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**Special Report: Civilian Protection in Armed Conflict**

Note: This special report was published as part of an IRIN web special on the issue of the protection of civilians in armed conflict published on 1 April 2003. The web special includes articles, in-depth features, interviews and country-specific studies covering the application of international humanitarian law, emerging mechanisms of protection and experiences of conflict-affected communities.

To access the web special please go to: [www.irinnews.org/webspecials/civilprotect/default.asp](http://www.irinnews.org/webspecials/civilprotect/default.asp)

**I. The law and civilians in conflict**

The reality of millions of civilians caught up in armed conflict is a grim one, and civilians are now the main casualties of war worldwide. Indeed, resident or displaced civilians are often specifically targeted for violent attack, rather than war affecting incidentally, and this has led to an unacceptably high toll on human life and livelihoods, according to the International Committee of the Red Cross (ICRC).

At the UN Security Council in November last year, UN Secretary-General Kofi Annan said: "The toll of dead and wounded - particularly among innocent civilians - has risen to levels that can be described, without any exaggeration, as appalling." He highlighted Sudan, saying aid workers "have collectively been dismayed by the recent pattern of attacks on civilians, humanitarian workers and facilities, including the shameful attacks on civilians at or near food distribution sites". He also cited the case of Angola, where, he said, more than a third of the population - over 4.5 million people - had been displaced as a result of a conflict that lasted for more than 30 years.

In Afghanistan, a quarter of a century of war has taken a heavy toll on the population of Afghanistan, causing the death by violence or disease of millions of people. Millions more Afghans are still locked in abject poverty, and the country has among the worst social and human welfare indicators in the world.

In the DRC, the humanitarian consequences of war in the east - driven substantially by the scramble for the illegal exploitation of Congo's natural and mineral resources - have been horrific, according to a panel of experts investigating the problem in a report in October 2002. In the five eastern provinces of the DRC, the number of excess deaths directly attributable to the Rwandan and Ugandan occupation between 1998 and September 2002 had been between three million and 3.5 million people, the panel said.

And these are just some of the violent conflicts - admittedly towards the worst end of the scale - that continue to challenge the international community but, more particularly, civilian populations living in danger and misery. Yet the humanitarian imperative, according to Kofi Annan, means working "to establish human security where it is no longer present, where it is under threat, or where it never existed."

**Protection under International Humanitarian Law**

International Humanitarian Law (IHL) lays down the minimum protection and standards applicable to situations where people are most vulnerable in armed conflict. It aims to prevent situations that might exacerbate vulnerabilities, such as displacement and destruction of civilian property.

International humanitarian law demands of belligerents that they respect the principles of distinction (between combatants and non-combatants), proportionality (of violence used) and precaution (against disproportionate effects of military attacks on non-combatants) in using violent means in situations of conflict.

Perhaps the most important of these, certainly in relation to civilian protection is that of distinction, which underpins the Geneva Conventions and their additional protocols.

This requires combatants to distinguish between those actively engaged in hostilities, on the one hand, and civilians and others (including the sick, wounded and prisoners of war) on the other. It also demands that combatants distinguish between civilian objects and military objectives. Non-combatants are protected under international humanitarian law and entitled to immunity from attack.

In that regard, international humanitarian law plays the role in time of war or violent conflict that human rights law plays in peacetime, guaranteeing fundamental rights for each individual.

According to the ICRC, the law of armed conflict:

- Protects, in armed conflict, all who do not, or who no longer, take part in hostilities: civilians, wounded and sick soldiers, prisoners of war;
- Strives to prevent parties to an armed conflict from resorting to criminal methods and indiscriminate or disproportionate use of force;
- Forms part of the international legal framework that aims to uphold human dignity and protect people from arbitrary treatment.

### **Violations of IHL**

In defiance of international humanitarian law, deliberate acts against civilians still result in terror, starvation, sexual violence, disappearances, the use of children as fighters and families being torn apart and forced disappearances, according to Angelo Gnaedinger, director-general of the ICRC.

Among the key issues that often arise, in the context of humanitarian emergencies and armed conflicts, are: securing access to affected civilian populations and the physical security of civilians and humanitarian workers.

"We're constantly having to call for full and unhindered access, respect for civilian populations, respect for [humanitarian] emblems, and making sure that all parties recognize the need to ensure the safety and security of aid workers," says Elissa Golberg, Deputy Director of the Human Rights, Humanitarian Affairs and International Women's Equality Division of Canada's Ministry of Foreign Affairs and International Cooperation.<sup>1</sup>

The nature of war is also changing, as conflicts become increasingly inter-related (whether at local, national or regional level) and the means of warfare evolves, including the deliberate targeting of civilians and the waging of war for specifically economic motives. More and more conflicts involve the targeting or forced displacement of civilians - as warring parties fight over territorial control, as a means to weaken enemy forces by targeting host or supportive communities, or to access natural resources. The parties involved are changing and proliferating, including non-state actors with uncertain chains of command that make dialogue and negotiation difficult and dangerous.

"The fact that, in a lot of circumstances, we're seeing armed groups that don't have standards 'command and control' functions, that don't operate with standard military rules of procedures; that

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<sup>1</sup> See the full IRIN interview with Elissa Golberg at:  
[www.irinnews.org/webspecials/civilprotect/IntElissaGolberg11.asp](http://www.irinnews.org/webspecials/civilprotect/IntElissaGolberg11.asp)

sometimes they're child soldiers, who are on drugs or who have been kidnapped - this is obviously complicating the environment," Elissa Golberg told IRIN.

As warring parties fight over territorial control, as a means to weaken enemy forces by targeting host or supportive communities, or to access natural resources, more and more conflicts involve the targeting or forced displacement of civilians

### **The role of aid agencies**

On the other side of this equation, humanitarian agencies are bound by principles of neutrality, impartiality and independent action in the conflict situations - foregoing political engagement in order to safeguard access for humanitarian assistance.

The nature of this is captured in the idea of 'humanitarian principles', which derive from international humanitarian law. These at once establish the non-aligned role of (neutral, impartial, independent) humanitarian agencies in situations of violence and protect the "humanitarian space" required by agencies to assure the safety and well-being of civilians (and other categories of 'protected persons').

These are sometimes further elaborated in ad hoc ground rules, Memorandums of Understanding (MOUs), or other arrangements which establish a basis for "principled humanitarian action" - setting out expectations and responsibilities of different parties in implementing humanitarian principles in a particular situation, thereby controlling the conduct of war and allowing for the coordination of humanitarian activity.

Such agreements initially focused on the behaviour expected and required of armed groups but the mutuality of the agreements has since become a focus for the obligations, and accountability mechanisms, of humanitarian agencies as well.

However, there are also voices of caution within the humanitarian community about over-stretch of agencies' mandates, responsibilities and abilities - especially as political actors have "backed off" from certain situations - and of getting involved in areas where the humanitarian imperative is clouded, and the protection afforded under IHL less clear. "Physical protection is a matter of power - of police, armies or whatever - and no NGO or humanitarian organization will be able to provide physical protection to people that are going to be bombed," Françoise Bouchet-Saulnier, legal counsel of MSF, told IRIN.<sup>2</sup>

"When IHL refers to protection, it refers to the defence of the legal status and the rights of civilians, and other 'protected persons', in times of conflict. It states different kind of responsibilities for the respect of these rights: armies and belligerents should refrain from attacking civilians directly and should not deprive them from relief. Humanitarian organizations have to monitor the level of protection given or refused by the belligerents to civilians and to provide necessary relief to civilians."

If it is an aim of war to forcibly displace people, there is no way - except by force - that you can stop this, Bouchet-Saulnier noted. What humanitarian organizations can do is bear witness to the pattern of violence imposed on populations and, in so doing, doing so, "trigger other mechanisms of responsibility that are not humanitarian but, rather, political or military."

Similarly, a senior policy worker spoke told IRIN of the danger, especially since the Rwandan genocide in 1994, of humanitarian organizations rushing to fill the vacuums left in many crises by political actors - thus, overreaching themselves in terms of responsibilities and mandate, and dangerously blurring the distinction between humanitarian and political actions that it had taken so long to establish.

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<sup>2</sup> See the full IRIN interview with Françoise Bouchet-Saulnier at: [www.irinnews.org/webspecials/civilprotect/IntFrancoiseBouchet11.asp](http://www.irinnews.org/webspecials/civilprotect/IntFrancoiseBouchet11.asp)

## **Culture of protection**

Unfortunately, the global "culture of protection" of civilians called for by UN Secretary-General Kofi Annan is still a distant prospect. In short, civilians are in dire need of protection and assistance in crisis situations around the world. Addressing the UN Security Council in November 2002, Annan spoke of practical actions required for the protection of civilians, including the need to: secure humanitarian access; separate clearly civilians and combatants; and re-establish swiftly the rule of law, justice and reconciliation during post-conflict transitions.

The Secretary-General also highlighted three new and significant challenges faced by humanitarian actors and the international community in conflict environments. Gender-based violence, the harmful consequences of the commercial exploitation of conflict, and the escalating threat of global terrorism were also cited as concerns.

IHL emerged from efforts to address the limits of war between state actors and its relevance today has been challenged in recent years given the changing nature of and parties to war. War crimes against civilians, often but by no means exclusively carried out by armed non-state actors, and the impunity these groups appear to feel - apparently confident that they will never be called to account for their deeds - is a particular threat to the perception and relevance of IHL in armed conflicts, according to humanitarian observers.

There are wholesale denials of humanitarian access, intimidation, kidnapping and targeting of aid workers, inadequate government efforts to protect civilians or bring the perpetrators of crimes to justice, and a slew of other challenges to IHL. Apart from terrorism, which is a clear and deliberate threat to non-combatants and a violation of IHL, the US 'war on terrorism' (as presented mainly by the US government, but also by other state parties) threatens the whole IHL system, according to Francoise Bouchet-Saulnier, legal counsel of Medecins Sans Frontieres.

"This concept opens up a time of long-lasting war, while refusing to respect the legal framework for wartime," she told IRIN. "It's very tricky to try to create a new kind of war (which will be 'the war against terrorism', which is a non-existing body of law) that creates an empty space, rather than creating a framework for this action," she said.

The key point is that if you resort to the use of armed forces, whoever you are, then international humanitarian law automatically applies, Bouchet-Saulnier added. Analysts have also identified the possible co-option of humanitarianism for political ends as a real challenge to humanitarian agencies working on the ground to implement IHL.

In 'A Bed for the Night', journalist David Rieff highlights the dangers of humanitarians, despite the best of intentions, often sacrificing the core principle of impartiality - the provision of assistance to vulnerable people on the basis of need - in a misguided effort to expand the sway of democracy and human rights.<sup>3</sup>

There is a real danger, especially in times of large-scale war, of humanitarian agencies accepting the militarisation of their role and becoming little more than sub-contractors to governments of military-political blocs. Another challenge is that, in certain crises, a wide range of activities may be carried out under the banner of humanitarian action or 'relief', some of which run counter to traditional ideas about humanitarianism, including independence, impartiality and independent action.

"Today, the word humanitarian is a label that tends to be used for a wide variety of activities undertaken by actors who do not meet the humanitarian law concept of an 'impartial humanitarian organization'... operating under very different forms and legal conditions," according to Francoise Bouchet-Saulnier of MSF. In southern Sudan, for instance, observers have noted a wide range of

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<sup>3</sup> A Bed for the Night: Humanitarianism in Crisis, David Rieff, published by Simon & Schuster, New York 2002

nongovernmental actors, including profit-making corporations, and with different religious, political and economic motivations, working to different ends yet variously describing their work as humanitarian - thereby blurring the humanitarian imperative.

Work outside established humanitarian principles - by agencies with varied motivations and operating procedures, not all grounded in IHL - could have serious negative consequences, whether by escalating conflict itself or by eroding the tense, fragile relationship between belligerents and humanitarian actors that humanitarian principles define.

But humanitarian law has ample provision for dealing with modern methods of warfare, the issue of non-state actors, the threat of terrorism and other aspects of armed conflict, according to its advocates. The challenge is to have those provisions respected and put into practice by all, according to ICRC president Jakob Kellenberger. The laws of war do not put obstacles in the way of fighting crime and terror, he says; they identify serious crimes and demand punishment for them. The question, as far as the ICRC is concerned, is not "does the law work?" but "do we want it to work?"

Respect for IHL must be complemented by actions to address the causes and effects of conflicts, such as poverty, inequity, intolerance and discrimination, and to promote humanitarian values of tolerance, non-violence and peace, according to Manuel Suarez del Toro of the IFRC.

"We need to work at creating a culture of respect, understanding and lasting peace," said Suarez Del Torno. "And in the event of a crisis or conflict, we must urge all parties to use dialogue and negotiation as a means to resolve conflicts, not violence."

## **Part II: Implementing International Humanitarian Law**

### **The key role of the ICRC**

The International Committee of the Red Cross has a specific mandate under the Geneva Conventions on the conduct of war to protect and assist victims of armed conflict and internal violence - though many other humanitarian and development agencies have become involved in offering protection and relief.

If fact, the mandates that diverse humanitarian organizations take unto themselves need to be addressed because "very often, they concentrate on access without reference to this duty to protect" and without fully understanding or appreciating their responsibilities under IHL, according to Francoise Bouchet-Saulnier, legal counsel for MSF.

The ICRC operates on the basis of an ethical framework known as its fundamental principles. Over time, the Red Cross principles have come to guide and position other humanitarian agencies in their roles of assisting and protecting those outside the limits of war in practical yet ethical ways.

### **Humanitarian principles**

The Red Cross movement developed its principles of humanitarian action in particular from its "three substantive principles" of humanity, non-discrimination and proportionality. For the ICRC, the principle of humanity - from which all other principles flow - means that mankind "shall be treated humanely under all circumstances." The principle, in turn, has three elements: prevent and alleviate suffering; protect life and health; and, assure respect for the individual.

The second substantive principle of non-discrimination holds that the ICRC shall "come to the help of each individual, equally and without any form of discrimination." This underpins the idea of the humanitarian imperative to offer and receive assistance on the basis of need, without discrimination on the basis of nationality, race, religious belief, class, political opinion or other criteria (beyond need). It

also means that the ICRC has a universal vocation, a mandate that "must extend to all men, in all countries - and other humanitarian agencies have claimed the same entitlement.

The third substantive principle, is that of proportionality, under which the ICRC says it is imperative to "relieve the suffering of individuals in proportion to the degree of their suffering, and to give priority according to the degree of urgency." In this light, for instance, the ICRC operates on the basis that only urgent medical reasons will authorise priority in order of treatment of persons requiring it. The ideas of non-discrimination and proportionality are sometimes combined under the principle of impartiality, which is listed by the ICRC as a derivative principle - along with neutrality and independence.

These three derivative principles (derived, that is, from the substantive principles) form the basis of day to day operating principles and procedures for the ICRC, which it hopes will assure it of the confidence of all parties to conflict situations, and thus the humanitarian space to operate.

### **Impartiality and Independence**

By impartiality, the Red Cross - and other humanitarian actors since - mean that assistance is delivered to all those who are suffering, based only on their needs and corresponding entitlements. Thus, humanitarian agencies are supposed to be ready to come to the help of each individual, equally and without any form of discrimination, without submitting to limitations, by virtue of the needs of vulnerable people and on the basis of their shared humanity.

"We do not ask a suffering man what country he comes from, or what his religion is, but say simply that he is in pain, that he is one of our own and that we will give him relief," the ICRC states, quoting Louis Pasteur.

Impartiality, the organization says, involves applying established rules, recognised as valid, without taking sides either for reasons of interest or sympathy. The humanitarian principle of impartiality implies that humanitarian agencies should respond to the needs of the civilian population as a whole, regardless of the authority under whose control they find themselves, and address the most urgent needs first.

By independence - in its political, religious and economic aspects - the Red Cross means that it must be sovereign in its decisions, acts and words to show the way towards humanity and justice. It emphasises its independence with regard to outside forces, in governments and intergovernmental organizations.

The movement says it asserts its independence by refraining from any involvement in internal or external politics in the situations in which it works, and excluding any intrusion of politics into its own sphere of action. It resists pressure of any social or economic character to turn it from the path defined for it by its objectives.

That independence, according to the ICRC, is also the guarantee of neutrality, which is essential for humanitarian workers. Neutrality means to the Red Cross movement that it "may not take sides in hostilities [or armed conflicts of any kind] or engage at any time in controversies of a political, racial, religious or ideological character."

To retain confidence in its relations with state and non-state actors in conflict situations, the ICRC says, it treats the people with whom it engages "on the basis of equality, not expressing itself on their legitimacy, not considering whether they are recognised, not judging their politics."

As a general rule, it also abstains from making public pronouncements about specific acts committed in violation of law and humanity, and attributed to belligerents - preferring to follow what it calls a

"persuasive, non-denunciatory approach" and share its findings, where it can, through "a constructive and confidential dialogue."

### **Protection in the field**

The humanitarian principles framework, grounded in the rights of non-combatants to assistance and protection, is intended to allow for concentration on the most vulnerable (including displaced persons, women, children and missing people) without losing sight of the overall aim of protecting the civilian population.

On a practical level, humanitarian organizations in situations of armed conflict are generally working to provide at least a minimum of protection to civilians affected. This may include establishing a presence on the ground, negotiating humanitarian access, preventing breaches of humanitarian law, ending such breaches or limiting their effect when they occur, and/or providing for the prosecution of individuals and parties violating the rights of civilians.

In terms of assuring respect for civilians, ICRC staff (and others) working in the field in situations of violence endeavour to assess living conditions of the population, analyse cases of abuse and violations of international law, identify any shortcomings or needs, and monitor those people who are particularly vulnerable.

Humanitarian agencies aim to ensure that all parties to a conflict provide individuals and groups with the full protection entitled to them under international law, and to take specific measures to ensure their safety in situations of military engagement. Relief agencies also work to protect civilians by negotiating access to vulnerable groups - their very presence often, but not always, serving to protect civilians - and by providing material and medical relief.

Michel Kassa, head of the UN Office for the Coordination of Humanitarian Affairs (OCHA) in the Democratic Republic of Congo, noted the degree to which humanitarian actors there and elsewhere put themselves in danger in addressing their humanitarian imperative.

"We risk our lives dozens of times each year in order to protect civilians," he told IRIN. Access and security are the two principle challenges the humanitarian agencies and supporting donors consistently run up against, according to Elissa Golberg, Deputy Director of the Human Rights, Humanitarian Affairs and International Women's Equality division of Canada's Department of Foreign Affairs and International Trade.

"That's access to the actual affected, civilian population, and physical security of civilians, as well as humanitarian workers," she said. "... We're constantly having to call for full and unhindered access, respect for civilian populations, respect for [humanitarian] emblems, and making sure that all parties recognize the need to ensure the safety and security of aid workers."

In doing its work, the ICRC establishes and maintains what it calls a confidential dialogue - both preventive and corrective - with civil authorities and armed actors regarding humanitarian issues, reminding them of the norms and principles of international law, recommending necessary courses of action and conducting follow-up activities.

Humanitarian agencies on the ground often liaise with donor countries to get them to use their diplomatic influence to prevent, publicise or bring a halt to violations of IHL, rather than going public themselves, which often carries the risk of endangering aid workers or programmes. Occasionally, where there are grave concerns and/or where confidential, diplomatic engagement has brought no results, the ICRC reserves the right to make public its concerns about violations of IHL.

"You have this variety of agencies on the ground and not everyone is going to be comfortable speaking out on issues, like an Amnesty or Human Rights Watch," Golberg told IRIN. "But that's OK,

that's just one kind of protection. Humanitarian agencies can do other things to enhance the safety of their beneficiaries."

As part of its prevention action to limit civilian suffering, the ICRC promotes:

- adoption of new treaties to make IHL more effective and respond to new needs that arise;
- ratification and use by states of laws, tools and measures to give effect to these instruments at national level;
- awareness and education programmes to make sure armed actors know of, understand and act upon their responsibilities to protect civilians in times of war.

It also pays particular attention to promoting the restriction or prohibition of weapons - such as landmines - that "have indiscriminate effects or cause superfluous injury or unnecessary suffering" to communities, and especially to civilians.

### **The need for implementation of IHL**

Advocates of IHL emphasise the central importance for its implementation - and, therefore, for the protection of civilians - of the role of individual states. The way forward lies in states adopting, ratifying and codifying in national laws the various conventions and protocols on the law of armed conflict, and assuring its implementation on the ground.

Just as national governments have the primary responsibility to assure the safety and protection of their civilians, in times of peace or violent conflict, so national courts have a clear obligation to bring to court those accused of grave breaches of international humanitarian law and national laws based upon it, according to the ICRC. But while the application of IHL is primarily the responsibility of states and other parties to armed conflict, other states are also bound by the Geneva Conventions "to respect and ensure respect for those rules in all circumstances".

This implies "that we must prosecute those who break these laws," says Gnaedinger, because to ignore the crime is to deny justice to the victims of war crimes, crimes against humanity and other atrocities. In June 2001, for instance, a jury of the Brussels 'Cour d'Assises' [Crown Court] in Belgium declared four Rwandans guilty or partially guilty of war crimes committed during the 1994 genocide.

But with states frequently failing to protect civilians as called for under IHL, or to bring perpetrators of war crimes and crimes against humanity to justice, there has been a growing trend of internationalising individual responsibility for certain heinous crimes.

### **The International Criminal Court (ICC)**

In 1998, the Rome Statute on the International Criminal Court paved the way for the establishment of a permanent court capable of prosecuting individuals allegedly responsible for serious breaches of IHL - and with jurisdiction over crimes regardless of when or where they were committed.

Rights and justice campaigners have emphasised the importance of the ICC:

- To help achieve justice for all, by filling a gap in the international legal system by dealing with individual responsibility as an enforcement mechanism;
- To end impunity by establishing the principle of individual criminal accountability for all who commit crimes against international law as a cornerstone of international criminal law;
- To help end conflicts, since violence often begets further violence, by providing the deterrent that at least some perpetrators of war crimes or genocide may be brought to justice;
- To remedy the deficiencies of ad hoc tribunals, which immediately raise the questions of 'selective justice', by establishing a permanent court that can operate in a more consistent way and regardless of the time and place in which atrocities occurred;



- To take over when national criminal justice institutions are unwilling or unable to act since, especially in times of violent conflict, institutions may have collapsed or national judicial systems lack the political will to pursue their own citizens;
- To deter future war criminals by establishing more clearly that atrocities will not go unpunished.

The UN High Commissioner for Human Rights, Sergio Vieira de Mello, hailed the inauguration of the ICC on 11 March as an historic "reaffirmation of our commitment to human rights, fundamental freedoms and justice." He stressed, however, that only 89 countries had ratified the Rome Statute establishing the court - which, he said, was "far from universality" - and that wider acceptance of its jurisdiction will be necessary to make the Court truly effective.

"The creation of the ICC represents a major step forward in an environment hitherto characterised by impunity, but a step that will only bear fruit if national legislation and actions become truly complementary to those of the ICC," according to Angelo Gnaedinger of the ICRC.

But while more rigorous prosecution of grave breaches of IHL should act as something of a deterrent, humanitarian workers say it is important that the international and humanitarian community must also raise public awareness and mobilise opinion each time the rights of victims are ignored or flouted.

They also call for extended advocacy for IHL, both with combatants and by giving lessons in humanitarian law in schools and universities, and the provision of proper instruction in military training establishments. "We must finally recognise," according to the ICRC's Gnaedinger, "that protecting the victims of conflict cannot be limited to emergency action - when we know how often such action is doomed to failure.

### **Part III: Priorities for Humanitarian Action**

Though International Humanitarian Law lays down the minimum protection and standards applicable to situations where people are most vulnerable in armed conflict, the gaps between protection in principle and reality are wide, and keenly felt by civilians in conflict situations around the world.

Addressing the UN Security Council in November 2002, UN Secretary-General Kofi Annan spoke of the need for actions required for the protection of civilians in three key areas:

- Secure humanitarian access
- The clear separation of civilians and combatants
- Swift re-establishment of the rule of law, justice and reconciliation during post-conflict transitions

In addition, he highlighted three new challenges emerging for the protection of civilians in conflict: sexual exploitation and gender-based exploitation in situations of war, commercial exploitation and the escalating threat posed by global terrorism.

That said, the importance of other issues has not receded and includes, especially: the growing phenomenon of non-state armed groups; and the need to vigorously promote respect for the law in war situations. Much of this agenda for the protection of civilians falls within the remit of IHL, though some aspects of reconciliation are beyond the purely humanitarian sphere - moving into the sphere of state politics - and will not be considered in detail here.

## **Humanitarian access**

Carefully negotiated humanitarian access does much to improve the protection of civilians in the short term and to improve prospects for a transition to reconciliation in the longer term, according to UN Secretary-General Kofi Annan.

The International Committee of the Red Cross has a specific mandate under the Geneva Conventions on the conduct of war to protect and assist victims of armed conflict and internal violence. This humanitarian imperative to assist the victims of war has, over time, come to include other humanitarian agencies assuming the right to have safe and unimpeded access under the Geneva Conventions when they offer their assistance as "independent and impartial" actors on behalf of civilians and other vulnerable people.

Unimpeded access to all populations in need (on the basis of impartiality) can remove a basis for grievance, de-escalate a conflict, lower its intensity, give an indication of the benefits of peace, and set the stage for an effective transition to peace. Yet, in most cases, access continues to be a challenge. In many conflicts, protection and assistance for civilians are manipulated, delayed or denied, and has obstacles put before it, including the insecurity of aid workers.

The results of limitations or denials of access have been very evident in the DRC, where war is estimated to have caused over two million "excess deaths" (over and above natural wastage) in the population, including some 350,000 deaths as a direct result of violence.

There is still great concern about humanitarian access in many conflict situations in Africa, as well as in Afghanistan, where security remains a major concern - although considerable gains have been made in Sudan, where access has been a fraught issue. Humanitarian workers continue to be targeted as well. Relief staff have been attacked or killed in the DRC, Sudan, Burundi, Chechnya, the Occupied Palestinian Territories and, just recently, in Cote d'Ivoire, where four Red Cross volunteers were killed in March.

This gap between rhetoric and reality has repeatedly been highlighted by events in Sudan, where a complex series of interconnected violent conflicts have caused devastation for the civilian population.

On the one hand, for example, Sudanese President Umar Hassan al-Bashir signed a decree in February to set up a national commission on international humanitarian law, welcomed by the ICRC that month as "a major step towards effective implementation of humanitarian law in Sudan, a country that has suffered 19 years of internal conflict."

Barely a week later, on 6 March, the International Crisis Group (ICG) warned that - even as peace talks on Sudan resumed in Kenya - the Khartoum government was "continuing to violate the cessation of hostilities agreement it signed 15 October 2002 with the rebel Sudan Peoples' Liberation Army (SPLA) and reaffirmed on 4 February 2003."

"The primary victims of the violence are civilians," it said, as "government forces and government-sponsored militias were attacking the oilfields of Western Upper Nile in an effort to dislodge the SPLA and expand oil industry development."

Continuous raids by government-sponsored militias along the Bentiu-Adok oil road in Western Upper Nile [Unity State], southern Sudan, were "discouraging the return of civilians who were displaced by the fighting in January and early February, in direct violation of the 4 February agreement by the parties to facilitate such return," the ICG added.

## **Non-State Actors**

A particular problem in trying to secure humanitarian access - and protecting civilian populations, more generally - is that of dealing with armed non-state actors, not all of whom are connected to political structures on which political or diplomatic leverage can be used.

Not only is there a wide range of non-state actors in many conflict situations - from rebel groups to private companies to self-enriching warlords - but the extent to which they recognise, or will live up to, their responsibilities under IHL is very varied, and rarely satisfactory. The presence of armed non-state actors, who often fail to recognise or live up to international responsibilities regarding access, frequently leads to access being restricted, unpredictable or denied altogether, according to UN Secretary-General Kofi Annan.

"It's often very difficult to know whom it is you're dealing with, where to point the finger of responsibility, not to become complicit in strategies that are actually abusive of civilian populations," says James Darcy of the Humanitarian Policy Groups of the UK-based Overseas Development Institute (ODI).

"Rebel forces will often deliberately blur that distinction; they will indeed take refuge and hide amongst the civilian population. And that makes it extremely hard for humanitarian agencies to know who to deal with and how to conduct themselves."

There is also the link between criminal and 'political' violence to consider, according to analysts, with some armed groups limiting themselves to broadly military activities but others more akin to criminal gangs profiting from the state of general lawlessness that often prevails, with the collapse of civil institutions. "There is no accountability with people of this kind [profiteering or anarchic] so, yes, I think it creates fundamental problems," Darcy told IRIN.

There are also risks associated with piecemeal and fragmented negotiations for access by humanitarian actors, with combatants frequently trying to play relief agencies against each other to gain a perceived political, tactical or resource advantage - in a way that threatens or diminishes humanitarian space, further endangering access.

But non-state actors are not alone and state parties, too, often fail to fulfill their responsibilities under IHL to allow safe and unimpeded access.

In order to improve humanitarian access, all parties must understand their obligations to civilians and there must be clearly defined conditions for humanitarian access, according to Kofi Annan. Contacts with combatants should be undertaken on a structured and coordinated basis, and tools such as the Security Council aide memoire should be used as a tool for guiding negotiations.

## **Separation of Armed Elements**

Conflict often results in the mixed movements of populations, from forced civilian displacements to armed elements seeking sanctuary in neighbouring districts or countries, and this can lead to dangers from the intermingling of civilians and combatants generally, as well as the movements of combatants into refugee or IDP camps, in particular.

The militarisation of refugee populations, and the need to separate armed elements from refugees and local host populations, is a particular concern for the protection of civilians, Kofi Annan told the UN Security Council in November - especially where refugee camps are located close to border areas and in close proximity to armed conflict. This may involve the likes of armed groups infiltrating displaced populations, refugee camps or even settled civilian populations, forcing people to act for them - sometimes by fighting for them, sometimes by supplying or feeding them - or endangering them by their presence.

The presence of armed elements among displaced or a refugee population often has "specific and serious humanitarian consequences", especially for women and children who were especially vulnerable, according to Kofi Annan. These included rape, trafficking, forced recruitment, and other forms of physical and sexual abuse, he told the Security Council in November.

In northern Uganda, Sudanese refugees and local populations not only have to contend with numerous problems associated with living in a region wracked by armed conflict - which has ranged, over time, from internal to inter-state and transnational - but also have to live with the daily threat of attack. Far from being located in a place of safety, these refugees and displaced people still carry most of the burden of a protracted series of armed insurrections and conflicts, perpetrated by the Lord's Resistance Army (LRA) of Joseph Kony.

More recently, observers say, they are also bearing the brunt of the military strategy - dubbed Operation Iron Fist - by which the Ugandan army, the Uganda People's Defence Forces (UPDF) aims to crush that LRA insurrection, and which has indirectly created the worst humanitarian situation the region has ever seen.

Despite the efforts of UNHCR and partner organizations, refugee camps are sometimes used as recruiting grounds, by armed groups tapping into disaffection with a government or state of affairs.

"I think, increasingly, humanitarian agencies have become conscious that probably the biggest protection issues are precisely those where a civilian population - and often a refugee population - is, in effect, being held to ransom by its own leadership," James Darcy told IRIN. "And that the protection action required is, for instance, demilitarisation of the refugee camp, without which free action - free of fear - on behalf of the civilian population is just impossible."

Refugees - and IDPs - are sometimes intimidated, abused, violated or even killed as a result of the breakdown of social systems, and the easy resort to violent means, in situations of conflict.

In such cases, a protection agenda may include education and training, self-protection and particular focus on especially vulnerable (such as unaccompanied or separated children) to the location, design and layout of refugee or IDP camps, human rights training or promotion of food security and income generation possibilities (to reduce individuals' vulnerability).

Funding is a major problem in conflict and post-conflict situations, with the resources available often inadequate to provide for basic food, water and shelter needs - not to mind broader protection issues, which have not always been an integral part of humanitarian interventions.

### **Refugee protection**

The office of the UN High Commissioner for Refugees (UNHCR) has developed a wide-ranging Agenda for Protection aimed at preserving the humanitarian character of asylum as well as the physical safety of refugees.

It emphasises the primary responsibility of refugee-hosting states to ensure asylum retains its humanitarian character, calls for disarmament of armed elements and covers the identification, separation and internment of combatants. However, the reality is not nearly so neat.

Liberian refugees in Cote d'Ivoire, which has been wracked by civil strife in recent months, fear for their lives. They say they are harassed. Some of them have been killed. For about 35,000 who still remain in the country, life has become increasingly difficult, according to a recent IRIN Interview with the Acting Representative of UNHCR for Cote d'Ivoire, Panos Moutziz.<sup>4</sup>

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<sup>4</sup> See [www.irinnews.org/report.asp?ReportID=32848](http://www.irinnews.org/report.asp?ReportID=32848)

Local populations in Tabou received information from fellow citizens in Grabo that Liberians had been involved in looting, killings and violations of the human rights of Ivorians, he said. As a result, they felt the traditional hospitality that had existed for Liberians for many years could no longer continue. UNHCR in collaboration with local authorities and the government has tried to counter this sentiment, trying to tell people that these were refugees who had not participated in atrocities or crimes. The situation calmed down a bit.

But in Guiglo, western Cote d'Ivoire, Liberian refugees are really worried and afraid because Niela refugee camp, with a population of up to 8,000, is close to the frontline, he added. Meanwhile, recent research in the DRC has suggested that the influx of refugees into the country was one factor, among others, that "strongly caused the proliferation of light weapons", which are the main cause of civilian death in the continuing conflict.

Northeastern DRC has been a sanctuary for people fleeing earlier or ongoing wars in Rwanda, Sudan and Uganda, according to the report from three Kinshasa-based researchers commissioned by the NGO Pax Christi/Netherlands.

"These refugees came into DRC with their [concealed] weapons and started to resell them so as to survive - and they launched out in this illicit traffic of light weapons either as salesmen, brokers or traders," they said in the report, titled "Proliferation and Illicit Traffic of Small Arms and Light Weapons in the Northeast of the DRC."<sup>5</sup>

UN Secretary-General Kofi Annan has recommended to the Security Council, among other measures:

- Encouraging greater commitment by governments to remove refugee and IDP camps from border areas, and to separate combatants from civilians;
- Support of the capacity of law in states hosting refugees in order to secure refugee and IDP situations fairly and calmly;
- Promotion of the Security Council's aide memoire on civilian protection by governments where combatants and civilians are intermingled, in order to assure that responses to security threats meet international standards.

### **Rule of law, justice and reconciliation**

Restoring the rule of law, which often breaks down in war situations - especially in protracted conflicts - is considered vital to a return to a situation of sustainable peace, based on the assured protection of civilians and the return of civil order.

For the regular rule of law to really take hold during a transition from armed conflict, humanitarian workers stress, one of the first priorities has to be a comprehensive programme of disarmament, demobilisation and reintegration (DDR) of former combatants. Longer term, this will also involve long term investment in education, training, family and community support.

But, more closely connected to IHL, such a transition also involves justice, reconciliation and accountability for war crimes. In order to provide for this, the impunity with which armed actors violate IHL must be ended, and an effective system of deterrence established, according to observers.

Situations of armed violence frequently generate the most appalling of crimes, including massacres, summary executions, death by starvation or disease, torture or ill treatment, as well as forced displacement or recruitment to arms, sexual abuse and violence, violations of rights to health, liberty and education, and so on - ad nauseum.

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<sup>5</sup> See IRIN story at [www.irinnews.org/report.asp?ReportID=32761](http://www.irinnews.org/report.asp?ReportID=32761)

For the full Pax Christi/Netherlands report go to:

[http://www.passievoorvrede.nl/upload/afrika/afrapport\\_02\\_research\\_DRC.doc](http://www.passievoorvrede.nl/upload/afrika/afrapport_02_research_DRC.doc)

In the overwhelming majority of cases, the victims and their families do not receive justice, and those who kill, torture, rape or attack civilians do so with the expectation of impunity.

The establishment of criminal courts for the former Yugoslavia, for Rwanda and Sierra Leone over the last decade or so has been recognised as an important step in asserting the need for accountability, in order to bind sometimes fragile peace and protect civilians during transition.

Kofi Annan has also highlighted that amnesties for combatants "remain unacceptable to and unrecognisable by the UN unless they exclude genocide, crimes against humanity and war crimes" - those offences for which the International Criminal Court has been established.

"The entry into force of the Rome Statute of the ICC marks an important deterrence against war crimes," according to Annan. "The culture of impunity is being challenged."

Many of the issues of law, justice and reconciliation relevant to protection - from restitution of property to land rights- directly relate more to politics than humanitarianism and humanitarian law, yet critically affect them.

"There is a certain point at which what the humanitarian system can deliver stops and where other forms of action are absolutely necessary," explains James Darcy of the ODI's humanitarian policy group.

"So, we see the need for coherence in the sense that there are certain forms of political action that are absolutely, intrinsically connected to humanitarian outcomes."

The issue of deterrence is important as part of a package of incentives for belligerents to respect the rules of war and, in that regard, the establishment of the ICC is viewed by humanitarian workers and IHL advocates as an extremely important development.

In the words of Kofi Annan, justice and reconciliation must work together to address the underlying causes of conflict and to prevent possibly violent retribution.

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This special report has been prepared by the English service of the United Nation's humanitarian information unit - IRIN, but may not necessarily reflect the views of the UN. For further information, contact e-mail: [irin@ocha.unon.org](mailto:irin@ocha.unon.org) or World Wide Web: <http://www.irinnews.org> . If you re-print, copy, archive or re-post this item, please retain this credit and disclaimer. Reposting by commercial Internet sites requires written IRIN permission.

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