

The Protection of Human Rights in Humanitarian Crises

A Joint Background Paper by OHCHR and UNHCR
IASC Principals, 8 May 2013

A. Objective

1. As a follow-up to the report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka (IRP report), the aim of this joint paper by the Office of the High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR), developed in consultation with Inter-Agency Standing Committee (IASC) and Global Protection Cluster (GPC) partners, is to identify some of the principal concerns relating to the protection of rights of persons in humanitarian crises¹ as recognised under international human rights and humanitarian law, as an integral part of humanitarian response, and to propose recommended actions to the IASC on a possible way forward.

B. Context

2. Humanitarian crises almost invariably result in immense human suffering, threats and violations of international human rights and humanitarian law. Pre-existing protection concerns may trigger a crisis or exacerbate the situation and its impact on affected populations. International law provides a robust framework for protecting the human rights of populations adversely affected by armed conflicts, situations of violence and insecurity, including natural and man-made disasters.² International law underscores the primary responsibility of states to guarantee protection, provides for the responsibility of non-state armed groups in situations of armed conflicts, protects human rights, facilitates humanitarian assistance and promotes durable solutions including through access to effective remedies for international human rights and humanitarian law violations. While international law aims at protecting the security and well-being of all persons, it accords distinct protection to certain affected categories, including women, children, the civilian population and internally displaced persons.

3. In the last decade, the United Nations and its Member States have taken several steps to position the protection of persons from violations of international norms as a fundamental pillar of the international community's response to humanitarian crises. These measures include the elaboration and adoption of human rights commitments, the reform of international human rights mechanisms including the establishment of the Human Rights Council and the strengthening of international coordination to respond to humanitarian crises. For more than a decade, the IASC and humanitarian actors more broadly, have recognised the fundamental importance of protection in humanitarian action through ensuring respect for international human rights and international humanitarian law. For example, the 2005 UN humanitarian reform created the cluster-approach whereby Protection Clusters play an instrumental and strategic role in coordinating protection response and helping ensure that

¹ For the purposes of this paper, 'humanitarian crises' refers to both conflict situations as well as natural disasters.

² In recent years, significant advances have also been made in consolidating international norms applicable to natural disaster situations.

humanitarian assistance yields protection outcomes. In humanitarian crises, affected States and non-state actors may perpetrate violations, restrict humanitarian access and fail to ensure accountability for violations. Important inter-governmental mechanisms, including the Security Council and the Human Rights Council, have not always taken timely or appropriate political action in this regard.

4. ‘Protection mainstreaming’, ‘protection language’, and ‘protection requirements’ permeate most IASC standards and policies and have as their foundation international norms and standards. However, the international community, as was seen in Sri Lanka in 2009 and similarly in other humanitarian crises, continues to grapple with the challenge of ensuring the full realisation of human rights during humanitarian crises. At the regional and global level, strategic interaction with Member States (MS), donors and inter-governmental bodies such as the Security Council (SC) and the Human Rights Council (HRC) remains a challenge. At the field level, the humanitarian community faces multiple challenges in ensuring protection, such as for example, being confronted with restricted access and security concerns including direct military attack. The protection of human rights is not systematically or adequately taken into account as a strategic consideration in humanitarian analyses, planning, policy and decision making fora. The human rights situation is not adequately monitored and information is not consistently channelled to relevant decision-makers and stakeholders. There are also real and perceived dilemmas regarding, on the one hand, engaging in public advocacy, including denunciation to address protection concerns and human rights and humanitarian law violations, and on the other hand to secure access to affected populations.

5. As the IRP report states, there are “significant challenges [that the UN may face] in **retaining the essential support of a Government to help in delivering assistance while at the same time responding to serious violations of international law.**”³ The report goes on to say that “[d]ecisions at UNHQ and in the field were affected by an institutional culture of trade-offs. The tendency to see options for action in terms of dilemmas frequently obscured the reality of UN responsibilities”.⁴ The report refers to this challenge as a ‘failure’ given its assessment that the UN did and does “possess(ed) the capabilities to **simultaneously strive for humanitarian access while also robustly condemning the perpetrators of killing of civilians**”.⁵ **Inadequate use of international law and expertise as a basis for interventions with the authorities to both humanitarian access issues and human rights violations** was highlighted as key to this.⁶ The report further highlighted that “there appear to have been **serious gaps in the guidance, support and instructions being provided to the RC/HC from UNHQ**” on the UN’s strategy and response to the killing of civilians and other violations of international human rights and humanitarian law.⁷

6. How should humanitarian actors advocate for and support States and inter-governmental mechanisms to realize their primary responsibilities to protect the human rights of persons affected by humanitarian crises? How should humanitarian actors address protection concerns with state interlocutors, including when governments are directly involved in violations of international human rights, humanitarian and refugee law? What does the humanitarian

³ IRP report, para 75.

⁴ Idem.

⁵ Idem.

⁶ In as much as a violation of the right to life is a violation of international law, so is the denial or obstruction of humanitarian access (for example, Article 6 of ICCPR; and Article 70 of Protocol 1 to the Geneva Conventions respectively).

⁷ IRP report, p. 109.

community need to do or change to ensure that protection of human rights, including by responding to violations of international human rights and humanitarian law, is part of a systemic response, including in extremely challenging situations? How should monitoring and analysis of such violations be ensured more consistently and be used to define the broader humanitarian response as a basis to achieve protection outcomes? How and when should humanitarian actors engage in advocacy, including public advocacy, to address violations? In addition to advocacy, how can humanitarians explore a wider menu of options, including effective negotiations to engage with relevant actors? How should humanitarian actors more effectively interact with relevant national and international actors, including human rights institutions and mechanisms, to improve protection outcomes?

C. Background

6. The IRP report concluded that “events in Sri Lanka **mark a grave failure** of the UN to adequately respond (...) to the evolving situation during the final stages of the conflict and its aftermath, **to the detriment of hundreds and thousands of civilians, and in contradiction with the principles and responsibilities of the UN**”.⁸ According to the report, at the core of this finding was the UN system’s **lack of an adequate and shared sense of responsibility for responding to international human rights violations**.⁹ The need to learn from the findings of the report, with a view to ensuring that the international community does not repeat its failures elsewhere, is undisputed, more so given that the systemic challenges and issues raised in the report are not limited or specific to Sri Lanka or the United Nations, but arguably symptomatic of broader challenges that permeate the international community’s protection response to crises.¹⁰

7. At the IASC’s meeting in Rome in December 2012 and at the suggestion of the HCHR, the Principals agreed as an item on its agenda to hold a discussion on the implications of the IRP report for the protection of human rights in humanitarian crises. With a view to addressing protection challenges that go beyond the situation of Sri Lanka in 2009, and following discussions between OHCHR and UNHCR, it was decided that the session would be prepared and facilitated jointly by the two Offices.

8. As a follow-up to the IRP report, the United Nations system is currently undergoing a process of developing specific actions to address the concerns identified and recommendations made.¹¹ The GPC held two consultations and communicated its recommendations to the DSG Working Group on the follow-up to the IRP report. These consultations involved UN agencies, NGOs, civil society and field Protection Clusters (PC).

D. Salient protection challenges in humanitarian crises

9. The notion of “protection” loses its specificity when it is used to refer to a broad range of humanitarian activities. Consequently, violations of international human rights and humanitarian law, as critical protection gaps, risk being overlooked and /or are under-reported. As was identified in the IRP report, “**protection was defined so broadly** [by the

⁸ IRP report, para. 80.

⁹ Ibid.

¹⁰ See for example, the Report of the Independent Inquiry into the UN’s actions in Rwanda, 1999; The After Action Review of the Haiti Crisis Response: Lessons Learned and Action Plan, September 2010.

¹¹ The United Nations Secretary-General tasked the Deputy Secretary-General with leading a senior Working Group to follow-up on the IRP report (including DPA, DPI, DPKO, DSS, OCHA, OHCHR, OLA, UNDP, UNICEF and WFP). The DSG is expected to suggest actions in a report to the SG.

humanitarian actors in Sri Lanka] that it included a wide range of humanitarian actions [which] obscured the **very limited extent to which the UN's protection actions actually served to protect people from the most serious risks.**"¹² Humanitarian assistance activities may have a protective impact, but are not necessarily the same or a substitute for protection activities and protection outcomes. When faced with challenges of humanitarian access humanitarian actors often focus on emergency outcomes. This has at times led to a lack of emphasis on responding to human rights and IHL violations. In such instances, it is important to ensure complementarity of roles and mandates. The distinct roles and responsibilities of humanitarian organisations, States, and human rights mechanisms and institutions in putting an end to, preventing and holding to account those responsible for violations of human rights and humanitarian law were not recognised. Protection activities aimed at putting an end to, preventing and holding to account those responsible for violations of human rights and humanitarian law (including more efforts at advocacy and negotiation with authorities on protection concerns) **were largely excluded from the UN's humanitarian efforts. Such actions might have otherwise contributed to ensuring that the human rights of affected populations was adequately respected, protected and fulfilled.**

9. One of the many challenges of ensuring protection in the context of humanitarian crises is the extent to which relevant actors fully and strategically consider the protection of human rights of affected persons in humanitarian crises while making decisions which define and prioritize modes of engagement. The IRP report highlights a number of issues to substantiate its finding that the UN failed to effectively protect the affected population. Even as **violations of international human rights and humanitarian law were occurring** in Sri Lanka, the UN did not "appear to fully recognize the scope of its responsibility to respond to (...) violations".¹³ For example, planning and strategy-making processes did not reflect a full understanding of Sri Lanka's violent past or the fact that **the protection risks originated from international law violations.**¹⁴

10. Effective humanitarian assistance is predicated on respect for humanitarian principles. The distinct roles of humanitarian and political organs need to be better recognised. The report notes that in Sri Lanka the UNCT and UNHQ "sought to **separate the humanitarian response from what they termed "political issues"**, and that these issues were wrongly defined.¹⁵ Reference to "what was 'political' seemed to encompass everything related to the root causes of the crisis and aspects of the conduct of the war. (...) Thus, raising concern over who was killing civilians, how many civilians were being killed, (...) were all, at various times, described as political issues."¹⁶ As a possible result of this, **inadequate priority was given to effective monitoring and reporting and to advocacy on the situation.** The report accordingly called for "embedding a UN human rights perspective into UN strategies".¹⁷ It also pointed to the critical need for **information and reporting to be credible, objective and**

¹² IRP report, para 48. "Situation reports from early 2009 on protection included such issues as psycho-social care, food and shelter gaps, recreational activities, and staff training – issues already well-covered under other humanitarian rubrics. In fact, the UN's planning papers and projects did not reflect a full understanding of Sri Lanka's violent past or the realities of protection risks originating primarily in violations by the Government and the LTTE".

¹³ IRP report, para. 50.

¹⁴ IRP report, para. 48.

¹⁵ IRP report, para. 49.

¹⁶ Idem.

¹⁷ IRP report at p. 32.

impartial.¹⁸ More effective and strategic engagement by relevant protection actors and PC/protection working groups with national and international human rights entities and NGOs to address these challenges is essential in this regard.

11. Humanitarian actors need to apply a framework of context and risk analysis, needs assessments and a rights-based approach that helps to identify threats and vulnerabilities and their causes as well as violations of international human rights and humanitarian law, and to establish appropriate responses. Advocacy and negotiation strategies at the country level (national and local) may not always be effective. In these circumstances, the roles of various actors, including at the global level, for example the Emergency Relief Coordinator (ERC), the HCHR, the High Commissioner for Refugees (HCR), UN human rights mechanisms, including the treaty bodies, special procedures mandate holders and the Universal Periodic Review process (UPR), NGOs and the GPC should be utilized. This also requires systematic engagement with governments, including members of key inter-governmental bodies such as the SC and the HRC. Credible and impartial information on the human rights situation is essential for such engagement.

E. A common starting point in humanitarian response

"[A]ll humanitarian actors share responsibility for ensuring that activities in each cluster and other areas of the humanitarian response are carried out with "a protection lens". Each of the Cluster Working Groups and Cluster Leads are responsible for ensuring that... activities carried out under their cluster responsibility do not lead to or perpetuate discrimination, abuse, violence, neglect or exploitation." (IASC WG 2005 Progress Report)

12. Humanitarian actors share a common objective: to alleviate suffering and protect lives, livelihoods and people's dignity. This objective is anchored in international human rights, humanitarian and refugee law. Humanitarian responses, in general, are intended to address acute cases of violations of these standards.¹⁹ **International human rights and humanitarian standards and norms offer a basis for principled, norm-based and constructive engagement** in humanitarian action, based on an accepted framework, and positively impact on the humanitarian community's effectiveness and credibility. Critically, a human rights-based approach, which takes into account the specific needs of vulnerable groups and individuals, aims at empowering people to claim their rights and strengthen the capacities and accountability of duty-bearers to meet their legal obligations.

13. Indeed, the IASC definition of protection places the protection of human rights at its centre: **"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. human rights law, humanitarian law and refugee law)"**. Based on this definition, the GPC coordinates global level inter-agency policy advice and guidance, works to ensure protection in humanitarian action and leads standard and policy setting relating to protection. Similarly for the UN, as a core constituency of the IASC, the centrality of the protection of human rights is clearly entrenched in the UN Charter, in international human rights instruments, in UN policy as well as in UN reform efforts –thereby serving as a basis of accountability and binding all UN staff to these common standards.²⁰ The need to integrate human rights considerations

¹⁸ "The UN repeatedly condemned the LTTE for serious international human rights and humanitarian law violations but largely avoided mention of the Government's responsibility" (IRP report para. 52).

¹⁹ IASC Human Rights Guidance Note for Humanitarian Coordinators, Page 2

²⁰ In Larger Freedom, A/59/2005, para 17.

across humanitarian efforts is also reflected in a number of key IASC mechanisms, processes and guidelines.²¹

14. Key actors and tools to ensure and strengthen the protection of human rights in humanitarian action are also available within the IASC and beyond. PCs at the country level undertake advisory, strategic and cross-cutting functions. These could be better supported by inter-cluster coordination and information management systems, and direct channels of communication with the HC's office to support the creation of an environment for undertaking assessments of risks and threats to the affected population, developing corresponding protection strategies which inform the entire humanitarian response; supporting the coordination of protection; informing and supporting the advocacy role of HCs; providing support to its members, and carrying out capacity-building and other activities to mainstream protection throughout humanitarian efforts. Through the collaborative efforts of agencies and NGOs, PCs should be enabled to advise the HC and HCT on protection, based on credible and impartial information of the human rights situation, and on protection strategies that respond, as a priority to the most critical human rights and lifesaving needs. In this regard the role of protection mandated agencies such as OHCHR, UNICEF and UNHCR²² is critical. OHCHR, including through its field presence²³ and UN human rights mechanisms, provides invaluable human rights expertise and support, including to RC/HCs and UN/HCTs. The key role of independent experts, including the special procedures mandates created by the HRC, and the good offices of the HCHR, the HCR as well as the ERC, to name a few, cannot be stressed enough. There is also significant expertise within other individual IASC organisations and other non-UN protection entities and NGOs. The roles of all of these actors in the protection of human rights must be strengthened.

F. Principles for Action

15. “[E]vents like those that occurred in Sri Lanka should not happen again. **When confronted by similar situations, the UN must be able to meet a much higher standard in fulfilling its protection and humanitarian responsibilities.**”²⁴ Drawing on legal and policy

²¹ As the most senior person responsible for humanitarian efforts at the country level, the Humanitarian Coordinator (HC) has, as explicated in his/her Terms of reference, specific obligations to “[P]romote[] the respect of international humanitarian and human rights law by all parties including non-state actors (...)”, and to ensure “a common strategic plan for realization of this vision (...) based on documented needs and integrating cross-cutting issues (for example (...) human rights)”. The Technical Guidelines for the Consolidated Appeals Process also contain many references to human rights, including a stipulation that the Common Humanitarian Action Plan should include a “common analysis of the humanitarian context identifying the key concerns regarding humanitarian principles and human rights violations”. Human rights work is also considered as falling under the Central Emergency Response Fund’s life-saving criteria with a requirement for the United Nations and the larger humanitarian community to pay particular attention to integrating and giving due consideration to cross-cutting issues including human rights. Furthermore, the IASC Human Rights Guidance Note for Humanitarian Coordinators makes clear reference to the importance to compile, analyse and assess human rights information, to undertake human rights advocacy and human rights reporting.

²² In emergencies which involve refugees, UNHCR has the mandate to prepare for, lead and coordinate the refugee response. UNHCR is also the Global Protection cluster lead and responsible for 16 field protection clusters . At the country level in disaster situations or in complex emergencies without significant displacement, the three core protection mandated agencies (UNHCR, UNICEF and OHCHR) will consult closely and, under the overall leadership of the HC/RC, agree which agency, among the three, will assume the role of Cluster Lead Agency for protection (IASC Cluster Coordination Reference Module, 2012, footnote 7).

²³ OHCHR is mandated to promote and protect the enjoyment and full realisation, by all people, of all rights including through promoting international cooperation to protect human rights, coordinating related activities throughout the UN and strengthening and streamlining the UN system in the field of human rights.

²⁴ IRP report, para. 88.

frameworks relevant to protection, a non-exhaustive and preliminary list of common principles is outlined below. These principles should serve as the foundation for responding to the challenges to effectively protect the human rights of affected persons in humanitarian crises, including by responding to international human rights and humanitarian law violations. All humanitarian actors need to make every effort to ensure the protection of affected populations against human rights and international humanitarian law violations as part of a broader strategy, which may include:

- **Primary responsibility of states:** The protection of the human rights of affected persons is the responsibility of States. Under international law, non-state armed groups also have certain responsibilities.
- **The role of humanitarian actors:** All humanitarian actors have a role to contribute to the protection of the human rights of affected persons either directly or as part of a broader strategy, which may include referring available information to relevant stakeholders, whether at the country or Headquarter level. Humanitarian activities must be aligned with protection priorities.
- **Protection activities** must focus on addressing the most serious violations of international human rights and humanitarian law and respond to the affected population's needs in a manner that protects human rights as an outcome.
- **'Protection'** should be centred on ensuring respect for international human rights, humanitarian and refugee law. The law is the principal basis and tool for undertaking effective humanitarian action, and provides advocacy arguments with an objective and impartial basis.
- **Humanitarian access and accountability**²⁵: Preserving humanitarian access and addressing accountability for international law violations are both grounded in international law. Both must be treated as human rights and humanitarian imperatives. Given the variety of actors, involved in humanitarian response including NGOs, concerted efforts should be made to ensure that methods and approaches are used complementarily to obtain optimal protection outcomes.
- **Monitoring, analysing and reporting** with respect to the protection of human rights of affected persons in humanitarian crises, including the root causes of violations, are critical in and of themselves and to inform and contextualise broader humanitarian strategies and responses. Human rights information must be analysed and assessed in terms of accuracy, credibility, compliance with international law and used for advocacy and to inform concrete action. Safe and confidential channels for sharing information must be established.
- **Sharing information:** Humanitarian actors should adopt and implement a strategy for regularly sharing information with relevant actors, while fully respecting principles of confidentiality. Risk mitigation measures should be put in place to preserve the safety and security of sources of information, particularly victims, witnesses and local civil society actors.

²⁵ In this regard, 'accountability' refers to the obligations of duty-bearers, as recognised under the relevant bodies of law – international human rights, humanitarian and refugee law

- In securing the protection of human rights, **humanitarian actors have different responsibilities** to undertake advocacy depending on their mandates and roles (e.g. HCs and PCs have a direct responsibility to undertake advocacy). For other humanitarian actors, advocacy can be indirect including through relaying relevant information with duty-bearers and other stakeholders with a view to preventing, putting an end to and seeking accountability for human rights violations, including effective remedies and access to justice for the affected population.
- **Public advocacy**, whether at the national, regional or global level, should take into account as a priority the protection of the human rights of the affected population. This should be based, inter alia, on an analysis of international human rights and humanitarian law violations, the potential role that an advocacy strategy will have in mitigating violations and the protection of humanitarian actors from possible retaliation.
- **Promoting access to justice**, including at the national level, and seeking accountability for violations of human rights law are essential elements of the IASC's commitment to ensuring accountability to affected populations.

G. Conclusion

The protection of human rights is central to ensuring an effective humanitarian response. However, as highlighted in the IRP report, how protection is operationalized in practice is contested in certain contexts. The challenge is to devise strategies to ensure that in all circumstances the protection of human rights and engagement in humanitarian action are mutually reinforcing rather than 'traded off' against each other. Difficult situations or perceived dilemmas and corresponding standards (and procedures) for a response, must be more explicitly articulated. To this end, a reiteration and further strengthening by the IASC of the centrality of the protection of the human rights of affected persons in humanitarian crises is essential.

Action Points

- i. **The IASC Principals, through UNHCR, OHCHR, and members of the GPC** agree to develop a policy on the protection of human rights as a framework for engagement in humanitarian crises. This policy will:
 - a. Include a statement and undertaking that places the protection of human rights of persons affected by humanitarian crises at the centre of humanitarian response, in all phases and contexts.
 - b. Outline guiding principles for protecting human rights of affected persons in humanitarian crises.
 - c. Provide a modality of engagement with government interlocutors and other actors on issues concerning the protection of human rights of affected persons.
 - d. Strengthen the framework of support for and accountability of key IASC actors to fulfil their roles as related to the protection of human rights of affected persons in humanitarian crises, in safety and security.
 - e. Reinforce the specific and strategic roles and responsibilities of different IASC and other relevant actors (at the global and national levels), including HCs and PCs, in advancing the protection of human rights through their roles at all levels, including in informing humanitarian decision-making in humanitarian settings.
 - f. Provide guidance on how the IASC definition of protection may be applied in different humanitarian crises and on other key challenges.

Action: The IASC Principals, through UNHCR, OHCHR, and members of the GPC (December 2014)

- ii. **OCHA, UNHCR, OHCHR, members of the GPC and the IASC** to study the impact of and gaps in existing IASC mechanisms, processes and tools in order to determine whether revisions are necessary to effectively integrate the protection of human rights of affected persons (e.g. the HC Job Description, Terms of Reference of Clusters, humanitarian planning guidelines, humanitarian assessment frameworks, strategic statement templates, relevant training programmes, etc.).

Action: OCHA, UNHCR, OHCHR, members of the GPC and the IASC (December 2014)

- iii. The GPC to review (in the context of a whole systems approach to protection), the effectiveness of strategic and operational interaction between Protection Clusters, the Humanitarian Coordinator and other actors.

Action: GPC (December 2014).