



GLOBAL PROTECTION CLUSTER 2020 GLOBAL PROTECTION FORUM

Summary report from event of 29th September 2020 organized by the GPC Task Team on Law and Policy (TTLP) “Leveraging Law and Policy for Effective Field Protection Response”

Recording of the event can be accessed here: <https://youtu.be/v4JL1JKA-E>

1. Panel

- Moderators: Martina Caterina (UNHCR/IDP Section, *incoming co-chair GPC TTLP*); Cecilia Roselli (*NRC Geneva Representative, co-chair GPC TTLP*)
- Speakers: Opening remarks: William Chemaly (*GPC Coordinator*) and Dr. Chaloka Beyani (*former Special Rapporteur on the human rights of IDPs, Member of the Expert Advisory Group for the UN Secretary General’s High-Level Panel on Internal Displacement, and Member of the UN High Level Fact-Finding Mission to Libya*). Panel: Valerie Svobodova (*Head of the Human Rights Liaison Unit and Co-chair of the GPC Task Team on Human Rights Engagement, former Niger Protection Cluster Coordinator*); Lorena Nieto (*Senior Protection Officer, UNHCR Regional Office in Panama, former Honduras Protection Working Group Coordinator*); Elina Shyshkina (*Advocacy coordinator for the Charitable Fund “Right to protection”, Ukraine, Protection Cluster Member*). Concluding remarks: Corita Tassi (*Protection and Gender Thematic Expert, ECHO, currently covering Latin America and the Caribbean region*).
- Participants: over 150, from all regions- from NGOs, civil society, UN agencies.

2. Objectives/overview of the session

Protection actors should invest in creating and/or consolidating an environment conducive to full respect for the rights of women, men, boys and girls, without any kind of discrimination. Promoting the implementation at the national level of relevant international law, including by supporting the ratification of relevant treaties and the establishment of adequate legal, policy and institutional frameworks, is essential.

The objectives of the session were:

- 1) to develop the understanding of the field protection staff and cluster coordinators on the work of the Task Team on law & policy (TTLP) and the support it can provide, and
- 2) to showcase examples, discussing challenges and lessons learnt about the important role field protection staff and cluster coordinators can play in advocating for and supporting States in the development and implementation of laws and policies for protection outcomes, with a particular focus on: supporting the development of an IDP law domesticating the Kampala Convention (Niger); supporting the development of an IDP law, while using the property law to establish a registry of properties abandoned by those displaced (Honduras); using protection monitoring to support advocacy for legislative change - particularly with regards to regulations adopted in the context of the current COVID19 pandemic (Ukraine).

The discussion aimed to inform the redesign of the GPC Training Package on Law and Policy, as well as the development of a checklist and “*Interim guidance for Field Protection Clusters and AoRs coordinators and operational actors on Law and Policy*”.



3. Summary of discussion points

Opening remarks

William Chemaly highlighted that international protection is constant work in progress, and he identified 3 main challenges in this respect: **1) we continue to fight the same battles.** IHL and IHRL keep being violated. The disregard for the rule of law we see today in Yemen, Syria, Somalia, Burkina Faso and Mozambique forces the question: is law still relevant? We need to reconfirm the basics every day. **2) Landscape and players have changed and are fragmented.** The number of armed groups is exponentially higher than that of Member States and hundreds of millions of civilians live under their authority. We need to make the basics work and figure out how they can be understood by duty bearers and adhered to in our fragmented societies. **3) Protection actors have changed, and** we need to better enable the front-line protection force to understand and engage on law & policy too. Finally, he emphasised the enormous value and concrete impact of normative frameworks, which, however, should never be taken for granted. Protection actors can make them relevant by promoting their development and use, analysing gaps, monitoring their implementation.

Cecilia Roselli gave an overview of the GPC Task Team on Law and Policy, which was established in 2015 as a **global platform for coordination** among UN agencies, NGOs and other relevant stakeholders on law & policy engagement. The TTLP has a **twofold mission**:

- i) Support governments and local authorities in discharging their responsibilities regarding IDPs and populations affected by displacement by promoting and supporting states' efforts in developing and implementing domestic legal and policy frameworks on internal displacement;
- ii) Support field clusters and relevant partners in contributing to the development, implementation, and monitoring of relevant legal & policy frameworks.

The Task Team does that primarily through supporting 5 areas (see the [TTLP webpage](#) for more info):

1. Capacity-Building;
2. Knowledge-sharing;
3. Guidance & Technical Advice;
4. Legal Audits;
5. Specific studies and research.

Dr. Chaloka Beyani addressed two main questions:

1) Why should protection clusters engage in law- and policy-making? What are the benefits? Law and policy offers protection clusters an opportunity to push the agenda on a number of relevant protection issues: E.g. in South Sudan, the protection cluster used the law-making process to raise the profile of housing, land and property issues that were of particular concern. Protection clusters are also very good on protection advocacy and monitoring, and law- and policy-making offer avenues and opportunities to strengthen and capitalise on this work, and to link protection work with other agendas such as durable solutions, reflecting integrated approaches (e.g. developing IDP laws & policies has been an important component of Durable Solutions Initiatives in Ethiopia, Somalia). Although in many contexts these processes receive strong international support (which can help with neutrality), national ownership and legitimacy is inherent to law- and policy- making and it must be ensured. When we support the development of frameworks for the government, we should make sure that governments are engaged in all steps (rather than the process being purely expat-led).



Law- and policy-making processes are useful to establish collaborative relationships with governments and other stakeholders: e.g. in South Sudan, the process involved the line Ministry (Hum Affairs); the National Commission for Disaster Management; the Principal Secretaries of all relevant ministries; a range of parliamentarians cross different parliamentary committees, including the Speaker of Parliament. We should map out from the beginning:

- the main influential stakeholders within government that should be involved,
- the main partners that government should be working with,

and ensure that they are fully briefed and consulted about the law-making process.

These processes also create a space for dialogue with national and international stakeholders, including donors and development actors. E.g. in South Sudan, UNDP rule of law and UN mission were involved, including supporting the legal audit and engaging parliamentarians. In Somalia, we are particularly engaging donors, to ensure they send relevant messages to governments, as 3/4 of the budget in Somalia is externally funded.

The importance of sensitising all actors on IDPs' needs and rights (GPs, KC) cannot be underestimated: many national stakeholders may not be familiar with their situation; development actors may question an approach that may seem status-based rather than vulnerability-based; all of this needs to be addressed at the beginning, as we did in South Sudan and Ethiopia. In Ukraine, initial crisis-response was given by local authorities, who were only allocated resources for initial 6 months; a central law was necessary to provide a longer-term assistance. These processes also offers an opportunity for harmonisation of national legislation relating to the protection of IDPs.

2) What are some of the key considerations to keep in mind throughout the process

Some key recommendations include:

- Identify champions and spoilers: we need dedicated champions to see the law throughout, because there are always anti-IDPs forces in governments;
- Find allies in the process: identify where roadblocks are and who can unlock such challenges, who can open doors;
- Involve communities: IDPs and other displacement-affected have a right to be involved, and tools have been developed to support such consultations (e.g. South Sudan);
- Technical support: identify what support is available, e.g. TTLP

Panel

Valerie Svobodova:

The context of displacement in Niger is quite complex- the population is very mixed, IDPs often live in areas where refugees and host community reside as well. Locations where IDPs live are often in zones with difficult access for humanitarians. The picture gets more complicated with Boko Haram active in the East of the country and non-state armed groups in the West. Niger ratified the Kampala convention in 2012 and committed to its domestication.

A key moment happened in 2017 when a regional workshop on IDP law and policy was organized by the GPC Task Team on Law and Policy, bringing together protection cluster, Government and UNHCR. This helped to set the dynamics and the tone with a simple and concrete action plan as a result of the workshop. Following return to Niger, a training was organized at Diffa level by the Protection cluster and jointly with the Government at national level. This resulted in an activation of an interministerial committee in early 2018 led by the Ministry of humanitarian action but also consisted of other ministries while ICRC, protection cluster and UNHCR were observers.

The official visit of the Special Rapporteur on IDPs in April 2018 was of significant support in the process. In Spring 2018- 8 training sessions targeting different audiences were undertaken at all



levels (Niamey, Diffa, Tillaberi), aimed at disseminating the Guiding Principles to different audiences, promoting a common understanding of these Principles and their practical application for better protection of IDPs. This allowed in-depth discussion and information sharing on the IDP context in Niger. UNHCR hired a consultant to support the process, review existing legislation, carry out consultations with various stakeholders on the draft law.

Consultations with IDPs were conducted in Diffa and Tillaberi regions, accompanied by sensitization sessions (through radio) in local languages.

The law passed in 2018- Niger was the first country to adopt the law on IDPs in Africa.

Practical use- examples include advocacy during the new displacement in Maradi area in 2019 and during the training for Defence and Security Forces.

As next steps, it is important to accompany the Ministry of humanitarian action in dissemination of the new law and to sanitize and do capacity building of varied actors on the law.

For Niger, the key takeaways from the process are the following:

1. Don't be at the front- support but process driven by national authorities
2. Create adequate environment by capacity building
3. Consultation with IDPs and host communities is key
4. Seize momentum such as the contextualized GP20 plan of action as an entry point
5. Support of the Special Rapporteur on IDP.

The Niger IDP Law is available at: <https://www.globalprotectioncluster.org/2018/07/27/niger/>

Lorena Nieto:

Context: when the law-making process started, in Honduras there already was a recognition of internal displacement by the government; an inter-institutional commission had been established; and a first IDP profiling, though not national in scope, had provided the necessary evidence base to inform law-development. At the same time, there were challenges: law-making takes a long time and protection needs could not wait for a law to be in place before being addressed; there was a lack of political will, because the parliament had another agenda; there were issues around availability of resources to implement a new law, as well as around communities' trust in the authorities.

Lorena presented 5 main points, a "pentologue for action":

1- **Need for a reality check:** the first step for protection actors in Honduras was to look at budget and available resources, and to understand government priorities. The Protection WG did an analysis and saw that budget gaps were significant: some organisations in the PWG had more resources than state entities in some cases. In this context, the strategy adopted was to continue supporting the design of the IDP law, while prioritising interventions to address key protection gaps for IDPs - specifically around HLP. Protection actors understood that although the magnitude of the violence was significant, the number of IDP was low because people were trying to cope with the levels of violence in order to not lose their properties. If they could protect their properties, people could flee as a protection measure with more reassurances.

2- **Response cannot start from scratch.** Governments do not always have the will, capacity and money to start from zero. Protection actors in Honduras looked at existing legal frameworks, and used the Property Law as a protection tool, so that people could start registering their properties (even though an IDP law was not there yet).



3- Importance of building bridges: particularly in the context of lack of institutional trust, protection actors had humanitarian space, and could count on their relationship with communities, their legitimacy and credibility vis-à-vis them. So they started to bring government representatives to situations of mass displacements, to start jointly identifying gaps and strategies; government (the Property Institute) and communities worked together to identify the properties that were abandoned as a result of forced displacement. The government did not have a relationship with the communities, so this was a clear added value the PWG brought.

4- Need for simultaneous processes: protection needs cannot wait! A gap was that even once abandoned properties were registered, the Property Institute could not devise which protection measures should be taken or who was responsible for that process. A law was still needed! So protection actors were trying to advance on both.

5- Importance of evidence: fundamental to have data, without it protection actors cannot talk to Governments, parliaments, donors and other stakeholders. Data is needed to advise governments how to start the process, how to move forward, what to prioritise in the response. It is not realistic to expect that the government will address everything at once.

Added value of the role of the Cluster:

- knowledge (of the situation, profiles of affected people)
- legitimacy (based on relationship with communities)
- advocacy (platforms at national, regional, global levels)
- methodologies (for assessments)

Challenges protection actors face:

- Lack of **technical capacity** re. certain aspects of law-making: not on legal issues, we do not need to be all lawyers; but we need to improve our skills to understand national budgets, for example - this is a skill protection actors usually do not have, but it is fundamental;
- **Institutional approach:** we need to have a collaborative, constructive relationship with the government based on the reality of challenges governments face, acknowledging their efforts - not just pointing out what they are failing at;
- We should be able to provide support in **medium and long-term**, not just the emergency phase; our interventions should be sustainable as much as possible;
- **Advocacy:** we are good at advocacy in familiar scenarios, we are not as strong as we should be in discussing with politicians that are not naturally very supportive of forced displacement issues - need for capacity-building in this area.

Elina Shyshkina:

Context in Ukraine: Ongoing conflict; 5 crossing points along the contact line between government-controlled (GCA) and non-government controlled areas (NGCA); issues around freedom of movement were exacerbated by COVID, as new measures to restrict movements were introduced through decrees, with several consequences in terms of family separation, limited access to rights (housing, health care). In April-May 2020, only 297 people were allowed to cross for “humanitarian reasons”. In June crossing points were re-open (including as a result of successful advocacy efforts by NGOs and Protection Cluster/international community), but the use of a phone app “Act at Home” was introduced through a new decree, for people to indicate their location for isolation purposes. If for whatever reason people cannot use this app, they face a number of problems including not being allowed to use the line of contact. R2P monitors and collects information on a number of problems people are facing with the use of the app, monitors the conditions of crossing, and provides different



forms of assistance to conflict-affected population. R2P then shares this information with relevant Ministries (e.g. Ministry of Digital Information), in order to advocate for legislative change to address the issues identified.

Closing remarks

Corita Tassi (ECHO)

Firstly, there is surely an urgency to give **more attention to law and policy in protection response**, in order to develop more comprehensive and contextualised risk analysis, which should be central to any Protection strategy (both PC strategy and HCT protection strategy). A **legal and policy analysis is crucial** to identifying and addressing context-specific legal and policy impediments and barriers for people to access and enjoy their rights.

Secondly, we need stronger **evidence and Inter-agency efforts** on how the lack of frameworks, lack of harmonisation among existing instruments, or limited implementation of laws and policies affect access to and enjoyment of people's rights. The role of protection clusters and all their members should be reinforced in this direction. This needs to be done collectively, with the support of all cluster members and beyond - all relevant humanitarian actors.

Thirdly: the **importance of law and policy in the Nexus discussions should be emphasised**. National legal and policy frameworks are essential to bring unity and coherence of efforts among a variety of national and international stakeholders, including development actors. While the humanitarian actors collect and analyse information and trends on the impact of the existing legal framework (or lack thereof) to build evidence-based advocacy and push towards change, accompanying a Government through often very long law and policy processes requires a longer-term engagement that should be supported by development actors as well.

Highlights from Q&A

1. What is the role of the international community and regional level in helping the country level efforts in relation to law and policy engagement?

The experience of Niger shows that the strategic use of global and regional platforms is to be encouraged: colleagues in the field should reach out without hesitation to the GPC Task Team on law and policy, GPC Task Team on human rights engagement, GPC operations cell. There are other means and channels for giving visibility to and advocate for specific legislative changes: human rights mechanisms, including UPR (Universal Periodic Review), Special Procedures and Treaty Bodies Mechanisms, as well as advocacy through the Human Rights Council. Regional mechanisms can be leveraged as well, what can be more effective is context specific.

The case of Honduras confirmed that governments like to be noticed and to showcase their efforts with the global community, despite gaps and challenges they face; GP20 was a great opportunity to bring government representatives to Geneva and address the Human Rights Council and other fora; it increased their commitment and promoted concrete action at the national level. The platforms we have at the global and regional level should be leveraged even more in this sense. Like in Niger, the visit of the Special Rapporteur to Honduras in 2015 was instrumental to promote progress on state response to internal displacement, including the development of a law; it would be important to use the opportunity of the High Level Panel to discuss with governments how further advancements can be made.

2. How can we more effectively engage with parliamentarians (e.g. case where IDP bill is presented by a minority and then the government has a different priority)



In Honduras, as mentioned, this has been a struggle and perhaps it remains an area where protection actors need to improve their skills and capacity-building could be envisaged, for them to be able to address parliamentarians within the reality of their legislative agenda and political will. Sensibilization of politicians is key, so e.g. facilitating visits by parliamentarians to IDPs, creating the space for government representatives to discuss with communities can be very valuable.

Ukraine has a different experience, more positive, as protection actors have connections and close working relationships with parliament and government. We regularly discuss with them (e.g. with specific parliamentary committees such as human rights, about property rights, freedom of movement etc.). However, negotiating with them can be challenging, to make them fully understand challenges. Adequate evidence is necessary. But Cooperation is essential, we should not adopt a confrontational stand even when rights are violated, because this is necessary if we want to promote any legislative and policy change.

3. How can the role of NGOs be strengthened? Were there any backlashes against NGOs in your countries?

In Niger, the experience was very positive. During the law-making process, there were sessions conducted with protection cluster members, including national and international NGOs, for them to highlight issues of concern (in some cases followed up bilaterally). One recommendation is to reach out to human rights NGOs that might not be involved in humanitarian platforms, but may have much to contribute in relation to these specific processes.

In the experience of Honduras, the government included NGOs from the start. It was strategic of them to involve everyone in all aspects, so when and if we fail it would be everyone's fault (acknowledging that the approach Honduras took is not what all governments prefer).

1. Key recommendations / follow up action (bullet points)

- The engagement of field Protection Clusters in the law-and-policy area should be strengthened based on a solid analysis of the legal and policy context, which should be an integral part of the protection context-based analysis informing the overall strategic planning.
- Protection colleagues are encouraged to reach out to TTLP co-chair (Martina Caterina, caterina@unhcr.org) with any request for support, including on technical advice and capacity building (the TTLP law and policy training package is currently being redesigned and converted in online format, although in-person workshops will continue to be delivered).
- The TTLP is developing a number of tools for field colleagues, including a checklist and a guidance document on the role of Protection Clusters and AoRs in law and policy. The TTLP co-chairs will soon share a brief survey on this, please send us your feedback!