

Concept Note on the Protection Cluster and the Protection of Civilians in the Democratic Republic of the Congo (DRC)

History and UNHCR's mandate as Cluster Lead

In November 2005, an OCHA-led mission visited the DRC to discuss the application of the cluster approach. Based on the mission's findings and recommendations, the Humanitarian Coordinator and members of the Humanitarian Advocacy Group (HAG) in Kinshasa decided to implement the cluster approach in order to fill the gaps identified and strengthen the overall humanitarian response in the DRC. In recognition of the need to improve the impact of humanitarian action in all sectors, cluster leads were designated for ten clusters and the new arrangements were reflected in the 2006 Humanitarian Action Plan (HAP).

In general, the Inter Agency Standing Committee (IASC) globally designated cluster leads retained their responsibilities at the national level. UNHCR was duly appointed Protection Cluster lead at national level and in the provinces where it is present. The Protection Cluster was initially co-chaired by the then MONUC Civil Affairs Section (CAS) although the latter relinquished co-chairmanship in the summer of 2008¹.

Contextual analysis of the DRC

Protection and humanitarian actors note minimal change in the climate of the DRC with continued armed military incursions by internal and external elements as well as fighting with the national army, *Forces Armées de la République démocratique du Congo (FARDC)*, especially in the eastern parts of the country. Over 1.7 million people remain displaced in Eastern DRC as a consequence of conflict with a steady increase since the end of 2010.

The first quarter of 2011 was marked by the re-configuration of the FARDC in the Kivus which continues to grapple, amongst others, with the challenges of the CNDP parallel chain of command. The movement of the FARDC during this restructuring exercise has left certain areas open to the attacks of armed elements such as the FDLR, the ADF/NALU and the Mai-Mai; the latter taking advantage of existing conflict and natural resources. In Oriental Province, the Government's position of attributing attacks to "bandits", while downplaying the presence of the LRA, has further compromised efforts to address this growing threat effectively. While LRA activity was thought to be in decline at the end of 2010, the beginning of 2011 saw a resurgence of attacks.

While all parties to the conflict commit exactions on the civilian population, the FARDC and the PNC, the latter to a lesser extent, remain the main perpetrators of human rights violations further weakening the state's ability to protect its civilians. Forced labour, extortion, severe physical abuse, theft and sexual and gender based violence are some of the abuses committed first and foremost by the state military and police as well as by armed groups. Women and children remain the most vulnerable groups, with the mass rapes in Walikale in September 2010 and Fizi in early January 2011 and recently in June 2011, as well grave violations against children which include recruitment of girls and boys by armed groups and the Congolese army. Widespread and systematic sexual and gender based violence has also become a defining feature of the conflict and insecurity that persists in the DRC with rapes perpetrated by civilians coming to the fore.

¹ This was due to MONUC's own mandate issues and some discomfort felt by certain NGOs and organisations vis-à-vis the Cluster's independence and humanitarian character. CAS remains a key actor within the Protection Cluster, both at the national and provincial levels.

Protection concerns and challenges to date

Despite improved coordination, more targeted response and better resource mobilisation, many protection challenges remain, as enumerated below:

Insecurity and inaccessibility

- Incursions, military operations and human rights abuses following armed element presence, have caused multiple displacements, further aggravating the vulnerability of the population.
- A trend of “self-defense” (vigilante) groups set up to protect themselves against state and non-state perpetrators has since emerged. Light arms are known to be circulating amongst the civilian population, thus further complicating the situation.
- Difficulties in accessing persons of concern due to both logistical challenges and security restrictions as well as shrinking humanitarian space due to military operations and attacks on humanitarian actors further limit the reach of service providers.

Impunity

- Despite the Government’s zero-tolerance policy, human rights violations continue to go unpunished, e.g. the 2006 International Criminal Court (ICC) arrest warrant for General Bosco Ntaganda (responsible for the forcible recruitment and training by rogue army officers and armed groups in the Kivus which included considerable numbers of children below 18) has not been carried by the Government, allegedly to avoid endangering the peace process.
- Weakness in state/judicial structures, corruption and the lack of political will continue to jeopardise efforts in bringing perpetrators, especially those who have committed serious/grave human rights violations, to justice.
- The population has little confidence in the justice system while fearing reprisals from perpetrators. The climate of impunity perpetuates the cycle of violence, forces the population to arm and defend itself and further weakens efforts to resolve conflict through legal and mediatory measures.

Security Sector Reform

- Disorganised, factionalised and unpaid military have led to the extortion and victimisation of the local population. Fighting continues amongst the ranks on position/military grade.
- The FARDC are also faced with logistical limitations, vis-à-vis deployments and their ability to combat rebel forces.

Combating Sexual Violence

- Unresolved issues within security sector reform and the climate of impunity hamper prevention of and response to SGBV.
- Few survivors come forward for fear of reprisals by perpetrators and marginalisation by their own communities. There are gaps in socio-economic support and reinsertion of rape survivors.
- The root causes of gender based violence go deeper than conflict, insecurity and displacement and need a holistic, all-encompassing approach.

Continued cycle of violence

- The DRC remains a complex operation due to the multitude of protection issues underlined by latent inter-ethnic tensions and ongoing resource conflicts.
- While headway has been made following the inter-community hostilities in Equateur in 2009, land and resource conflicts remain stumbling blocks to durable peace efforts.

- Cycles of repeated violence include a mix of political and criminal motives spreading to other more stable areas.

The Protection Cluster: Progress and evolution

UNHCR's leadership, responsibilities and expectations of the Cluster

UNHCR as Protection Cluster lead brings in the agency's protection expertise and long-standing experience with displacement issues. In the course of the years, due to its structure, the nature of the protection problems in the DRC and its initial successes, the Protection Cluster has become a forum in which *all civilian protection issues are discussed*.

Cluster leadership, however, **is time and resource intensive**. UNHCR as agency lead is expected to cover a wide range of tasks from secretarial duties (drawing up minutes of meetings, drafting position papers and advocacy letters), coordination activities (orienting the agenda, preparing for the Humanitarian Action Plan and Pooled Fund Allocations) to substantive protection work (advocacy with MONUSCO and local authorities). Recent development also has seen more and more responsibilities designated to Cluster leads, particularly on an operational and programmatic level, such as monitoring and evaluating protection activities, following up on protection projects financed by the Pooled Fund and interfacing with donors.

Leadership must also be seen at a political level, where neutrality and accountability, particularly the notion of "provider of last resort" is concerned. Over and above the technical, day to day functioning of the Cluster, UNHCR is called upon to represent and defend the interest/position of the Cluster at high level inter agency forums such as the Humanitarian Advocacy Group (HAG), the Senior Management Group on Protection (SMG-P) as well as before media and humanitarian observers. The recent Refugees International report on UNHCR's responsibilities vis-à-vis internally displaced persons is an illustrative example of how our responsibility as providers of last resort is scrutinised.

The current staffing of the Protection Cluster includes a dedicated full time team in Kinshasa, consisting of a Protection Officer at P3, a JPO at P2 and a National Officer. Between June 2010 and July 2011, the Cluster received a Support Officer in the Kivus and a Co-facilitator in Province Orientale from OXFAM GB through a project funded by ECHO². The project has since ended with OXFAM retreating from co-facilitating, a decision made by the organisation at a global level. In the field, Cluster coordinators/leads are not full time and often have to balance the demands of their day to day protection tasks and that of the Cluster's.

Membership, collaboration and partnerships

In a complex operational environment, the Protection Cluster has allowed protection actors with divergent capacity, geographical presence and interest to **prioritise activities mobilise resources efficiently and present an overall, nationwide strategy with a global perspective while taking into account province-specific issues**. With this common vision, **the Protection Cluster allows protection actors to speak and advocate with one voice** before a number of key actors such as the Humanitarian Coordinator, peace keepers, the Congolese government as well as donors.

The Protection Cluster comprises of the Child Protection Working group led by UNICEF, and at one time, a Sexual Gender based Violence (SGBV) Working Group headed by UNFPA. In view of the National Strategy on Combating Gender Based Violence, the Cluster now engages with the Sexual Violence Unit in MONUSCO as well as the five pillars within the Strategy in so far as SGBV related information sharing and co-ordination activities are concerned³. An example of

² The European Commission's Humanitarian Aid Department

³ For more information on the National Strategy, see the Briefing Note on SGBV

such collaboration in this regard is the Emergency Response Cell (*Cellule d'Urgence*) set up within the South Kivu Cluster, where the latter engages actively with actors within the National Strategy in responding to SGBV within a humanitarian context.

Partnerships within the Cluster have been open and inclusive although issues of NGO independence, presence and capacity of local actors and collaboration with MONUSCO (in some cases, lack of it) continue to be discussed.⁴ The presence of donors in the Cluster has also been a subject of debate and requests by donors to be part of the Cluster have been treated on a case-by-case basis. The Protection Cluster has nevertheless been credited as the most consultative of Clusters, where strategies, advocacy notes and position papers are endorsed and validated by members of the Cluster.

Cluster Strategy, activities and achievements

In the Humanitarian Action Plan for 2011, the Protection Cluster has outlined the following objectives to meet foreseeable needs and developments in the course of the year in reference to the lessons learnt/good practices in 2010:

- **Harmonise data collection and analysis to improve prioritization of protection activities;**
- **Prevent, anticipate and reduce protection risks to populations affected by insecurity and conflict;**
- **Reinforce rapid response capacity of actors to protection needs; and**
- **Improve access to justice, assistance, rehabilitation and restitution to victims.**

In this respect, some of the notable Cluster achievements include the following:

- Members of the Protection Cluster have coordinated monitoring in return areas, participated in ongoing inter-agency needs assessments and developed contingency plans as well as standards and indicators for the evaluation of protection activities. Protection monitoring piloted by UNHCR, for example, is now in place and operational in North Kivu, South Kivu, Province Oriental, Katanga and Equateur. While challenges remain, these cross-cutting activities are hoped to facilitate the provision of immediate and predictable response to protection needs.
- There has been improved coordination on protection-related issues, between the humanitarian community and the military wing of MONUSCO. The Protection Cluster has become the main forum where the military wing of the Mission regularly exchanges views with the humanitarian agencies.
- In efforts to respond to the humanitarian consequence of impunity and problems within the security sector, actors within the Protection Cluster have carried out capacity building of civil and military judicial authorities on the rule of law and administration of justice, as well as training and sensitization for the FARDC and the PNC.
- In respect of thematic issues and responses, the cluster has also sought to prevent the recruitment of children into armed forces and groups through its partnership and collaboration with the Child Protection Working Group. The Protection Cluster has also been involved in the implementation of Resolution 1612 of the Security Council concerning children affected by armed conflict; UNHCR's Protection Monitoring in particular, has sought to include aspects of the 1612 monitoring requirements. With concrete collaboration and presence of the Sexual Violence Unit and the components to the National Strategy on Combating Gender Based Violence in the Protection Cluster, response to SGBV is expected to be more coordinated and holistic. Actors in the de-mining sector have also used the forum in order to

⁴ Collaboration with MONUSCO is discussed here below

appeal for a better understanding of the humanitarian response to the issue of mines and unexploded ordinances (UXO).

- Various practical tools have since been developed in terms of best practices, indicators and monitoring and evaluation. With these in place, the Cluster will have more a unified and harmonised basis/foundation for its strategy and responses.

Cluster challenges and constraints

In so far as coordination is concerned, the Protection Cluster faces the challenges below:

- Active and informed participation of all members and stakeholders: there is still a need to **reinforce understanding of protection as a concept (jurisprudentially and legally), strategically and operationally in a humanitarian/urgent context**. Without a common base, discussions can be difficult to steer and decisions difficult to be undertaken during meetings or strategic planning sessions.
- Multiple coordination and funding mechanisms, where humanitarian, transitional and stabilisation activities co-exist in the same areas. The SGBV coordination mechanism is an example how the Protection Cluster finds itself having to work with the five pillars/components of the Comprehensive/National Strategy in order to ensure that SGBV remains in the humanitarian domain without creating extra layers in the coordination structures.
- **Rapid response to urgent humanitarian crisis**. While actors continue to respond to urgent crises, the Protection Cluster must prove that it brings added value to activities on the ground. The incidents of mass rapes in Walikale last year and in Fizi this years show gaps in the following areas:
 - the timely sharing and dissemination of credible information;
 - efficient referencing of cases to relevant partners; and
 - mid and long term follow up which could in turn lead to prevention mechanisms being put in place following certain incidents.
- Measuring impact of protection activities continues to be a challenge with further pressure from donors who demand more practical indicators to facilitate monitoring and evaluation. The results of protection activities are more abstract, especially in areas of ongoing conflict although it is arguable that communities who are better equipped to protect themselves and in turn empowered, will be more receptive to other humanitarian interventions such as health, nutrition or education.
- Dedicated human resource, not only for Cluster leadership and co-facilitation but also for members participating in Cluster meetings and activities. Unless there is support and buy-in from their agencies, Cluster members/participants do not always have sufficient decision making capacity nor the time to involve themselves in Cluster efforts (meetings, review of documents, strategic planning).

Collaboration with MONUSCO (previously MONUC) and the UN System-Wide Strategy on the Protection of Civilians (PoC Strategy)

With the presence of MONUSCO'S civilian and military sections, the Protection Cluster avails itself to **a direct line of contact** with the sole entity in the international community that can physically ensure the deterrence of violations from taking place. While concerns of collaborating with the military were raised by some humanitarian actors in the Protection Cluster in relation to maintaining their humanitarian principles of neutrality and impartiality **this cooperation has borne fruit** as the Cluster has been **privy to relevant security information** that MONUSCO possesses, **discusses protection/prevention/reaction issues** that would be **communicated to**

the MONUSCO command structure, and has been able to directly **solicit the support of MONUSCO** on occasions where civilian populations were at risk.

Meanwhile, the UN Policy Committee chaired by the Secretary General tasked (the then) MONUC and UNHCR with the development of an overarching strategy for the UN system in DRC that includes a shared vision of the UN's objectives and a set of agreed results, timelines and responsibilities for tasks critical to consolidating peace in the country (June 2009). In this framework, MONUC and UNHCR were requested to contribute to this strategy with the development of a UN system-wide strategy on the protection of civilians, through the protection cluster. The PoC strategy was finalised and endorsed by the SRSG and the UNHCR Representative on 7 January 2010.

This PoC Strategy aims at addressing the needs of those civilians who are exposed on a daily basis to the consequences of hostilities and violations by armed groups, with a particular attention to the situation of women and girls. The strategy **builds on already existing strategies** such as the then UNSSSS (now ISSSS) and STAREC, and the Comprehensive Strategy for Combating Sexual Violence in DRC (pre-cursor to the National Strategy for Combating Gender Based Violence in the DRC).

The UN-System Wide Strategy for the Protection of Civilians in the DRC is articulated around four objectives:

1. Crosscutting tool: **Harmonize data monitoring, analysis, dissemination and monitoring and evaluation (M&E) systems**, with a view to improving the prioritization of protection activities
2. **Prevent, mitigate and anticipate protection risks** on civilians including IDPs
3. **Improve access to assistance, justice, the compensation, rehabilitation and redress of victims**
4. **Promote the rule of law**; support the restoration of State authority, and the implementation of durable solutions

Achievements under the PoC strategy:

- The UN System Wide Strategy on the Protection of Civilians renders MONUSCO's mandate operational amongst others in terms of responsibility and accountability. Collaboration with the Protection Cluster has ensured that MONUSCO's approach has the protection of civilians at heart. Apart from reiterating the concept of "do no harm", the Cluster collaborates with MONUSCO in identifying areas of deployment via the Protection Matrix. The Cluster had also advocated for the conditionality policy vis-à-vis assistance to FARDC to be put in place and continues to monitor the developments.
- With the UN System Wide Strategy in place, the Protection Cluster can move away from formal "advocacy" vis-à-vis MONUSCO towards more purposeful collaboration, through the latter's presence in the Protection Cluster meetings and the Cluster (lead's) presence in the Protection Working Group and Senior Management Group for Protection. Joint planning tools with MONUSCO in the form of the Joint Protection Matrices also strengthen collaboration and frank dialogue between humanitarians and the Force through open discussions on needs, priorities, capacities and expectations.
- **Early Warning** mechanisms have also been put in place by MONUSCO CAS (Community Alert Networks using mobile phones) and the NGO CRS (using HF Radios) in close consultation with the Protection Cluster, especially where risks to the focal points and civilian population is concerned.

Way forward and outlook into 2012

In view of lessons learnt and an assessment of the needs and constraints as outlined above, UNHCR as Protection Cluster lead has prioritised its efforts around the following points:

Reinforced leadership through human resource and investments in existing capacity

- UNHCR as Cluster lead has received funds pursuant to the Pooled Fund initiative in reinforcing all Clusters in the DRC, where it is looking to recruit two P3 officers dedicated to the running of the Cluster in Bukavu (South Kivu) and Bunia (Province Oriental). There are also provisions for a data manager which will assist the Cluster in various aspects of information collection. This is in addition to the P4 Cluster Coordinator positions created for the Kinshasa and Goma operations.
- The Cluster will tap into the Global Protection Cluster Working Group's resources; working closely with them on issues such best practices, evaluation of protection activities and indicators, rapid response tools, donor advocacy and protection mainstreaming.
- Liaising with senior management, programme and human resources in terms of budgetary planning and apprising them of Cluster management needs.

Improve the Cluster's response to urgent humanitarian crisis while building in preventive measures through:

- More practical reporting and timely sharing of credible information. This includes setting up an immediately deployable Cluster evaluation team and ensuring protection actor presence in the Inter-Cluster Roster;
- Ensuring contingency planning and updating (through follow up and monitoring of certain areas of concerns);
- Mapping out and coordinating existing early warning mechanisms set up by various NGOs and recently MONUSCO CAS.

Ensure durability of responses

- Reinforce knowledge and capacity of local actors as primary stakeholders. Expertise must be shared (through encouraging participation in meetings and conducting training/workshops) to ensure continuity and durability of protection programmes;
- Involve and consult the local community at all levels in order that they can develop and take ownership in mechanisms put in place to protect themselves (e.g. early warning);
- Evaluate and update the UN System Wide Strategy in collaboration with MONUSCO and OCHA to ensure that it remains relevant while streamlining strategies with other initiatives (stabilisation, peace building) in view of the Mission's potential change in mandate in the near future.

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