

UNHCR's role in IDP protection: opportunities and challenges

by Erika Feller

Roberta Cohen has encouraged, cajoled and even shamed the UN into assuming a more effective role to protect IDPs. Throughout two decades of tireless advocacy she has consistently argued that UNHCR should be more engaged in IDP protection. Her hopes are now being realised.

During the past year UNHCR has made a clear commitment to be a more predictable partner among humanitarian actors in its response to the protection, assistance and solutions needs of IDPs. UNHCR's policy concerning engagement with IDPs has evolved from being one of "no, unless certain conditions are met" to "yes, unless specific conditions arise."

UNHCR's evolving mandate

UNHCR's involvement in IDP operations is not new, and dates back to engagement in Sudan in 1972. Over the years, UNHCR has extended its services to IDPs and today we are engaged in no fewer than 22 IDP operations, seven of which have adopted the recently-introduced 'cluster approach'.¹

UNHCR's core mandate set out in its Statute² is to provide, on a non-political and humanitarian basis, international protection to refugees and seek permanent solutions for them. While the Statute makes no reference to IDPs, it recognises in Article 9 that the High Commissioner may also "engage in such activities ... as the General Assembly may

determine, within the limits of the resources placed at his disposal." Based on this Article, a series of UN General Assembly Resolutions have acknowledged UNHCR's particular humanitarian expertise and encouraged its involvement in situations of internal displacement.

The principal criteria governing the organisation's involvement with IDPs are set out in Resolution 53/125 of December 1998, in which the General Assembly "reaffirms its support for the role of the Office of the High Commissioner in providing humanitarian assistance and protection to internally displaced persons, on the basis of specific requests from the Secretary-General or the competent organs of the United Nations and with the consent of the State concerned, taking into account the complementarities of the mandates and expertise of other relevant organisations, and emphasises that activities on behalf of internally displaced persons must not undermine the institution of asylum."

The notion of 'protection' has been defined by the Inter-Agency Standing Committee (IASC) as a function that encompasses all activities aimed at obtaining full respect for the rights of

the individual, in accordance with the letter and the spirit of relevant bodies of law, including human rights, humanitarian and refugee law, and without discrimination of any kind.

Adding to this definition, UNHCR has stated that "protection is a responsibility entailing the restoration of the most basic rights to the people, not least the right to life, to not suffer torture or discrimination, to respect for one's dignity and the preservation of one's family. Protection is also about creating an enabling environment so that these and other rights have a reasonable chance of being enjoyed, pending a durable solution to the problems at issue."

Who protects IDPs?

The Guiding Principles on Internal Displacement, to which Roberta Cohen has made such an important contribution, state that "national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction." Even so, there has in recent years been a growing recognition of the international community's collective and complementary protection responsibility in situations where states are unable or unwilling to safeguard the rights of their citizens.

The role of UNHCR and other humanitarian actors in situations of

internal displacement almost always demands a delicate balancing act, encouraging and assisting states to assume responsibility for the protection of their citizens while at the same time holding them to account and substituting for them when they fail to fulfill their obligations. The 'cluster approach' now being introduced in situations of internal displacement and the 'collaborative approach' that preceded it have both been formulated as a means of operationalising the notion of a 'responsibility to protect'.

While such approaches should enable UNHCR and its partners to generate new synergies and complementarities, they also raise important challenges of inter-agency cooperation and coordination. In refugee situations, UNHCR's Statute enables the organisation to assume a leading role and to coordinate the activities of other actors. In situations of internal displacement, however, the development of a protection strategy requires consensus among a number of protection actors, whose mandates, understanding of protection and working methods may be somewhat different. In such circumstances, there is a need to ensure that the distribution of protection responsibilities does not lead to contradictory approaches or weaken accountability.

The exact scope of UNHCR's evolving role is also a subject of continuing discussion. UNHCR has made a commitment to act as a 'cluster lead' in the three areas of protection, camp management and coordination and emergency shelter. This is not only in relation to conflict-generated IDPs but also when the need arises vis-à-vis other affected populations, including people living in IDP-populated areas and areas of IDP return. Some organisations do not consider the scope of UNHCR engagement to be inclusive enough, and have argued that in countries such as the Democratic Republic of Congo or Somalia the international community's protection response should address the human rights of the civilian population as a whole. UNHCR, however, has maintained that the aim of the humanitarian reform process is to fill gaps in existing responses, that broader human

rights issues are the responsibility of the UN High Commissioner for Human Rights and that civilian victims of violence fall within the competence of the International Committee of the Red Cross.

IDP and refugee protection

There has been a longstanding discussion of the relationship between refugee and IDP protection. In legal terms, much of that discussion has focused on the fact that refugees are to be found outside their country of origin and have a distinct, internationally recognised status while IDPs remain within their own state and are entitled to enjoy the same rights as other citizens. In practical terms, refugees and IDPs are confronted by many of the same threats and problems: lack of adequate shelter, food, water, sanitation and health care; risk of sexual and gender-based violence; vulnerability to human smuggling and trafficking; and inadequate access to justice.

In other respects, however, there is evidence to suggest that certain human rights violations are particularly widespread in the context of internal displacement. These include forced movement, including forced relocation and return; restrictions on freedom of movement; violations of land, housing and property rights; and forcible recruitment to the armed forces and militia groups. Such risks are especially evident in situations of ethnic cleansing in which the members of certain communities are deliberately expelled in order to further the political, military and territorial objectives of the governmental or non-state actors responsible for their displacement.

The operational contexts of IDP and refugee protection are not identical. IDPs are frequently to be found in close proximity to areas of armed conflict and ongoing violence. Combatants and political actors are often hostile to the presence of humanitarian personnel. IDPs themselves may be widely dispersed or in hiding, and may be reluctant to identify themselves because of a fear that they will be the target of further human rights violations.

Approaches to protection

IASC and UNHCR definitions of protection have a number of important characteristics which underpin UNHCR's efforts to plan, design and deliver protection for IDPs. They emphasise the inter-relatedness of the three bodies of law (human rights, humanitarian and refugee law) which must be applied in a complementary manner to ensure the greatest benefit possible for IDPs and affected populations. They both highlight the importance of non-discrimination and equality, including the need for the effective mainstreaming of gender, age and diversity considerations in all protection activities. The notion of IDP protection employed by UNHCR recognises the interdependence of law and practice. National legislation which recognises and respects the rights of IDPs and other citizens is of limited value unless those people are able to enjoy and exercise those rights in a practical manner. At the same time, UNHCR considers that the rights and entitlements enjoyed by citizens must be effectively institutionalised in a country's legal and judicial system, rather than being granted at the whim of the state and its local representatives.

IDP protection and asylum

A protection principle espoused by UNHCR is that the organisation's involvement in situations of internal displacement must not undermine the institution of asylum or compromise the right of refugees to seek and enjoy asylum in another state. UNHCR is concerned that our leadership of, or participation in, a collaborative or cluster-based response may have negative outcomes where:

- involvement might constitute or contribute to a strategy that is intended to contain displaced persons within the borders of their own country
- there is a risk that countries of asylum may renounce their protection obligations toward refugees and asylum seekers, on the basis that the UN response in the country of origin provides them with an 'internal flight alternative'

- UNHCR's impartiality would be negatively impacted, to the extent that humanitarian access to refugee populations would be jeopardised
- UNHCR's involvement with IDPs and affected populations would compromise its relationships with host governments or parties to a conflict to such an extent it would affect our activities for refugees
- an involvement with IDPs within a collaborative inter-agency framework could lead to a conclusion or an interpretation by countries of asylum concerning the applicability of Article 1D of the 1951 Refugee Convention, which states that the Convention shall not apply to persons who are receiving protection or assistance from UN agencies other than UNHCR.

In order to ensure that UNHCR's involvement with IDPs does not compromise the institution of asylum, a careful inquiry and decision-making process will be required. It is possible that an initial and positive determination with regard to UNHCR's involvement

might be obviated by a change of circumstances, requiring the organisation to withdraw from an IDP operation. Anticipating the possibility of such a scenario, the IASC has endorsed a mechanism within the cluster leadership approach to ensure the timely identification of another agency to assume a protection leadership role.

The establishment of this mechanism does, however, leave at least two important questions unanswered. If UNHCR decides not to get involved in or to withdraw from an IDP situation, is there a risk that the involvement of another UN agency may undermine the institution of asylum? And to what extent will UNHCR be able to withdraw from an IDP operation it has established without endangering its protection role in relation to refugees living in the same country?

Conclusion

With the introduction of the cluster approach, UNHCR, the UN system and the broader

humanitarian community have made a commitment to improve the predictability and effectiveness of their response to the needs of internally displaced populations and affected communities. That objective has not yet been attained. There continue to be important gaps – financial, institutional, operational and political – in the international community's response to the issue of internal displacement. In seeking to fill those gaps UNHCR believes that primary emphasis must be placed on the practical task of providing better protection to IDPs. Improved needs assessment, coordination, monitoring and reporting mechanisms are certainly needed. However, they should not become a substitute for practical protection interventions that safeguard the rights, security and welfare of the internally displaced.

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1. See previous article by Dennis McNamara and also T Morris 'UNHCR, IDPs and clusters', FMR25 www.fmreview.org/FMRpdfs/FMR25/FMR2531.pdf
2. www1.umn.edu/humanrts/instree/v3sunhcr.htm

Lologo transit camp for IDPs, south Sudan, September 2006.

