



Human rights engagement to strengthen protection through law and policy

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Introduction

This paper was developed by the Global Protection Cluster's Task Teams on Human Rights Engagement (TT-HRE) and on Law and Policy (TTLP) with the aim to explore how human rights engagement by protection clusters and their members can be used to increase the access of people affected by crises to their rights through the development and implementation of laws and policies in line with international standards.

The first section explains why it is important for protection clusters to increase their human rights engagement, particularly with the aim of promoting changes in law and policies which lead to strengthening protection for the people affected by humanitarian and displacement crises. The second section explores how this can be done, while the third and fourth sections offer concrete examples of how two specific forms of human rights engagement in particular - the Universal Periodic Review and Special Procedures Mandate Holders, in particular the Special Rapporteur on the human rights of IDPs - have been used to promote law and policy change for strengthened protection outcomes.

1 - WHY human rights engagement on law and policy to strengthen protection?

Human rights are commonly understood as the inalienable rights to which a person is entitled merely for being human. They are built on underlying principles of universality, equality and non-discrimination, and are enshrined in treaties, rules of customary international law, national laws and other standards that define them and help to guarantee their full enjoyment. **Human rights apply to all individuals**, including in times of crises and displacement.

Treaties and rules on customary international law form the backbone of international human rights law, with other instruments, such as declarations, guidelines and principles contributing to its understanding, implementation and development. Under international human rights law, States assume the primary obligation to **respect**, to **protect** and to **fulfil** the human rights of persons within their territory or under their jurisdiction. These international standards are complemented by regional and national human rights frameworks.

It is essential for protection actors to invest in environment-building action, aimed at creating and/or consolidating an environment – political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of women, men, boys and girls, without any kind of discrimination. Promoting the implementation at the national level of relevant international law, including by supporting the ratification of relevant treaties and the establishment of adequate legal, policy and institutional frameworks, is therefore paramount. The recognition of the fact that law- and policy-making processes may take years, while humanitarian actors are often constrained by achieving

targets in shorter timeframes, does not diminish the importance of law and policy engagement for protection actors; it rather highlights the need to build alliances and strengthen cooperation with development and human rights actors, particularly local actors including local civil society organisations and affected populations, to achieve the legislative changes that the protection actors believe should be prioritised in a given context according to their analysis.

While not being the only issue of relevance, in many humanitarian settings, when displacement happens and a State does not have in place an adequate legal and policy framework to deal with the issue, the issue quickly becomes very apparent. For example, countries tend to lack a government focal point responsible for the protection and assistance to IDPs with clear responsibilities that can be the main counterpart for humanitarian actors. The experience of displacement enhances the need for protection under international, regional and national human rights frameworks. The core international human rights treaties set out a broad range of human rights obligations and establish a variety of supervisory mechanisms that foster the creation of an accountability and implementation space that involves multiple stakeholders, including States, civil society organizations, national human rights institutions, development actors, academia, internally displaced persons and protection clusters. Respect for human rights – or the failure to respect those rights – are critical at every stage of the displacement cycle:

- violations of human rights are a root cause of flight in the first instance;
- the human rights of tens of millions of people in protracted displacement in their own countries are also threatened.

The Guiding Principles on Internal Displacement are the key international framework of reference for the protection of internally displaced persons (IDPs), outlining a set of applicable standards that are grounded in hard (international human rights and humanitarian) law. Ever since their creation in 1998, they have been essential in promoting human rights standards for IDPs in countries across the globe. In addition to restating a number of key human rights standards identified in international human rights treaties and the Universal Declaration of Human Rights, the Guiding Principles call for the following actions on human rights:

- All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.
- International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In doing so, these organizations and actors should respect relevant international standards and codes of conduct.

An important **way in which the Guiding Principles were promoted and used in many countries has been through their incorporation into domestic legislation**, mostly through the amendment of existing laws and policies¹ and/or through the development of new laws and policies specifically dedicated to the protection and assistance of IDPs.² This is an often necessary exercise of State sovereignty because although IDPs remain citizens or habitual residents of the country in which they are displaced, and are therefore protected by the constitution and relevant national legislation, this rarely reflect the specific needs of the displaced, however, and may even have detrimental effects

¹ Laws and policies that are not IDP-specific but are nevertheless relevant to displacement, such as those related to disasters and climate change, land, documentation or voting rights.

² For further information, please refer to the [database](#) on law and policies on internal displacement of the GPC Task Team on Law and Policy.

because it is not tailored to the particularities and challenges of internal displacement nor is it drafted with times of humanitarian crisis in mind. National legislation on documentation may, for example, require people to apply for their identity documents in their places of origin. Given the fact that returning to their homes or places of habitual residence to do so may put IDPs' safety at stake, such a requirement could prove an insurmountable obstacle.³

The incorporation of the Guiding Principles and other relevant international and regional standards for the protection of IDPs has been recommended by several UN and regional bodies, including the Organisation of American States (OAS) and the Council of Europe (CoE), which have urged their member states to develop national frameworks on internal displacement. In Africa, the [2006 Great Lakes Protocol](#) and the [2009 Kampala Convention](#) make it mandatory for member states that ratified those instruments to develop national legal and policy frameworks for the protection and assistance of IDPs.

The GPC Task Team on Law and Policy has invested significantly over the years in supporting Governments and their partners in developing and implementing relevant frameworks on internal displacement through capacity-building and capacity-sharing, advocacy, technical advice, tool development and research. Through a strong collaboration with the GPC Task Team on Human Rights Engagement, we/the GPC aims to help protection colleagues in the field to achieve the legislative and policy change they would like to see in their operations through more strategic human rights engagement.

2 - HOW can human rights engagement support law and policy change to strengthen protection?

Engagement with UN, regional and national human rights systems has helped to ensure that protection, including the protection of IDPs, has been integrated into human rights discourse, with recommendations from human rights mechanisms providing a rich source of material for use by protection clusters in carrying out protection advocacy, **including in relation to law and policy change**. Many field colleagues have found practical and innovative ways of engaging human rights mechanisms to address various protection challenges with a positive impact on the protection of the rights of IDPs. In a variety of contexts, this has meant addressing legal and policy obstacles faced by people in accessing their rights.

Human rights mechanisms can thus be used to reinforce and complement protection and advocacy work of protection clusters with respect to a significant number of issues of concern. They can be engaged to help protection clusters achieve immediate, mid-, or long-term protection objectives. **Objectives relating to law and policy change tend to be mid- or long-term**, as such processes usually take some time, **but they are an essential component of environment-building protection action** in which protection actors must invest,⁴ aimed at creating and/or consolidating an environment – political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of women, men, boys and girls, without any kind of discrimination.

Promoting the implementation at the national level of relevant international law, including by supporting the ratification of relevant treaties and the establishment of adequate legal, policy and institutional frameworks, is paramount and protection clusters have an important role to play in

³ [Brookings – LSE, IDMC, NRC: National Instruments on Internal Displacement: a Guide to their Development, 2013](#), p. 9 and 11.

⁴ In addition to responsive and remedial action, as defined in the “protection egg model”. These three groups – or types of activity – constitute a “protection framework” which may be imagined in the form of an egg and which is meant to convey the non-hierarchical and interdependent nature of the activities as well as the possibility of carrying them out simultaneously.

advocating for and supporting States in the development and implementation of their laws and policies for protection outcomes.⁵ Human rights engagement provides excellent avenues to do that. The Guiding Principles are a prime example of how soft law can lead to concrete protection systems. An evident example is that of the Human Rights Council and other UN treaty bodies, as well as regional human rights systems, using these Guiding Principles to determine and interpret state obligations in regards to IDPs.

Ensuring that human rights mechanisms are fully considered in protection planning allows clusters to think creatively about how the mechanisms might be useful (either in terms of their processes and/or their outcomes/recommendations) in developing new advocacy activities or moving forward on existing ones. It also enables clusters to ensure that key protection staff are available in the run-up to, during engagement, and for necessary follow-up advocacy activities.

Effective engagement with human rights mechanisms generally involves:

- 1) Human rights related analysis as part of protection analysis;
- 2) Identifying protection challenges which can be addressed under national law and international human rights law;
- 3) Identifying available human rights mechanisms and means of engagement;
- 4) Deciding on an approach and identifying key partners and tools for engagement;
- 5) Engaging with the mechanism(s);
- 6) Undertaking activities to promote implementation of the outcomes of the mechanism(s); and
- 7) Monitoring and reporting on human rights engagement and the impact.

Those steps are to be contextualized based on protection needs and situations. They should, however, be considered for all areas of human rights focus, including law and policy. For example, when it comes to human rights analysis, it can be very relevant for protection actors to have an understanding of the extent to which national legislation aligns with international human rights standards in key areas, or whether there are clear gaps or impediments, in law or practice, to people's ability to access their rights. The Task Team on Law and Policy particularly recommends the use of legal reviews of national legislation relating to the protection of IDPs through the use of a well-established methodology that it can share.

The main human rights mechanism established under the *UN Charter* is the **UN Human Rights Council** (HRC). The HRC is an intergovernmental body monitoring and assessing respect for human rights worldwide. The HRC mainly exercises its monitoring function through the **Universal Periodic Review** (UPR). The UPR reviews all 193 UN Member States' human rights records. Each State is reviewed every 4.5 years in a public process.

The HRC also establishes UN **Special Procedures** that include 44 [thematic](#) and 11 [country](#) mandates who monitor human rights compliance along thematic or country-specific lines. In addition to undertaking country visits, they are able to receive individual complaints of human rights violations and make urgent appeals to States to prevent such violations or to seek redress if they have already occurred.

In addition to the HRC and its mechanisms, ten [UN Treaty Monitoring Bodies](#) (committees of elected independent experts) oversee the implementation of the ten UN human rights treaties. The committees review State Parties, on a periodic basis, on the implementation of their treaty obligations. Several committees may also receive individual complaints, request interim measures, and issue decisions regarding rights violations.

⁵ A number of useful tools and resources on this are available on the webpage of the GPC TTLP: <https://www.globalprotectioncluster.org/2020/12/30/guidance-documents-and-tools/>.

In the following section, we will focus on how two specific forms of human rights engagement - the Universal Periodic Review (UPR) and Special Procedures, in particular the Special Rapporteur on the human rights of IDPs - have been used to promote law and policy change for strengthened protection outcomes, particularly with regards to the protection of IDPs.

3 - Using effective human rights engagement for law and policy change: some examples

IN FOCUS: Universal Periodic Review

According to an analysis carried out by UNHCR of the second and third UPR cycles, 127 recommendations were made on matters relating to internal displacement. 75% of the recommendations explicitly refer to internally displaced persons as “IDPs” or “displaced persons”, whereas the others refer to different but related terms such as “victims of disasters”, “persons in internally displaced camps” or refer to international frameworks on internal displacement.

Of the 127 recommendations, 90% were supported by the states under review, demonstrating their willingness to engage on the subject. The rest of the recommendations were ‘noted’. Overall, 47% of the recommendations put forward by States in relation to internal displacement concern law and policy. These tend to recommend the development of policies and strategies in line with international and regional standards, as well as the enforcement of measures to implement national frameworks and strengthen the protection of the rights of internally displaced persons and returnees. The African Union Convention for the Protection and Assistance of IDPs in Africa (“Kampala Convention”) is explicitly mentioned in 17 recommendations, mostly by States recommending its ratification (and its domestication in 3 cases). The Guiding Principles on Internal Displacement are mentioned 4 times, as key standard of reference for the development of national laws in non-African countries.

This analysis highlights first and foremost that while it is evident that IDPs issues are indeed being discussed in the UPR mechanism, this does not happen to the extent that they deserve. In order for the UPR to be more effective in bringing about changes on IDPs issues, such issues should be more frequently raised in the consultation and recommendation processes. However, the emphasis that recommending States give to the issue of law and policy when addressing internal displacement should be noted, and continued to be promoted.

Last but not least: it is clear that one of the weakest aspect of the UPR mechanism is the monitoring of the implementation of the recommendations. For this reason, it is crucial that States, whether those who give recommendations or those who receive, should follow up on the implementation of these recommendations, so as to help the UPR function better.

IN FOCUS: Special Rapporteur on the human rights of IDPs

The Special Rapporteur on the human rights of IDPs’ support for the establishment of a legal framework on internal displacement: the case of Honduras

In 2013, the State of Honduras officially recognized forced displacement as a matter of concern that requires urgent action. Upon the recognition, the Government created the Interinstitutional Commission for the Protection of People Displaced by Violence (CIPPDV) as the institutional focal point in charge of designing and promoting the adoption of policies and response measures on prevention, protection and durable solutions for internally displaced persons (IDPs).

In 2015, the Special Rapporteur on the human rights of IDPs, Chaloka Beyani, visited Honduras on an official mission. His mission [report](#) highlighted the impact of violence and internal displacement on the most affected groups of population and communities and put forward recommendations for the government and other stakeholders as relevant, one of which was the adoption of a legal framework

on internal displacement. In response to this recommendation, the CIPPDV began the formulation of a draft bill.

The Human Rights Secretariat led the process by carrying out a comparative analysis of internal displacement frameworks in the region and reviewing the relevant international human rights and humanitarian law instruments, protection tools such as the Handbook for the Protection of Internally Displaced Persons⁶, as well as the Special Rapporteur's report. From 2016 to 2018, consultations were carried out with public institutions at the central and local levels to identify institutional capacities and gaps; and with internally displaced persons to identify protection needs, experiences and intentions during and after displacement. Dr. Beyani carried out a working visit to Honduras in 2016, during which he met with various government counterparts to follow up on his recommendations, including the parliamentary committee drafting the law. In 2017 the new mandate-holder, Cecilia Jimenez-Damary, also visited Honduras in the context of a high-level event linked to the regional process contributing to the Global Compact on Refugees ("MIRPS", for its acronym in Spanish) and continued to advocate for progress on the legislative front. She also supported these efforts through capacity-building of key government representatives, who participated in the 2017 Sanremo Course on Internal Displacement co-organized by the Special Rapporteur with the Sanremo Institute for Humanitarian Law and UNHCR.

All along the law-making process, UNHCR provided technical support in the design and implementation of consultation methodologies, working sessions with the Human Rights Secretariat to outline the bill's structure and review the drafting process, and engaging with other relevant actors such as the Interamerican Commission on Human Rights, the International Committee of the Red Cross and the Norwegian Refugee Council to join the consultations, as well as the advocacy efforts.

Later on, the CIPPDV carried out analysis sessions in order to incorporate the information collected during its consultations on the draft bill, particularly aiming at fine tuning its contents to reflect an age, gender and diversity approach, as well as adjusting coordination mechanisms between central and local level institutions. By 2019, the draft bill for the prevention, assistance and protection of internally displaced persons was completed, and the Human Rights Secretariat handed it to the National Congress' Human Rights Commission as the first step to reach its final adoption.

However, there has been a lack of political drive from the executive and legislative institutions to guarantee that the draft bill is advancing promptly and following the due legislative course. Without a strong institutional leadership, the process was stalled, until October 2020 when the draft bill was finally introduced to the legislative agenda, thanks to the advocacy carried out by the community-based organization, Youth Against Violence (*Jóvenes Contra la Violencia*). Currently, the draft bill is still pending discussion, and the CIPPDV is preparing advocacy actions to call congressmen and congresswomen to action. In order to support these efforts, the Special Rapporteur published a joint [press release](#) with the Inter-American Commission on Human Rights. In 2020, key national and local government representatives from Honduras, were also invited to participate (along with their counterparts from Mexico, El Salvador and Guatemala) in the first Sanremo Course on Internal Displacement held in Spanish. The Special Rapporteur continues to closely follow developments in the adoption of the law in Honduras as a matter of priority.

The Special Rapporteur's recommendations included in the 2015 mission report were highly useful to outline the competence framework, contributing to the establishment of legal dispositions on the draft bill such as the creation of a national response system integrated by a deliberative body such as the CIPPDV, as well as implementing bodies such as a Directorate for the Protection of Internally Displaced Persons within the Human Rights Secretariat, as well as Municipal Protection Units. During the later stages of the process, the recommendations provided guidelines for the inclusion of

⁶ Published by the Global Protection Cluster, June 2010.

prevention mechanisms such as a national prevention plan and early warning systems, which did not initially come up during the consultations with institutions.

This experience evidences that the Special Rapporteur's report is a very useful tool that highlights important elements that national responses should consider when drafting public policies, especially in contexts of generalized violence such as Honduras, where the responses to internal displacement must also take into account root causes that need structural reforms. It also highlights the need for sustained advocacy for creating and maintaining political momentum throughout the law-making process, where the Special Rapporteur plays a key role in setting engagement opportunities such as the Sanremo course on internal displacement to promote capacity-building, and encourage government officials to champion the efforts at the national level.