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ACCESS TO HOUSING, LAND & PROPERTY IN FORCED DISPLACEMENT CONTEXTS

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Considerations and Recommendations for the World Bank Group and Other Investors

Executive Summary

Access to Housing, Land and Property (HLP) is foundational to socio-economic inclusion and an essential steppingstone for refugees and IDPs (‘displaced persons’) to rebuild their lives.⁸ Access to HLP means having a home, free from the fear of forced eviction, a place that offers safety, and the ability to seek livelihood opportunities. Displacement creates specific barriers to accessing HLP, and host government policies and practices may further restrict access intentionally or unintentionally. It is equally important to ensure that HLP legal frameworks are fully implemented and protected when violated. This requires considering HLP issues among the host population alongside those of displaced persons.

Unresolved HLP issues are linked to recurring displacement, and may cause or worsen conflict, undermining stability and socio-economic development. The WBG and other investors have a role to play in strengthening host government response

⁸ Although different legal frameworks are applicable to refugees and IDPs, the types of barriers and challenges both groups face are similar. Therefore, the paper will refer to ‘displaced persons’ going forward.

to displaced person's HLP access challenges. Such an approach begins with a thorough understanding of the HLP legal frameworks and practices and how they relate to displaced persons. It also requires implementing concrete mechanisms to enable displaced persons' access to HLP, undertaking policy dialogue with governments, and addressing HLP rights violations as part of development efforts.

More specifically, the WBG and other investors should:

Inclusive Policy

- ▶ Promote systematic HLP due diligence in projects supporting socio-economic development including displaced persons.
- ▶ Bolster national capacity to address HLP issues faced by displaced persons to facilitate their socio-economic integration.
- ▶ Support the right to restitution or reparation of displaced persons regardless of the durable solution.

Promote Concrete Mechanisms to Ensure HLP Access

- ▶ Support government policies that enable displaced persons and other marginalized groups to access HLP.
- ▶ Strengthen government provision of remedial options for HLP rights violations and disputes.
- ▶ Support institutional safeguarding of property documentation including for displaced persons.
- ▶ Promote government policies that support the documentation of displaced persons' HLP assets in the area of origin/return.

Stakeholder Engagement

- ▶ Ensure that displaced persons in all their diversity have a voice in the design and implementation of projects strengthening their access to HLP.
- ▶ Engage strategically with all actors, including NGOs and U.N. agencies, involved in HLP issues at the global, regional, and country level.

THE ISSUE:

HLP access is key to sustainable solutions for displaced persons

The Link between HLP Access and Socio-Economic Development

Access to HLP and improved security of tenure are crucial to the achievement of independent livelihoods. HLP access can also have a positive impact on household income and food security, as conveyed by the

WBG and **Food and Agriculture Organization** (FAO). In many situations, the issue of access to natural resources, which is linked to HLP access, is also vital to establish livelihoods. This is not different in refugee or IDP contexts. Despite recognizing the role of HLP access for socio-economic development, assistance to displaced persons often does not consider underlying HLP issues.

Without proper due diligence on HLP assets can lead to competing claims, disputes and even violence. Complex legal frameworks and bureaucratic processes, additional legal requirements, and discriminatory practices can make it impossible for displaced persons to access their HLP rights. The lack of accessible remedies when HLP rights are challenged is another impediment to legal protection and security of tenure. Addressing these barriers requires strengthening governments' legal frameworks, more effective technical approaches, and significant monetary resources.

The Link Between the HLP Access of Displaced People and the Host Population

HLP access for displaced persons is intrinsically linked to HLP access of the host population. It might be that the host population in general, or historically marginalized groups within the host population, face insecure tenure themselves or cannot access HLP rights. Moreover, problems with access to and control over HLP assets can be both a root cause and consequence of conflict and displacement. This might trigger new or exacerbate existing disputes and violence over HLP or cause further dispossession or displacement. However, if addressed in a clear, thoughtful, and systematic way, promoting HLP access for displaced persons as part of a broader approach can improve trust between displaced persons and host populations, in governance institutions, and lead to sustainable solutions to displacement. Combined with effective dispute resolution, HLP rights can even be a tool for building peace and preventing violence. In this sense, HLP could be considered an aspect of a “peace dividend” and support the humanitarian-development-peace nexus.

The Link Between HLP and Return

HLP rights play a crucial enabling role in sustainable and voluntary return of displaced people, particularly the right to restitution or reparation. Displaced persons who know they can recover their HLP assets back home or be compensated for their loss are much **more likely to return**. This link between HLP rights and facilitating voluntary returns or other solutions is not always considered. Facilitating the recovery of or compensation for abandoned or destroyed HLP assets is in most situations a complex task and will require high-level discussions, negotiations and formal (peace) agreements with the host governments and countries of origin. However, basic measures can be taken to prepare for and facilitate the possibility of future restitution of HLP assets while displaced. The WBG is in a unique position to encourage both high-level negotiations between governments and national-level policies and practices to facilitate the restitution of HLP assets and the rights of displaced persons should conditions for sustainable and voluntary return be met. The WBG and other investors, however, should avoid being instrumentalized in any political pressures for the involuntary return of displaced people to unsafe and unsustainable conditions.

CONSIDERATIONS:

Explore how HLP access affects the socio-economic status of displaced persons and how they are intrinsically linked to solutions

Analysis of Legal, Policy, and Non-Legal Barriers to HLP Access at the Country Level

The WBG recognizes the importance of HLP rights to further economic opportunities for refugees in the Refugee Policy Review Framework (RPRF). However, a more **in-depth analysis of the legal and policy frameworks** and existing practices governing HLP access is essential, particularly at the country level. HLP rights for displaced persons are complex (often defined by statutory and customary/traditional frameworks) and multi-dimensional (technical, legal, and socio-political), involving a diverse set of stakeholders and asymmetries of power. The analysis should also shed light on the **socio-political aspects** of HLP access and other non-legal barriers displaced persons face in claiming HLP rights. For instance, displaced persons might be legally able to rent housing or cultivate land, but social stigma or discrimination may prevent them from accessing their rights and/or means for remediation.

The WBG's legal and socio-political analysis should examine questions or issues such as:

- ▶ What are the legal frameworks governing HLP rights and how do they relate to displaced persons? What additional HLP policies or reforms might be required to enable displaced persons to access HLP and improve their security of tenure?
- ▶ What is the HLP policy framework for the host population? And are there any historically marginalized groups within the broader society that face similar barriers to accessing their HLP rights? Improving displaced persons' security of tenure implies ensuring the HLP rights of the host population as part of the process in case they face barriers themselves in accessing those rights.
- ▶ How is the current implementation of HLP and related policy frameworks? Are there any additional requirements or regulations that affect the access or enjoyment of HLP rights? What non-legal barriers or socio-political barriers do displaced people face when claiming their HLP rights?
- ▶ Has the required due diligence been done when HLP assets or infrastructure are made available or provided to displaced persons by host governments?
- ▶ How are laws or regulations enforced if at all? Who are the key interlocutors or powerholders when it comes to the administration of HLP policies?
- ▶ Are displaced people able to access natural resources? While the RPRF references natural resource management from the perspective of environmental degradation, it is equally important to consider its linkages to livelihood opportunities.
- ▶ Are there any existing HLP disputes or tensions among the host population and how have they been affected by the displacement? What are the available remedial options or mechanisms?

- ▶ How can HLP policies and their implementation be inclusive to refugees and host populations that face additional barriers based on age, gender, disability and diversity?

Concrete Mechanisms for Displaced People to Assert and Enjoy HLP Rights

Concrete mechanisms are equally important for displaced persons to access HLP as part of their socio-economic integration in host communities. The WBG is already addressing HLP access for refugee populations by strengthening government provision of land tenure security. For example, the WBG's [Municipal Infrastructure Development Program in Uganda](#) recognizes that access to land needs to be addressed for both host and refugee populations, but there is no clear indication of how this issue is being addressed, what analysis was conducted, or what redress mechanisms will be available to resolve disputes. The WBG's support of such government mechanisms must be informed by the following elements:

- ▶ What might be needed to materialize *de jure* HLP rights into a *de facto* access to and protection of HLP for displaced persons? This starts with a contextualized analysis of forcibly displaced populations and the barriers that hinder their access to HLP rights.
- ▶ How will displaced people and other relevant persons be made aware of their (newly) acquired rights and potential legal obligations? Are authorities aware of their (new) policies?
- ▶ How are governments ensuring *secure* access to HLP assets for displaced persons? For example, knowing that access to land or housing will not be challenged encourages investment in seeds and tools, home improvements and proactive search for livelihood opportunities, which facilitates the local socio-economic integration of displaced persons. What are the legal or other protections needed to ensure increased security of tenure?
- ▶ What are the remedial options or mechanisms available to displaced persons to resolve HLP disputes or address HLP policy violations? And if such mechanisms are lacking, what is needed to address HLP disputes or policy violations involving displaced persons?

Upholding the Right to Restitution or Reparation

While the RPRF does not touch upon the question of **refugees' and IDPs' rights to recover their HLP assets** back home, the WBG should consider its role in upholding the right to restitution or reparation even when the recovery of HLP assets might be a longer-term process. As a respected agency focusing on longer-term sustainable development, the WBG is uniquely placed to encourage both hosting countries and countries of origin to consider the following aspects of restitution or reparation:

- ▶ What are the legal frameworks for displaced persons to reclaim abandoned or destroyed HLP assets through restitution or forms of reparation or compensation?
- ▶ Have HLP policies, including the rights to restitution or compensation, been discussed as part of development plans/projects or peace agreements?
- ▶ What is the HLP situation in the area/country of origin? To what extent do HLP issues constitute barriers to sustainable return and, if so, what could be done to address these? Have HLP issues been the root causes of conflict and displacement?

- ▶ What are the possibilities for displaced persons to transfer HLP assets from the location of displacement to their former or new home?

It must be stressed that restitution, reparation, or any other forms of compensation should never be used to encourage return when conditions are unsafe to do so. Premature, uninformed, and involuntary return to dangerous contexts violates international law and could lead to further displacement, conflict, and instability. HLP restitution or reparation should also be upheld in the case of local integration or relocation, taking the form of compensation or the provision of adequate housing.

RECOMMENDATIONS:

Safeguard HLP rights and address HLP rights violations

Addressing unequal access to HLP for displaced persons and other marginalized groups are crucial to realizing their socio-economic integration and ultimately promoting shared prosperity and ending poverty. The WBG should consider HLP rights as central to development efforts in refugee and IDP hosting countries. Specifically, the WBG should:

Inclusive Policy

- ▶ **Promote systematic HLP due diligence in projects supporting socio-economic development including displaced persons.** Understanding the underlying HLP situation in both its legal and socio-political aspects when implementing socio-economic interventions is crucial. Additionally, it is important to understand the relevance of customary frameworks and their relation to statutory frameworks and state institutions. This analysis should indicate how these frameworks relate to displaced persons and highlight other marginalized groups among the host population. Consultation with affected populations to identify their specific legal and practical barriers to accessing HLP rights is critical in this analysis.
- ▶ **Bolster national capacity to address HLP issues faced by displaced persons to facilitate their socio-economic integration.** The WBG should play a role in strengthening institutional capacity to address HLP issues, including those faced by the host population. This should also involve identifying and supporting institutions that administer HLP access and ensuring that they include displaced persons in their frameworks and mechanisms.
 - ▷ Considering that political will, responsibility, and capacity are not homogeneous nor always clearly allocated across entities, the WBG should map the overlapping jurisdiction/control over HLP issues among these entities.
 - ▷ Where authorities and entities are unwilling to collaborate or are party to the conflict, capacity building might focus on host population and displaced persons and interaction with respective authorities might be limited to local-level engagement and advocacy.
- ▶ **Support the right to restitution or reparation of displaced persons regardless of the durable solution.** Materializing the right to restitution or reparation is a rather complex and sensitive endeavor. Considering the lack of good practices or examples, the WBG should invest in

research and pilots to explore innovative ways to action the right to restitution or reparation or find proper alternatives that are grounded in displaced persons' understanding of the concept.

Promote Concrete Mechanisms to Ensure HLP Access

- ▶ **Support government policies** that enable displaced persons and other marginalized groups among the host population to understand, access and protect their HLP rights.
- ▶ **Strengthen government provision of remedial options for HLP rights violations and disputes.** Identify and map institutions that have played a role in the adjudication of HLP disputes prior to displacement and find ways to integrate them. The existence of effective mechanisms for conflict resolution plays an important role in achieving sustainable solutions. It is also important to ensure that these mechanisms are accessible and non-discriminatory to women and other disadvantaged groups.
- ▶ **Support institutional safeguarding of property documents including for displaced persons.** This goes beyond formal titles and includes any documents that demonstrate a connection to the HLP assets/rights – as in the case of informal tenure – and should include an analysis of the gaps.
- ▶ **Promote government policies that support the documentation of displaced persons' HLP assets in the area of origin/return.** This can include the mapping of damaged, destroyed, abandoned, or occupied HLP assets of the broader population and protection from further occupation, use or illicit sale. This will enable future restitution processes and prevent HLP disputes and secondary displacement. Providing information to displaced persons about their current HLP status and procedures for restitution is critical in facilitating sustainable displacement solutions. However, the WBG should avoid being instrumentalized in the politicized aspects that might lead to the involuntary return of those displaced.

Stakeholder Engagement

- ▶ **Ensure that displaced persons in all their diversity have a voice in the design and implementation of projects strengthening their access to HLP.** Consulting refugee and host communities is essential for maximizing the success of projects designed to address the barriers they face to accessing HLP rights.
 - ▷ The RPRF aptly acknowledges the need to pay particular attention to displaced women as they may encounter additional barriers and discrimination when it comes to accessing HLP rights. Despite strong constitutional guarantees of equality and non-discrimination, women often unable to assert their HLP rights in practice. It is therefore important to clarify women's HLP rights and their empirical complexities through participatory dialogues to address traditional, cultural, and other sensitivities and barriers at play.
 - ▷ The WBG should also engage other groups that face barriers to accessing HLP rights on the basis of age, gender, disability and diversity.

- ▶ **Engage strategically with all actors, including NGOs and U.N. agencies, involved in HLP at the global, regional and country level.**
 - ▷ HLP issues straddle the humanitarian-development-peace nexus, so it is essential to facilitate robust coordination and ensure complementary action among diverse actors (development and humanitarian actors, academics, public and private sector, and other disciplines).
 - ▷ Engage with the HLP Area of Responsibility (AoR) within the Protection Cluster of the humanitarian cluster system. Globally, the HLP AoR includes a diverse range of stakeholders including development, human rights, and humanitarian actors, donors, academics, etc. Country-level HLP coordination groups exist across the globe.