie and Saghie, pp.59-61.

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