

IDMC Modules on Durable Solutions for IDPs (2015)

Module six: HLP

Time	105 minutes
Overview	<p>The session covers housing, land and property (HLP) issues and their relevance in the pursuit of durable solutions. HLP rights are one of four core criteria established by the IASC framework criteria – “effective and accessible mechanisms to restore HLP” – and they are also relevant to other benchmarks it identifies:</p> <ul style="list-style-type: none">• Long-term security and safety• An adequate standard of living without discrimination• Access to livelihoods and employment• Access to civil documentation
Objectives	<p>By the end of the session, participants will:</p> <ul style="list-style-type: none">• Understand the importance of HLP issues to the achievement of durable solutions• Be aware of instruments relevant to HLP issues in the context of durable solutions• Be able to propose actions to guarantee HLP rights in support of the achievement of durable solutions
Key messages	<ul style="list-style-type: none">• HLP is relevant to other rights including the right to life, the right to dignity and physical mental and moral integrity, the right to family life and the right to health• HLP rights refer to different legal categories derived from both statutory and customary law• Effective and accessible mechanisms are necessary for timely restitution and compensation. There are many options to consider.• Restitution tends to be the preferred way of facilitating durable solutions. If restitution is not feasible or IDPs express a preference in this sense, compensation becomes an alternative.
Documentation	<ul style="list-style-type: none">• Brookings publication of the IASC framework
Equipment and materials	<ul style="list-style-type: none">• LCD/computer for PowerPoint slides• Flipcharts and markers• Flipchart stand for presentations

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Module six:
Criteria for
Durable
Solutions

Title slide

Durable solutions: Challenges and way forward

Housing, land and property (HLP)

IDMC training workshop
(Place/Country)
(Inclusive dates)



Module
six: HLP

Objective
s slide

3"

Objectives

- To understand the importance of HLP issues to the achievement of durable solutions
- To analyse instruments relevant to HLP issues in the context of durable solutions
- To propose actions to ensure access to HLP rights and to fulfil the criteria for durable solutions relevant to them



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Present the topic and the learning objectives one by one.

What do HLP rights mean?

- Land, home and livestock
- Formal title deeds
- Informal rights: right of use and tenure security, right to pass through, grazing rights, right to water
- Individual and collective rights
- Right to sell, rent, plant and harvest

Property
Tenancy rights
Users' rights

Form of
redress



Explain the many different types of property and asks participants to give examples of HLP rights, including informal land rights.

Make a drawing based on participants' answers - house, river, trees, crops, wood, cattle. Show the slide and explain the different forms of tenure beyond ownership.

Highlights the importance of analysing the different types of HLP rights before designing a restitution mechanism to ensure that all rights holders can benefit from it.

Module six:
HLP

Links between HLP and displacement

HLP as a cause of displacement

HLP as a means of forcing displacement

HLP as consequence of displacement

- Loss of shelter and livelihood
- Disputes in place of origin and refuge
- HLP violations as obstacles to durable solutions and the rule of law



HLP issues may contribute to or be the cause of displacement. Depriving people of their property, particularly if their living depends on it, or destroying their houses may be used as a means of forcing people to flee. As such, restoring IDPs' HLP rights is essential for the achievement of durable solutions.

HLP in places of refuge

- Inadequate shelter: increased protection risks – GBV and health – and areas prone to disasters
- Insecure tenure: risk of forced eviction
- Limited access to land for subsistence
- Tension with hosts over resources
- Limited access to education and health facilities occupied by IDPs

Relevant to the pursuit of durable solutions?



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Explain that HLP issues arise in places of both origin and refuge. Ask the participants about some of the problems IDPs' might face in their place of refuge. Elicit some responses and if necessary provide some ideas yourself.

HLP in places of origin

- Degradation of infrastructure and boundary markers
- Occupation, squatting and illegal use
- Destruction and looting
- Loss of property records
- Confiscation/reallocation
- Prescription and abandonment laws
- Non-implementation of restitution commitments
- Exclusion of women, children and minorities
- Land declared unsuitable for residence (risk area)
- Landmines/unexploded ordnance (UXO)



Ask the participants for examples of HLP issues IDPs face in their place of origin. Identify common elements that constitute obstacles to the achievement of durable solutions:

1. Impinge on IDPs' basic human rights or put them at risk
2. Aggravate IDPs' predicament and needs
3. Constitute obstacles to the fulfilment of various durable solutions criteria - adequate standard of living, access to livelihoods, safety and security.

Is there a right to land?

- No right to land in international law
- Still often a precondition to the fulfilment of a number of human rights
- Can you quote any of these rights?
 - Right to food
 - Right to health
 - Right to housing
 - Right to an adequate standard of living



Explain that international law does not establish a right to land per se, but that it can be derived from a number of other rights for which it is a precondition – the rights to food, health, housing and an adequate standard of living.

Right to land and vulnerable groups

Indigenous people:

- International Labour Organisation convention 169
- Universal Declaration on the Rights of Indigenous Peoples, 2007
- Guiding principle nine

Women:



- Convention against all forms of discrimination against women (CEDAW) explicitly protects against possible discrimination in access to land



Introduce the international legal framework relevant to HLP and focus on indigenous

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	<p>people and women.</p> <p>Indigenous people: there is no legally binding definition of indigenous people, but some characteristics can be identified - minorities at the national level; self-identification; strong cultural, social and ancestral links with their land. Explains the provisions of ILO convention 169.</p> <p>Women: HLP rights are based on the principle of non-discrimination, particularly on the basis of sex or gender.</p>
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Module six: HLP	<div style="background-color: #a0c0ff; padding: 10px; text-align: center;"> <h3>Legal framework and guidelines</h3> </div> <ul style="list-style-type: none"> ▪ Guiding Principles on Internal Displacement, 1998 ▪ Principles on Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), 2005 ▪ UN Basic Principles and Guidelines on Development-based Evictions and Displacement, 2007 ▪ UN Guiding Principles on Security of Tenure for Urban Poor, 2013 ▪ Food and Agriculture Organisation Guidelines on Responsible Governance of Tenure, 2012 <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 20px;">   </div> <p>Present the main international instruments relevant to HLP rights. Reiterate that there is no single convention dedicated to the issue, but that there are many provisions in broader universal and regional instruments, such as the Great Lakes Pact and Kampala Convention, and in international humanitarian and human rights law.</p>
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Use the slide to present the main guidelines and principles relevant to HLP rights.

Main HLP rights and state obligations

- IDPs have a right to adequate housing that includes tenure security and protection from forced evictions
- Property and left empty and possessions left behind because of displacement must be protected
- After the conflict, IDPs should be able to repossess their property or receive compensation
- The state should design mechanisms to address HLP disputes

Explain the main obligations inherent in HLP rights.

HLP and durable solutions

IASC framework on durable solutions:

Relevant criteria

- Long term security and safety
- Adequate standard of living without discrimination
- Access to livelihoods and employment
- Access to civil documentation
- Effective and accessible mechanisms to restore HLP



Present the main elements of the IASC framework that relate to HLP. The achievement of durable solutions is closely linked to access to, restitution of, or compensation for lost HLP assets that provide shelter, home, livelihood opportunities and an adequate standards of living.

The security of home and shelter, including from landmines, contributes to long-term security and safety.

Restitution is a remedy both for violations of HLP rights violations and for displacement more broadly, in that IDPs' lack of access to their homes and land constitutes a significant obstacle to return. It is also often an element of durable solutions based on local integration and settlement elsewhere.

HLP and access to livelihoods and employment

- Access to land is essential for IDPs for whom it is or was their main source of livelihood
- IDPs displaced from rural to urban areas unable to use their farming skills should be supported in acquiring new skills to facilitate to help them integrate locally
- IDPs returning to areas where houses and businesses have been destroyed, land occupied or livestock stolen face obstacles to durable solutions



Explain the many ways in which HLP issues affect IDPs' ability to access to livelihoods and employment. If land is their main source of their livelihood - in the case of farmers, pastoralists and fishermen - impeded seriously jeopardises their ability to meet their basic needs.

IDPs' livelihood opportunities and employment are also significantly compromised if they flee from rural to urban areas, where their skills and experience are redundant. Unless they are able to learn new skills, chances of integrating locally are very slim.

When the destruction or occupation of land, homes and businesses or the loss of livestock interrupts IDPs' productive activities, it is unlikely that their choice of settlement option will be sustainable and they may well have to depend on assistance.

HLP and adequate standards of living

- Access to employment and livelihoods is necessary for an adequate standard of living
- Adequate housing is one of the components of the right to an adequate standard of living – Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights (ICESCR), article 11.1
- Precarious housing conditions and weak tenure security can be both a factor in vulnerability to displacement and a consequence of displacement



Explain the many ways that HLP issues affect IDPs' ability to achieve an adequate standard of living.

Establish the potential link between relocation and forced eviction, and refer to guiding principle six.

HLP and access to adequate housing

ICESCR General Comment 4:

- Legal tenure security
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural adequacy

Adequate housing is not just shelter

ICESCR General Comment 7:

Forced evictions are the “removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without ... appropriate forms of legal or other protection.”

- Human rights violation
- Criteria for a lawful and legitimate eviction

Always human rights violation



Explain the many ways that HLP issues affect IDPs' right to adequate housing, as established by ICESCR in observations four and seven, on adequate housing and forced evictions respectively.

HLP and access to documentation

Documentary: Documents in Haiti

What are the challenges related to the issuing of documents and to HLP issues shown in the video?



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Screen the UNHCR video Getting Papers.

<http://unhcr.org/v-4e69fc5e6>

Lead a short discussion on the main documentation issues that may prevent the resolution of HLP issues.

HLP and access to documentation

- IDPs often lose documents proving their property rights during their displacement
- Cadasters and other property registers may be destroyed
- IDPs may never have had such documents
- Problems associated with lack title deeds:
 - Reconstruction assistance may be refused
 - Problems in the recognition of inheritance



Explains the importance of documentation to the achievement of durable solutions, and the challenges that displacement tends to create. Inability to prove ownership, the right to occupy or use land and property or the right to live in a certain area is a serious impediment to the right to adequate housing and to IDPs' ability to meet their own needs (inheritance).

If IDPs do have their documents, whether because they have been lost or they never owned them, arrangements need to be put in place for them to be issued or replaced.

Ask the participants how IDPs might prove their residence in a certain area or their ownership or user's rights.

If they do not volunteer community mapping, suggest that such an exercise, which determines who and what was there before the onset of a conflict or disaster, might be one way of going about it.

HLP and safety and security

- Land disputes are a source of insecurity and may escalate
- Presence of landmines or UXO
- Loss of housing creates risks for single women and female heads of household
- Unaccompanied children often at risk of being trafficked
- Exposure of housing to disasters



Explain the link between HLP rights and safety and security, including the importance of demining and disaster risk reduction measures.

HLP restitution in the Guiding Principles

- Responsibility of states to help IDPs recover, their property and possessions to the extent possible - principle 29.2
- One of the measures inherent in IDPs' achievement of durable solutions - principle 28
- Restitution is the preferred remedy according to both the Guiding Principles and the Pinheiro Principles



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Introduce the principle of restitution, and refer to guiding principle 29 and the Pinheiro Principles.

Explain that restitution is the preferred remedy, but if it is not feasible then compensation may be considered.

Restitution as preferred solution

- Leaves all settlement options open
- Redress a wrong done, restorative justice
- A right per se:

Pinheiro principle 2.2: “The right to restitution exists as a distinct right and is prejudiced neither by the actual return nor non return of refugees and displaced persons entitled to HLP.”



Explain why restitution is the preferred remedy:

The most obvious link is between restitution and return. IDPs' repossession of their home and land contributes significantly to making return sustainable by providing shelter and livelihood opportunities.

Restitution can, however, also facilitate the achievement of durable solutions based on the other settlement options, but enabling IDPs to sell or rent their property whether they intend to return, integrate locally or settle elsewhere.

Compensation tends to encourage local integration or settlement elsewhere rather than return.

Restitution is a right per se, independent of IDPs' settlement choice.

Highlight the different measures listed in the basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law - UN General Assembly 2006 (Dec 2005) - of which restitution is one.

Compensation

- **Envisaged when:**
 - Restitution is not possible - Guiding Principles and Pinheiro Principles
 - The concerned party prefers compensation – Pinheiro principle 21
- **Compensation may:**
 - Complement restitution
 - Address destruction, loss of income
 - Be cash or in kind



Explain the circumstances in which compensation should be considered, most notably when restitution is feasible.

Discusses the various forms of compensation, whether cash or in-kind. Explain that the potential the cash compensation is often limited, given that it requires significant funding, and that compensation in kind can be a good alternative.

Dispute resolution mechanisms

- Judicial mechanisms
- Traditional mechanisms - pros and cons
- Ad hoc mechanisms - Burundi
- Administrative mechanisms - Bosnia Herzegovina
- Defining the rights covered – scope
- Training those affected on their rights



Introduce the different dispute resolution mechanisms, including their pros and cons and provide examples from other contexts - BiH and Burundi.

Pinheiro Principles

On property restitution for refugees and IDPs

- **Same concept as the Guiding Principles:** They do not create new rights but bring together principles relevant to HLP rights.
- **Difference:** They include principles based on good practice from previous restitution programmes.
- **New:** They broaden the scope of restitution to non-owners, such as informal rights holders and tenants:
 - Right to adequate housing, including security of tenure
 - Right to privacy and respect for the home
 - Right to the peaceful enjoyment of possessions



Present the Pinheiro Principles, which were adopted by the UN sub-commission on the

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protection and promotion of human rights on 11 August 2005, resolution 2005/21. They clarify the right to property restitution by bringing the relevant provisions of international human rights and humanitarian law together in a single document, and provide guidance on the design of restitution mechanisms. They also underline the HLP rights of non-owners: renters, squatters, secondary occupants and holders of customary land rights.

Group activity

Four groups/four themes:

- Non-owners
 - Women and tenure security
 - No-build zones and relocation
 - Restitution/compensation
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- Identify obstacles for your assigned issue and discuss how they may impede the achievement of durable solutions
 - Propose possible solutions and recommendations



Divide the participants into four groups and assign each group one theme. The themes given on the slide are indicative only, and may have been adapted to a given setting.

1. Non-owners - tenure security issues for tenants, squatters and others
2. Collective ownership or use of land and property
3. Women and tenure security
4. No-build zones and relocation
5. Restitution vs compensation
6. Indigenous and pastoralist groups

Ask the groups to identify obstacles that may prevent the achievement of durable solutions and propose possible solutions and recommendations.

Conclusions

- HLP rights include formal and informal titles, individual and collective rights, property, tenancy and use
- Loss of shelter and livelihoods and HLP disputes in places of origin and refuge may be obstacles to durable solutions
- Fulfilment durable solutions criteria is closely linked or is relevant to HLP issues
- The Pinheiro Principles favour restitution over compensation, but not the latter's exclusion



Conclude by recapping on the key points of the presentation:

HLP rights include a variety of different titles and corresponding statutory and customary rights. The concept refers to owners, tenants, cooperative dwellers, customary land tenure owners, users and squatters.

Failure to address HLP issues and to solve potential HLP disputes (through restitution or compensation) may result in an impediment to achieving durable solutions.

Many durable solutions criteria are closely linked to or relevant to HLP.

The Pinheiro principles offer guidance on addressing HLP issues including by setting up dispute solution mechanisms. The general position of the Pinheiro principles is that restitution is to be considered preferable to compensation.