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Protecting civilians: the gap between norms and practice

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Key messages

- Norms and policies governing the protection of civilians (PoC) have dramatically expanded in recent decades, yet there is a growing sense that this has not translated into improved protection for civilians on the ground.

- While the expansion of norms, law and policy has been important, poor prioritisation and monitoring of outcomes have hindered their operationalisation.

- The rhetoric around protection has led to high expectations. Much more can and should be done. Understanding of civilian needs and the methods they use to protect themselves must be improved, and must play a greater role in influencing policy and programming.

Photo: Displaced children near Shangil Tobaya, Sudan.
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A wide array of norms, laws, policies and mechanisms focused on improving the protection of civilians (PoC) in armed conflict have emerged since the early 1990s. These range from international conventions highlighting PoC and the establishment of the International Criminal Court (ICC) to PoC-mandated UN peacekeeping missions and the elaboration of the Responsibility to Protect (R2P). However, as crises from Syria to the Central African Republic illustrate, these developments have not always translated into improved protection for civilians on the ground. This Policy Brief explores the rapid development of PoC laws and policies and critically examines attempts to translate them into concrete improvements for civilians in conflict situations.

The evolution of PoC norms and policy

PoC may be broadly understood to encompass actions to protect the lives and dignity of civilians in armed conflict, enable them to access

essential humanitarian assistance and create a secure environment over the long term. Various actors, from parties to a conflict to peacekeepers and aid agencies, have distinct roles to play in enhancing the protection of civilians in conflict. They also often have different – and at times conflicting – interpretations of the concept, and how to operationalise it.

The contemporary origins of PoC in International Humanitarian Law (IHL) lie in the aftermath of the Second World War. In response to the brutal treatment of civilians during the conflict, the Fourth Geneva Convention of 1949 firmly established legal protection for individuals who are not or are no longer participating in hostilities, and their property, as well as protection for those attempting to provide humanitarian assistance. While all civilians are afforded protection, women, children, the elderly and the displaced are given special mention. These protections were reiterated and strengthened in the Additional Protocols of 1977, and reflected in refugee and human rights law. Then as now, the problem remains that neither states nor armed groups sufficiently or consistently comply with these provisions.

A series of crises in the 1990s – including Somalia, Rwanda and Srebrenica – underscored the toll of conflict on civilians. In the years since, PoC-related norms and policies have dramatically expanded. Key developments included UN Secretary-General Boutros Boutros-Ghali's *Agenda for Peace* in 1992, highlighting the concept of human security; the establishment of the ICC, with the hope that it would enhance compliance with IHL and help prevent gross and systematic violations of human rights; the first UN Security Council Open Debate on the Protection of Civilians in 1999; and numerous international conventions highlighting PoC, ranging in focus from the protection of children in armed conflict to the banning of landmines and cluster munitions.

In parallel, a new protection norm specific to mass atrocities (genocide, war crimes, crimes against humanity and ethnic cleansing) emerged: R2P. First elaborated in the 2001 report of the International Commission on Intervention and State Sovereignty, R2P was unanimously adopted by member states at the UN World Summit in 2005. R2P consists of three pillars: the state's responsibility to protect its citizens from mass atrocities and their incitement; the international community's responsibility to encourage and assist states;

and the international community's responsibility to use diplomatic means to protect civilians or take collective action if a state continues to manifestly fail to protect civilians. This last provision – specifically as it relates to armed intervention – has aroused the most controversy. Notwithstanding the need for Security Council authorisation of any military intervention, many fear it will lead to the violation of state sovereignty and will be used to legitimise military aggression or regime change.

Protecting civilians through peacekeeping

One way in which PoC norms have been brought into practice is through the UN Security Council. The Council now has a number of tools at its disposal to take action on PoC issues, including the informal Expert Group on key protection issues, the imposition of targeted sanctions, establishing commissions of inquiry and making referrals to the ICC. However, the growing prevalence of peacekeeping missions with mandated PoC responsibilities has received the most attention – and criticism. Since the first peacekeeping mission with a PoC mandate was authorised (UNAMSIL in Sierra Leone in 1999), there has been a dramatic increase in the number of PoC-mandated peacekeeping missions, with 94% of peacekeepers deployed by 2009 operating under PoC mandates.[1]

The challenges to effectively *implementing* a PoC mandate are myriad, from under-resourced or ill-trained forces to a lack of political will. In the past, well-meaning mandates have often failed to translate into specific, appropriate and realistic guidance for peacekeepers on the ground.[2] There are also often unrealistic expectations of what missions can achieve, with many endowed with so-called 'Christmas tree' mandates, 'hung about with every task the international community's collective wisdom and conscience could devise'.[3] UN missions struggle to square peacekeepers' responsibilities under their mandate with limitations in terms of training,

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1   Victoria Holt and Glyn Taylor with Max Kelly, *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges*, OCHA/DPKO Jointly Commissioned Study, 2009.

2   Alison Giffen, *Addressing the Doctrinal Deficit: Developing Guidance To Prevent and Respond to Widespread or Systematic Attacks Against Civilians* (Shrivenham: UK Defence Academy, 2010).

3   Ditchley Foundation and ODI, 'Summary Note: Protecting Civilians in Armed Conflict', May 2013.

manpower and the caveats governments place on their troop deployments. Many of these issues have improved in recent years with the UN's elaboration of a new operational concept and improved training.

Another contentious issue is the increasing militarisation of peacekeeping missions, which has created tension between peacekeeping and humanitarian agencies over appropriate approaches. A recent example is Security Council Resolution 2098 (2013), which created a 3,000-strong Intervention Brigade in the Democratic Republic of Congo to undertake 'targeted and robust offensives … neutralizing and disarming armed groups'. The establishment of the brigade was met with outcry from many aid agencies and human rights groups over concerns that it would ultimately result in greater harm to civilians and questions around accountability.

Regional organisations have also undertaken PoC-focused missions and military interventions, including the African Union in its missions in Somalia and the Central African Republic. The NATO-led intervention in Libya is the most notable recent case of military action justified by PoC concerns. Security Council Resolution 1973 (2011), which authorised the intervention under Chapter VII of the UN Charter pertaining to situations the Security Council considers to be a threat to international peace and security. However, the resolution explicitly expressed the intervention's goal as the protection of civilians. Many of its advocates saw it as a normative victory for R2P, while others heavily criticised it as over-stepping the intended scope of the resolution. Given robust US support for the NATO intervention, some UN member states saw it as little more than a fig-leaf for US-backed regime change.

These suspicions have been exacerbated by the uneven pursuit of Security Council resolutions and other international actions relevant to PoC. Resolutions are heavily driven by the preferences of Security Council members, with some crises all but ignored. Military intervention is not always the most effective or appropriate approach in a given situation, nor is it the most common. There are generally numerous preferable diplomatic, political and economic tactics. However, the violation of state sovereignty in order to protect civilians has generated intense controversy and the circumstances under which it effectively serves protection objectives are fiercely debated.

Protection in humanitarian action

Until the 1990s, protection in humanitarian action was the nearly exclusive remit of the International Committee of the Red Cross (ICRC) and the UN High Commissioner for Refugees (UNHCR), both of which are specifically mandated in IHL (in the case of ICRC) and through the Convention on the Status of Refugees (in the case of UNHCR) with protection roles. This changed with the genocide in Rwanda and crises elsewhere, which led to new approaches, notably the principle of 'do no harm' and a growing focus on protection programming.[4] The UN Children's Fund (UNICEF) began to play a much larger role in humanitarian responses to conflict, and the Office of the High Commissioner for Human Rights (OHCHR) was created in 1993, with its first field presence in Rwanda. The UN Office for the Coordination of Humanitarian Affairs (OCHA), created in 1992, plays a substantial policy role on the protection of civilians, as well as supporting overall humanitarian response strategies. The number of specialised NGOs focusing on protection grew, and many others began implementing standalone protection programmes and 'mainstreaming' protection.

There is little humanitarian actors can do to eliminate the protection threats faced by those they seek to help. But they can respond to the needs of civilians arising from protection crises and reduce their vulnerability in a number of ways. The most commonly used definition of protection programming comes from the Inter-Agency Standing Committee (IASC), which describes '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)' as 'protective'.[5] The problem is that virtually anything that falls along the spectrum of humanitarian action can be considered 'protective'. Many aid workers see 'protection' programming as encompassing issues beyond those threats emanating specifically from conflict, from domestic and criminal violence to livelihoods and women's empowerment. There is much to recommend comprehensive approaches, but problems arise when there is a lack of prioritisation or protection outcomes are vaguely articulated and poorly monitored.

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4 Sorcha O'Callaghan and Sara Pantuliano, *Protective Action: Incorporating Civilian Protection into Humanitarian Response* (London: ODI, 2007).

5 IASC, *IASC Operational Guidelines: On the Protection of Persons in Situations of Natural Disasters*, 2011, p. 5.

Despite the production of guidelines and common standards many agencies have failed to develop a concrete, outcome-oriented focus to their protection activities. Where protection is 'mainstreamed', there is the risk that it becomes merely a box-ticking exercise. Measuring the impacts for civilians becomes difficult and the proliferation of 'protection' language can distort the perception of what is actually being done to ensure that civilians are protected from harm.

The 'protection gap'

The protection gap first and foremost stems from the failure of belligerents to comply with IHL and the absence of political solutions to conflict, but it can also arise from unrealistic expectations and insufficient understanding of which approaches will effectively result in greater protection. Regardless of the causes, there has often been a tendency to proclaim a 'protection failure' where international action is seen as insufficient to protect civilians, with significant blame often apportioned to the UN. The recent UN review of its actions during the war in Sri Lanka found evidence of a 'systematic failure' and urged the UN to meet a 'higher standard in fulfilling its protection and humanitarian responsibilities'. Many of the review's findings echoed similar reviews of Rwanda and Srebrenica. It is clear that the overwhelming need is not for new norms or laws but for concerted and more effective action to improve compliance with existing ones.

Part of the gap between rhetoric and reality stems from the fact that protection has been treated more as an activity than as an outcome. Aid agencies 'do' protection work, while peacekeeping forces 'implement' PoC mandates. Plans and promises become the focus, rather than outcomes. This obscures discussions of appropriateness and effectiveness, sidelining what lessons can be learned and what approaches might work best.[6] It also implies that any action that can be described as protective is sufficient or desirable. There is a strong case to be made for changing not only the way protection of civilians is 'done', but also the language used to express it.

PoC efforts are undermined by insufficient understanding of civilians' needs and a failure to actively involve them in design and implementation. Discussions during UN Security Council deliberations and deployment planning often do not sufficiently consider or prepare for the specific nature of violence and threats in a particular context. Few humanitarian interventions are based on rigorous context-specific protection analysis to identify risk patterns and understand what drives the behaviour of parties to conflict, and much protection programming is simply replicated from place to place. There is a lack of understanding by international actors at various levels of what protecting civilians means to civilians themselves, national governments and non-state armed groups.

Exacerbating this, much protection policy and programming neglects to consider the means and mechanisms civilians use to protect themselves. In acknowledgement of this, there is increasing attention on the strategies people draw upon to enhance their own protection.[7] This stems from a recognition that external interventions often fail to build upon local capacities and responses that are the first, and sometimes the only, line of defence in a crisis. However, not all 'self-protection' is positive. In desperate situations people may resort to protective responses, such as arming themselves, that have damaging long-term consequences or present new risks. Support for what civilians are doing themselves in the face of coercion and violence should be part of any protection strategy, but it is not enough on its own; an excessive focus on 'self-protection' risks diverting attention from the obligations of belligerents and shifting the burden onto civilians.

Conclusion

Knowledge and acceptance of PoC norms is growing among states and armed groups, and there have been some successes and examples of good practice within humanitarian action and peacekeeping operations to build upon. The IASC 'whole of system' review of protection in humanitarian action due to begin later this year is a positive step. However, new perspectives and approaches are urgently needed. As the current crises in Syria and the Central African Republic demonstrate, there must be greater flexibility and clarity on objectives as well as innovative and practical responses. In particular, the needs and experiences of civilians themselves – so often absent from the discussion of their protection – must be placed at the centre of any response to the dangers they face.

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6   Jenny McAvoy, 'Protection Is the Outcome, Not the Activity', draft, April 2013.

7   Ashley South et al., *Local to Global Protection in Myanmar (Burma), Sudan, South Sudan and Zimbabwe*, Network Paper 72 (London: ODI, 2012).