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Protective action: incorporating civilian protection into humanitarian response

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What is protection?

Put simply, protection is about seeking to assure the safety of civilians from acute harm. Traditionally, protection by humanitarian agencies was considered the province of 'mandated actors' – agencies with a specific mandate under international law to perform specific protection activities. The approach of the two main protection actors, the International Committee of the Red Cross (ICRC) and the UN High Commissioner for Refugees (UNHCR), was, and largely remains, a concern for legally oriented, diplomatic and persuasive engagement with national state and non-state actors. The legal foundations of protection work are reflected in its most commonly accepted definition, which describes protection as:

> all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (i.e. human rights law, international humanitarian law and refugee law).[1]

Developments during the 1990s and early 2000s profoundly changed perceptions of the relationship between humanitarianism and warfare, prompting humanitarian actors to think more deeply about the extent of their responsibility to provide more than relief alone. A growing appreciation of the effects of war on civilians; recognition of the limitations and sometimes negative consequences of relief assistance; greater emphasis in international policy spheres on a responsibility to protect;

1 ICRC, Third Workshop on Protection, Background Paper, 7 January 1999.

Key messages

- Humanitarian agencies have a responsibility to understand the nature of the risks affected people face, and to consider the positive and negative impacts of their work on these risks.
- Agencies should incorporate civilian risk, as well as need, into their analysis and response. At a minimum, agencies should adopt a core commitment to protection which includes: an organisational policy on protection; assessments and analysis that incorporate protection; a commitment that assistance programmes consider impact on civilian risk; measures to see that processes are in place to respond to abuses witnessed during work; and training and support for staff in protection.
- Agencies should consider investing in central capacity in order to guide the development and implementation of organisational protection policies. Further investment is required so that agencies can develop the skills and tools they need to undertake assessments of civilian risk.
- The Protection Cluster should activate its *droit de regard* over other spheres of action through the development and agreement of methods to mainstream protection into assistance.
- Donors should consider providing additional support to non-specialist protection agencies in developing institutional protection policies, capacity and training, as well as supporting the inclusion of protection activities in relief programmes.

and closer linkages between humanitarian action and the wider policy agenda all combined to expand the focus of humanitarian action to encompass issues of civilian safety.

As a result of these changes, the number of protection actors has increased and protection itself has evolved. It has become a visible and vocal activity in all forms of relief response, from natural disasters to complex emergencies. Protection is one of the 11 core areas of humanitarian action coordinated under the cluster approach. It is no longer the exclusive preserve of mandated actors; an unprecedented number and array of new protection agencies are active, working more closely with affected communities and drawing on links with other political and military actors in their efforts to increase civilian safety. As a result, the overall focus of protection has shifted away from a primary preoccupation with working diplomatically with national duty-bearers (the meso level) to a new emphasis on the responsibility of international actors (the macro level) and on programmatic work within communities (the micro level).

The developments described here have also affected how protection is understood. Many agencies, while continuing to accept the ICRC definition as the overarching normative framework, have also developed more accessible working definitions which emphasise safety rather than rights. Arguably, these working definitions distil a distinctive humanitarian element from the all-encompassing ICRC definition, in that they focus on the more acute forms of suffering (see Box 1). The recasting of protection in non-legal language has also proved a more fruitful entry-point for some non-specialist agency discussions on how to ensure that protection principles are incorporated into other assistance programmes.

Different levels of protection involvement

There are a number of reasons why humanitarian agencies are cautious about engaging in protection. The first relates to capability, and the fact that humanitarian workers, unlike military actors for example, are generally unable to physically protect civilians against imminent attack. Linked to this is a concern that humanitarian agencies engaging in protection 'substitute' for more effective protective action by the responsible authorities, or may disguise the international community's failure to address protection imperatives through more robust means. On a more pragmatic level, agencies report a high degree of confusion about protection and how it should be approached. Within the humanitarian field it is questionable whether non-specialist humanitarian agencies have the requisite skills or capacity to undertake technical protection

Box 1: Agency approaches to protection

- ICRC: Protection encompasses those activities aimed at preventing and/or putting an end to violations of the rights of individuals and ensuring that authorities and belligerents meet their obligations in accordance with the letter and the spirit of International Humanitarian Law (IHL) and other fundamental rules which protect individuals in situations of violence. These activities seek to affect the causes of abuses, not their consequences.
- UNHCR: a range of concrete activities that ensure that all women, men, girls and boys of concern to UNHCR have equal access to and enjoyment of their rights in accordance with international law. The ultimate goal of these activities is to help them rebuild their lives within a reasonable amount of time.
- UNICEF and Save the Children: freedom from violence, injury or abuse, neglect, maltreatment or exploitation.
- OCHA and International Rescue Committee: all activities aimed at ensuring full respect for the rights of the individual in accordance with international human rights law, IHL and refugee law.
- Norwegian Refugee Council (NRC): protection of refugees and IDPs involves protection of rights pursuant to internationally accepted conventions, principles and standards.
- Oxfam: safety from violence, coercion and deliberate deprivation.
- MSF-H: freedom from violence, abuse and deliberate neglect.
- WFP: safe and dignified programming.

programmes, and if they do so they may undermine the work of more specialist actors. Finally, there is the argument that humanitarian protection jeopardises programmes: protection is a contentious and overtly political form of humanitarian action, and so may have attendant risks for programmes, staff and beneficiaries.

While these are legitimate concerns, they are not the basis for inaction in every situation. Rather, they suggest that the potential scope and limitations of humanitarian protection should be clearly understood and articulated in different contexts. In light of the horrific consequences of conflict for civilians, humanitarian agencies have a responsibility to understand the nature of the risks affected people face, and to consider the positive and negative impacts of their work on these risks. While the role of humanitarian actors in protection may be limited, in certain contexts and, for certain communities, protection work can save lives, help create safer options for affected communities or alleviate

Table 1: Organisational and capacity requirements associated with different levels of protection

Type	Mainstreaming	Protective action	Specialist (or stand-alone) protection programming
Definition	The incorporation of protection principles and concerns into relief programming. A risk analysis is undertaken and programmes are designed in order to minimise risk to the degree possible.	Projects or activities that have both assistance and protection objectives, or are a means of addressing protection problems through assistance. Can involve activities such as advocacy or assistance work.	Dedicated protection projects are undertaken in parallel with other assistance work. Undertaken by specialist protection agencies, these projects have the primary objective of meeting protection needs of civilians.
Examples	Incorporating protection considerations into water and sanitation programmes. For example, considering lighting around latrines, family (non-communal) latrines and monitoring latrine use to ensure safety.	Strategically using interventions to enhance protection such as protection by presence or targeting assistance to at-risk populations. Fuel-efficient stoves. Information campaigns on places of return. Advocacy towards local authorities to change relocation policies.	Rule of law programmes. Registering refugees and assisting with documentation. Monitoring IHL and reporting to authorities on adherence. Medical and psychosocial care to survivors of GBV.
Capacity	Assistance staff have basic knowledge of protection, are able to monitor trends and adapt programmes accordingly. Requires minimum level of dedicated capacity at headquarters, with at least periodic support in-country for a fixed period. Requires organisational policy on, and commitment to, protection. Senior managers' appraisals incorporate protection. Training required to ensure good basic knowledge of protection.	Requires some dedicated protection capacity at field level in order to ensure consistent protection training and skills development. Also requires dedicated capacity at headquarters. Requires organisational policy on, and commitment to, protection. Senior managers' and project staff appraisals incorporate protection. Requires training and tools and methodologies to undertake protection work.	Requires specialist staff to implement programmes with technical support from headquarters. Organisational policy on and commitment to protection. Senior managers' and project staff appraisals include protection. Requires consistent training and established tools and methodologies to undertake protection work.
Funding	Central funding to support training and capacity requirements.	Central funding to support training and capacity requirements.	Central funding to support training and capacity requirements. Requires dedicated resources and budget lines at field level.

the effects of abuse. The question, therefore, is not *whether* humanitarian organisations have a responsibility to consider issues of civilian safety in their work, but rather *how far* this responsibility extends.

In general, protection activities are divided into two types: 'mainstreaming protection', which involves incorporating protection principles into relief programming, and 'stand-alone' or 'specialist' programmes or activities that have protection as their primary or sole objective. However, between these two lies a comprehensive body of work that fits into neither category, but which is increasingly pursued by many agencies. These activities – which are termed 'protective actions' for the purposes of this paper – can have both assistance *and*

protection objectives, or can be a means of addressing protection problems through assistance. Table 1 sets out the difference between mainstreaming, protective action and specialist action, highlighting capacity and funding requirements for each.

A universal 'core commitment' to protection

Despite the complexity and challenges involved, responsibility for determining agency practice on protection is often left to individual protection officers in the field, rather than emerging out of clear guidance developed at an organisational level. While there is a need for field programmes to be sufficiently flexible to decide which protection activities are

Box 2: Non-specialist approaches to protection: WFP and Oxfam

In response to the Secretary-General's call in 1997 that all UN agencies must integrate human rights into their work, as well as prompts from other UN agencies that WFP should use its large field presence for protection, the agency began a multiyear research project into protection. This research showed that hunger was frequently distorted by protection issues, and that food distribution often indirectly resulted in protection problems. The main findings were that an organisation with the profile, influence and coverage of WFP could potentially have a major impact in protection without departing from its overall goal of hunger reduction (HPG Livelihoods and Protection meeting, 26 April 2007). For WFP, protection means 'safe and dignified programming'. This incorporates three elements: employing a protection-oriented analysis of hunger; seeking to ensure that programming does not incur new risks; and agreeing procedures for action when abuses are witnessed.

Oxfam has spent a number of years considering its protection responsibilities. Following a 2006/2007 internal review of its protection work, senior managers agreed that Oxfam would, at a minimum, mainstream protection into all of its assistance programming, and clarified what 'mainstreaming protection' means for the organisation. The agency also decided that it should build on its experience in dedicated protection programming in situations of forced displacement and sexual violence, make such programming a dedicated focus area and invest in capacity and skills development (R. Hastie et al., *Protection: Mainstreamed, Integrated or 'Stand Alone' Programmes?*, Oxfam Internal Discussion Paper, 2007, p. 2.
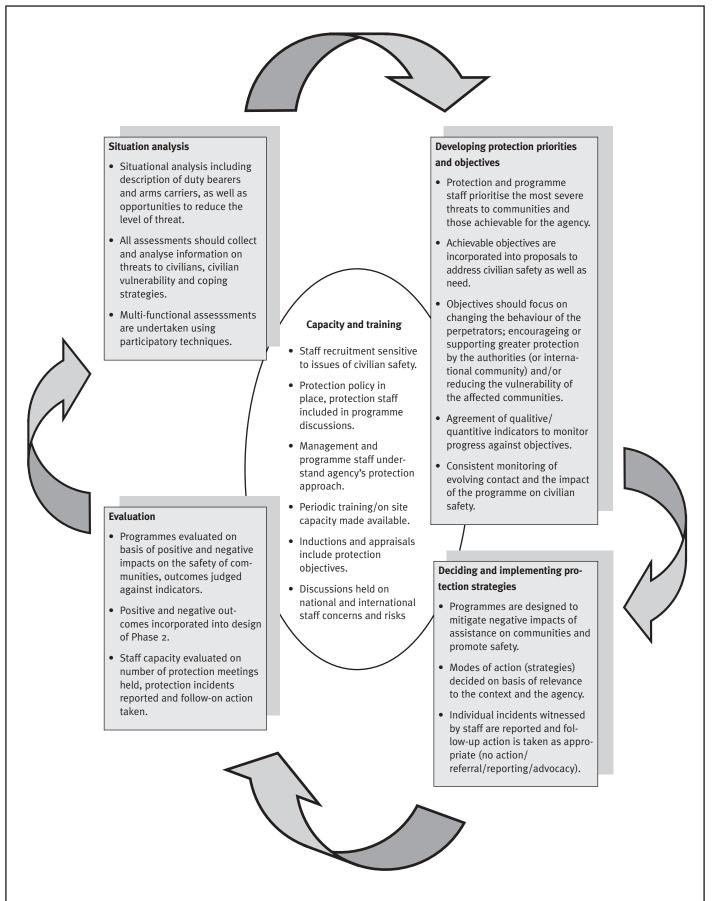
most appropriate in a given context, such decisions should be guided by overall institutional protection policies. Clarifying organisational positions would help reduce the level of confusion and duplication of roles amongst humanitarian organisations, and ensure that operational agencies play a part in enhancing, rather than undermining, the protection activities of specia-list agencies. It would allow decision-making on protection to be guided by organisational considerations – such as mandate, capacity and expertise – rather than personal preference. It would help to ensure that considerations of civilian risk are integral to how humanitarian organisations respond to crises, rather than simply an additional activity for those with the time, interest and capacity. Finally, it would help to clarify the minimal, but important, role that traditional relief agencies can play in protection, so that concerns about 'substitution' can be countered.

HPG recommends that each humanitarian organisation, at a minimum, adopts a 'core commitment' to protection. This core commitment encompasses mainstreaming protection into their relief operations as outlined above, as well as the facility to respond to protection incidents encountered during the provision of assistance. Thus, this core commitment involves the following five programmatic and organisational elements:

1. **Setting out an organisational policy on protection that elaborates what protection means for the organisation:** any policy should be framed by international humanitarian law (although the protection approach may not be explicitly legalistic), and organisations should elaborate their approach to protection and their scope of work.

2. **Providing training and support for staff on protection to ensure they understand it and can identify and respond to threats encountered in the course of their work:** dedicated protection support is preferable to allow the development of protection policies, staff training and facilitation of protection on the ground with the aid of simple, context-specific tools.

3. **Ensuring assessment and analysis to take account of risk as well as need:** analysis is required to understand what violations, threats or abuses civilians are facing, and whether humanitarian interventions can play any role in mitigating these. Participatory assessment is crucial in this regard.

4. **Ensuring assistance considers possible impacts on civilian risk:** the key determinant in integrating protection into assistance is ensuring that it is considered in all stages of the project cycle, from design to monitoring and evaluation. While checklists and other tools are available to facilitate this, the presence of dedicated protection staff to provide ongoing support to programmes is preferable.

5. **Establishing processes to respond to abuses witnessed during work:** protocols should be put in place to guide staff in how to respond when they witness abuse. Potential responses will depend on the agency and context, and will include: (1) engaging the responsible authorities; (2) referring information to experienced protection agencies; (3) assisting affected individuals in accessing services; and (4) adapting programmes.

Figure 1: Incorporating protection into the project cycle

Situation analysis

- Situational analysis including description of duty bearers and arms carriers, as well as opportunities to reduce the level of threat.

- All assessments should collect and analyse information on threats to civilians, civilian vulnerability and coping strategies.

- Multi-functional assesssments are undertaken using participatory techniques.

Developing protection priorities and objectives

- Protection and programme staff prioritise the most severe threats to communities and those achievable for the agency.

- Achievable objectives are incorporated into proposals to address civilian safety as well as need.

- Objectives should focus on changing the behaviour of the perpetrators; encourageing or supporting greater protection by the authorities (or international community) and/or reducing the vulnerability of the affected communities.

- Agreement of qualitive/ quantitive indicators to monitor progress against objectives.

- Consistent monitoring of evolving contact and the impact of the programme on civilian safety.

Capacity and training

- Staff recruitment sensitive to issues of civilian safety.

- Protection policy in place, protection staff included in programme discussions.

- Management and programme staff understand agency's protection approach.

- Periodic training/on site capacity made available.

- Inductions and appraisals include protection objectives.

- Discussions held on national and international staff concerns and risks

Evaluation

- Programmes evaluated on basis of positive and negative impacts on the safety of communities, outcomes judged against indicators.

- Positive and negative outcomes incorporated into design of Phase 2.

- Staff capacity evaluated on number of protection meetings held, protection incidents reported and follow-on action taken.

Deciding and implementing protection strategies

- Programmes are designed to mitigate negative impacts of assistance on communities and promote safety.

- Modes of action (strategies) decided on basis of relevance to the context and the agency.

- Individual incidents witnessed by staff are reported and follow-up action is taken as appropriate (no action/ referral/reporting/advocacy).

More comprehensive protection approaches by non-specialist agencies

Some organisations may choose to go further than adopting the core commitment to protection outlined above. While there is no blueprint to help agencies decide the limits of their engagement, key organisational considerations include:

- the profile of the agency concerned (e.g. strict neutrality and impartiality may mean that some agencies are less amenable to protection work);
- the degree of fit with the agency's work (e.g. the work of emergency response actors or medical agencies may be more proximate to civilian abuse and thus protection may be more relevant);
- the level of risk involved (protection may increase risk to staff, programmes and beneficiaries, particularly where the government is one of the main perpetrators of violence);
- the capacity of the organisation to take on additional responsibilities (both the amount and type of capacity available in the organisation); and
- the added value of the agency assuming an expanded role in protection (e.g. larger agencies with greater influence may bring unique leverage).

Additional factors may be relevant in determining whether an agency should take on protection roles in a specific context. These include the capacity and willingness of the authorities to respond; the capacity of affected communities to address protection concerns themselves; the agency's expertise and experience in the issues concerned; and the degree of complementarity between the proposed work and that of specialist protection agencies.

A wide range of protective actions are possible, but can be largely grouped into two different areas:

1. **Enhancing protection through the strategic use of humanitarian assistance:** there are a number of ways in which humanitarian assistance can be used strategically to enhance protection, including the deployment of aid workers in order to increase protection through presence; targeting assistance to specific locations or communities so as to reduce tensions or vulnerability; or placing conditions on the delivery of assistance in order to encourage compliance with protection standards. Each approach has its limitations and, to a certain extent, involves compromising the principle of impartiality.
2. **Dedicated programming to reduce vulnerability and decrease threats**: there are a wide variety of practical measures that non-specialist actors can take to increase the protection of affected

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Box 3: Collective advocacy in northern Uganda and Darfur

In northern Uganda, government intimidation has ensured that the majority of humanitarian actors have shied away from challenging the state on its responsibility to protect its citizens. Those that have spoken out have been intimidated – both locally and nationally. These issues were brought into sharp focus following the publication of a report by the Civil Society Organisations for Peace in Northern Uganda (CSOPNU) in March 2006. This highlighted the findings of an earlier study, hotly disputed by the government, which put the crude mortality rate in Gulu, Kitgum and Pader well above emergency thresholds, with an estimated 1,000-plus excess deaths per week. Murder was found to be the third most common cause of death, with nearly 4,000 killings in the period January–June 2005. Soon after the release of the report, humanitarian representatives were called to a meeting at President Yoweri Museveni's ranch, where they were told that NGOs were to remain silent on issues of government responsibility.

While advocacy is also sensitive and risky in Darfur there have been some successes. Joint advocacy by humanitarian and diplomatic actors was suc-cessful in removing legislative obstacles to assistance for rape survivors. Under Article 48 of Sudan's Criminal Code, rape victims were obliged to report the incident to the police in a 'Form Eight' report before they could receive medical treatment. This was a major barrier to treatment as victims frequently did not trust the authorities, and rapes were generally not reported – a fact which the authorities used to substantiate their position that claims of sexual violence were fabricated. Sudanese medical staff were also concerned about retaliation from the authorities, including harassment, intimidation and even prosecution, if they did not comply. Advocacy by UNICEF, the UN Population Fund (UNFPA), UNDP and the IRC, with support from local diplomatic representatives, led to the reporting requirement being removed. While poor communication of this change in policy by the Ministry of Health has limited its effect, in areas where people are informed it has allowed medical staff to treat survivors without fear of repercussions from the authorities. Despite the sensitivity of the subject, the sustained and multiactor advocacy approach was thought to be instrumental in ensuring the safety of participating agencies.

populations. These can focus on decreasing the level of threat that communities face, or helping to reduce communities' vulnerability to threats. Monitoring, reporting and advocacy have become more common features of humanitarian action as humanitarian agencies seek to inform, encourage and facilitate protection by other actors in recognition of their lack of capacity to protect directly. While such activities can decrease the level of risk civilians face, care must be taken in light of concerns about the lack of professional standards, as well as associated risks to staff and programmes. Other approaches focus on reducing communities' vulnerability to threats through reducing people's exposure. Examples include providing information to assist people in making decisions about movement; facilitating dialogue between communities and protection actors; and providing income-generation activities so that more risky strategies can be avoided. It is important that the potential of community responses is not exaggerated: whilst there may be opportunities for people to avoid risk or mitigate its impact, these may be relatively insignificant in comparison to the scale of the overall threat they face.

Conclusion

Protecting civilians from acute harm is very much a humanitarian concern, in that it seeks to preserve life and alleviate suffering. With increased recognition of the impact of crises on civilians, it is also a concern that humanitarians can no longer justifiably ignore. The increased prominence of protection in humanitarian action is therefore a welcome development as it has encouraged acknowledgment of the role that all aid agencies can play in helping to protect civilians from acute harm. However, for many non-specialist actors deciding whether and how to engage in protection has been an ad hoc and inconsistent process, and involvement has not been supported by the requisite standards, skills and capacity. Adopting a minimum 'core commitment' to protection may help to delineate roles and ensure that each organisation develops the capacity to analyse the risks facing affected communities, to adapt its programming so that it assists in keeping people safe and to support its staff in responding to abuses witnessed during its work.

Decisions on whether an agency should go beyond the core commitment to protection into these more comprehensive areas of activity must be weighed against considerations such as the level of fit with current agency activities, the capacity of the agency to take on new areas of activity, the added value of doing so and the potential risks to staff and programmes. For certain activities, this will require an interrogation of an agency's commitment to impartiality and neutrality. In that sense, protection can be understood as the point of interface between humanitarian actors and their political, military and human rights counterparts. Each agency has a minimum responsibility to incorporate protection concerns into their relief activities to minimise risks and help keep people safe.

The more issues of risk or civilian safety become guiding determinants of where and how agencies respond, the more flexibility may be required in terms of the principle of impartiality. Similarly, while a greater analysis of the dynamics of conflict may not challenge principles of neutrality, activities such as monitoring, reporting and advocacy certainly stretch the concept. This does not infer that each humanitarian agency undertakes dedicated protection activities. Protection programming requires specialist knowledge, skills and capacity, and these can only be acquired through major organisational commitment, sustained over time. It is neither appropriate nor realistic for every humanitarian organisation to develop this level of capacity.

As the number of agencies engaging in protection increases, so too does the need for dialogue between them. Non-specialist protection actors have tended to pursue interventions either at the international or the very local level, often sidestepping national authorities. These approaches are important, but care must be taken not to undermine the work of specialist actors as they encourage and support national authorities to adhere to their protection responsibilities. More discussion between non-specialist and specialist protection agencies is needed to understand how this delicate balance can be maintained. While non-specialist protection agencies must take seriously their role in protection, experienced protection actors and donors must also support their involvement by assisting with the development of tools and capacity.

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