

The Human Rights and Gender-Based Approach in the context of a chronic humanitarian crisis:

# THE GAZA STRIP



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# **01.** **INTRODUCTION**

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# 01

## INTRODUCTION

The consolidated concept of humanitarian action conveys the idea that humanitarian actors provide aid to populations affected by crises (usually armed conflicts or natural disasters), mainly following a needs-based approach. However, the concurrent trend related to humanitarian responses devotes more attention to human rights, by attempting to integrate a **human rights- and gender-based approach** (HRGBA) into the humanitarian framework. Implementing a HRGBA implies going beyond the most urgent material needs of the affected community; broadly speaking, it means protecting human rights, promoting and defending human dignity, tackling the root causes of a specific humanitarian crisis, or occasionally denouncing and coping with its disproportionate impact on those who are most affected.

We need to bear in mind that it is crucial we tackle **gender-based** violations of human rights to ensure universal coverage for the affected population, with special attention paid to women and girls, as they are often among the most affected groups in humanitarian crises. Indeed, in everyday life, and on a greater scale in the context of a humanitarian crisis, women and men are met with difficulties to the full exercise of their rights. Therefore, humanitarian actors should be able to provide the necessary support to each group making up the affected community. In the last several decades, armed conflicts have escalated, provoking a sharp increase in the number of people in need of humanitarian aid, and they have created protracted crises. This escalation of conflicts has strongly jeopardized safety and security, access to basic services (health, water, food, etc.) and the livelihood opportunities of vulnerable collectives such as women and girls: for instance, according to UN Women, man-made and natural disasters affect women the most, with 60% of maternal deaths happening in humanitarian crises, along with a notable spread of gender-based violence.

Therefore, in order to deliver an effective humanitarian response, agencies working in the field should implement a HRGBA, considering that visible material needs are caused or exacerbated by underlying violations of human rights. Through the HRGBA, we conceive these needs as corresponding to rights that should be exercised and must be claimed (a person does not only need food, but has the right to adequate food in a sufficient quantity and quality) and we analyze obligations and responsibilities to protect and fulfill them.

In 2005, the Emergency Relief Coordinator along with the Inter-Agency Standing Committee (IASC) –an international forum created in 1991 through the General Assembly’s Resolution 46 and joined by UN and non-UN humanitarian organizations– promoted a **humanitarian reform** (the so-called Humanitarian Reform Agenda) with the aim of improving the effectiveness of humanitarian responses through a typified cluster approach, a stronger coordination among humanitarian actors, and adequate humanitarian funding. Since the ‘90s, many NGOs have started to adopt the **rights lens to analyze and tackle human needs** in the long term, by considering the great majority of humanitarian crises a direct consequence of the abuse and violation of human rights, not just a matter of social or political tension between government entities and populations.

Therefore, there has been a shift in the concept of humanitarian action from the classic concept of “assistance” consisting fundamentally of the provision of goods and services or even aimed at meeting biological needs for survival, to reconnecting and recovering the clear link between humanitarian action and the protection of rights which has existed since the adoption of the Hague Regulations.

IASC’s Working Group Progress Report from 2005 asserts that “all humanitarian actors share responsibility for ensuring that activities in each cluster and other areas of humanitarian response are carried out with the ‘protection lens.’” Each of the Cluster Working Groups and Cluster Leaders are responsible for ensuring that activities carried out within their cluster’s area of responsibility do not lead to or perpetuate discrimination, abuse, violence, neglect or exploitation. Furthermore, IASC defines protection as “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights law, humanitarian law and refugee law).”

Recently, ECHO has issued guidelines which also put protection at the center of humanitarian action: “the fundamental purpose of protection strategies in humanitarian crises is to enhance physical and psychological security or, at least, to reduce insecurity for persons, groups and communities under threat, to reduce the risk and extent of harm to populations by seeking to minimize threats of violence, coercion and deliberate deprivation, reduce vulnerability to such threats, and strengthen (self-protection) capacities as well as enhancing opportunities to ensure safety and dignity.”<sup>1</sup> The approach the agency adopts is similar to that of the ICRC (the “egg model”, as will be demonstrated in Section 4) although the ICRC goes even further in terms of the intervention modalities they implement.

Without a doubt, there should be reflection on the likely degree of political involvement assumed by each humanitarian agency according to its mandate, although there are many ways to design and implement a human rights-based approach –such as *quiet/private humanitarian diplomacy, visibility, encouragement, convening and bridging and public advocacy*– it is important to consider the tools and tactics that open the door to communicate with different local stakeholders without compromising the access of humanitarian and human rights actors to affected populations, their operational capacity to deliver quality programming and the safety and security of their staff in the field.

Overall, the positive outcomes of following a human rights-based approach in a humanitarian context are multiple: apart from raising awareness and demanding accountability of duty bearers, it gives us a chance to highlight and cope with structural inequalities (especially as regards women and girls) through a broader and holistic conception of interventions aimed at social transformation in the mid and long term. Moreover, it highlights the need to strengthen and systematize data collection processes to gather better evidence of human rights violations, while it can serve as a bridge to incorporate LRRD (Linking Relief Recovery and Development) approaches into the design of long-term projects that aim to improve quality of life within a humanitarian setting.

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1. *Humanitarian Protection: Improving Protection Outcomes to Reduce Risks for People in Humanitarian Crises*, EC, SWD, 2016, 183 final, May 2016, page 6.

The present document aims to provide guidance to make the HRGBA operational in the context of chronic humanitarian crises (such as in the occupied Palestinian territory), an approach that helps to provide a new perspective to interpret reality which emphasizes the struggle against inequality, the largest of which is gender-related (suffered by 51% of the world population).

We start by presenting the general characteristics of the HRGBA (Section 2) and analyzing their implications in a humanitarian context (Section 3). We briefly present how the approach has been turned into strategies and actions by two of the main humanitarian actors: the International Committee of the Red Cross –ICRC– and the Directorate-General for European Civil Protection and Humanitarian Aid Operations –ECHO (Section 4). The main elements of the applicable legal framework are then introduced (Section 5). Following the theoretical framework, we go into its practical application in the implementation of actions, while highlighting key aspects to be considered in the different phases of the humanitarian project cycle (Section 6).

For the elaboration of these guidelines, we have reviewed literature (reports, manuals, guidelines referenced in Section 7) produced by development and humanitarian actors (UN agencies, NGOs, etc.) considered to be the leading actors in the implementation of the HRGBA, as well as by the Institut de Drets Humans de Catalunya.

**02.**  
**WHAT IS THE  
HUMAN RIGHTS-  
AND GENDER-  
BASED APPROACH?**

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# 02

## WHAT IS THE HUMAN RIGHTS- AND GENDER-BASED APPROACH?

In 2003, the international development cooperation community adopted a common vision of what the human rights approach applied to development cooperation means:

### COMMON UNDERSTANDING OF THE UNITED NATIONS ABOUT HUMAN RIGHTS IN DEVELOPMENT COOPERATION<sup>2</sup>

*1. All programs, policies and technical assistance should promote the exercise of human rights, as established in the Universal Declaration of Human Rights and other international human rights instruments.*

*2. The standards and principles of human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments and principles derived from them guide cooperation and programming for development 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 the capacities of rights holders to claim their rights.*

The adaptation of the HRGBA to any intervention entails the assumption that all actions will be aimed at the full exercise of the rights of all human beings and peoples, based on the international legal framework. This means not only a change in language, but a more essential transformation of the way we analyze a situation, identify existing problems, define the strategies and actions to be undertaken, and implement and monitor them.

The HRGBA implies a changed conception of the human being, since a person ceases to be only a subject with needs that must be met, to also become a subject of rights, with social and legal power to demand that the state or relevant duty bearer comply with its obligations to respect, protect and fulfill them.

Through this approach, all actors are perceived as having a role as **rights holders** (all human beings), **duty bearers** (state institutions, the international community) or **responsibility bearers** (the community, family, NGOs, CBOs, etc.). Reality is thus analyzed in terms of human rights, by identifying who the owners of rights are (rights holders) and which individuals and institutions bear the obligation (duty bearers) and responsibility (responsibility bearers) to respect, protect and fulfill rights. It is critical that all actors be aware of their rights, duties and responsibilities and that they have the capacity to claim and exercise them.

2. *The Human Rights-Based Approach. Statement of Common Understanding.* Inter-Agency Workshop on a human rights-based approach in the context of UN reform, May 3 to 5, 2003.



The HRGBA analyzes reality in terms of inequalities, with a special focus on the inequality suffered by over half of the world's population: women and girls. **Inequalities**, which are human rights violations themselves, are considered to be at the center of all development problems and, in turn, to trigger the vulnerability of certain groups which will be the most affected in situations of conflict and disasters. This approach looks beyond the immediate, most visible effects of a given problem to understand its structural, root causes through a broader and deeper analysis and, thus, strategies to be adopted, processes to be supported and actions to be implemented will aim to address them, to contribute to real social and political transformation.

The **objective** of an action with a HRGBA is transformed into an attempt to correct discriminatory practices, particularly those that are gender-related, and the unjust distribution of power, resources, opportunities and capabilities in the world, therefore identifying and addressing the **underlying and root causes** of major developmental challenges and unfulfilled rights.

## 2.1. Dimensions of rights

When analyzing a given situation and the existing problems and challenges, we have to consider the different dimensions of rights. According to Human Rights Theory, rights have the following dimensions: availability, access, acceptability, quality, sustainability and participation.

DIMENSION	PARAMETERS
<b>Availability</b>	Infrastructures, resources, input, programs, projects, goods and services available to ensure the exercise of a right.
<b>Access</b>	Whether or not there is discrimination in access to services, be it in physical, geographic, cultural, religious or economic terms.
<b>Acceptability</b>	Are services acceptable to the expected users' values? Are users satisfied by their quality? Are services trusted?
<b>Quality</b>	Not only technical quality in terms of opportunity, integrity and effectiveness, but also human quality of service providers.
<b>Sustainability</b>	Long-term availability and accessibility, with no infringement of other rights.

DIMENSION	PARAMETERS
<b>Participation</b>	Populations' involvement in the design, implementation, management and monitoring of goods and services ensuring the exercise of a right.

**SOURCE:** Adapted from FERNÁNDEZ JUAN, A. et al. *Guía para la incorporación del EBDH en las intervenciones de cooperación para el desarrollo, 2008*

**EXAMPLE:** the right to adequate food.

The Committee on Economic, Social and Cultural Rights has established that “The right to adequate food is realized when every man, woman and child, alone or in community with others, has **physical and economic access** at all times to adequate food or means for its procurement (...).The Committee considers that the core content of the right to adequate food implies:

The **availability** of food in a **quantity and quality sufficient** to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are **sustainable** and that do not interfere with the enjoyment of other human rights” (General Comment 12, CESCR).

## 2.2. Human rights, gender and cultural sensitivity

The application of the rights-based approach in any given context (be it a development process or a humanitarian response) necessarily implies a **culturally sensitive approach**.

Cultural sensitivity requires an understanding and an engagement with the local system(s) of meaning (worldview and underlying key values and ideas). In many situations, human rights language and concepts may be initially alien, unfamiliar, felt as foreign, Western and thus contested. This is often the case when working on gender equality. Ways of translating universal principles into the codes of the local context will be jointly found, and this goes, of course, beyond language: finding points of connection in values and ideas within a culture that can be the basis for the legitimacy of an action (and its objectives).

Human rights are based on universal principles which can be found in all cultures. It is critical to scan the way rights and their underlying principles are formulated and internalized by the different local and national legal, social and cultural systems; the inclusion of local values and institutions is thus key in a rights-based analysis.

In practice, it is a good idea to conduct activities aimed at analyzing the local culture, traditions and institutions while searching for certain values, literary references and political, historical or other prominent personalities that are or can become role models, so as to find connections with universal principles. In order to do so, alliances with religious authorities and other local leaders have proven to be key.

### 2.3. Conflict sensitivity

When working in the context of conflict, it is essential to adopt a sensitive approach, which requires the incorporation of conflict analysis into the overall intervention cycle. This analysis will aim to identify both threats and opportunities, which might indeed exist within the dynamics of conflict, and look at the vulnerability and power relations among actors. Critically, the impact of a planned intervention must also be studied.

We should bear in mind that any HRGBA intervention aims to transform reality (for instance, making changes to social and economic power relationships, locally or even at the national level) and that doing so is likely to be controversial, as change always triggers further discussion. Being aware of this as an organization and ensuring that all actors involved in our project are as well is part of the responsibility of an agency implementing the HRGBA. A full analysis of the possible negative effects that could be unintended consequences of actually achieving expected results must be analyzed keeping in mind the Do No Harm approach. Ways and means of dealing with such consequences will be analyzed, discussed and defined with those concerned by the intervention in its initial phases (risk analysis), in order to plan actions and means of dealing with them should they arise.

**EXAMPLE:** Increased domestic violence when women are economically empowered in the context of a patriarchal society where different forms of violence prevail, notably violence against women.

There are multiple actions to be considered in parallel with those leading to the economic empowerment of women which aim, on the one hand, to prepare the social context and, on the other, to ensure support mechanisms for women. Here are some examples:

- Raising awareness among men on gender roles – masculinities.
- Planning economic activities or other empowering activities for men.
- Working with key religious/community leaders on masculinities to develop alliances in combating ideas on unequal gender roles.
- Providing legal aid and psychosocial support to women (where there are no other organizations doing so).
- Coordination with other interventions: selecting contexts where our actions can be complemented by other critical actions or existing services.

**03.**  
**HRGBA**  
**CHARACTERISTICS**  
**IN A HUMANITARIAN**  
**CONTEXT**

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# 03

## HRGBA CHARACTERISTICS IN A HUMANITARIAN CONTEXT

- **Human Rights (IHRL), Humanitarian (IHL) and Refugee laws** are the **basis of all actions** and are at the core of any action's **objectives**. This legal framework should guide the definition of an action's objectives. Actions will aim to contribute to the full exercise of rights; they will address, to the maximum possible extent, inequalities in the distribution of power and in discriminatory practices. They will be informed by the recommendations of international human rights bodies.
- **Equality and non-discrimination** with special attention to **vulnerable groups**. HRGBA prioritizes interventions with the participation of the most vulnerable and impoverished individuals and groups, with the idea that all people are equal by virtue of the inherent dignity of all human beings. In order to ensure that the distribution of power, rights, wealth and opportunities becomes equal, a special focus on vulnerable groups is thus needed. An important aspect here is the development of facts and figures disaggregated by gender, ethnicity, age, sexual orientation, etc. The action will thus aim to protect and reduce the vulnerability of the **most disadvantaged individuals and groups**, that is, those suffering from intersectionalities (multiple forms of discrimination). When actions are implemented following a rapid assessment with a limited data collection capacity and an understanding of the local context, the action will at least be in line with the principles of non-discrimination and inclusion, and thus avoid the exacerbation of existing vulnerabilities and patterns of discrimination.
- An **active participation** is sought throughout the project cycle: from the context analysis to the definition of objectives and activities, their implementation, monitoring and evaluation. Any intervention should provide a real opportunity for people to be part of decision-making and influence the agenda, process and implementation of the intervention. Participation is a right; furthermore, the fact that all human beings are considered rights holders means that participation is not an option but an obligation. As stated by the Paris Declaration on Aid Effectiveness, participation and ownership of the project by all stakeholders increases the effectiveness of the intervention. This means that a broad spectrum of the community has to be able to participate in decision-making processes and have real influence in the humanitarian response.
- **Strengthening capacities and empowerment**. This refers to the ways in which individuals and groups identify discrimination and/or violations of law (awareness process) and how they strengthen their capacity to interact with the state and other groups in order to have control over the circumstances and achieve their own goals, with the aim of improving their quality of life and having influence in their country's political life. This feature reinforces the concept of the person as **a citizen**, partner and actor in their own development, and not as a beneficiary of an action of assistance. Therefore, interventions with a HRGBA should contribute to the development and strengthening of capacities to achieve both that rights holders demand, exercise and enjoy their rights in equal conditions, and that individuals or institutions, duty bearers and responsibility bearers comply with their mandates. The process of empowerment is closely linked to the active participation of men and women. Actions will target **rights holders'** ability to claim their rights and **duty bearers' and responsibility bearers'** capacity to fulfill their roles in accordance with international law.

- **Cultural sensitivity** is closely related to active community participation & empowerment. In practice, it will mean the identification of local barriers and opportunities, as well as an understanding of the influence of cultural factors. It is of particular significance in order to address gender-related inequalities.
- **Accountability.** HRGBA places the accountability of individuals and institutions in a central role, promoting greater awareness of the rights, duties and responsibilities of the different actors involved, using the legal framework and international human rights law, international humanitarian law and refugee law. It also promotes transparency and open spaces, so that all stakeholders can contribute and demand responsibility for the conduct of each actor and for the clarity of the results, and serves to identify the skills necessary in order to enforce women's rights. This accountability should also be applied to the organizations that adopt the HRGBA, be they donor agencies or NGOs.
- **Ongoing, comprehensive and transversal gender analysis.** Any HRGBA action should include a gender analysis in all phases of the action, from situation analysis to evaluation. Not simply as a methodological tool, but as a mental structure and construction which understands that in the process leading to the effective exercise of human rights, women in most contexts start out from an unequal situation compared to men. This understanding implies the need to continuously assess the treatment, capabilities, opportunities, resources and power dynamics between men and women.
- **Holistic solutions.** A HRGBA analysis will lead to the proposal of holistic solutions, which consider not only rights holders and duty and responsibility bearers, but also the global political, social, legal, economic and cultural framework surrounding them (which in turn conditions existing power relationships) and therefore, a multi-sector action will be required. Coordination with and within clusters is thus essential.

### **3.1. What does the HRGBA add to humanitarian action?**

- It provides a conceptual framework to analyze and interpret reality and to guide strategic programming: the content and scope of rights serve to delineate objectives and processes to reach them.
- This framework – human rights & humanitarian standards – constitutes a sound legal and ethical basis to address complex issues and provides a basis for legitimacy, complementary to the Code of Conduct and different protection policies that all humanitarian agencies should already adhere to.
- Human beings are no longer conceived as subjects with needs which have to be satisfied, but rather as subjects with rights who have the social and political power to claim state actions or omissions oriented towards the fulfillment of rights.
- A link to long-term processes, which are especially relevant in contexts of chronic humanitarian crisis: proposed strategies and actions based on this approach will be holistic and will expect results in the mid and long term, since they intend to address systemic, structural violations of human rights.
- Insofar as participation and empowerment are key elements, it encourages self-reliance, and seeks to reduce aid dependency and foster peoples' and communities' self-esteem.

- Through the promotion of active participation and effective inclusion, which in turn ensures cultural sensitivity, and combined with adequate mechanisms to gather and respond to feedback regarding humanitarian actions, these, as well as the actors implementing them, become more accountable. Accountability is also reinforced as regards the obligations of duty bearers and responsibility bearers to the population (related to rule of law/governance) through advocacy for the rights of the most vulnerable and by providing information on their situation.

# **04. STRATEGIES AND ACTIONS: THE EGG MODEL**





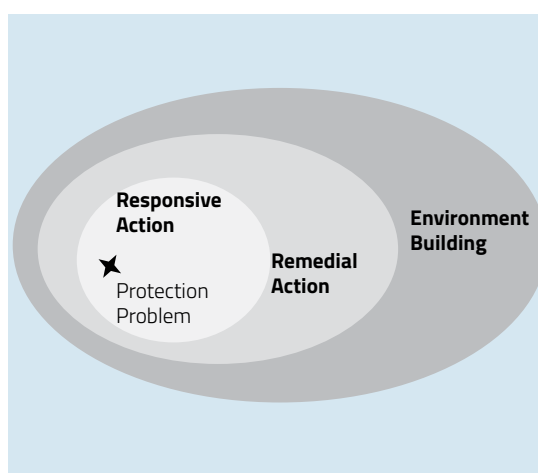
# 04

## STRATEGIES AND ACTIONS: THE EGG MODEL

Over the last decade, it has become increasingly accepted that humanitarian actors need to take protection into account in their programming. The IASC Principals adopted a statement which affirms that *“the protection of all persons affected or at risk must define humanitarian decision-making and responses, including engagement with states and non-state parties to conflict. It must be central to our preparedness efforts, as part of immediate and life-saving activities, and throughout the duration of humanitarian response and beyond”*.<sup>3</sup> Protection has thus been put at the center of humanitarian action. Furthermore, the IASC has affirmed that the *“need to apply a framework of context and risk analysis requires assessment and a rights-based approach that helps to identify threats, vulnerabilities and their causes, as well as violations of international human rights and humanitarian law, and helps to establish appropriate responses.”*<sup>4</sup>

In 2008, ICRC defined its protection policy<sup>5</sup> using the so-called “egg model”, which has thereafter been adopted by multiple actors, including ECHO, which in turn has recently launched its protection policy<sup>6</sup> with reference to it, although limiting the areas included in the egg they have the mandate to support.

The **egg model** proposes a multiform intervention within a humanitarian crisis setting with **3 types of responses** that can be implemented either in parallel or one after the other, through **5 modes of action**.



Source: ICRC Protection policy (2008)

3. Available at: [https://interagencystandingcommittee.org/sites/default/files/centrality\\_of\\_protection\\_in\\_humanitarian\\_action\\_statement\\_by\\_iasc\\_princi.pdf](https://interagencystandingcommittee.org/sites/default/files/centrality_of_protection_in_humanitarian_action_statement_by_iasc_princi.pdf) (December 17th, 2013).  
 4. OHCHR, UNHCR IASC, A Joint Background Paper on the Protection of Human Rights in Humanitarian Crises (May 8th, 2013)  
 5. ICRC, Reports and Documents: ICRC Protection policy. Institutional Policy (Volume 90, Number 871, September 2008).  
 6. European Commission, *Commission Staff Working Paper, Humanitarian Protection: Improving Protection Outcomes to Reduce Risks for People in Humanitarian Crises*, SWD (2016)183 final.

## 4.1. Response types

TYPE OF ACTION / DEFINITIONS	ICRC	ECHO (OBJECTIVES)
<b>Responsive</b>	Any activity undertaken to deal with an emerging or established protection problem (mainly human rights violations), and that is aimed at preventing its recurrence, ending it, and/or alleviating its immediate effects.	Stop, prevent, and alleviate the worst effects of human rights violations and patterns of abuse. They are immediate and urgent, targeting specific groups and/or persons.
<b>Remedial</b>	Any activity undertaken to restore people's dignity and to ensure adequate living conditions after they have suffered abuse.	Restore dignity in the aftermath of human rights violations. Support people living with the effects of those violations. They can be preventive of secondary abuse.
<b>Environment Building</b>	All efforts to establish or foster a social, cultural, institutional and legal environment in which the rights of individuals might be respected.	Aims to create an environment that allows full respect of rights, promoting deep changes in attitudes, policies, values, or beliefs. Has to do with the prevention and long-term transformation of causes.
<b>Sources</b>	<i>ICRC Protection Policy (2008)</i>	<i>EC Commission Staff Working Paper (2016)</i>

Responses are defined in accordance with the context, taking into consideration multiple factors such as what the priorities are, what the capacities of the organization (and its partners) are, and which other actions are being implemented (and can complement our own).

According to DG ECHO, responsive and remedial activities are typical humanitarian protection activities, whereas environment-building activities are more structural in nature and usually go beyond the scope of humanitarian action.

RESPONSE TYPE	EXAMPLES
<b>Responsive</b>	<ul style="list-style-type: none"> <li>- Distributing items (food, NFI, ...)</li> <li>- Denouncing HR violations</li> <li>- Disaster/crisis preparation interventions</li> </ul>
<b>Remedial</b>	<ul style="list-style-type: none"> <li>- Rehabilitation programs for those most affected by a crisis</li> <li>- Restitution/reparation programs</li> </ul>
<b>Environment Building</b>	<ul style="list-style-type: none"> <li>- Supporting the development of laws and policies to better protect rights</li> <li>- Supporting the establishment or improvement of public services to guarantee rights (to health, to education, etc.)</li> <li>- Capacity-building programs targeting the authorities and local communities</li> <li>- Raising awareness and training on human rights &amp; humanitarian law with rights holders, duty bearers and responsibility bearers</li> </ul>

## 4.2. Modes of action

There are three modes of action which aim to raise awareness of responsibility, putting pressure on authorities to ensure their compliance with international principles and norms and their cooperation in protective measures.

<b>1/ Persuasion</b>	Aims to convince the authorities and other actors (duty & responsibility bearers) through bilateral confidential dialogue, to do something to fulfill their obligations.
<b>2/ Mobilization</b>	Aims to engage influential third parties (e.g. states, regional organizations, private companies, members of civil society or eminent individuals who have a good relationship with the authorities in question) to take action to put pressure on duty bearers.
<b>3/ Denunciation</b>	Public exposure of specific imminent or established IHRL or IHL violations in order to put pressure on duty bearers to act or refrain from acting (mobilizing shame).

Protection can be provided to victims or affected populations in two ways as regards duty and responsibility bearers:

<b>4/ Support</b>	Aims to reinforce the capacity of the authorities and existing structures so that they are able to assume their responsibilities and fulfill their functions.
<b>5/ Substitution</b>	Direct provision of services that the authorities are unable to provide (owing to lack of means, or unwillingness, or when no such authorities exist). Substitution should be a last resort, but may be necessary when the responsible authorities are unwilling or manifestly incapable.

Two main criteria are considered when deciding which mode(s) of action to adopt: the capacity and willingness of authorities to act or refrain from acting (to collaborate, engage in the response) and the risks they might entail both for the affected communities and the organizations involved in the action.

In the context of the occupied Palestinian territory, with the protracted humanitarian crisis, the response should include all three types (remedial, responsive and environment-building). In terms of modes of action, the following table proposes examples for the different types.

MODE OF ACTION	EXAMPLES
<b>Persuasion</b>	<ul style="list-style-type: none"> <li>- Together with local authorities, jointly analyze the effects of laws, policies or existing services in the exercise of rights, to identify gaps and design corrective actions, or share the findings with authorities to promote changes.</li> <li>- Organize community-based, integrated approaches to collect evidence on vulnerabilities and use the analysis of the data for designing humanitarian interventions and promoting policy change.</li> </ul>
<b>Mobilization</b>	<ul style="list-style-type: none"> <li>- Engage with different advocacy platforms and clusters to coordinate advocacy actions/initiatives.</li> <li>- Elaborate a timely report on potential IHL/IHRL violations for intermediate targets and power holders (key donors and responsibility bearers as UN-relevant bodies).</li> <li>- Elaborate policy papers on IHL/IHRL violations in order to mobilize power holders to put pressure on duty bearers.</li> </ul>

MODE OF ACTION	EXAMPLES
<b>Denunciation</b>	<ul style="list-style-type: none"> <li>- Support the preparation of complaints (claims to be introduced in local courts, or submitted to UN committees).</li> <li>- Support the preparation of shadow reports within the examination processes of either Palestine or Israel, either directly or indirectly (sharing information with organizations that lead the preparation of reports).</li> <li>- Participate in UN procedure sessions' Universal Periodic Review, formal and informal NGO meetings as part of committees' state report exams.</li> <li>- Prepare or support public statements/press releases.</li> </ul>
<b>Support</b>	<ul style="list-style-type: none"> <li>- Support local authorities (on different levels: ministries, governorates and municipalities) in the elaboration or reform of policies and laws: legal studies, capacity-building, exchange of experiences, etc.</li> <li>- Support local authorities (on different levels: ministries, governorates and municipalities) in the improvement of services to monitor, report, plan and better comply with/respond to human rights obligations.</li> <li>- In communities, promote understanding of legal aspects, policies and processes connected to the IHL and IHRL violations they might be suffering from.</li> <li>- Create synergies among different layers of governance (from ministries to communities) to ensure the flow of information with respect to incidents/violations of IHL/IHRL.</li> </ul>
<b>Substitution</b>	<ul style="list-style-type: none"> <li>- Ensure availability of basic services (direct provision of material assistance to ensure the well-being of communities) with the involvement (to the maximum possible extent) of local authorities who can guarantee sustainability (assume them in the mid-term).</li> <li>- Provide protective assistance for communities/households under attack, harassment or intimidation.</li> <li>- Provide an emergency response in the aftermath of incidents/violations.</li> <li>- Provide legal counseling and representation to those suffering from incidents/violation.</li> </ul>

# **05. APPLICABLE LEGAL FRAMEWORK**



# 05

## APPLICABLE LEGAL FRAMEWORK

Taking into consideration that the HRGBA is based on international human rights standards with special attention for women's rights, knowledge of the key instruments and protection mechanisms (universal, regional and national) is fundamental to being able to analyze a given situation through the human rights lens.

In the context we deal with, it is worth noting that it is now widely recognized by the international community that **international human rights law continues to apply in situations of armed conflict**. Thus, in contexts of conflict and occupation, two bodies of law apply and are considered to be complementary sources of obligations: international human rights law (IHRL) and international humanitarian law (IHL).

As stated by the Human Rights Council in its Resolution 9/9, effective measures to guarantee and monitor the implementation of human rights should be taken in defense of civilian populations in situations of armed conflict, including people under foreign occupation, and effective protection against violations of their human rights should be provided, in accordance with IHRL and applicable IHL.

Differences between IHL and IHRL:

- The most important difference is that the protection provided by international humanitarian law is largely based on distinctions — in particular between civilians and combatants— unknown in international human rights law.
- While IHL is applicable in times of war without any possible reservations, some rights protected under IHRL might be suspended in certain exceptional and strict conditions.<sup>7</sup>
- Human rights protected by treaties and other soft law are applicable as long as those treaties have been ratified by the state, with the exception of some of the rights enshrined in the Universal Declaration of Human Rights, which are considered to be *ius cogens*. On the other hand, the Hague Regulations are considered to be customary international law, thus binding for all states regardless of their acceptance, whereas the Geneva Conventions have attained universal ratification.

Lastly, it is worth noting that it is widely acknowledged that the application of human rights standards to non-state actors is particularly relevant in situations where they exercise some degree of control over a given territory and population. Non-state armed groups are increasingly called upon to observe human rights protections, in accordance with the particular situation on the ground. Indeed, the assumption of international human rights responsibilities by non-state actors is seen as a pragmatic recognition of the realities of a conflict, without which rights holders would lose out on any practicable claim to their human rights.

7. See Art. 4.1 of the International Covenant on Civil and Political Rights, which sets the conditions under which certain rights might be suspended, and General Observation 29 (2001), Human Rights Committee, which establishes rights that can never be suspended.

When working in the occupied Palestinian territory (oPt) and when analyzing the legal and policy framework, we should consider both those of Palestine and Israel. Israel is part of most of the core human rights conventions and has to fulfill its human rights obligations in the oPt. In spite of the recurrent Israeli legal argument that, following the disengagement from the Gaza Strip in 2005, they no longer have legal obligations as the Occupying Power, their obligations persist since Israel retains control over the Strip. It is also worth noting that in its Advisory Opinion on the Wall, the International Court of Justice pointed out that Israel's obligations under ICESCR include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities" (Advisory Opinion, para. 112).

On the other hand, since Palestine was accorded non-member observer state status in the United Nations, it has been subject to a number of international treaties and conventions (see Annex 1.1). Where they exercise effective control, the Palestinian Authority, the Palestine Liberation Organization and the Palestinian Legislative Council are bound by international human rights obligations and those derived from International Humanitarian Law, which have attained a universal ratification.

It is worth noting that, for civil society, this evolution opens the door to a wide range of instruments and protection mechanisms: not only can efforts in human rights monitoring and advocacy with universal mechanisms be used in relation to Israel, but now they can also be applied to Palestine. Following-up and advocating for further ratification of human rights treaties (and optional protocols accepting individual complaint procedures), using the state review process to participate with state authorities in drafting state reports or preparing alternative reports, getting involved in civil society meetings working on thematic issues, as well as disseminating treaty bodies' interpretations of the scope and meaning of rights and state obligations (general comments or recommendations), and holding duty bearers accountable to the recommendations of treaty bodies or findings of Special Procedures are some examples of what can be done.

Annexes 1.1, 1.2, 1.3, 1.4 and 1.5 are intended to provide additional information on the main treaties, status of ratification, functions of the different treaty bodies and ways to use them.

### **Case study: the right to work of rural female householders in the Gaza Strip**

The right to work of rural women, enshrined in CEDAW Art. 11 (a) and ICESCR Art. 6.1, is the prerequisite for the exercise of other human rights and for women to have a life with dignity. It in turn requires freedom of movement, which is guaranteed under international human rights law (Art. 12, ICCPR and Art. 13 UDHR) and international humanitarian law (Fourth Geneva Convention, Art. 27).

Israel, as the Occupying Power, has an obligation to facilitate the freedom of movement of persons residing in the occupied Palestinian territory. Arts. 27 and 64 (2) of the 4th Geneva Convention and Art. 43 of the Convention regarding the Laws and Customs of War on Land, recognize that certain restrictions on freedom of movement are allowed under international law, including for reasons of security, but they must be strictly necessary for that purpose, proportionate and non-discriminatory, in accordance with the Advisory Opinion of the International Court of Justice on the legal consequences of the construction of the wall in the occupied Palestinian territory (paras. 135-137).



The infringement of freedom of movement of persons and goods entails further restrictions in other rights, such as the right to education and the right to health, which are closely connected with the right to work.

The violation of the right to work has been found to be a triggering factor in a particularly serious and concerning situation: the high rates of violence against women.<sup>8</sup>

Now, what are the main features and aspects of the right to work and the corresponding state obligations?

- **Availability.** States must ensure the existence of tailored services to help people to identify employment opportunities and find work (Gen. Comm. 18, CESCR).
- **Accessibility.** Access to work involves three key elements: non-discrimination, physical accessibility, and information accessibility. Discrimination in access to and continuation of employment is prohibited. States must ensure that reasonable accommodations are made so that workplaces are physically accessible, particularly for persons with physical disabilities. Everyone has the right to seek, obtain and impart information on employment opportunities (Gen. Comm. 18, CESCR). Non-discrimination and equality between men and women in accessing the right to work is included in CEDAW Art. 11 (b) and (c).
- **Acceptability and quality.** The right to work involves several interrelated components, including the right to choose and accept work freely, to just and favorable working conditions, safe working conditions, and the right to form trade unions (Gen. Comm. 18, CESCR). Firstly, the right to equal remuneration for work of equal value without discrimination on the grounds of gender is reflected in CEDAW Art. 11 (d), CEDAW Rec. Gen. No. 13 and ICESCR Art. 7. Secondly, employment protection in terms of social security and healthy working conditions is included in CEDAW Art. 11 (e) and (f). Thirdly, it is important to note that CEDAW Rec. Gen. No. 16, focusing on the specificity of rural women who work without remuneration, urges state parties to ensure that working women have remuneration and minimum social security benefits guaranteed for their work.
- **Sustainability:** CEDAW addresses this aspect as regards rural women. CEDAW Art. 14.2 (a) and (e) include the right of rural women to actively participate in development and the right to self-organize into groups and self-reliant cooperatives in order to have equal access to the same economic opportunities as men. The participation of rural women in planning and implementation of development plans is necessary in order to ensure the sustainability, in the long term, of actions that are sensitive to their needs as a vulnerable group and which aim at tackling their vulnerability.

Beyond the ICESCR and CEDAW dispositions, the right to work and related rights are further defined by the numerous international standards set by the International Labor Organization (ILO).

8. Alianza por la Solidaridad & ActionAid, 2015, *Violence Against Women in the Gaza Strip after the Israeli Military Operation Protective Edge 2014*.

### ***Gaza legal linkages related to the right to work***

The overall unemployment rate for 2013 was 33%, while in 2014 it rose to 44%.<sup>9</sup> Furthermore, before the conflict, youth unemployment was 57%, while in 2014 the percentage rose by 11% to 68%.<sup>10</sup> Higher numbers are found regarding women's exercise of the right to work. In fact, female unemployment data shows that men and women have different employment opportunities. Regarding males, 68% are part of the workforce, and of these 40% are unemployed, whereas only 20% of women are part of the workforce, and of these 57% are unemployed.<sup>11</sup> These figures highlight the discrimination suffered by women in accessing the Gaza Strip's labor market.

We will now outline some of the main policy, legal, and cultural factors which prevail in the Gaza Strip that could entail direct and indirect limitations of rural women's right to work.

#### *Israeli policies*

The ongoing Israeli blockade and permit regime restricts access by Gazan residents to the West Bank and Israel, thereby limiting their access to employment opportunities.

The blockade of the movement of goods has had a devastating effect on Gaza's economy and undermines possibilities for creating and developing businesses and employment. The blockade has resulted in the closure of most of the manufacturing industry, which is deprived of materials and export markets, and this has led to a surge in unemployment.

Furthermore, movement is restricted within the Gaza Strip in the buffer zone areas along the barrier with Israel and at sea. This limits Gazans' access to their lands and fishermen's access to the maritime area established under the Oslo Accords (these established 20 nautical miles under the PA's jurisdiction, but Israeli restrictions have been limiting it in practice to 2-3).

#### *Palestinian laws, policies and custom*

Citizens' right to work is recognized by Art. 25 of the Basic Law, which also allows for the creation of labor unions, and grants the right to conduct strikes within the limits of the law. Gender-based discrimination within employment is prohibited under Article 100 of the Palestinian Labor Law (No. 7 of 2000).

9. ILO Regional Office for Arab States, *Labour Market Conditions in Gaza, 2013-2014: A Briefing Note*. Beirut. 2015, p. 3.

10. ILO (2015), *Ibidem*, p. 7.

11. ILO (2015), *Ibidem*, p. 6.

There are limitations in the Labor Law that do not ensure universal access. For example, it does not cover domestic, agricultural, or informal labor, where higher proportions of female workers are found. The law also excludes places of work with fewer than five employees, and few means of proper enforcement are available.<sup>12</sup> The fact that the majority of women are not unionized and that the Palestinian women's movement is not sufficiently unified or well-organized to advocate for working women's rights explain why the Labor Law does not fully address these rights.<sup>13</sup>

The property rights of Palestinians in Gaza are regulated by Egypt's Law No. 1 of 1965, combined with the application of Shari'a to state-owned property. Women's rights to property and to control of their land or other properties are recognized, but statistics of women owning land, a home or other properties are so low (around 7% in Palestine) that they reveal that this right is not applied in practice. Here, custom plays a key role, since it encourages married men to retain property individually rather than jointly with their wives. Also, while there are no legal restrictions to women's ability to access credit, since men own most property, women tend to lack the collateral necessary to secure loans.<sup>14</sup>

Women often lack control over their income and rarely enter into business contracts and activities. This is mainly due to the customary belief that men, as the traditional family breadwinners, are in charge of financial decisions, even those involving the income and assets of their female family members.

As regards the right to a free choice of profession and employment, once again the situation on the ground indicates that it is not exercised; despite their legal right to freely choose a profession, we find that women perform stereotypically female tasks (related to their roles as mothers and caretakers). Palestinian women are highly concentrated in two sectors of the economy –agriculture and services— and are virtually non-existent in two others, construction and transportation.<sup>15</sup> We can identify two main factors that explain this situation: firstly, in terms of policies, the fact that vocational education provided to women generally limits their access to skilled work and directs them toward those roles and, secondly, that social norms render it difficult for girls to enroll in training for typically male functions.

In addition, working women suffer gender discrimination in terms of remuneration. In fact, the wage gap between men and women in the Occupied Palestinian Territory is 30% for work of equal value.<sup>16</sup>

12. Sanja Kelly and Julia Breslin, eds. *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010). Chapter on Palestine, page 18. Available online at <http://www.freedomhouse.org>

13. Hilal, J.; Al-Kafri, S.; Kuttab, E.; 2008, *Unprotected Employment in the West Bank and Gaza Strip: a Gender Equality and Workers' Rights Perspective*. ILO

14. *Ibidem*, page 15.

15. Samia al-Botmeh, 2015, *Unlocking the Labor Market for Palestinian Women*, available at <https://al-shabaka.org/briefs/labor-market-palestinian-women/>

16. UNRWA-Comité Español & Pérez, 2012, p. 14.

**06.  
HRGBA  
IN THE  
HUMANITARIAN  
PROJECT CYCLE**



# 06

## HRGBA IN THE HUMANITARIAN PROJECT CYCLE

In these guidelines, we divide the intervention cycle into 3 phases: humanitarian context analysis, humanitarian response planning and humanitarian response implementation, monitoring and evaluation. Some aspects must be considered throughout the cycle, whereas for each phase we will see specific aspects.<sup>17</sup>

### 6.1. Must do's throughout the intervention cycle

#### **a) Participation**

Participatory assessments must be conducted at key stages, incorporating **systematic engagement** to identify the diverse perspectives, risks and capacities of groups within crisis-affected communities, including men, women, girls and boys, and groups such as older persons, persons with disabilities, persons belonging to minority groups, and persons of diverse sexual orientation or gender identity.

Mechanisms are to be created and maintained to ensure the **effective participation** of all, and especially the most vulnerable, marginalized and typically excluded (those suffering from multiple intersectionalities, such as women, heads of household, the young, rural individuals, those with low education levels, etc.). Their voices have to be heard and their perspectives truly considered to feed the programming cycle, with tailored interventions where needed.

**Meaningful participation** must characterize all phases: context analysis, the mapping of stakeholders, response planning, the analysis of risks related to the different alternative strategies to adopt in order to pursue an objective, the actual implementation of that strategy and the follow-up and evaluation of the processes and the results that are generated.

- During the assessment and action design phase, ensure that mechanisms (committees, focus groups, meetings) and conditions (the possibility to access information and the process of decision-making, including language, etc.) are in place to ensure participation of the key stakeholders, and very notably the most affected individuals and groups.
- The action has to be designed together with the individuals and groups we will work with: their voices must be key in deciding which objectives to pursue and how best to achieve them.

17. For this section, we have used several manuals and guidance notes; most notably, UNFPA and Harvard School of Public Health and Gender, *A Human Rights-Based Approach to Programming. Practical Implementation and Training Manual*; Danish Institute for Human Rights, *Applying a Rights-Based Approach. Inspirational Guide for Civil Society* (2007); ActionAid, *Human Rights-Based Approach Resource Book* (2010); IASC *Protection and Accountability to Affected Populations in the Programme Cycle* (2015), all of which are available online.

- Individuals and groups whose rights are to be advanced must have a leading role in the implementation of project activities.
- These individuals must also take an active part in monitoring and evaluation activities.

### **b) Accountability**

Firstly, we must bear in mind that, as an organization, we are a **responsibility bearer**. Therefore, we have to ensure accountability in our actions, both in terms of **achieved results** (including negative effects our actions might have generated), and in terms of the **processes undertaken** and the **standards and values** adhered to during implementation. Accountability must be ensured in the communities we work with, the donors funding our actions and, more generally, among all local actors (and, we could say, the general public).

To start with, the organization should adhere to human rights principles in practices and policies regarding how **it operates internally and externally**. How, for instance, staff are recruited (according to which criteria), or how the implementation of actions is documented, taking into consideration that partners and stakeholders have to be able to access relevant information, including financial information such as project budgets, contributions from donors, project accounts as well as the accounts of the organization itself.

**Transparency** is critical in how we manage the organization and its actions. For instance, in ensuring the “return” of information referring to a context analysis (the findings of a study), the process of decision-making when defining an action, or the results of a monitoring or evaluation report.

Guaranteeing accountability and transparency within humanitarian organizations legitimizes the claim that duty-bearers fulfill their international obligations, which is a central element of the HRGBA.

- Establish a two-way system of information sharing for the action, activities and impact: from the organization to the community and from the community to you. Feedback mechanisms must be in place during implementation in order for stakeholders to have ways to share their perceptions and thoughts on your action (including complaints).
- Be transparent in the working processes and procedures used by the organization, and ensure that they are in accordance with human rights principles and norms.

### **c) Risk analysis**

The ongoing analysis of risks is also critical throughout the process, and should be accompanied by the organization’s readiness to adapt to the findings of such exercises (which can mean changes to foreseen activities, for instance).

Initially, during context analysis, discussions must consider the possible evolution of the present situation, and how they might affect communities and groups in terms of increasing levels of risk or of creating new risks. When deciding which strategies and activities are to be adopted, the analysis must have two levels:

- Risks to the persons/entities we want to involve in the project (to avoid harming them)
- Risks to the organizations (ACH and local partners)

It is possible to plan actions for which we can expect an increase in tensions and risks, which is often the case when we tackle the root causes of discrimination and inequality and the unjust distribution of power, but participants in such actions must be aware of these risks, and mechanisms to address possible consequences must be discussed with those involved. Beyond developing mitigation measures for the identified risks, in this type of cases, informed consent of communities is key prior to any subsequent action or activity.

During the implementation of the action, its consequences and the evolution of the situation must be constantly monitored in order to be able to react and adapt, if need be, to prevent negative effects or worsening a situation.

- Ensure that an analysis of risks and mitigation measures for the individuals and groups you are working with is conducted during the design of the process, with the active participation of collaborators (they will be best placed to foresee the consequences of any changes to be promoted)
- Ensure mechanisms to follow up on the effects of the action, and be ready to react promptly.
- Make sure that all persons involved in the action are well aware of its potential risks, and that they still want to be part of the process (informed consent).
- Identify responses and reactions to potential risks, beginning in the initial stages.

#### **d) Gender analysis**

Humanitarian crises can affect men and women in very different ways, and the way they impact youth can also be very different. In chronic humanitarian situations, the foundations of social structures and human security are most often weakened, which contributes to protracted gender-based and sexual violence, as well as other human rights abuses against women and girls. The humanitarian action must recognize and analyze the changing roles and vulnerabilities of women and men, ensuring their participation in decision processes throughout the intervention and actively involving them in implementation, monitoring and evaluation.

- Ensure that the perspectives, experiences, potential benefits and effects of an action for women are constantly incorporated into analysis and decision-making, including the analysis of the feasibility and appropriateness of the action.
- Use disaggregated data by sex and age.
- Use existing/gathered knowledge on gender norms, roles and relations to inform data analysis.
- Ensure an analysis of the gendered power dynamics within a given community or society prior to intervention.
- Ensure an in-depth risk analysis prior to implementation in order to assess any unintended or negative impacts that may occur as a result of the proposed activities. Establish mechanisms to avoid such risks.
- Ensure that the methods of consultation to be used throughout the cycle guarantee that women's voices are heard, especially those suffering greater marginalization (take into consideration the socio-cultural norms that might prevent women from participating).
- Ensure gender equality and gender sensitivity within your own organization, through steps such as ensuring a culturally appropriate gender balance in programming teams, as well as enhancing the awareness and sensitivity of staff.

### e) *Coordination*

It is impossible for one organization to address all the human rights issues that cause a certain situation, especially when we have a holistic, integrated vision of rights which considers them all to be inseparable. This increases the need for coordination with all other actors operating in a given context (which is justified by many other reasons). Coordination serves multiple purposes: sharing and disseminating information (including analytical information about the context or the evolution of protection risks), finding synergies with others to complement actions and increase their potential impact, etc.

Coordination is thus necessary throughout the project cycle, and can happen within clusters along with other mechanisms, especially those that are led by national authorities.

- Map actors; identify who is doing what, and which coordination forums and mechanisms exist.
- Get actively involved in coordination forums, share relevant information on the findings of your context analysis, actions and evaluations (including the monitoring of risks) and promote accountability and transparency.
- Support the development of coordination mechanisms where they do not exist, involving, to the maximum possible extent, local civil society and authorities.

## 6.2. Humanitarian context analysis

### a) *Key considerations*

In this phase, we conduct a situation/problem analysis and map actors, while key protection risks and needs are identified and analyzed through the participation of a broad and representative sample of the community. The objectives are:

- To define a map of rights that can be claimed.
- To define a map of actors in accordance to rights, responsibilities and obligations regarding the rights that can be claimed.
- To define the risks faced by different groups and the organization, and how they can be faced/addressed (with which strategies/actions).
- To define the role of the organization conducting the analysis according to their mandate, resources and operational capacity. To analyze what can/should be done by the organization and what should be referred to other actors.

HRBGA requires an analysis of a given context, its problems (and how an event has affected the rights of certain groups in particular ways) and the different stakeholders concerned and involved in terms of human rights and humanitarian norms and standards. Critically, risks have to be analyzed on different levels, as we have seen above.

For the “problem analysis”, we look at the position of individuals and groups within society, rather than focusing exclusively on their situation.



The context analysis should determine:

- The applicable legal framework(s) –considering both international and national systems— and to what extent they are applied in practice; this includes the determination of whether:
  - The main international treaties have been ratified
  - Relevant rights are recognized in the Constitution or Basic Law
  - Relevant policies and regulations are formulated in accordance with international norms and principles
- Relevant mechanisms and processes in accordance with international standards
- The drivers of the crisis
- Existing community-based protection mechanisms and capacities
- Patterns of violence and harm (including who/what is causing or alleviating them, and why)
- Historical, political and social dynamics within and between groups, including marginalized and at-risk social groups
- Specific groups at risk of discrimination
- Physical threats/threats emerging from hostilities
- Forms and prevalence of sexual and gender-based violence (SGBV), the main perpetrators and persons at risk
- Impact of the crisis on children (e.g. recruitment, association with armed groups, child labor, exploitation and family separation)
- National protection coordination mechanisms and potential for international humanitarian community engagement
- Response capacity of local, national and international actors, including need for capacity development
- Actual and potential roles of actors such as political/peacekeeping missions, government agencies/institutions, donors, member states, existing civil society, human rights organizations

The analysis should map rights holders, duty bearers and responsibility bearers. This includes the household level (such as parents), community level (elders, religious leaders, teachers, health providers), local level (municipal officers, local government officials), national level (ministers, presidents), and international level (donors, international NGOs, UN agencies, and so forth).

Take into consideration for each group:

Rights holders:

- Who are they?
- What are their immediate needs?
- Are they aware of their rights and how to claim them?
- What are their capabilities?
- How are they organized?

Duty and responsibility bearers:

- Who are they?
- What are their resources and capacities?
- What are their obligations as regards identified problems, and to what extent are these met?
- What is their attitude as regards the identified problem(s)?
- What are they actually doing to respond to the problem(s)?

**b) Key questions**

- Which groups are most affected in the particular context?
- What are the rights that are being violated/infringed upon/insufficiently protected?
- What are the rights and capabilities of the selected rights-holders? Are they able to influence their situation? Take into consideration:
  - International, regional and national norms, as well as policies, strategies and action plans, including customary and religious laws, practices and values that prevail
  - Existing mechanisms to claim rights (formal and informal justice)
  - The different dimensions of rights to determine the degree of vulnerability
  - Intersectionalities (gender, culture, religion, social status, etc.)
- Who are the responsibility bearers? What are their capacities?
- How are the different groups (rights holders, duty bearers and responsibility bearers) affected by the situation (conflict, disaster, etc.)?
- Who are the duty bearers? What are their legal obligations? What are their capacities to meet these obligations?

To the extent possible, data will be collected in a **disaggregated** manner.

In order to analyze vulnerability, aspects to be considered are:

- Levels of education
- Productive and economic means
- Health status
- Levels of power and influence
- Access to services and information
- Levels of participation in the elaboration of policies, plans, etc.
- The different kinds of discrimination that might exist (religious, ethnic, cultural, etc.). Bear in mind that discrimination can result from legal inequality in status and entitlements (it may be caused by legal and policy environments).

### c) Potential Actions

- Conduct surveys to determine a baseline with disaggregated data (gender, age, disability, rural/urban, households led by women, other possible intersections).
- Conduct participatory problem analysis involving local communities and authorities, ensuring the voices of those most discriminated against and vulnerable are heard (stakeholder meetings or focus groups, interviews with key informants, etc.).
- Conduct participatory vulnerability and capacity analysis to determine strengths and gaps/weaknesses.
- Provide feedback to communities and authorities about findings.
- Participate in clusters or other coordination mechanisms, share information on findings, map ongoing initiatives.

As a result of this context analysis, where problems have been identified and analyzed and stakeholders have been mapped and analyzed, the following will be determined:

- The main existing human rights problems
- The most vulnerable groups
- Which problems affecting certain groups are not addressed

The selection of the core problem to be addressed will be done in accordance with the organization's mandate and comparative advantage as regards other actors operating in the given context.

## 6.3. Humanitarian response planning

In this phase, we identify specific priorities and desired outcomes that must be pursued collectively. As a result, they must also be defined with meaningful participation and the engagement of communities and, where possible, authorities. The process leading to the setting of objectives and means of reaching them must recognize differences in age, gender and diversity.

### a) Key considerations

When defining objectives, results and activities, bear in mind that:

- The logic of the action must be related to the rights to be promoted. Components of the action and its expected results will relate to different affected groups (in terms of rights holders) and to duty and responsibility bearers.
- Indicators will be elaborated in terms of progress in the exercise of rights.
- Several factors that provoke the violation of human rights will be tackled: root causes of exclusion, discrimination or the non-fulfillment of rights have to be targeted.
- Seek relationships and complementarity with other actions.
- Ensure the participation of relevant rights holders, duty bearers and responsibility bearers in decision-making and in the way activities are conceived.

Furthermore, the action should be designed to:

- Focus on both duty bearers and rights holders and promote their awareness, capacity and interrelations.
- Focus on synergies within sectors and pay attention to linkages between micro and macro levels.
- Create special mechanisms to ensure focus on and inclusion of those most vulnerable.
- Ensure ownership and meaningful participation.
- Include mechanisms for complaint, resolution and redress.

### **b) Actions**

Projects and activities might include services to address immediate problems, together with classic HRGBA components:

- *Capacity building*

This can include research, the development of handbooks, manuals or training materials, education, awareness-raising activities, organizational or network development.

- *Strengthening of governance structures, dialogue between the state and civil society, and mechanisms for interaction between rights holders and duty and responsibility bearers*

This can include supporting change in legal and administrative procedures and institutions on different levels (community, municipality, governorate, State), building dialogue and interrelations between rights holders and duty and responsibility bearers; or promoting networking.

- *Advocacy and practical actions on human rights violations*

This can take the form of campaigns, the promotion of changes to specific laws, policies or practices, human rights reporting (UN conventional and non-conventional mechanisms or other), legal aid or the development of legal literacy.

Types of activities as regards the different kinds of stakeholders:

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#### **Rights holders**

- Organizing and mobilizing rights holders
  - Raising awareness of rights
  - Building consciousness about the root causes of the specific human rights violations they suffer from and about authorities' legal obligations
  - Building the organizational and leadership capacity of rights holders' organizations
  - Supporting the mobilization of rights holders in advocacy actions and campaigns
  - Addressing basic needs in ways that increase the empowerment of rights holders
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**Duty bearers**

- When possible (and necessary), raise awareness on the international legal framework and the duty bearers' obligations.
- When possible, support compliance with international legal obligations through capacity-building, legal and policy development support, etc.
- Hold the duty bearer accountable.
- Get the duty bearer to accept responsibility.
- Publicly expose duty bearers' inaction or violations.

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**Responsibility bearers**

- Raise awareness on human rights and humanitarian norms and principles and their responsibilities in this regard.
- Capacity-building
- Create alliances to promote human rights.
- Publicly expose human rights violations .

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**Key questions**

When objectives and expected outcomes are being defined, you should check the following:

- √ Are they related to human rights norms or principles?
- √ Do they address issues related to specific rights holders?
- √ Do they foresee changes referring to both rights holders and duty bearers?
- √ Do they address identified root causes of the problematic situation, including policy and/or legislation?
- √ Do they address specifically gender-related inequalities?
- √ Do the priorities reflect the issues raised by the most vulnerable groups?

## 6.4. Response implementation, monitoring and evaluation

Program implementation, monitoring and evaluation is done with the active participation of communities and authorities, in a way that ensures that their feedback and contributions regarding the impact of activities and the situation on the ground (and thus possible expected or unexpected risks) are adequately considered, meaning that they influence possible adjustments to the response and to future actions.

A primary challenge for a HRGBA action is to ensure that programs remain true to basic human rights principles. Monitoring and evaluation is one of the main tools to ensure this.

How you should implement and monitor programs depends on the field and the specific actions you have designed, but some general issues can be highlighted.

### **a) Key considerations**

#### ***Implementation***

- When starting the implementation, focusing only on implementing activities rather than producing the expected outputs and results is a significant risk. We must avoid losing a global perspective and focusing exclusively on what the logical framework provides. Also, pressure from deadlines should not result in reduced efforts to ensure meaningful participation.

The main concern and **focus** during implementation are the needs and **rights of the most vulnerable sectors**, the individuals and groups we are working with, rather than indicators, schedules and budgets, which are also important but are not the aim of the programs. Again, flexibility within the framework of the program is necessary in order to ensure that we adequately address their needs, priorities and claims.

- **Addressing root causes** requires action on a local and national level as regards law and policy, as well as action related to organizational and community empowerment. It is crucial that we acknowledge that a humanitarian intervention must aim at starting or supporting **processes** that might lead to effects in the **long term**, and for which local **structures of mobilization, networking and participation** will have to remain operational (beyond the implementation period). In this sense, it is critical that we take measures to broaden the scope of the intervention, ensuring:
  - An ongoing coordination with local, national and international actors
  - Support in establishing, developing or strengthening sustainable structures and institutions where a meaningful dialogue and interaction between rights holders, duty bearers and responsibility bearers can effectively take place.
- Ensuring meaningful, ongoing participation in the long term is not easy, especially when we intend to address structural problems. The **management of expectations** is key, as are the mechanisms we create to ensure **information sharing** at all times (and not only in the initial phase, when we launch the project) so that we also promote **informed participation** by key stakeholders.

Therefore, we will not only need steering committees; other means must be used, such as media campaigns, public meetings, training... Relying on existing structures (such as local committees) can prove useful, but we need to ensure that they don't exclude the most vulnerable parties or reproduce discriminatory patterns.

In order to encourage participation, we should also ensure that we don't limit efforts to holding meetings, but that we **return the results and information to the communities**, and that we include people in decision-making and encourage the mobilization of rights holders.

- It is very important that we establish clear **inclusion and complaint mechanisms** for our partners and the individuals and groups we work with, and that we be able to react to the feedback we receive.

### ***Monitoring and Evaluation***

Monitoring and evaluation (M&E) are important to ensuring **constant organizational learning** and the improvement of our actions. Mechanisms to ensure that the results and findings of M&E feed into strategy and programming must be established. They are also a key element to ensure accountability and transparency.

M&E mechanisms will aim to establish to what extent an action has contributed to transforming power relationships, or to correcting inequalities, discriminatory practices and the unjust distribution of power.

So, what do we monitor?

On the one hand, we will look at the **results of our action**:

As regards rights holders:

- Changes in people's lives that the action has helped generate
- Which rights are being better fulfilled
- Which rights are no longer being violated
- Awareness of rights and the capacity to claim them
- Citizen mobilizations to claim rights

As regards duty bearers:

- Changes in duty bearers' behavior in terms of compliance with international human rights obligations
- The adoption or implementation of legislation and/or policies
- Levels of accountability
- The establishment or improvement of mechanisms to claim rights and provide reparations
- The involvement of citizens/civil society in the elaboration of policy and law...

Results must be formulated taking into consideration what can be realistically achieved in the typically short timeframes of humanitarian actions. In this sense, there are two dimensions that can be analyzed, monitored and evaluated: the attitudes and behavior of duty bearers and of rights holders. In other words, that rights holders are more organized and active in claiming rights or that duty bearers have changed their conduct.

Also, the HRGBA emphasizes the importance of **processes**, which means that monitoring and evaluation will look at management, procedures, capacities of the different organizations and bodies involved in the action (including our own), mistakes, changes and resources.

The components of the action to look at are the following:

<p><b>Human rights</b></p>	<p>Has the action contributed to improving the exercise of human rights?          Have the action's activities increased rights holders' awareness of their rights?          Has the action contributed to creating normative changes (policies/legislation)?</p>
<p><b>Equality and non-discrimination</b></p>	<p>Have discriminated groups been considered in the action?          Has the project contributed to modifying situations of inequality? Has it promoted equality?          Have rights holders, duty bearers and responsibility bearers been included in all of the phases of the action?          Have actions regarding public policies of equality and non-discrimination been included in the action?</p>
<p><b>Accountability</b></p>	<p>Have mechanisms to account for the action's objectives, results, procedures, mistakes and learning by rights holders, duty bearers and responsibility bearers been operational throughout the action?          Has information been shared in an adequate manner that ensures it is understood by all?</p>
<p><b>Participation</b></p>	<p>Have stakeholders participated meaningfully in all phases of the project cycle and in the coordination structures/entities?          Has the project encouraged citizen participation?          Has our action been coordinated with the interventions of others?</p>
<p><b>Strengthening capacities</b></p>	<p>Analysis of the capacities (aptitudes, qualities and means) that have been developed by rights holders to claim their rights, by duty bearers to comply with their obligations and by responsibility bearers to comply with their moral responsibilities.</p>

It is important to monitor potential conflicts. When rights-based projects are successful, they trigger changes in power relationships, which will very probably entail tension. This should be monitored throughout the project cycle in order to identify new risks that arise, or unintended effects of the action that might lead to adaptations of what we do or that might drive us to adopt measures to react to unexpected consequences.



To ensure all of these aspects, monitoring should be regular and include feedback or complaint mechanisms to allow participatory monitoring and acknowledge stakeholders' status as rights holders.

**b) Actions**

- Establish mechanisms for collective and ongoing analysis of risks, based on protection monitoring, and ensure that humanitarian assistance does not create/exacerbate protection risks or cause further harm.
- Ensure a sensitive, culturally-appropriate protection strategy for two-way communication with communities in a manner that enables access to information and direct engagement by/with a range of different groups within communities.
- Formalize feedback and complaint mechanisms through an official policy that defines the purpose and limitations of these mechanisms (addressing confidentiality issues).
- Explore creative ways of enabling representatives from a cross-section of the community (in terms of age, gender and diversity) to participate in the monitoring and evaluation of results.
- Ensure that the rights holders you have worked with have a key role in M&E processes and procedures.
- Establish mechanisms and procedures to ensure transparency and accountability.

# **07. HRGBA TOOLS AND BIBLIOGRAPHICAL RESOURCES**



# 07

## HRGBA TOOLS AND BIBLIOGRAPHICAL RESOURCES

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The Human Rights and Gender-Based Approach  
in the context of a chronic humanitarian crisis:

# THE GAZA STRIP

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