

**WORKING SESSION ON BUILDING CAPACITY FOR THE PROTECTION OF
IDPs
GENEVA, 14-16 DECEMBER 2005**

EXECUTIVE SUMMARY

This document reports on a working session organised by UNHCR to examine gaps and make recommendations for doctrinal and protection policy development, as well as operational guidance in UNHCR's response to IDP situations.

UNHCR has committed to taking the lead in three clusters: protection; camp coordination & management; and, emergency shelter. UNHCR's new role and responsibilities are described in the *IASC Protection Cluster Working Group Report* (November 2005), with particular reference to Annex I and II.

Field colleagues noted the **deficit of communication** from the HQs to the field on the implementation of the new cluster approach. Participants also raised their concern that the IASC discussion appears to have been very “**UN centric**” without giving sufficient consideration to the role and responsibilities of States and civil society.

- Field colleagues identified a number of challenges, including :
 1. the fact that the **conceptual discussion** on IDP protection, including a debate on the fundamental differences between the refugee and IDP protection regimes, is still missing,
 2. the question: “When are IDPs **no longer of concern** to UNHCR?” has yet to be answered to guide the development of criteria for operations to define exit strategies,
 3. **political and protection imperatives**, which may not necessarily go hand in hand and will continue to raise tensions also in the framework of the new approach,
 4. the lack of adequate **human and financial resources**,
 5. the need for the building of clear **relationships** with other protection actors, taking into account the absence of partners in emergency operations,
 6. UNHCR's **limited expertise** in some of the areas for which the agency has assumed cluster lead responsibilities.

Effective and predictable partnerships with UN agencies, NGOs and institutions will need to be built and new fundraising strategies explored. Participants agreed on a need for policy guidance on a variety of issues, a collection of basic tools and the need for an effective mechanism to capture and tap into previous IDP experiences and expertise within and beyond UNHCR.

THE WORKING SESSION ON IDP PROTECTION - BACKGROUND

The Principals of the Inter-Agency Standing Committee (IASC) on 12 September 2005 designated UNHCR as the "cluster lead" for the protection of conflict-generated Internally Displaced Persons.

Within the Department of International Protection (DIP), the Protection Capacity Section (PCS) has been assigned to explore options for developing tools to enhance UNHCR's capacity to fulfill this responsibility. To ensure that this task is undertaken in a comprehensive and field oriented manner, DIP organized a working session with selected colleagues who are currently involved in shaping IDP operations or have gained valuable experience in this area in the past.

The objectives of the working session were for HQs to:

- update field colleagues on recent developments with regard to the "cluster approach" and develop a common understanding of the implications this will have for UNHCR field operations

for field colleagues to:

- advise DIP on gaps in protection policy and operational guidance in UNHCR's response to IDP situations
- identify gaps and existing practices in the area of IDP protection training and operational support
- advise DIP on the issues to be addressed and methodology best suited to cater to the needs of field colleagues.

The following report summarizes the discussions that have taken place during the working session and specifies the doctrinal developments and policy guidance that are still required. Throughout the workshop in working groups, participants discussed and identified concrete challenges, policy gaps, and existing tools, the findings and recommendations of which can be found at the end of this document.

THE HUMANITARIAN REVIEW PROCESS

The Humanitarian Response Review made clear that the main protection gap in the humanitarian response relates to IDPs. The Emergency Relief Coordinator, in June 2005, called upon the UN agencies to develop a collaborative approach that would increase the agencies' accountability. Against this background an approach was developed whereby agencies would be responsible and accountable for certain functional sectors under so-called "clusters".

Starting points for the discussions within UNHCR were on the one hand that UNHCR has been involved in IDP operations since the 1970s and has gained valuable experience, while on the other it was also clear that the UN was reviewing the overall system's humanitarian response and UNHCR wanted to be part of it. It was also argued that if UNHCR would get involved with IDPs this could pay protection dividends for refugees and strengthen refugee protection, impact on solutions and could create opportunities to return, while at the same time creating better leverage with States.

Challenges for UNHCR

1. Financial Resources

In principle donors welcomed UNHCR's offer to do more but they cautioned against affecting refugee operations and initially suggested to build "firewalls" between refugee and IDP operations for funding purposes. However, given operational realities in the field, UNHCR soon recognized that it will be virtually impossible to separate some of the operations that are/will have to be undertaken.

In December 2005 the General Assembly approved the creation of extended CERF which aims at 400 Mio USD to jump start IDP operations. Given that UNHCR has a substantial financial shortfall, even before it takes on any responsibilities for IDPs, UNHCR will indeed have to do "more with less" or rather "less with less" and de-prioritize some tasks.

2. Partnerships

It was recognized at the working session that the IASC process was too UN centric and has not sufficiently engaged Governments and NGOs. It is now hoped that in the move to the field level the national authorities and the NGO community, including national NGOs, would be more engaged. It was also noted that taking on partnerships should not be used to reduce our responsibility and involvement – in fact taking on partnerships can at times create more responsibility, especially when it involves training and mentoring national NGOs. Participants also pointed to the potential security risks of involving national NGOs in protection/human rights work, both for the (members of the) NGOs concerned and IDPs.

3. Human Resources - Staffing

As staffing capacities are limited, existing deployment schemes will be utilized. This will include the ProCap deployment scheme and some "Surge" staff. UNHCR will also have to rely on Temporary Assistance and Staff-in- Between-Assignments (SIBAs). It has to be recognized that deployments in IDP situations will also have implications for the safety and security of staff due *inter alia* to the proximity to areas of conflict.

The ensuing discussion then developed around the following themes:

Expertise of focal points

Whereas the focal points system would aim at ensuring a reliable response, it appears that some of the agencies listed in Annex II are not humanitarian actors and will not actually be on the ground in case of an emergency. Concern was raised that "waiting" for agencies to become operational on the ground might cost lives and expose IDPs to greater protection risks, while UNHCR may already have the necessary expertise and presence. Clear benchmarks will need to be established for what can be considered a sufficient engagement by the focal point agency, so as to enable to RC/HC and cluster leads to take remedial action if these are not met.

Participants were also concerned that UNHCR would be a last resort even in areas where we do not have a particular expertise. In such areas UNHCR should not expend resources, but rather rely on other experienced actors.

Roles and responsibilities of state authorities

Participants raised concerns that the IASC *Report of the Protection Cluster Working Group* does not give sufficient consideration to the role and responsibilities of the States. This could give rise to the impression that the UN is responsible and accountable for the protection of IDPs.

The role of OCHA

OCHA will continue to play a useful coordination role in the new cluster approach at the inter-cluster level. In the current system, UNHCR is the protection cluster lead and will report to the RC/HC in the field. Given this role, it might be envisaged in the future to have UNHCR managing the ProCap deployment scheme to serve all the agencies participating in the protection cluster.

Distinguishing between IDPs and other populations

Participants highlighted the fact that in some situations it might be difficult to identify IDP populations as they may merge with the local community to avoid stigmatization and/or persecution. At the same time, in some instances affected populations that are not able to displace themselves are even more at risk than IDPs. It is also clear that in situations of return that seek to stabilize populations and support the capacity building of authorities a differentiation between IDPs and affected populations is not viable.

Political and protection imperatives

It is anticipated that political and protection imperatives, which may not necessarily go hand in hand, will continue to raise tensions also in the framework of the new approach. It is not expected that the cluster will solve these tensions.

The role of DPKO and UN missions

The role of DPKO and of UN missions is recognized and will have some bearings on UNHCR's responsibilities. Although the potential risks are acknowledged, it is clear that protection in many cases cannot be delivered without peacekeeping.

CONCEPTUALIZATION OF IDP PROTECTION

UNHCR needs to recognize the fundamental difference between refugee and IDP protection. Often a wrong assumption is established that IDP protection would be similar to refugee protection, when in fact the protection of IDPs has greater similarities with returnee protection, in which UNHCR has had a mandate for years.

The working session therefore suggests that discussion should be focus on clarifying what exactly States' obligations are and what can be done to ensure that States meet these obligations. These efforts need to be accompanied by an understanding of the availability, functionality and effectiveness of State structures and could include scenarios that typically emerge, such as fragile, weak or absent structures.

An understanding and analysis of the capacities of States is integral to any clarification of responsibilities of international actors and will also be linked to the question: When is the risk high enough for the affected population to justify the UN system's intervention? Subsequently, it also needs to be clarified whether these international actors are expected to **do** protection, or **promote** protection, or **facilitate** protection.

WHEN DOES DISPLACEMENT END?

The beginning of internal displacement is fundamentally a *prima facie* assessment that looks into the reasons why people are displaced. The theory is that IDPs should benefit from freedom of movement within a country. This in itself is an indication that a status cannot be attached to internal displacement and therefore that there is no real beginning and ending. The Guiding Principles contain no cessation clauses. In some countries domestic laws have introduced "cessation clauses" for IDPs. Despite the lack of

“cessation clauses” in international law, we are faced with the reality that the international community has to devise exit strategies.

When do the activities of the international community need to change?

Instead of focusing on “when does displacement end”, another approach would be to address the question “when do the activities of the international community have to change?” The determining factor for shifting from an IDP response to another form of engagement (poverty reduction, restitution etc) could be a comparison of the situation of IDP populations relative to the conditions of the surrounding population. By these means, services can be mainstreamed into community based development approaches, even in the absence of prospects for the (re)-establishment of rule of law, property restitution etc.

Based on these considerations, UNHCR might need to develop criteria when a returnee is no longer of concern to UNHCR. There is no agreement on this in the house at present, as some colleagues refer to the duration of displacement, others refer to the re-establishment of mechanisms for national protection (the lack of which prompted the displacement in the first place), the key elements of which are non-discrimination and freedom of movement.

There is an indication that the solutions discussion that takes place in the refugee context must be more nuanced in the IDP context, due to the risk that the situation of internal displacement may be unintentionally perpetuated. As such, the most important element of defining a disengagement strategy is to ascertain the wishes of IDPs.

Knowledge

- **Human Rights, International Humanitarian Law and institutional framework**

1. Knowledge of international, regional and domestic human rights relating to IDPs and mechanisms and types of interventions relevant to IDPs;
2. Knowledge of Guiding Principles and related standards of international law;
3. Basic understanding of the principles of International Humanitarian Law;
4. A solid understanding of the relevant mechanisms and mandates (SRSR, ERC, SC, IDD etc.)
5. Knowledge of the mandates of other agencies such as OHCHR, ICRC;
6. A good understanding of economic and social rights, their content and the corresponding obligations, as well as coping mechanisms within the community;
7. Knowledge of recommendations of Human Rights Charter and Treaty bodies and State reports to these bodies;
8. Knowledge of local/national property legislation, national actors and capacities, formal and traditional remedies and the cultural and historical context of land;
9. Knowledge of the Pinheiro principles and other international standards;
10. Knowledge of case law of ECHR (Cyprus vs. Turkey) and the IACtHR (Moiwama vs. Surinam and Case of Mapiripan Massacre vs. Colombia);
11. Familiarity with African Union (AU), European Union (EU), Council of Europe, Organization of American States (OAS) project activity;
12. Basic knowledge of culture and history of the society;
13. Knowledge of the IASC cluster approach;
14. Knowledge of longer term development activities to allow for a smooth transition from relief to development, (exit strategies);

- **Understanding the community**

1. Understanding of Participatory Assessment as a basis for a situation analysis;
2. Knowledge of existing communication methods and networks;

- **Fundraising**

1. Good understanding of the “budgeting machinery” and available funding mechanisms;
2. Knowledge and skills on fundraising and donor relations;

Skills

1. Negotiation skills and an understanding of negotiation roles in the context of state and non-state actors (learning from other agencies with expertise);
2. Political analysis skills for strategy development; capturing the knowledge of colleagues and/or relevant institutions (e.g. ICG);
3. Mediation and peaceful co-existence: skills to lead the overall process, but rely on institutions and agencies with specific expertise;
4. Information management for human rights monitoring (differs significantly from collecting statistical information);
5. Being able to deal with the military;
6. Ability to use and advocate effectively through international and local media;
7. Networking;

Attitude

1. Change to “service mode” and become more flexible, i.e. increased focus on partnerships and participation;
2. A more inclusive approach to planning;
3. Being aware of long term objectives;
4. Zero tolerance of impunity in case of human rights violations;
5. Empathy;

RECOMMENDATIONS

TOOLS TO BE DEVELOPED

- **Access:** Standard draft protocol on access;
- **Human Rights/Protection Monitoring:** standard incident report form, standard monitoring framework at inter-agency level and standard monitoring agreements; get inventory of existing ones and pull together for a standard monitoring form; development of a standard open-source protection monitoring database;
- **Joint assessment tool:** standard format for a inter-agency assessment/analysis of IDP situations (building on and including participatory assessment) which would lead to the joint development of benchmarks/time-lines for action (also considering the role of state and non-state actors);
- **Documentation:** in a toolbox SOPs on civil documentation and when and how to issue civil documentation in the absence of a functioning/access to a national civil administration (birth, death...);
- **Witness Protection:** Model witness protection schemes and guidance on what to do when no such system is in place;
- **Security:** Model security protocols;
- **Inventory of external resources** (universities, NGOs, other agencies) with specific expertise that UNCHR does not have (e.g. reconciliation and mediation);
- **Inventory of internal resources**, i.e. a list of UNHCR staff that accumulated relevant expertise in IDP situations and or specific issues (housing, property);

GUIDANCE AND DOCTRINAL DEVELOPMENT REQUIRED

- **Freedom of movement**
 1. Guidance on the use of armed escorts;
 2. Under what circumstances would UNHCR evacuate IDPs? Development of evacuation guidelines;
 3. Third country resettlement for IDPs?
 4. When is it legitimate for authorities to limit movement/return?

5. Use of specific efforts that improve freedom of movement, including establishment of bus lines, provision of ID cards, agreements on family unity and access to basic services;
- **Human rights/protection monitoring**
 1. Guidance on minimum standards for human rights monitoring and its objectives (monitoring, reporting, analysis and intervention) and tools for setting up monitoring databases and effective data-management;
 2. Guidance on the use of traditional justice in the absence of functioning state structures;
 3. Based on documents and analyses developed by other agencies, provide guidance for staff on the content of economic, social and cultural rights, corresponding obligations of states and implications for the international community/agencies when and how to intervene;
 - **Safety and security**
 1. Border situations: how do UN agencies engage when people move to an unsafer location? Develop a framework for policy among humanitarian actors when to provide assistance in locations that jeopardizes physical safety;
 2. Standby agreements for civilian police – do they still exist and do they apply to IDP situations?
 - **Registration and documentation**
 1. Guidance on the rationale for registration when and how to get involved and when to de-register;
 - **Integrated missions**
 1. Clarification of relations between the new inter-agency cluster leadership approach and the mandate/structure of integrated missions and guidance on how to engage integrated missions;
 - **Return, solutions and reconciliation**
 1. Review of VolRep and HCRs involvement in return and adapt to IDP situations; are the benchmarks the same?
 2. What are the implications for programme and assistance if IDPs choose to remain?
 3. Do we apply VRFs? Are we using the same VRFs?
 4. Is the distinction of promotion or facilitation also appropriate in an IDP context?
 5. Should HCR be involved in “promotion of return” by governments?
 6. Recruitment of national staff should be take into account reconciliation considerations (ethnic, religious balance in an office); guidance from DHRM required;
 7. How can we use traditional justice mechanisms in reconciliation processes?
 8. Guidance and tools for effective information-management;
 9. Guidance and operational arrangements with law reform institutions should be developed so that they can be brought in the return and early recovery phase;

10. How to feed results of human rights monitoring into legal reform processes and ensure that legal aid schemes will become part of the national system;
11. Better understanding and guidance on institution building;

RECOMMENDATIONS

- **Doctrinal developments**
 1. The Department of International Protection should provide doctrinal and policy guidance as a matter of priority in 2006.
- **Information sharing**
 1. The cluster approach and relations within the cluster should be clarified and communicated to the field in an operational guidance note by UNHCR.
 2. A general message from the ERC on the approach and its application to the whole UN system should be sent to the field.
 3. Information sharing from HQ to the field needs to be improved. This will need to include information on communications, developments and reform processes in other agencies involved in the cluster approach and indicate their implications for UNHCR.
- **Staffing and support**
 1. The current support structure at HQ is not sufficient to provide support capacity towards the field.
 2. For the new priority countries staffing support through missions is welcomed, but it needs to be ensured that these are then followed through and do not leave gaps once they leave.
 3. A mechanism should be introduced that makes it possible for colleagues with specific and relevant IDP experience to come out of their current operations to help develop tools and support operations.
 4. Operational tools and documentation of practices should be collected and distributed prior to the development of traditional training tools.
 5. A joint inter-agency training plan and delivery of joint inter-agency training activities, including on protection, are required.
 6. An IASC Code of Conduct should be developed that goes beyond sexual abuse and exploitation.

UNHCR/DIP
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