

## THE PROTECTION OF INTERNALLY DISPLACED PERSONS AND THE ROLE OF UNHCR

### I. INTRODUCTION

1. For over thirty years, UNHCR has been operationally involved with persons forcibly displaced within their own countries. As early as 1972, the Economic and Social Council (ECOSOC) of the United Nations called on the High Commissioner to extend assistance both to refugees returning then to southern Sudan and “persons displaced within the country”<sup>1</sup>. In affirming this resolution, the General Assembly commended UNHCR’s “efficient role in the coordination of relief and resettlement operations of refugees and other displaced persons”<sup>2</sup>. Initially, the Office engaged with internally displaced persons (IDPs) in the context of refugee or returnee situations, still in the throes of armed conflict. As the humanitarian imperatives of internal displacement asserted themselves in their own right, UNHCR refined its organizational response to the problem and its activities became increasingly welcomed by the international community.

2. Other resolutions would go on to underscore the value of putting in the service of the internally displaced UNHCR’s expertise in providing protection, assistance and finding solutions for refugees. More and more, the Office was called upon to act, and, over time, provided protection and assistance to internally displaced persons in Africa including in Angola, Sierra Leone, Somalia, Mozambique, Chad, Ethiopia and Zimbabwe. In Latin America, internally displaced persons in Colombia, El Salvador and Nicaragua have benefited from the activities of the Office. In the Middle East, Iraq, and Lebanon have seen substantial UNHCR IDP operations and, in Central Asia, Afghanistan. In Europe, UNHCR’s involvement with IDPs in the Balkans is well documented, and, today, the Office works with IDPs in the Russian Federation and the South Caucasus. UNHCR’s longest standing operation has been running in Sri Lanka since the early 1990s<sup>3</sup>. In all, the Office is today involved in IDP operations in some 22 countries across the world<sup>4</sup>.

3. UNHCR’s response nevertheless attracted some criticism for its selectivity. The global response to what was increasingly recognized as an acute humanitarian crisis was perceived as weak and beset with critical gaps. In September 2005, responding to a call by the General Assembly for a more predictable, effective and accountable system<sup>5</sup>, the Inter-Agency Standing Committee<sup>6</sup> (IASC) agreed on the

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<sup>1</sup> Economic and Social Council (ECOSOC) Resolution 1705 (LIII), 27 July 1972. See also ECOSOC Resolution 1655 (LII), 1 June 1972.

<sup>2</sup> United Nations General Assembly Resolution 2958 (XXVII) 12 December 1972.

<sup>3</sup> In 1991, UNHCR received authorization from the United Nations Secretary-General to engage with IDPs in the Sri Lanka operation. For a general description of UNHCR’s IDP involvement, see UNHCR, “Operational Experience with Internally Displaced Persons”, 1 September 1994.

<sup>4</sup> UNHCR, “UNHCR IDP Operations: Current Situation and Outlook”; under preparation, [February] 2007.

<sup>5</sup> The United Nations General Assembly, in its Resolution 58/177, 22 December 2003, emphasized “the importance of an effective, accountable and predictable collaborative approach” and called for “the need to strengthen further inter-agency arrangements and the capacities of the United Nations agencies and other relevant actors” to meet the “immense challenges of internal displacement”.

<sup>6</sup> This is the primary framework for inter-agency co-ordination of humanitarian assistance which brings together key United Nations and non-United Nations partners. The IASC was established in 1992 in response to United Nations General Assembly Resolution 46/182, 19 December 1991. Its full members are the executive heads of the United Nations Development Programme (UNDP), United Nations High Commissioner for Refugees (UNHCR), Food and Agricultural Organization (FAO), World Health Organization (WHO), World Food Programme (WFP); United Nations

establishment of the “cluster approach”<sup>7</sup>. The arrangement was aimed at creating more predictable and accountable leadership in a total of nine sectors of response<sup>8</sup>. In line with its expertise and experience, and given its strong commitment to become a predictable and dependable partner in responding to the plight of the internally displaced, UNHCR agreed to assume the lead role for the clusters of protection, emergency shelter and camp coordination and management for conflict-induced IDPs.

4. UNHCR’s new commitment has given rise to a number of questions. Above all, the State stakeholders have sought to understand UNHCR’s long-term vision and its implications in several key sectors. With regard to protection, a number of issues have also come under scrutiny in the dialogue both with States and other players, notably the inter-agency Protection Cluster Working Group, including the meaning, scope and content of the Office’s responsibilities.

5. To address the strategy issue, the Office recently circulated a draft paper which sets out the policy and the vision for UNHCR’s involvement with internal displacement and elaborates a range of organizational implications, stretching from the structure of the Office and its human resources’ development to the mobilization of resources and a new budgetary system<sup>9</sup>. Complementing that paper, the present note focuses on the protection aspects of UNHCR’s role and seeks to clarify the more important issues pre-eminent in debate at this point. Starting with the basis for the Office’s involvement, the so-called “mandate” question, the paper reiterates that the responsibility to protect IDPs is first and foremost that of national States. Given that the Statute of the High Commissioner’s Office does not include a specific responsibility for IDPs, this paper examines the long-established affirmation by States, most notably through Executive Committee (ExCom) Conclusions and General Assembly Resolutions, upon which the authority for its involvement has been grounded. This paper explains the meaning of protection, both normative and operational before following with a consideration of the cluster approach and its implications. While explaining the similarities with the Office’s protection activities for refugees, the paper highlights the benefits of UNHCR’s involvement for the IDPs themselves. It will also highlight the “dividends” which accrue to refugee protection, before underlining the differences which must nevertheless command attention. In this respect, the concerns that its involvement with IDPs could adversely impact UNHCR’s ability to fulfill its mandated responsibilities for refugees are addressed. UNHCR is mindful of these risks, and the Office’s mitigation strategies are explained accordingly. In closing, the paper returns to UNHCR’s protection role within the cluster approach and concludes by illuminating a number of challenges which remain to be addressed as that role is further developed.

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Population Fund (UNFPA); United Nations Office for the Coordination of Humanitarian Affairs (OCHA); and United Nations Children Fund (UNICEF). Standing invitees (other agencies and NGO consortia) also form part of the IASC.

<sup>7</sup> The cluster approach was welcomed by the IASC Principals in December 2005. For details see IASC, “Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response”, 24 November 2006.

<sup>8</sup> These nine sectors and the designated global cluster lead are: Nutrition (UNICEF), Health (WHO), Water/Sanitation (UNICEF), Emergency Shelter (UNHCR for IDPs from conflict, and IFRC (convener) for disaster situations), Camp Coordination/Management (UNHCR for IDPs from conflict, and IOM for disaster situations), Protection (UNHCR for IDPs from conflict, and UNHCR/OHCHR/UNICEF to consult for disasters and civilians affected by conflict, other than IDPs), Early Recovery (UNDP), Logistics (WFP), Emergency Telecommunications (OCHA/UNICEF/WFP). See below, footnote 30, for further information on the agencies which took leadership responsibilities within the protection cluster.

<sup>9</sup> UNHCR, “Policy Framework and Implementation Strategy: UNHCR’s Role in Support of an Enhanced Humanitarian Response to Situations of Internal Displacement”, 9 February 2007 (hereinafter “UNHCR’s Policy Paper”). See also EC/57/SC/CRP.18 of 8 June 2006 “UNHCR’s Expanded Role in Support of the Inter-Agency Response to Internal Displacement Situations” as well as papers submitted to UNHCR Informal Consultative Meetings dated 11 January 2006, “UNHCR’s Engagement Within the Inter-Agency Cluster Leadership Approach”, and dated 12 September 2006 “UNHCR’s Expanded Role in Support of the Inter-Agency Response to Internal Displacement Situations”.

## II. THE BASIS FOR UNHCR'S INVOLVEMENT WITH IDPS

6. The protection of IDPs, as persons displaced within their own country, is primarily the responsibility of the national State concerned<sup>10</sup>. Many Governments indeed take seriously their sovereign responsibilities in this respect. The work of UNHCR and other international organizations in rallying to a humanitarian crisis of internal displacement in these instances will thus be complementary to sovereign responsibilities which evidently must be discharged.

7. The reality has nevertheless been that humanitarian responses to IDP crises have overall been characterized by neglect, gaps or failures. These are particularly acute in situations of armed conflict, during which governments may not be in a position to ensure the necessary protection. The displaced may be in areas of territory over which the authority of the State is absent, or difficult to enforce, and State policies may themselves cause or aggravate forced displacement or hinder humanitarian work. Resource and capacity deficiencies can and usually will curtail the ability and scope of the authorities to respond. Where individuals are in need of protection and assistance, and States are unable or unwilling to protect, the role of the international community in supporting the protection of basic rights and ensuring that needs are addressed has proved both imperative and pivotal<sup>11</sup>.

8. United Nations General Assembly Resolution 428 (V) of 1950 which established the Office of the United Nations High Commissioner for Refugees does not confer a specific mandate for IDPs on the organization. Article 9 of the Statute of the Office, annexed to the Resolution, however authorizes the High Commissioner to “engage in such activities (...) as the General Assembly may determine, within the limits of the resources placed at his disposal.” Consistent with this provision, the General Assembly has, over the years, broadened the competence of the Office to include groups of forcibly displaced persons who do not fall, individually or collectively, within the scope of the refugee definition in the Statute.

9. The resolution on southern Sudan mentioned before is an early example. In the context of the voluntary repatriation of refugees to southern Sudan, governments, UNHCR, other agencies and international organizations were urged to provide assistance for the voluntary repatriation, rehabilitation and resettlement of refugees returning from abroad and to “persons displaced within the country”<sup>12</sup>. In the case of UNHCR, in both this and the other resolutions that followed, its expertise in providing international protection and humanitarian assistance and finding solutions for refugee problems was seen to be of particular relevance for the situation of the internally displaced.

10. From the very onset, some States were concerned about perceived interference with national sovereignty or unwarranted interventions. These concerns were addressed through the requirement that UNHCR's engagement, first, would be at the request of the Secretary-General or the competent principal organs of the United Nations. Second, the consent of the State concerned had to be given. These threshold criteria are reiterated in a number of General Assembly Resolutions, notably 47/105 (1992) and 48/116 (1993) and 49/169 (1994). For its part, the Executive Committee in 1994 recognized the Office's role for internally displaced persons and affirmed that General Assembly Resolution 48/116 provided an appropriate framework for involvement.<sup>13</sup> Internal UNHCR operational policies were elaborated taking these criteria into account.

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<sup>10</sup> Paragraph 19 of the UNHCR Policy Paper, see footnote 9, expressly underscores this principle and says “UNHCR stands ready to work with States in fulfilling this responsibility”.

<sup>11</sup> The Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 1998, also stress that while “[t]he primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities”, “[i]nternational humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced.” See Guiding Principle 25.

<sup>12</sup> See footnotes 1 and 2.

<sup>13</sup> Executive Committee, Conclusion No. 75 (XLV), 1994, on Internally Displaced Persons.

11. Today, the foundation for UNHCR's engagement with IDPs is widely attributed to United Nations General Assembly Resolution 53/125 (1998), paragraph 16 of which reaffirms "support for the role of the Office of the High Commissioner in providing humanitarian assistance and protection to internally displaced persons, on the basis of specific requests from the Secretary-General or the competent organs of the United Nations and with the consent of the State concerned, taking into account the complementarities of the mandates and expertise of other relevant organizations", and emphasizes that "activities on behalf of internally displaced persons must not undermine the institution of asylum." The resolution thus repeats the main terms of engagement set out in earlier General Assembly resolutions. It underscores UNHCR's mandate for refugees and stresses that the institution of asylum should not be undermined through the Office's work with IDPs. The situations in which UNHCR's could engage are not circumscribed and the importance of UNHCR working in partnership with other relevant organizations is particularly emphasized.

12. Noting this resolution, the Executive Committee reaffirmed its support for UNHCR's role with internally displaced persons on the basis of the "criteria specified by the General Assembly"<sup>14</sup>. In 2005, the Committee explicitly supported an expanded role for UNHCR in situations of internal displacement when it welcomed "the proposals made by the Secretary-General and United Nations General Assembly to strengthen the United Nations humanitarian system". It took note "of deliberations by the Inter-Agency Standing Committee aimed at following up on the outcomes of the response review and to bring about greater consistency in the response to humanitarian emergencies" and encouraged "UNHCR to continue to explore the feasibility of taking on coordination responsibilities for clusters related to internally displaced persons' protection, camp management and shelter in conflict situations as part of a broader United Nations coordination effort in support of the United Nations humanitarian coordinators, with a view towards ensuring a more effective, predictable, and timely response to humanitarian crises, including a system of accountability"<sup>15</sup>.

13. The cluster approach is not in itself a mandate-giving mechanism. It is an arrangement through which the existing mandates of international organizations are brought together in a coordinated and predictable fashion. As early as 1992, the General Assembly had encouraged the Office to "work closely with the Under-Secretary-General for Humanitarian Affairs, as well as with United Nations organisations and governmental, intergovernmental or non-governmental bodies, to assure a coordinated and effective response to complex, humanitarian emergency situations"<sup>16</sup>. Of course, UNHCR's IDP involvement predates the cluster approach and many ongoing IDP operations are still not brought within the cluster approach as of today. The cluster approach itself is, indeed, still being developed. UNHCR's commitment to the approach is however resolute. Moreover, it sees in its determination to be a more predictable and reliable player the opportunity to consolidate and move further forward its role on behalf of IDPs and to contribute to greater coherence within the UN humanitarian system<sup>17</sup>. Both its strategy paper referred to earlier and the present note are inspired by the expectation of enhancing the Office's dialogue with States and other stakeholders towards this objective.

### III. THE LEGAL FRAMEWORK FOR IDP PROTECTION

14. The internally displaced, as all persons under the jurisdiction of a State, are entitled to the full protection of national laws. Additionally, under international human rights law, States have the obligation to respect, protect and fulfill the human rights of their citizens and other persons on their territory or under their

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<sup>14</sup> Executive Committee, Conclusion No. 87(L), 1999, General Conclusion on International Protection.

<sup>15</sup> Executive Committee, Conclusion No. 102 (LVI), 2005, General Conclusion on International Protection.

<sup>16</sup> United Nations General Assembly Resolution No. 47/105 (1992), 16 December 1992.

<sup>17</sup> Paragraph 9 of UNHCR Policy Paper, see footnote 9, says: "UNHCR is fully supportive of the humanitarian reform process, firmly committed to the task of establishing an enhanced response to the needs of IDPs and determined to exercise the responsibility which it has assumed in relation to such populations."

jurisdiction. Furthermore, in situations of armed conflict, international humanitarian law applies. Thus, national law, together with international human rights law and international humanitarian law, forms the basic legal framework for the protection of IDPs.

15. Among the international human rights instruments that merit mention as especially pertinent to the protection of IDPs, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) stand out. The ICCPR in particular declares certain fundamental rights as not derogable, including the right to life; freedom from torture or cruel, inhuman and degrading treatment or punishment; freedom from slavery or to be held in servitude; recognition as a person before the law; and non-discriminatory treatment. Where derogation may not be precluded, the ICCPR requires that the “public emergency which threatens the life of the nation” should be officially proclaimed and the derogation must be strictly required by the exigencies of the situation. These universally applicable instruments<sup>18</sup> are buttressed by many others, universal as well as regional, concerning more specific fields of rights or which relate to specific groups.

16. Turning to international humanitarian law, the principal instruments are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. The four Geneva Conventions and Additional Protocol I form a normative framework for the overall protection of civilians during international armed conflict. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) is of particular relevance to the protection of IDPs. Both treaty-based and customary international humanitarian law oblige States Parties to distinguish at all times, in a conflict, between the civilian population and combatants, and to direct operations only against military objectives.

17. Non-international armed conflicts are covered by Article 3 common to the Four Geneva Conventions and Additional Protocol II. Together, they provide for the protection of civilian populations against, *inter alia*, being objects of attacks; displacement unless for safety or imperative military reasons; violence to life and person, in particular murder of all kinds, mutilations and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault; corporal punishment; taking of hostages; and collective punishment. International humanitarian law is binding on both States and organized armed groups.

18. The Guiding Principles on Internal Displacement issued in 1998,<sup>19</sup> should also be specially mentioned. While they do not constitute an independent legal source, they “reflect and are consistent with international human rights and humanitarian law and analogous refugee law<sup>20</sup>. Moreover, the United Nations General Assembly has recognized them “as an important international framework for the protection of internally displaced persons”.<sup>21</sup> The principles are thus an “important tool”<sup>22</sup> and authoritative framework for the identification of the rights, guarantees, and standards relevant to the protection of individuals in situations of internal displacement.

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<sup>18</sup> See Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, A/CONF.157/24 (Part I), chap. III, Article 5.

<sup>19</sup> See the Guiding Principles on Internal Displacement, see at footnote 11.

<sup>20</sup> Guiding Principles on Internal Displacement, see footnote 11, Introductory Note by the Representative of the Secretary-General on the human rights of internally displaced persons; see also the Introduction to the Guiding Principles which, at paragraph 3, states that: “These Principles reflect and are consistent with international human rights law and international humanitarian law.”

<sup>21</sup> United Nations General Assembly Resolution, A/RES/60/1, 24 October 2005.

<sup>22</sup> See, for example, Commission on Human Rights Resolution 2005/46, E/CN.4/RES/2005/46 (19 April 2005) paragraph 7.

19. Various Security Council resolutions have directed the international community to address IDP situations, and have explicitly placed expectations upon UNHCR in this regard.<sup>23</sup> Security Council resolutions relating to women, children and the protection of civilians more generally are also of relevance to the protection of IDPs. As seen before, there are several United Nations declarations and General Assembly Resolutions which have addressed a range of issues and aspects relating to internal displacement, thereby providing, together with similar instruments of other international or regional bodies, an important body of “soft law” of direct relevance to IDP protection.

#### IV. THE SCOPE AND CONTENT OF PROTECTION ACTIVITIES

20. With a view to promoting a coherent and consistent approach to “protection”, the Inter-Agency Standing Committee (IASC) has defined protection as a function that encompasses all activities aimed at obtaining full respect for the rights of the individual, in accordance with the letter and spirit of the relevant bodies of law, including human rights, humanitarian and refugee law, without discrimination of any kind.<sup>24</sup> Protection activities should first and foremost be designed to protect against threats to life, prevent torture or discrimination, and promote respect for dignity and the preservation of family unity. Protection is also about creating an enabling environment so that these aims have the most reasonable chance, under the circumstances, of being realized.

##### (a) The personal scope of UNHCR’s IDP protection activities

21. UNHCR’s engagement with IDPs within the cluster approach is primarily with those displaced due to armed conflict. In situations where internal displacement is exclusively due to natural or human-made disasters, the IASC arrangements envisage that consultations would be undertaken at the field level among UNHCR, UNICEF and the Office of the High Commissioner for Human Rights (OHCHR), under the overall leadership of the Humanitarian or Resident Coordinator, for agreement on which of the three agencies could best assume the lead role for protection.<sup>25</sup>

22. UNHCR’s activities in co-ordinating the protection cluster will be explained shortly<sup>26</sup>. The personal scope of those activities is however directed for the benefit, first and foremost, of IDPs themselves. So as to ensure their success, the activities will also typically be pursued through supporting the communities hosting IDPs or receiving those returning to their places of origin.

23. In addition to benefiting IDPs, the above approach will also assist UNHCR in fulfilling its responsibilities within the cluster approach for populations who are affected by internal displacement but who are not necessarily displaced themselves. In this respect, it is important to affirm that UNHCR recognizes that affected populations, the definition of which includes persons or communities “at risk of displacement”, fall squarely within the coordination responsibilities it has assumed under that cluster. It acknowledges that questions and indeed even concerns have arisen over this category and the nature and scope of the protection responses and operational activities it entails. The in-built system of consultations alluded to earlier should result in the identification of the appropriate protection-mandated agency, particularly in light of the respective mandate of the OHCHR and the International Committee of the Red Cross (ICRC). Finally, the consent of the State concerned will also have to be given.

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<sup>23</sup> See for example, operative paragraph 11(K) of Security Council Resolution 1244 (1999) on Kosovo, 10 June 1999, which refers to the responsibilities of the international civil presence, and Annex 2, referred to in the body of the Resolution, on UNHCR’s supervisory role with respect to the return of refugees and displaced persons.

<sup>24</sup> The definition was originally developed in a series of ICRC protection workshops involving some fifty human rights and humanitarian actors and later adopted by the IASC. See IASC, “Protection of Internally Displaced Persons-Inter-Agency Standing Committee Policy Paper Series” No. 2, 2000 at p 2.

<sup>25</sup> IASC Principals Meeting, “Cluster Working Group on Protection, Progress report”, 12 December 2005.

<sup>26</sup> See below paragraphs 31 to 33.

(b) The material scope of activities

24. The material scope of UNHCR's activities will depend to a large extent on the needs of the IDPs and the capacities of the government to address these and ensure the rights of the IDPs in the country concerned. The material scope will also depend on the relations of the IDPs with their government or with the *de facto* authorities, the security situation and prospects for long term solutions. Availability of funding and other resources will also affect the possibilities to undertake activities.

25. States remain ultimately responsible for the protection of persons within their territory or jurisdiction. The involvement of UNHCR and other international actors in situations of internal displacement thus does not lead to a delegation of responsibility from the State to international agencies. Its purpose is "not to substitute but to strengthen national efforts for protecting and assisting the internally displaced."<sup>27</sup>

26. In addition to addressing the most urgent humanitarian needs, UNHCR's activities are aimed at capacitating States and affected societies to effectively address displacement challenges. Relying strongly on partnership with the government concerned, national NGOs and other relevant civil society actors and, of course, IDP communities themselves, the Office also works closely with sister agencies of the United Nations system, as well as with intergovernmental and international NGOs within comprehensive multi-sectoral programmes. On the basis of an existing Memorandum of Understanding, UNHCR also engages in and will further develop its strategic partnership with the United Nations Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, with a view to promoting protection of the internally displaced at the global and national levels, as well as advocacy and the mobilization of human and financial resources.

27. UNHCR's protection and assistance programmes for IDPs have traditionally covered a wide range of situations and activities. Since armed conflict and human rights deficiencies or abuses are major causes of displacement, UNHCR's activities have entailed presence in areas affected by serious disturbance or conflict, where physical safety and security are key concerns<sup>28</sup>. These activities focus on monitoring and direct intervention to protect the vulnerable, particularly women and children whose exposure to Sexual and Gender-Based Violence (SGBV) is seriously heightened in conflict situations. UNHCR has also been called upon to organize evacuation of civilians in life threatening situations; negotiate safe passage for relief supplies; intervene with local entities to prevent the involuntary return of the internally displaced to areas of danger; facilitate freedom of movement, including the possibility for persons in danger to seek asylum; and advocate with parties to the conflict, working closely with partners such as the ICRC. Working with UNICEF, advocacy has been directed particularly against child recruitment by armed groups. In some situations, UNHCR has been called upon by the government concerned to monitor or intervene on the treatment of threatened minority groups in order to mobilize preventive action. In 2005, UNHCR was designated as the lead agency for HIV/AIDS for displaced persons, IDPs included, in the UNAIDS division of labour.

28. Enhanced legal protection for IDPs has been pursued through assisting the authorities to develop national legislation and appropriate administrative support arrangements, so as to strengthen the framework for identifying IDPs, promote their non-discriminatory treatment and protect their rights. UNHCR has also aided national authorities and other actors to extend essential services to IDPs, particularly in rural areas, including the delivery of non-food relief items, establishing basic health care facilities, and providing shelter.

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<sup>27</sup> See Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, *Framework for national responsibility*, E/CN.4/2006/71/Add.1, (23 December 2005), paragraph 49.

<sup>28</sup> This is a fundamental point in UNHCR Policy Paper, see footnote 9, which devotes a special part, paragraphs 46 to 48, to the problem.

Capitalizing on UNHCR's experience gained in assisting refugees and returnees, another critical area of support to national authorities has been the strengthening civil registration services by supporting mobile civil registration systems and facilitating access to justice for IDPs through mobile courts.

29. UNHCR undertakes with its partners, protection situation assessments and designs specific responses at the community level. Underpinning these activities are the age, gender and diversity mainstreaming approach, as well as the participatory and community development approach, through which the needs of specific groups of individuals, particularly women, children, the aged and the disabled are identified and addressed. Community projects have been established to enhance coping skills, promote integration with host communities, and strengthen livelihood and self reliance skills, particularly of women. Programmes have also been implemented to provide support for victims of violence, including SGBV through reporting mechanisms, as well as through psycho-social support services. In some operations, the Office, in close collaboration with the authorities, UNICEF and NGOs has helped to set up schools and has sought to address the specific needs of unaccompanied and separated children, including family tracing and reunification. UNHCR has organized and coordinated HIV/AIDS and IDP inter-agency assessment missions in several countries.

30. UNHCR explores durable solutions in consultation with IDPs and the concerned government, as well as with the communities hosting IDPs or to which they will be re-located. Solutions are first and foremost about the restoration of rights. This may be achieved in the context of returning home in safety and dignity or integrating *in situ* or in another place in the country. In this regard, UNHCR has advocated with concerned governments to allow the return of IDPs to their homes, grant land in safe areas for them to settle on, or otherwise facilitate their right to integrate elsewhere. UNHCR has also undertaken substantial activities in regard to restoration of property to IDP returnees, including through facilitating mechanisms to settle competing claims. UNHCR's activities aimed at peace building and reconciliation in the context of returnees will also be of significance to its activities on behalf of IDPs.

31. What do UNHCR's responsibilities and activities comprise under the IASC protection cluster for which it has assumed coordination leadership?<sup>29</sup> It is recalled that, within this cluster, nine specific areas have been identified as in need of a particular response. In regard to each of these, a "focal point" agency has been designated to work in tandem with UNHCR's overall coordination of the cluster.<sup>30</sup>

32. At the global level, UNHCR is responsible for leading the development of standards and policies for IDP protection, helping to build capacities among participating agencies, and coordinating operational support for new and ongoing emergencies. The Office will ensure that all activities performed within the framework of the cluster approach, going beyond those in the protection cluster, are carried out with a "protection lens". There is thus a *droit de regard* over other clusters, to ensure that strategies and activities they promote will not have a negative impact on protection. UNHCR is currently engaged with a number of focal point agencies to foster better understanding of protection responsibilities through tools development. The drafting of a manual for IDP protection is being coordinated by UNHCR as a collaborative effort.

33. As protection cluster lead agency at the country level, UNHCR is both the overall coordinator and the specific focal point for three areas, namely: protection of persons with specific protection needs; prevention and response to threats to physical safety and security and other human rights violations (with OHCHR); and logistics and information management support. UNHCR's responsibilities include ensuring

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<sup>29</sup> See IASC "Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response", see footnote 7; and IASC Principles Meeting, "Cluster Working Group on Protection Progress Report", see footnote 25.

<sup>30</sup> These are rule of law and justice (UNDP/OHCHR); prevention and response to sexual and gender based violence (UNFPA/UNICEF); protection of children (UNICEF); protection of other persons with specific needs (UNHCR); prevention of and response to threats to physical safety and security and other human rights violations (OHCHR/UNHCR); mine action (UNMAS); land, housing and property issues (UN-HABITAT); promotion and facilitation of solutions (UNDP); and logistics and information management support for the cluster (UNHCR).



that cluster members and other operational partners engage in a specific IDP situation in a strategic coordinated fashion, bringing their respective expertise to play in a complementary way to address identified priorities. The coordination function also entails support to and partnership with national authorities and participating agencies to undertake needs assessments, employing a community and participatory approach that incorporates age, gender and diversity considerations. As cluster lead agency, UNHCR is also responsible for ensuring that response strategies maximize capacities and resources among the various actors. After consultation with cluster members and the Humanitarian Coordinator, UNHCR may have to be a “provider of last resort” where critical protection gaps remain and designated partners are unable to act.

## V. RELATIONSHIP BETWEEN IDP PROTECTION AND REFUGEE PROTECTION

### (a) Synergies

34. It is fundamental to the involvement of UNHCR that its protection activities for IDPs are not considered as substituting the right to seek and enjoy asylum across borders. The protection of IDPs is however an imperative in its own right. It is not only an adjunct to refugee protection. In this respect, the experience of UNHCR has clearly demonstrated the importance for persons who are specially vulnerable because of internal displacement to have their safety, freedom, dignity and humanitarian needs addressed under an international protection framework. Although challenging, the involvement makes a real, positive difference in protection terms.

35. UNHCR’s experience has demonstrated that this involvement yields also clear and tangible dividends for refugees, both those in the countries of the IDP operation and those from that country who found asylum in other countries. The collaboration with the authorities can be much closer, bringing with it improved possibilities of access to a wide range of interlocutors not only with ministries and local authorities, but at the very highest levels of Governments. Especially where the benefits of UNHCR’s involvement with the IDPs are clear to see, these contacts can have a positive effect on asylum and protection in the country concerned. In those cases where the citizens of this country may be refugees elsewhere, there are telling advantages to operating in the heart of what may even be their very areas of origin. UNHCR comes to gain much better knowledge of the factors which cause external displacement thereby improving asylum management, especially as concerns eligibility procedures. Even more vitally, the ability to elaborate strategies on and promote prospects for repatriation, in what is thus a comprehensive framework of solutions, is enhanced.

36. This is not to play down the differences to which attention must be drawn and which are explained shortly. It is important to stress, however that IDPs are often displaced for the same reasons as those who have crossed an international border and they will have endured similar experiences. Their needs will, in their most essential character, also often be kindred: basic survival, physical security, prevention and response to SGBV issues and problems deriving from particular vulnerabilities. When delivering protection at the community level, standards of human rights in relation to specific categories of persons, such as women and children, are applicable equally in both contexts. Various types of needs assessment methodologies, including community-based, participatory, and age, gender and diversity approaches, as well as types of responses designed, including projects aimed at supporting host communities, are as applicable to IDPs as to refugees. While there are key differences between the voluntary repatriation of refugees to their countries and of IDPs to their homes, much of the complexities of reintegration at the community level between repatriating refugees and returning IDPs are similar. That, through its more resolute involvement with IDPs, UNHCR gets to recognize and explore all synergies possible, is not only good in strategic terms, but should ultimately work in favour of more space and patronage for asylum itself.

(b) Differences

37. Clearly, the international normative framework is different. While the term “refugee” is a legal categorization denoting a legal status attained by fulfilling certain internationally accepted criteria, no such status exists at the international level for IDPs. The rights and obligations of refugees are regulated quite specifically by binding, universal and regional instruments. As for UNHCR’s role in this context, its mandate for refugees is conferred upon it by the General Assembly, through a Statute in which the term “refugee” is specifically defined, and the functions of the Office for “refugees falling within the scope of the Statute”, stipulated. These functions extend to the Office’s supervisory role for the international treaties relating to refugees, namely, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. UNHCR’s mandate for refugees is thus wide in scope and authorizes UNHCR, as the “lead” agency for refugees, a clear degree of independence of action. This is a distinct, mandated responsibility for which the Office has statutory authority. UNHCR will continue to treat that responsibility with the special importance it calls for and deserves.

38. By contrast, as seen already, UNHCR’s responsibilities for IDPs are still evolving. Evidently, international human rights and humanitarian law principles provide no less an authoritative underpinning for the protection of IDPs. However, the relationship between States and UNHCR and the other protection agencies in the framework of IDP protection is, on the one hand, less specific and more qualified in scope and, on the other hand, is clearly still developing. In both respects, they fall principally within the essentially permissive frameworks underpinned, as seen earlier, by General Assembly and ExCom Conclusions, hence the recognition of the importance of dialogue and cooperation in further developing this framework.

39. It is also recognized that IDP situations will more typically than refugee operations involve UNHCR and other agencies working in tenuous environments including those not controlled fully by the national authorities. The dynamics of interventions will thus have to take into account interaction with armed groups and/or *de facto* authorities. Working with parties to a conflict and ensuring the neutrality of the Office are thus vital, and staff security is often times among the foremost issues of concern. These complexities can make the delivery and measuring of protection successes in IDP situations eminently more challenging than in refugee situations.

40. Approaches to durable solutions may also differ. Although, as seen already, there may be many similarities in the dynamics of reintegration of returning refugees and in the reintegration of returning IDPs, in the refugee context, voluntary repatriation is based on the legal right of an individual to return to his or her own country and the corresponding responsibility of States to accept their nationals. However, IDPs are persons in their own country; and with no international dimension involved, the legal basis for solutions is grounded, *inter alia*, in the right to freedom of movement within a State and to choose one’s place of residence.

41. With regard to the durable solution of local integration for refugees, this takes place in a foreign environment with consequently greater complexities in the integration process, entailing significant components of legal and socio-cultural elements. Integration *in situ* of IDPs takes place inside the individuals’ own country. Questions of legal status, as well as socio-cultural dimensions, should in principle be less complex than those pertaining to refugees. As for resettlement, entailing permanent departure for another country, there is no established programme for IDPs in the same way as understood for refugees.

42. The realization of solutions is also affected by different parameters for when a displacement situation is deemed to cease and when the need for international engagement is at an end. There are clearer indicators for refugee situations than currently exist in the IDP context. While a “refugee” denotes a legal status susceptible to being “ceased” through return and re-establishment in the country of origin, “IDP” as such, is

not a legal status and can, therefore, not be “ceased”. In protection terms, the challenge of “disengagement” is more appropriately linked to the actual ability to access and enjoy full rights of citizens of their country in all the vital sectors.

(c) Preserving asylum and refugee protection

43. Relevant General Assembly resolutions and Executive Committee Conclusions<sup>31</sup> stipulate that “activities on behalf of internally displaced persons must not undermine the institution of asylum, including the right to seek and enjoy in other countries asylum from persecution”. This is also an important component of the vision the Office has elaborated for its IDP involvement.<sup>32</sup> However, the refugee and IDP functions should not be viewed as contradictory of each other. The spirit is rather to uphold the internationally established right to seek and enjoy asylum while synergizing the two sets of responsibilities. This is the light in which UNHCR has developed its strategies for mitigating the possible risk scenarios it has identified. They are explained below.

(i) Where involvement with IDPs could be relied upon to deny individuals who wish to flee the country the right to seek and enjoy in other countries asylum from persecution

44. The involvement of UNHCR or any other agency in providing protection and assistance to IDPs could be seized upon to ground measures on a national, bilateral or regional basis to keep internally displaced or other persons otherwise seeking asylum in neighbouring countries strictly within national borders. Every UNHCR decision on its involvement in an IDP situation will give priority consideration to this risk. The Office will undertake systematic monitoring of the situation both at the start of its decisionmaking and on an ongoing basis throughout the IDP operation. Indicators of the existence of the risk would include:

- Border closure;
- Large-scale deployment of security or immigration personnel at frontiers;
- Policies or measures restricting or preventing departure from the country;
- Denial of admission at borders;
- *Refoulement*;
- Actions to create “safe” enclaves, with people fleeing the conflict being forced to move or return to these areas within a country of origin;
- Denial of access of UNHCR to persons having crossed the border.

45. In any of these cases, the Office would, in close concert with other stakeholders, undertake strong representations to ensure that the option and ability to realise asylum is always available. The Office’s involvement in the protection of IDPs would also be accompanied by providing regularly updated information on the situation in the country of origin for the benefit of asylum operations where the internal displacement is accompanied by cross-border movements of asylum-seekers.

(ii) Where, on the basis of UNHCR’s involvement, countries of asylum seek to limit protection obligations toward refugees and asylum-seekers

46. The special risk that UNHCR has considered in this respect concerns the argument which could be made by asylum countries that United Nations protection response in the country of origin offers an “internal flight alternative”. The Office’s policy and doctrine on this notion does not support the contention that any United Nations operation on behalf of internally displaced persons amount to an alternative to seek asylum.

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<sup>31</sup> For example, Executive Committee Conclusion No. 75(XLV), see footnote 13.

<sup>32</sup> See UNHCR Policy Paper, see footnote 9, paragraphs 17 and 18: “UNHCR will ensure that its role in situations of international displacement does not detract from its mandated activities in relation to refugees, and will seek to maximize the synergies and economies of scale that link the two functions.”

Once again, UNHCR monitoring would be targeted to assessing whether involvement on behalf of IDPs in the country of origin leads to a deterioration of the asylum space for refugees originating from that country, and/or results in pressure to return home. Relevant indicators include:

- Denial of access to asylum procedures;
- Systematic rejection of refugee status or other protected status for those who have left their country of origin as a result of the conflict;
- Decisions by adjudicating bodies that these persons have an “internal flight alternative” and are therefore not in need of international protection;
- Systematic use of detention or restrictions to freedom of movement specifically for people fleeing from a given internal conflict.

47. These indicators would be employed to compare the treatment received by persons fleeing a specific internal conflict and that of other asylum-seekers or refugees, with a view to determining whether the former are subject to a differentiated approach considered discriminatory in light of all the circumstances of the case.

(iii) Risks to the neutrality of UNHCR’s work

48. While, as regards its work for refugees, ensuring the non-political character of its activities is not usually in itself a complicating factor for UNHCR in a country of asylum, it is much more complex in the context of IDP situations, where UNHCR and international agencies have to work in conflict affected areas among parties to the conflict. The Office is very attentive to the risk that it could be perceived as favouring one party or the other by providing protection and assistance to IDPs who might be considered as not “civilian” by one of the parties. Questioning or impugning the neutrality or impartiality of UNHCR in this way could have serious consequences. Humanitarian access to refugee populations being assisted by UNHCR could become restricted and staff security can become an issue. In both instances, the protection role of the Office for refugees in the country becomes at risk of being diminished.

49. UNHCR’s mitigation strategy for this risk lies, first and foremost, in the Office’s scrupulous and transparent demonstration of the impartiality which drives its work. A strategy of networking and open lines of contact and communication with all the parties is therefore critical. Humanitarian operations, especially those involving distribution of material assets, will have to be monitored and overseen closely, including by senior managers. The Office will also monitor the protection situation of refugees to elicit any untoward or negative changes that may follow its involvement with IDPs in the affected country. Among the relevant indicators are:

- Accusations or complaints against UNHCR or the UN system;
- Accountability on distribution and utilization of humanitarian goods and service;
- Enjoyment of rights by refugees not negatively impacted;
- Ease or difficulty in access to refugees and asylum-seekers by UNHCR;
- Attacks against IDP beneficiaries;
- Continuous cooperation with national authorities and other parties to a conflict (regularity, quality and impact of dialogue);
- Attacks against UN/UNHCR staff, assets or facilities;
- Prospects for repatriation of refugees who originated from the country not negatively impacted;
- Confidence-building measures, amnesties, etc.

50. As indicated, each of these scenarios will be the subject of a proactive inquiry and a clear internal decision-making process to ensure that the necessary processes are implemented. Additionally, the IASC Principals have endorsed a mechanism within the cluster approach to ensure timely identification of another agency to assume leadership in protection should UNHCR determine that the protection of refugees or the

right to seek asylum is being undermined. In such circumstances, UNICEF and OHCHR would immediately meet and decide which alternative agency is willing and ready to assume the leadership of the protection cluster. Should UNHCR determine that it is not in a position to participate, or to continue in activities on behalf of IDPs in any given situation, immediate activation of this mechanism would be pursued.

## VI. OUTSTANDING CHALLENGES

51. It has been pointed out already that the great majority of UNHCR's IDP operations are not being implemented under the cluster approach. This might even remain the case for some time as the cluster approach itself gains ground. It is, however, the mechanism to which the United Nations system as a whole, including UNHCR, is committed in developing its standing response to internal displacement emergencies. In keeping with its commitment in this respect, UNHCR will continue to work with other United Nations agencies and partners, within the IASC framework, to better define its role as cluster lead agency. It is recognized that this process will inevitably have to find an accommodation with a number of key challenges which are now starting to emerge. They are outlined below.

### (a) Clarifying the scope of engagement

52. It has earlier been pointed out that the protection cluster foresees engagement with three specific categories of "non-displaced" persons termed as "affected populations". These are communities hosting IDPs; those to which IDPs have returned; and others "at risk of displacement". The question highlighted already as to the strategic and operational nature and scope of the protection responses for potential displacement situations continues to attract attention and touches on an important aspect of UNHCR's role as lead agency for this cluster. Evidently, for an organization for which displacement is a vital ground for its involvement, this particular situation calls to attention questions of both legal and institutional competence. UNHCR, however, also believes that along the lines sketched already above in paragraph 23, these questions can be resolved in a manner that meets all concerns and ensures that a critical point of vulnerability leading directly to displacement is addressed within a coherent national and international framework.

### (b) Ensuring protection as a cross-cutting concern

53. As the protection cluster lead agency, UNHCR carries a particular responsibility to ensure that activities both within this cluster and across others are carried out within a protection framework and are consistent with international standards. On the one hand, working in a framework of several partnering agencies, with perhaps uneven protection expertise, capacities and outlooks, creates a special challenge for coherence and consistency in protection strategizing, delivery and accountability. On the other hand, this multiplicity of mandates offers a unique strength, in that the comparative advantages of each of the designated agencies can be brought to bear on what is a huge and complex problem. Protection cannot be projected as only a specific and unique sector. It will have to be driven forward as the overarching rationale and objective of all the activities carried out on behalf of the beneficiary IDP populations.

### (c) Enhancing resources for IDP protection

54. The vision as outlined in the policy document is to make UNHCR a predictable and fully engaged partner in the new approach to situations of internal displacement. It is however also acknowledged that IDP responsibilities thus far have not attracted mainstream resources. In the particular case of protection, the concern is that funding and resource limitations should not limit the scope of activities to be implemented, creating a situation in which even baseline standards may not be met. The solution for this problem is the same one that the policy paper has projected for the resource question as a whole for IDPs: namely, a proactive resource mobilization strategy which, in particular takes "advantage of the funding opportunities associated with the process of humanitarian reform". Obviously, in this context, protection needs will have to be assigned special priority.

(d) Avoiding an overly bureaucratic approach to delivering protection

55. The cluster approach has attracted criticism in some quarters as being overly bureaucratic. UNHCR's objective is that, especially in the field of protection, structures, processes and modalities should be kept as simple, flexible and responsive as possible. Evidently, a system which has so many players and operates at a global and a national level will, especially in the initial phases, require to be devoted to assessments, meetings and consultations to devise a well coordinated strategy. In the field of protection however, this foundation work must be balanced carefully with and will eventually be justified by the ability to actually ensure implementation of activities that have a tangible impact on the plight of the IDPs.

(e) Clarifying interagency partnership and "provider of last resort" role

56. The "provider of last resort" device has been attached to the cluster approach as a pivotal element of accountability. Within the protection cluster, the challenge of ensuring that concerned partner agencies concretely translate their pre-disposition at the global level to act as predictable partners in the protection response at the field level has already made itself felt. The Office considers it particularly crucial that all the partner agencies should be able to pursue their operational responsibilities as a matter of course, so that any operational engagement by UNHCR in respect of the areas of responsibilities in the protection cluster is as a "last resort". In order to maximize capacities and avoid duplication, criteria will need to be developed to guide the "triggering" of the "last resort" role.

(f) Disengaging from IDP operations

57. Disengagement from IDP operations has often been linked to the more legal question relating to the "ending" of displacement. UNHCR's outlook has already been indicated in this paper, namely that durable solutions in the IDP context are first and foremost about restoration of and the actual ability to exercise rights in a fulsome manner. Of course, in both these and other cases portending "disengagement", such as where it is judged that there are no significant protection dividends for IDPs from UNHCR's involvement; collaboration and consultations with the Emergency Relief Coordinator and other partners will be necessary, in itself making disengagement as such a much more complex question than if an agency was acting alone.

## VII. CONCLUSION

58. The most serious problems of the displaced result from the inability or refusal of the parties directly concerned to safeguard the security and well being of the communities and the right of individuals to remain in safety in their homes. More importantly, these problems result from failure to achieve a peaceful resolution of the conflicts that cause displacement. The restoration of peace and the protection of human rights are the best ways to provide truly effective protection to the internally displaced. These are ultimately the responsibility of governments. The forms of protection and humanitarian assistance that can be provided by UNHCR to persons within their own country must serve primarily to promote or reinforce national protection, which itself must be provided by the national authorities. International organizations can play a supportive role, but they cannot substitute for governments in the protection of their own people.

59. Several United Nations resolutions recognize and call for UNHCR's role in support of internally displaced persons. The Office welcomes endeavours to consolidate its overall role with these populations. UNHCR believes that it is possible to achieve this in a constructive manner, satisfying the concerns of governments, respecting and building upon the ongoing coordination efforts being implemented by the humanitarian community and, most importantly, offering a coherent vision that addresses the very real needs of the concerned populations.

*UNHCR*  
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