

HUMAN RIGHTS GUIDANCE NOTE FOR HUMANITARIAN COORDINATORS

1. INTRODUCTION

The UN Secretary-General's Programme for Reform launched in 1997 underscored that human rights are a concern that cuts across the entire UN system, entailing commensurate responsibilities for its various organs and agencies.ⁱ In his second report on the UN Reform, he reiterated that the promotion and protection of human rights is a bedrock requirement for the realization of the Charter's vision, and further emphasized the strengthening of national protection systems in each country, reflecting international human rights norms, should be a principal objective of the Organization, particularly in post-conflict countries.ⁱⁱ Thus, although some UN agencies have expressly designated mandates and possess specialised technical expertise in different aspects of the promotion, protection and realization of human rights, it is incumbent on all entities to address human rights concerns as part of their routine work programme.

The purpose of this guidance note is to provide Humanitarian Coordinators (HCs) with a specific, clear and field-oriented tool to facilitate the integration of human rights into humanitarian action, and to outline the role of the HC in this context. It is hoped that the guidance note will also facilitate and encourage agencies to clarify their role vis-à-vis the integration of the human rights agenda into their activities.

This guidance note has been prepared by the IASC Task Force on Human Rights and Humanitarian Action in response to a request from the IASC Working Group.ⁱⁱⁱ It should be seen as complementary to other Task Force

products, namely *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law* (2003) and *Growing the Sheltering Tree - Protecting Rights through Humanitarian Action* (2002). It also serves as a tool for use by UN members of the IASC for attainment of the objectives set out in the Action 2 Plan of Action.^{iv}

In addition to the above-mentioned publications, there are numerous IASC policy and advisory/technical outputs that address protection and other human rights related concerns. HCs are encouraged to consider these in conjunction with this guidance note.^v

The aim of the guidance note is to provide humanitarian coordinators with a specific, clear and field oriented tool on the integration of human rights into humanitarian action.

The guidance note begins by setting human rights law in context and discusses its relevance to humanitarian action. Subsequent sections provide assistance to HCs for the gathering and assessment of human rights-related information and for the application of this information – with particular attention paid to the application of human rights for assistance, protection response and advocacy activities as well as for possible human rights related reporting which might be undertaken. The guidance note concludes with suggestions regarding the forms of human rights partnership and coordination systems which HCs might consider establishing. An introduction to the international human rights system – which sets out the basics regarding

the nature of international human rights laws and the mechanisms for oversight of its implementation – is set out as an annex to the guidance note.

There is a wealth of good practice and lessons learned that have yet to be compiled and shared. As such, this guidance note should be considered a work in progress. Its refinement will largely depend on the comments of HCs and their colleagues. It is also necessary to bear in mind the extent to which Resident Coordinators who are not simultaneously HCs can be of assistance to the latter as they share and compare experiences on an ongoing basis.

2. HUMAN RIGHTS AND HUMANITARIAN ACTION: SOME OF THE MEETING POINTS

Protection of human rights is intrinsic to effective humanitarian action.

Human rights violations and resulting protection issues are frequently a feature of complex crisis situations and are often a significant source of the problem that has contributed to, or been exacerbated by, armed conflict. For instance, patterns of discrimination against minority groups are often the triggers for armed conflict and crisis. Similarly, the failure of the State to check corruption and ensure the welfare of its people can result in political upheaval and turmoil which again may lead to an escalation of human rights violations. Commonly, the lead into crisis is also marked by a weak or ineffectual legal and judicial system and the erosion of democratic governance and accountable administrations.

Once underway, complex crises can, by their very nature, be understood in part as human

rights emergencies since they constitute a deprivation of the fundamental rights of the victims to life.

Complex emergencies also typically involve, or are greatly exacerbated by, multiple forms of deliberate violations of human rights of civilians. Disasters associated with natural hazards may also be so exacerbated. Such violations can range across the spectrum of economic, social, cultural, civil and political rights. This may include, for example, the denial or blocking of humanitarian access and assistance, or the destruction of agricultural land and the poisoning of wells, or the killing, mutilation and sexual assault of civilians and the forced recruitment of civilians, including children to serve as soldiers. Vulnerable groups, such as female-headed households, children, members of minority groups and the uprooted - both refugees and internally displaced persons (IDPs) - can typically experience multiple forms of human rights deprivation.

Participation, local ownership, capacity development and sustainability are essential characteristics of a human rights-based approach to programming.

Human rights are relevant to the nature of both the humanitarian programming and the protection responses to these emergency situations. In the first place humanitarian responses, in general, are intended to address acute cases of human rights deprivation. Furthermore, a number of UN agencies and NGOs have adopted a specific and distinctive human rights-based approach to programming.^{vi}

It is widely accepted that a human rights-based approach to programming places emphasis

both on outcomes and on the process by which outcomes are achieved. In line with international human rights norms, participation, local ownership, capacity development, sustainability, accountability, non-discrimination, empowerment and transparency are essential characteristics of a human rights-based approach.^{vii} Rights-based approaches to programming require a protection perspective to underpin all aspects of programming or, to put it in other terms, programming and protection become understood as two sides of the same coin.

Human rights-based approaches bring humanitarian actors into sometimes unfamiliar roles.

There is wide acceptance for the proposition that human rights law is an essential basis for protection activities. An ICRC sponsored series of expert workshops defines protection as, “encompass[ing] all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law. Human rights and humanitarian organisations must conduct these activities in an impartial manner (not on the basis of race, national or ethnic origin, language or gender)”.^{viii} The definition describes a protection activity as an activity which, “prevents or puts a stop to a specific pattern of abuse and/or alleviates its immediate effects (responsive action); restores people’s dignity and ensures adequate living conditions through reparation, restitutions and rehabilitation (remedial action); fosters an environment conducive to respect for the rights of individuals in accordance with the relevant bodies of law (environment building)”.

Rights-based approaches to programming may bring humanitarian actors into sometimes

unfamiliar roles. In order to identify protection issues and concerns, for example, it is necessary to have a sound understanding of the human rights situation as well as a host of other factors including whether all relevant authorities are able and willing to meet their responsibilities.

It is not unusual that an analysis of the human rights and security situation, and identification of the priority concerns of those in need of humanitarian assistance, including women, will lead to advocacy and other measures geared to influencing attitudes and policies and bringing an end to abusive and harmful practices that are antagonistic to the enjoyment of fundamental rights and well-being of populations adversely affected by crises and disasters.

An analysis of human rights and security situation, and identification of the priority concerns, may lead to advocacy and other measures aimed at ending human rights violations or otherwise seeking to affect policy and practice. These advocacy actions will, depending on circumstances, have local, national and international dimensions. Actions will sometimes be targeted at short-term solutions. Others can have a very long-term perspective – such as when humanitarian actors seek the inclusion in peace processes and peace agreements of strong human rights protection provisions. The long-term aspect of human rights-related work also helps to clarify the necessary connection between humanitarian work, reconstruction and development.

3. THE NEED TO AVOID MISPERCEPTIONS ABOUT HUMAN RIGHTS-BASED APPROACHES TO PROGRAMMING:

It is helpful to clarify what a rights-based approach to programming is not about, in order to de-mystify it and avoid misperceptions:

- ***It is not about inevitably overturning all the familiar and proven ways of working.*** Much good programming practice is already attuned to the rights and dignity of beneficiaries. The human rights approach acknowledges this and suggests ways to enhance its impact and effectiveness to better reach all beneficiaries, including women. For example, it suggests working in different ways with existing and with new partners – the human rights-related approach for instance opens the door to partnerships with such groups as local and international human rights NGOs and such national human rights bodies as human rights commissions and ombudspersons. It also serves to strengthen the ties with human rights field programmes of DPKO, OHCHR and regional organisations.
- ***It is not about trying to turn an unwieldy body of law into an “off the shelf” hands-on programming tool.*** The law is the critical normative guide and it is the basis for human rights-related approaches. However the law on its own cannot provide all of the detailed operational answers – these must be found by humanitarian actors in light of their experience and local realities, and taking into account the guidance provided by the

human rights experts (such as treaty bodies and the Special Rapporteurs).

- ***It is not about inevitably entering into confrontation with local and national authorities.*** Human rights address all aspects of life, from the economic and social to the civil and political and there will usually be much common ground between authorities and humanitarian actors – areas where they will be in agreement rather than conflict. On those challenging issues which do cause tensions it is important to recall that there are multiple ways to undertake advocacy – ranging from forms of quiet diplomacy to public pronouncements. What is more, tensions and impact on programming can be reduced or avoided through an effective division of labour whereby groups or office holders best suited to advocacy undertake work on behalf of others.

There are a lot of misconceptions about human rights approaches to humanitarian work.

- ***It is not about overturning the system of humanitarian standards and principles which have served us well.*** Human rights-related approaches to humanitarian action are fully consistent with humanitarian principles.^{ix}

4. BUILDING HUMAN RIGHTS PARTNERSHIPS

Within the UN system and among international and national humanitarian NGOs, there is considerable expertise regarding human rights approaches to humanitarian work. A number of agencies and NGOs follow rights-related approaches and can

provide invaluable assistance to the HC. As noted above, if there is a dedicated UN human rights operation in the locality (whether of DPKO, DPA or OHCHR), it may be in a position to support the realization of humanitarian objectives particularly in relation to protection issues. There may also be a human rights field operation of a regional organisation such as the OSCE. In the absence of such a dedicated human rights presence HCs should establish contact with the relevant Regional Representative of OHCHR so as to benefit from their expertise and as a means of maintaining contact with OHCHR headquarters.

Outside the humanitarian framework there may be a number of potential partners with whom the HC can very usefully engage. As noted above it is important to locate the human rights focal point(s) within Government. There may also be a human rights national institution, such as a Human Rights Commission, Human Rights Ombudsperson or dedicated thematic institutions, such as anti-discrimination or child rights bodies. Within the local NGO community also there may be many organisations with which the HC might not otherwise have contact – such as NGOs which focus on human rights monitoring and advocacy, or have a specific focus on women or children’s rights. Depending on the circumstances, the HC might find it very useful to maintain contact with international human rights NGOs (those engaged in monitoring and reporting as well as those with a capacity building function) which have an interest in the country in question – and which, in some cases, may have a local office.

5. ACTION AREAS FOR HUMANITARIAN COORDINATORS

(a) Integrating Human rights into CHAP / CAP

The Technical Guidelines for the Consolidated Appeal Process (CAP) contain many references to human rights, including a stipulation that the Common Humanitarian Action Plan (CHAP) should include “a common analysis of the humanitarian context, identifying the key concerns regarding humanitarian principles and violations of human rights”. Of greater importance, however, is the fact that human rights are meant to be at the core of the CAP, which is a programming tool.^x

CCA/UNDAF and CAP/CHAP undertaken in the three year period will have systematically integrated human rights – Action 2 Plan of Action

The centrality of human rights data to the CHAP/CAP process is reflected in the IASC’s Assessment Framework and the Assessment Matrix tools. The Assessment Framework is for use by the humanitarian community as a basis for discussion and analysis, with the objective of reaching a common understanding of the needs of a particular population. These tools, if carefully used, will provide significant assistance in supporting a human rights-based approach to humanitarian action. They integrate a concern to promote human rights across all of the categories which are addressed, such as demographics; protection; mortality; morbidity; nutritional status; access to water; sanitation and hygiene practices; availability and adequacy of shelter; access to

health and psycho-social services; food security; education; etc. These categories are also interwoven in the Assessment Framework in a way that helps ensure that the crosscutting issues of protection, anti-discrimination and participation are addressed throughout. This would be in addition to one of the specific Consolidated Appeal sectors which addresses “Protection/Human Rights/Rule of Law”. The final section of the Matrix, on national context, is particularly helpful to focus attention on the elements necessary for the existence and vigour of a “culture of human rights” within any State.

There are a few practical steps which can be taken to ensure that human rights-based approaches are fully pursued in the context of CAPs/CHAPs:

- Designate humanitarian staff with human rights, protection, and programming knowledge and skills to participate in the CAP-process and in all related trainings, brainstormings and drafting.
- Include, where possible, other human rights personnel within CAP teams – such as UN human rights officers and relevant NGO specialists.
- Ensure that the involvement of the human rights specialists is not restricted to working on the specific protection-related sectors and encourage people with human rights skills to assist colleagues dealing with all aspects of the CHAP and CAP.
- Ensure that CAP training teams have at least one member with relevant human rights training skills.

Keep in mind that donors may fund human rights projects from different budget lines than humanitarian projects. This differentiation

may require approaching new interlocutors within such donor communities.

(b) Compiling human rights information

Both in the context of CHAP/CAP but also in order to provide a solid base for the fulfilment of the HCs advocacy responsibilities (see below), consideration should be given to a number of issues that are relevant to a sound analysis of human rights issues that affect the humanitarian situation:

- In the ordinary course of humanitarian action, humanitarian actors will inevitably gather and receive considerable information regarding the human rights situation of affected populations, especially women, albeit it may not be seen or expressed in human rights-type terms. HCs should ensure that this information is brought to their attention for effective follow-up coordination. This information may not address all aspects of the human rights problem and further details may be required for purposes of sound human rights-based responses. The Assessment Framework and the Assessment Matrix tools are very helpful in illustrating the types of data which may be required.

Effective data gathering is critical for implementation of the human rights related functions of the Humanitarian Coordinator.

- HCs can draw on multiple partners for gathering of information. For example, here is the data gathered by UN colleagues. In some situations the UN has established a dedicated human rights monitoring capacity. This most commonly exists within the framework of a DPKO or DPA-led mission. OHCHR has also established

monitoring programmes of its own in a small number of countries. It has also placed representatives in each of the regions. It is, however, also important to create mechanisms for gathering human rights-related information from non-protection mandated agencies, as their staff tend to be active and engaged with beneficiary communities.

- International humanitarian NGOs are also a very good source of information. Although they are not tasked with carrying out human rights monitoring, they often come across human rights-related information in the course of their assistance work - merely through their presence in the communities. Moreover, increasingly, humanitarian NGOs seek to pass on such information to protection-mandated organizations for their respective follow-up in a way that does not jeopardize their humanitarian access, all the while enabling them not to be “silent witnesses” to human rights violations.
- The local and national human rights communities may also be a rich source of information. A number of countries have independent national human rights institutions, such as human rights commissions or human rights ombudspersons. The Government itself may equally be willing to share human rights information, as may foreign diplomatic and donor missions within a country.
- Finally, one should be aware of the extent to which international human rights monitoring mechanisms can generate helpful information. Special Procedures of the Human Rights Council, especially those with country-specific mandates, often amass considerably detailed data.

The work of the human rights treaty bodies may also be of help and careful note should be taken of governmental reports to these bodies as well as of their concluding observations and recommendations. It may also be rewarding to engage directly with the office-holders themselves, treaty bodies and their secretariats.

- The HC has a responsibility to ensure that all partners keep in mind the often great sensitivity of the exercise of information gathering. Careless gathering, storage and transmission of data can put at risk the lives and welfare of victims and witnesses - sometimes of entire communities. Relevant human rights principles, such as the right to privacy and confidentiality should be strictly respected in the course of information gathering. It can also jeopardise programmes, humanitarian access and erode humanitarian space. For instance humanitarian workers should never interfere with evidence of a mass grave or other such indication of the commission of a grave crime. In cases such as these the HC should seek the necessary expert help, with the assistance of the OHCHR or otherwise as appropriate in the specific case. Interaction with victims and witnesses should also be undertaken with the greatest care.^{xi}

(c) Analysing and assessing human rights information

Before taking action regarding human rights information which has been provided to the HC, it is necessary to subject it to analysis and assessment. In general, it is recommended that the HC seek the assistance of specialists in assessing and analysing human rights information before deciding on a course of action. In many respects, the analysis and assessment techniques will be no different

from any other form of data from the field. Some particular considerations should be kept in mind:

- Information will often be provided regarding a practice or incident without any specific reference to the human rights issues which arise – thus it will frequently be for the HC to make that assessment.
- The information may refer to forms of common criminal activity which cannot be characterised as raising specific issues under human rights law – such as where the reporting concerns common crimes which the authorities are doing all in their power to deal with (if the authorities were failing in this duty a human rights issue would arise since the authority has a duty to protect its people).
- Reports of grave human rights violations, particularly specific incidents, need to be treated with some caution. It should be recalled that witnesses and victims are often traumatised and this may affect their recall of events. Where possible these reports should be corroborated by other sources.
- HCs will not always need to make a determination of what precise provision of human rights law might be infringed by a practice reported from the field. In the first place, reports may deal with matters of such gravity that the legal obligation is clear regardless of what treaties a state has ratified (this would be the case, for instance, regarding reports of violations of the right to life, perpetration of mass rape/torture and racial/ethnic discrimination, as well as war crimes and crimes against humanity).^{xii}

- Sometimes, though, it will be necessary to assess whether a set of facts actually constitute a violation by the State of its human rights obligations, whether customary or treaty-based. In the latter case, it is necessary to check exactly which human rights treaties the State is party to and to verify that the State has not exempted itself from relevant provisions of a treaty by means of “reservations” or “derogations.”^{xiii}
- With respect to non-State actors, it may be important to verify whether they have agreed to respect human rights standards. For instance, groups may have made specific commitments at some time, for instance in a Humanitarian Code of Conduct, and unilateral arrangements, and the provisions of cease-fire or peace agreements may include relevant elements.

It is recommended that the Humanitarian Coordinator seek the assistance of specialists in assessing and analysing human rights information.

(d) Options for Responses, including undertaking human rights advocacy

The Revised Terms of Reference for the HC vest him/her with responsibility for “advocating with the relevant parties for the application of humanitarian principles”. This includes promoting respect for human rights and international humanitarian law.^{xiv} Undertaking effective advocacy and intervention is never easy and carries with it the possibility of negative consequences for humanitarian activities as well as for the very people whose situation it seeks to improve.

However, careful design of advocacy/intervention strategies can minimise risk and maximise possible positive results. Some general considerations to take into account in developing such strategies:

- HCs must ensure that the human rights concerns which have been identified are addressed one way or another. Importantly, specific protection mandated agencies must be properly informed and involved by the HC, and when so-specifically mandated, they take the lead in addressing the concerns, liaising closely with the HC.
- The issue must be properly reviewed and analysed, and appropriate and effective partners must be identified for the response strategy. UN partners, including the HC him/herself when the protection mandate of another UN agency or department is not triggered, can take the lead in the response. It may also be the case that an entity outside the UN Country Team context. for instance, a national or international humanitarian or human rights NGO, or one or more donor governments, may be better placed to undertake the action or may usefully be invited to join/support any action being considered.

The Humanitarian Coordinator should advocate for application of humanitarian principles – including promotion of respect for human rights – The Revised Terms of Reference for Humanitarian Coordinators.

- It is useful to work to the extent possible with any existing national actors, such as national human rights commissions and ombudspersons, or the judiciary. Similarly, it is important to identify and

engage with the part of government which may have specific human rights responsibilities – some governments have established specific human rights ministries while others assign a human rights mandate to existing ministries or to the office of the Head of State or Prime Minister.

- At the international level, much more advocacy could be directed to and through Special Procedures of the Human Rights Council (as listed in the Annex). Many of the Special Procedure experts are mandated to make specific and urgent interventions with governments and they can also address issues in their periodic public reports. Special Procedure experts can also undertake valuable advocacy and intervention work in the course of their country visits. The Secretary-General’s Special Representative on Children and Armed Conflict has similar functions.
- Even though the treaty bodies are not geared to address urgent situations, there is a certain advocacy and intervention value in engaging their attention in cases where the country concerned is a party to the relevant human rights treaty. Some of the treaty bodies have developed inter-sessional mechanisms to respond to urgent situations and they all may be able to take useful action if they are informed of specific situations during periods when they are actually in session. In any case, all of the treaty bodies can make a valuable contribution to those advocacy efforts which take a long term perspective.
- When appropriate, it will be important to draw a situation to the attention of institutions dealing with international criminal law such as the tribunals and courts for former Yugoslavia, Rwanda and

Sierra Leone, as well as the Office of the Prosecutor at the International Criminal Court.

- It is possible to undertake human rights advocacy with non-State armed groups notwithstanding that they are not formally bound by human rights treaty law – though they are of course bound by international humanitarian and customary law. There are many examples of armed factions agreeing to respect human rights standards, either generally or regarding specific groups such as children. Non-state groups may have also committed to human rights standards through a peace agreement.
- When considering the involvement of high-level UN officials in advocacy and intervention efforts, the High Commissioner for Human Rights should be fully informed – issues of reporting to the High Commissioner are discussed further below.
- Country visits by Security Council missions and donor governments can also provide valuable opportunities to raise human rights issues and appropriate opportunities should not be lost in this regard.
- Whatever advocacy strategies are used, it is important to precisely identify the specific objectives of the strategy and to periodically assess the extent to which these have been achieved. It is only through such reviews that advocacy efforts can grow more effective.
- Whenever action is considered, there must be an assessment of any possible negative impact for the protection of victims, witnesses or others - including humanitarian workers – as well as for the

general security and operation of humanitarian programmes.

- To the extent possible, advocacy strategies should be aimed at securing sustainable solutions rather than ad hoc responses which may solve an immediate problem but at the expense of undermining long term capacity to deal with an issue. For instance, it may be tempting to invite political or military forces to deal with a matter which should more properly be referred to the police and judicial systems, assuming that the latter are functioning. Similarly, in cases where an effective human rights complaint mechanism is in place in a country it may make sense to work with that mechanism rather than weakening it by bypassing it.

It is recommended that the Humanitarian Coordinator report on the human rights situation in his/her regular reports to the UN Emergency Relief Coordinator.

6. HUMAN RIGHTS REPORTING

As a matter of practice, the HC should report on the protection situation in his/her regular reports to the Emergency Relief Coordinator. It is suggested that the entire content of the reports be informed by a human rights analysis and, at the same time, it is advisable for all periodic reports to be equally used to report on human rights issues and initiatives which are of particular note during the reporting period.

Consideration should be given to bringing to the attention of the High Commissioner for Human Rights, as soon as possible, those situations which appear to raise serious human rights concerns. Depending on the circumstances these reports might be periodic

or an ad-hoc basis. HCs should also arrange to meet with the High Commissioner when they travel to Geneva. During such visits the HC might also meet the relevant OHCHR geographical teams; staff supporting relevant Special Procedures (i.e., Special Rapporteurs for the country concerned or whose thematic mandate is of direct relevance to the situation); and secretariat staff of the treaty bodies (for instance in a case where the country concerned is due to have a report considered by a treaty body).

7. MECHANISMS TO SUPPORT HUMAN RIGHTS ACTIVITIES

The Revised Terms of Reference for the HC provide for the establishment of a number of coordination mechanisms within the humanitarian community. It is important to ensure that human rights specialisation and key human rights actors are part of such coordinating tools as appropriate. In the first instance this can be done through putting in place systems whereby human rights considerations can be brought to bear regarding all aspects of humanitarian action.

- The HCs may find it very useful to appoint a human rights focal point to assist them in human rights related responsibilities. The identification of the focal point will differ from location to location depending on

local circumstances and it may be either an individual or an agency/institutional actor. Regardless of the identity of the focal point it should have ongoing and direct contact with the HC, and be present/represented at inter-agency meetings, including those at the level of Heads of Agency. Where it is deemed useful, this focal point structure can evolve into an actual protection working group, whose chair would inform the HC and through him/her, the extended country team.

Humanitarian Coordinators may find it very useful to appoint a human rights focal point to assist him/her in carrying out human rights-related responsibilities.

- This proposed protection working group should be an inter-agency human rights protection working group within the humanitarian coordination framework, tasked with ensuring that human rights issues are regularly discussed and addressed. Decisions as to which agency should chair the group and its membership will be largely country specific. In practice, participation should include UN agencies, international organisations, and NGOs. These protection working groups should also engage with national or local authorities, when appropriate.

Annex I: A CHECKLIST OF PROPOSED ACTION

Information gathering and analysis and pursuit of remedies

- ***Patterns of human rights abuse and violation should be identified*** for early-warning analysis purposes, as they contribute to the development of a humanitarian emergency. Such violations can range across the spectrum of economic, social, cultural, civil and political rights.
- ***Efforts of multiple actors for the gathering of human rights-related information should be drawn upon***, with proper mechanisms in place to enable this channel of communication.
- ***Assistance of specialists*** in assessing and analyzing human rights information should be sought.
- Where human rights expertise is not available in-country, ***OHCHR Regional Representatives should be contacted for support***.
- A specific ***human rights thematic group*** within the humanitarian coordination framework should be established, chaired by an ***HC-appointed human rights focal point***, which could be an individual or an agency/institutional actor.

Programming

- ***Humanitarian staff with human rights protection and programming knowledge and skills should participate in CAP teams***, as should human rights experts from all participating organizations. This involvement should not be limited to the work on specific protection-related sectors.
- For an effective human rights-related approach, ***participation, local ownership, capacity development, and sustainability*** in the elaboration of the programmes should be stressed.

Advocacy

- ***Advocacy/intervention strategies should be carefully designed*** to minimize risk and maximize positive results.
- In planning for interventions, ***detailed assessments of any possible negative impact*** for the protection of victims, witnesses or others – including humanitarian workers – ***as well as the general security and operation of humanitarian programmes should be carried out***.
- ***Advocacy strategies could be directed to and through*** a specific member of the UNCT with a particular mandate, national or international NGOs, national human rights institutions, Special Procedures of the Commission on Human Rights, and/or relevant treaty bodies. ***The High Commissioner for Human Rights should be kept fully informed***.

- *States should be supported in establishing independent national human rights institutions, such as human rights commissions or ombudspersons, as well as in developing national human rights action plans which should be closely linked to other national planning activities.*

Reporting

- *HCs should report on the protection situation in his/her regular reports to the ERC. The entire contents of the reports should be informed by a human rights analysis and be used to report on human rights issues and initiatives which are of particular note during the reporting period.*
- *Situations which appear to raise serious human rights concerns should be brought to the attention of the High Commissioner for Human Rights, either periodically or on an ad-hoc basis. HCs are encouraged to visit OHCHR when in Geneva.*

Annex II: Elements of the International Human Rights Legal System

The immediate foundations of international human rights law lie in the Charter of the United Nations and the Universal Declaration of Human Rights, and its details can be found in international human rights treaties as well as in “customary” international law. The law contains provisions for the promotion and protection of economic, social, cultural, civil and political rights, as well as the right to development, and contains specific protections against torture, discrimination against women and racial discrimination. Specific attention is paid to the rights of the child and of migrant workers. The human rights system is underpinned by the following principles:

- **Universality and inalienability:** Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her.
- **Indivisibility:** Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
- **Inter-dependence and Inter-relatedness:** The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to shelter.
- **Equality and Non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
- **Participation and Inclusion:** Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.

A number of human rights, including the right to life, the prohibitions of torture and the prohibition of racial discrimination, are part of customary international law and hence binding upon all states. These rights, additional rights and more detailed provisions are also to be found in the various specific treaties (also sometimes termed, “covenants” and “conventions”) which may be ratified by States. The global human rights are to be found in UN sponsored treaties, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child. Important regional-level human rights treaties apply for the Americas, Africa and Europe. There is no regional human rights treaty for Asia-Pacific.

States may avoid commitment to some provisions of the treaties by means of entering “reservations” at the time of adherence to the treaty. They also have a very limited ability, by means of a formal procedure, to derogate from certain civil and political rights in times of emergency.

Additional detail on the content of human rights may be found in non-binding international declarations and resolutions adopted by the General Assembly and the former UN Commission on Human Rights, now the UN Human Rights Council, as well as the outcomes of many World Conferences. These materials are often known as “soft law”.

It is States, both directly and through their agents, which are the duty bearers in international human rights law. Their obligation is three-fold, to respect human rights, to protect and fulfil human rights, and to facilitate and provide human rights. With regard to economic, social and cultural rights international law recognises that they may be implemented to the maximum of available resources, with a view to achieving progressively their full realisation. However, the States obligations are no less firm than as regards other rights, and some obligations are required to be implemented immediately.

States can implement their human rights obligations through several types of measures, including: *legislative* – making necessary legal changes to promote and protect human rights; *executive* – actually protecting and promoting rights across all parts of governance of society; *policy-making* – ensuring that national policy and programmes and supporting budgets reflect the human rights commitments; *judicial* – ensure access to justice and other procedures for redress of the violation of rights; *educational* – ensure that all levels of the education system support and promote a human rights “culture” and, that the State *nourish a strong civil society* capable of playing a vigorous part in building and supporting that culture.

The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations.

States, though not obliged to do so, are encouraged also to establish independent national human rights institutions, such as human rights commissions or ombudspersons, as well as to develop national human rights action plans which should be closely linked to other national planning activities.

While non-state actors are not, as such, human rights duty bearers, groups such as economic actors and non-state armed groups sometimes voluntarily agree to respect human rights responsibilities and there are many examples of their being successfully encouraged to do so.

When State authorities and national actors are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations.^{xv} The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation.^{xvi} The UN is thus in a uniquely important position to assist States to abide themselves by their human rights obligations to their people.

At the international level the implementation by States of the UN human rights treaties is monitored by the human rights treaty bodies – seven committees of independent experts which meet for a number of weeks each year. All of the treaty bodies are listed as Annex V, together with full contact information. The principal functions of the treaty bodies or “committees” are to:

- Examine reports submitted by the States parties to the treaty in question and issue guidance to the states in the form of “Concluding Observations”.

- Consider individual complaints in cases where the relevant treaty provides for that possibility and where the state in question is a party to the procedure.
- In the case of the committees monitoring the Convention Against Torture and the Convention on the Elimination of All Forms of Discrimination Against Women, to undertake, with the consent of the State involved, targeted investigations regarding states which give particular cause for concern.
- Issue authoritative interpretation of the rights contained in the treaties in the form of “General Comments”.

All organs of the UN have a role in the promotion and protection of human rights. For instance:

- **The General Assembly** negotiated and adopted the global human rights treaties and generates much human rights guidance and soft law on an ongoing basis.

- **The Security Council** plays an important role in drawing attention to human rights situations which threaten international peace and security and in taking action in response thereto.

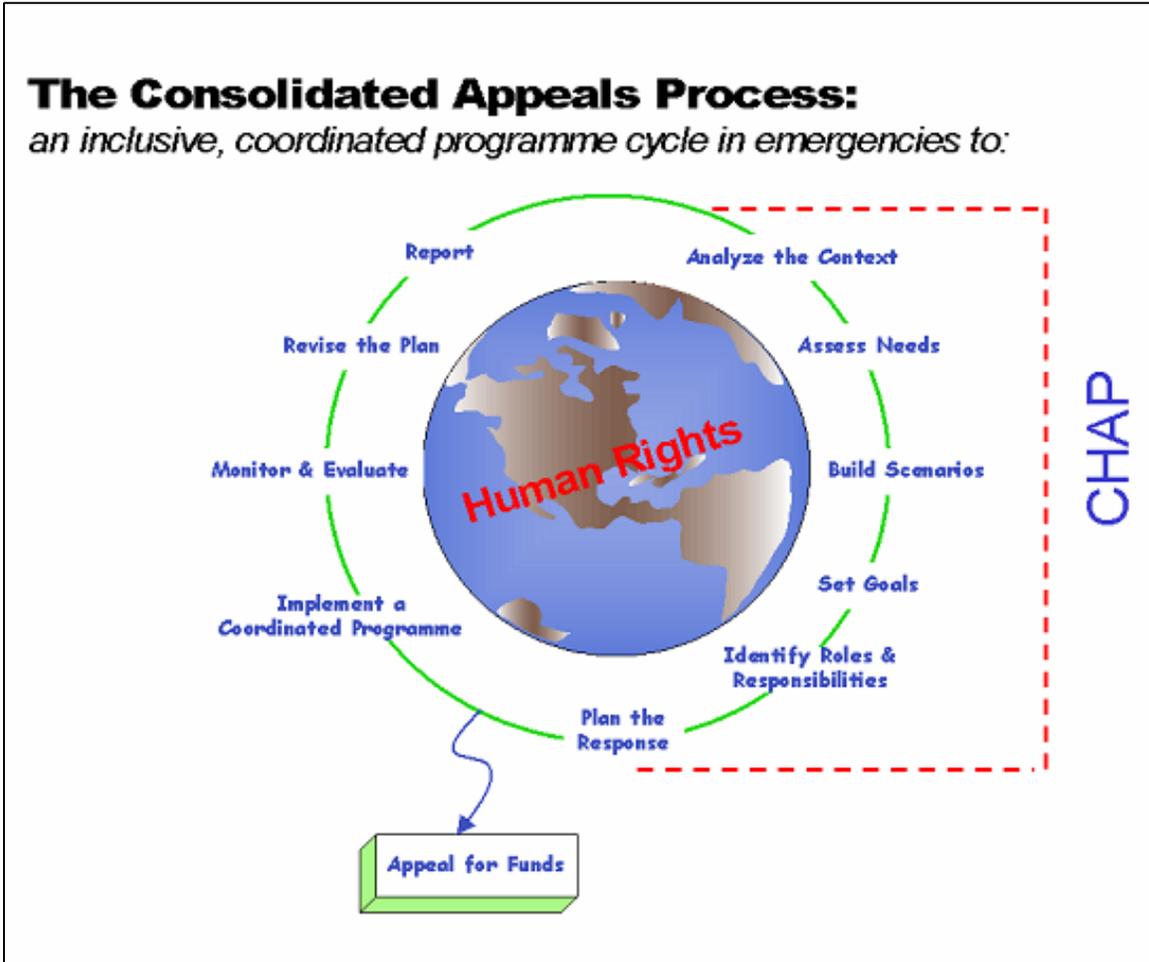
All of the organs of the UN are involved in the promotion and protection of human rights

- The former Commission on Human Rights, now **The Human Rights Council**, has a central position in the form of its annual debates and the related resolutions and other outputs. The Commission also has appointed a number of independent experts to monitor and issue recommendations concerning specific countries or thematic issues, which have been transferred to the Council. The experts, known as Special Procedures of the Council, produce reports for the Council and, in some cases, the General Assembly. They frequently undertake country visits. A full list, with contact details, of the Special Procedures is provided in the Annex IV.

- **The High Commissioner for Human Rights** is the principal UN official with responsibility for human rights and is accountable to the Secretary-General. The post of High Commissioner was created in 1993. The High Commissioner seeks to lead the international human rights movement by acting as a moral authority and voice for victims. The High Commissioner makes frequent public statements and appeals on human rights crises and travels widely to ensure that the human rights message is heard in all parts of the globe. At the same time the High Commissioner engages in dialogue and builds constructive cooperation with Governments to strengthen national human rights protection. Further, the High Commissioner has been given the task of integrating human rights thinking and standards throughout the work of the Organization. OHCHR works with other parts of the UN to achieve this goal and participates fully in each of the UN’s programmes – peace and security, economic and social affairs, development cooperation and humanitarian affairs.

International human rights law is closely related to international humanitarian law, refugee law and international criminal law. Many egregious violations of human rights will also constitute violations of the other bodies of law. One of the implications of this possible coincidence is that, pursuant to the provisions of international humanitarian and international criminal law, it may be possible to prosecute and convict individuals for the perpetration of such acts.^{xvii} The nature and application of the various bodies of law is not discussed further in this Guidance Note – please instead refer to the IASC publication, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law*.

Annex III: Graphic overview of the CAP and CHAP.



Annex IV: LIST OF SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

Status as at June 2006

OHCHR contact information:

Soussan Raadi-Azarakhchi, Special Procedures Branch, 41 22 917 9252

Karim Ghezraoui, Special Procedures Branch, 41 22 917 9147

Thematic mandates – (by chronological order of establishment)

- Working Group on enforced or involuntary disappearances (1980)
 - Mr. Stephen Toope, Chairperson (Canada), appointed in 2002
 - Mr. Joel Adebayo Adekanye, Vice-Chairperson (Nigeria), appointed in 2000
 - Mr. Saied Rajaie Khorasani (Islamic Republic of Iran), appointed in 2003
 - Mr. Darko Götlicher (Croatia), appointed in 2004
 - Mr. Santiago Corcuera (Mexico), appointed in 2004
- Special Rapporteur on extrajudicial, summary or arbitrary executions (1982)
 - Mr. Philip Alston (Australia), appointed in 2004
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (1985)
 - Mr. Manfred Nowak (Austria), appointed in 2004
- Special Rapporteur on the right to freedom of religion or belief (1986)
 - Ms. Asma Jahangir (Pakistan), appointed in 2004
- Special Rapporteur on the sale of children, child prostitution and child pornography (1990)
 - Mr. Juan Miguel Petit (Uruguay), appointed in 2001
- Working Group on arbitrary detention (1991)
 - Ms. Leila Zerrougui, Chairperson-Rapporteur (Algeria), appointed in 2001
 - Mr. Tamás Bán (Hungary), Vice Chairperson, appointed in 2001
 - Ms. Manuela Carmena Castrillo (Spain), appointed in 2003
 - Mr. Seyyed Mohammad Hashemi (Islamic Republic of Iran), appointed in 2002
 - Ms. Soledad Villagra de Biedermann (Paraguay), appointed in 2000
- Special Rapporteur on the right to freedom of opinion and expression (1993)
 - Mr. Ambeyi Ligabo (Kenya), appointed in 2002
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (1993)
 - Mr. Doudou Diène (Sénégal), appointed in 2002
- Special Rapporteur on the independence of judges and lawyers (1994)
 - Mr. Leandro Despouy (Argentina), appointed in 2003

- Special Rapporteur on violence against women, its causes and consequences (1994)
Ms. Yakin Ertürk (Turkey), appointed in 2003
- Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (1995)
Mr. Okechukwu Ibeanu (Nigeria), appointed in 2004
- Special Representative of the Secretary-General for children and armed conflict (1997)
Mr. Olara Otunnu (Uganda), appointed in 1997
- Independent expert on human rights and extreme poverty (1998)
Mr. Arjun Sengupta (India), appointed in 2004
- Special Rapporteur on the right to education (1998)
Mr. Vernor Munoz (Costa Rica), appointed in 2004
- Special Rapporteur on the human rights of migrants (1999)
Ms. Gabriela Rodriguez Pizarro (Costa Rica), appointed in 1999
End of tenure in 2005 – new mandate-holder to be appointed
- Special Representative of the Secretary-General on human rights defenders (2000)
Ms. Hina Jilani (Pakistan), appointed in 2000
- Special Rapporteur on the right to food (2000)
Mr. Jean Ziegler (Switzerland), appointed in 2000
- Special Rapporteur on the right to adequate housing (2000)
Mr. Miloon Kothari (India), appointed in 2000
- Independent expert on economic reform policies and foreign debt (2000)
Mr. Bernards Andrews Nyamwaya Mudho (Kenya), appointed in 2001
- Special Rapporteur on human rights and fundamental freedoms of indigenous peoples (2001)
Mr. Rodolfo Stavenhagen (Mexico), appointed in 2001
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2002)
Mr. Paul Hunt (New Zealand), appointed in 2002
- Working Group of experts on people of African descent (2002)
Mr. Peter Lesa Kasanda, Chairperson (Zambia), appointed in 2002
Mr. Joe Frans (Sweden), appointed in 2002
Mr. George N. Jabbour (Syrian Arab Republic), appointed in 2002
Mr. Roberto B. Martins (Brazil), appointed in 2002
Ms. Irina Zlatescu (Romania), appointed in 2002
- Special Rapporteur on trafficking in persons, especially in women and children (2004)
Ms. Sigma Huda (Bangladesh), appointed in 2004

- Representative of the Secretary-General on the human rights of internally displaced persons (2004)
Mr. Walter Kalin (Switzerland), appointed in 2004
- Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2005)
Members will be appointed after approval of the mandate by the ECOSOC in July 2005.
- Independent expert on human rights and international solidarity (2005)
The expert will be appointed after approval of the mandate by the ECOSOC in July 2005.
- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (2005)
The Representative will be appointed after approval of the mandate by the ECOSOC in July 2005.
- Special Rapporteur on the promotion and protection on human rights and fundamental freedoms while countering terrorism (2005).
The Rapporteur will be appointed after approval of the mandate by the ECOSOC in July 2005.
- Independent Expert of the High Commissioner on minority issues (2005)
The Representative will be appointed after approval of the mandate by the ECOSOC in July 2005.

Geographic mandates – (by chronological order of establishment)

Item 8 mandate

- Special Rapporteur on the situation of human rights in Palestinian territories occupied since 1967 (1993)
Mr. John Dugard (South Africa), appointed in 2001

Item 9 mandates

- Special Rapporteur on the situation of human rights in Myanmar (1992)
Mr. Paulo Sergio Pinheiro (Brazil), appointed in 2000
- Special Rapporteur on the situation of human rights in Democratic People's Republic of Korea (2004)
Mr. Vitit Muntarbhorn (Thailand), appointed in 2004
- Special Rapporteur on the situation of human rights in Belarus (2004)
Mr. Adrian Severin (Romania), appointed in 2004
- Special Rapporteur on the situation of human rights in the Sudan (2005)
Ms. Sima Samar (Afghanistan), appointed in 2005.

Item 19 mandates

- Special Representative of the Secretary-General for human rights in Cambodia (1993)
Mr. Peter Leuprecht (Austria), appointed in 2000
- Independent expert of the Secretary-General on the situation of human rights in Somalia (1993)
Mr. Ghanim Alnajjar (Kuwait), appointed in 2001
- Independent expert of the Secretary-General on the situation of human rights in Haiti (1995)
Mr. Louis Joinet (France), appointed in 2002
- Personal Representative of the High Commissioner on the situation of human rights in Cuba (2003)
Ms. Christine Chanet (France), appointed in 2003
- Independent expert on technical cooperation and advisory services in Liberia (2003)
Ms. Charlotte Abaka (Ghana), appointed in 2003
- Independent expert on the situation of human rights in Burundi (2004)
Mr. Akich Okola (Kenya), appointed in 2004
- Independent expert on the situation of human rights in the Democratic Republic of the Congo (2004)
Mr. Titinga Frédéric Pacéré (Burkina Faso), appointed in 2004

1503 mandate

- Independent Expert on the situation of human rights in Uzbekistan (2004)
Mr. Latif Huseynov (Azerbaijan), appointed in 2004.

Annex V: List of Treaty Bodies and Contact Information

<p>Treaty Bodies Treaties and Commission Branch Alessio Bruni, Tel. 022.917.93.16 Jane Connors, Tel. 022.917.93.61 Palais Wilson</p>
Human Rights Committee*
Committee on the Elimination of Racial Discrimination*
Committee against Torture* **
Committee on Economic, Social and Cultural Rights
Committee on the Rights of the Child
Committee on the Rights of All Migrant Workers*
Committee on the Elimination of All Forms of Discrimination Against Women* **

All of these Bodies review reports from states parties on compliance by these of the treaty obligations. In addition four have individual complaints mechanisms and two can undertake inquiry procedures

* Individual complaints

** Inquiry procedures

CEDAW is serviced by the Division of Advancement of Women (DESA) in New York.

Contact person: Christina Brautigam, Tel. 1.212.963.05.35

Endnotes

ⁱ Report of the Secretary-General “Renewing the United Nations: a programme for reform” (A/51/950), paras. 78 and 79.

ⁱⁱ Report of the Secretary-General, “Strengthening of the United Nations: An Agenda for Further Change” (A/57/387), paras. 45 and 50.

ⁱⁱⁱ The initial draft had been written for OHCHR by Michael O’Flaherty, Co-Director University of Nottingham Human Rights law Centre < Michael.o’flaherty@Nottingham.ac.uk>

^{iv} In his report in 2002, “Strengthening of the United Nations: An Agenda for Further Change” (A/57/387), the Secretary-General called for strengthened human rights-related United Nations action at the country level, and requested the High Commissioner for Human Rights to develop a plan for this purpose, in cooperation with the United Nations Development Group and the Executive Committee for Humanitarian Affairs,. The result, “Action 2 Plan of Action”, was adopted by Heads of 22 UN agencies, programmes and departments in September 2003, and laid out three objectives for the period of 2004-2006: (a) UN country teams will have internalised the fundamental nature of human rights to their mission as well as its implications for the humanitarian and development activities; (b) UN country assistance frameworks in development and humanitarian circumstances will systematically build upon human rights norms and principles in their analysis, programming and implementation; and, (c) Observations and recommendations of the treaty monitoring bodies of the human rights conventions of the United Nations system, as well as of the special procedures of the Commission on Human Rights, will be taken into account in UN action at the country level.

^v They include for instance: IASC Review of the CAP and Plan of Action for Strengthening the CAP (2002); Technical Guidelines for the CAP (2003); Policy Statement for the Integration of a Gender Perspective in Humanitarian Assistance (1999); Statement of Commitment on Gender Based Violence in Emergencies (2004); Guidelines for Field Staff Promoting Reintegration (Golden Rules)-(2000); Respect for Humanitarian Mandates in Conflict Situations (1996); Revised Terms of Reference of Humanitarian Coordinators (2003); Note of guidance on relations between Representatives of the Secretary-General, Resident Coordinators and Humanitarian Coordinators (2000); Revised Guidelines for HIV/AIDS Interventions in Emergency Settings (2003); Guiding Principles on Internal Displacement (1999); Manual on Field Practice in Internal Displacement (1999); IDP Training Strategy (2002); Growing the Sheltering Tree: Protecting Rights through Humanitarian Action (2002); Implementing the Collaborative Response to Situations of Internal Displacement – Guidance for UN Humanitarian and/or Resident Coordinators (2004); Protect or Neglect – Towards a More Effective United Nations Approach to the Protection of Internally Displaced Persons (2004); Sanctions Assessment Handbook - Assessing the Humanitarian Implications of Sanctions; Plan of Action and Core Principles of Codes of Conducts on Protection from Sexual Abuse and Exploitation in Humanitarian Crisis (see also Secretary-General’s Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13)), as well as the IASC Statement of Commitment on Action to address gender based violence in emergencies. These and other relevant documents can be found on the IASC website (www.humanitarianinfo.org/iasc) and Reliefweb (www.reliefweb.int).

^{vi} For example, in relation to development cooperation, this approach has been described by UNDG participating agencies in terms which can be applied also to humanitarian action:

“(a) All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process. Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.”^{vi} (*The Human Rights Based Approach to Development Cooperation - Towards a Common Understanding Among UN Agencies*, adopted at Stamford, USA, May 2003).

^{vii} The Sphere Project Handbook on Humanitarian Charter and Minimum Standards in Disaster Response , for example, intrinsically links fundamental rights with the provision of essential services.

^{viii} See ICRC, *Strengthening Protection in War*, Geneva: ICRC (2001). International Human Rights Law identifies further non-discrimination grounds, including political opinion, religion, and disability.

^{ix} These sets of principles include those contained in United Nations General Assembly resolution 46/182 of 1991, The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief, 1994, and the Principles and Good Practice of Humanitarian Donorship, 2003, as well as a number of regional and country specific sets of principles and codes of conduct. The various codes and sets of principles tend to acknowledge that human rights law serves as one of their core sources and, in practice, human rights law is strongly reflected in many of the provisions. Human rights law and human rights approaches also serve to interpret better the codes and principles and to target them more effectively.

^x The Action 2 Plan of Action has as one of its specific objectives that, “CCA/UNDAF and CAP/CHAP undertaken in the three year period will have systematically integrated human rights” (Para 14 (b)).

^{xi} For guidance please see the [OHCHR Manual on Witness Protection](http://www.unhcr.ch/html/menu6/2/training.htm) (forthcoming: it will be accessible at <http://www.unhcr.ch/html/menu6/2/training.htm>). UNICEF has also developed specific guidelines on dealing with children in such situations and its advice should be sought whenever appropriate. UNHCR should take the lead in any information gathering with refugees. Regarding IDPs, the designated UN agency (where applicable) should take the lead. It is also strongly advised that the HC seek the advice of relevant human rights specialists. For further information regarding good practice for the gathering and handling of human rights information see the [OHCHR Training Manual on Human Rights Monitoring](http://www.unhcr.ch/html/menu6/2/training.htm) (accessible at: <http://www.unhcr.ch/html/menu6/2/training.htm>).

^{xii} For further information on international crimes see IASC, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law* (2003), available at www.humanitarianinfo.org/iasc

^{xiii} The term “reservation” refers to the right of States when signing or ratifying a human rights treaty to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state. As regards derogations, most human rights treaties allows states to suspend or derogate from the application of some human rights guarantees in emergency situations, including war. However, human rights law also recognises that people have certain fundamental and “non-derogable” rights that must be protected at all times, even in conditions of war and emergency. They include the right to life; the right to legal personality and due process of law; the prohibition of torture, slavery and degrading or inhuman treatment or punishment; and the right to freedom of religion, thought and conscience. Also, the obligation of States to progressively realize economic, social and cultural rights will not be suspended even during the emergency under certain treaties, such as the International Covenant on Economic, Social and Cultural Rights.

^{xiv} HC TOR, para.20.

^{xv} SG report A/59/2005, para. 135

^{xvi} The Vienna Declaration and Programme of Action, para. 4

^{xvii} For example, the violation of the right to food (under human rights law), when intentional, becomes a violation of international humanitarian law and a war crime. According to the Rome Statute of ICC, “intentional starvation as a method of warfare” is a war crime. In such cases the violation goes beyond the breach of a convention and becomes a crime under international law.