

**High Commissioner’s Dialogue on Protection Challenges
“Protection Gaps and Responses”
(8-9 December 2010)**

**Breakout Session 1: Gaps in the International Protection Framework
and in Its Implementation**

Report by the Co-Chairs:

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This breakout session involved a wide-ranging discussion on the complex topic of implementation and normative gaps. Participants raised not only gaps themselves, but also good practice examples of how these are being addressed at national and regional levels and some suggested ways forward, including for UNHCR.

I. Implementation/operational gaps and issues

Main gaps identified

- Participants identified a number of implementation gaps and related protection issues, including:
 - Lack of access to protection (territory and procedures, and protection against *refoulement*), for example in Europe;
 - Lack of access to livelihoods and opportunities for self-reliance (health care, education etc);
 - Xenophobia, discrimination, racism and intolerance;
 - Lack of protection for vulnerable groups such as women and children, including against sexual and gender-based violence;
 - Detention of asylum-seekers and refugees, especially children;
 - Lack of recognition of the international protection needs of LGBTI refugee applicants;
 - Difficulties in applying the 1951 Convention cessation clauses, including uncertainty as to what happens when people do not want to return;
 - Inadequate documentation issued to refugees in some countries; and
 - Need for stronger government engagement in countries where refugee status determination is conducted by UNHCR.
- Participants mentioned some particular situations which need further attention, such as:
 - Protracted refugee situations and their impact on host communities
 - Large-scale influxes
 - Urban refugees and implementation of UNHCR’s urban policy

- Participants also acknowledged that gaps are often caused by resource constraints and underlined the need for better responsibility sharing.

Good practices

- Participants recognized a number of good practices from different regions in addressing protection gaps, including:
 - The contribution of Latin American countries:
 - The expanded refugee definition in the Cartagena Declaration, which has been transposed into national legislation in a number of countries.
 - The adoption of the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas in November 2010, which looks ahead to addressing future displacement challenges.
 - The good practice example of the Philippines, where UNHCR has handed over refugee status determination to the government in a responsible manner. The government continues to engage with UNHCR, pursuant to UNHCR's supervisory responsibility, which is an effective example of the exercise of national sovereignty.
 - A number of good practice examples from Zambia, including:
 - An initiative to improve relations between refugees and their host communities, enabling them to share skills and realize each other's potential;
 - Livelihoods training for refugees to build self-reliance;
 - The development of mobile courts to enable access to justice for refugees in remote parts of the country.

Suggestions to address implementation gaps

- It was recommended that States:
 - Incorporate their international obligations into domestic legal and institutional frameworks, including constitutions where appropriate;
 - Engage more actively with national human rights institutions, other human rights mechanisms such as the UPR, and civil society more generally;
 - Provide training for judges, legislators, law enforcement officials and refugees (in livelihoods);
 - Increase public awareness of the Conventions, to avoid politics and public opinion being obstacles to accession;
 - Acknowledge the ways in which refugees can contribute to their host communities and improve opportunities for self-reliance (whilst recognizing that self-reliance is not always a first step towards local integration);
 - For States that undertake their own refugee status determination, ensure the proper exercise of UNHCR's supervisory role;
 - Work towards better implementation of urban refugee policies; and
 - Using the State pledging process for the ministerial-level meeting in 2011, commit to undertake concrete measures to address protection gaps.

- It was recommended that the international community:
 - Make a strong commitment to follow up on protracted refugee situations and keep the topic alive;
 - Enable persons of concern to participate in identifying the gaps they face, as well as their needs and priorities;
 - Look at large-scale influx situations from a burden-sharing and even cross-continental perspective; and
 - Reward States for ‘good behaviour’ in addressing protection gaps. Rather than focusing on negative developments, use good practices as a platform for the future.

- It was recommended that UNHCR:
 - Develop operational guidance on urban refugee situations, to complement the urban refugee policy;
 - Ensure a systematic, holistic approach to addressing displacement challenges in the field, by joining efforts with other UN country teams and other actors;
 - Work more with States on clarifying the consequences of cessation, and on monitoring situations where cessation could apply; and
 - Improve age, gender and diversity mainstreaming.

II. Main normative gaps and related issues

Main gaps and issues identified

- There is no ‘right to run for your life’.
- Not everyone who has been forced to leave their country will fit within the current refugee protection framework. Whilst some States allow their admission, there is no coherent international normative framework on protecting their rights.
- A clear cut normative gap identified by participants was cross-border displacement as a result of natural disasters and the effects of climate change. Mention was made of the tsunami in South East Asia and Haiti earthquake.
- In some circumstances, normative gaps can overlap with operational and implementation issues. Examples include:
 - People caught up in mixed movements, who can face serious humanitarian consequences such as extreme violence and trauma; and
 - Stranded migrants, who cannot move forward nor go back to the country from which they have come. Some might have applied for refugee status, and some might have had their asylum claims rejected. Some may be stuck in detention.

- Participants raised some additional issues relevant to addressing implementation gaps, such as:
 - Capacity-building (building up asylum and protection systems at national and international level); and
 - Balancing national security concerns with refugee/human rights protection.

Good practices

- Participants identified a number of ways in which gaps in the normative framework are being addressed at the national and regional levels:
 - Some regions employ a broader refugee definition than the 1951 Convention, pursuant to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration in the Americas.
 - A number of countries have national legislation that fills gaps in the international framework, addressing people displaced for reasons such as natural disasters and environmental causes, or generalized violence. Argentina, for example, recently adopted legislation providing access to provisional residence permits for people who might not be able to return to their country of origin because of a natural or environmental disaster.
 - Even in the absence of specific legislation, a number of countries provide some form of protection to people fleeing natural disasters, for example. This is sometimes following calls from UNHCR.
 - Mexico is currently developing its national legislation, to include regularization programmes, protection measures to make migrants less vulnerable and guarantee their human rights, and to specifically address statelessness determination. In addition, measures have been taken explicitly to highlight gender-based violence as a ground for asylum. (Note: Mexico has since approved a Law on Refugees and Complementary Protection)
 - A Convention for the Protection and Assistance of IDPs was adopted by the African Union in October 2009, though this is yet to enter into force.
 - There have been several developments in the European Union, including:
 - Entry into force in 2009 of the EU Charter of Fundamental Rights. Article 18 guarantees a broad right to asylum.
 - Article 15C of the EU Qualification Directive which, despite implementation challenges, is a positive provision for people fleeing situations of generalized violence.

Common understandings

- Some common understandings emerged from the session on how to address normative gaps, including to:
 - Consolidate the existing normative framework by exploring what the norms currently say, and where there are gaps;
 - Examine the complementarities of different bodies of law;

- Consider where the human rights baseline is for people displaced in contexts not covered by existing instruments – the ‘elementary considerations of humanity.’ This relates not only to who should be covered, but also what their basic needs and rights are (e.g. health, education, self-reliance);
- Further explore existing good practices, at national and regional levels;
- Address not only the need for national responses but also regional arrangements and regional preparedness, particularly with regard to sudden onset disasters; and
- Overall, consider how to fill normative gaps at the international level, based on existing good national and regional practices and drawing on other relevant bodies of international law. Explore whether the approach taken in the Guiding Principles on Internal Displacement could be useful in addressing normative gaps.