

Policy

PROTECTION IN HUMANITARIAN ACTION

2016

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INTER-AGENCY STANDING COMMITTEE POLICY ON PROTECTION IN HUMANITARIAN ACTION

1. BACKGROUND AND PURPOSE OF THE POLICY

In a statement issued in December 2013, the Principals of the Inter-Agency Standing Committee (IASC) affirmed that all humanitarian actors have a responsibility to place protection at the center of humanitarian action.¹ As part of preparedness efforts, immediate and life-saving activities, and throughout the duration of a crisis and beyond, it is thus incumbent on Humanitarian Coordinators, Humanitarian Country Teams and clusters to ensure that “protection of all persons affected and at-risk [informs] humanitarian decision-making and response, including engagement with States and non-State parties to conflict.” The IASC has committed to a system-wide and comprehensive response to conflict and disasters. This response is driven by the needs and perspectives of affected persons, with protection at its core.

Civilians are often subjected to violence, abuse, coercion and deprivation during armed conflict. Experience shows that parties to conflict often violate the principles of distinction, proportion and precaution in the conduct of hostilities. The IASC’s approach to protection emphasizes that under international law authorities at all levels of government hold the primary obligation and responsibility to respect, protect and fulfil the rights of persons on their territory or under their jurisdiction. In armed conflict, non-State armed groups (NSAGs), although not party to international humanitarian law (IHL) treaties, are bound to respect IHL – including the fundamental obligation to distinguish between civilians and fighters in the conduct of hostilities and the obligation to take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks. (See Annex I of this policy for more on the normative framework for protection.) In addition, de facto authorities or non-state armed groups that exercise government-like functions and control over territory are increasingly expected to respect international human rights norms and standards when their conduct affects the human rights of individuals under their control.

In armed conflict, other situations of violence and disasters, international and national humanitarian organizations have a crucial role to play in offering their services to help prevent and to alleviate human suffering. A strategic, comprehensive and collective approach to protection in humanitarian response can enhance the overall ability of humanitarian actors to analyze, prioritize and respond effectively to violations of international human rights law and international humanitarian law (hereinafter collectively referred to as “violations”), including the risks and consequences of violence, abuse, coercion and deprivation occurring in humanitarian crises.

¹ IASC, Statement on the Centrality of Protection, 17 December 2013 <http://www.refworld.org/pdfid/52d7915e4.pdf>.

This policy defines the centrality of protection in humanitarian action, as per the December 2013 statement of the IASC Principals, as well as the process for its implementation at country level. In doing so, it seeks to reinforce complementary roles, mandates and expertise of all relevant actors. Specifically, this policy emphasizes an IASC commitment to prioritize protection and contribute to collective protection outcomes, including through the development of an HCT protection strategy to address the most critical and urgent risks and violations. It also underlines the need to implement this commitment in all aspects of humanitarian action and across the Humanitarian Programme Cycle (HPC). As such, the collective IASC roles and responsibilities in placing protection at the center of humanitarian action are explained, with due consideration for mandates and expertise and in line with humanitarian principles.

This policy is intended to support and build on the IASC's Policy on the Protection of Internally Displaced Persons (1999).² It also seeks to complement other initiatives in support of protection, particularly the United Nations (UN) Human Rights Up Front Initiative (HRUF).³ Humanitarian actors must also strictly adhere to the IASC commitments related to Protection from Sexual Exploitation and Abuse (PSEA): this means working proactively to prevent and protect affected persons from any abuse by humanitarian actors themselves.⁴

2. DEFINING THE CENTRALITY OF PROTECTION IN HUMANITARIAN ACTION

The IASC defines protection as:

*"... all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. International Human Rights Law (IHRL), International Humanitarian Law, International Refugee law (IRL))."*⁵

This definition is comprehensive in scope, both in terms of the legal framework for protection ("full respect") and in terms of the strategies and methods by which protection can be achieved ("all activities").

Fundamentally, protection encompasses efforts pursued by humanitarian actors in all sectors to ensure that the rights of affected persons and the obligations of duty bearers under international law are understood, respected, protected and fulfilled without discrimination.

In practice, for a humanitarian response to be protection-oriented, it is essential to understand and seek to prevent, mitigate or end actual and potential risks, including violations of international humanitarian and human rights law, producing the harm that affected persons

² Protection of Internally Displaced Persons, Inter Agency Standing Committee Policy Paper, December 1999, https://interagencystandingcommittee.org/system/files/legacy_files/FINALIDPPPolicy.pdf

³ Rights up Front: A Plan of Action to Strengthen the UN's role in Protecting People in Crisis, 2013. www.un.org/sg/humanrightsupfront

⁴ IASC Statement on Protection from Sexual Exploitation and Abuse (December 2015) and Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and Non-UN Personnel (December 2006).

⁵ Protection of Internally Displaced Persons, Inter Agency Standing Committee Policy Paper, pg.4 December 1999, https://interagencystandingcommittee.org/system/files/legacy_files/FINALIDPPPolicy.pdf See also, Gioffi Caverzasio, Sylvie (2001) Strengthening Protection in War: a Search for Professional Standards. Geneva: ICRC, p 19. The definition was originally adopted by a 1999 Workshop of the International Committee of the Red Cross (ICRC) on Protection.

experience during a conflict or disaster. This requires a continuous analysis of risks people face, of threats, vulnerabilities and capacities of affected persons, and of the commitment and capacities of duty bearers to address risk factors. It also requires the identification of measures to reduce those risks, avoid exacerbating risk, including to stop and prevent violations, avoid reinforcing existing patterns of violence, abuse, coercion or deprivation and restoring safety and dignity to people's lives. This analysis provides the evidence-base for programming, advocacy and dialogue for the purpose of influencing and changing behaviours and policies in support of a more favourable protection environment.

Protection demands meaningful engagement with affected persons during all phases of a response in a manner that recognizes and is sensitive to age, gender and diversity. A meaningful engagement that goes beyond dialogue and risk assessment should enable humanitarian actors to respond to the priorities of affected persons and determine the impact of humanitarian action (or inaction) on them and, in turn, to design, implement and adapt activities that address or prevent patterns of violence, abuse, coercion and deprivation and assist people to claim their rights.⁶ Persons who are socially marginalized, for example, tend to face a heightened risk during a crisis due to their already limited resources, access to information, contacts and safe coping mechanisms. Children, in particular, face increased risks and vulnerabilities and make up half of the affected population. Often times, affected persons are able to identify the risks they face and their own capacities to address these risks. As such, specific risks such as sexual violence, explosive hazards, family separation or forced displacement, which can affect men, women, girls and boys differently, are more likely to be detected through meaningful engagement with affected populations.

3. RESPONSIBILITY FOR THE CENTRALITY OF PROTECTION

Given the multifaceted nature of protection threats and the complex contexts in which they arise, complementary, coordinated and collaborative actions by multiple organizations and authorities are required. Making protection central to humanitarian action thus demands a system-wide commitment (See Annex II for more details on the roles and responsibilities in relation to protection of different actors and entities within the IASC framework).

In their 2013 statement, the IASC Principals call on the full range of actors at country level to place protection at the centre of humanitarian action: Humanitarian Coordinators, Humanitarian Country Teams and Clusters. The Humanitarian Coordinator is responsible for leading and coordinating relevant organizations⁷ to design and deliver a humanitarian response that is principled, timely, effective and efficient, and contributes to longer-term recovery. Accordingly, the Humanitarian Coordinator has a fundamental role to play in ensuring that protection informs

⁶For example, food distributions may be followed by attacks on civilians by armed forces. Armed groups may subject medical facilities to incursions during which medical personnel are threatened and patients are taken away. People's movement may be restricted and they may be deprived of essential goods and services as a method of punishment directed at certain political, ethnic, or religious groups. Continuous deliberate deprivation of certain population groups may in turn leave people vulnerable to exploitation, such as sexual abuse or trafficking. The delivery of assistance may be impeded by the presence of explosive hazards.

⁷ See the Terms of Reference of the Humanitarian Coordinator:

<https://www.humanitarianresponse.info/en/system/files/documents/files/HC%20Terms%20of%20Reference.pdf>

decision-making in the HCT and that protection priorities are identified and result in collective action. The HCT, as the strategic and operational decision-making forum established and led by the HC, must likewise commit, in accordance with each member's expertise and mandate, to share information and analysis on protection as well as to prioritize and contribute to collective efforts to enhance protection for affected persons.

All humanitarian actors, irrespective of their sector-specific expertise, can contribute to protection of affected persons by committing to:

- Address protection issues that intersect with their formal mandates and sector-specific responsibilities;
- Engage collectively to achieve meaningful protection outcomes that reduce overall risks to affected persons by decreasing threats, reducing vulnerability and enhancing capacities;
- Mobilize other actors within and beyond the humanitarian system, as appropriate, to contribute to collective protection outcomes; and
- Evaluate commitments and progress towards placing protection at the center of the humanitarian response.

By committing to these four actions, which are explained in some detail below, humanitarian actors are more capable of ensuring a comprehensive and effective humanitarian response with protection at its core.

3.1 Address protection issues that intersect with formal mandates and sector-specific responsibilities

The Sphere Standards set out four protection principles that can be used to inform humanitarian response and to address protection issues through protection mainstreaming, protection integration, or specialized protection activities:

- Avoid exposing people to further harm as a result of your actions.
- Ensure people's access to impartial assistance – in proportion to need and without discrimination.
- Protect people from physical and psychological harm arising from violence and coercion.
- Assist people to claim their rights, access available remedies, and recover from the effects of abuse.

3.1.1 Protection mainstreaming

Protection mainstreaming,⁸ an imperative for all humanitarian actors engaged in humanitarian response, ensures a protection lens is incorporated into operations. It is a way of designing and implementing all programmes so that protection risks and potential violations are taken into

⁸ Different actors use different definitions for this term. The Global Protection Cluster Protection Mainstreaming Task Team defines protection mainstreaming as the process of incorporating protection principles and promoting meaningful access, safety and dignity in humanitarian aid (GPC Protection Mainstreaming Training Package). Some actors use the terminology of "safe programming", either as synonymous with protection mainstreaming or as a variation on protection mainstreaming. Conversely, some actors consider the safety, dignity and accessibility of aid (or "safe programming") to be primarily about meeting the basic minimum technical standards of humanitarian assistance and as distinct from protection itself.

consideration. To mainstream protection, actors need to understand *who* is at risk, *from what* or *whom* as well as *why*, and the consequences their actions or inaction may have on the threats people experience and their vulnerability and capacity vis a vis these threats . This includes knowing *how* and *where* to refer people in need for specialist support to prevent or recover from violence and exploitation, as well as understanding *when, how, and to whom* to refer specialized protection issues.⁹

3.1.2 Protection integration

Protection integration involves incorporating protection objectives into the programming of other sector-specific responses (i.e. beyond the protection sector response) to achieve protection outcomes. Integrated protection programming requires all humanitarian actors to commit, wherever feasible and appropriate, to protection objectives in the design of their activities. It can therefore support the system-wide commitment to the centrality of protection because it relies on different actors (i.e. protection and non-protection) to work individually and together as part of a multi-sector humanitarian response.

3.1.3 Specific and/or specialized protection activities

Protection actors and humanitarian actors with protection expertise play a key role in ensuring the implementation of specialized protection activities and services that aim to meet targeted protection objectives.¹⁰ The scale and scope of such activities and specific areas of expertise of these actors vary greatly, ranging from the incorporation of small scale protection activities within a wider humanitarian response to large stand-alone programmes in specific technical areas run by specialized protection actors. It is equally important for protection actors to make their protection expertise available to other clusters.

3.2 Engage collectively to achieve meaningful protection outcomes

Emerging, on-going or protracted crises that create risks to affected persons require coordinated, coherent, strategic and multidisciplinary responses. The HPC consists of a set of inter-linked tools to assist the Humanitarian Coordinator and members of the HCT to prepare for, manage and deliver this coordinated and multidisciplinary response, which comprises both assistance and protection. Depending on the operational context, however, it is often necessary to develop a comprehensive protection strategy to focus HCT attention and action on protection priorities beyond the scope of the Humanitarian Response Plan (HRP) or the protection cluster strategy.

⁹ Clusters should work with the protection cluster and specialized actors to ensure referral pathways are in place particularly for issues relating to gender-based violence, child protection, and psychosocial support.

¹⁰ By way of example, standalone protection activities can include protection monitoring and reporting as well as activities aimed at preventing or responding to specific protection risks (e.g. gender-based violence), violations (e.g. lack of access to documentation, restrictions on freedom of movement) and needs, including for specific groups such as women, children, persons with disabilities, older persons, displaced persons, and migrants. Activities can thus range from documentation, mine action, psychosocial care to rule of law.

Designing such a protection strategy requires four inter-related and on-going commitments as well as the full engagement of the Humanitarian Coordinator, HCT and all clusters, especially the protection cluster. These commitments are to:

- Data and information collection and sharing in conformity with data protection standards
- Integrated analysis
- Agreement on protection priorities and collective actions
- Continued monitoring and evaluation

These commitments must also inform and be informed by key deliverables in the HPC. At the same time, because humanitarian crises evolve rapidly, these commitments are dynamic. In other words, to understand and adapt to changes in operational contexts, it is necessary to ensure continuous monitoring and assessment; engagement with affected persons; information collection and sharing; analysis of protection risks, violations and harm; and evaluation of the roles of other actors.

3.2.1 Data and information collection, sharing and management

Insofar as mandates, expertise and confidentiality protocols permit, humanitarian actors must endeavour to collect and share data and information that is relevant to the protection of affected persons. In doing so, humanitarian actors provide the necessary evidence-base for analysis, programming and advocacy as well as for all components of the HPC and the development, review and update of a comprehensive protection strategy. Data and information collection and sharing should be timely to support early warning mechanisms and enable rapid and potentially life-saving interventions.¹¹ Data and information collection, sharing and management, however, must adhere to data protection standards, principles of confidentiality and a defined purpose. It must be done in a manner that protects the individuals and groups providing information from harm, including through the use and respect of informed consent. (See Annex III for more guidance on information and data management, including data protection.)

3.2.2 In-depth and integrated protection analysis

An in-depth and integrated analysis of the protection situation is necessary to understand i) *what* is provoking and shaping the crisis dynamics and resultant protection situation; ii) *what* is triggering or will trigger threats, including potential violations; iii) *who* is vulnerable vis a vis these threats *and why*; and iv) *how* the foregoing impacts the coping mechanisms of all affected persons. The commitment and capacity of duty bearers to address these risk factors must also be analyzed, as well as whether any failure to act will result in further risk to the vulnerable population. An integrated analysis requires engaging multiple actors from multiple disciplines and perspectives within and outside the humanitarian system, including peace operations, where deployed.

¹¹ Data collected should always be age and sex disaggregated. It must likewise be complemented by secondary data sources, early warning mechanisms and information available from national and international human rights monitoring mechanisms as well as other information management systems

Protection risks and violations are influenced by age, gender and other diversity factors, which can be exacerbated by a crisis, especially when forced displacement occurs. As such, to enable a more effective overall response, an in-depth and integrated analysis needs to take into account the specific vulnerabilities that underlie the risks faced by all affected persons, thereby avoiding an exclusive focus on pre-defined categories of persons. In particular, the analysis should consider experiences of men, women, girls and boys, and marginalized persons (e.g. LGBTI¹² persons, older persons, persons with disabilities, displaced persons or migrants, persons belonging to ethnic and religious minorities or linguistic minorities and/or indigenous peoples).

The protection cluster has the primary responsibility to support this in-depth and integrated analysis that is informed and validated by affected persons. The protection cluster must also ensure continuous protection monitoring and analysis. The protection cluster's analysis needs to be shared regularly with the Humanitarian Coordinator and HCT to inform decision-making, review and update protection priorities in light of the evolving operational context and measure progress towards collective protection outcomes.

3.2.3 HCT protection priorities and actions

Protection needs to be discussed regularly in the HCT (e.g. as standing agenda item). This discussion should draw on the protection analysis presented by the protection cluster as well as the HCT's engagement with international and national actors, including, as relevant, those outside the humanitarian response, to determine priorities and immediate actions. Such HCT discussions can thus be used to develop a comprehensive, system-wide protection strategy.

An HCT protection strategy, which needs to inform and be informed by the Humanitarian Response Plan (HRP), should aim to save lives and ensure the safety and dignity of affected persons while at the same time alleviating their suffering; preventing, stopping and addressing the violations they experience; providing effective remedies to violations and harm that they have endured; and restoring their dignity, assisting them to claim their rights and creating an environment whereby all duty bearers fulfill their protection obligations. As such, all levels of intervention, whether responsive, remedial or environment building should be considered in developing the strategy (See Annex IV for a description of the different levels of intervention for protection).

In view of the foregoing, an HCT protection strategy can build on an existing protection cluster strategy or other international, national or local strategy. The objective should be to ensure that strategies are streamlined, complementary and mutually reinforcing, and to avoid duplication, including at the delivery level.¹³ It is thus distinct from a protection cluster strategy because it serves to enable a comprehensive response to protection risks, including potential and actual violations, beyond what protection actors can achieve on their own. An HCT protection strategy therefore needs to describe its intended impact as well as the causal logic necessary for such an impact. It also needs to set out the protection outcomes to be collectively achieved as well as

¹² Lesbian, gay, bisexual, transgender and intersex

¹³ The HCT protection strategy, for example, is distinct from the protection and solutions strategy for refugees, led and coordinated by UNHCR. Both strategies should be streamlined, complementary and mutually reinforcing and avoid duplication, including at the delivery level.

the actions and activities to be pursued, including those already described in the HRP. Information management and monitoring systems should be agreed from the outset so that progress towards the strategy's outcomes can be systematically addressed and adjusted as necessary.

The UN's Human Rights Up Front (HRUF) initiative calls for the development and implementation of country-level strategies that address potential or actual serious violations by leveraging the capacities of the entire UN system. Accordingly, HCT protection strategies can contribute the humanitarian component and complement and reinforce HRUF strategies.

3.3 Mobilize other actors to contribute to collective protection outcomes

Factors that impact the protection of affected persons are often variable and multifaceted, going well beyond the capacity of humanitarian actors.¹⁴ In identifying protection priorities and the collective actions necessary to meet those priorities, including in the development or review of HCT protection strategies, humanitarian actors will need to engage and advocate with a broad range of stakeholders beyond the humanitarian response.¹⁵

In order to maximize impact, engagement with – *inter alia* -- development actors and peace operations is essential. Such an engagement, however, must seek complementarity and, at the same time, preserve humanitarian principles and avoid confusing roles and responsibilities. A broader range of stakeholders may be able to contribute information and analysis alongside concrete interventions (including advocacy and funding) aimed at stopping or redressing violations. Every effort must be made to ensure that any engagement with non-humanitarian actors does not undermine the aims of the HCT protection strategy, and that steps are taken, whenever possible, to anticipate and prevent or mitigate adverse consequences, including misinformation and misperceptions that could compromise humanitarian principles.

Humanitarian actors often face multiple challenges, including being confronted with restricted access or security concerns up to and including direct military attack. A balance needs to be struck between the possible impact of engaging in public advocacy to address protection risks and violations, and the possible consequences on continued access to affected persons. The HCT must therefore consider and agree on how best to leverage the different roles and capacities of different entities and on how to use regional and global actors and processes to ensure that advocacy takes place to support the achievement of protection outcomes and to prevent and

¹⁴For example, the humanitarian evacuation of people trapped by ongoing hostilities and facing an imminent risk requires negotiation with parties to conflict and potentially peacekeepers to ensure safe passage. It also demands a dialogue with communities and local authorities in areas where persons will be relocated. Hands-on contributions of shelter, logistics, health, food, and other sectors are equally necessary.

¹⁵ The diverse range of stakeholders to consider includes: different organs of the relevant state authority; armed forces and armed groups; individual commanders and fighters; diverse groups of affected persons, their institutions, and leaders; national and local organizations; national human rights institutions; political and peacekeeping missions; other States and permanent missions; private sector entities; donors; advocacy organizations; academia; and think tanks.

address violations of international law.¹⁶ These actors and entities can mobilize support, staffing and funding as well as engage in supportive advocacy, which may require systematic engagement with governments – including members of key inter-governmental bodies such as the UN Security Council and the UN Human Rights Council.¹⁷

3.4 Evaluate commitments and monitor progress in placing protection central in humanitarian action

The HCT needs to monitor and evaluate regularly its progress in working collectively to achieve protection outcomes and reducing the exposure of affected persons to risks and violations, as well as in supporting affected persons to enjoy their rights without discrimination. When developing a comprehensive protection strategy, the HCT will need to agree in advance on the mechanisms it will use to evaluate the strategy’s impact, as well as whether decision-making has been transparent and has served to enhance overall accountability to affected persons.

4. IMPLEMENTATION OF THE POLICY

It is necessary for all levels of leadership in IASC organizations to hold themselves and their staff accountable for the effective and consistent implementation of this policy. Specifically, this requires a commitment to advancing protection as an outcome, ensuring that:

- Effort of affected persons to rebuild their resilience and their own protection are supported, including through a meaningful and consistent engagement with humanitarian actors and involvement in decision-making.
- Leadership supports and promotes collaboration to harness the diverse mandates and expertise of IASC organizations in achieving protection outcomes while, at the same time, promoting accountability – including accountability to affected persons (AAP).
- Protection considerations, including an analysis of threats, vulnerabilities, capacities and the potential for unintended negative consequences are applied before, throughout and beyond a humanitarian response (in all aspects of the HPC), including in recovery and development activities.
- Humanitarian Coordinators and HCTs report on and are supported in making progress towards defined protection outcomes, including with the technical capacity and resources required.
- Insofar as mandates, expertise and confidentiality protocols allow, all humanitarian actors actively contribute to protection outcomes by collecting and sharing data and information;

¹⁶ Such actors and entities could include, but are not limited to, the Emergency Relief Coordinator (ERC), the High Commissioner for Human Rights, the High Commissioner for Refugees, the IASC Principals, the Emergency Directors Group, UN Human Rights Mechanisms (including the treaty bodies and special procedures) and the Global Protection Cluster (GPC).

¹⁷ The ERC and the High Commissioner for Human Rights’ functions enable them to effectively use mechanisms such as addressing the Security Council and Human Rights Council, contributing to the Secretary-General’s reports to the Security Council, General Assembly, Human Rights Council and the Economic and Social Council to draw the attention of the international community to protection risks. Furthermore, the ERC and the High Commissioner for Human Rights, in their functions as members of the Secretary-General’s Executive Committees, the Policy Committee and Chief Executive Board are in a strong position to promote an active and concerted response from within the UN system to such problems as they evolve.

contributing to analysis; reporting on violations; engaging in advocacy; and committing programming, activities, funding and other resources in support of protection outcomes.

- Humanitarian programmes and activities are carried out in compliance with this policy, and staff and partner staff of IASC organizations understand the rationale and contents of this policy and their obligations thereunder.
- All relevant governmental, intergovernmental, and non-governmental partners are adequately informed of this policy, as appropriate, and with a view to including regional, national and local actors in the collective and comprehensive approach to protection as described in this policy.
- This policy is considered when IASC organizations recruit, train and manage the performance of their staff.

Humanitarian responses to crises must endeavour to adhere to the highest standards of protection. This in turn demands each IASC member organization to commit to a cultural change whereby protection is understood as a shared, system-wide responsibility that is core to humanitarian action. All staff of IASC member organizations must therefore be encouraged, supported and incentivized by all levels of leadership to consider protection in all their actions; adhere consistently to a principled approach to humanitarian action, regardless of the political dynamics driving or influencing a crisis; and contribute to preventing, stopping, reporting on and remedying risks, violations and harm experienced by affected persons in crisis.

ACRONYMS AND ABBREVIATIONS

AAP	Accountability to Affected Persons
AoR	Area of Responsibility
AU	African Union
DSRSG	Deputy Special Representative to the Secretary General
EDG	Emergency Director's Group
ERC	Emergency Relief Coordinator
ERW	Explosive Remnants of War
GBV	Gender-Based Violence
GPC	Global Protection Cluster
HC	Humanitarian Coordinator
HCT	Humanitarian Country Team
HLP	Housing, Land and Property
HNO	Humanitarian Needs Overview
HPC	Humanitarian Programme Cycle
HRP	Humanitarian Response Plan
HRUF	Human Rights Up Front
IASC	Inter-Agency Standing Committee
ICC	Inter-Cluster Coordination
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IFRC	International Federation of Red Cross and Red Crescent Societies
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IRL	International Refugee Law

L3	Level 3
MA	Mine Action
NRC	Norwegian Refugee Council
OAS	Organization of American States
OAU	Organization for African Unity
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PC	Protection Cluster
PSEA	Protection from Sexual Exploitation and Abuse
RC	Resident Coordinator
TA	Transformative Agenda
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	Office of the High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNMAS	United Nations Mine Action Service
WG	Working Group

DEFINITIONS

COERCION

Forcing someone to do something against his or her will.

DATA PROTECTION

The systematic application of a set of institutional, technical and physical safeguards that preserve the right to privacy with respect to the collection, storage, use and disclosure of personal data.

DEFINED PURPOSE (DATA PROTECTION)

Given the sensitive and personal nature of protection information, protection information management must serve specific information needs and purposes. The purpose must be clearly defined and be proportional to both the identified risk and costs *vis-à-vis* the expected response.

DIVERSITY

Refers to different values, attitudes, cultural perspectives, beliefs, ethnic background, nationality, sexual orientation, gender identity, abilities, health, social status, skills and other specific personal characteristics. While the age and gender dimensions are present in everyone, other characteristics vary from person to person.

DEPRIVATION

Preventing people from accessing the goods and services they need. This can be deliberate or unintended, direct or indirect. It may include discrimination.

GENDER

Refers to the socially constructed roles for women and men, which are often central to the way in which people define themselves and are defined by others. Gender roles are learned, changeable over time, and variable within and between cultures. Gender often defines the duties, responsibilities, constraints, opportunities, and privileges of women and men in any context. Gender equality refers to the equal enjoyment of rights, responsibilities and opportunities of women, men, girls and boys. Gender equality implies that the interests, needs and priorities of each gender are respected.

GENDER-BASED VIOLENCE

Gender-Based Violence (GBV) is an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (i.e. gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty.

INFORMED CONSENT

Consent signifies the approval by the participant for the information to be used as explained. Consent is often given with limitations. It must therefore be specified whether all the data and information provided can be used, including the identity of the participant, or whether the information may be used on condition that the identity of the participants is kept confidential. The participant may deem some parts of their information to be confidential, and others not: this should also be clarified and recorded. For example, recent violations occurring in an IDP camp, where the perpetrators are still in the vicinity, may be judged to be confidential, whereas previous violations relating to the cause of displacement may not.

Informed consent is voluntarily and freely given based upon a clear appreciation and understanding of the facts, implications, and future consequences of the consent. In order to give informed consent, the individual

concerned must have all relevant facts at the time consent is given and be able to evaluate and understand its consequences. They also must be aware of and have the power to exercise their right to refuse to engage in an action and/or to not be coerced (i.e. being persuaded based on force or threats) or unduly influenced. Children's informed consent should be considered in light of their evolving capacities. In the case of children (under age 18), informed consent must be voluntary, with the informed consent of the child and a parent or guardian when in the best interests of the child. Persons with disabilities may need specific support based on the nature of their impairment whether it be physical, intellectual, or mental, to give consent.

In specialized protection work, risks to affected individuals linked to information sharing may be higher than risks associated with other humanitarian work. In these cases, "informed" implies the information provider receive explanations in simple, jargon-free language, as to the following:

- The identity of the information collector, along with a brief explanation of the mandate of the organization;
- The purpose of the information collection, its scope and method, and intended use of the information collected (to present cases, for statistical purposes, etc.);
- The details of the potential risks and benefits of participation in the process, including those related to using the information provided;
- The meaning of confidentiality, and how it applies, with special emphasis on the fact that the person interviewed can request any information that may reveal his/her identity to be kept confidential;
- Contact information so that the participant can reach the information gatherer;
- Details on how long the information will be used, and how and where it will be kept (stored);
- Reminders that the participant can cease participating at any time, and request that his or her information be destroyed, whenever feasible.

Even if informed consent is granted, the information collector has an obligation to assess the potential implications of the use of that information on the safety of the person providing it, and on others involved, and to minimize any additional risk to the participants that may be incurred.

NON-DISCRIMINATION

The principle of non-discrimination guards against unjust distinction in the treatment of different groups or individuals, on the basis of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, disability, birth or other status. This includes not being singled out for harm, denied access, unable to assert their rights, or otherwise disadvantaged.

Activities aimed at ensuring that people are not singled out for harm, denied access, unable to assert their rights or otherwise disadvantaged on the basis of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth, age or other status, i.e. discriminated against.

PROTECTION MAINSTREAMING

Different actors use different definitions for this term. The Global Protection Cluster Protection Mainstreaming Task Team defines protection mainstreaming as the process of incorporating protection principles and promoting meaningful access, safety and dignity in humanitarian aid. Some actors use the terminology of "safe programming," either as synonymous with protection mainstreaming or as a variation on protection mainstreaming. Conversely, some actors consider the safety, dignity and accessibility of aid (or "safe programming") to be primarily about meeting the basic minimum technical standards of humanitarian assistance and as distinct from protection itself.

PROTECTION INTEGRATION

Protection integration involves incorporating protection objectives into the programming of other sector-specific responses (i.e. beyond the protection sector response) to achieve protection outcomes. Integrated

protection programming requires all humanitarian actors to commit, wherever feasible and appropriate, to a protection objective in the design of their activities. It can therefore support the system-wide commitment to the centrality of protection because it relies on different actors (i.e. protection and non-protection) to work individually and together as part of a multi-sector humanitarian response.

PROTECTION OUTCOMES

A response or activity is considered to have a protection outcome when the risk to affected persons is reduced. The reduction of risks, meanwhile, occurs when threats and vulnerability are minimized and, at the same time, the capacity of affected persons is enhanced. Protection outcomes are the result of changes in behaviour, attitudes, policies, knowledge and practices on the part of relevant stakeholders. Some examples of protection outcomes include:

- Parties to conflict release child soldiers and issue explicit prohibitions, reinforced by disciplinary measures, to prevent child recruitment by their forces.
- National legislation formally recognizes land tenure entitlements of displaced populations.
- Safe access to alternative sources of cooking fuel reduces exposure to the threat of sexual violence.
- Community-based preparedness and early warning mechanisms support timely evacuation of especially vulnerable individuals from areas where they are at risk of violent attacks.
- Community leaders renew and promote societal norms that condemn gender-based violence and its perpetrators.
- Community level protection committees influence security forces to change their conduct in and around civilian areas through on-going liaison and negotiation.
- Government authorities support the voluntary movements of affected persons by ensuring full access to information that enables free and informed decision-making.

SPECIALIZED PROTECTION ACTIVITIES

Protection actors and humanitarian actors with protection expertise play a key role in ensuring the implementation of specialized and/or specific protection activities and services that aim to meet targeted protection objectives.

VIOLENCE

The act or threat of physical or psychological abuse.

ANNEX I

NORMATIVE FRAMEWORK

I. International humanitarian law

i. What is IHL?

International humanitarian law (IHL) is a branch of public international law specifically designed to limit the effects of armed conflicts. It applies in both international and non-international armed conflicts, and represents a compromise between the principles of military necessity and humanity. IHL restricts the means and methods of warfare and aims to ensure respect for persons who are not, or are no longer, taking direct part in hostilities (such as wounded combatants and detainees).

ii. Sources of IHL

Contemporary IHL came into being with the original Geneva Convention of 1864. It has evolved in stages in response to advances in weapons technology and changes in the nature of armed conflict.

A major part of international humanitarian law is contained in the four Geneva Conventions of 1949, which are universally ratified. In 1977, the Conventions have been developed and supplemented by two further agreements: the First and Second Additional Protocols relating to the protection of victims of, respectively, international and non-international armed conflicts. In 2005, a Third Additional Protocol was adopted, recognizing an additional distinctive emblem, the Red Crystal, having the same international status as the Red Cross and Red Crescent. Other agreements regulate the means and methods of warfare including the prohibition to employ certain weapons and protect certain categories of people and goods. These agreements include: the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict plus its two protocols; the 1972 Biological Weapons Convention; the 1980 Conventional Weapons Convention and its five protocols; the 1993 Chemical Weapons Convention; the 1997 Ottawa Convention on anti-personnel mines; the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. (A full list of the treaties that make up IHL can be found on pages 14 and 15 of the “IHL: answers to your questions” in section iv. below or at www.icrc.org/ihl/.)

In addition to treaty law, IHL also consists of customary law, i.e. rules emerged from State practice and considered as legally binding.

iii. Basic obligations under IHL

Parties to the conflict must distinguish at all times between combatants and military objects, on the one hand, and civilians and civilian objects on the other. Any attacks may be directed only against combatants and military objects and all feasible measures must be taken to avoid and, in any event, to minimize incidental loss of civilian life, injury to civilians, and damage to civilian objects. IHL also recognizes the primary role of State and non-State parties to armed conflicts to ensure the well-being of civilian populations under their control. IHL recognizes the right of neutral and impartial relief organizations to offer their services to alleviate the suffering of the affected population. The State must consent to relief action by humanitarian actors, but such consent cannot be withheld arbitrarily when the needs of the population under their control are not met. Parties to the conflict as well as all States not parties to the conflict must facilitate and allow the rapid and unimpeded passage of humanitarian aid to civilians in need.

As a brief overview, obligations of IHL also include the following:

➤ The following acts are prohibited at all times:¹⁸

- Targeted or indiscriminate attacks against civilians or civilian objects;
- Starvation of civilians as a method of warfare, and attacking, destroying, removing or rendering useless any objects indispensable for the civilian population's survival;
- Reprisals or collective punishments against civilians;
- Using civilians to shield military objectives from attack or to shield, favour or impede military operations;
- Acts of violence intended to spread terror;
- Using weapons that are inherently indiscriminate, cause superfluous injury or unnecessary suffering, or cause widespread, long-term and severe damage to the environment.

➤ Principles of humane treatment

- Persons who do not, or have ceased to, take part in hostilities must be treated humanely and protected against violence to life, health and physical or mental well-being, including murder, mutilation, torture and cruel, humiliating or degrading treatment.
- Rape, enforced prostitution and any form of indecent assault as well as sexual slavery, exploitation and abuse are prohibited in all circumstances and at all times.

➤ Forced displacement

- Unless essential for the security of civilians or imperative military reasons, parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, and parties to a non-international armed conflict may not order the displacement of the civilian population.
- Displaced persons have a right to voluntarily return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.
- States may not deport or transfer parts of their own civilian population into a territory they occupy.

➤ Assistance and basic living conditions

- All parties to the conflict must allow and facilitate the rapid and unimpeded passage of relief assistance necessary for the survival of civilians.
- All possible measures must be taken so that displaced civilians receive satisfactory conditions of shelter, hygiene, health, safety and nutrition.

➤ Individuals and groups with specific rights or needs

- The specific protection, health and assistance needs of women must be respected.
- Children are entitled to special respect and protection. Children under 15 must not be recruited into armed forces or armed groups or be allowed to take part in hostilities, whether directly or indirectly.¹⁹
- Older persons, persons with disabilities and the infirm are entitled to special respect and protection.
- The sick and wounded must be protected and provided with needed medical care and attention with the least possible delay and to the fullest extent practicable.
- The family should be protected. Measures should be taken to ensure that family members are not separated and, if separation occurs, that they are reunited as soon as possible.

iv. More information about IHL

¹⁸Global Protection Cluster handbook on the protection of IDPs Introduction

http://www.globalprotectioncluster.org/assets/files/tools_and_guidance/protection_of_idps/IDP_Handbook_EN.pdf

¹⁹The Optional Protocol to the Convention on the Rights of the Child raises the age limit to 18 for compulsory recruitment by States and for any type of recruitment, even if voluntary, by armed groups. Similarly the Protocol raises to 18 the age limit for direct participation in hostilities in the lines of governmental forces and to 18 for any type of participation in hostilities on the side of non-State armed groups.

ICRC, *International Humanitarian Law: Answers to Your Questions*, 2014, available at:
<https://www.icrc.org/eng/assets/files/other/icrc-002-0703.pdf>

ICRC, *Customary International Humanitarian Law Database*, available at:
<https://www.icrc.org/customary-ihl/eng/docs/home>

IASC Task Force on Humanitarian Action and Human Rights, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the context of armed conflict*, 2004, available at:
<https://www.icrc.org/eng/assets/files/other/faqs.pdf>

II. International human rights law

i. What is IHRL?

International human rights law is a system of international norms designed to protect and promote the human rights of all persons. These rights, which are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, are universal, interrelated, interdependent, and indivisible.

ii. Sources of IHRL

a. International instruments

IHRL finds its source in a series of international treaties, which are reinforced and complemented by customary international law, general principles, and soft law instruments.

The development of modern IHRL started with the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948. There are ten core international human rights treaties, each with their own committee of experts to monitor implementation by its State parties:

- The International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- The International Covenant on Economic, Social and Cultural Rights (1966) and its Optional Protocol.
- The International Covenant on Civil and Political Rights (1966) and its two Optional Protocols.
- The Convention on the Elimination of All Forms of Discrimination against Women (1979) and its Optional Protocol.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002).
- The Convention on the Rights of the Child (1989) and its three Optional Protocols.
- The International Convention on the Protection of All Migrant Workers and Members of Their Families (1990).
- The International Convention for the Protection of All Persons from Enforced Disappearance (2006).
- The Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol.

Some treaties are supplemented by optional protocols (noted above) dealing with specific concerns, such as the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, or on the sale of children, child prostitution and child pornography, or the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

A State must have ratified or acceded to the treaty to be bound by its obligations. However, there is a significant body of international human rights norms that forms part of customary international law. This

means that these rules are binding on the State regardless of whether it has ratified or acceded to a relevant treaty.

IHRL further comprises a wide range of non-binding instruments, which assist in understanding and delineating human rights obligations (“soft law”). Examples include:

- The Universal Declaration of Human Rights;
- Declaration on the Protection of Persons from Enforced Disappearances;
- The Guiding Principles on Internal Displacement;
- Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups;
- The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity;
- The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and
- The Nelson Mandela rules.
- Guiding Principles on Business and Human Rights.

Some of the provisions contained in some of these instruments may reflect customary international law

b. Regional human rights instruments

Concurrent with the development of international human rights law applying to all States, regional human rights treaties and monitoring mechanisms have also been developed. The provisions of regional treaties and the jurisprudence of regional monitoring mechanisms, especially the binding decisions of regional courts, may have particular influence with relevant States. In some countries, regional standards may be better known and more respected than nearly identical international standards. Similarly, in instances where the constitution or national law incorporates regional standards, they should be prominently used.

In Europe, all members of the European Union and the Council of Europe have ratified the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Court of Human Rights adjudicates cases concerning States’ compliance with the Convention. The European Social Charter was adopted in 1961 and revised in 1996. It deals with economic, social and cultural rights, and is monitored by the European Committee of Social Rights. An additional protocol provides for a system of collective complaints. In addition, specialist treaties have been developed such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities.

Members of the Organization of American States (OAS) adopted the American Declaration of the Rights and Duties of Man in 1948 and the American Convention on Human Rights in 1969. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights oversees the implementation of both these human rights instruments. The OAS has also adopted additional protocols to the American Convention on Human Rights and treaties on specific issues to strengthen the regional protection of human rights.

Almost all States of the African Union (AU) have ratified the 1981 African Charter on Human and Peoples’ Rights. The African Commission on Human and Peoples’ Rights monitors its implementation by State parties and has adopted guidelines and principles that interpret its provisions. AU has adopted an additional protocol to the African Charter to strengthen the protection of women’s rights and an additional treaty on children’s rights. In 2005, AU created the African Court on Human and Peoples’ Rights.

The Council of the League of Arab States adopted the 2004 Arab Charter on Human Rights. The treaty establishes the Arab Human Rights Committee to consider reports of State parties on the measures taken to give effect to the Arab Charter.

iii. Applicability of IHRL

The duty of the State to respect, protect and fulfill human rights applies at all times, including during armed conflict and disasters. In “time of public emergency which threatens the life of the nation” and the existence of which is officially proclaimed”, the State may temporarily derogate from (i.e. suspend) certain rights. (See Article 4, International Covenant on Civil and Political Rights; also interpreted by the Human Rights Committee in its general comment No. 29). Such derogations are only allowed to the extent strictly required by the exigencies of the situation, and the measures taken cannot be inconsistent with the State’s obligations under international law and cannot be discriminatory. In addition, some rights are non-derogable (i.e. they can never be suspended whatever the situation, even during an armed conflict). These include:

- The right to life;
- Freedom from torture and cruel, inhuman and degrading treatment or punishment, or of medical or scientific experimentation without consent;
- Freedom from slavery, slave-trade and servitude;
- Recognition of everyone as a person before the law
- Freedom of thought, conscience and religion;
- The principle of legality in criminal law, including the prohibition of punishment for any act that was not a crime when the act was committed

In addition, the prohibition against genocide is absolute.

The International Covenant on Economic, Social and Cultural Rights contains no derogation clause, and the Committee on Economic, Social and Cultural Rights has confirmed that the Covenant applies even in times of conflict or general emergency. In its general comment No. 3, the Committee on Economic, Social and Cultural Rights has affirmed that States parties have a core obligation to ensure the satisfaction of at least minimum essential levels of each of the Covenant’s rights. This interpretation of the Covenant has been further elaborated by the Committee in subsequent general comments, in particular general comment No. 14 on the right to health and general comment No. 15 on the right to water, in which the Committee confirmed that the core obligations related to those rights are non-derogable. In addition, it is important to note that the Convention on the Rights of the Child has no derogation clause and applies in both times of peace and during armed conflict or emergency situations.

IHRL imposes obligations to *respect, protect, and fulfil* that covers all human rights. These three terms make it possible to determine whether international human rights obligations have been violated. Since States have obligations to do something (positive obligations) or to abstain from doing something (negative obligations), they can be responsible for a violation of IHRL through action, omission, or failure to take necessary measures.

The *duty to respect* refers to duty holders’ obligation to refrain from any action that would interfere with an individual’s enjoyment of or access to a human right. For example, in a situation of conflict, States should refrain from denying access to health facilities to members of an opposition group, and from militarily occupying a school. Such actions would represent direct interference by the State in the enjoyment of the rights to health and to education.

The *obligation to protect* requires duty holders to ensure that third parties do not deprive people of their rights, including by preventing, investigating, punishing and ensuring redress for certain acts committed by third parties. States should, for instance, take measures regarding attacks by armed groups against health and educational facilities, as these are a key element for the enjoyment of the rights to health and education.

The *obligation to fulfil* refers to the State obligation to take all necessary legislative, administrative, budgetary, judicial and other measures towards the full realization of human rights. For example, States need to take measures to enable individuals to fulfil their economic and social rights themselves or, if necessary, to ensure direct provision of certain goods and services. In a conflict, the destruction of social infrastructure might mean that people are not in a position to feed themselves. In such cases, States should make sure that food aid reaches the population, as this will be both an underlying determinant for the enjoyment of the right to health, and will ensure freedom from hunger, and respect for the minimum core content of the right to food.

It is important to note that States are obliged to investigate and prosecute gross violations of IHRL, in particular those that amount to crimes under international law. States' investigations into such allegations must be carried out by independent and impartial bodies and be prompt, thorough, and effective. Victims of human rights violations are entitled to effective remedies, including reparation and redress.

The primary duty bearers of human rights obligations are States. In addition, de facto authorities or non-state armed groups that exercise government-like functions and control over territory are increasingly expected to respect international human rights norms and standards when their conduct affects the human rights of individuals under their control.

iv. Applicability of IHRL during armed conflict and interplay between IHRL and IHL

IHRL is applicable at all times, meaning also in situations of armed conflict. In such contexts IHRL applies concurrently with IHL (which only applies in situations of armed conflict). In principle, both bodies of law should be applied in a complementary and mutually reinforcing way. In the few cases where inconsistencies between the two bodies of law appear, the most pertinent norm or rule to a specific incident or issue should be applied, because that norm or rule reflects the specific reality it was developed for. However, it is important to note that assessing the interplay between the two bodies of law and determining the applicable norms or rules to a specific case or incident is a complex exercise.

iv. More information about IHRL

OHCHR, *Manual on Human Rights Monitoring* (Chapter 5 on “Applicable International Human Rights and Humanitarian Law Framework”), available at:

<http://www.ohchr.org/Documents/Publications/Chapter05-MHRM.pdf>

OHCHR, *International Legal Protection of Human rights in Armed Conflict*, 2011

http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf

IASC Task Force on Humanitarian Action and Human Rights, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the context of armed conflict*, 2004, available at:

<https://www.icrc.org/eng/assets/files/other/faqs.pdf>

III. International refugee law

I. What is IRL

International refugee law is an area of law that protects and assists people, as refugees, who are no longer protected by their own country, are outside their country of origin, and are at risk or victims of persecution or other forms of serious harm in their country of origin. International refugee law provides specific rights and standards of treatment, based on international human rights law, for their stay in the country of asylum.

The specific legal regime protecting the rights of refugees is referred to as ‘international refugee protection’. The rationale behind the need for this regime lies in the fact that refugees are people in a specific predicament, which calls for additional safeguards. Asylum-seekers and refugees lack the protection of their own country.

Article 14 of the Universal Declaration of Human Rights asserts the right of everyone to seek and enjoy asylum. Other legally binding documents, such as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), have since confirmed this right. However, no clear content was given to the notion of asylum at the international level until the 1951 Convention related to the Status of Refugees [the ‘1951 Convention’] was adopted, and UNHCR was tasked to supervise its implementation. The 1951 Convention and its 1967 Protocol, as well as regional legal instruments, such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration of 1984, are the cornerstone of the modern refugee protection regime and set forth the basic rights and obligations of refugees.

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol provide a universal code for the treatment of refugees and include core principles of protection such as non-discrimination, *non-refoulement*, non-penalization for irregular entry and presence, and the acquisition and enjoyment of rights over time. Fundamental to international refugee law is the principle of *non-refoulement* -- a prohibition of the forced return of a refugee to his or her country of origin if the return would expose that person to a risk of persecution. The *non-refoulement* principle of international refugee law has received such wide recognition and application that it has reached the status of customary international law and is, therefore, binding even on states not party to the 1951 Convention relating to the Status of Refugees.

Not everyone crossing an international border is a refugee. In general, a refugee is any person who meets the eligibility criteria in the refugee definition provided by relevant international or regional refugee law instruments or UNHCR’s mandate. Article 1 of the 1951 Convention relating to the Status of Refugees defines a refugee as:

[A] person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a social group or political opinion, is outside the country of his origin and is unable or unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Regional legal instruments have extended this definition to include persons compelled to leave their country of origin because of indiscriminate violence or other events seriously disturbing public order in the refugee definition. Thus, countries in Africa adhering to the 1969 OAU Convention governing specific aspects of refugee problems in Africa and in Latin America applying the Cartagena Declaration of 1984 may have a broader refugee definition.

Under international law, a person is considered a refugee (and so entitled to certain protections and treatment) as soon as s/he meet the relevant criteria, regardless of whether or not they have received formal recognition as a refugee. A person does not become a refugee because of recognition, but rather is recognized *because* s/he is a refugee.

Refugee protection does not extend to persons who have committed a crime against peace, a war crime or a crime against humanity; a serious non-political crime outside the country of refuge; or acts contrary to the purposes and principles of the United Nations. While, in such situations, refugee law might not be applicable, the protection provided by human rights and humanitarian law remains in place.

ii. Key sources of IRL

International refugee law encompasses international and regional legal instruments and customary international law that identify persons in need of international protection as refugees and the rights to which they are entitled. The main international/regional instruments are:

- The 1951 Convention relating to the Status of Refugees;
- The 1967 Protocol relating to the Status of Refugees;
- The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

In addition, the 1984 Cartagena Declaration on Refugees, while not legally binding, has attained a particular standing Latin America through its incorporation into national laws. Further, in the European Union, refugee protection is part of the Common European Asylum System, which is based on the 1951 Convention relating to the Status of Refugees.

As with international human rights law, there is also an important body of relevant soft law, including *Conclusions on International Protection of the Executive Committee of the High Commissioner's Programme* and *Guidelines on International Protection* issued by UNHCR in the exercise of its supervisory responsibility. The full range of international humanitarian (in the case of armed conflict) and human rights law is equally applicable to refugees.

iii. More information about IRL

UNHCR, *Protection Manual* (repository of protection policy and guidance), available at:

www.refworld.org

UNHCR, *Refugees and Migrants: Frequently Asked Questions*, available at:

<http://www.unhcr.org/56e95c676.html>

UNHCR website, available at:

<http://www.unhcr.org/>

The Refugee Law Reader (cases, documents and materials), available at:

www.refugeelawreader.org

IV. Domestic/National Laws

Domestic or national laws may be more familiar to affected persons or duty bearers. Insofar as they are compliant with international law, they should be referenced to support protection. The constitutions and laws of some countries may sometimes even be more protective of human rights than international law. In such cases, humanitarian actors should use the applicable standards that are the most protective, be they international, national or local. Advocacy and other work to make domestic law compliant with international standards can strengthen protection. All States have a responsibility to ensure that their national laws and policies respect and reflect their obligations under international law, including those contained in international human rights and humanitarian law. States, therefore, must take action, by all appropriate means, to give effect to their international legal obligations at the national level.

V. Traditional, social, and cultural norms

The behaviour of affected people as well as duty-bearers, including national authorities, State and non-State parties to a conflict, and other actors, may be primarily informed or driven by ideas, beliefs, or policies derived from traditional, social, religious or cultural norms rather than by their obligations under international law.

These norms may be, to some degree, consistent with international humanitarian and human rights law and, therefore, have positive protective effect. For example, in many societies, the idea of a ‘warrior’ is closely linked to the ideals of honourable and ethical conduct on and off the battlefield. Some cultural norms consider involving children in armed conflict to be taboo, and others make a distinction between people who participate in fighting and those that are to be protected because they do not participate in fighting. Social, cultural and religious norms may recognize entitlements to community resources for people who are displaced from their homes, or who have lost a head of household.

A society that has been wracked by war or one that is suffering the effects of repeated disasters and pressure on scarce resources, may see its traditional norms and values come under pressure, particularly when communities are displaced, scattered from their traditional homes and lands, and traditional leadership is under strain. In addition, some traditional norms may be abusive or harmful rather than protective. For example, beliefs about the role of girls and women in society may result in relying on harmful coping mechanisms, such as forced marriage or an unwillingness to challenge gender-based violence. Traditions associated with communal conflict may encourage retaliation for attacks and looting of property.

This means that when seeking to enhance compliance with IHL and HRL, humanitarian actors should be mindful of the broader scope of norms that affect behaviour during crises. Traditional, social, and cultural norms may not be used as justification for the violation of international law. However, familiarity with the traditions, norms, and rules of the society affected by conflict or disaster can open up opportunities to persuade a variety of actors to change abusive behaviour – whether this means promoting or reviving a positive and protective norm or mitigating an abusive one.

ANNEX II

ROLES AND RESPONSIBILITIES FOR THE CENTRALITY OF PROTECTION

1. Country-level

HUMANITARIAN COORDINATOR

With overall responsibility to coordinate country-level humanitarian action that aims alleviate to human suffering and protect the lives, livelihoods and dignity of populations in need, the Humanitarian Coordinator²⁰ ensures that:

- protection priorities are identified and addressed in strategic humanitarian planning and decision-making, including by leading and coordinating the development and implementation of an HCT protection strategy;
- all necessary efforts are made to ensure sufficient funds are allocated to protection response;
- respect for human rights and international humanitarian law by all parties, including non-state actors, is promoted by coordinating the advocacy efforts of relevant organizations and through private and/or public advocacy, as appropriate.
- all necessary efforts are made to obtain free, timely, safe and unimpeded access by humanitarian organizations to affected populations by leading and/or promoting negotiations with relevant parties, including non-state actors.

Additionally, the Humanitarian Coordinator is responsible for fostering collaboration among humanitarian actors so as to enable analysis and collective commitments in addressing complex protection issues. This may involve encouraging humanitarian actors to challenge the status quo and tackle difficult issues jointly.

For informed decision-making, advocacy and negotiation, the Humanitarian Coordinator needs to seek regularly an in-depth and comprehensive analysis of the protection situation from the Protection Cluster and other relevant national and international actors. Together with the HCT, the Humanitarian Coordinator is responsible for facilitating and coordinating collaboration and engagement with a diverse range of humanitarian and non-humanitarian actors in addressing protection threats.²¹

HUMANITARIAN COUNTRY TEAM

The HCT, as the strategic and operational decision-making and oversight forum established and led by the Humanitarian Coordinator, must commit, in accordance with each member's expertise and mandate, to share information and analysis on protection as well as to prioritize and contribute to collective efforts to enhance protection for affected persons. The HCT is responsible for agreeing on common strategic issues, including setting common objectives and priorities for the overall humanitarian response with protection as a central element. The HCT drives the development and implementation of an HCT protection strategy. This in turn demands a regular discussion on protection to identify priorities and immediate actions, including coordinated advocacy, aimed at alleviating human suffering and protecting the lives, livelihoods and dignity of populations in need.

INTER-CLUSTER COORDINATION (ICC) MECHANISM

²⁰ While the affected State has the primary role in the initiation, organisation, coordination, and implementation of humanitarian assistance within its territory, in situations where a Humanitarian Coordinator (HC) is designated s/he is responsible for leading and coordinating humanitarian action of relevant organisations in country. See the Terms of Reference of the Humanitarian Coordinator. It is the primary role of OCHA to support the HC in meeting these responsibilities.

²¹ In a statement by the IASC Principals on 11 December 2015, the placement of PSEA within the humanitarian architecture was clarified and an IASC system-wide responsibility for developing PSEA strategies and action plans institutionalized through reinforced PSEA responsibilities for Humanitarian Coordinators. See the full statement here:
https://interagencystandingcommittee.org/system/files/iasc_statement_on_psea_20151211_2.pdf

The inter-cluster coordination (ICC) mechanism facilitates the integration of protection and protection mainstreaming in the Humanitarian Programme Cycle, including through coordinated assessments and joint analysis for a shared understanding across clusters of *who* is at risk, from *what* or *whom*. Inter-cluster coordination supports protection mainstreaming in the clusters by facilitating a collective approach suitable to the context, in close collaboration with the protection cluster which provides technical expertise. The ICC provides updates on operational developments impacting a response, thereby supporting efforts by the Humanitarian Coordinator and HCT to identify and address protection priorities, including core advocacy issues.

PROTECTION CLUSTER

At country level, the protection cluster²² supports the delivery of specialized and specific protection activities, undertakes regular assessments and analysis, plans and implements its cluster strategy and coordinates and contributes to robust advocacy.

In addition to its standard cluster responsibilities, the protection cluster must contribute to timely and informed decision-making by the Humanitarian Coordinator and HCT through an ongoing and in-depth and integrated analysis of the protection situation, which is enabled by a meaningful engagement with affected persons. The protection cluster must also monitor and assess continuously whether and how protection risks are changing so that the Humanitarian Coordinator and HCT can review protection priorities in light of the evolving operational context and measure progress towards collective protection outcomes (i.e. support the HCT to monitor results-based and outcome level information in real time).

Additionally, the protection cluster supports the mainstreaming of protection. It also works with and provides its expertise to other clusters in addressing the most prevalent and severe protection risks that intersect with their sector-specific response.

OTHER CLUSTERS AND ORGANIZATIONS

Notwithstanding the critical role played by the protection cluster described above, all clusters and their lead agencies have a responsibility to contribute to placing protection at the center of humanitarian action. Accordingly, cluster coordinators need to ensure that protection is appropriately incorporated into all phases of the HPC and that protection is mainstreamed into sector-specific programming.

All clusters must feed into the protection analysis that informs decision-making and development of the HRP. All clusters must also work with protection actors to ensure that referral pathways are in place for protection actors to respond to specific protection issues (e.g. gender-based violence, child protection and psychosocial support).

All clusters must also commit to sharing information, insofar as mandates, expertise, and confidentiality protocols permit, which is relevant to the protection of affected persons. They must determine how they can contribute to the HCT protection strategy, afterwards committing to undertake activities and advocacy in support of the strategy and in a manner that harnesses their mandates, resources, and expertise towards achieving protection outcomes.

2. Global-level

²² UNHCR is lead of the Global Protection Cluster. At the country level, IASC guidance states that cluster lead agencies “ideally mirror global arrangements.” For conflict-induced crises, UNHCR often leads the protection cluster, whereas in disaster settings or in complex emergencies without significant displacement, leadership of the protection cluster is decided through consultation between UNHCR, OHCHR and UNICEF.

EMERGENCY RELIEF COORDINATOR

The ERC²³ is responsible for the coordination of interagency humanitarian action, in cooperation with relevant organizations and entities dealing with humanitarian assistance, and in full respect of their mandates. The ERC has a central role for the interagency coordination of protection and assistance to internally displaced persons. The ERC's responsibilities include advocating for protection and assistance, mobilizing political and financial support, briefing the Security Council and engaging in dialogue with governments, humanitarian agencies and other relevant actors. The ERC, in consultation with the IASC, should seek to ensure that Humanitarian Coordinators are appointed and managed in light of the system-wide commitment to place protection at the center of humanitarian action. Through regular exchange and dialogue with Humanitarian Coordinators, the ERC should promote ongoing country-level protection analysis that informs decision-making for coordinated responses aimed at reducing overall risks to affected persons. Country-level analyses should likewise provide the ERC the evidence-base to mobilize support and engagement by UN Member States and multilateral *fora*.

THE INTER-AGENCY STANDING COMMITTEE

The overall objective of the Inter-Agency Standing Committee (IASC)²⁴ is to improve humanitarian response, including the protection of affected people. The primary objectives of the IASC in complex and major emergencies are to:

- Develop and agree on system-wide humanitarian policies;
- Allocate responsibilities amongst organizations in humanitarian programmes;
- Develop and agree on a common ethical framework for all humanitarian activities;
- Advocate common humanitarian principles to parties outside the IASC;
- Advocate for the full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law and refugee law);
- Identify and address areas where gaps in mandates or lack of operational capacity exist; and
- Resolve disputes or disagreements about and amongst humanitarian organizations on system-wide humanitarian issues.

IASC PRINCIPALS

The IASC Principals have recognized that they share responsibility for placing protection at the centre of humanitarian action, including by supporting efforts at the country level through policy development, dialogue, advocacy and engagement with States. The IASC Principals have committed to provide the necessary support and to work with Humanitarian Coordinators, HCTs, Cluster Coordinators, Protection Clusters and all IASC members in achieving system-wide and comprehensive response to crises, and to the needs of affected persons, with protection at the core.

IASC WORKING GROUP

The responsibilities of the IASC Working Group (WG) include: developing policies and guidance in line with strategic decisions made by the IASC; making proposals to the IASC on strategic issues; and collaborating with the Emergency Directors Group in identifying and elaborating policy matters with direct bearing on humanitarian operations. The IASC WG also has responsibility for establishing and overseeing the work of Task Teams as well as setting up and monitoring Reference Groups.

²³ The ERC role is set out in GA Resolution 46/182 and subsequent resolutions on Strengthening of the coordination of emergency humanitarian assistance of the United Nations. See also GA Resolution 56/164 (2001) and subsequent resolutions on Protection of and Assistance to Internally Displaced Persons.

²⁴ For more on IASC roles see Inter-Agency Standing Committee, see the *Concise Terms of Reference and Action Procedures*, February 2014: https://interagencystandingcommittee.org/system/files/legacy_files/IASC%20TOR%20-%2011Feb2014.pdf

IASC EMERGENCY DIRECTORS GROUP

The Emergency Directors Group (EDG) has an important role to play in relation to operationalizing the IASC Protection Policy, including by supporting the leadership and responsibility of the Humanitarian Coordinator and HCT, and by undertaking regular monitoring and review of emergency operations. Specifically, the EDG is responsible for:

- Advising the IASC on operational issues of strategic concern, including all operational issues placed on the agenda of the IASC Principals;
- Undertaking regular monitoring and review of emergency operations, including through joint field missions;
- Mobilizing agency and Global Cluster resources to address operational challenges and gaps, in support of Humanitarian Coordinators and HCTs;
- Considering future high-risk scenarios and determining appropriate early actions in support of Humanitarian Coordinators and HCTs;
- Supporting the IASC Principals in the activation and implementation of a system-wide Level 3 (L3) emergency response as defined in the Transformative Agenda Protocols;
- Ensuring appropriate information sharing with the IASC Working Group so as to address policy gaps and inform policy formulation; and
- Assuring the roll-out and implementation of the Transformative Agenda, including through monitoring, capacity and guidance, in close collaboration with the Senior Transformative Agenda Implementation Team (STAIT).

GLOBAL PROTECTION CLUSTER

Providing a platform for partners with expertise, resources and capacity relevant to protection, the Global Protection Cluster, led by UNHCR, coordinates and contributes to global-level inter-agency policy advice; provides guidance to Protection Clusters in the field on cluster responsibilities (including strategy development, information management, assessment and analysis and operational delivery); supports protection responses in humanitarian action (i.e., non-refugee situations); and leads standard and policy setting in relation to protection in complex emergencies (i.e. conflict and disaster-induced).

Given the broad definition of protection, Areas of Responsibility (AoR) have been established within the GPC: Child Protection, Gender-Based Violence (GBV), Mine Action (MA), and Housing, Land and Property (HLP). These AoRs provide technical advice and support in their specialized areas. AoRs may be replicated at the field level with sub-clusters, and other technical working groups may be formed to address specific context-specific protection issues.²⁵ Organizations that lead AoRs and field-level sub-clusters have the same responsibilities as cluster leads.

Child Protection

The Child Protection AoR, led by UNICEF, brings together NGOs, UN agencies, academics and others under the shared objective of ensuring more predictable, accountable and effective child protection responses in emergencies. To achieve its goals, the Child Protection AoR works closely with other specialist protection actors, notably in gender-based violence, as well as with actors specialized in mental health and psychosocial support as well as education.

The Child Protection AoR defines child protection as “the prevention of and response to abuse, neglect, exploitation of and violence against children in emergencies.”

²⁵ Technical working groups are task orientated and time limited and are created on a needs-basis. They should dissolve once they have completed their tasks.

Gender-Based Violence

The Gender-Based Violence (GBV) AoR, currently led by UNFPA and UNICEF, works to promote a comprehensive and coordinated approach to programming that prevents and responds to GBV. The GBV AoR accomplishes this through four key areas of work:

- Supporting lifesaving services operating in humanitarian settings
- Building knowledge and capacity on prevention of and response to GBV
- Establishing norms and standards
- Advocating for increased action, research, and accountability at global and local levels

The GBV AoR is premised on the understanding that all clusters and actors must take action to address GBV. While GBV occurrence is under reported, it takes place in every society and peaks in times of humanitarian crisis and displacement. With this in mind, the GBV AoR advocates for humanitarian personnel to assume GBV is occurring and threatening affected populations and treat it as a serious and life-threatening problem in every humanitarian response. GBV AoR members participate in and collaborate with other cluster lead agencies to ensure that GBV considerations are mainstreamed in the humanitarian response and linked with other cross-cutting issues.

Mine Action

The objective of the Mine Action AOR, led by UNMAS, is to ensure more predictable, accountable and effective mine action (MA) responses in emergencies, including by supporting field based MA activities and MA coordination mechanisms.

The objective of Mine Action is to identify and reduce the impact and risk of landmines and explosive hazards to a level where people can live safely. Mine Action also includes humanitarian demining (involving survey, mapping, marking and fencing and clearance), helping victims become self-sufficient and providing opportunities for sustainable development and stability, providing at-risk populations with mine risk/explosive remnants of war (ERW) risk education, as well as stockpile destruction.

Housing, Land and Property

The overarching goal of the HLP AoR, led by NRC and co-facilitated by IFRC, is to ensure a more predictable, accountable and effective HLP response in humanitarian emergencies. The HLP AoR operates as an open and inclusive forum with the view to benefit from the wide range of expertise within the HLP community of practice. At the country level, HLP forms part of the protection sector response in emergencies and a dedicated HLP coordination mechanism is usually integrated in field-based protection clusters. HLP working groups coordinate specialist HLP interventions and ensure that HLP issues are effectively taken into account in other relevant sectors of humanitarian assistance.

ANNEX III

GUIDANCE FOR INFORMATION MANAGEMENT

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ANNEX IV FRAMEWORK FOR PROTECTION ACTIVITIES²⁶

Specialized protection activities can be categorized in accordance with different levels of intervention, described below. In some cases, however, it can be difficult to confine all protection activities to a level of intervention. The dissemination of international humanitarian law, international human rights law, reporting or advocacy, for example, are transversal and thus relate to or support different levels of intervention.

Responsive Action: includes any activity undertaken in the context of an emerging or established pattern of abuse, resulting from violence, coercion, or forced deprivation, and aimed at prevention or alleviating its immediate effects. These activities are carried out when abuse is threatened or in its immediate aftermath to try to mitigate their effects on civilians. Action is also intended to pressure the relevant authorities, either through dialogue or public disclosure, into taking measures to stop the abuse and prevent its recurrence. Responsive action is urgent (but continue over substantive period of time if the threat remains) and its impact is immediate

Examples of responsive action include: Protection by presence, including monitoring, reporting and advocacy on violations by specialized agencies; provision of advice to authorities and other stakeholders to address rights guarantees and standards; transferring people out of crisis-affected areas and providing information and communications (e.g. assisting family members to contact each other; strengthening community networks to prevent child rights violations; establishment of referral mechanisms; reporting a human rights violations to a specialized agency; referring a survivor of violations to medical assistance or psychosocial care or legal assistance; employing a humanitarian notification system to de-conflict civilians and civilian infrastructure from airstrikes).

Remedial Action: includes any activity aimed at restoring dignified living condition through rehabilitation, restitution, and reparation. Remedial action focuses on assisting and supporting people while they live with the effects of violence, coercion, and deprivation; such action aims at restoring people's dignity and ensuring adequate living conditions, subsequent to violence through rehabilitation, restitution, compensation, reparation, and psychosocial support. It can be similar to responsive action, include advocacy but activities are longer term and are concerned with helping people to recover and restore their dignity.

Examples of remedial action include: providing direct services to victims of violence, coercion, and deprivation; helping to bring about repatriation, resettlement, integration, or final arrangements; and establishing systems to track down missing persons and reunite families; promoting justice for victims and due process for perpetrators; supporting and protecting organisations working to defend rights; education in health centres to prevent stigmatisation of survivors of sexual violence; vocational training and psychosocial support for former combatants as part of a livelihoods programme; assistance to mine/ERW victims.

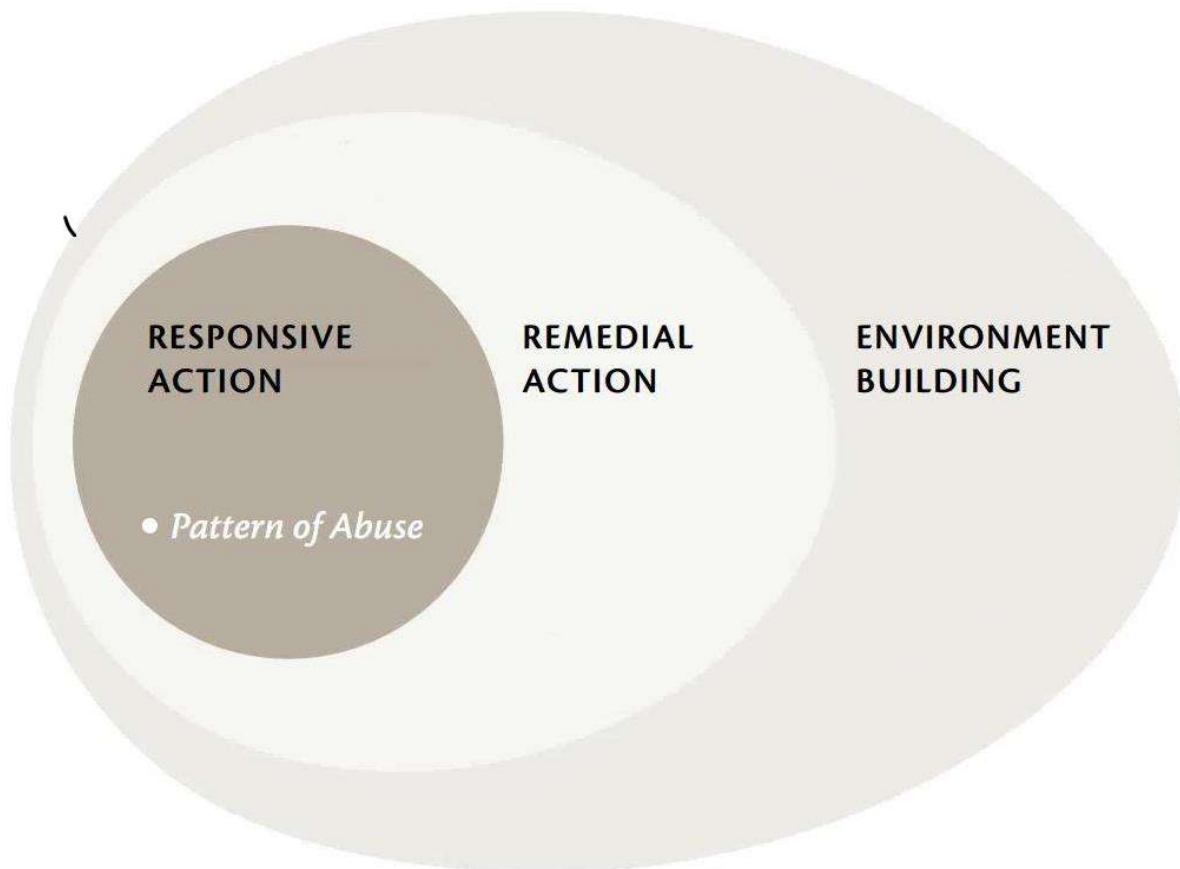
Environment Building: includes any activity aimed at creating or consolidating an environment conducive to full respect for the rights of individuals. Environment building activity aims to change policy, attitudes, beliefs, and behaviour, seeking structural changes in law and attitude.

Examples of environment-building action include: promoting knowledge and respect for human rights and humanitarian principles; advocating for the ratification of treaties; assisting in the integration and implementation of international law at national levels; supporting the development of a fair justice system;

²⁶ Inter-Agency Standing Committee, *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action*, 2002, available at: http://www.globalprotectioncluster.org/assets/files/tools_and_guidance/IASC_Growing_Sheltering_Tree_2002_EN.pdf

capacity building, technical assistance and support for national human rights organizations, civil society organisations, and government institutions (such as law enforcement); helping to establish organisations at national and international levels that are capable of enhancing respect for human rights and international law, including those tasked with the implementation or monitoring of international law standards (i.e. an Ombudsman); mine/ERW risk education to public employees working with at-risk persons.

The “Egg Model,” presented below, provides a visual representation of the different levels of intervention for protection work. Developed by the ICRC through a multi-year consultative process with a range of experts, the egg model is widely recognized and used by humanitarian organizations. Interventions appearing in the egg model can be implemented in a sequence or simultaneously.



MODES OF PROTECTIVE ACTION

In addition to levels of intervention, there are five main modes of action. These include:

- **Persuasion:** Talking privately to convince your advocacy target to change its policy or practice
- **Mobilization:** Telling other organizations or entities what is happening so that they can influence the authorities or perpetrators to change their policy or practice. Carefully sharing information to bring positive pressure
- **Denunciation:** Making public what is happening in order to put pressure on your advocacy target to change its policy or practice.
- **Support:** Supporting existing structures
- **Substitution:** Direct service provision

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