

# **THE PROTECTION SURVEY**

Advance version of a study prepared for the  
Internal Displacement Unit and the Brookings-SAIS Project on Internal Displacement  
and submitted to the Senior Inter-Agency Network on Internal Displacement and the  
Inter-Agency Standing Committee

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## EXECUTIVE SUMMARY

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### Introduction

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In December 1999, the Inter-Agency Standing Committee (IASC) adopted its policy paper on the protection of internally displaced persons, through which the heads of UN agencies acknowledged that the protection of internally displaced persons “must be of concern to all humanitarian/development agencies”. The policy paper was described as part of a growing effort by international organisations “to address more proactively the needs of internally displaced persons, to assess and analyse those needs, and to act when the rights of the internally displaced are being violated.” Four years on, to what extent have UN agencies addressed the problem of providing effective and meaningful protection to the displaced? Just how proactive are they? To what extent do they act when the rights of the displaced are being violated? Indeed, just how engaged are humanitarian and development agencies in providing protection to internally displaced persons?

In an effort to throw some light on these questions, the Internal Displacement Unit and the Brookings Institution-SAIS Project on Internal Displacement undertook a joint “protection survey”. The aim of the survey is to examine through a series of country missions the way in which UN country teams and other relevant actors work to support states in discharging their primary responsibility for the protection of internally displaced persons or, in some cases, directly provide protection themselves.

Between December 2002 and May 2003, the survey team undertook missions to the Russian Federation, Somalia, Burundi, Liberia, Angola, the Democratic Republic of Congo, Nepal, Sri Lanka and Colombia.<sup>1</sup> During the missions the survey team held discussions with a broad range of representatives of UN agencies, government officials, representatives of regional organisations, international and national NGOs, civil society groups, the International Committee of the Red Cross (ICRC) and national Red Cross and Red Crescent societies, members of national human rights institutions, representatives of regional and UN peace missions, members of the diplomatic and donor community, and of displaced and minority communities.

This report presents the findings of the survey team. It is an advance version of a more detailed and comprehensive report to be published in 2004 by the Brookings-SAIS Project. The present report is intended primarily for consideration by the members of the Senior Network on Internal Displacement and the IASC-Working Group and to stimulate discussion within these bodies aimed at improving the international response to internal displacement.

### 1. Protection – What is it and Who does it?

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The IASC policy paper adopted the definition of the term “protection” reached by some fifty humanitarian, human rights and academic organizations/institutions during a lengthy series of workshops sponsored by the ICRC. Protection was defined as referring to: “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (i.e., human rights law, international humanitarian law, refugee law)”. Protection activities fall within three broad categories:

- environment building – activities aimed at creating and/or consolidating a global environment conducive to full respect for the rights of individuals;
- responsive action – activities undertaken in the context of an emerging or established pattern of abuse and aimed at prevention and/or alleviating its immediate effects;

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<sup>1</sup> The choice of countries reflects various considerations, such as the need to include a cross-section of displacement situations where the protection concerns and the responses thereto may be different; the need for a regional balance in the choice of countries; and the need to include countries which are subject to a UN peace mission and/or special procedure of the UN Commission on Human Rights.

- remedial action – activities aimed at restoring dignified living conditions through rehabilitation, restitution, reparation.<sup>2</sup>

As the policy paper rightly notes, it is first and foremost the responsibility of the states concerned to meet the assistance and protection needs of their displaced populations. The protection role of other actors, including international agencies and NGOs, “involves reinforcing national responsibility and supporting, not substituting for, the protection responsibilities of competent authorities.” However, in those situations where the competent authorities are either unable or unwilling to meet that responsibility, substitution may be necessary.

As regards the role of UN agencies, the policy paper holds that the scale and multi-faceted nature of displacement crises (and of course the absence of a single agency for the internally displaced) have led the IASC to recognise that an effective and comprehensive response to the protection and assistance needs of displaced persons “necessitates a collaborative approach.” Thus an effective management model for assistance and protection in situations of internal displacement requires an approach that will bring together government officials, UN agencies, international organisations, and international and local NGOs. It is an approach which “implies a significant coordination role for the Emergency Relief Coordinator (ERC) and the IASC-WG” and, importantly, requires the Humanitarian/Resident Coordinator (HC/RC) “to undertake an important assessment and task coordination role within the country setting”. This also requires the “involvement of UN agencies and other international and national organisations, based on their areas of comparative advantage.”

The IASC policy paper and its subsequent “supplementary guidance to HCs/RCs on their responsibilities in relation to internally displaced persons” underscore that UN humanitarian and development agencies have a role to play in providing protection to the internally displaced – in undertaking activities aimed at ensuring the full respect for the rights of the displaced, as contained in the relevant provisions of international law as restated in the Guiding Principles on Internal Displacement. Moreover, the policy paper provides quite detailed guidance as to the types of environment building, operational and remedial activities to be undertaken to this end. Importantly, these and other documents (such as the revised terms of reference for HCs) also indicate where the responsibility lies for ensuring that protection issues are addressed, assigning concrete roles in this respect to the HC/RC at the field level and at the level of headquarters to the ERC, the IASC-WG, the High Commissioner for Human Rights (HCHR) and the Representative of the Secretary-General on internally displaced persons (RSG-IDPs).

## **2. Protection in Practice – Observations from the Field**

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To what extent though, has the theory of the protection policy paper and the supplementary guidance and other relevant documents translated into practice at the field-level?

In the first place, it must be acknowledged that considerable efforts are being expended in a number of countries by UN and NGO staff to provide protection to internally displaced persons and other vulnerable groups, often under extremely difficult and dangerous conditions. Such efforts include:

- Dissemination and promotion of the Guiding Principles amongst UN and NGO staff and national and local authorities through, for example, translation into local languages, training, the development of national law and policy based on the Principles
- Development in some countries of nation-wide systems for monitoring and reporting on the conditions of the displaced, inclusive of a variety of UN and non-UN actors, including civil society groups and members of displaced communities.
- Establishment in a few cases of national and in some cases provincial-level protection working groups, bringing together relevant UN and non-UN actors to discuss protection issues and

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<sup>2</sup> See Sylvie Giossi Caverzasio (ed), *Strengthening Protection in War – A Search for Professional Standards*, Geneva: ICRC (2001) 19-21.

develop appropriate responses, including advocacy efforts undertaken by the HC/RC and specific UN agencies.

- Efforts by some UN agencies and both national and international NGOs to establish a presence and to develop programmes in areas where internally displaced persons are under threat.
- Needs assessment missions focusing primarily on protection issues.
- Capacity-building and logistical support to local governmental and non-governmental human rights actors, as well as to community-based protection initiatives.

These and other efforts notwithstanding, it is equally clear, however, that the UN's approach to the protection of internally displaced persons is still largely *ad hoc*. It is an approach which is driven more by the personalities and convictions of individuals on the ground than by an institutional, system-wide agenda. The UN's approach to protection at the field level also suffers from a lack of political and financial support from UN headquarters and UN member states. Interviews with a diverse and sizeable group of observers highlighted the following critical protection gaps:

- An apparent reluctance to advocate for the rights of internally displaced persons in an effective and assertive manner by some HCs/RCs and RSGs/SRSGs at the field level, UN headquarters officials and donors.
- A lack of awareness among the majority of HCs/RCs interviewed of their responsibilities *vis-à-vis* the protection of internally displaced persons, as stipulated in the protection policy paper, supplementary guidance and other relevant documents.
- A lack of leadership, coordination, planning and strategising on protection. In several of the countries visited there was a visible failure on the part of HCs/RCs and country teams to treat protection as a critical component of the overall UN response (humanitarian, development and diplomatic) and to establish forums aimed at facilitating a coordinated and effective approach to protection, inclusive of all relevant actors (UN and non-UN), including the displaced.
- A failure of the UN system at both the field and headquarters levels to effectively address denial of humanitarian access to internally displaced persons in dire need of protection and assistance. This was of particular concern when governments appeared to deny access to areas where there were allegations of serious and (in a number of cases) protracted violations of international humanitarian and human rights law by government forces.
- An inability or unwillingness of the UN system (at the field and headquarters levels) and UN member states to address causative factors of displacement such as minority persecution, inequitable distribution of resources as well as economic exploitation. For example, many interviewees believed that the economic interests of member states and a UN reluctance to confront the governments in question took precedence over the UN's obligation to advocate for the security and welfare of the internally displaced, even when the UN was present precisely due to forced displacement and widespread violations of international law.
- A failure to document and emphasize the humanitarian consequences of small arms and other weapons transfers.
- In the majority of the countries visited, there was an absence of monitoring and reporting on protection problems and needs relating to displaced persons and other vulnerable groups, which undermined advocacy, early-warning and preparedness.
- Insufficient presence of international staff at the field level, in particular outside the capital, and among vulnerable populations, including the displaced and those at risk of displacement, and a reliance in some cases on national staff to run programmes due to concerns about the security of expatriates, even when national staff were at high risk.
- In some situations, inadequate efforts to establish a meaningful UN/international presence, despite a reasonable (though not necessarily sufficient) number of personnel, in particular on the part of UN peacekeeping troops and military observers.
- A failure of the UN and member states to provide adequate resources and personnel to peacekeeping troops, military observer missions and UN human rights operations, even in cases where UN Security Council mandates or resolutions relating to the protection of civilians exist.

- The imposition of constraints placed by host governments on the engagement of UN humanitarian actors with non-state actors to negotiate humanitarian access and to disseminate human rights and humanitarian principles.
- Insufficient attention to the development of country team early-warning and response capacity and encouragement of the development of such systems by host governments.
- Inadequate efforts by some country teams to consider protection in the context of needs assessments.
- Insufficient resource allocation and mobilisation for protection by UN agency headquarters and the Secretariat too often leave staff in areas that are unsafe. Thus when UN field security officers and UNHCR protection officers were redeployed to the Gulf earlier this year, the ability of some UN country teams to address critical protection issues was significantly weakened.
- Inconsistent or non-existent support for protection projects by the diplomatic and donor community (particularly in the context of the CAP), hindering the ability of UN agencies to engage in protection activities and negatively affecting the morale of UN staff dedicated to improving protection responses.
- A near total absence of progress on the issue of impunity, especially relating to allegations involving host government military, police and other security forces.

### **3. Conclusions and Recommendations**

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Ultimately, however concerned international humanitarian and development agencies are with the protection of internally displaced persons on paper, in practice the international protection of the internally displaced is not undertaken in any sort of predictable, consistent or systematic manner. And on occasion, intentionally or otherwise, it may be overlooked altogether. Yet a predictable, consistent and systematic approach to the protection of internally displaced persons is precisely what is required. In an effort to foster such an approach, the following recommendations are advanced for further consideration and discussion.

#### **Need for More Assertive and Effective Advocacy**

- At the field level, HCs/RCs and RSGs/SRSGs should adopt a more vigorous, sustained and where necessary and appropriate, a vocal approach to advocacy on protection issues.
- At headquarters, the Emergency Relief Coordinator (ERC), the High Commissioner for Human Rights (HCHR), the Representative of the Secretary-General on IDPs (RSG-IDPs), the IASC and the relevant special procedures of the UN Commission on Human Rights—should ensure consistent and sustained support for advocacy efforts undertaken at the field level by HCs/RCs and/or RSGs/SRSGs. They should in turn, be supported in such efforts by the Secretary-General.
- UN country teams (through the HC/RC or a specific agency such as UNHCR, OHCHR or OCHA) should take steps, such as convening regular donor briefings, to mobilise the donor and diplomatic community, keeping them informed of events on the ground and situations calling for support of human rights and humanitarian principles.
- Advocacy by UN actors and the diplomatic and donor community should include reminding governments of their responsibility to hold the perpetrators of violations of international criminal, human rights and humanitarian law accountable.
- Country teams, with the support of headquarters, should press for participation in ceasefire and peace negotiations to ensure that protection issues are raised, such as full and unimpeded humanitarian access; the importance of human rights monitoring and reporting during transition periods; and the humanitarian consequences of any continuation of small arms and other weapons transfers.

#### **Ensuring Implementation of the HC/RC Responsibilities**

- There is an urgent need for the ERC/IASC-WG/Internal Displacement Unit to raise awareness among HCs/RCs (current and future) of their responsibilities regarding the protection of internally displaced persons, as detailed in the protection policy paper, the supplementary guidance and other relevant documents.

- The Internal Displacement Unit should be instructed by the ERC/IASC-WG to develop a system to ensure the accountability of HCs/RCs and country teams for the consistent implementation of appropriate protection activities.
- Monthly reports from HCs/RCs to the ERC should routinely include sufficient information on protection concerns and country team responses thereto.
- The above reporting obligation should be extended to RCs in displacement-affected states.
- The Administrative Committee on Coordination should consider revising its “Guidelines on the Functioning of the Resident Coordinator System” to reflect more fully the responsibilities of RCs in relation to internally displaced persons, as provided for in the IASC policy paper and supplementary guidance.

#### **Coordination, Planning and Strategising on Protection**

- HCs/RCs and country teams must recognise protection as a distinct but integral component of the UN response (humanitarian, human rights and development) and undertake appropriate coordination, planning and strategising, including the development of an integrated country protection strategy to be included in the CAP and supported by headquarters.
- In all displacement situations, the HC/RC should designate a country team focal point on protection to facilitate coordination in this sector. This should include the establishment of a protection working group or similar coordination and strategy-development forum that brings together all relevant actors (UN and non-UN) and provides appropriate channels for consultation with displaced and at risk-communities.
- The IASC/IASC-WG should develop clear and express guidance for HCs/RCs and country teams regarding default options for coordination and monitoring on protection. The ultimate aim should be to ensure that in all country situations an agency of the UN (preferably one with a protection mandate) is tasked with developing a coordinated and inclusive approach to protection, including effective monitoring. The agency concerned must be provided by its respective headquarters with the necessary financial and human resources to fulfil this task, including through the secondment of protection experts from other agencies or *via* recruitment by the Internal Displacement Unit.
- Consideration should be given by the IASC-WG to producing a revised/expanded version of the protection policy paper, taking into account the protection role which could and should be played by other UN actors, such as military and civilian staff of UN peace missions, the special procedures of the Commission on Human Rights and the UN human rights treaty bodies.

#### **Monitoring and Reporting as Standard**

- The establishment of UN mechanisms for the effective monitoring and reporting of protection issues concerning the internally displaced and communities at risk should be standard practice for country teams.
- Particular attention should be paid to collecting information on marginalized or otherwise vulnerable groups and individuals among the displaced population, such as women, children, the disabled, older people, community leaders, human rights defenders, vulnerable recruitment-age males and females and others, based on careful analysis of collected information.

#### **Enhanced and Meaningful International Presence**

- Country teams and other UN, international and regional actors should seek to enhance their presence including, security conditions permitting, a more regular presence of UN and NGO staff out in the field as opposed to the capital. This would help facilitate monitoring and reporting as well as provide a measure of security for displaced and other vulnerable groups.
- UNHCR and OHCHR should be strongly encouraged to consider increased deployment of protection and human rights officers on the ground – including secondment to other agencies such as OCHA or UN peace missions – and in numbers proportional to the gravity of the situation. In order to enable these agencies to strengthen presence, however, they must be

adequately resourced. The ERC and the IASC-WG should examine ways to advocate for increased support for protection personnel with donors.

- All UN and NGO field staff, including military and civilian personnel of UN and multilateral or regional peacekeeping missions, should receive training on international human rights and humanitarian law standards, including the Guiding Principles on Internal Displacement. They should be well-informed about in-country monitoring and reporting systems and the steps they must take should they witness human rights/humanitarian law violations or receive information about violations. Training must also encourage field staff to consider protection issues when conducting assessments and planning and evaluating programmes.
- Headquarters officials and entities such as the IASC and the Security Council, as well as the donor and diplomatic community, should respond in a prompt and assertive manner to threats/attacks against UN and other humanitarian staff, stressing that any such threats/attacks are unacceptable and that steps should be taken by relevant actors to hold perpetrators accountable.

#### **Engaging Non-State Actors**

- UN country teams, under the leadership and coordination of the HC/RC, should as a rule be permitted by UN headquarters to engage non-state actors to negotiate humanitarian access, to promote and disseminate humanitarian and human rights principles and to encourage improved conditions for the displaced in areas controlled by those actors.
- Headquarters should support and facilitate the efforts of country teams to engage non-state actors when doing so might promote better conditions for the internally displaced.

#### **Developing an Early-Warning and Response Capacity**

- Country teams need to take a more proactive approach to early-warning and response, a process which would be greatly facilitated by the development of systems for monitoring and reporting on the situation of the displaced and other groups at risk.
- More effective use should be made of early warning information provided by national NGO and civil society networks and, where relevant, national human rights institutions which should in turn be encouraged by country teams to share information with the UN.
- Country teams should develop a response capacity which allows for the rapid deployment of staff, security conditions permitting, to relevant areas in an effort to discourage forced displacement and other violations and to provide an initial response to the needs of the population in the event that the deterrent fails. Agencies in the capital should agree to designate specific staff members to be “on call” to undertake missions as and when required, taking into account security conditions.
- HCs/RCs and officials at headquarters, including the ERC, HCHR, RSG-IDPs and relevant country special rapporteurs of the Commission on Human Rights, as well as members of the diplomatic and donor community, should intervene with the relevant authorities with a view toward preventing impending displacement and/or other protection problems.
- The IASC-WG should periodically review situations identified as possibly leading to internal displacement in order to contribute to appropriate contingency planning.

#### **Raising the Profile of Protection in Needs Assessments and Resource Mobilisation**

- Needs and vulnerability assessments should routinely focus on protection issues. Country teams should also consider fielding separate or complementary protection assessment missions.
- Country teams should ensure that the protection and assistance needs of internally displaced persons are adequately reflected in the Consolidated Appeals Process (CAP) as well as Common Country Assessments (CCAs), UN Development Assistance Frameworks (UNDAFs) and Poverty Reduction Strategy Papers (PRSPs).
- Country teams should ensure that protection-related projects and programmes are sufficiently prominent in the resource mobilisation process.
- Internal Displacement Unit should regularly review such documents to ensure that the protection and assistance needs of internally displaced persons are adequately reflected.

### **Strengthening Local and National Protection Capacity**

- Country teams should promote and support the development and work of national human rights institutions and other national human rights actors (both governmental and non-governmental) through logistical and capacity-building support. They should also advocate for and when possible take steps to ensure the physical security of human rights defenders, including the leaders of displaced communities.
- Country teams should explore the possibilities for the development of national policy and legal frameworks for the protection and assistance of the displaced, based on the Guiding Principles.
- Country teams, with the necessary support from headquarters and donors, should pay increased attention to the development of and support for domestic rule of law and judicial mechanisms during the emergency phase of an operation, as well as during later phases.

### **Donor Support**

- The donor and diplomatic community should adopt a more consistent and proactive approach to supporting the UN's efforts to advocate for the rights of the internally displaced and other populations at risk.
- Donors are strongly encouraged, in cooperation with UN country teams, to raise their profile "in-country" and to undertake field missions on a more regular basis, in particular to those areas where protection problems are anticipated or ongoing, security permitting.
- Donors should demonstrate greater commitment to funding protection activities in the field.

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## INTRODUCTION

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In December 1999, the Inter-Agency Standing Committee (IASC) adopted its policy paper on the protection of internally displaced persons, through which the heads of UN agencies acknowledged that the protection of internally displaced persons “must be of concern to all humanitarian/development agencies”.<sup>3</sup> The policy paper was described as part of a growing effort by international organisations “to address more proactively the needs of internally displaced persons, to assess and analyse those needs, and to act when the rights of the internally displaced are being violated.”<sup>4</sup> Four years on, to what extent have UN agencies addressed the problem of providing effective and meaningful protection to the displaced? Just how proactive are they? To what extent do they act when the rights of the displaced are being violated? Indeed, just how engaged are humanitarian and development agencies in providing protection to internally displaced persons?

In an effort to throw some light on these questions, the Internal Displacement Unit and the Brookings Institution-SAIS Project on Internal Displacement undertook a joint “protection survey”. The aim of the survey is to examine through a series of country missions the way in which UN country teams and other relevant actors work to support states in discharging their primary responsibility for the protection of internally displaced persons or, in some cases, directly provide protection themselves.

Between December 2002 and May 2003, the survey team undertook missions, in the following order, to the Russian Federation, Somalia, Burundi, Liberia, Angola, the Democratic Republic of Congo, Nepal, Sri Lanka and Colombia.<sup>5</sup> During the missions the survey team held discussions with a broad range of representatives of UN agencies, government officials, representatives of regional organisations, international and national NGOs, civil society groups, the International Committee of the Red Cross (ICRC) and national Red Cross and Red Crescent societies, members of national human rights institutions, representatives of regional and UN peace missions, members of the diplomatic and donor community, and of displaced and minority communities.

This report presents the findings of the survey team. It is an advance version of a more detailed and comprehensive report to be published in 2004 by the Brookings-SAIS Project. The present report is intended primarily for consideration by the members of the Senior Network on Internal Displacement and the IASC and as such it assumes a certain level of familiarity amongst its readers with the UN system and terminology. Its aim is to stimulate discussion within these bodies with a view to improving the international response to internal displacement.

Drawing upon the IASC protection policy paper and other relevant documents, part one of the report describes the theoretical context of the survey, with an explanation of what is meant by the term “protection”. It also discusses the apparently straightforward but at times contentious question of who is responsible for acting to protect displaced persons and those at risk of displacement.

Part two draws upon the findings of the field missions and, using the protection policy paper as a frame of reference, discusses protection in practice: the manner in which protection activities are carried out in the field by UN and other relevant actors. It notes that significant efforts are being undertaken in the field by UN staff to protect the displaced and under difficult, complex and often extremely dangerous circumstances. However, it observes that such efforts are largely *ad hoc* and are often driven more by the personalities and convictions of individuals than by any institutional agenda, as underlined by the fact that in some cases their efforts lack the required support (sometimes verging on opposition) from headquarters. In short, international protection of the internally

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<sup>3</sup> IASC, *Protection of Internally Displaced Persons – Inter-Agency Standing Committee Policy Paper Series, No.2*, New York: United Nations (2000) 2.

<sup>4</sup> *Ibid.*

<sup>5</sup> The choice of countries reflects various considerations, such as the need to include a cross-section of displacement situations where the protection concerns and the responses thereto may be different; the need for a regional balance in the choice of countries; and the need to include countries which are subject to a UN peace mission and/or special procedure of the UN Commission on Human Rights.

displaced is not undertaken in any sort of predictable, consistent or systematic manner. And on occasion, deliberately or otherwise, it may be overlooked altogether.

Part three contains a number of recommendations as to how field-based protection could be undertaken more effectively and, most importantly, more systematically.

A word on what this report is not. This report is not an evaluation of the performance of any given country team. Nor does it attribute quotes to specific individuals. Prior to undertaking the country missions it was decided to avoid any such evaluation and to guarantee confidentiality to interviewees. While the survey team acknowledges the questions that might arise regarding this approach, if this report is to provide an accurate picture (albeit a snapshot) of the state of field-level protection for the internally displaced, and one which provides a sound basis for recommendations for its improvement, it was imperative that the team obtain an understanding of what people on the ground, who confront (or suffer) these issues and problems on a daily basis, actually think and believe. The survey team sought to create an environment in which interviewees would feel at ease and encouraged to candidly share their views without concern that they had to restrict their comments to the “agency line”. It was an approach interviewees appreciated. In fact, many used the opportunity to “unburden themselves” of serious concerns and to share information that could not or would not have been shared in a more formal context. Thus, for what the report may lack in country specific detail, it hopefully compensates for in terms of relevant and practical recommendations for bringing about what are frankly much-needed improvements in field-based interventions/approaches and headquarters responses relating to the protection of internally displaced persons.

## PART ONE

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### PROTECTION – WHAT IS IT AND WHO DOES IT?

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The IASC's endorsement of the policy paper confirmed the view that "international responses to crisis situations must address not only assistance needs but also concerns of physical security", a marked departure from past practice.<sup>6</sup> It was a reflection of the growing awareness within the international community of the connection between protection and assistance and underscored the fact that "the meaning of protection at a general level, and for internally displaced persons in particular, was yet to be fully conceptualised."<sup>7</sup> Thus, the objective was to define IASC policy on protection of internally displaced persons: "to broadly outline some major elements which together constitute the field of protection in internal displacement situations."<sup>8</sup>

#### 1. Defining "Protection"

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The policy paper uses the definition of protection adopted at the third of a series of protection workshops organised by the ICRC between 1996 and 2000.<sup>9</sup> Workshop participants, representing a wide variety of humanitarian and human rights experts, reached a definition by consensus (after long debate) of the "concept of protection" as "all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (i.e., human rights law, international humanitarian law, refugee law)".<sup>10</sup>

#### 2. Operationalising Protection – How?

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While violations arise from arbitrary acts "they can also be the consequence of deliberate policy, ranging from harassment to genocide."<sup>11</sup> In such circumstances, it is difficult for humanitarian organisations to provide material assistance to the victims without also being concerned about why they require such assistance in the first place or about the impact which that assistance will have on the people's safety. When it comes to armed conflict, the protection aspect of humanitarian action cannot be ignored – otherwise, that action will at best bring only partial relief; and at worst may harm those it is intended to help.<sup>12</sup>

According to the IASC policy paper, there is growing recognition among humanitarian and development agencies of their responsibilities in the area of protection, including with regard to the internally displaced. However, it also notes that "there remains a need to give practical meaning to such commitment."<sup>13</sup> To this end, and once again drawing upon the ICRC workshop process, the policy paper outlines three broad categories of protection activities:

- environment building – activities aimed at creating and/or consolidating a global environment conducive to full respect for the rights of individuals;
- responsive action – activities undertaken in the context of an emerging or established pattern of abuse and aimed at prevention and/or alleviating its immediate effects; and finally
- remedial action – activities aimed at restoring dignified living conditions through rehabilitation, restitution, reparation.

The policy paper then identifies the different sorts of activities or, as paper puts it, "strategic areas relevant to protection work in situations of internal displacement", which fall within these categories and which are summarised as follows (and discussed in more detail in part two of the report):

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<sup>6</sup> See *Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1999/47*, UN doc. E/CN.4/2000/83 (2000), para.39.

<sup>7</sup> IASC, note 3 above, at 3.

<sup>8</sup> *Ibid.*, at 4.

<sup>9</sup> On the workshops and their findings see further, Caverzasio note 2 above.

<sup>10</sup> IASC, note 3 above, at 4.

<sup>11</sup> Caverzasio, note 2 above, at 8.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

## **2.1 Environment Building**

- Dissemination, promotion and application of the Guiding Principles on Internal Displacement;
- Advocacy: bringing violations to the attention of the ICRC and the UN system (the Humanitarian and/or Resident Coordinator (HC/RC), the Office of the High Commissioner for Human Rights (OHCHR), and other UN agencies with a special expertise or responsibility in this field who should, in turn, make representations directly to the relevant authorities);
- Development of strategies for engaging non-state armed groups;
- Prevention of displacement, establishment of early warning systems, increasing awareness;
- Increasing or initiating international humanitarian presence among threatened communities;
- Preparedness;
- Strengthening local and national protection capacity;
- Developing or ensuring continuing protection training for international staff, national authorities and non-state actors, local organisations and all other relevant actors.

## **2.2 Operational Response and Remedial Action**

- Monitoring and reporting, including relaying of information by the HC/RC and the country team to the ERC, Representative of the Secretary-General on internally displaced persons (RSG-IDPs), OHCHR and the IASC-Working Group (IASC-WG);
- Vulnerability assessment (integrating protection into needs assessments);
- Ensuring that protection needs are addressed in joint assistance programming processes, such as the Consolidated Appeals Process (CAP);
- Promotion of protection in the design of assistance programmes, including through consultation with protection-mandated agencies operating in the country;
- Strengthening community-based protection;
- Development of protection strategies for women, children and other vulnerable groups;
- Promotion of protection in the design of return/reintegration or resettlement programmes;

## **3. Operationalising Protection – Whose Responsibility?**

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As the policy paper rightly notes, it is first and foremost the responsibility of the states concerned to meet the assistance and protection needs of their displaced populations.<sup>14</sup> According to the policy paper, the protection role of other actors, including international agencies and NGOs, “involves reinforcing national responsibility and supporting, not substituting for, the protection responsibilities of competent authorities.”<sup>15</sup> However, in those situations where the competent authorities are either unable or unwilling to meet that responsibility, substitution may be necessary.

### **3.1 The Collaborative Approach**

In terms of the role of UN agencies, the policy paper holds that “[t]he scale and the multi-faceted nature of displacement crises have led the IASC to recognise that an effective and comprehensive response to the protection and assistance needs of displaced persons necessitates a collaborative approach. Thus an effective management model for assistance and protection in situations of internal displacement requires an approach that involves not any one agency, but government officials, UN agencies, international organisations, and international and local NGOs.”<sup>16</sup> It is an approach which “implies a significant coordination role for the ERC and the IASC-WG” and importantly, requires the HC/RC “to undertake an important assessment and task coordination role within the country setting”. This also requires the “involvement of UN agencies and other international and national organisations, based on their areas of comparative advantage.”<sup>17</sup>

The approach elaborated by the IASC has not escaped questioning. The ink had barely dried on the policy paper when the IASC found itself defending coordination and the collaborative approach from claims that its inherent dispersal of responsibility for protection among various agencies would

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<sup>14</sup> IASC, note 3 above, at 11.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

translate into a lack of leadership and accountability.<sup>18</sup> The IASC's response to such criticism was to reaffirm the validity of the collaborative approach but also to acknowledge that it required considerable improvement. Among other initiatives<sup>19</sup>, the IASC sought to further clarify responsibilities within the collaborative approach – and to translate for HCs/RCs what exactly is expected of them in the field – through the drafting and adoption in April 2000 of the “Supplementary Guidance to Humanitarian/Resident Coordinators on their Responsibilities in Relation to Internally Displaced Persons”.<sup>20</sup> Although in essence a more detailed restatement of the coordination-related sections of the protection policy paper, the supplementary guidance also contains some interesting additions to the policy paper, both at headquarters level and in the field.

### **At Headquarters**

As Chair of the IASC and focal point for the inter-agency coordination of protection and assistance to internally displaced persons, the ERC is responsible for global advocacy on protection and assistance, resource mobilisation, global information on the displaced, and ensuring that satisfactory mechanisms have been established at field level for the effective coordination of the international response to situations of internal displacement and that these arrangements are adequately supported.<sup>21</sup> The ERC is also mandated to bring to the attention of the IASC, for review in the IASC-WG, situations of internal displacement requiring a coordinated response.

The supplementary guidance provides more clarity than the policy paper in recommending that “when necessary and appropriate”, the ERC should bring issues concerning displaced persons to the attention of the Secretary-General and the Security Council.<sup>22</sup> While the phrase “necessary and appropriate” is left unqualified, this provision is an important addition from the point of view that the Security Council has, since 1999, become increasingly seized of the issue of protection of civilians in armed conflict, including recognising the “particular vulnerability” of internally displaced persons in such situations. The Council has further expressed its willingness “to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed, including through the consideration of appropriate measures at [its] disposal”.<sup>23</sup> Thus, it would appear that the ERC holds a special responsibility to bring protection matters relevant to displaced persons to the Security Council.

The supplementary guidance also sets forth a more proactive role in regard to following-up on the missions of the RSG-IDPs and the ERC. It notes that the RSG-IDPs serves as an advocate on behalf of internally displaced persons and in that capacity undertakes missions to affected countries, including at the request of the IASC, and makes recommendations for improved response.<sup>24</sup> In this connection, the IASC-WG is charged with monitoring the follow-up to field visits by the RSG-IDPs, as well as those undertaken by the ERC and inter-agency teams. The IASC-WG is also charged, as the inter-agency forum for all matters regarding the displaced, with reviewing country arrangements.<sup>25</sup>

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<sup>18</sup> See *Statement by the President of the Security Council*, UN doc.S/PRST/2000/1. See also: USUN Press Release, “Statement by Ambassador Richard C. Holbrooke, United States Permanent Representative to the United Nations, Cardozo Law School, New York, March 28, 2000” (28 March 2000); ICVA, “New Momentum for a Single Agency Mandated to Protect and Assist IDPs”, *ICVA Talk Back*, Vol. 2, No. 2 (March 2000).

<sup>19</sup> The IASC also took the step of establishing in September 2000 a Senior Inter-Agency Network on Internal Displacement which was mandated to undertake country missions with the goal of making recommendations (through its Special Coordinator) to the Secretary-General and the ERC for enhanced inter-agency approaches to internal displacement. This approach ultimately led to the establishment of the OCHA Internal Displacement Unit in January 2002. See *Interim Report from the Special Coordinator of the Network on Internal Displacement* (9 April 2001). See also, ICVA, “Moving Ahead on the IDP Debate”, *ICVA Talk Back*, Vol.3, No.2 (April 2001).

<sup>20</sup> Reproduced as Annex B in IASC, note 3 above, at 27-30.

<sup>21</sup> Pursuant to the Secretary-General's programme for reform and the subsequent recommendations of the IASC relating to the Review of the Capacity of the United Nations System for Humanitarian Assistance (October 1998).

<sup>22</sup> IASC, note 3 above, at 29, para.8.

<sup>23</sup> See UN Security Council res.1265 (1999). See also SC res.1296 (1999).

<sup>24</sup> IASC, note 3 above, at 28, para.9.

<sup>25</sup> *Ibid.*, at 28, para.10.

### **At the Field Level**

The supplementary guidance states that in situations of internal displacement defined as complex emergencies, an HC is normally designated by the ERC, in consultation with the IASC, as the responsible and accountable official, whether or not he or she is also serving as the RC. In countries affected by displacement, but where no HC has been appointed, the RC is the responsible official while in countries where the Secretary-General has designated an overall lead agency for humanitarian action, the Representative or Country Director of that agency is normally the responsible official.<sup>26</sup> The HC/RC, in consultation with the UN country team and other relevant partners, recommends to the ERC an allocation of responsibilities for the protection of and assistance to internally displaced persons.<sup>27</sup>

In line with the primary responsibility of national authorities for assisting and protecting their displaced populations, the HC/RC must consult with national and local authorities to assess their capacity to respond to the needs of the displaced and in doing so should impress upon the authorities their primary responsibility for the protection of and assistance to civilians in general. The HC/RC is encouraged to suggest to the Government and local authorities the appointment of a focal point within their structure on issues of internal displacement, to serve as counterpart for the international community. He or she may also suggest ways in which the UN system can help to strengthen the local and national capacity to provide protection and promote durable solutions.<sup>28</sup>

The HC/RC is also responsible for the coordination of the UN's response to the needs of the internally displaced and ensuring that gaps in the response to the displaced are systematically addressed.<sup>29</sup> Pursuant to the policy paper, he or she is expected to encourage the formation of in-country task forces on internally displaced persons to develop capacity and competence to address protection issues.<sup>30</sup> In order to clarify roles and responsibilities, the HC/RC may encourage the development of memoranda of understanding between key partners.<sup>31</sup>

In addition, the HC/RC is expected to oversee the development of a comprehensive plan of response to the assistance and protection needs of the displaced; the basis for displacement related components of the CAP and its Common Humanitarian Action Plan (CHAP). The plan should take into account the activities of the national and local authorities. It should also reflect the protection role of organisations with the relevant expertise or mandates. As well as reflecting the need to maintain a focus on the systematic search for durable solutions for the displaced, it should also address the specific needs of certain groups, such as marginalized persons, women, children, older people and others who may be at special risk. After approval by the country team, the plan should be submitted to the ERC.<sup>32</sup>

In developing the country team's response to situations of internal displacement and in order to address any gaps therein, the HC/RC may call upon the ERC and the IASC to make available expertise in the form of specialised inter-agency missions, training programmes and temporary reinforcement of personnel and equipment.<sup>33</sup> Subsequent to the establishment of the OCHA Internal Displacement Unit, HC/RCs may now address specific protection problems to the "Protection Coalition", an inter-agency coalition at headquarters chaired by the Unit. Although the Coalition is intended to primarily address specific protection questions or problems referred to it by HC/RCs – which to date has happened in relation to only one country – its terms of reference do provide the possibility for "other relevant actors, including field-based humanitarian organisations and NGOs" to approach it with information and requests for support. It may also seek information on its own

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<sup>26</sup> Ibid., at 28, para.11. Unless otherwise stated, for convenience this report uses the term "HC/RC" to refer to the responsible official, whether he or she is Humanitarian and/or Resident Coordinator, or Representative of Country Director of an overall lead agency.

<sup>27</sup> Ibid., at 29, para.29.

<sup>28</sup> IASC, note 3 above, at 29, paras.15-16.

<sup>29</sup> Ibid., at 29, para.18.

<sup>30</sup> Ibid, at 13.

<sup>31</sup> Ibid., at 13 and 30, para.24.

<sup>32</sup> Ibid., at 30, paras.22-23.

<sup>33</sup> Ibid., at 30, para.19.

initiative.<sup>34</sup> The coalition clearly has some potential for providing support to the field. However, it has to date dealt with only one country, at the request of the HC/RC, and has since been dormant for most of 2003. Consideration should be given by the Unit and the coalition members to its revival.

The HC/RC, on behalf of the country team, can also call upon the ERC and the IASC to take the case of displaced and other war-affected communities to the Security Council “as deemed appropriate”<sup>35</sup>. The HC/RC should also advise the ERC on possibilities for the RSG-IDPs to intervene with the authorities in the country in question, and with the international community, in support of the protection of and assistance to the displaced, in addition to the RSG’s regularly scheduled activities and missions.<sup>36</sup>

Finally, the guidance notes that in view of the perilous and difficult environment in which they have to operate, the security and well-being of workers providing assistance and protection in situations of internal displacement are often at risk. Plans for responding to the needs of internally displaced persons should, therefore, include adequate provisions to ensure personal and operational security.<sup>37</sup>

### **Terms of Reference of HCs**

The above steps should be read in conjunction with the “generic terms of reference of the HC”, as approved by the IASC in 1994 and which are referred to in the supplementary guidance as providing “detailed guidance on the overall responsibilities of the HC, which is also relevant to situations of displacement.” Particular attention is drawn to paragraph 20 thereof concerning humanitarian advocacy, including advocacy for unimpeded access to affected populations.<sup>38</sup>

A revised version of the Terms of Reference for HCs has been under discussion within the IASC-WG for several months. It is intended to reflect new developments, namely the increasing prominence of the internal displacement issue and the need for more attention to protection, the adoption by the IASC of the protection policy paper and subsequent affirmation of the collaborative approach through the supplementary guidance. The revised Terms reaffirm the responsibility of the HC for “overseeing the development of a comprehensive strategic plan for responding to the assistance and protection needs of internally displaced persons and identifying the most appropriate collaborative arrangement amongst operational agencies for implementing the plan, ensuring that all needs are met.”<sup>39</sup> In this regard, it notes that the HC’s responsibility for the displaced stems directly from the ERC’s role as focal point for internally displaced persons. The Terms of Reference continue that “[i]n discharging his/her duties in this regard, the HC will be guided by the IASC Protection Policy Paper and the Supplementary Guidance”.<sup>40</sup>

The revised Terms of Reference strengthen the humanitarian advocacy to be undertaken by the HCs. Not only is he/she responsible for advocating for unimpeded access to those in need, but also for “promoting respect for human rights and humanitarian law as well as the Guiding Principles on Internal Displacement.” It further states that the HC is responsible for “carrying out advocacy initiatives with the local and international media, the international community, the civil society and the public at large.”<sup>41</sup> Elsewhere in the document, the HC is deemed responsible for “promoting and monitoring the implementation of relevant guidelines adopted by the IASC”, including the Guiding Principles and the protection policy paper.<sup>42</sup>

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<sup>34</sup> See further, “Protection Coalition on Internal Displacement, Terms of Reference”. Available at [www.reliefweb.int/idp/docs/references/ToRProtCoalition240702.pdf](http://www.reliefweb.int/idp/docs/references/ToRProtCoalition240702.pdf)

<sup>35</sup> IASC, note 3 above, at 30, para.19.

<sup>36</sup> *Ibid.*, at 30, para.20.

<sup>37</sup> *Ibid.*, at 30, para.24.

<sup>38</sup> *Ibid.*, at 29, para.17.

<sup>39</sup> IASC, *Revised Terms of the Reference for the Humanitarian Coordinator, Final Draft* (29 August 2003), at para.14.

<sup>40</sup> *Ibid.*, at para.15.

<sup>41</sup> *Ibid.*, at para.20.

<sup>42</sup> *Ibid.*, at para.24.

### **Human Rights Guidelines for RCs**

Additional guidance for RCs on human rights and protection issues is also available in the form of the human rights guidelines for RCs, approved by the UN's Administrative Committee on Coordination (ACC) in March 2000.<sup>43</sup> Although fairly general in nature, the guidelines do clearly refer to the RC's responsibility to "faithfully respect, represent and promote the norms, standards and policies of the [UN], including those relating to human rights, in all relevant official communications, statements and representations to the press, to Governments and to all other counterparts and contacts."<sup>44</sup> Interestingly, the guidance also notes that in formulating public positions and statements, RCs "are asked to consider that, while the particular focus may vary from country to country, no country is without human rights challenges." It continues that "[p]ublic representations to the contrary will be neither credible nor constructive."<sup>45</sup> Beyond these more general comments, the guidance also provides that petitions, complaints and other communications relating to alleged or imminent human rights violations received by RCs and other UN staff in the field "should be promptly transmitted to OHCHR for appropriate action and advice."<sup>46</sup>

Note should also be made of the ACC "Guidelines on the Functioning of the RC System".<sup>47</sup> These include the RC "job description", detailing the specific responsibilities and duties of the RC which are silent in regard to his/her responsibilities in relation to internally displaced persons. Given that the guidelines were adopted in September 1999 and, therefore, prior to the drafting of the protection policy paper and the supplementary guidance, there is clearly a case to be made for their revision.

#### **4. The What and Who of Protection – A Recap**

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The protection policy paper and the supplementary guidance clearly underscore that UN humanitarian and development agencies have a role to play in providing protection to the internally displaced – in undertaking activities aimed at ensuring the full respect for the rights of the displaced, as contained in the relevant provisions of international law as restated in the Guiding Principles. Moreover, the policy paper provides quite detailed guidance as to the types of environment building, operational and remedial activities to be undertaken to this end. Importantly, these and other documents (in particular, the revised terms of reference for HCs) also indicate where the responsibility lies for ensuring that protection issues are addressed, assigning concrete roles in this respect to the HC/RC at the field level and at the level of headquarters to the ERC, the IASC-WG, the High Commissioner for Human Rights (HCHR) and the RSG-IDPs. The question is to what extent all this theory translates into practice at the field level, how field level concerns are transmitted to headquarters and whether these concerns are responded to in a timely and useful manner.

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<sup>43</sup> See Administrative Committee on Coordination, *The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System* (March 2000).

<sup>44</sup> *Ibid.*, at para.12.

<sup>45</sup> *Ibid.*, at para.13.

<sup>46</sup> *Ibid.*, at para.11.

<sup>47</sup> ACC, *Guidelines on the Functioning of the Resident Coordinator System* (1999).

## PART TWO

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### PROTECTION IN PRACTICE – OBSERVATIONS FROM THE FIELD

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To what extent then has the theory of the protection policy paper and the supplementary guidance and other relevant documents translated into practice at the field-level? To what degree is field-level protection for internally displaced persons characterised by activities aimed at creating and consolidating a global environment conducive to full respect for the rights of the individual? How organized and comprehensive are activities aimed at preventing and alleviating emerging or established patterns of abuse and which seek, for those whose rights have been violated, to restore dignified living conditions through rehabilitation, restitution and reparation? And how effectively does all this take place within the framework of a collaborative approach which is inclusive of all relevant actors, UN and non-UN, international, national and local?

#### 1. Environment Building

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##### 1.1 Dissemination and Promotion of the Guiding Principles on Internal Displacement

As the policy paper observes, the effectiveness of the Guiding Principles as a protection tool depends on the extent to which they are respected by the various concerned actors, including the international community. Pursuant to a decision of the IASC in March 1998 encouraging its members to apply the Principles in their activities, the policy paper notes that the Principles should be used by UN agencies as a benchmark against which to assess assistance and/or protection activities in their areas of responsibility. It also notes that an integrated country team approach should be adopted when applying the Principles at the field level, the responsibility for which would fall to the HC/RC, in cooperation with the IASC-WG.

It was apparent from the field visits that there was extensive, though by no means absolute, awareness among UN field staff, as well as the staff of international and national NGOs, civil society actors and national and local authorities as to the existence and indeed, utility, of the Guiding Principles. In a number of countries, the Principles were certainly a key feature of protection efforts and were being used as a benchmark against which to assess the situation of the displaced and as a tool in advocacy efforts with the authorities. It would not, however, be entirely accurate to describe these efforts as constituting an “integrated country team approach”. In some countries, the Principles were being used by agencies and NGOs as the basis for awareness-raising initiatives with displaced communities. In others, country teams were using the Principles as the basis for their efforts to strengthen the national and local capacity for protection through, for example, training and the development of legal and policy frameworks for the displaced, based on the Guiding Principles (see below). In two countries visited the Principles were a significant component of the efforts of the country teams and donor community to inject a humanitarian and human rights dimension into ceasefire and national reconciliation negotiations which were ongoing among the various warring parties.

To assist in these various activities, in a number of the countries visited, UN agencies had had the Principles translated into the relevant national and local languages. In another of the countries visited, an international NGO had produced a comic strip version of the Principles for rights-awareness training with displaced communities. Elsewhere, the survey team was informed of the efforts of one UN national staff member to promote the Principles in his particular area of responsibility by organising and participating in a local radio programme discussing the rights of the displaced. Consideration was also being given in one country to using the society’s traditional use of poetry as a means of communication to disseminate humanitarian and human rights principles.

##### 1.2 Advocacy

According to the policy paper, “[a]ctive and assertive advocacy for the rights of internally displaced persons” – that is to say, giving the victims a voice and ensuring that humanitarian issues and concerns are taken into account – “can be an essential component of protection efforts.” It continues, “[g]reater awareness of the rights of internally displaced persons as well as of their condition and

needs, must be promoted with national leaders, international organisations, the media, donors and parties to conflicts.”

Where violations of relevant international provisions occur, the policy paper states that field staff of UN agencies, NGOs and international organisations should ensure that the information is communicated to officials and/or institutions “that are in a position to act upon it.” These include the HC/RC, OHCHR, ICRC or other UN agencies with a special expertise or responsibility in this field. In turn, these mandated actors “should” make representations directly to the competent authorities or other parties with influence over the territory where violations are occurring, including UN peacekeeping forces and police monitoring units, and bilateral or regional military contingents assisting with peacekeeping.

Reference should also be made to the revised terms of reference for HCs which note the HC’s responsibility for advocating with the relevant parties for the application of humanitarian principles on behalf of the victims and of the humanitarian community, including “promoting respect for human rights and humanitarian law as well as the Guiding Principles”.

### **Advocacy - An Essential Component of Protection**

Perhaps the first point to make with regard to advocacy is that the policy paper sells the concept rather short. While the policy paper states that advocacy “can be” an essential component of protection, on the basis of the field visits it is apparent that it is not so much a question of “can be” as “is” an essential component of protection. And it is a component of protection on which the UN needs to work much harder.

A constant theme during the interviews was that however extensive a given country team’s efforts were on protection, their full potential will only be met if they are supported by firm and effective advocacy, in particular from the HC/RC and also from the heads of the different agencies in a given country, reinforced by headquarters. Advocacy can come in many forms but should be based on a complementary balance between speaking out and quiet diplomacy. Yet in all the countries visited, regardless of how extensive or not a given country team’s efforts were on protection, interviewees from different backgrounds – UN, NGO, civil society, donor, displaced – emphasised the need for UN country teams and the UN system as a whole to take a much firmer line on protection issues with governments and other relevant actors. Some referred to the need for HCs/RCs and country teams “to stand up to the authorities and take decisions which aren’t favourable”. Others spoke of the need for the HC/RC and country team “to be more indignant about things” and to include “a critical voice” on behalf of the displaced in their dialogue with governments, lest they become complicit in national policies that are ineffective or which compound the problems of the displaced. One UN staff member, voicing concerns shared by many of his colleagues, referred to the UN’s stance on advocacy and protection more broadly by asking “why we are ashamed of doing what we should be doing, the protection of human rights?” And as one HC/RC remarked, if the UN is not in a country to protect human rights, then “what are we here for?” Others expressed their “repugnance” at the fact that NGOs and civil society groups would often denounce violations, sometimes at great personal risk, while the higher levels of the UN – the HC/RC, heads of field-based agencies and headquarters officials – remained silent. As the staff of one national NGO remarked, the UN’s failure to speak out over abuses “puts us local human rights organisations at risk because we’re having to do the advocacy rather than providing information to more powerful actors.”

### **Advocacy and the Role of the HC/RC**

Although the HC/RC is the “responsible and accountable official” at the field level, it should be noted that the survey team did not get a sense that the relaying of protection specific information to the HC/RC and others “in a position to act upon it” is something that occurs on a systematic or routine basis in the majority of the countries visited, thus limiting opportunities to engage governments and other actors on protection issues. In those cases where such information was provided to the HC/RC, or was at least readily available, the record of the HCs/RCs in providing “assertive and effective advocacy” was still mixed, indicating that there is a disconnect between information-gathering and strategic planning in protection.

At one end of the spectrum were a small minority of HCs/RCs for whom the protection concerns of the displaced and the civilian population were clearly an issue for discussion with the relevant authorities, either quietly behind closed doors or, in some cases, more publicly through the issuance of press statements and interviews with the media. This was particularly encouraging, though it was apparent that their willingness to raise protection and human rights issues stemmed more from a sense of personal conviction than as a result of policy guidance from the IASC or any belief that they would necessarily be supported in such efforts by headquarters.

At the other end of the spectrum were those who, although exhibiting some awareness of the protection concerns of the displaced, did not view themselves as having a role to play in advocating openly or discreetly for an appropriate response from the government. As one HC/RC remarked: “I don’t think we should make big speeches about human rights” – a role which was, in his opinion, best left to groups such as Amnesty International and Human Rights Watch. And to be sure, some other staff within the UN shared this view. According to another senior UN official, human rights/protection advocacy was best undertaken by NGOs and the media because of the need for the UN to maintain effective channels of cooperation with the government.

Some interviewees felt the need for the HC/RC to maintain a good working relationship with the government interfered with or compromised a more assertive line on protection issues, although there was an understanding that the approach need not necessarily be confrontational. As one study has observed in weighing up the pros and cons of different coordination models, the widely perceived disadvantage of the joint HC/RC coordination model “centres on the difficulties for the [RC] who is mandated to work closely with the government of the country in carrying out the robust diplomacy integral to the role of [HC] – for example on the rights of refugees or internally displaced persons.”<sup>48</sup> It follows, of course, that this problem may be more pronounced for RCs who do not have the HC mandate to bolster their position on the importance of protection of internally displaced persons. Without wanting to underestimate the difficulties involved in balancing the need for close relations with the government or *de facto* authorities with that of raising protection issues, failure to raise protection with the relevant authorities will only serve to undermine the UN’s stated commitment to “human rights mainstreaming” and a “human rights-based approach” to development cooperation<sup>49</sup>, as provided for in common country assessments (CCAs) and UN Development Assistance Frameworks (UNDAFs). As one observer commented, “the preparation of the UNDAF was all very human rights focused, but when human rights violations were taking place [the country team] was silent.” As has been observed elsewhere, “[o]ne of the great unspoken truths of the human rights based approach is that [country teams] may ... have to take an adversarial position against the state; in extreme cases this could threaten their programmes, access and even presence in the country ... [However,] it is no longer good enough to say ‘we have to work with the government’”.<sup>50</sup>

Although resolving this dilemma is beyond the scope of this report, two points should be mentioned. First, there is clearly a need to achieve uniform awareness and acceptance among HCs/RCs of their responsibilities in regard to advocacy on protection issues. Indeed, the difficulties of balancing their different tasks notwithstanding, the field visits revealed a widespread lack of awareness among HCs/RCs regarding their responsibilities as elaborated in the protection policy paper, the

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<sup>48</sup> Nicola Reindorp and Peter Wiles, *Humanitarian Coordination: Lessons from Recent Field Experience – A Study Commissioned by the Office for the Coordination of Humanitarian Affairs*, London: Overseas Development Institute (June 2001) 20.

<sup>49</sup> According to the statement of “common understanding” on the human rights based approach to development cooperation, as discussed at the Second Inter-Agency Workshop on Implementing a Human Rights Based Approach in the Context of UN Reform in May 2003: “(1) All programmes of development cooperation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration ... and other international human rights instruments. (2) Human rights standards contained in, and principles derived from, the Universal Declaration ... and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process. (3) Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.” See *Report of the Second Inter-Agency Workshop on Implementing a Human Rights Based Approach in the Context of UN Reform*, (Stamford, 5-7 May 2003).

<sup>50</sup> William G. O’Neill, “The Current Status of the Human Rights Mainstreaming – Review of Selected CCA/UNDAFs and RC Annual Reports” (23 April 2003) at 2. On file with the authors.

supplementary guidance and other relevant documents discussed in Part One. Although the IASC's development and endorsement of the policy paper and the supplementary guidance were important steps towards a more predictable international response to the protection of the displaced, it is apparent that they have yet to trickle down sufficiently to the field level. Of the seven HCs/RCs interviewed by the survey team (the remaining two were not available to meet with the team), only three were familiar with the existence of either document. Moreover, as indicated above, it was apparent that the interest of the HCs/RCs concerned in addressing protection issues stemmed more from a sense of personal conviction than that of institutional responsibility resulting from IASC policy-making. Be that as it may, there would clearly be some value in raising awareness among HCs/RCs of their responsibilities in terms of the protection of the internally displaced. Linked to this, it is essential that appropriate steps are taken to develop a system for holding HCs/RCs accountable for meeting those responsibilities.

The second and related point is that appropriate steps need to be taken by HCs/RCs, as well as by senior headquarters staff and donors states, to impress upon governments that HCs/RCs are expected and required to address protection issues. It should also be made clear by headquarters, donors, governments and regional bodies that it is unacceptable for governments to penalise an HC/RC for implementing his or her responsibilities in this regard. This implies the full support of headquarters for the HC/RC which would include not succumbing to political pressure to reassign an HC/RC to another country.

### **Discretion versus Denunciation**

To be sure, as indicated above, advocacy efforts were being pursued by a number of HCs/RCs and country representatives or directors of certain UN agencies, on a consistent but discreet basis. Often, however, NGOs, civil society, and even UN agency staff are unaware of the steps which are being taken at higher levels to respond to a given situation, therefore damaging, in some cases, the UN's image *vis-à-vis* advocacy. Indeed, some humanitarian and other observers were highly sceptical as to whether the "hard issues" were really being raised behind closed doors if there was no indication at all from the UN system that there was concern about certain issues. Discretion indeed may be the better part of valour – under certain circumstances. As the policy paper states, "[w]hen undertaking advocacy efforts, the situation must be carefully examined to determine what type of advocacy will be most effective and what are the possible points of entry." A number of interviewees underlined the benefits of raising protection issues in a discreet and confidential manner, as opposed to public denunciation, noting that it is often appreciated by the authorities as it allows them to take corrective action while at the same time saving face.

The benefits of discretion notwithstanding, a number of interviewees also referred to the downside of too much discretion and that of not speaking out at all. NGO staff noted that the UN's apparent silence may discourage some NGOs from undertaking advocacy efforts of their own. Advocacy led by the UN was considered to provide a more secure context for similar efforts by NGOs as they are often reiterating concerns already voiced by the UN. In cases where the UN, NGOs and civil society had engaged in discussions *vis-à-vis* the need for advocacy, it was believed that a "united front" could be particularly effective, though of course differences in approach may be equally valuable so long as they complement each other and are united in the goal of promoting protection for the displaced. Ultimately, the case can be made for better communication and liaison between the UN and civil society, though the UN should not always be expected to reveal specifics about when or what was discussed with the authorities.

In several cases, there was wide perception among NGOs and civil society *and* within the UN community that UN officials were not taking up protection/human rights issues up with the authorities at all. This seriously undermined the UN's credibility and the perception of its impartiality and neutrality among these groups, not to mention the effect on the local population, including the displaced, who were often sensitive to the perceived silence of the UN. Although some argued to the contrary, that the UN's impartiality and neutrality were best upheld by not denouncing the actions of one side or other to the conflict, many interviewees held that maintaining one's neutrality and impartiality is not a question of not being seen to take the side of one party or the other. It is not a

question of not speaking out in the face of violations. On the contrary, it is precisely about taking a side – that of the victim, whatever “side” they are on. It is about taking a principled approach, ensuring that actions by all parties to a conflict conform to international human rights and humanitarian law principles and that they be called to account for actions which do not so conform. As one donor representative remarked regarding the failure of the HC/RC and UN agencies in one country to denounce widespread atrocities against civilians, including the displaced: “The UN wasn’t raising issues. It should have been vocal. It’s the guardian of the [international human rights] treaties”.<sup>51</sup>

### **Principles versus Political Objectives**

The UN’s ability to take a principled, as opposed to politicised, approach to protection and advocacy is a complex, broad issue, to be sure, but cannot be avoided. As one HC/RC remarked, if one is going to adopt a principled approach one has to apply the same standards throughout the world. It was not, in his words, “a question of nuancing principles”. However, nuancing principles is seen by some as necessary to maintain dialogue with certain authorities and even to remain in the country. According to one country team representative, the UN’s silence in the country situation just referred to above resulted from a decision taken at an unspecified “higher level” that the UN would maintain a low-profile to avoid disrupting the efforts of UN secretariat officials in New York to pursue a mediation role in the resolution of the conflict.

Conflict resolution is certainly an important (albeit potentially long-term) means of facilitating the protection of the displaced, and is clearly one of the UN’s principal responsibilities. As the report of the Panel on UN Peace Operations observes: “The [UN] was founded, in the words of its Charter, in order ‘to save succeeding generations from the scourge of war.’ Meeting this challenge is the most important function of the Organisation, and, to a very significant degree, the yardstick by which it is judged by the peoples it exists to serve.”<sup>52</sup> How though, does one balance the organisation’s conflict resolution and prevention responsibilities with another of its Charter-based responsibilities: to “promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”<sup>53</sup>, including those caught in the midst of armed conflict?

A number of UN staff also raised concerns over the tendency for human rights and protection issues, including those relating to the displaced, to be subjugated to political concerns in the context of UN peace operations, despite the apparent importance attached to human rights within the context of such missions (as demonstrated in two of the countries visited by the existence of “human rights divisions” within the missions concerned). As a staff member of one of these divisions remarked: “I can’t underline enough the limitations that a peacekeeping mission and environment imposes on us... The political environment won’t allow us to do anything that would impact negatively on a peace and reconciliation agenda. We have to recognise the conflict between the political and human rights agenda.” Another referred to the “frustration” of being a human rights person in a UN peacekeeping mission, stating that as a human rights officer “[your views are] not a priority”.

In another of the countries visited, some members of the country team referred to the UN’s unwillingness to raise politically-sensitive concerns over a donor-supported government policy which was a significant factor in the displacement crisis and which apparently had obvious human rights implications beyond forced displacement. The survey team is also aware of the case of another displacement-affected state in which the country team has had no direct or formal contact with the displaced on the grounds that the displacement issue belongs to what one senior UN official described

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<sup>51</sup> In a similar vein, albeit in a different context, the UN Panel on Peace Operations has observed that “[i]mpartiality for [UN peace operations] must ... mean adherence to the principles of the [UN] Charter: where one party to a peace agreement clearly and incontrovertibly is violating its terms, continued equal treatment of all parties by the United Nations can in the best case result in ineffectiveness and in the worst may amount to complicity with evil. No failure did more to damage the standing and credibility of UN peacekeeping in the 1990s than its reluctance to distinguish victim from aggressor.” See *Report of the Panel on United Nations Peace Operations*, contained in *Identical letters dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, UN doc.A/55/305-S/2000/809 (2000) ix.

<sup>52</sup> *Ibid.*, at para.1.

<sup>53</sup> Article 55(c), UN Charter.

as a “forbidden area” which the country team is “not supposed to look at, have an opinion upon or allude to in any official manner.” The UN’s position had “existed for years and ... has been, if not *de jure* at least *de facto*, accepted by UN headquarters.”

Elsewhere, one mission member noted that “sometimes we are told there are some issues we can’t [are not permitted to] investigate” – which seems to contradict the importance attached by the Security Council in various resolutions to ending impunity for those responsible for serious violations of international humanitarian, human rights and criminal law, including through the “establishment and use of effective arrangements for investigating and prosecuting serious violations of humanitarian and criminal law, at the local and/or international level (from the outset of [a peacekeeping] operation).”<sup>54</sup> The importance of taking up these issues is of course not limited to peacekeeping operations.

### **Advocacy and the Role of RSGs/SRSGs**

The examples cited above raise obvious concerns as to the freedom of action on the humanitarian/human rights side *vis-à-vis* the political side of the UN, which often has the final say in the UN system’s response/approach. Yet not unlike the humanitarian side, the political side also has a key role to play in terms of advocacy, in particular when it is present in-country in the form of a political, peace-building or peacekeeping mission, under the authority of a Representative or Special Representative of the Secretary-General (RSG/SRSG) and the secretariat Departments for Peacekeeping Operations (DPKO) and for Political Affairs (DPA).

On paper, the role of RSGs/SRSGs in terms of advocacy on protection issues is not immediately apparent, though there is a strong case to be made for them to undertake appropriate efforts. To begin with, the policy paper, while not referring to RSGs/SRSGs, does provide that information concerning violations be brought to the attention of those in a position to act which “includes”, thus is not limited to, the HC/RC, OHCHR, ICRC or UN agencies. Moreover, these actors are expected to make representations directly to the competent authorities or other parties with influence over the territory where the violations are occurring, including UN peacekeeping and police forces which are under the authority of an RSG/SRSG. In addition, pursuant to the guidance note on the relations between RSGs and HCs/RCs, the RSG/SRSG has the authority and the responsibility to provide “overarching leadership” to the UN team in-country.<sup>55</sup> It seems incumbent upon the RSG/SRSG, as the senior UN official in a given country to undertake advocacy efforts at the request of the HC/RC and country team or else to support their efforts. Indeed, an RSG/SRSG’s failure to engage in advocacy efforts or to support those of the HC/RC and country team would likely serve to undermine the efforts of the latter. A government is unlikely to feel the need to treat the concerns of the humanitarian side of the UN with too much seriousness if the political side is not supportive or, worse still, dismissive of those concerns.

Assuming that there is a case to be made for RSGs/SRSGs to undertake and support advocacy efforts, it would be useful to spell this out in clearer terms. Indeed, the field missions revealed that the role of RSGs/SRSGs (who were present in five of the countries visited) in raising protection concerns and advocating for the rights of the displaced was limited or at least unclear to many observers, including UN staff. In fact, in some cases it was apparent that they did not consider that they had a role in this respect at all despite the relevance of the protection issues in the mission area and their potential impact on ceasefire agreements and peace and reconciliation negotiations which they were there to support and foster. As one interviewee pointed out, it was precisely because of the instability and current human rights and humanitarian situation that the UN, in its political and humanitarian manifestations, was in the country in question. In eight of the nine countries visited by the survey team, it is clear that violence in those countries has been of consistent concern to the UN and member states, as indicated by UNSC resolutions and reports of UN organisations with protection/human rights mandates, including OHCHR, UNHCR and UNICEF.

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<sup>54</sup> See further the Security Council’s *Aide Memoire for the consideration of issues pertaining to the protection of civilians during the Security Council’s deliberation of peacekeeping mandates*, contained in *UN Security Council Presidential Statement*, UN doc. S/PRST/2002/6 (15 March 2002).

<sup>55</sup> IASC, *Note of Guidance on Relations between Representatives of the Secretary-General, Resident Coordinators and Humanitarian Coordinators* (30 October 2000), at para.2.

### **Staff Security**

Another factor which emerged in some of the interviews as impacting upon the willingness of senior field-staff to raise protection concerns, in particular in a public manner, was that of security. As the policy paper provides, in undertaking advocacy efforts, “the safety and security of field staff must be taken into account.” In one country visited, the murder of two senior UN officials (as well as three ICRC delegates) in recent years, combined with what several UN staff described as a totally inadequate response to the killings from UN headquarters and other parts of the UN system, have only served to deter staff, including senior agency staff, from reporting on, and speaking out about abuses.

The unresolved cases have also created a fear among humanitarians about going to the field without armed security guards. This is complicated by the fact that such security is provided essentially by one of the parties to the conflict whose forces are directly implicated in human rights violations. The fact that parties to the conflict have been hired by the UN as armed security guards is ethically questionable on a number of levels and obviously gives rise to concerns over the safety of UN staff. In addition to serious allegations of the involvement of these forces in human rights/humanitarian law violations, these security forces are in a position to make or strongly influence UN security decisions. They may well be (and in the case of one country the team visited, were) motivated at times to deny humanitarian access to areas where government forces are engaged in violations or are failing to meet obligations to assist civilians. To place trust in the security evaluations of actors who have clear reasons to exaggerate security concerns in order to keep humanitarians out constitutes, in the view of the team, unsound practice. Once such “assistance” has been contracted, it is very difficult to extricate oneself from agreements. Finally, paying parties to the conflict known to be committing violations of international law is also highly questionable from an ethical perspective.

### **Advocacy and the Role of Headquarters Officials**

Responsibility for advocacy rests on the shoulders of more actors than just the HC/RC, members of the country team and the political and peacekeeping representations of the UN. Although, as the policy paper points out, effective advocacy must be locally/nationally based, it also provides that, as a matter of course, information on the displaced should be brought to the attention of officials and/or institutions at headquarters level specifically mandated to advocate for the protection of the displaced. It notes that the ERC’s function enables him or her to effectively use mechanisms such as addressing the Security Council and contributing to the Secretary-General’s reports to the UN’s Economic and Social Council (ECOSOC) and the General Assembly to draw the attention of the international community to such protection problems. Furthermore, the ERC and the HCHR, in their function as members of the Secretary-General’s Executive Committees (on Humanitarian Affairs (ECHA) and Peace and Security (ECPS)), are considered to be in a strong position to promote an active and concerted response from within the UN system to such problems as they evolve. Also, the annual reports of the RSG-IDPs to the UN Commission on Human Rights, as well as his contacts during official country visits, are also cited as providing additional platforms for high-level advocacy. Mention should also be made of his biannual reports to the General Assembly and his post-mission reports to the Secretary-General and the IASC-WG.

Of critical importance is the fact that the ERC is permitted to bring issues concerning the internally displaced to the attention of the Secretary-General and the UN Security Council. To be sure this would not always be an appropriate course of action and would presumably be relevant to situations involving serious and systematic violations of international human rights and humanitarian law (and would logically extend to crimes against humanity and genocide). However, the ERC’s access to the Security Council is limited. The previous ERC, for example, briefed the Security Council on specific country situations on two occasions in 2002, both times in relation to the same country. Moreover, in both cases the briefings (which focused on the general humanitarian situation rather than specific protection concerns) were undertaken at the request of the Council. Despite what the policy paper and supplementary guidance may prescribe, discussions with headquarters officials reveal that it is not a given that the ERC can request to brief the Council on specific concerns relating to the displaced.

The reports of the Secretary-General to ECOSOC and the General Assembly, and for that matter, the Security Council, provide an important avenue for drawing attention to particular country situations and protection concerns. The same can also be said regarding the reports of the RSG-IDPs to the Commission on Human Rights and the General Assembly, and in particular his reports on country missions. In terms of responding to urgent protection concerns, however, including cases of impending displacement, they are of less utility given that such reports are generally submitted on an annual basis. That said the RSG has prepared interim reports and provided briefings on country missions to the IASC-WG. Consideration should be given to him also providing such briefings to the Security Council. The Secretary-General's reports to the Security Council on specific country situations are issued on a more regular basis. However, there is a significant time lag between their drafting and submission to the Council for its consideration. Moreover, some country teams noted that they were not always consulted by their colleagues on the political side on the content of these reports or requested to contribute to them, thus missing an important opportunity to raise relevant concerns.

In terms of direct advocacy with the states concerned, just as HCs/RCs were criticised for their perceived and actual reluctance to raise protection concerns in an active or assertive manner, the same criticism was also levelled at headquarters officials. To be sure, part of the problem may lie in the fact that advocacy efforts by headquarters officials such as the ERC, the HCHR, as well as the RSG-IDPs, may be pursued discreetly, such as through private meetings with diplomats in Geneva or New York, or through correspondence, the content of which is not released to the public. The problem may also lie in the fact that some HCs/RCs prefer to deal with issues in-country rather than calling for support from outside. For instance, although the supplementary guidance provides that HCs/RCs should advise the ERC on possibilities for the RSG-IDPs to intervene with the authorities in the country in question in support of the protection and assistance of the displaced, this has happened only in a few cases. While HCs/RCs may prefer to deal with issues in-country, the ERC and the HCHR, or their staff at least, are aware of the situation in a given country courtesy of information submitted by the field to their respective desk officers in New York and Geneva. Thus while such support is not necessarily requested, the ERC and HCHR should nonetheless seek to offer it as appropriate.

Despite the fact that discreet forms of advocacy are often pursued on the part of headquarters officials, the perception at the field level is that headquarters is not as supportive in its advocacy efforts as it might and is expected to be. Particular emphasis was placed by UN country staff on the need for more visible support in terms of advocacy from the ERC, the HCHR and the RSG-IDPs, all of whom were considered to have mandates which relate directly to the issues at stake. There are expectations that the ERC (as the focal point in the UN system for ensuring that the assistance and protection needs of the internally displaced are met); the HCHR (the UN official expressly mandated to "play an active role in removing the current obstacles and in meeting the challenges to the full realisation of all human rights and in preventing the continuation of human rights violations throughout the world"<sup>56</sup>); and the RSG-IDPs as the "global advocate" for the internally displaced (as he is sometimes referred to) could and should all play a more active role in pressing governments, UN agencies and regional bodies to prevent, halt, and otherwise address the protection needs of the displaced – and end impunity for those who violate international law. Of course, they will need support from the UN Secretary-General's office and UN member states committed to these ideals – a tall order given the competing political interests that often arise in crisis situations.

In one of the countries visited, OHCHR staff expressed their deep concern over the perceived lack of support from headquarters in Geneva, particularly relating to high-level advocacy. One staff member recalled being informed by headquarters that "the High Commissioner has too much to deal with." Others have noted that OHCHR does not see responding to humanitarian emergencies and the displaced as its responsibility, beyond undertaking technical assistance activities. Others have referred to the Office's limited involvement/interest to date in the IASC and IASC-WG (with the exception of the IASC Reference Group on Human Rights and Humanitarian Action, a sub-group of the IASC-WG).

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<sup>56</sup> See GA res. 48/141.

In another of the countries visited, OCHA staff noted that it was not always a question of lacking headquarters support – though that was an issue – but that when it came to advocacy, headquarters had at times pursued its own priorities over those of the country team, underlining the need for better coordinated advocacy efforts. For instance, staff expressed their frustration that talking points prepared for a briefing to the Security Council by the ERC had been re-written at headquarters and no longer reflected what the country team saw as the key issues for the Council’s consideration. As one UN staff member stated, “headquarters should not be making political judgements on behalf of the country team” without, at a minimum, prior consultation. At the same time, it should be noted that the previous ERC and current Deputy ERC have demonstrated a willingness to raise protection issues through issuing press statements or holding press briefings, doing so on seven occasions in the course of 2002, though less so in 2003. Consideration should also be given to the role which might be played by the UN’s Special Coordinator on Internal Displacement who is also the Director of the Internal Displacement Unit. To date, the Special Coordinator has issued one statement in regard to a specific country situation and jointly with the RSG-IDPs. Whether he should do so on a more frequent basis is a pertinent question for further consideration by the ERC, to whom the Special Coordinator reports.

The approach of the RSG-IDPs to his mandate is well-known and has been summarised by one commentator as emphasising collaboration and dialogue with states rather than direct denunciation – “‘low key’ in contrast to the ‘high decibel’ approach used by many human rights NGOs”.<sup>57</sup> The basis for this is Commission on Human Rights and General Assembly resolutions that call upon the RSG to “dialogue” with governments in contrast to the mandate of Commission on Human Rights special rapporteurs who are mandated to investigate human rights violations. There is much to commend this approach, as testified to by the significant achievements of the mandate since its creation in 1992. Moreover, the RSG has issued public statements in regard to specific country situations, as well as pursuing more discrete forms of advocacy such as direct contacts with government officials and correspondence and confidential appeals relating to specific protection problems, including impending displacement.

However, the question has been asked whether the time has come for the RSG to raise the level of his voice.<sup>58</sup> The RSG has himself acknowledged that there are times when this would be appropriate, noting in January 2000 that the countries on which he has focused attention through country visits are, paradoxically, those that acknowledge the problem and which cooperate in permitting him to study it first-hand. “And yet countries with serious situations of internal displacement that deny the problem or bar access cannot shield themselves completely from international scrutiny... To draw attention to such situations, different approaches are required. One approach ... is that of issuing statements of concern.”<sup>59</sup> It should be noted that the RSG does issue country-specific statements at the end of missions and may refer to specific country situations in his annual statement to the Commission on Human Rights and other UN bodies. He has also raised concerns in regard to specific countries at meetings of regional bodies and at conferences and seminars at which government officials and local media were present, thereby improving the chances of the message reaching those for whom it is intended. He has also issued public statements in regard to particularly acute and/or deteriorating situations, though consideration should be given to issuing these sorts of statements more frequently, such as in cases of imminent displacement or forced return, or widespread and systematic violations of the rights of the displaced, or where access is denied and where public pronouncements may be more effective than quiet diplomacy in drawing attention to, and shaming a government into changing its behaviour.

Indeed, there are no shortage of countries where access is denied and the displacement problem ignored or minimised – situations which warrant, if not demand, public scrutiny and attention in an effort to change the behaviour of relevant actors, including prompting a more active and assertive

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<sup>57</sup> Thomas Weiss, cited in *Taking Stock and Charting the Future: International Symposium on the Mandate of the Representative of the UN Secretary-General on Internally Displaced Persons, Vienna, Austria, December 12-13 2002*, Washington, D.C.: Brookings Institution-SAIS Project on Internal Displacement (2003) 7.

<sup>58</sup> *Ibid.*

<sup>59</sup> E/CN.4/2000/83 (2000), at para.61.

response from UN agencies on the ground, UN headquarters and the Security Council. To be sure, this may involve a trade-off such as risking reduced access for missions to the countries concerned. However, a failure to speak out due to the expectation or hope of an invitation to undertake a mission is also a trade-off which, in the absence of the anticipated mission, serves only to favour the government concerned, enabling it to continue to evade public scrutiny and UN pressure or influence. This is in many respects symptomatic of a broader system-wide problem concerning the failure to exploit opportunities for advocacy and intervention due to poor risk assessment, i.e. unfounded or excessive fear on the part of UN officials that a government or *de facto* authority will react negatively to increased engagement. As the RSG-IDPs observed in the report of one of his country missions, as a result of the Government's apparent sensitivity with regard to the internal displacement issue, the international community, including UN agencies in the country, "avoided open discussion of the problem with the authorities and refrained from providing protection and assistance to those displaced, except within the context of projects implemented in areas of the country in which the displaced were located, but for which they were not specifically targeted".<sup>60</sup>

Returning specifically to the RSG-IDPs, as the "global advocate" for the displaced, it might be argued that it is not only incumbent upon the RSG to hold governments (beyond those of countries to which he undertakes missions and issues statements on) accountable for their actions *vis-à-vis* the displaced but to also be seen to be doing so. The importance of a more proactive and public approach from the RSG is also underlined when one considers that the RSG exercises a greater degree of independence from the UN system than is the case for other high-level officials such as the ERC and the HCHR. He is, to use the parlance of the UN human rights system, one of the "special procedures" or "independent experts" of the UN Commission on Human Rights. As such, he can issue statements in a more expeditious manner than may be the case for either the ERC or the HCHR. At the same time, as noted above, his mandate is different and there may be limits to what he can say in view of the fact that he represents the Secretary-General and indeed, needs the support and backing of the UN system. It should also be noted that an increased role in this direction would also require strengthening the mandate in terms of capacity and staff support, which is currently considered to be minimal.

Beyond the roles of these individual officials, reference should also be made to the potentially significant role which could be played by the IASC, consisting as it does of the heads of the UN's human rights, humanitarian and development agencies. Indeed, as the policy paper observes, albeit more in relation to the field than headquarters but applicable nonetheless, "common stands by agencies can be particularly effective [in terms of advocacy]. At the same time they reduce the risks related to agencies acting separately or alone." Yet common stands by the IASC membership are relatively few and far between. Since 1995, the IASC has issued five statements referring to specific country situations and only one of these was directly concerned with the situation of the displaced. Although this may be in part a reflection of an HC/RC's preference to address issues in-country, interviews with HCs/RCs revealed that most had never considered seeking the support of the IASC for advocacy purposes. Furthermore, as has been noted elsewhere and confirmed by the survey team, there is little awareness among field staff of the IASC's role, let alone that "the field can make claims of the time of the IASC."<sup>61</sup> This should not, however, preclude the IASC from taking a more proactive approach to offering its support, a role which could and should be fostered by OCHA and the ERC as chair of the IASC. Clearly, however, UN field staff and others need to be made aware of this avenue of support for the protection of the displaced and civilians in general.

While the view from the field is that a more supportive and visibly proactive stance on protection issues would be welcome from headquarters officials and entities, there is also the question of what impact such a stance would have beyond leaving the spokesperson and staff in the field feeling that something has been done. As much as one might want to, it cannot be assumed that public statements and press briefings by headquarters-level officials such as the ERC and the RSG-IDPs are a panacea for the ills of the displaced. Indeed, in the final analysis it is clearly important that a public stance on

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<sup>60</sup> Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 2002/56. Addendum. Profiles in displacement: Turkey, UN doc. E/CN.4/2003/86/Add.2 (2003), Executive Summary.

<sup>61</sup> Reindorp and Wiles, note 48 above, at 41.

protection issues be strategically used within the context of more discreet but vigorous and sustained diplomatic efforts (albeit with some measure of feedback to country teams on steps taken) and which, importantly, should be supported by the Secretary-General.

### **Looking Beyond the Policy Paper**

Responsibility for advocacy efforts does not rest solely with the various officials and entities referred to in the policy paper and discussed above.

### **Special Procedures of the UN Commission on Human Rights**

A more proactive approach to advocacy for the rights of the internally displaced might also be considered by the RSG-IDPs' special procedure colleagues in the UN Commission on Human Rights. Three of the countries visited by the survey team fall under the purview of a rapporteur or expert of the Commission and UN human rights and some NGO staff acknowledged the important role which these actors played in terms of focusing attention on the human rights situation, including that of the displaced, and raising concerns directly with governments during their field visits. There was, however, a sense that the rapporteurs concerned did not undertake missions as frequently as warranted by the situation. Moreover, there is a perception that rapporteurs could do more in terms of advocacy outside the context of missions, i.e. through issuing public statements or confidential urgent appeals to governments in response to specific protection issues concerning the displaced, working whenever possible on a joint basis with the RSG-IDPs.

Although steps of this sort are being taken, the question is whether they are being taken frequently enough. Indeed, of the three rapporteurs, one has not issued any public statements outside the context of missions since his appointment in 2001, another has issued two public statements since 1999 concerning the human rights situation in the country and the third, while more prolific (four statements have been issued during the first six months of 2003, none of statements issued referred to the situation of the displaced despite the significance of the issue in the context of the statements. Concern was also expressed over the fact that one special rapporteur had not undertaken a mission to the mandated country for over 12 months, in part due to health reasons, but had also not relinquished the post to someone who could have undertaken a mission during a particularly crucial period in terms of the human rights situation in the country. Moreover, although in some cases the issues concerned may come within the purview of more than one of the special rapporteurs – such as a thematic and country-specific rapporteur – the individual circumstances of the rapporteur, rather than the needs of the affected population, seem to determine the frequency of visits, the level of engagement and the quality of the follow-up necessary to ensure progress.

Reference was also made to the need for the Commission's special procedures to do more in terms of making their existence known beyond the human rights constituency and to all humanitarian actors, especially given that they constitute a potentially important source of external advocacy. Attention should also be paid in this respect to ensuring the engagement of these same actors in implementing recommendations arising from the missions. In other words, an effective follow-up mechanism for recommendations needs to be established.

### **UN Human Rights Treaty Bodies**

A similar point applies also to the UN's human rights treaty bodies which monitor the implementation of various human rights treaties, such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, and the Convention on the Rights of the Child to name but three. Again, the survey team found very limited awareness of the existence of these bodies among country teams and national NGOs and civil society groups, despite the potential to provide another avenue for raising concerns regarding the situation of the displaced and the issuance of "concluding observations" requesting specific actions from state parties, which could be used by country teams in their advocacy efforts.

### **Donor and Diplomatic Community**

Other potentially important allies in terms of advocacy (but not referred to in the policy paper) is the donor and broader diplomatic community. In a number of the countries visited, interviewees from a

variety of backgrounds noted the important role which these actors could play in advocating for the rights of the internally displaced with the government of the country concerned. In one of the countries, OHCHR organised a regular monthly human rights briefing for members of the diplomatic and donor community to update them on human rights and protection issues, including concerns pertaining to the displaced. The object of the meeting was to mobilise diplomats and to persuade them to undertake lobbying and advocacy efforts with the government.

In another of the countries visited, the survey team was struck by the stance taken by the donor community with regard to a particular protection problem affecting the displaced at the time of the visit. The donor community presented an assertive and “unified” (although some preferred to maintain independent contacts with the government, they nonetheless supported the overall donor stance on the issue) front to the government with a view to bringing about a change in behaviour and which, at the time, seemed to bear fruit. Interviews with representatives of the donor community revealed that the HC/RC and the OCHA office in the country concerned had played an important role in keeping donors regularly informed of the situation on the ground, including through regular weekly briefings. Some donors also noted that regular briefings, aside from being a useful forum in which to exchange and share current information, promoted a degree of informality among donors and agency representatives which facilitated the flow of information by allowing contacts through less formal means, such as direct contacts by telephone or email.

In another of the countries visited, donors were credited with, in the words of one NGO, a “superb piece of work” in the form of a document on “basic principles for peace and development”. The purpose of the document was to “ensure sustainable resources for peace and development ... through a process that links development to adherence to basic principles” – making development assistance conditional on respect for basic human rights principles – an important initiative given the levels of assistance at stake. The basic principles included various initiatives aimed at facilitating respect for human rights and security. For example, the document notes that the “adoption of the Guiding Principles on Internal Displacement would support these initiatives.”

In other countries, the role of the donor and diplomatic community was regarded in a far less positive light. An important element in the examples referred to above was that the donors shared, by and large, a common position *vis-à-vis* the issue or issues at hand. As several interviewees noted, however, while it is often possible to bring donors together to discuss issues, a common position is not always forthcoming given individual political and particularly commercial interests which may well take precedence over concern for the human rights situation and willingness to embark upon advocacy initiatives on behalf of people under threat.

However motivated a donor state may be to assist internally displaced persons, state donor agency representatives represent the interests of the state, which may not always be compatible with humanitarian aims. Considerable resources are provided for humanitarian programmes. These investments are clearly undermined by the failure to address human rights violations and failing to put preventive protection programmes in place. The difficult question for humanitarian organizations, both UN and NGO - and for donor agencies – is where to “draw the line” when protection is undermined by political interests even as the money continues to flow. The ethical considerations are of course complex – what would “drawing the line” actually mean? Reducing aid and thereby risking harming the persons in need or remaining complicit in violations and carrying out a policy at variance with humanitarian principles? For example, in one country a major donor agency was providing assistance to respond to a displacement situation that was, in part, the result of that same donor’s broader domestic and foreign policy.

It was also noted that in some cases, those political and commercial interests which donors are keen to protect also provide some measure of leverage over the governments concerned. What is lacking is the will to analyse the potential in this regard and to use it.

### Advocating Against Impunity

Contrary to what some humanitarian aid workers may believe, advocacy for accountability for international crimes and domestic human rights violations is not inconsistent with humanitarian principles. There is great support among humanitarian organisations for the International Criminal Court, for example. Most humanitarian organisations are understandably reluctant to be publicly vocal about violations and to identify those responsible – although not all. Many decide to condemn violations by identifying those responsible either expressly or by implication. Others choose to remain publicly silent while passing on information to those with clear human rights or protection mandates. Some decide to remain silent altogether, an approach which has fallen more and more out of favour and is often based upon a failure to understand the principles of neutrality and impartiality.

As previously asserted, neutrality does not translate into passivity in the face of abuse. And condemnation of forcible displacement, interference with return and other protection problems does not constitute a violation of neutrality—unless such condemnations occur against only one side in a conflict.

For example, while many humanitarians may believe that ICRC is silent when abuses occur, that is in fact not the case—they remain *publicly* silent in terms of accusations against specific belligerents, but raise concerns with those believed responsible for violations whenever possible, and will often publicly raise concerns about violations of international humanitarian law in a general sense. (Only on rare occasions has the ICRC decided to speak out publicly about abuses by one side – and only when the organization has determined there is no alternative given the refusal of parties to a conflict to alter their behaviour). What the ICRC does (and does very well) is maintain a balance by raising such concerns with *all* parties to a conflict. At the same time, however, in respect of the principle of confidentiality, ICRC does not transmit information to war crimes tribunals, as human rights bodies do.<sup>62</sup>

*Should* humanitarian organisations be more vocal about impunity? Humanitarian organisations have a strong interest in seeing an end to attacks against those they seek to serve and are in an excellent position, given their proximity to victims and witnesses, to have invaluable knowledge regarding the clear and dramatic humanitarian effects of impunity. Although only some humanitarian organisations have demonstrated willingness to speak out publicly on the need for accountability, it is hoped that all will see the importance of pressing the UN, regional bodies and UN member states to demand an end of impunity from governments and others responsible for violations.

As the UN Secretary-General has observed: “Internationally recognised standards of protection will be effectively upheld only when they are given the force of law, and when violations are regularly and reliably sanctioned. The establishment of the *ad hoc* tribunals for the former Yugoslavia and Rwanda, and the adoption of the Rome Statute to establish a permanent International Criminal Court (ICC) are important steps in this direction.”<sup>63</sup> It is imperative that these steps are complemented at the field level through advocacy efforts which reinforce the message to actual and would-be perpetrators of abuses that, as one UN official put it, “there’s an ICC and you might end up there.”

### 1.3 Engaging Non-State Actors

With internal armed conflict constituting one of the main causes of internal displacement, the policy paper states that strategies for engaging not only government authorities but also other parties to the conflict in the protection of the internally displaced need to be developed. It notes the importance of ensuring that efforts at engaging non-state actors be linked to the dissemination, training and advocacy activities outlined in the policy paper. It further notes that such efforts should be integrated in the overall coordination efforts under the leadership of the HC/RC and should fully take into account on-going activities of other international organisations to avoid ineffective duplications. Finally, it refers to the importance of ensuring that dialogue with non-state actors retain a strictly

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<sup>62</sup> See Roberta Cohen and Francis Deng, *Masses in Flight – The Global Crisis of Internal Displacement*, Washington D.C.: Brookings Institution (1998) 132.

<sup>63</sup> *Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict*, UN doc. S/2001/331 (2001), para.9.

humanitarian character. In addition to the policy paper, the Secretary-General has also underlined that “it is critically important that humanitarian actors are able freely to make contact with non-state actors and to negotiate fundamental issues like humanitarian access, regardless of relationships between the State and the rebel groups.”<sup>64</sup>

The importance of allowing humanitarian actors to engage non-state actors is self-evident and in a number of the countries visited such efforts were being pursued by country teams in often very difficult and politically complex environments. One key observation in this regard was the importance of making the most of windows of opportunity presented by ceasefires and peace negotiations to push issues of access as well as respect for fundamental human rights and humanitarian law principles. In one country visited the HC/RC and country team had used the occasion of a national reconciliation process – into which they had introduced a comprehensive “technical paper on humanitarian principles” – to obtain the agreement of the various warring parties to recognise the right of the civilian population to receive humanitarian assistance, to guarantee the security of all humanitarian personnel and installations and to enhance the population’s access to assistance. Moreover, this agreement came in the form of an article contained in the “Declaration on Cessation of Hostilities, Structures and Principles of the National Reconciliation Process” signed by the warring parties and witnessed by neighbouring states and key donor governments. As such, it provided the HC/RC and the country team with a useful tool for advocating with the parties for improved access.

In some countries visited by the team, the UN was slow to engage in peace processes and therefore missed important opportunities to advocate for displaced persons on a variety of issues and to take a stand on issues such as impunity. Sometimes this was due to valid concerns about the UN participation conferring legitimacy upon actors not believed to be seriously engaged in the peace process. The team observed a lack of creative thinking and full consideration for protection issues in two cases in particular. In one case, talks were initiated without strong presence of the UN or of one particularly influential UN member state with presence in the region (a lower level diplomat was sent). While there were concerns about the sincerity of the parties to the talks, the earlier lack of presence of higher level diplomats and UN staff to insist upon humanitarian principles be upheld was viewed by interviewees as a missed opportunity, as they believed that the presence of higher level officials could have indicated they “meant business” on human rights and humanitarian access. Even if the parties were not committed to the peace process, the gathering of the parties provided an important chance to “read them the riot act” – to warn them that ongoing violations of humanitarian law, including denial of access to and security for humanitarian operations would not be looked upon favourably. One observer remarked that the parties were thought to be quite nervous about being held accountable given the anger expressed by the West after September 11 and the proliferation of international judicial bodies and that it would have been a good opportunity to make the point that individual warlords/leaders would be held accountable sooner or later.

In another case, one party to the conflict engaged in forced recruitment of child soldiers was also a key actor in a demobilisation plan that, according to some observers, gave them far too much influence over the process and invited corruption. The demobilisation plan included hiring members of that group to run centres for demobilised children. Given the pressure exerted by this group on the civilian population and children, the risk of renewed conflict and the dwindling number of voluntary adult recruits, observers were sceptical that children would be encouraged to leave the armed militias. In addition, the survey team was aware of discussions taking place between the UN and the armed group which sought to secure the release of a specific number of children each month rather than a blanket demand by the international community that all children be released immediately to neutral third parties who could ensure their protection. Even if unrealistic to expect that all children would be released immediately, the idea of negotiating a certain number of children per month was disconcerting.

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<sup>64</sup> *Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict*, UN doc. S/2002/1300 (2002), para.19.

The team notes that where OHCHR has had a strong presence in terms of personalities and expertise, or where there was a high level UN official or other authoritative figure participating in the process, human rights concerns made it to the negotiating table – or were at least included in the end. It would be valuable to explore how the UN can ensure that critical protection issues such as humanitarian access, accountability for violations of ceasefires and peace agreements, guarantees on safe return, mine action, demobilisation of child soldiers and other issues are raised early in any peace process – and that human rights experts have a seat at the table from the outset.

In a number of the other countries visited, humanitarian staff complained that they were prohibited by the government concerned and/or senior UN officials, including at headquarters level, from having any official contact with non-state armed groups to discuss access or protection issues. According to one official from a UN political mission, while supporting the idea of the HC/RC establishing contact with rebel forces, he did not consider that the HC/RC had a mandate to do so and felt that he would become *persona non grata* if he tried. Such an arrangement cannot be reconciled with UN policy guidance, such as the protection policy paper and the guidance on relations between RSGs and HCs/RCs, as well as the above cited reports of the Secretary-General.

In this and some other countries, establishing contact with non-state actors was considered to be the responsibility of DPA and its political and peace-building representations or “UN Offices” and RSGs/SRSGs in the countries concerned – despite the fact that the headquarters issued guidance note on relations between SRSGs and HCs/RCs provides that the HC “is responsible for the planning and coordination of humanitarian operations and will maintain links with the government (and other parties to the conflict) for this purpose.”<sup>65</sup> Moreover, interviewees in at least two countries expressed concern that political representations of the UN did not take up issues of humanitarian access or protection with any of the parties denying or impeding access to affected populations, whether non-state armed groups or government forces.

According to a senior UN official in one country, pushing the government and opposition groups to facilitate humanitarian access was not something they had considered despite UN contact with both parties and the overarching importance of the issue for the humanitarian side of the UN. This was a significant missed opportunity, especially given the fact that a regionally-led initiative to resolve the conflict was also underway in the country concerned. Rather astonishingly, there appeared to be no input regarding access and broader humanitarian and human rights issues. To his credit though, the official concerned stated a willingness to work more closely with the humanitarian side in the future to examine how the activities of one may impact upon the other.

It goes without saying that if the UN’s humanitarian side is prohibited from making the necessary contacts and the political side fails or refuses to do so, access and the provision of life sustaining assistance and protection to the displaced and other groups in danger is simply not possible. This is a serious problem further compounded by the fact that international and national NGOs may be (and in some countries most definitely are) reluctant to fill this “negotiation vacuum” because of the very real danger that their actions are later characterised by the government as support for the rebel or insurgent cause, thus raising deep concerns regarding the safety of humanitarian personnel and the overall ability of the UN and others to carry out programming in the country.

#### **1.4 Prevention, Early Warning and Awareness and Preparedness**

The policy paper calls upon the UN system to provide sustained attention to prevention activities to diminish the risk of displacement. In particular, specific actions to address root causes of conflict and the mitigation of violations and abuses are required. A protection perspective and a displacement risk assessment should be integrated into all early warning analyses in countries and communities where displacement has occurred and where human rights violations that may lead to displacement are taking place. Supporting early warning initiatives within the humanitarian sphere can strengthen the capacity and ability to anticipate and mitigate situations causing internal displacement. What this means at the field level, according to the policy paper, is that field staff of UN agencies, NGOs and

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<sup>65</sup> *Guidance Note*, note 55 above, at para.5.

international organisations as well as local authorities should be encouraged to provide information on impending situations of internal displacement and communicate it to the HC/RC and other agencies with a special expertise or responsibility at field level. In turn, these mandated actors, would be responsible for informing the IASC-WG, the ERC and the RSG-IDPs.

The absence of systematic UN human rights/protection monitoring and reporting mechanisms in the majority of countries visited effectively precludes the ability of country teams to undertake meaningful preventive action and obviously seriously hampers responsive action. This will be discussed in more detail below (see section 2.6). An obvious benefit of establishing a system which requires field staff to convey protection-related information to those in a position to act, thereby enabling the identification of trends and patterns of abuses, is that it significantly improves the chances for identifying the location and timing of future violations, including forced displacement and allows for the development of specific preventive protection strategies, such as increasing international presence in a given area, requesting members of the diplomatic community or headquarters officials to intervene with the relevant authorities, pre-positioning of emergency relief items such as food, medical supplies and shelter materials in the event that preventive measures are unsuccessful, etc.

That said, in one country, it was apparent that the absence (at the time of the survey team's mission) of any formal UN monitoring and reporting system notwithstanding, information pertaining to impending displacement was made available on a systematic basis by members of the NGO community and the national authorities on the basis of information compiled through their own monitoring systems. In the case of the latter, information collected by national officers and NGO contacts in the field was transmitted to the capital where it was analysed and a risk report drawn up. The risk report was transmitted to various government officials, including a government committee consisting of the Vice-President and the Ministers of Defence and Interior which is responsible for deciding whether the risk assessment requires a response or not.

In practice, however, the committee has consistently deemed that a response is not required, much to the frustration and dissatisfaction of the institution drafting risk reports, which have proved reliable (massacres, assassinations and displacement have often occurred as predicted by the reports, its representatives explained). The committee's "no action" approach was, in the judgment of a very well-informed interviewee, a deliberate failure to prevent violations. The lack of action from the authorities is believed to be motivated by the government's political and military objectives, which are at times if not often contradictory to the goals of the early warning concept. Obviously, this undermines the credibility of the whole system, which is particularly unfortunate as some participants in the system have earned the respect of human rights and civil society groups as well as communities of displaced persons, who feel they have an advocate.

It stands to reason that communities will be increasingly less inclined to take the risk of providing information when the possibilities of response seem so remote, especially when their perception is that the government is insincere in its stated intent. If risk reports were shared with UN agencies they could, as appropriate, take steps, such as increasing presence in the areas concerned and intervening with the authorities in an effort to elicit a appropriate response. UN involvement in the process might also be desirable on the basis that governments response to risk reports will likely be a military one which, some interviewees remarked, has to date seemingly caused more problems than it has solved.

In the same country an NGO-led national monitoring system routinely provided early warnings to the UN system relating to impending displacement and other human rights violations. However, the NGO in question expressed concern at the inconsistent response from the country team to their warnings, which seemed to depend on what hour of the day and what day of the week the warning was issued. Weekends were considered to be a particularly inauspicious time to issue warnings given that there is no mechanism for obtaining a response from the UN at weekends.

It should be noted that the country team was, at the time of the survey team's mission, in the process of developing an early-warning and rapid response capacity. This revolved around information

collection and analysis by an inter-agency “humanitarian situation room” (already in existence) which would identify situations of impending displacement – and which could also draw on information and risk warnings emanating from the two sources discussed above. On the basis of that information, an inter-agency “rapid response unit” would be dispatched to the area to provide a discouraging presence and also to enter into discussions with local military and police personnel as well as community leaders with a view to resolving the situation. In the event that such steps were unsuccessful and displacement occurred, humanitarian staff were already in place to respond, to the extent possible, to the subsequent needs of the population. While the system has potential, some agency staff expressed concern regarding the ability and willingness of individual agencies to provide staff for a truly “rapid response”. Consideration might be given to each agency designating specific staff members to be “on call” to undertake such missions as and when required. This should also include the designation of alternates in the event that the specified staff member is away on mission or otherwise out of the country.

### **Awareness Raising**

The policy paper also notes that another important element in terms of preventive action is making populations at risk aware of their rights. As the policy paper notes, through human rights training, awareness campaigns, and advocacy with local leaders, communities can be empowered to protect themselves and reclaim their rights. In particular, local organisations and the internally displaced persons themselves should play an active role in providing information on imminent situations of internal displacement.

In a number of the mission countries activities of this sort were being undertaken either directly by UN agencies and NGOs or indirectly through supporting local NGOs and civil society groups. Such activities should be further encouraged and supported. At the same time, it is also important for UN agencies and other relevant actors to take the necessary steps towards ensuring that these rights can be realised through direct intervention in specific cases by the UN with authorities concerned; the establishment and support of legal counselling services accessible to affected people and the rebuilding, strengthening and reform of the local and national judiciary and law enforcement agencies. As one interviewee noted, “what is the point of human rights awareness if there is no mechanism for delivery?”

### **Protection through Presence**

As the policy paper notes, establishing an international humanitarian presence among internally displaced persons is often an important step towards ensuring their protection. According to the policy paper, “[e]xperience in this field suggests that in certain circumstances, the presence of expatriates ‘watching and listening’ has, at times, been found to deter, or at least mitigate, human rights violations.”

The significance of international presence was a recurring theme in the interviews, with virtually unanimous agreement that the presence of international humanitarian staff had a deterrent effect (albeit not absolute) on those committing abuses and provided a sense of security for the displaced and civilian population. One humanitarian aid worker made the poignant observation that “people feel that having someone there means someone is watching and if something happens, [at least] someone will know.”

The importance attached to the presence of expatriates in the field came as no great surprise, and nor did the variations in the levels of presence in the different countries visited. One of the countries visited was characterised by the extensive presence of international humanitarian staff throughout the country, including of UNHCR protection officers. As observed in an internal UNHCR report on the country concerned which was shared with the survey team: “UNHCR ... continued its earlier position that its continuous presence in areas of IDP concentration, including areas controlled by [opposition forces], to ensure access to UNHCR by concerned populations was a fundamental necessity for successful protection and programme activities.” It continues that “UNHCR’s highly visible presence in these areas is seen to have a positive effect on its protection of the displaced. By way of example, through its presence, UNHCR was able to learn of problems facing IDPs, share

information on problems facing IDPs with other agencies, develop and prioritise responses to these problems and follow-up after the fact as to the outcome of its intervention. Equally, UNHCR's physical presence in areas of tension often helped to defuse tense situations and avoid violence."

In other countries, the UN's presence was less extensive, in particular in terms of protection specialists. Staff tended to be more localised and often limited largely to the national or provincial capitals. The extent of international presence in any given country is of course influenced by a range of variables, such as the level of access to and within countries and the security situation, staffing levels, availability of resources and so on, some of which are more easily addressed than others.

Whatever the level of presence in a given country, interviewees from all backgrounds spoke of the need for current levels to be increased, both in terms of numbers of expatriate staff on the ground and in terms of being more "visible" in the provinces. Emphasis was also placed on ensuring that international presence, however extensive it may be in geographical terms, is meaningful. Although, as noted above, the presence of expatriates "watching and listening" has been found to deter, or at least mitigate, human rights violations, watching and listening is not always sufficient. As one observer has noted: "International presence alone will not bring protection. The presence must be conscious, forceful, courageous. It must be an engaged presence that is not afraid to resist injustice and cruelty."<sup>66</sup> Yet, in some of the countries visited this clearly was not the case. One NGO with whom the survey team met remarked that rather than expanding their presence, the UN could achieve more by making its existing presence felt, complaining that on joint missions with UN agencies the latter act as if they are there merely to accompany us: "they don't make people think their role is important." Elsewhere, some interviewees referred to the need to "remind" the protection staff of one agency to undertake regular visits to camps for the displaced, despite credible information that serious protection problems were imminent.

Providing a meaningful presence on the part of humanitarian and development agencies requires two things. The first is appropriate training for all field-staff so they have an understanding of what protection is and what is required of them as individuals. Not everyone in the field has a human rights and protection background – while the presence of such experts in sufficient numbers is clearly desirable they are at the moment few in number within any given field operation. All field-based staff, national and expatriate, from programme officers to sanitation engineers, need to be made aware of their personal and organizational responsibilities in working toward the protection of the people they are there to serve – and this requires training. While steps in this direction are being taken in some of the countries visited, such training must be undertaken on a more systematic basis and, as noted above, must go beyond just receiving information about violations or educating staff about what steps they must take when they witness violations. They need to understand how to consider protection issues when conducting assessments and planning and evaluating programmes. Many interviewees indicated that they continue to feel the need for support regarding the "how to" of protection that are relevant to their particular areas of expertise.

The second requirement of meaningful presence is the need to ensure that communities at risk "know that you are there to help them" in the words of one NGO official. In one of the countries visited a number of interviewees questioned the potential value of international presence given the lack of knowledge among the civilian and displaced population, in particular in rural areas, as to what the UN is and what it could do for them. They argued that UN agencies in the country needed to do more to establish relations with communities outside of the capital, particularly in rural areas. At the time of the team's visit there was a significant lull in the conflict, and this was viewed as an important time for agencies to get out of the capital and pursue such efforts, especially given the danger of collapse of the ceasefire and peace talks. It was also emphasised that establishing the necessary rapport with communities and overcoming their "suspicion of foreigners" is a process which requires a considerable investment of time in a given area.

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<sup>66</sup> Bill Frelick, cited in Diane Paul, *Protection in Practice: Field Level Strategies for Protecting Civilians from Deliberate Harm*, Overseas Development Institute, Relief and Rehabilitation Network Paper, No. 30 (July 1999) 10.

### **Presence, Protection and the Role of UN Peace Missions**

Although UN agencies were often accused of failing to project a meaningful presence, in one of the countries visited, particular criticism was levelled at the personnel of the UN peacekeeping mission, in particular peacekeeping troops and ceasefire observers. Indeed, given their significant numbers on the ground (at least in comparison to humanitarian staff), a number of agency and NGO staff expressed disappointment at their limited impact in terms of providing any meaningful protective or preventive presence.

A significant factor in this was the mission's mandate. As one senior UN official noted, the Security Council provided the mission with a relatively limited mandate *vis-à-vis* protection of civilians, including the displaced. The mandate to protect was essentially restricted to providing protection in those areas where its troops are deployed, where it is within the mission's capabilities to provide protection and where the civilians concerned are under "imminent threat" of physical violence – a mandate which was described by one interviewee as being dependent on a "lot of if's". In line with this mandate, and as confirmed in interviews with military and civilian members of the mission, the deployment of troops to a given place to respond to a specific situation or to act as a deterrent to prevent a situation from deteriorating – a course of action which is sometimes followed by humanitarian staff – was not an option seen as open to the mission. As one military member of the mission noted, "preventive deployment can work but the Security Council must give us a mandate to do it." It was apparent, however, that there was more to the situation than a question of mandate. As other members of the mission noted, "all troops are sent on the understanding that they are doing guard duty. They are not combat troops... We don't deploy troops to areas where there is a problem. That's interventionist and troop contributors would not accept it." And it is not just the troop contributors who are wary of preventive deployments. As one senior official within the mission observed: "We asked [the UN's Department for Peacekeeping Operations (DPKO) in] New York if we could use our civilian [human rights and humanitarian] presence as an excuse to deploy a contingent as a deterrent [in that area] but New York was very concerned that if it all went wrong, you've got a problem of getting troops out." It was further noted though, that if the mission did not deploy a preventive presence and the situation exploded, the mission "will be blamed for not doing anything." Some mission members expressed the view that DPKO should delegate more decision-making responsibility in protection matters to those in-country who were considered, reasonably enough, to be in a better position to judge the realities on the ground.

What then of those troops and ceasefire monitors who are already deployed in areas where there are problems or where problems subsequently arise? The survey team met with a group of ceasefire monitors in one part of the country and were informed that providing a preventive presence – travelling to a given location where problems were reported or anticipated – was not something they would consider because they were unarmed.<sup>67</sup> Some interviewees noted, however, that a lot depends on personalities; that there are observers prepared to take a more flexible approach to their work, including seeking to provide a preventive presence. A number of interviewees also remarked that the unwillingness of some ceasefire observers to take such a proactive role towards protection might also stem from the unpopularity of the mission among segments of the local population. Some explained this in terms of a lack of awareness on the part of the population as to the mission's role and mandate, but one senior official remarked quite openly that it was not a question of educating the population on the mission's mandate because "they know what it is and they don't think it's enough". In other words, some of the hostility and resentment toward the mission stemmed from its passivity in the protection of civilians. The fact that a significant proportion of the ceasefire observers did not speak the national language and had not been provided interpreters was also problematic. Similarly problematic were allegations of sexual abuse and exploitation against mission staff and which had prompted the mission's SRSG to issue an interoffice memorandum to all staff concerning conduct regarding the prohibition of sexual abuse and/or exploitation by all members of the civilian and military components of the mission.

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<sup>67</sup> Subsequent to the survey team's mission, two UN ceasefire observers were murdered in May 2003.

Beyond seeking to provide protection to the displaced and civilian population through presence, a number of interviewees also referred to the role of the mission in providing direct protection to civilians who come to the mission's offices in search of refuge. This was clearly problematic on the grounds of what one official referred to as the "one human approach". That is to say, that if you let in one civilian, several more are likely to follow. This was considered impractical in many of the mission's offices as there was simply no capacity to deal with large numbers of civilians seeking protection, not least because in some areas the only mission members present were ceasefire observers who, as noted above, were unarmed.

There was also some discussion concerning the utility of "multi-specialty units" or a rapid reaction force to respond to specific situations in which civilians were under imminent threat of physical violence but where there was no or only limited presence of peacekeepers. Again, however, interviewees drew attention to the limitations of the mandate and expectations of troop contributing states. It was also noted that a rapid response aimed at protecting civilians would also need a sufficient number of serious, disciplined troops, preferably from a single contributing state. It is a tragic irony – and food for thought for the future – that a matter of months after the survey team's mission, the Security Council was forced to respond to an escalation in fighting and the perpetration of horrendous atrocities in one part of the country by authorising the deployment of a multinational force, in the words of the relevant Council resolution, "to contribute to the stabilisation of the security conditions and the improvement of the humanitarian situation..., to ensure the protection of ... internally displaced persons ... and, if the situation requires it, to contribute to the safety of the civilian population, United Nations personnel and the humanitarian presence." This was precisely the sort of mandate hoped for by many of the people interviewed by the team several months before the situation worsened considerably in the summer of 2003.

The role of UN peace operations *vis-à-vis* the protection of civilians has been the subject of discussion for some time now. Of particular note, the report of the Panel on UN Peace Operations discussed this issue in some detail, noting that "peacekeepers – troops or police – who witness violence against civilians should be presumed to be authorised to stop it, within their means, in support of basic United Nations principles and ... 'consistent with the perception and the expectation of protection created by [an operation's] very presence'".<sup>68</sup> The Panel also expressed its concern however, about the "credibility and achievability of a blanket mandate in this area." Noting that there are hundreds of thousands of civilians in current UN mission areas who are exposed to potential risk of violence, the Panel observed that UN forces currently deployed "could not protect more than a small fraction of them even if directed to do so." Moreover, "promising to extend such protection establishes a high threshold of expectation. The potentially large mismatch between the desired objective and resources available to meet it raises the prospect of continuing disappointment with [UN] follow-through in this area. If an operation is given a mandate to protect civilians, therefore, it must also be given the specific resources needed to carry out that mandate."<sup>69</sup> The responsibility for this obviously rests with the troop contributing states. In the Millennium Declaration, adopted by the General Assembly in September 2000, UN member states resolved "to make the [UN] more effective in maintaining peace and security by giving it the resources and tools it needs for conflict prevention, peaceful resolution of disputes, peacekeeping, post conflict peace-building and reconstruction." States further resolved "to expand and strengthen the protection of civilians in complex emergencies, in conformity with international humanitarian law."<sup>70</sup>

### **Presence and Donors**

Just as donors were considered to play an important role in terms of advocacy for the rights of the displaced, a number of interviewees also drew attention to the valuable contribution which they could make in terms of presence. Getting donor representatives out of the capital and into the field was a course of action which was pursued by country teams in a number of the countries visited and was considered to be important on two counts. First, it raises awareness among donors of the realities on

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<sup>68</sup> A/55/305-S/2000/809, para.62, citing the *Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, UN doc. S/1999/1257 (1999) 51.

<sup>69</sup> *Ibid.*, at para.63.

<sup>70</sup> See GA res.55/2 (2000).

the ground. Second, the visible presence of donors may contribute to the deterrence of abuses by making it clear to governments and other actors that they are aware of the reality in the field and are concerned about violations. One NGO staff member believed that donors should visit the field more and justify that by asserting the need for closer monitoring of projects.

### **Staff Safety and Security**

A critical factor in providing an international presence is that of ensuring the security and safety of field staff. Indeed, one NGO official questioned the effectiveness of international presence in one particular country on the grounds that it was not just the displaced and the civilian population at large that were under threat but also international humanitarian staff as underlined by the murders of two senior UN officials and three ICRC delegates. Several interviewees expressed deep concern about what they described as a wholly inadequate response to the killings from the UN system. According to a number of people interviewed by the team, the failure to investigate or even strongly denounce these murders served to make expatriate staff think twice about venturing out of the capital. Although some time has passed since the murders, they continue to trouble people. Humanitarian aid workers in this country expressed real fear for their own safety – and needless to say, have little confidence that if anything happened to them effective action would be taken by the UN. Fear of personal safety – not an easy subject for people to discuss – was raised in a number of countries by humanitarian personnel.

In one country, an OCHA staff member has consistently and vigorously raised the cases of individual humanitarian aid workers taken hostage with the government and reminds the humanitarian community of their need to keep solidarity with them frequently through bringing up their names in meetings. This seems to have an important effect on morale. The OCHA office keeps large photographs of hostages on the wall. Thankfully, one of the hostages was released earlier this year following months in captivity.

Although, as another UN staff member noted, one must accept that there is a certain element of risk involved in working in the field, those risks can be minimised by following relevant security procedures and guidelines. As the supplementary guidance states: “in view of the perilous and difficult environment in which they have to operate, the security and well-being of workers providing assistance and protection in situations of internal displacement are often at risk. Plans for responding to the needs of internally displaced persons should, therefore, include adequate provisions to ensure personal and operational security.”

And indeed they should, though it was apparent from the field visits that security measures were sometimes viewed as a mixed blessing. According to some interviewees the determination of UN security officers regarding acceptable conditions under which to engage in humanitarian work were sometimes at odds with the perception of humanitarian staff. Security directives were often viewed as either too restrictive or too lax by humanitarian staff. Moreover, some agency and NGO staff suggested that the designation of areas as security phase one, two, three and so on should be more localised. They reported that there were often pockets or specific communities that were accessible and with potential for protection/assistance activities but which fell within a broader geographical area deemed off-limits to UN agencies and their implementing partners.

A particular dilemma in some of the countries visited arose from the need for agency staff to work with armed escorts. Although this was in response to very real and extreme threats to staff security, as indicated above it was highly problematic given that in two cases the guards were provided by governments forces that are parties to the conflict. This raises serious concerns as to the perceived neutrality and impartiality of the UN by other parties to the conflict, not to mention the displaced and civilian population, who are likely to be less inclined to come to the UN for protection or to report abuses.

### **Preparedness**

As the policy paper points out, to be effective, early warning capacity needs to be linked to timely and decisive response mechanisms on both the national and international level. Country teams should be

responsible for ensuring that emergency pipelines are capable of meeting anticipated needs. The pre-positioning of staff, transport, shelter, material and food and medical supplies and the development of rapid implementation plans which take contingencies into account should be ensured in impending situations of internal displacement. This is certainly sound guidance, and as noted above, in one of the countries visited the country team was developing an early-warning and rapid response capacity, including improving capacity to meet urgent needs for assistance. In the majority of countries visited however, the survey team did not get a sense that preparedness in protection was a priority on country team agendas, perhaps explained in part because of the failure to institute monitoring and reporting systems allowing country teams to identify, with any great accuracy, potential trouble spots. While all the country teams include agencies and individuals with a high degree of “field-connectedness” – awareness of when and where violations are occurring, against whom and by whom – this does not often translate into coherent strategic protection problem-solving and planning.

At the headquarters level, beyond the role headquarters officials might play in intervening with the authorities with a view to preventing displacement, the policy paper notes that periodic review by the IASC-WG of situations identified as possibly leading to mass displacement could make an important contribution to ensuring appropriate contingency planning including technical cooperation with the authorities. Again, this is sound guidance. However, a cursory review of the summary records of the IASC-WG over the last two years suggests this is not taking place with any great frequency.

### **1.5 Strengthening Local and National Protection Capacity**

Underlining the primary responsibility of the national authorities for meeting the assistance and protection needs of the internally displaced, the policy paper notes that it is essential to assist the authorities in the discharge of this responsibility and to strengthen the national capacity, not only for emergency response but also for human rights protection. It further notes that such assistance is especially effective where the state experiencing displacement is willing but not able to discharge its protection responsibilities. The assistance may take the form of technical cooperation and advisory services programmes as well as programmes for good governance.

In a number of the countries visited, technical cooperation and advisory services, rule of law and good governance programmes were ongoing and conducted under the auspices of various agencies, in particular OHCHR, UNDP and UNHCR. Such programmes were aimed for the most part at reconstructing and/or building the capacity of the police, the judiciary and civil society and human rights institutions through reconstruction of infrastructure, training on international human rights standards, provision of essential equipment and such like. In a number of the countries visited, UN agencies supported legal assistance programmes and counselling centres which were in turn providing legal advice to and supporting legal actions by displaced persons and the population *per se*.

A particularly important form of international support is that provided to national human rights institutions (such as national human rights commissions and ombudsmen), which in a number of the mission countries received capacity-building support and training from UN agencies (specifically, UNHCR, UNDP and OHCHR). Although the independence of these different institutions from their governments varied from country to country, in three of the countries visited it was clear that they played a critical role in the protection of the displaced, i.e., through providing legal advice and pursuing complaints against the authorities on behalf of displaced persons.<sup>71</sup> It was interesting to note that in one of the countries visited the national human rights commission was the only independent body, with the exception of the ICRC, present in the conflict areas and the only organisation attempting to investigate human rights violations. In another of the countries visited, staff of the national human rights institution strongly believed that UN support for their work provided them security-through-association; security they would not otherwise enjoy. They noted, however, that UN agencies could provide them valuable assistance by accompanying them in areas where they cannot travel alone for security reasons.

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<sup>71</sup> For more information on the role of national human rights institutions in regard to protection of the internally displaced, see Mario Gomez, *National Human Rights Commissions and Internally Displaced Persons: Illustrated by the Sri Lankan Experience*, Washington D.C.: Brookings-SAIS Project on Internal Displacement (July 2002).

Beyond providing support to national human rights institutions, efforts were also underway in several countries to strengthen the local and national capacity to provide more direct protection to the displaced. In one country, for instance, OCHA was managing a UNDP funded project which sought to strengthen the capacity of the national and local authorities to protect the displaced, including providing logistical and financial support to staff from the Ministry of Justice and the national authority responsible for displaced persons to deploy people to act as protection monitors in displaced persons camps. This was part of a larger project which also included protection training for the national and local authorities. Elsewhere, UNHCR was involved in extensive efforts to assist the local authorities in issuing identity documents to the displaced and communities at risk of displacement – an important source of protection, both in the sense of reducing the risks of harassment as well as in ensuring access to basic services and assistance which is often dependent on the possession of identity documents.

Training of national and local authorities was also underway in another of the countries visited, where a joint training team, composed of representatives of OCHA, the military, police, the office of the attorney-general and the government ministry responsible for the displaced, was conducting training on the Guiding Principles aimed at their respective counterparts in different provinces throughout the country. The training sessions involved analysis of the situation in given provinces according to the Guiding Principles followed by the identification of steps that should be taken and the persons or organizations responsible for carrying out the recommendations. The results of this process were incorporated into a protection plan specific to that particular province. The plan was adopted by the participants on the basis of consensus and signed by the provincial governor, thereby providing a mechanism or tool to hold the governor accountable, at least in a political sense. Implementation of the plans is monitored at the provincial level by OCHA-led teams and at the national level by a joint technical group composed of UN agencies. The plans also provide for the establishment of committees to monitor and promote their implementation.

Although progress in regard to the latter is patchy, with protection issues being addressed instead in existing coordination bodies, the survey team was informed that in the fourteen (out of eighteen) provinces in which workshops had been held, humanitarian partners reported that open and frank discussions on protection issues were now possible with members of the military, police and provincial governments. It was also noted that the involvement of international partners was crucial in the workshop process. Limited involvement in some of the provincial protection workshops was considered to undermine the credibility of the process and the viability and implementation of the protection plans. Concern was also expressed over the lack of full support for the national training team from the participating government institutions, indicating the need for the HC/RC to impress upon the relevant institutions the importance of their full support for the process. Finally, structural weaknesses within the justice system at the provincial and municipal level were hampering the overall effectiveness of addressing protection issues and indicated the need for capacity building support in this area.

In addition to pursuing training activities with a view to strengthening the national and local capacity, significant efforts had also been expended in one country visited to assist the government in developing a national legal and policy framework for the protection of the displaced based on the Guiding Principles. The Guiding Principles have formed the basis for minimum standards (developed by the Government in cooperation with UN agencies in the summer of 2000) to be applied in the resettlement of internally displaced persons. In October 2000 these standards were formally adopted in a decree as norms on the resettlement of internally displaced persons. Prior to the formal adoption of the norms, work commenced on the part of the government, and again in cooperation with UN agencies, to draft standard operating procedures which fleshed out in more detail the provisions contained in the norms, which were eventually adopted in December 2002. This strengthened the government's capacity by providing a defined framework for its activities. It is far more effective, some interviewees asserted, for the UN to base its advocacy efforts on national legal provisions, rather than more "distant" international human rights and humanitarian law standards. As one person remarked, "you can go to the government and say 'this is your law; implement it'". The development of national legal and policy frameworks that will promote the protection of

internally displaced people based on the Guiding Principles is an important trend actively promoted by the RSG-IDPs and the Internal Displacement Unit.

An important lesson which emerges from the examples above is the fact that even within governments with poor human rights records, there are people willing to pursue activities of this sort with the UN and other organisations. As one interviewee noted, “the government isn’t a monolith. There are people you can work with.” Another interviewee noted that rather than lambasting the government for its actions or inaction from the outside, it was often far more effective to go to one’s partners within the government and have them raise the issues. To have, in her words, “government dealing with government”.

## **1.6 Training**

The IASC policy paper emphasizes that “an integrated training programme on the protection, assistance and reintegration of internally displaced persons is essential for international staff, national authorities and non-state actors, local organisations and all other relevant actors.” At the time of the drafting of the policy paper, the IASC-WG was in the process of developing training modules on displacement, based on the Guiding Principles and aimed at field-staff of UN agencies, NGOs as well as local and national authorities.

The IASC training modules were completed in 2001 and form the basis for the training and capacity building programme of the Internal Displacement Unit, which has provided in-country training on the Guiding Principles to a broad number of UN and NGO staff, members of civil society and national and local authorities in a number of the countries visited by the survey team. A complementary training programme on internally displaced persons and the Guiding Principles has been conducted for several years now by the Norwegian Refugee Council.

The importance of such training is beyond doubt. However, on the basis of the field missions, the survey team observed a lack of conscious extension of such training and other protection-related training to UN/multinational/regional peacekeeping forces, police, ceasefire monitoring mission staff, and to field-based staff of regional organisations beyond any initial, and often quite brief, country orientation or induction. This clearly indicates that the recommendation of the IASC policy paper regarding the need of the IASC-WG to bring relevant training material to the attention of UN peacekeepers and civilian police “who increasingly are undertaking activities of direct relevance to internally displaced persons” has yet to be consistently applied.

Second, there is a need to provide training which focuses not just on the content of the Guiding Principles and other relevant international legal standards but also on more practical, day-to-day issues of what field staff should do in the event that they witness abuses taking place or receive information regarding violations. The policy paper notes that where violations of relevant international provisions occur, field staff should ensure that the information is communicated to officials and/or institutions that are in a position to act upon it. However, it was apparent from the field visits that humanitarian staff, both UN and non-UN, were not always aware of either their responsibility in this regard nor how and to whom to report relevant information – itself a reflection of the lack of attention paid in some of the countries to establishing the necessary systems to facilitate reporting on violations. Nor was it always clear to field staff precisely what sort of actions or events should be reported.

The policy paper also notes that “[i]t is envisaged that a number of critical principles on the HC/RC’s role *vis-à-vis* internally displaced persons will be distilled from the modules and fed into the RC/HC training programme at the UN Staff College” – though enquiries with UN Staff College have revealed that this has not taken place, or rather that there is no such training course at the Staff College.

## 2. Operational Response and Remedial Action

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### 2.1 Vulnerability Assessment

The need to include protection within needs assessments is now oft-cited but does not always – or even often – occur in practice.<sup>72</sup> As one commentator recently observed, current approaches to needs assessments tend to construe human suffering in humanitarian terms as consisting in the lack of basic commodities such as food, shelter, and water. While lack of access to the basic requirements for survival is often a key determinant of people’s vulnerability, the other critical aspect of basic human welfare for the humanitarian agenda is human security and the need for protection, including freedom from violence or fear, freedom from coercion, and from deprivation as the means of survival. “While the need for protection cannot be easily quantified, it is an essential component of assessment in conflict-related crises, in order to establish both the threats to people’s basic security and the context within which assistance efforts must be conducted.”<sup>73</sup> These comments come from a study prepared for the “Montreux IV” meeting of donors on the CAP and coordination on humanitarian emergencies, held in February 2003. The donors meeting subsequently called for needs assessments to take into account protection and security issues.<sup>74</sup>

Although the importance of ensuring that needs assessments focus as a matter of course on protection issues requires much more focus, it was apparent from some of the field visits that the issue had registered with some country teams. In one country, a series of nationwide “rapid assessments of critical needs” over the last few years included a focus on protection issues and used the Guiding Principles as a frame of reference. The reports of these missions included a breakdown by province of the particular problems identified, as well as a matrix listing immediate priorities, the activities which needed to be undertaken to respond to these, the size of the “caseload” and its location, the identity of those responsible for undertaking the required activities, and the estimated costs of these interventions. Although a systematic and comprehensive approach to assessment, a major drawback was that the protection aspect of the assessment was undertaken by OCHA staff without the participation of the DPKO human rights officers in the country (who were unable to participate for “mandate-related reasons”). Although OCHA staff had performed this task well, it might have been preferable – as argued by the OCHA staff concerned – for those with a human rights background and training to have undertaken this aspect of the assessment.

In another of the countries visited, UNHCR had led a comprehensive assessment of conflict-related needs in which protection was very much a key issue. The resultant report notes at the outset that protection “is the cornerstone of relief, recovery and rehabilitation activities in the transition phase towards post-conflict.” The report also pays “particular attention and priority ... to those most vulnerable (primarily IDPs), returnees and refugees.” Subsequent sections of the report provide an overview of the origins and movements of the displaced population and their intentions regarding resettlement or return, stresses the need to address property and land rights issues, and emphasises the importance of maintaining a focus on protection from sexual and gender violence, child labour, physical security for minority displaced populations, etc. It then provides a list of actions required in the immediate, medium term and long term to address these various problems.

Elsewhere, it was apparent that while there was some acknowledgement of the protection and security problems facing the displaced included in OCHA-led inter-agency needs assessments, this was done more in passing and there was little if any analysis of the sort devoted to other sectors of the humanitarian response, such as health, nutrition, water and sanitation and education – despite the

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<sup>72</sup> See further Cohen and Deng, cited in Paul, note 66 above, at 9.

<sup>73</sup> Overseas Development Institute, Humanitarian Policy Group, *Measuring Humanitarian Need – A Critical Review of Needs Assessment Practice and Its Influence on Resources Allocation – Preliminary Findings*. Prepared for Montreux IV: Donor retreat on the CAP and coordination on humanitarian emergencies, 26-28 February 2003.

<sup>74</sup> See para.25 of the “Common Observations” of the fourth Donor Retreat on the Consolidated Appeals Process and Coordination in Humanitarian Emergencies, Montreux, 26-28 February 2003. On file with the authors.

gravity of the protection problems in the countries concerned. In addition, regular “humanitarian situation reports” issued with respect to different parts of the country were often limited to the discussion of protection problems affecting children and to sexual and gender-based violence – whereas in other cases, there was insufficient attention to these issues, especially sexual and gender-based violence.

As the policy paper notes, consideration should also be given in certain circumstances to the despatch of separate or complementary protection assessment missions. A variation on this theme was apparent in one country where a joint government/UN/NGO protection group based in the capital undertook regular missions to different parts of the country to assess the protection needs of internally displaced persons. Using the Guiding Principles as its frame of reference, the assessment missions took a broad approach to protection, examining the situation of the displaced *vis-à-vis* access to food, health, shelter, water and sanitation, education, as well as personal physical security, freedom of movement and so on. On the basis of the findings, recommendations were drawn up which both identified those responsible for their implementation and stipulated a time period within which the necessary action was to be taken. Specific actors, generally from among the inter-agency group, were also designated to follow-up on the implementation or failure to implement recommendations. It is interesting to note that these needs assessment missions were also used as an opportunity to disseminate the Guiding Principles among local authorities and the displaced population. In addition, mission reports were shared with a higher-level forum on the protection of the displaced composed of senior government (including at ministerial level), military and police officials, heads of UN agencies and NGO representatives.

## **2.2 Coordinated Programming of Assistance**

Country teams, in formulating their Consolidated Appeals (CAPs) should ensure that the protection needs of internally displaced persons are addressed in the joint programming process. Pursuant to its terms of reference, the IASC-WG seeks to ensure that the needs of the internally displaced are systematically taken into account in resource mobilization processes. It is also recommended that the activities of agencies having a more specific protection mandate, such as the UNHCR, OHCHR and UNICEF should be highlighted in the CAP.

The extent to which the CAP process reflects the needs of the displaced, including for protection, has been the subject of scrutiny in the past. In 2000, the RSG-IDPs commissioned a study on the extent to which the CAPs for that year supported internally displaced persons.<sup>75</sup> The study found that most of the CAPs acknowledged the special vulnerabilities and needs of the internally displaced and that many individual projects took these needs into account. It also found, however, that there remained considerable scope in the appeal documents to enhance the analysis and response to internal displacement, particularly with regard to protection.

Although a detailed analysis of the extent to which the CAP process reflects the needs of the internally displaced three years on is beyond the scope of the present report, it is pertinent to make a number of observations. To begin with, it should be noted that subsequent to the RSG’s study, efforts have been ongoing at headquarters to promote a more human rights and protection-oriented approach in the CAP. The August 2002 version of the *Technical Guidelines for the Consolidated Appeals Process* notes that “[g]reater efforts should be made to integrate human rights and humanitarian principles into the CAP, in accordance with the Secretary-General’s Report on UN Reform in 1997 to mainstream human rights throughout the UN’s work with a view to enhancing its effectiveness and ensuring its principled basis.”<sup>76</sup> More precisely, it notes that the CAP should include a specific section on humanitarian principles and human rights which: describes the key humanitarian principles and human rights issues that are of primary concern to the humanitarian programme; outlines the implications of these for humanitarian action; explains how the CAP country team aims to address these issues (whether

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<sup>75</sup> James Kunder, *The Consolidated Appeals and IDPs – The Degree to which the UN Consolidated Inter-Agency Appeals for the Year 2000 Support Internally Displaced Populations*, Washington D.C.: Brookings Institution/UNICEF (2000).

<sup>76</sup> OCHA, *Technical Guidelines for the Consolidated Appeals Process* (August 2002) 4.

through programming, advocacy or both); and demonstrates (in the section on response) how sector strategies and projects contribute to addressing these issues.

In addition, the CAP training programme includes a module on human rights and humanitarian principles which aims to assist participants to: recognise how the right to life with dignity underpins all humanitarian responses; recognise human rights as a starting point for developing the Common Humanitarian Action Plan (CHAP); identify relevant international and national legal sources for human rights; identify specific human rights issues in the context of a given country; appreciate how humanitarian principles and codes of conduct provide a framework for developing and implementing humanitarian programmes; apply the rationale for using the universal and country specific humanitarian principles in the CAP; and to explain the use of the CAP as a mechanism for putting humanitarian principles into practice.<sup>77</sup>

It is encouraging to note that of the nine countries visited, the six included in the CAP process incorporated sections on humanitarian principles and human rights within their respective CAP documents. This is certainly encouraging, though it should be noted that there were extensive variations between the documents in the extent to which they met the various requirements outlined above, i.e. providing a description of the key humanitarian principles and human rights issues that are of primary concern to the humanitarian programme; outlining the implications of these for humanitarian action and so on.

While human rights and humanitarian principles are accorded greater prominence in this way, the specific projects intended to bring about the realisation of these principles are afforded far less prominence in the CAP documents when it comes to the section on response plans. In all but one of these six countries the human rights and/or protection sector appear towards the end of the document, generally after the food, health, education, mine action, water and sanitation, shelter and non-food items sectors. While this may seem inconsequential, it does not appear to fulfil the recommendation of the IASC-WG to maintain/raise the profile of protection within the CAP and to highlight the activities of agencies having a more specific protection mandate.

There is clearly a need to enhance the profile of protection overall and to develop plans to engage the donor community more fully and effectively. Although the overall funding for protection activities in the CAP increased fairly significantly between 2001 and 2002, from over US\$22 million to over US\$66 million, it still remains among one of the consistently under-resourced sectors in the CAP.<sup>78</sup> As noted in the 2003 CAP for one of the countries visited: “For many agencies, insufficient funding has limited programme implementation or resulted in their suspension ... OHCHR reports that not only are monitoring activities and the provision of legal assistance restricted, but training and human rights dissemination programmes, targeting key government institutions, have been limited and, where training has been undertaken, follow-up activities have suffered.” Other CAP documents revealed that in two of the countries visited, protection received only 13% and 16% of required funds respectively, while in another country visited, in which protection concerns were clearly acute, the protection sector received no funding from the CAP at all.

So, how does one account for this shortfall? Interviews with donors did not throw too much light on the subject as most seemed to think that funding for this sector was not a problem. It would seem therefore that their perception as to what the agencies require to do protection clearly differs from the assessment of the agencies. At the same time, it was interesting to note that a number of donors expressed the desire for agencies to do more in terms of protection. In one case, a major donor agency expressed disappointment and even anger at the failure of one UN agency to take on more responsibility in protection. And of course, just as it is difficult to quantify the “need” for protection, it is also problematic to quantify the result or “success” of protection activities, or to measure protection activities in terms of the “bang for the buck”. There is a case to be made for more work to

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<sup>77</sup> OCHA, *CAP Training Programme* (April 2002) 2 and 41.

<sup>78</sup> OCHA Financial Tracking System, “Evolution of Funding by Sector Over the Last 5 Years, 1999-2003”, available at [www.reliefweb.int/fts](http://www.reliefweb.int/fts)

be undertaken on the design of “protection indicators”. In the meantime, it can only be hoped that the above-noted request of donors for needs assessments to take protection needs into account is matched by an increased emphasis from donors on the financing of activities which are intended to respond to those needs.

### **Integrating Protection into Development Programmes**

Of course, not only CAP-participating countries are beset by problems of internal displacement. Tools to facilitate the integration of protection concepts and practice into coordinated programming of assistance must also be highlighted in CCAs, UNDAFs and “poverty reduction strategy papers” (PRSPs). It is encouraging to note the extent to which country teams have sought to integrate and mainstream human rights into the documents. A review of 18 CCAs and UNDAFs revealed that country teams recognise the importance of basing their analysis on human rights established in various international treaties, promoting participation and capacity-building and looking at the causes of poverty from a human rights perspective. Improving governance, increasing accountability and standing up for the marginalized and most vulnerable were also prominent in the documents reviewed. As the author notes, the documents “resonate with human rights principles, language, standards and practices.”<sup>79</sup>

In terms of the countries visited as part of the protection survey, it is clear that their respective CCAs and UNDAFs also take a rights-based approach, but it is discouraging to note that emphasis has not often been placed on the situation of the displaced, who are frequently the most marginalized and most vulnerable. In one country, neither the CCA nor the UNDAF make any reference to the internally displaced or their specific needs, although the CCA does focus on a number of thematic issues such as rights of women, the rights of children (who between them make up the majority of the displaced population), persons with disabilities and caste and ethnicity (a significant factor in the displacement crisis in that displaced persons from certain castes and ethnic groups are at particular risk of discrimination and exploitation). The CCA was drafted mid-way through a six year-long conflict and yet the conflict is referred to only in passing (in a three line paragraph it notes that the conflict has “led to widespread violence on both sides, often on innocent residents of the affected areas”). There is nothing beyond a brief mention of the particular problems faced by “innocent residents”, a significant number of whom became displaced. Nor is there any mention of how the government and the UN intend to respond to their situation. Although the UNDAF covers the post-conflict period as it were, there is still no reference as to how the situation of those who remain displaced, who live in appalling conditions and suffer various forms of discrimination due to displacement will be addressed within the framework of the UN and the government’s development plans.

The UN Staff College, which provides on-site training to country teams on the development of CCAs and UNDAFs, informed the survey team that “if the issue of [internally displaced persons] emerges as a critical one, this will be reflected in the CCA and UNDAF.” It is essential that this happens and that appropriate steps are taken to monitor this.

Similarly, country teams should ensure that the problems and needs of internally displaced persons are considered within the context of national poverty reduction strategies and the development of poverty reduction strategy papers (PRSPs). PRSPs are designed to provide a framework for lending operations by the World Bank and the International Monetary Fund and are according to the UN Development Group increasingly viewed by donors “as a needed instrument to plan and coordinate their policies of assistance.”<sup>80</sup> As such, it is clearly important that they pay due consideration to addressing the needs of displaced populations.

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<sup>79</sup> O’Neill, note 50 above, at 3.

<sup>80</sup> See further, United Nations Development Group, *UNDG Guidance Note to United Nations Country Teams on the PRSP* (8 November 2001).

### **2.3 Promoting Protection in the Design of Assistance and Return/Reintegration or Resettlement/Integration Programmes**

While the primary responsibility to provide protection rests with the competent authorities, the protection policy paper acknowledges that:

- humanitarian agencies have responsibilities of their own to ensure that protection features are integrated in their programmes and operations;
- a number of agencies have devised specific guidelines in this regard (e.g., prevention of sexual exploitation in camp situations, protection against child recruitment through schooling, integrating mine-awareness in assistance programmes, linking data collection for documentation and tracing with registration for relief assistance, etc.). Agencies should review their assistance programmes, however, to avoid potential negative effects on protection and to strengthen programme features that could positively effect protection;
- agencies providing assistance should consult with other expert or mandated agencies operating in the country, to determine how their programmes could be strengthened to afford protection of basic rights;
- in setting out a programme agencies should take into account on-going activities of other international organizations to avoid duplication;
- in cases of return and/or resettlement, displaced persons are particularly vulnerable to involuntary return/resettlement and to a lack of safety in the areas of return/resettlement. Additional problems often relate to the restitution of land and property rights. Humanitarian and development agencies need to work together to ensure that their programmes are designed to specifically tackle these challenges.

There is of course much to support promoting protection in the design of assistance and return/resettlement programmes in pursuing a rights-based or human rights mainstreaming approach to programming. A number of interviewees were quick to point out that as protection is a cross-cutting issue, it should of course be mainstreamed into the country team's programmes rather than dealt with as a specific sector of the humanitarian response, like food and nutrition, health, water and sanitation, education and so on.

#### **The Perils of Mainstreaming Protection**

In a number of the countries visited, the meaning and modalities of rights-based programming are not fully understood by country teams, resulting in well-intentioned but very confused and even disingenuous efforts to address protection problems or prevent violations. Some organisations engage in a kind of reverse logic by arguing, for example, that they have a rights-based approach because they address specific rights, such as the right to food or medical care. Realising the right to food is not simply a question of distributing food. It is also a question of where, when, how and to whom one distributes the food. Similarly, realising an individual's right to an adequate standard of living is not just about providing shelter, water points and latrines but is also concerned with ensuring that the individual can exercise her or his influence on where the water points and latrines are located in order to promote equitable distribution of services and to prevent violations (such as the commonly used example of women being sexually assaulted when forced to go long distances for water or to use latrines). Too narrow an interpretation of the rights-based approach stifles thinking on the part of humanitarian staff as to how to deliver assistance in ways that seek to prevent forced displacement and human rights violations and strengthens access to persons at risk, in particular marginalized groups.

It was apparent from the field visits and interviews that protection issues relating to the physical security of displaced persons rather than access to basic services were not always addressed in a conscious manner within the context of the broader humanitarian programme. For example, the meetings of different sector coordination bodies, such as on food, water and sanitation, shelter, for example, tended not to apply a protection perspective to their work despite the connections between the timing of food distributions to the displaced and attacks on their camps; or physical and sexual assaults on displaced persons walking to poorly located latrines or water points. As one senior UN official stated, "[i]t is a question of how things are prioritised and so far there's been no prioritisation

of internally displaced persons and protection.” Another interviewee remarked that although the CAP for the country concerned was structured around a rights-based approach to programming, staff were not thinking rights-based out in the field. Elsewhere, an interviewee stated that while protection issues are sometimes raised in general coordination meetings, this takes place on an *ad hoc* basis and discussions are often brief.

Others also drew attention to the fact that protection issues were not given due weight even in those sector coordination groups which have a manifest link to protection. In one country, UN and NGO staff in a particular region had created, on their own initiative and to the chagrin of some agencies in the capital, a local inter-agency human rights working group in which to discuss and resolve protection problems because of the lack of necessary guidance and advice on protection from the capital. Although an inter-agency “human rights and gender working group” existed in the capital, interviewees noted that its terms of reference dealt almost exclusively with the promotion and resolution of gender-based issues than more general human rights and protection concerns of the sort which field staff confronted on a daily basis. In another country, the chair of the inter-agency “thematic group on human rights” noted that although internally displaced persons is a standing item on the group’s agenda, “it does not mean that we’re dealing with protection”. In his opinion it would be preferable to establish a separate or sub-group on protection of the displaced, involving all agencies and donors, not least because the sorts of protection concerns with which it would be concerned often required a “quick response” which was more readily achievable through a focused group of that sort. Lack of access to basic services, and even the total denial of basic services, while certainly a focus of country teams, is not always viewed or addressed as a protection problem *per se*. Responses may concentrate on how to get material assistance to those in need without sufficient attention to the causes of the lack of access to or the denial of services. This means that interventions may be misdirected and that advocacy on rights falls by the wayside.

#### **Appointing a Protection Focal Point**

The above comments underline a recurring theme in the interviews, notably the need to formalise the country team’s response to protection issues, specifically through the designation by the HC/RC of a sector coordinator or focal point on protection from within the UN country team. This person or persons would be tasked with bringing relevant UN and non-UN actors together to analyse protection problems – both actual and potential – and to develop and implement a coherent and coordinated protection strategy to respond to those problems.

To be sure, variations on this approach existed in a majority of the countries visited, and with often quite different terms of reference. In those countries in which UNHCR was present and mandated to work with internally displaced persons, and in recognition of its comparative expertise in protection, the preference and expectation was that UNHCR would play such a role. And this was the case in three of the countries visited, with UNHCR clearly taking a lead on protection of the displaced. In those countries in which UNHCR lacked such a mandate, many interviewees felt it should be duly assigned to UNHCR given its expertise in protection. Failing that, interviewees did not state a preference for any particular UN agency to facilitate protection planning but most were clear that they strongly preferred the UN to take on the role as they believed it would provide a protective umbrella for protection engagement. As the staff of one NGO remarked: “we are not so worried about who [in the UN country team takes a lead on protection], just so long as there is someone we can work with, where we can air our problems and focus on issues together”. Nearly all those interviewed believed that the UN should take the initiative to bring relevant actors together. It was said by another observer that the ‘lead’ on protection should be taken by an agency with “money, capacity and headquarters support...[although ultimately] we just want to see someone doing it. We don’t care who”.

In five of the “non-UNHCR-led” countries visited, OCHA initiated action on protection, albeit to quite varying degrees and not always because it had been formally designated as such but because, in the words of one OCHA official, “no one else is doing it and somebody should be”. To be sure, OCHA’s initiatives have not been without controversy and have not been wholeheartedly welcomed by other agencies, or for that matter by OCHA senior management. OCHA staff with whom the survey team

met expressed frustration over the lack of support from headquarters, which they viewed at times as bordering on opposition, for their efforts to take the lead in developing inter-agency protection strategies on behalf of the displaced. In two cases, high-level UN missions to the countries had drawn attention to the need for a greater focus on protection issues and the development of appropriate strategies to this end. In the absence of realistic alternatives on the part of agencies with a protection mandate, the task was assumed by OCHA (in one country UNHCR and OHCHR were present and in the other UNHCR and DPKO, including a human rights component were present, but in both countries were limited in terms of mandate, presence and/or capacity). In one of the two countries concerned this was greeted with a certain level of consternation on the part of other UN agencies and the NGO community while OCHA headquarters reacted with what one person described as “absolute horror” at OCHA’s becoming “operational”.

Whether it was becoming operational or not is a matter of interpretation. In any event, two points should be noted. First, in both cases, the strategies and mechanisms which have developed are aimed at coordinating and facilitating the work of others, of bringing relevant actors around the table to discuss protection issues, including national and local authorities who, as it should be, play key roles in the protection strategies in both countries. Second, even if OCHA’s actions are construed in terms of it becoming operational, what exactly is the problem with that when, as with the two cases in question, none of the operational agencies were in a position, or were prepared to assume the necessary role? Surely what is important is ensuring protection for the internally displaced rather than being hamstrung by the strict and inflexible implementation of mandates.

OCHA’s role in these two countries did not escape criticism from the donor community either. In regard to one of them, a meeting of donors in May 2003 “cautioned OCHA from stepping in to fill gaps”, requesting instead that it “work with its humanitarian partners to ensure that gaps were filled by those with the necessary resources and capacities.” It was apparent to the survey team, however, that, as indicated above, OCHA had sought to bridge the protection gap precisely because of the lack of resources, capacity and will on the part of its humanitarian partners, which stemmed to a large extent from the lack of donor support for protection activities, in particular for those of UNHCR.<sup>81</sup>

These particular problems notwithstanding, the experience of OCHA seems to indicate that when it comes to assigning sector coordination responsibilities, while competence in protection is an obvious advantage it may actually be a secondary consideration to that ensuring that a member of the country team act as a focal point on protection, bringing relevant actors together. At the same time, as various interviewees noted – including OCHA staff – an OCHA field advisor will not possess the same competence in protection that one would expect to find in a UNHCR protection officer – as one OCHA official put it: field staff “are not hired to do protection”. Furthermore, for OCHA staff, undertaking protection-related activities comes in addition to their routine coordination responsibilities and some are better than others at balancing these various responsibilities. By the same token, however, it was also apparent from the field visits that in those countries where UNHCR had the lead on protection, the nature and extent of that lead varied to quite an extent, with protection constituting the organisation’s *raison d’être* in one country while in another constituting little more than protection on paper only.

Either way, the experience of OCHA does at least confirm that “allocating coordination responsibilities can prove contentious even at the sectoral level, particularly when no agency – whether the UN or otherwise – has clear technical expertise or mandated responsibility for a sector”.<sup>82</sup> Moreover, what happens in the event that donors and agencies resist the efforts of HCs/RCs to allocate sectoral responsibilities?<sup>83</sup> And what steps should be taken in the event that the designated agency fails to fulfil its coordination responsibilities? In one of the countries visited, one agency’s perceived reluctance to fulfil its publicly stated role “to facilitate a coordinated approach to protection issues” was a constant theme in interviews with other members of the country team, the NGO

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<sup>81</sup> See OCHA, *Report on the Working Group on OCHA Meeting, The Hague 13-14 May 2002*. On file with the authors.

<sup>82</sup> Reindorp and Wiles, note 48 above, at 39.

<sup>83</sup> *Ibid.*

community and donors, with some suggesting that the agency concerned, in the words of one UN official, “should put up or shut up and let someone else get on with it”. The question was how to press the issue. Indeed, the survey team would agree with the recommendation of one study that there should be more work at the headquarters level to build in greater predictability around the allocation of sectoral responsibilities in order to relieve HCs/RCs from having to “reinvent the wheel at every turn”<sup>84</sup> and to avoid what one NGO referred to as agencies “squabbling over who does what”.

### **Protection Working Groups**

As indicated above, the principal task of the protection focal point would be the establishment of working groups or similar fora on protection, both in the capital and at the local level to the extent possible. The purpose of the working group would be to bring together protection-oriented and interested actors to raise and analyse protection problems and develop a coordinated and coherent response with a view to preventing human rights violations and further displacement.

Certainly some questioned this approach. To begin with there were those who favoured an approach in which the emphasis was on mainstreaming protection, as discussed above. Others questioned how much interest would be shown in such a group while one interviewee was concerned that it would “only annoy the authorities” who might then deny access to displaced persons or other groups under threat. Some argued that there are already too many sectoral and thematic coordination bodies in a given country-setting, such as on food security and nutrition, water and sanitation, education, health, child protection, gender etc., and that another dealing with protection, be it displaced persons-specific or civilians in general, would further compound the bureaucracy and keep staff in meetings and out of the field.

On the basis of the field visits and interviews, however, it was clear that more formalised coordination on protection has distinct advantages. Protection working groups provide a forum where agencies providing assistance have the opportunity to consult with other expert or mandated agencies operating in the country, to determine how their programmes could be strengthened to afford protection of basic rights; and to discuss how to avoid duplication in their programmes.

The formalised approach also promotes the development of a clear and coherent strategy on protection which, as numerous interviewees took pains to point out, was often lacking. Indeed, as has been observed in relation to the broader humanitarian response: “Having a clear strategy and plan to guide the humanitarian response is pivotal to ensuring that the most critical humanitarian needs are met. Yet all too often humanitarian actors in general, and the UN in particular, are unable to articulate what they are trying to achieve, or how their particular actions relate to precise goals”<sup>85</sup> – a finding which the survey team found to apply as much to protection as the broader humanitarian response. In the majority of the countries visited by the survey team ongoing protection activities did not seem to form part of an overall protection strategy which was itself a component of the broader humanitarian response. Although there was a general awareness among field staff that protection problems existed and that these should be addressed, this was not always complemented by any detailed analysis of the nature of those problems which, in turn, could provide a basis for a comprehensive protection plan involving the development of specific strategies allocating clear roles and responsibilities to both international and national actors in responding to and preventing protection problems. As one UN official noted, “we are just fixing things; there’s no overall strategic plan.” In fact, the survey team obtained documentation outlining a comprehensive and detailed protection strategy, including an overview of the roles and responsibilities of different actors in its implementation, in only one of the countries visited.

Yet a majority of interviewees from UN, donor and non-governmental circles emphasised the need for a more strategic and planned approach to protection. NGOs and civil society groups were particularly in favour of a clear and defined position on the part of UN country teams *vis-à-vis*

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<sup>84</sup> Ibid.

<sup>85</sup> Ibid., at 26.

protection for several reasons. First, because they would know what to expect from the country team and its individual members. Second, because it would provide a list of responsibilities and tasks against which to hold members of the country team accountable. And third, because it would offer NGOs a clearer sense of the role that they could play in cooperation with the UN country team.

Sectoral coordination on protection provides an important vehicle for pushing agencies to meet protection responsibilities and to clarify the precise nature of these responsibilities early on. By focusing on specific protection problems members of the group, including UN agencies, are effectively compelled to find either direct or indirect solutions to those problems or else explain why they cannot, in which case alternatives can be sought – including recourse to headquarters for advice and support; the fielding of a mission of technical experts, etc. It also provides a forum in which UN and non-UN actors can explain the limits of their mandates and thus decrease potentially unrealistic expectations as to what they can achieve. In a number of the countries visited there was an evident gap between what was expected of UN agencies by NGOs and civil society actors and what they could deliver within the parameters of their mandates and capacity. That said, it was also apparent that in some cases these limitations were self-imposed. What was required was some creative thinking, a process which could be facilitated through discussion with others in a protection working group. In a similar vein, a protection working group also provides a forum in which to ascertain the veracity of information. As one interviewee noted, if an alleged violation is true one can act, and if it is a rumour devoid of substance one can dispel it.

Another argument in support of sectoral coordination on protection is that a protection working group provides a forum in which agencies such as UNHCR and OHCHR, which may be present in a given country but not expressly mandated to undertake protection activities on behalf of the displaced, can at least provide knowledge, advice and training to those agencies and organisations that wish to undertake such work but lack the requisite expertise. Similarly, in view of its acknowledged expertise with regard to the protection of civilians in armed conflict, ICRC, while remaining outside of the UN system in a given country setting, could provide informal guidance and training to the members of a UN-led protection group. Indeed, the members of one such group with whom the survey team met were particularly appreciative of ICRC's efforts to provide training on international humanitarian law. While the ICRC may not wish to participate directly in protection working group meetings in some countries, ICRC heads of delegation expressed strong interest in keeping informed of protection-related activities of others and were willing to assist humanitarian and other organisations in increasing understanding of international humanitarian law.

Another particularly important aspect of a UN-convened protection working group is that it provides an umbrella of international protection under which international and national NGOs and civil society groups have greater freedom of action than might otherwise be the case. NGO staff and members of civil society in all the countries visited emphasised that while they are keen to raise and to address protection problems encountered by their field staff they are often prevented from doing so on account of being more vulnerable than the UN to different forms of pressure from government authorities or non-state armed groups and, in the case of international NGOs, at greater risk of expulsion from a country. The opportunity to raise protection concerns, including directly with the authorities concerned but within the context of a working group convened and chaired by the UN was considered by many as an important step towards overcoming this dilemma. Many national NGOs and members of civil society expressed the view that linkages with the UN are critical to their security.

The survey team participated in the meetings of protection working groups at the capital and local levels in three of the countries visited. During these meetings they were struck by the extent to which the presence of the UN in the meetings and in particular in the role of chair or joint-chair appeared to empower members of the group, in particular from civil society and national NGOs, to raise protection concerns directly and candidly with members of the national or local authorities who were also present – a process which was also aided by the regular interaction and personal relationships which had developed between these different actors as a result of their being brought together on a regular basis by the UN to discuss issues of concern. Several interviewees, in referring to the activities of protection working groups whose composition included local and national government personnel,

noted that a key outcome of these groups was the promotion of dialogue and confidence between the government in question and the humanitarian community – even if it is rather nuanced in that it is not the government *per se* but certain individuals therein. As already noted, the importance of finding people within the government with whom one can work should not be underestimated.

This raises the issue of the membership or composition of such a group. Should it include UN agencies only? UN agencies and international NGOs only? Or UN agencies, international NGOs, and donors? Should it include national NGOs and civil society groups? Or might the latter increase the risk of informants being present, reporting on the group's activities and making others feel at risk and essentially silenced? Should government officials be included, or might this deter group members from reporting abuses, or fear retaliation for doing so? All this is of course very much country-specific. For instance, the participation of government representatives is a key and indeed important feature of such groups in some countries, including in one case facilitating the group's access to affected populations who might otherwise have been "off-limits". In others it clearly would not work given the level of government obstruction of efforts to improve human rights or their direct involvement in violations, although again, there are almost always "human rights sympathisers" within governments or other power structures. Moreover, the manner in which the group carries out its work is also an issue. The country director of one international NGO commented that he would have to think very carefully about participation in such a group lest his organisation's involvement give rise to repercussions from the government. Similarly, others noted the importance of ensuring that certain groups and individuals, in particular victims and witnesses of abuses, do not become exposed due to the work of the group. In fact, the survey team was alarmed to learn that one working group was developing a monitoring and reporting system that would share extensive identifying data about victims with government institutions directly implicated in human rights violations committed against the displaced – though that aspect of the system was subsequently dropped.

#### **2.4 Support to Community-Based Protection**

As the protection policy paper observes, community structures can be an important source of protection in situations of displacement. It notes that the needs of the internally displaced should be addressed within a broader humanitarian strategy which takes into account the needs of all segments of the population and in particular those of the host-community. Local coping mechanisms are particularly important in the absence of effective governance and rule of law. The protection policy paper states that:

- displaced communities should be involved in decisions on the design of programmes to address their needs, and about their return or resettlement. Activities that encourage the maintenance or restoration of communal links or promote the integration of the displaced into the surrounding community can contribute to their security;
- in emergency situations, high priority should be given to reuniting families, creating support structures for unaccompanied children, and enabling displaced persons to remain with or rejoin members of their clan, tribe or village;
- over the longer term, activities that strengthen civil society and facilitate conflict resolution and reconciliation among different cultural, ethnic and religious groups can contribute to the protection of the displaced. They can also lead to the creation of conditions for the eventual safe return and reintegration, or resettlement and integration of internally displaced persons.

The survey team observed that humanitarian agencies are generally well-informed regarding the importance of addressing the needs of internally displaced persons as part of a broader, community-wide, humanitarian response at the field level. In fact, in some cases agencies decided it was better not to act unless it was possible to engage in a community-based approach. In one of the countries visited, for example, given that a significant proportion of the displaced came from a traditionally marginalized minority, it was evident that assistance and protection efforts on their behalf would be likely to succeed only if they were part of a broader response package aimed at the community as a whole.

Unfortunately, in all countries visited, there has been less importance attached to involving the displaced in decisions taken on the design of programmes addressing their needs, in particular for protection, and about their return or resettlement, despite stated policy goals and programme descriptions. As one commentator has observed: “one aspect of the [internal displacement] problem that has been too frequently overlooked is the ability of internally displaced people to adapt to the experience of displacement. This oversight robs the displaced of their voice and belittles the substantial contributions they make in shaping in their own lives.”<sup>86</sup>

According to one interviewee, while UN agencies in one country were making important advances in protection, the emphasis was on the “easier”, legalistic route, involving the monitoring of international standards. In her opinion, such actions, while valuable, do not provide actual protection as such. On the contrary, protection often comes from the family and the community – something some humanitarian actors have failed to grasp, in no small part because they had not fully consulted with displaced communities or people at risk of displacement regarding what is important to them, how they perceive their situation and their problems, and how agencies and NGOs might assist them in helping themselves. Displaced people know how to organise and protect their communities, one interviewee said. They do not need advice and guidance from the UN. What they need is sometimes as simple as torches and whistles whereas at other times they need a protective umbrella under which to work through engagement with the UN, UN presence in the field, and advocacy by UN agencies.

In one of the countries visited, where UN agencies have manifestly failed to provide any sort of protection to the displaced and other communities at risk, some communities have developed their own advocacy strategies. One group of villagers reported to the survey team that because the threat of forced recruitment was causing draft-age males (and younger) to leave the village, the heads of household convened to discuss the problem. They made the decision that they would no longer accept forced recruitment of their young which, for reasons which were not apparent, seemed to hold some sway as from that point on rebel visits to the village were concerned with obtaining food rather than recruiting the young. Another community reported that in response to the continued refusal of the local authorities to allow them to return to their homes, they had organised a protest and “sit-in” at the local authority offices, an action which resulted in them being allowed to return.

Elsewhere, there was an awareness among some country teams of the need to engage and provide the necessary support to local communities in their own protection. In two countries, OCHA and UNHCR staff respectively were engaged in important efforts to support community-based protection mechanisms. In one country, the OCHA field advisor in one province worked with displaced communities to establish a “vigilant nucleus” in displaced persons camps in the province. Each nucleus consists of six displaced persons from the community trained to monitor human rights violations, who reported daily to a “Commission for the Follow-Up on Protection Issues” on serious human rights violations and weekly on cases considered less serious. The five members of the Commission include local government officials, the national police, the national Red Cross society and members of local civil society groups and NGOs. The Commission in turn reports regularly to a “Protection Sub-Group, which is chaired by the provincial representative of the Ministry of Justice. At the time of the survey team’s visit, follow-up had already taken place on a number of individual cases, including rape and other violations of physical integrity. The Commission and the Sub-Group were also involved in conducting a sensitisation campaign with the army and national police concerning underage recruitment and also reported significant progress in decreasing rape by soldiers. Unfortunately, this was the only province where protection structures had advanced to this stage, and the team was informed that due to major UN agency restructuring in the country the future of UN support for the protection system was uncertain. Discussions were ongoing at headquarters in this regard and in the meantime OCHA was to retain its role in supporting the protection system, including through continued training and capacity building workshops at the central and provincial level.

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<sup>86</sup> Marc Vincent, “Introduction”, in Marc Vincent and Birgitte Refslund Sorenesen, *Caught Between Borders – Response Strategies of the Internally Displaced*, London/Oslo: Pluto Press/Norwegian Refugee Council (2001) 1.

In another of the countries visited, UNHCR staff play a critical role in providing support to “communities of peace”, an admirable and courageous example of community-based protection. The communities concerned have declared civilian autonomy *vis-à-vis* the parties to the conflict and adhere to self-imposed restrictions on carrying weapons, passing information to armed actors, or supporting armed groups in any other way. Support from UNHCR staff has taken various forms, though particular appreciation was expressed by community leaders for the presence of expatriate staff, as well as representatives of the international NGO Peace Brigades International, during periods of tension such as when armed actors (including government forces) entered or approached the communities. In addition to supporting communities of peace, UNHCR staff were also actively engaged in supporting associations advocating for the rights of their communities, with special emphasis placed on supporting indigenous and ethnic associations as well as specific associations of displaced persons or coalitions. Thus increased UN engagement, especially in the field “with the people” is seen as critical.

Another form of community protection which existed in some of the countries visited were armed self-defence units, some of whose members also included displaced persons. Such defensive measures were not of course supported by UN agencies. The reason for mentioning them here is to emphasise the need for a more assertive stance from UN agencies in opposition to such forms of civil defence. Indeed, it was clear from the field missions to countries where such units existed that while they might well provide a modicum of protection to displaced and other communities, it essentially invites civilians, often children, to participate in the conflict, increasing the likelihood that they, their families and communities become targets. They also serve to fuel pre-existing conflicts within and between families, clans and communities. In one particular case, efforts by the government to encourage armed civil defence units and informant networks sought to engage civilians in the conflict, dividing communities and seriously undermining protection principles and ongoing protection activities. These initiatives have invited attacks from other armed actors, thus greatly increasing the vulnerability of frontline communities both in terms of danger from direct attack and the likelihood of being cut off from assistance as areas where fighting takes place are obviously often declared “no-go” areas either by the armed actors or by humanitarian agencies responding to heightened security threats. Of particular concern is the effect these campaigns are having on indigenous communities, whose members are under law exempt from military service. Indigenous leaders reported to the survey team that some of their young people have been enticed or forced due to threats to join civil defence units or become informants. Given the extremely precarious situation of many indigenous groups (some of which have fewer than forty members still alive) this has potentially devastating consequences for their survival.

## **2.5 Protection Strategies for Women, Children and Other Vulnerable Groups**

The protection policy paper enjoins humanitarian agencies to:

- ensure that gender and child-related aspects of displacement are considered in the planning and programming. It notes that displacement tends to alter the structure of families and households and to change gender roles, with women often playing central roles in reducing the vulnerability of entire communities to the effects of displacement. Thus, their participation in the design of protection strategies is essential;
- continue to study gender relations and how these have been affected by displacement, including through the routine compiling of gender-specific information in assessments;
- ensure that the protection needs of children, in particular of unaccompanied minors and child soldiers, are taken into consideration by all UN agencies, using the Convention on the Rights of the Child as a basis for advocacy and programming;
- give more attention to the needs of other vulnerable groups such as older people and the physically disabled.

In all the countries visited bar one, there was clearly an awareness on the part of humanitarian actors of the importance of addressing the needs of vulnerable groups. In some countries, inter-agency bodies existed to address issues concerning child protection and gender. The survey team notes,

however, the importance of considering the needs of others who do not necessarily fall within these different categories of vulnerability, in particular draft-age males.

It is telling for instance, that in one of the countries visited, the protection response by humanitarian agencies to a catastrophic humanitarian situation which was unfolding in one part of the country was expressly focused on “separated children”, “children associated with armed groups”, and “sexual violence”. Without questioning the importance of addressing these concerns, one must ask about the concerns of draft-age males at risk of forced recruitment by militias, a major factor in continuing the conflict. In another mission country, staff of one NGO noted that draft-age males were at particular risk of ill-treatment by the authorities, especially if they required medical treatment which, as far as the authorities were concerned, implied association, if not membership of the insurgent forces. The result was that either draft-age males would forego treatment or NGO staff might have to adopt less visible approaches to providing treatment, at the risk of leaving the organisation open to accusations of assisting insurgents and possible repercussions.

## **2.6 Monitoring and Reporting in the Field on Protection Needs**

Ongoing monitoring of the protection requirements of internally displaced persons, and how these needs are or are not being addressed is, as the policy paper observes, “essential”. Field monitoring serves an important protection function by establishing a presence near at-risk populations and allows regular identification of groups that are particularly at risk. It also allows for timely intervention at a local level which may be more effective in ending or discouraging further abuse. The policy paper also notes that if necessary, the HC/RC and the country team should relay such information to headquarters in order to ensure a timely and effective response. As one HC/RC put it, monitoring and reporting “should be standard stuff”.

### **A Less Than Systematic Approach**

Essential it is, standard stuff it is not. The survey team found monitoring and reporting systems in only three of the nine countries visited. In one of these, OCHA field staff systematically collected and verified information on protection concerns obtained through interviews with displaced and other war-affected communities and from partner agencies and NGOs. This information was then conveyed on a monthly basis to the capital where it was consolidated into a national “protection tracking matrix”. The matrix outlined particular protection problems by province and indicated “suggested action” to be undertaken at both the field level by the field advisor and at the national level by the HC/RC, including for instance, briefing donors on specific issues and interventions with national and local authorities. The matrix was then submitted to an inter-agency “protection technical group”, which selected issues for focused attention for that month, forming the basis for the advocacy efforts of the HC/RC. In addition, donors and high-level UN officials visiting the country during that month were asked to raise these same issues in their meetings with government officials. Although successful in effectively communicating field-based protection concerns to the capital level, a number of NGOs expressed the desire for greater transparency as to the steps actually taken by the HC/RC in response to information received, information which was often provided by NGOs.

In another country, UNHCR had established a less elaborate but no less important system of monitoring and reporting. Protection officers submitted protection-related information, including that obtained from other UN agencies, NGOs and other relevant actors, on a daily basis to the field office for their area of responsibility. This information was compiled in a database at the field office and consolidated into a weekly two-page “highlights” note which was sent to the capital. The highlights provided the basis for a monthly “operational situation report” for a given area, providing information on the general situation, major developments that month, the numbers of displaced persons present within the area of responsibility, issues related to the local integration and resettlement of the displaced, protection issues including information pertaining to the protection of women, children and other groups of special concern. On the basis of information received, interventions would be developed and undertaken either by the protection officer, senior staff from the relevant field office or else from the capital, including the UNHCR country representative.

In the third case, OCHA staff managed a UNDP funded “protection project” which included the establishment of a joint governmental-NGO system of monitoring and reporting on abuses in displaced persons camps, albeit restricted to those camps located around the capital. OCHA provided material and logistical support and acted as the secretariat for information received on a regular basis from NGO and local authority monitors who resided in the camps along with the displaced population. As mentioned previously in this report, however, the survey team and indeed a number of others, including the displaced, had concerns about the confidentiality of information and the safety of those reporting violations, though these concerns were subsequently addressed.

In the remaining five countries, although some agencies had instructed field staff and implementing partners to routinely submit information concerning protection problems, reports were often not forthcoming and information that was obtained was often not shared with other members of the country team. In a number of countries, NGOs were unaware of reporting mechanisms and did not express strong interest in participating in UN human rights reporting mechanisms, although information was often shared between individuals. In one country, UNHCR took the unprecedented step of effectively creating a national NGO to undertake monitoring and reporting in those areas UN staff could not access. Although some members of the country team and NGO staff complained that information gathered by this NGO was not shared with them, this was all the same a creative attempt to find a solution.

In another country, the extension of an OCHA-convened protection working group in the capital to the provincial level was expected to facilitate improved monitoring and reporting on the situation of the displaced and other war-affected groups. However, in the same country, an NGO had been enlisted by UNHCR to undertake monitoring and reporting on the conditions of returning refugees, but no such system existed in regard to the internally displaced. OHCHR informed the survey team that it had considered taking on this necessary task but had been unable to for lack of resources. Of great concern to the survey team and to many of those interviewed was the fact that OHCHR previously had an extensive monitoring capacity throughout the county, but that the monitoring staff had been cut drastically. At the time of the survey team’s visit there were only two international staff left in the monitoring unit of a previous staff of over twenty, and both of them had announced plans to leave but had not been told anything about replacements.

OHCHR staff in another country were also considering the creation a national network of NGOs given the level of their access compared to that of UN agencies to displaced and other vulnerable groups throughout the country. However, in another country where there existed such an NGO information network, UN agencies had yet to tap into this source in an effective manner. Staff of the NGO concerned reported that they never received any feedback from the UN on its information, while the ICRC would often seek further details on issues and cases raised in the reports.

In another country, one agency noted that it had instituted reporting by field staff on incidents “affecting our work or the people we work with”, which included the internally displaced. The documentation of human rights violations against the displaced and other beneficiaries was undertaken in order to demonstrate to headquarters the high degree of tension in the country and the subsequent need for additional funds for staff security rather than for the purpose of developing an effective protection programme. That said, the agency did raise protection issues with government officials and share information with protection-oriented members of the country team and the HC/RC. Elsewhere, one UN staff member informed the survey team that his attempts to bring protection concerns to the attention of his superiors in the capital had not been well-received. The staff member was informed that raising such issues “is not my job”. The policy paper clearly states, however, that where violations of relevant international provisions occur, field staff of UN agencies, NGOs and international organisations “should ensure that the information is communicated to officials and/or institutions that are in a position to act upon it.”

### **The Role of UN Peace Missions**

UN peacekeeping troops and ceasefire observers should play a fundamental role in reporting on human rights conditions. They were described by one peacekeeping mission official as the “basic

building blocks in our information network”, whose function in terms of reporting had evolved from reporting on ceasefire violations to the “general situation”. Interestingly, the daily report form used in the country at the time of the team’s visit covered the political and military situation as well as civil affairs and humanitarian issues. The latter requires reporting on matters related to, *inter alia*, “refugees (condition of refugees, movement, camps, numbers, etc.)” and “human rights violations (general population, child soldiers, prisoners, refugees, etc.)”. “Internally displaced persons” as a category is conspicuous by its absence, though it may be that issues regarding the displaced are addressed under different subject headings. It is at least a step in the right direction, though a recent NGO report notes that many ceasefire monitor’s reports “are coded ‘NTR’ (Nothing to Report)”. Moreover, a number of interviewees questioned the quality of the reporting on non-military issues, noting that due to the limited interaction of the ceasefire observers with the population and their tendency to rely on information provided only by the local or *de facto* authorities, their view of the situation on the ground tended to be one-sided and not always accurate.

### **Humanitarian Situation Rooms and Information Centres**

In at least two of the countries visited, certain UN agencies and NGOs were taking steps to collect information and data on specific types of abuses affecting the displaced and civilian population, notably on sexual and gender based violence. However, it was not apparent that this information was shared with other agencies, even after steps were taken to ensure confidentiality, or were fed into a central collection point. One UN official suggested that rather than establishing a formal monitoring and reporting system, it might be preferable to establish a central point into which information collected on various different issues, including protection, is conveyed and analysed. In one of the countries visited, an inter-agency “humanitarian situation room” had been established to act as a repository for information from different agencies and NGOs for analysis and compilation into a regular humanitarian situation report. This report was not intended to be protection specific, however, and discussions were ongoing as to what sort of protection information it should provide. Similar steps were also being pursued in two of the other countries visited, though the extent to which these situation rooms or information centres received information pertaining to protection issues appeared to be limited.

There is an increasing awareness within the humanitarian community of the utility of “humanitarian information centres” (HICs). The IASC-WG at its meeting in March 2003 endorsed the concept of HICs as a means of supporting the coordination of humanitarian assistance “through the provision of information products and services.”<sup>87</sup> Assuming that HICs are set to become a more common feature on the humanitarian landscape it would be important to examine in more detail the role which they might play in collecting and providing information on protection issues – or equally might not play, given the sensitive and often confidential nature of such information.

### **The Need for a More Systematic Approach**

Although the efforts described above are encouraging to varying degrees, they do underline the need for country teams to adopt a more systematic approach to monitoring and reporting. The failure of a UN country team to develop reporting mechanisms is an extremely serious omission of responsibility, and questions should be asked about why a system has not been developed. It is simply not possible to develop an effective protection programme (one that will pick up trends and enable consideration of a variety of interventions) without reliable data and informed analysis of the information that is collected.

In a given country there may exist any number of civil society actors: faith-based organisations, journalists, trade unions and professional groups such as bar, medical and teacher associations. There are field-based staff, representatives of national and international NGOs and UN agencies. National staff may come from displaced and other vulnerable communities and usually have special insight into protection problems and assist expatriates in developing valuable contacts. Staff of regional organisations may, in some cases also have an express human rights monitoring mandate. In short,

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<sup>87</sup> See the IASC-WG, 52<sup>nd</sup> Meeting, 12-13 March 2003, FAO Headquarters Rome, Summary Record and Action Points (3 April 2003), as well as the “HIC Background Note” and “Statement of Intent”. On file with the authors.

there are significant numbers of persons in the field in daily contact with displaced people and other communities who possess information on the situation, problems and needs of people at risk. The problem is that this information often does not reach those who can act upon it or forward it those who can.

Access to credible and verified information allows HCs/RCs or country teams to identify trends and patterns and provides them with solid information on which to base advocacy efforts such as those noted in the policy paper. It provides an important opportunity to engage the ERC, the HCHR and the RSG-IDPs, as well as the diplomatic and donor community. As one diplomat explained, one reason mitigating against the issuance of demarches by his government was concern that they lacked an authoritative view of the situation and because the Embassy wanted more detailed information on precise conditions to ensure the credibility of the report (though some humanitarian staff asserted that this might be a convenient excuse for remaining silent; arguing that the information was there, but the will to use it was lacking). According to one HC/RC, access to reliable and detailed information “allows us to answer [the Government’s routine riposte of] ‘what are the facts?’” or “what information are you basing your allegations on?” whenever concerns are raised. Another UN official noted that a credible system of monitoring and reporting allows the HC/RC to go to the Government and say “You have a problem. These patterns are emerging” and to request that appropriate steps are taken to respond.

Monitoring and reporting is also essential as it allows country teams to undertake a comprehensive analysis of the displacement situation, including the different needs arising from this which might require a variety of responses. For example, in one of the countries visited, some interviewees were concerned that the country team did not fully understand the dynamics of the crisis and had failed to recognise that some of the displaced fled because they were being specifically targeted and persecuted as individuals, and therefore required a different response from that needed in the case of families and communities fleeing *en masse* from the direct or indirect effects of conflict. Elsewhere, concerns were raised over the tendency for country teams to consider the displaced as a homogenous group when in fact there were particular minority groups or clans more vulnerable to abuse and exploitation – again, a situation requiring quite specific measures to address problems unique to them as a group.

As noted above, monitoring and establishing trends and patterns of abuses improves the possibility of anticipating and identifying where and when violations are likely to occur in the future. This increases the opportunities to take preventive measures, such as increasing international presence in a given area or requesting members of the diplomatic community or headquarters officials to intervene with the relevant authorities. It also allows for the pre-positioning of emergency relief items such as food, medical supplies and shelter materials in the event that preventive measures are unsuccessful.

Monitoring, reporting and importantly, documenting abuses, is also critical in terms of seeking to counter the impunity for human rights and humanitarian law violations endemic in every single country visited. The important advances in recent years towards ending impunity through international and national tribunals and truth commissions must be further supported by advances at the field level in ensuring the regular documentation of abuses with a view to possible future prosecutions, however remote the likelihood of justice for victims may seem at the time. Throughout this process, it is critical to ensure that appropriate steps are taken to protect the identity of victims and witnesses.

Of course, instrumental in the success of field-based protection is the need to complement monitoring and reporting systems with effective intervention strategies which can range from, for example, local level interventions by trained and experienced staff to a demarche by the HC/RC. If there is confidence on the part of those reporting violations or incidents that advocacy will take place in response to information passed on it will serve to ensure their continued participation, despite the dangerous undertaking which this represents for some people.

## PART THREE

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### CONCLUSIONS AND RECOMMENDATIONS

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Despite the considerable efforts of UN staff working under extremely difficult and often dangerous conditions, the UN's approach to the protection of internally displaced persons is still largely *ad hoc*, driven more by the personalities and convictions of individuals than by an institutional, system-wide agenda. The UN's approach to protection at the field level also suffers from a lack of political and financial support from UN headquarters and UN member states.

Indeed, however concerned international humanitarian and development agencies are with the protection of internally displaced persons on paper, in practice the international protection of the internally displaced is not undertaken in any sort of predictable, consistent or systematic manner. And on occasion, intentionally or otherwise, it may be overlooked altogether.

Yet a predictable, consistent and systematic approach to the protection of internally displaced persons is precisely what is required. It is an approach which, on the basis of the findings of the field missions, would be characterised by a number of key requirements:

- Assertive and effective advocacy at the field level and at headquarters.
- Implementation of HC/RC responsibilities as provided in the protection policy paper, supplementary guidance and other relevant documents.
- At the field level, predictable and effective coordination, planning and strategising on protection.
- Instituting monitoring and reporting on protection concerns as standard.
- Enhanced and meaningful international presence in the field, including outside of the capital.
- Engagement with non-state actors.
- The development of a country team early-warning and response capacity.
- Higher profile for protection in the context of needs assessments and resource mobilisation.
- Strengthening local and national protection capacity.
- Donor support for advocacy and for protection programmes.

In an effort to foster such an approach, the following recommendations are advanced for further consideration and discussion.

#### 1. Need for More Assertive and Effective Advocacy

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- At the field level, HCs/RCS and RSGs/SRSGs should adopt a more vigorous, sustained and where necessary and appropriate, a vocal approach to advocacy on protection issues.
- At headquarters, the Emergency Relief Coordinator (ERC), the High Commissioner for Human Rights (HCHR), the Representative of the Secretary-General on IDPs (RSG-IDPs), the IASC and the relevant special procedures of the UN Commission on Human Rights—should ensure consistent and sustained support for advocacy efforts undertaken at the field level by HCs/RCS and/or RSGs/SRSGs. They should in turn, be supported in such efforts by the Secretary-General.
- UN country teams (through the HC/RC or a specific agency such as UNHCR, OHCHR or OCHA) should take steps, such as convening regular donor briefings, to mobilise the donor and diplomatic community, keeping them informed of events on the ground and situations calling for support of human rights and humanitarian principles.
- Advocacy by UN actors and the diplomatic and donor community should include reminding governments of their responsibility to hold the perpetrators of violations of international criminal, human rights and humanitarian law accountable.
- Country teams, with the support of headquarters, should press for participation in ceasefire and peace negotiations to ensure that protection issues are raised, such as full and unimpeded humanitarian access; the importance of human rights monitoring and reporting during

transition periods; and the humanitarian consequences of any continuation of small arms and other weapons transfers.

## **2. Ensuring Implementation of the HC/RC Responsibilities**

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- There is an urgent need for the ERC/IASC-WG/Internal Displacement Unit to raise awareness among HCs/RCs (current and future) of their responsibilities regarding the protection of internally displaced persons, as detailed in the protection policy paper, the supplementary guidance and other relevant documents.
- The Internal Displacement Unit should be instructed by the ERC/IASC-WG to develop a system to ensure the accountability of HCs/RCs and country teams for the consistent implementation of appropriate protection activities.
- Monthly reports from HCs/RCs to the ERC should routinely include sufficient information on protection concerns and country team responses thereto.
- The above reporting obligation should be extended to RCs in displacement-affected states.
- The Administrative Committee on Coordination should consider revising its “Guidelines on the Functioning of the Resident Coordinator System” to reflect more fully the responsibilities of RCs in relation to internally displaced persons, as provided for in the IASC policy paper and supplementary guidance.

## **3. Coordination, Planning and Strategising on Protection**

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- HCs/RCs and country teams must recognise protection as a distinct but integral component of the UN response (humanitarian, human rights and development) and undertake appropriate coordination, planning and strategising, including the development of an integrated country protection strategy to be included in the CAP and supported by headquarters.
- In all displacement situations, the HC/RC should designate a country team focal point on protection to facilitate coordination in this sector. This should include the establishment of a protection working group or similar coordination and strategy-development forum that brings together all relevant actors (UN and non-UN) and provides appropriate channels for consultation with displaced and at risk-communities.
- The IASC/IASC-WG should develop clear and express guidance for HCs/RCs and country teams regarding default options for coordination and monitoring on protection. The ultimate aim should be to ensure that in all country situations an agency of the UN (preferably one with a protection mandate) is tasked with developing a coordinated and inclusive approach to protection, including effective monitoring. The agency concerned must be provided by its respective headquarters with the necessary financial and human resources to fulfil this task, including through the secondment of protection experts from other agencies or *via* recruitment by the Internal Displacement Unit.
- Consideration should be given by the IASC-WG to producing a revised/expanded version of the protection policy paper, taking into account the protection role which could and should be played by other UN actors, such as military and civilian staff of UN peace missions, the special procedures of the Commission on Human Rights and the UN human rights treaty bodies.

## **4. Monitoring and Reporting as Standard**

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- The establishment of UN mechanisms for the effective monitoring and reporting of protection issues concerning the internally displaced and communities at risk should be standard practice for country teams.
- Particular attention should be paid to collecting information on marginalized or otherwise vulnerable groups and individuals among the displaced population, such as women, children, the disabled, older people, community leaders, human rights defenders, vulnerable recruitment-age males and females and others, based on careful analysis of collected information.

## **5. Enhanced and Meaningful International Presence**

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- Country teams and other UN, international and regional actors should seek to enhance their presence including, security conditions permitting, a more regular presence of UN and NGO staff out in the field as opposed to the capital. This would help facilitate monitoring and reporting as well as provide a measure of security for displaced and other vulnerable groups.
- UNHCR and OHCHR should be strongly encouraged to consider increased deployment of protection and human rights officers on the ground – including secondment to other agencies such as OCHA or UN peace missions – and in numbers proportional to the gravity of the situation. In order to enable these agencies to strengthen presence, however, they must be adequately resourced. The ERC and the IASC-WG should examine ways to advocate for increased support for protection personnel with donors.
- All UN and NGO field staff, including military and civilian personnel of UN and multilateral or regional peacekeeping missions, should receive training on international human rights and humanitarian law standards, including the Guiding Principles on Internal Displacement. They should be well-informed about in-country monitoring and reporting systems and the steps they must take should they witness human rights/humanitarian law violations or receive information about violations. Training must also encourage field staff to consider protection issues when conducting assessments and planning and evaluating programmes.
- Headquarters officials and entities such as the IASC and the Security Council, as well as the donor and diplomatic community, should respond in a prompt and assertive manner to threats/attacks against UN and other humanitarian staff, stressing that any such threats/attacks are unacceptable and that steps should be taken by relevant actors to hold perpetrators accountable.

## **6. Engaging Non-State Actors**

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- UN country teams, under the leadership and coordination of the HC/RC, should as a rule be permitted by UN headquarters to engage non-state actors to negotiate humanitarian access, to promote and disseminate humanitarian and human rights principles and to encourage improved conditions for the displaced in areas controlled by those actors.
- Headquarters should support and facilitate the efforts of country teams to engage non-state actors when doing so might promote better conditions for the internally displaced.

## **7. Developing an Early-Warning and Response Capacity**

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- Country teams need to take a more proactive approach to early-warning and response, a process which would be greatly facilitated by the development of systems for monitoring and reporting on the situation of the displaced and other groups at risk.
- More effective use should be made of early warning information provided by national NGO and civil society networks and, where relevant, national human rights institutions which should in turn be encouraged by country teams to share information with the UN.
- Country teams should develop a response capacity which allows for the rapid deployment of staff, security conditions permitting, to relevant areas in an effort to discourage forced displacement and other violations and to provide an initial response to the needs of the population in the event that the deterrent fails. Agencies in the capital should agree to designate specific staff members to be “on call” to undertake missions as and when required, taking into account security conditions.
- HCs/RCs and officials at headquarters, including the ERC, HCHR, RSG-IDPs and relevant country special rapporteurs of the Commission on Human Rights, as well as members of the diplomatic and donor community, should intervene with the relevant authorities with a view toward preventing impending displacement and/or other protection problems.
- The IASC-WG should periodically review situations identified as possibly leading to internal displacement in order to contribute to appropriate contingency planning.

## **8. Raising the Profile of Protection in Needs Assessments and Resource Mobilisation**

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- Needs and vulnerability assessments should routinely focus on protection issues. Country teams should also consider fielding separate or complementary protection assessment missions.
- Country teams should ensure that the protection and assistance needs of internally displaced persons are adequately reflected in the Consolidated Appeals Process (CAP) as well as Common Country Assessments (CCAs), UN Development Assistance Frameworks (UNDAFs) and Poverty Reduction Strategy Papers (PRSPs).
- Country teams should ensure that protection-related projects and programmes are sufficiently prominent in the resource mobilisation process.
- Internal Displacement Unit should regularly review such documents to ensure that the protection and assistance needs of internally displaced persons are adequately reflected.

## **9. Strengthening Local and National Protection Capacity**

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- Country teams should promote and support the development and work of national human rights institutions and other national human rights actors (both governmental and non-governmental) through logistical and capacity-building support. They should also advocate for and when possible take steps to ensure the physical security of human rights defenders, including the leaders of displaced communities.
- Country teams should explore the possibilities for the development of national policy and legal frameworks for the protection and assistance of the displaced, based on the Guiding Principles.
- Country teams, with the necessary support from headquarters and donors, should pay increased attention to the development of and support for domestic rule of law and judicial mechanisms during the emergency phase of an operation, as well as during later phases.

## **10. Donor Support**

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- The donor and diplomatic community should adopt a more consistent and proactive approach to supporting the UN's efforts to advocate for the rights of the internally displaced and other populations at risk.
- Donors are strongly encouraged, in cooperation with UN country teams, to raise their profile "in-country" and to undertake field missions on a more regular basis, in particular to those areas where protection problems are anticipated or ongoing, security permitting.
- Donors should demonstrate greater commitment to funding protection activities in the field.