

#PROTECT  
AID WORKERS



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# Ensuring the Protection Aid Workers: Why a Special Mandate Holder is Necessary

Discussion Paper

Strengthening the protection of aid workers goes far beyond the simple application of security measures. Indeed, a series of important questions need further discussion, particularly on why existing mechanisms developed to protect aid workers often fail those working to help the most vulnerable.

Specific security strategies for humanitarian agencies operating in complex environments can be broadly characterised by the concepts of acceptance, protection, and deterrence. This paper *i.* promotes the respect of humanitarian principles – humanity, impartiality, independence, neutrality – as a tool for humanitarian actors to gain acceptance and access, and *ii.* uses the term ‘protection’ to refer to legal and judicial mechanisms meant to ensure protection of staff from violence, as well as accountability after the violence has occurred.

This paper does not discuss the correlation between the increase of attacks against humanitarian workers and the real and/or perceived politicisation of aid. This discussion paper is based on the assumption that humanitarian agencies strive to remain principled despite the increasingly challenging environment in which they operate.

## 1. Figures seem to show that violence against aid workers is significantly increasing. Does that mean that aid workers are more targeted than before?

The increasing number of interventions worldwide with consequently more aid workers in the field along with the fact that incidents are more easily reported today explains in part why the number of attacks is higher than in previous years<sup>1</sup>. The use of absolute numbers only is insufficient however to describe the increase in targeting. Tellingly, in 2014, the five contexts with the greatest number of attacks on aid workers were Afghanistan, Syria, South Sudan, Central African Republic and Pakistan<sup>2</sup>, all countries experiencing violent conflicts. It shows that respect for International Humanitarian Law (IHL), applicable in armed conflicts, and humanitarian principles are decreasing and that the nature of humanitarian aid and the protection that aid workers deserve is poorly respected and/or understood.

In situations of conflict or violence, humanitarian workers are deliberately staying in, or traveling to, dangerous areas in order to support the most vulnerable populations trapped in these areas. They become valuable targets for all parties to a conflict, despite their neutrality and impartiality.

Individual governments have the primary responsibility to ensure the protection aid workers within their boundaries, but the broader international community bears responsibility as well. Considering the growing number of violent crises and increased needs of vulnerable populations, it is urgent that specific focus be made on the protection of aid workers. This is why a special mandate holder could be the solution to strengthen their protection.

## 2. Aid workers, as civilians, are protected under international humanitarian law. So is there really a gap in the legal protection provided to aid workers?

First, protection accorded to aid workers will vary depending on the nature of the situation they are operating in. In many contexts where humanitarian workers delivering assistance, international humanitarian law (IHL) does not apply. And even when IHL does apply, the inherent protections are far from guaranteed. In many cases, aid workers often operate in contexts that are difficult to clearly define.

This unequal and rather complicated set of legal nuances regarding the levels of protection which can be granted to specific aid workers creates a gap between those who can benefit from specific protection and those who cannot.

It is indisputable however that as civilians, the majority of aid workers is protected under IHL, and more specifically by the Geneva Conventions<sup>3</sup>. But IHL also provides reinforced protection for some groups of aid workers, such as medical staff, creating a hierarchy of legal protections that privileges certain categories of aid workers above others<sup>4</sup>.

Aid workers are afforded different levels of protection depending on their organizational affiliation: being a UN staff member or a volunteer from a NGO will greatly change the protection provided. For example, UN Staff can benefit from the provisions of the Convention on the Safety of UN and Associated Personnel, while agencies detached from the UN will not.

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1 - Humanitarian Outcomes, Aid Worker Security Report 2015. Figures at a glance, available at: . See also: <http://www.irinnews.org/aid-worker-security-map/dataviz.html>

2 - Pakistan Today, Pakistan one of the deadliest countries for aid workers: Report, available at: <http://www.pakistantoday.com.pk/2015/07/16/national/pakistan-one-of-the-deadliest-countries-for-aid-workers-report/>. See also: <http://www.irinnews.org/report/101737/fewer-aid-worker-attacks-that-s-good-right>

3 - Kate Mackintosh, Beyond the Red Cross: the protection of independent humanitarian organisations and their staff in international humanitarian law, *International Review of the Red Cross*, vol. 89 nr 865, March 2007. Available: <https://www.icrc.org/eng/assets/files/other/irrc-865-mackintosh.pdf>. In addition, under the Rome Statute, attacks against humanitarian workers constitute a war crime.

4 - See 'Humanitarians Under Attack: Tensions, Disparities, and Legal Gaps in Protection', Julia Brooks, ATHA, 2015.

The aid worker's nationality can also mean a difference in protection. The protection afforded to national and international humanitarian personnel are very often unequal. Aid agencies are progressively transferring risk to national staff as part of remote management strategies, consequently increasing their exposure to dangers. In addition, while international personnel can benefit from consular protection and mechanisms provided by their country of origin, national personnel are left to rely on often weak or non-existent domestic justice systems.

Finally, the current mechanisms rely on the good faith of States<sup>5</sup> to actually provide a conducive environment for aid agencies and to prosecute perpetrators, all but ensuring weak systems to protect aid workers.

Considering the fragmentation and complexity of the existing mechanisms, an enhanced and comprehensive protection for all aid workers is needed. This should start with increasing the levels of knowledge of the existing mechanisms within all agencies and staff, and ensuring that the highest standards apply to all aid workers, particularly national staff.

### **3. Why focus on aid workers rather than on the global effort to enhance protection of the much greater number of civilian victims of violence? And wouldn't this focus make them a special group, de facto creating a hierarchical categorization of civilians?**

Focusing attention on the protection of aid workers is not meant to prioritize aid workers at the expense of the broader civilian population. Conversely, enhanced protection of aid workers will ensure that civilians receive lifesaving assistance. The fundamental reason why aid workers are in dangerous areas in the first place is to help populations in distress.

Furthermore, focusing on strengthening protection of aid workers would not create another, more favourable, status for aid workers. A special mandate holder could work as an advocate for this group and raise awareness of the specific vulnerability of aid workers, particularly national staff. Other special mandate holders are, too, focussing on specific vulnerable groups of civilians, like children or women.

This question also raises the issue as to whether aid workers, who are civilians under IHL, are really treated just like any other civilians. The nature of their work, the fact that certain groups of aid workers (UN or ICRC staff) benefit from specific protection, that the Security Council passed two resolutions on the Protection of Humanitarian Personnel and often include provisions on the protection of aid workers in other resolutions are proof that they are in reality considered differently than the broader civilian population. As Larissa Fast asserts in her book 'Aid in Danger', the very humanitarian principles that independent aid workers adhere to are meant to separate and distinguish aid workers from the broader conflict dynamics. This is a significant difference with the civilian populations they seek to aid, as the latter are often targeted by the parties because of their inherent characteristics (religion, ethnicity origins, etc).

In effect, aid workers are part of a different dynamic which needs to be addressed too if we really want to ensure access to aid by all vulnerable populations. In addition, aid workers working in situations of conflict or violence are deliberately staying in, or traveling to, dangerous areas in order to support the most vulnerable populations trapped in these areas. The large majority of them are doing so as civilians, yet the very nature of their work as well as the nature



5 - See 'Humanitarians Under Attack: Tensions, Disparities, and Legal Gaps in Protection', Julia Brooks, ATHA, 2015.

of the populations supported, especially in an increasingly politicized and militarized humanitarian space, can drive parties to the conflict to question or even deny their civilian nature. In such situations, existing mechanisms, and especially UN humanitarian agencies, including the Emergency Relief Coordinator (ERC), are often ineffective in raising situations of violence since access to vulnerable populations can be jeopardized. A special mandate holder however could follow-up on specific cases with the parties involved while leaving the question of responding to the needs of the populations to humanitarian agencies.

#### **4. Should not the NGOs themselves rather than the international community bear the responsibility to protect their staff by providing adequate risk assessments?**

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Providing protection for aid workers does depend on organisations performing high quality security assessments. In recent years there has been a sharp increase in the development and application of security-related tools and expertise. However, sometimes the violence aimed at aid workers is unpredictable and opportunistic, so even the best risk assessments are insufficient. Despite an increased awareness of risks and a greater focus on security assessments, the number of attacks against aid workers is increasing, raising the need to develop other approaches to protect aid workers.

The inherent risks that aid workers take in delivering aid go far beyond what could be considered to be an occupational hazard in other professions, compelling the international community to take exceptional steps to ensure their protection. Ultimately, attacks on aid workers are indirectly attacks on the civilians they are trying to help.

In addition, humanitarian aid is carried out in the name of solidarity, on behalf of the international community. It is also the international community's shared responsibility to ensure that vulnerable populations in crises receive aid and to ensure that aid workers are not harmed in the delivery of aid.

Finally on this question, security measures do not ensure accountability for violence against aid workers. An important part of the work of a special mandate holder would also be to fight against the almost absolute impunity with which attacks on aid workers occur. Given impunity appears to presently be a fundamental feature of violence against aid workers, calls for accountability for the crimes committed would be an essential part of the special mandate holder's mandate. Clear demonstration that attacks against aid workers would be met with tougher punishments, loss of integrity and global condemnation could work as a deterrent against these attacks.

#### **5. Instead of looking for the solution within the means of the international community, should better protection not be sought through better compliance of NGOs with the humanitarian principles (and is enhanced protection not contrary to the humanitarian principles and efforts to gain acceptance)?**

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The spirit of the humanitarian principles - humanity, neutrality, impartiality, independence - is that humanitarian action must be carried out based on the needs of the most affected people without any discrimination, and on remaining neutral towards and independent of any party or objective other than the humanitarian imperative. Humanitarian principles are critical in guaranteeing safe access to those in need and in maintaining acceptance, safety and protection of staff and volunteers.

However, in today's volatile operating environments, acceptance of humanitarian action by local authorities, armed groups, and populations remains a challenge and requires active regular engagement. Despite continual efforts, agencies that are widely accepted by the population still suffer grave incidents against their staff and property. Sadly, there have been too many recent examples proving that simply abiding by humanitarian principles is not sufficient to protect aid workers, in particular nationals.

Increased attempts by States and other actors to use humanitarian action as a crisis management tool, using humanitarian assistance to further military and political objectives, is one reason for the erosion of respect for humanitarian principles. Lack of understanding and respect for these principles can explain part of the increased violence against aid workers.

Considering this situation, a special mandate holder could work alongside the humanitarian system, without interfering with agencies' efforts to gain access, to develop better understanding and respect for the nature of humanitarian aid at all levels. In effect, a special mandate holder would therefore amplify agencies' calls for respect of humanitarian principles.

## 6. Why create yet another mechanism within the UN system?

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Some other roles within the UN system do encompass the question of the protection of aid workers. In particular, the UN Security Council<sup>6</sup>, the General Assembly<sup>7</sup> and the even the International Law Commission (on Protection of persons in the event of disasters<sup>8</sup>) have touched on the issue. But despite a clear recognition that the protection of aid workers is a critical issue, very few concrete steps have been taken to give this agenda the tools it needs to be brought to scale.

Furthermore, it is unfair to expect that a body not specifically tasked with the protection of aid workers would cover all aspects of it in addition to its usual mandate. The result is that it does not happen.

The Emergency Relief Coordinator (ERC), for example, should be the reference person in cases of violence against humanitarian workers. Yet, as seen above, the ERC is rarely in a situation to be able to negotiate access and ensure delivery of humanitarian aid as well as follow up specific cases of violence against aid workers.

A special mandate holder however, while a UN mechanism, remains a flexible solution which could cover the topic without adding administrative burdens to humanitarian agencies. Its independence from UN Member States' direct supervision would also allow for activities to be undertaken more quickly.

## 7. How will the establishment of a UN mechanism to strengthen the protection of aid workers impact the perceived neutrality of NGOs?

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The neutrality and independence of humanitarian agencies, and the perception thereof, is of utmost importance for all actors, as seen above. For this reason, aid agencies need to find the right balance between the protection provided by being associated with the UN, and therefore benefiting from UN legal protection under the Conventions as seen above, and being detached from their political influence or their activities which could increase the risks of attacks.

A special mandate holder tasked with the protection of aid workers, although effectively part of the UN system, would not however be part of the humanitarian system or the broader military and political activities undertaken by the UN. The special mandate holder would therefore enjoy sufficient detachment from political influence to work at all levels, including with local authorities and non-state actors, while benefiting from the recognition and support of the international community. While still being a UN entity, the special mandate holder should be given all latitude to talk to all groups, including armed groups on UN sanctions lists. This independence from political branches of the UN should prevent it from negatively impacting the neutrality of NGOs.

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6 - See Resolution 2175 (2014).

7 - Safety and security of humanitarian personnel and protection of UN personnel, Report of the Secretary General, A/69/406, 29 September 2014.

8 - See International Law Commission, <http://legal.un.org/docs/?symbol=A/CN.4/L.831>

## **8. Without a clear uniform definition of an aid worker, would not anyone then claim to be one in order to benefit from this protection and how could protection be provided without misuse of such a mechanism?**

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The good cannot suffer the consequences of the bad – fear of misuse of protection should not prevent aid workers being provided with the tools they both need and deserve.

If an aid worker's status is unclear after an incident occurs, an assessment to determine the victim's status could be conducted, to mitigate the potential misuse of the mechanism, on a case by case basis based on a set of identified criteria. Indeed, as with any mechanism intended to provide additional protection, fraud is a concern. However, this should not be used as an excuse not to take steps to strengthen the protection of aid workers.

## **9. If the different actors in armed conflict do not even abide by the rules of IHL, why would they respect any other mechanism?**

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Compliance with and respect for international and domestic laws are fundamental to ensuring the protection of civilians, and more specifically for aid workers. Indeed, if international laws are respected, neither civilians nor aid workers would be killed, attacked or kidnapped. Sadly, this hypothesis is far from reflecting reality. Ensuring compliance with and respect for IHL is of utmost importance and is the responsibility of States generally and of the ICRC<sup>9</sup> in particular.

A special mandate holder appointed to work on the protection of aid workers would not create any additional legal obligations. By bringing coherence and clarity to the standards of protection expected for all aid workers, the special mandate holder could demonstrate and highlight the specific gravity of crimes against aid workers, work to prevent violence against aid workers, and increase accountability for crimes against them.

As seen above, the mandate holder could work at local level with authorities and armed non-state actors to raise awareness and promote humanitarian work and humanitarian principles. The special mandate holder, through its special position, could confidentially raise issues with governments as well as build non state actors' knowledge of IHL and humanitarian principles, and their capacities to implement them. The Special mandate holder could also work as an entry point for personnel who cannot turn towards their own agencies for support as well as follow up on cases confidentially with families and authorities.

This person would work within the existing legal framework and use all existing mechanisms in order to both raise awareness of the gravity of such crimes, setting clear standards about the exceptional severity with which they would be punished, as well as fight against the almost absolute impunity with which these attacks are perpetrated.

## **10. Has it been taken in consideration raising awareness of the situation of aid workers will inadvertently bring 'added value' to the violence against them?**

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Aid workers, due to their work and the value of the material they transport and use, already have an added "value", often at the origin of the targeted violence.

To prevent this 'value' from rising, and possibly even to decrease it, the protection mechanism should put a stop to the culture of impunity for crimes against aid workers and humanitarian assets.

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<sup>9</sup> - See the ICRC: See the ICRC similar campaign 'Health Care in Danger', available at: <https://www.icrc.org/eng/what-we-do/safeguarding-health-care/solution/2013-04-26-hcid-health-care-in-danger-project.htm>

# TAKE ACTION

## WHAT CAN WE DO THEN TO CREATE A SPECIAL MANDATE HOLDER FOR THE PROTECTION OF AID WORKERS?

All actors should collectively raise awareness of the current legal protection gap leaving violent non-conflict situations and non-medical staff outside the scope of legal protection for aid workers. The dialogue between humanitarian actors and all other parties must be strengthened and the respect for the nature of humanitarian aid should be emphasised.

And very concretely, UN member states should demand the UN Secretary General appoint a special mandate holder for the protection of aid workers. The UN General Assembly or the Security Council could authorize the creation of this position too, as it has been done before .

### THIS SPECIAL MANDATE HOLDER COULD BE MANDATED TO:

- (a) **Work with relevant authorities** to ensure that all cases of violence against aid workers are brought to justice;
- (b) **Report to relevant UN bodies**, on an annual basis, on incidents against aid workers and follow-up actions taken, to fight against the culture of impunity;
- (c) **Work with Member States** to review ways to strengthen domestic laws and search for opportunities new compliance mechanisms with all actors and at all levels;
- (d) **Function as an advocate**, as a resource and as recourse for all aid workers in case of violence against them;
- (e) **Raise awareness on the nature of humanitarian work and the humanitarian principles** both within the UN systems and with Member States.

**ACF INVITES GOVERNMENTS, DONORS AND ALL OTHER ACTORS TO OPENLY DISCUSS THE ISSUE OF THE PROTECTION OF AID WORKERS AND A SPECIAL MANDATE HOLDER.**

**ACF CALLS ON STATES TO INTRODUCE RESOLUTIONS CALLING FOR THE CREATION OF A SPECIAL MANDATE HOLDER.**

**ACF CALLS ON THE UN SECRETARY GENERAL TO APPOINT A SPECIAL MANDATE HOLDER.**

# #PROTECT AID WORKERS

*We call on the United Nations to create a Special Rapporteur for the protection of humanitarian aid workers*

[www.protectaidworkers.org](http://www.protectaidworkers.org)



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