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**UNHCR's role in support of an enhanced
humanitarian response for the protection of
persons affected by natural disasters**

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I. Introduction

1. Since 2005, UNHCR has served as inter-agency cluster lead for protection at the global level, as well as at the country level for situations of conflict-induced displacement.¹ The original inter-agency arrangements provide that in the case of natural disasters, where the cluster system is activated and a protection cluster established, the designation of the protection cluster lead agency remains a matter of consultation and agreement among the three protection-mandated agencies.²

2. There has been general recognition by Governments, the Inter-Agency Standing Committee (IASC), non-governmental organizations and protection-mandated agencies, that the “consultative process” for the designation of protection cluster lead for natural disasters has not served the intended purpose of predictability in humanitarian response to such situations.

3. Nor, more importantly, has the delay this designation process entails served the interests of persons affected by a natural disaster. For example, delays in designating a protection-cluster lead may affect the extent to which protection concerns are reflected in needs assessments, flash appeals and planning of the overall humanitarian response, resulting in the denial of protection and assistance to those most in need. Failure to address livelihood issues, particularly for female and child-headed households, can lead to an increase in school drop-outs, child labour and sexual exploitation and abuse. Failure to address issues of lost documentation and the destruction or absence of land registries can trigger premature and unsafe return, land disputes and prolonged displacement.

4. Following intensive consultations among the protection-mandated agencies and with the Emergency Relief Coordinator (ERC), earlier this year the IASC proposed to pilot a new arrangement in which UNHCR would assume a more predictable protection cluster leadership role in natural disaster situations.³ Against this backdrop, this conference room paper reviews UNHCR’s experience to date in supporting the protection response in natural disaster situations by:

- addressing the basis for the Office’s intervention, as well as the nature of the protection provided to populations affected by natural disasters, compared with refugee operations;
- identifying key responsibilities and activities arising from the distinct roles of cluster lead agency and of operational partner in protection in natural disasters;

¹ See Inter-Agency Standing Committee *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response*, November 2006; Inter-Agency Standing Committee (Principals Meeting) *Cluster Working Group on Protection Progress Report*, December 2005. See also Executive Committee Conclusion No. 102 (LVI), 2005. For Standing Committee documentation issued during the same time period, see *UNHCR’s Expanded Role in Support of the Inter-Agency Response to Internal Displacement Situations* (EC/57/SC/CRP.18), June 2006; *Update on Coordination Issues*, (EC/55/SC/INF.2), September 2005.

² *Ibid.* While UNHCR also co-leads the Emergency Shelter and Camp Coordination and Camp Management Clusters at the global level, the other co-leads (IFRC and IOM) serve as lead agency for these clusters in natural disasters at the country level, whereas UNHCR does so in the case of conflict-induced displacement.

³ For additional background, see *Questions and answers on UNHCR’s Protection Cluster coordination role in natural disasters* (EC/62/SC/INF./1), February 2011. See also B. Deschamps and M. Azorbo, *Earth, Wind and Fire, A review of UNHCR’s role in recent natural disaster*, (PDES/2010/06), June 2010.

- exploring the most common and recurrent protection issues arising in natural disasters; and
- providing a policy framework outlining UNHCR's engagement in natural disasters. This framework consists of nine core considerations which have guided the organization's engagement to date and which would continue to do so under the pilot arrangement.

II. Legal basis and the nature of UNHCR's involvement

5. While the content of some activities may be similar, and thus the operational expertise largely transferable, there is a fundamental difference in the nature of UNHCR's protection activities on behalf of internally displaced persons (IDPs) and those on behalf of refugees. This stems from the international legal regimes applicable to both groups, as well as the principle of State sovereignty. The Office has a distinct, mandated responsibility for refugees, conferred with statutory authority by the General Assembly.⁴ Apart from its Statute, UNHCR's refugee mandate also stems from public international law, and in particular international treaty law. The obligation of States to cooperate with UNHCR is, for instance, explicitly mentioned in international and regional legal instruments for the protection of refugees, notably the 1951 Convention and 1967 Protocol relating to the Status of Refugees.⁵

6. By contrast, UNHCR does not have a general or exclusive mandate for IDPs. The organization's involvement with regard to IDPs, including those affected by natural disasters, has evolved from the residual powers vested in it by paragraphs 3 and 9 of its Statute, authorizing the Office to engage in "such additional activities . . . as the General Assembly may determine...." Subsequent resolutions of the General Assembly have endorsed additional activities and functions, particularly the first "Omnibus" resolution acknowledging UNHCR's activities in favour of IDPs in 1992.⁶ In 1993, the General Assembly clarified UNHCR's role, setting out the formal criteria for the Office's involvement, including the consent of the State concerned and the "complementarities of the mandates and the expertise of other relevant organizations."⁷

7. The principles of State sovereignty and the primary responsibility of the State for persons present on its territory have significant operational implications in the internal displacement context, particularly in natural disasters. The State retains the primary role in the initiation and organization of a humanitarian response. Thus the activities of UNHCR will always be in support of the State, complementing rather than supplanting State responsibility.

8. Moreover, because UNHCR's engagement with regard to IDPs and others affected by natural disasters is not statutory, its involvement and response are not exclusive, but must be considered within a coordinated, inter-agency system respecting and drawing upon the mutual commitments of other humanitarian actors, including national and local non-

⁴ GA Res. 428(V) (1950) Annex.

⁵ For example, in Articles 35 and 36 of the 1951 Convention relating to the Status of Refugees.

⁶ See GA res. 47/105 para. 14. See also *Internally Displaced Persons: The role of the United Nations High Commissioner for Refugees* (EC/50/SC/INF.2), January 2000; GA res. 48/116; GA res. 49/169; Executive Committee Conclusion No. 68 (XLIII), 1992; Executive Committee Conclusion No. 71 (XLIV), 1993.

⁷ See GA res. 48/116 para. 12, as well as UNHCR's policy paper on *Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees* (EC/50/SC/INF.2), January 2000, which was presented to the Standing Committee in March 2000.

governmental partners. This is particularly true with protection, where agencies and organizations have varying expertise and responsibilities, and where each can contribute to the overall response. In operational terms, the Office's involvement with the internally displaced today is largely defined by the inter-agency "cluster approach" developed by the IASC under the leadership of the ERC.

III. UNHCR's recent experience in natural disasters

9. Even before the arrangements established by the humanitarian reform, UNHCR had experience acting in support of States affected by natural disasters, particularly where the magnitude of the disaster undermined the capacity of the State to respond, for example, in response to the 2004 Indian Ocean tsunami. Over the past seven years, the Office has supported protection responses in eleven natural disasters, leading the cluster (or a cluster-like sectoral response) in seven such situations, with the most substantial responses being in Pakistan (2010 floods), the Philippines (2009 floods), Myanmar (2008 Cyclone Nargis)⁸ and Sri Lanka (2004 tsunami).⁹ Presently the United Nations Children's Fund (UNICEF) leads the protection cluster in four natural disaster situations (El Salvador, Indonesia, the Lao People's Democratic Republic and Mozambique), and the Office of the United Nations High Commissioner for Human Rights (OHCHR) leads in one (Haiti). UNHCR continues to lead or co-lead protection clusters or similar coordination mechanisms in Pakistan, the Philippines and Myanmar, while also playing a strong supportive role to OHCHR in Haiti.

10. UNHCR's protection role in natural disasters can be divided into three distinct functions: that of Global Cluster Lead, that of Protection Cluster lead agency at the national level, and that of an operational partner.

11. *Global Cluster Lead Responsibilities:* As lead agency of the Global Protection Cluster (GPC), UNHCR has carried out certain responsibilities in relation to natural disasters since the inception of the humanitarian reform in 2005, including "ensuring system-wide preparedness and technical capacity to respond to humanitarian emergencies, and...ensuring greater predictability and more effective inter-agency responses."¹⁰ In particular, and in cooperation with a broad base of partners, the Office has responsibility for setting standards and policies, building response capacity and providing operational support. Through the GPC's Task Force on Natural Disasters, led by the International Law Development Organization (IDLO), the Office has, for instance, supported development of training modules on protection in natural disasters. Through the use of partner arrangements, such as the inter-agency ProCap roster and an agreement with HelpAge International, the GPC has facilitated expert deployments to address protection issues, as well as the particular needs of older persons and persons with disabilities in natural disasters.

12. *Cluster Lead Responsibilities:* The role of protection cluster lead at the national level is fundamentally one of ensuring a well-coordinated, participatory and effective response to protection concerns within the humanitarian response. This entails undertaking

⁸ Initially a "Protection of Women and Children" Cluster was activated with UNICEF and Save the Children as co-leads. This evolved into a broader Protection Cluster led by UNHCR in December 2008.

⁹ As the tsunami pre-dated the establishment of the cluster system, UNHCR led an inter-agency protection working group. Other lead roles have been in Chad (2010 floods), Kenya (2009 floods), Yemen (2008 floods, sectoral response), Uganda (2007 floods), and Somalia (2006 floods).

¹⁰ Inter-Agency Standing Committee, *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response*, 24 November 2006, para. 4.

responsibilities for coordination, assessment and strategic planning, monitoring and evaluation, training and capacity building, and advocacy and resource mobilization. The principles of partnership also inform cluster lead responsibilities: close consultation and planning with national and local authorities and national non-governmental organizations are essential, not only for an effective protection response, but also for capacity building and the timely handover of coordination responsibilities.

13. Importantly, the cluster lead is not expected to carry out all necessary activities. Rather, the cluster lead as “provider of last resort” must ensure that gaps are identified and advocate for them to be filled, meeting those needs itself only where access, security, and resources allow.

14. *Operational activities:* As an operational protection partner, UNHCR has sought to contribute in areas where it has particular expertise, such as participatory assessment, community-based approaches, and age, gender and diversity mainstreaming. Moreover, its activities are targeted to address risks or vulnerabilities among IDPs and affected populations which are specifically caused or exacerbated by the natural disaster. For example, in Haiti, the Office has sought to prevent situations of statelessness and related risks of trafficking by supporting partners to provide access to birth registration and other relevant documentation. Similarly, UNHCR has worked in partnership with other agencies, such as with the International Organization for Migration (IOM), to establish an inter-agency mediation team to avoid or defer eviction from temporary sites of displacement; and with the United Nations Population Fund (UNFPA), to adopt a case management system for survivors of sexual and gender-based violence.

15. Whether as cluster lead or as an operational partner, UNHCR is firmly committed to working as a supporting partner of the State. Responsive activities must be consistent with the reconstruction plans of the State and enhance capacity-building efforts by the State. Particularly important in the recovery following a natural disaster is the evaluation of humanitarian activities within the context of the pre-existing national development plan.

IV. Nature of protection risks and responses in natural disasters

16. A protection response following a natural disaster is often complex. It is, however, facilitated by the fact that humanitarian agencies, national and local actors are working toward the same end: to ease the immediate suffering of those affected and to seek to re-establish, as rapidly as possible, the conditions needed for people to resume a normal life and to return home. In addition, in contrast to situations of armed conflict, the displacing event is often characterized by rapid onset – and rapid resolution. This means that plans for early yet sustainable return (or relocation where this is not possible) must be considered from the outset of the response.

17. Despite these differences from conflict-induced displacement, many resulting protection risks are similar. UNHCR’s experience in natural disasters to date – particularly in the Philippines, Haiti and Pakistan – suggests common and recurring protection issues following a natural disaster. Immediate concerns are to ensure non-discriminatory access to food, shelter, potable water and sanitation. Addressing family separation and physical insecurity – preventing sexual and gender-based violence, and protecting against exploitation, abuse and trafficking – are also paramount. Evacuations and relocations are often necessary. The replacement of personal documentation can be critical, as lack of documentation may compound vulnerabilities by limiting access to essential services. Furthermore, early into the recovery, careful attention to issues of land and livelihoods can significantly influence whether return is premature or sustainable.

18. In addition to identifying particular “areas of need”, the inclusion of a protection perspective throughout the disaster response is essential precisely because the provision of assistance cannot be presumed to be a neutral activity affecting everyone equally and in a positive way. The manner in which assistance is delivered, distributed and accessed can affect individuals with diverse needs and vulnerabilities in disparate ways. UNHCR has found certain protection approaches – integral to its work with refugees and conflict-affected IDPs – to be equally important in natural disasters. These include outreach to identify and target assistance to the most vulnerable (e.g. older persons, persons with disabilities, female and single-headed households); participatory assessments; age, gender and diversity approaches; and the provision of support for host communities and community-based development.

V. Guiding considerations framing the nature and scope of UNHCR’s engagement in protection in natural disaster situations

19. Based on its experience with IDPs to date and on the parameters established by General Assembly resolutions and Executive Committee conclusions, UNHCR has evolved a set of general considerations that have guided its involvement in natural disasters, and which will continue to do so. These considerations are as follows:

- *State responsibility*: In natural disasters, as at all times, the responsibility of the State for citizens and others on its territory remains primary. UNHCR’s engagement thus serves to support the role and responsibility of the State.¹¹
- *State consent*: UNHCR’s engagement – its commencement, its continuation and its geographical scope – is premised upon State consent.
- *Humanitarian assistance and capacity building*: As UNHCR acts in support of the State, a continuous process of consultation and coordination is paramount. Similarly, the “support” of the State implies two parallel elements: support during the humanitarian response, as well as enhancing the capacity of local actors.
- *Protection linked to the disaster*: The material scope of UNHCR’s protection response is directly linked to addressing the risks and vulnerabilities that are either caused or exacerbated by the natural disaster. Pre-existing or endemic protection concerns, except to the extent they influence the disaster response, should be addressed through the national development plan as well as the UN Country Team programme.
- *Emergency response*: UNHCR’s activities are directed toward the emergency response phase. While the facilitation of conditions enabling sustainable return and other durable solutions is relevant even in the emergency phase,¹² a strategy for

¹¹ UNHCR policy in this regard fully accords with General Assembly Resolution 46/182: “Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination and implementation of humanitarian assistance in its territory.” GA res. 46/182, 19 December 1991, Annex, para. 4. “In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.” *Ibid.*, para. 3.

¹² “Emergency assistance must be provided in ways that will be supportive of recovery and long-term development.” *Ibid.*, para. 40.

handover to government authorities and local and development partners must be included in the protection strategy from the start.

- *Inter-agency coordination and partnership*: In its role as cluster lead, UNHCR will be responsible for strategic coordination of the protection component of the international humanitarian response. This role recognizes and depends upon the principle of partnership, including with national and local NGOs, as well as with other UN agencies and international humanitarian partners.
- *Traditional operational expertise*: In its role as an operational partner, UNHCR will focus on areas in which it has a comparative advantage and expertise, taking into account and drawing upon complementarities in the mandates and expertise of local, national and international partners.
- *Separate source of funding*: Funding for the response to natural disasters will come from inter-agency flash appeals, separate UNHCR appeals, and the Central Emergency Response Fund (CERF). Thus the extent of UNHCR's operational protection response may be limited by funds raised directly in relation to the disaster.
- *Exit strategy*: UNHCR will not seek prolonged involvement in situations of natural disaster. With its engagement directed at protection activities in the emergency phase, UNHCR's planning with the affected State will, from the start, include parameters and benchmarks for disengagement.

VI. Pilot arrangement for the designation of protection cluster lead

20. The pilot arrangement proposed in January 2011 by the IASC Principals relates specifically to the designation of the cluster lead at the country level. It does not affect any of the guiding considerations for UNHCR's engagement set forth above.

21. Thus, the arrangement becomes relevant only after a request for United Nations support has been made by the affected State and the United Nations decides to implement the cluster approach. At that point, rather than leaving designation of the lead agency fully open, the new arrangement sets clear parameters to quickly resolve the issue of designation. Where a protection coordination mechanism already exists, that arrangement and its leadership will continue. Where OHCHR is present with adequate capacity and expertise and UNHCR is not, OHCHR will assume the protection coordination role. Only where these two elements are not present will UNHCR assume the role of leading and coordinating the protection cluster.

VII. Conclusion

22. Consistent with the parameters elaborated above, UNHCR is prepared to meet the responsibilities contained within the IASC's proposal for protection coordination arrangements in situations of natural disaster for a pilot period of one year. At the end of this period, the pilot will undergo a review, which will include input and guidance from the Executive Committee and protection partners. UNHCR looks forward to further engagement on these issues.
