

REPORTS AND DOCUMENTS

Aide-memoire: Operational guidance on maintaining the civilian and humanitarian character of sites and settlements

: : : : : :

Introduction

In light of the growing complexity of humanitarian crises today and the continued need for effective cooperation among humanitarian actors, the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Refugees (UNHCR) launched a consultative process in September 2016 to collect operational practices with regard to maintaining the civilian and humanitarian character of sites and settlements for internally displaced persons (IDPs) and refugees. Exchanges with field staff from both organizations targeted five ongoing operations – in the Central African Republic (CAR), the Democratic Republic of the Congo (DRC), Iraq, Nigeria and South Sudan – and included a one-day workshop in Geneva on 20 April 2017 in which the UN Department of Peacekeeping Operations (DPKO) also participated.¹ A wider set of stakeholders was consulted as well, during a roundtable organized under the auspices of the Global Protection Cluster (GPC) on 21 April.

This aide-memoire draws on the above-mentioned consultations to provide operational guidance for humanitarian actors in maintaining the civilian and humanitarian character of sites and settlements (hereinafter referred to as sites)

in situations of armed conflict.² Part 1 of this guidance sets out the necessary context and principles with regard to the civilian and humanitarian character of sites. It provides a description of the main operational challenges and dilemmas that humanitarian actors confront and examines the content of applicable legal frameworks. Part 2 offers measures for humanitarian actors to consider – within the remit of their respective expertise, experience and mandates – when working toward maintaining the civilian and humanitarian character of sites. These measures include efforts to engage actors beyond the humanitarian community in the spirit of complementarity and in respect of humanitarian principles.

Part 1: Understanding the context and principles

Operational challenges and dilemmas

Humanitarian actors are often confronted with difficult choices, for which there are no clear-cut solutions. These difficulties are compounded, particularly with regard to preserving the civilian and humanitarian character of sites, when the primary duty-bearers are unable or unwilling to fulfil their responsibilities, or are themselves the source of a threat. It is therefore important to identify and acknowledge operational dilemmas and associated protection risks arising in armed conflict as well as the potential and limitations for humanitarian action.

For instance, sites can turn into environments where propaganda or recruitment activities are carried out. In highly polarized contexts, where an armed conflict is fought along ethnic or religious lines, civilians inside sites can be partisan and can have close connections with armed groups. Although remaining off the battlefield, these civilians can be regularly engaged in recruitment and training in support of one side of a conflict, thereby contributing to spreading an armed group's influence. Dealing with scenarios such as these is delicate. Humanitarian actors involved in managing sites should prevent propaganda and recruitment activities from taking place within those sites. In practice, however, this can be complicated as individuals involved in those activities, if not admitted or expelled from sites, could be exposed to serious security threats. In addition, operationalizing the criteria for identifying people involved in recruitment and training can be difficult if a large number of civilians is involved.

Another dilemma arises with regard to disarmament and demilitarization of sites. In the chaos of ongoing hostilities and large-scale displacement, refusing armed persons from entering sites may be the only feasible option to maintain

- 1 The inclusion of the DPKO at this stage of the dialogue stemmed from the recognition of the key role that peace operations (in particular those with a protection of civilians mandate) can play in ensuring the civilian and humanitarian character of sites. Engagement between peace operations and humanitarian organizations on this matter is therefore essential, although often complex, and needs improving.
- 2 However, the aide-memoire can also be relevant for other actors involved on the ground, e.g. UN missions, other international organizations and governmental entities in charge of camp management.

the civilian and humanitarian character of sites. However, keeping sites weapon-free, while ensuring a certain level of safety, is not enough to maintain their civilian and humanitarian character because it does not guarantee that all people who may constitute a threat to civilians are identified and separated.³ Disarmament and demilitarization of sites is furthermore particularly complex when the civilian and humanitarian character has already been compromised, including when a non-State party to an armed conflict controls the site.

Additional complications arise when civilians may be carrying weapons for their own defence. When no authority is there to protect sites, should weapons be authorized inside sites? If people may be put at higher risk if disarmed, not disarming *at that time*, until conditions improve, may be considered the only safe option. At the same time, the risk of violence erupting within sites must also be taken into account. In some contexts, the presence of State armed forces or members of an organized armed group may be perceived by civilians in sites as a form of protection, rather than a threat. Civilians themselves may ask for armed groups or forces to be present in sites for their own security. Here, advocating for a reasonable proximity of armed groups or forces near sites and the establishment of weapons depositories where combatants/fighters visiting a site could leave their arms may become necessary.

In practice, there are inevitable challenges in aligning humanitarian imperatives (i.e., providing protection and assistance to people in need) with principled action (i.e., humanitarian, neutral, impartial and independent). For example, to what extent should humanitarian actors be involved in supporting sites where prolonged security screening occurs or which have become *de facto* places of deprivation of liberty? In such situations, providing material assistance could contribute to extending the screening process longer than absolutely necessary. In the same vein, the question arises as to what extent being present (e.g. for monitoring purposes) can amount to condoning or attesting to safe conditions within sites.

Finally, the provision of humanitarian assistance to sites where combatants/fighters are known to be present can also constitute a dilemma. Assistance can be misused to support a party to the conflict and thus perceived as contributing indirectly to maintaining the conflict. In some cases, suspending assistance could be contemplated as leverage to preserve the civilian character of sites. Such an approach, however, can give rise to additional protection risks or be counter-productive when civilian populations in sites may have few, if any, alternatives to meet their basic needs and thus may be compelled to resort to harmful coping strategies.

3 See the section on “Separation”, below.

Unpacking the notion of the civilian and humanitarian character of sites

Drawing largely from international humanitarian law (IHL), and to some extent international refugee law, the sections below define the conditions necessary for sites to be considered civilian and humanitarian, as well as the protection and security benefits derived from such status.

Civilian character

Sites typically aim to shelter displaced populations and facilitate their access to humanitarian assistance. As such, they are or are made of civilian objects under IHL, entitled to protection against direct attack in situations of armed conflict, unless and for such time as such objects become military objectives.⁴ Even when sites, or parts of them, are used for military purposes in a manner that would turn the concerned parts into military objectives, parties to the conflict must respect all rules related to the conduct of hostilities, including the principles of distinction, proportionality and precaution.⁵ Parties to the conflict must notably take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to sites or civilian objects located within sites.⁶ The mere presence of combatants or fighters within sites does not yet, in itself, turn sites or parts of sites into military objectives.

Additionally, parties to the conflict must take all feasible precautions to protect sites under their control, including the civilian population residing in those sites, against the effects of attacks, notably by avoiding, to the extent feasible, locating military objectives inside sites or in their vicinity.⁷

In the context of managing sites and maintaining their civilian character, it is essential to distinguish combatants and fighters from civilians, as well as civilians who participate directly in hostilities from those who do not. This is of vital importance because combatants, fighters and civilians who participate directly in hostilities may be subject to direct attack, thereby presenting a threat to sites and their inhabitants.

- 4 See Additional Protocol I (AP I), Art. 52; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rules 7–10. IHL defines civilian objects, *a contrario*, as “all objects that are not military objectives”: see *ibid.*, Rule 9. In order to qualify as a military objective, (i) an object must make an effective contribution to the adversary’s military action by its “nature”, “location”, “purpose” or “use”, and (ii) the object’s total or partial destruction, capture or neutralization must offer a definite military advantage in the circumstances ruling at the time (cf. AP I, Art. 52(2); ICRC Customary Law Study, Rule 8).
- 5 On the principle of distinction, see AP I, Arts 48, 52; ICRC Customary Law Study, above note 4, Rules 1, 7. On the principle of proportionality, see AP I, Art. 51(5b); ICRC Customary Law Study, above note 4, Rule 14. On the principle of precaution, see Geneva Convention IV, Art. 18(5); AP I, Arts 57, 58; ICRC Customary Law Study, above note 4, Rules 15–24).
- 6 AP I, Art. 57; ICRC Customary Law Study, above note 4, Rules 15–21 (principle of precautions when launching an attack).
- 7 AP I, Art. 58; ICRC Customary Law Study, above note 4, Rules 22–23.

- Under IHL, civilians are all persons who are not members of the armed forces of a party to the conflict.⁸
- In international armed conflicts, members of a State's armed forces (other than medical personnel and religious personnel) party to the conflict are **combatants**.⁹ Membership in State armed forces is generally defined by domestic law and expressed through formal integration into permanent units (distinguishable by uniforms, insignia and equipment).¹⁰

In non-international armed conflicts, members of State armed forces or organized armed groups of a party to the conflict are generally described as **fighters** for the purposes of the principle of distinction.¹¹

The most important consequence associated with combatant/fighter status is the loss of civilian status and of protection against direct attack. Civilian protection is restored as soon as membership in regular State armed forces ceases, namely when a member disengages from active duty and reintegrates into civilian life (e.g. a full discharge from duty or a deactivated reservist). Similarly, membership of an organized armed group of a party to the conflict ends when an individual expresses disengagement openly or through a conclusive behaviour, such as lasting physical distancing from the group and reintegration into civilian life or the permanent resumption of an exclusively non-combatant function (e.g. political or administrative activities).¹²

- Civilians lose their protection against direct attack for such time as they take direct part in hostilities. In other words, only for such a time may they be directly attacked as if they were combatants/fighters. Once they end the specific act that amounts to taking direct part in hostilities (that is, lay down, store or hide their weapons and return to civilian activities), they regain their protection against direct attack.¹³

However, civilians who contribute to the general war effort of a party to the armed conflict without directly harming another party to the conflict (such as recruiters, trainers, financiers or propagandists) do not, as such, directly

8 ICRC Customary Law Study, above note 4, Rule 5.

9 Geneva Convention III (GC III), Art. 4; AP I, Arts 43–44; ICRC Customary Law Study, above note 4, Rules 3–4. Participants in a *levée en masse* are also regarded as combatants without being members of the armed forces: Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Art. 2; GC III, Art. 4(A)(6).

10 Membership in *irregular* forces belonging to a State party to the conflict can only be reliably determined on the basis of functional criteria such as those applying to organized armed groups in non-international armed conflicts. See: ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, Geneva, 2009 (ICRC Interpretive Guidance), p. 25.

11 ICRC, *Commentary on the First Geneva Convention*, 2016, paras 530, 532–534; ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 31IC/11/5.1.2, October 2011, p. 43. For further information about the determination of membership, see ICRC Interpretive Guidance, above note 10, pp. 30–36.

12 ICRC Interpretive Guidance, above note 10, p. 72. This includes notably the resumption of such exclusively non-combatant functions (e.g. political or administrative activities) for the non-State party to the conflict to which the organized armed group belongs.

13 *Ibid.*, pp. 65–73.

participate in hostilities. They, therefore, do not lose their protection against direct attacks according to IHL.

Humanitarian character

Preventing combatants/fighters from entering sites is essential for maintaining the civilian character of those sites, but it may not be enough to preserve the humanitarian character of sites and, ultimately, for ensuring effective protection of IDPs/refugees hosted therein. It is therefore necessary to identify other categories of persons who could pose a risk to the humanitarian character of sites.

First, there may be civilians who sporadically take a direct part in hostilities *while being accommodated in sites*. Their situation needs to be distinguished from that of civilians who sporadically took a direct part in hostilities but *have ceased to do so when entering sites*. While the latter must not be barred from entering a site on the basis of their past direct participation in hostilities, the risk posed by the former should be considered and appropriate measures taken to tackle that risk, while bearing in mind that they are civilians and not combatants/fighters.

Secondly, some activities undertaken by civilians hosted in a site who support a party to the conflict without directly participating in hostilities could also endanger the safety of other civilians and undermine the humanitarian character of sites – although not affecting the civilian character of sites or their protection under IHL. Notably, activities such as recruitment and training of or for armed forces are considered incompatible with the humanitarian character of sites. Such activities are also incompatible with the institution of asylum under international refugee law.

That said, it is also necessary to identify the potential protection risks arising with non-admittance or expulsion of individuals from sites. Civilians who are not admitted or are expelled from sites on account of their contribution to the general war effort, for example, could be assumed (erroneously) by an opposing party to the conflict to be combatants/fighters (hence, targetable) under IHL. Importantly, individuals expelled from sites (including combatants/fighters) may still need to be protected from *refoulement* in accordance with international law,¹⁴ and thus require specific attention.

Part 2: Applying operational measures

Drawing from current-day operational practice and responding to the operational challenges and dilemmas described in Part 1 of this document, the sections below

¹⁴ *Non-refoulement* is the principle of international law that prohibits an authority (State or other) from transferring a person to another authority where there are substantial grounds to believe that this person would be in danger of being subjected to violations of certain of his or her fundamental rights. The principle of *non-refoulement* is found expressly in IHL, international human rights law and refugee law, though with different scopes and conditions for each of these bodies of law. The principle of *non-refoulement* has become customary international law.

propose measures humanitarian actors can consider with a view to maintaining the civilian and humanitarian character of sites. In doing so, the role of other actors is also explained, alongside the challenges humanitarian actors need to anticipate and the steps they can follow when engaging with these actors.

Ensuring a broad protection approach

Humanitarian actors need to ensure that sites provide an effective protective environment for people fleeing the effects of armed conflicts. First and foremost, this means ensuring the physical safety of displaced populations hosted in sites by preventing the presence of combatants/fighters. It also entails preventing civilians who contribute to the general war effort from intermingling with the population hosted in sites when their activities undermine the latter's protection. Equally important are measures that prevent civilians from participating directly in hostilities in a spontaneous, sporadic or unorganized manner. Finally, humanitarian actors need to assess the potential protection risks for individuals who are not admitted into sites as well as those who are separated, expelled or deprived of liberty.

In view of the foregoing, a broad protection approach that draws on all bodies of international law is necessary to achieve the best protection outcome for all individuals in need of protection. Such an approach must be supported by a holistic analysis that looks at: (i) the threats that have triggered displacement; (ii) the protection risks posed to persons residing in sites, including those caused by the presence of militants; and (iii) the protection risks posed to those not admitted to sites. In the present document, we use the term "militants" to encompass combatants, fighters, civilians who, while accommodated in sites, directly participate in hostilities (either inside or outside those sites), and civilians who contribute to the general war effort without directly participating in hostilities.

Concrete measures

Screening

States have the primary responsibility to protect and assist persons within their jurisdiction, including by taking measures to ensure that sites located in their territory remain secure, and that their civilian and humanitarian character is maintained.¹⁵ This includes the engagement of border security personnel, police and immigration authorities as well as the armed forces, as required.

15 Similarly, non-State organized armed groups who are party to an armed conflict are bound by IHL and must respect sites and refrain from launching direct attacks against civilians and civilian objects (ICRC Customary Law Study, above note 4, Rule 7). Furthermore, if armed groups control the territory where a site is located, they also have a certain responsibility to ensure the safety and well-being of the population within this territory (*ibid.*, Rules 22–23).

Nonetheless, States may be unwilling or may lack the capacity to discharge their responsibilities fully, particularly when large-scale displacement or an emergency occurs, and may therefore request assistance from the international community.

When a government takes up its role and screening procedures are in place, humanitarian actors should monitor the situation to ensure that the authorities strike the right balance between security and humanitarian considerations, in particular when dealing with large influxes of IDPs or refugees. Protection concerns may arise in relation to the way the screening is conducted, ranging from inadequate treatment and material conditions during screening to restrictions on freedom of movement during lengthy screening processes which, in some cases, can amount to arbitrary deprivation of liberty; family separation; persons going missing after screening; and forced return or *refoulement*. These concerns may become acute in situations where IDPs/refugees tend to be stigmatized and perceived to have a particular political opinion or as complicit with an actor in the conflict. Lastly, humanitarian actors should ensure that authorities take into account the particularly vulnerable situations of women and children associated with armed forces or armed groups – the latter should benefit from special protection and assistance measures appropriate for their gender and age, regardless of how they were recruited.

When a UN peace operation is deployed, in particular one with a protection of civilians mandate, it may also put in place screening mechanisms and seek to ensure the security of sites. UN missions will typically seek to empower the government to undertake screening, rather than take on this responsibility. Where UN missions do perform screening, however, it should be recognized that they are only one protection actor amongst many. They will likely seek the expertise and capacities of other UN and humanitarian partners with more experience in managing sites. Other actors can also provide support or technical advice on specific aspects of the screening (e.g. identification of children associated with armed forces or armed groups, or the establishment of screening procedures and criteria).

Humanitarian actors can also seek appropriate inter-agency mobilization and support to governments. They cannot, and should not, however, be expected to replace the primary duty-bearers, as they do not have the means or the mandate to undertake security operations. The role of humanitarian actors is rather to advocate for the State to ensure effective and transparent screening based on clear standard operating procedures (SOPs) for the identification of militants, and, when required and appropriate, their separation from the rest of the civilian population, consistent with applicable norms and standards.

In performing such a role, and advising those in charge on what would be adequate screening procedures, humanitarian actors must base their actions on a good understanding of the extent of the threats, the consequences and the protection needs that a situation may create. This must be considered from the viewpoint of the safety of the people sheltered in the site *and* in light of the risks someone may face if not admitted inside, separated, deprived of liberty, or expelled. Understanding the perception of the displaced community, as well as

that of the host community, with regard to possible threats and what may pose a concern for their safety and well-being within (and around) the site, is crucial.

A comprehensive protection response by humanitarian actors with regard to the screening process would include the following steps, among others:

- **Registering persons with specific protection risks** (e.g. disengaged combatants/fighters, men and women of recruitment age) and documenting missing persons (including in relation to allegations of arrests), with a view to preventing disappearances and re-establishing family links.
- **Engaging in a protection dialogue** with the authorities and the UN mission on screening procedures, providing practical recommendations on procedural safeguards (e.g. *non-refoulement*) and general treatment during such exercises (e.g. reasonable timeframes and preserving family unity) as well as other more specific issues (e.g. searches of females by female officials).
- **Maintaining a presence** close to sites in order to monitor protection risks and to gather evidence for a more concrete dialogue with the authorities.
- **Visiting screening sites** (in accordance with each actor's mandate and working modalities).
- **Monitoring screening procedures** when full and transparent access is given by the authorities and a channel to the authorities has been established to ascertain concerns identified by humanitarian actors.
- **Advocating for priority in identifying children** who are or have been associated with armed forces or armed groups. Once identified, the child's welfare should be monitored and the right balance needs to be found between enabling the child to benefit from special programmes that address his or her specific needs and support reintegration into the family and community, and avoiding stigmatization.
- **Advocating for special attention to women** associated with armed forces or armed groups, such as gender-sensitive screening procedures, separate screening facilities for women, and particular consideration for women who are pregnant, lactating and/or accompanied by infants or newborns. Screening procedures should give priority to women and children, and incorporate their specific protection and assistance needs, including as a consequence of sexual and gender-based violence.

Separation

Following screening, persons identified as militants and posing a serious threat (i.e., either because they continue to engage in hostilities or because their activities pose other protection risks) should be separated from the rest of the population as early as possible. Separation preserves humanitarian space as well as the humanitarian character of assistance and the security of humanitarian personnel working in sites.

Separation can include expulsion from a site, transfer to another place, reporting to authorities and, in exceptional circumstances, deprivation of liberty. The measure chosen should also address the security threats and protection

concerns that separated individuals may have. In particular, any expulsion or transfer to another authority must be in strict compliance with international law, including the principle of *non-refoulement*. Failure to find appropriate responses for separated individuals may result in them hiding among the civilian population in sites, thereby compromising the civilian and/or humanitarian character of those sites. Lastly, in principle, effective responses must not only ensure the safety and humane treatment of separated individuals but also contribute as much as possible to decreasing the level of violence at community level.¹⁶

It is therefore necessary for humanitarian actors to map the potential responses for identified militants, and to play a role in advising the authorities and other stakeholders on the best way to implement separation in a specific situation.

In exceptional circumstances, based on an individual and case-by-case basis, identified militants may be detained for the purposes of criminal proceedings or interned/administratively detained.¹⁷ Any deprivation of liberty must be carried out in accordance with applicable international and domestic laws and standards.

In practice, deprivation of liberty may give rise to a number of concerns, in particular: a lack of legal basis or grounds and procedures for deprivation of liberty; inadequate conditions of detention and treatment; violation of the principle of *non-refoulement*; and lack of access to humanitarian actors.

When any of the above-mentioned situations arise, humanitarian and human rights actors with a specific mandate to visit persons deprived of liberty may consider, according to their mandate, working modalities and expertise, the following:

- **Engaging in a protection dialogue** with the authorities to advocate *inter alia* for: access to places of detention and individuals deprived of liberty to monitor conditions and treatment; the adoption of remedial measures to prevent abuses; and the adoption of and compliance with relevant procedural safeguards or judicial guarantees.
- **Providing material assistance** (basic hygiene items, blankets, clothing, water and sanitation etc.) to support the authorities in ensuring adequate conditions

16 For example, this is about providing opportunities for rehabilitation and reintegration into civilian life to former combatants/fighters so that they do not resort again to violence, and creating mechanisms for social cohesion and dialogue at community level. See the following section on disarmament, demobilization and reintegration programmes.

17 The terms “internment” and “administrative detention” refer to non-criminal detention for security reasons, occurring, for the former, in time of armed conflict, and for the latter, outside an armed conflict (i.e., in other situations of violence, or in peacetime). For more information on internment under IHL, see ICRC, “Internment in Armed Conflict: Basic Rules and Challenges”, Opinion Paper, 25 November 2014, available at: www.icrc.org/en/document/internment-armed-conflict-basic-rules-and-challenges. In certain specific circumstances, where combatants involved in an international armed conflict enter a neutral State’s territory, internment will be required by IHL. See Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, USTS 540, 18 October 1907 (entered into force 26 January 1910), Art. 11; GC III, Art. 4(B)(2).

of detention, based on a thorough assessment of the situation and the pros and cons of such an approach.

- **Advocating for the specific protection and assistance needs of women and children**, such as preservation of family unity or visits, psycho-social assistance and medical care.

Disarmament, demobilization and reintegration (DDR) and other alternative programmes

Alongside screening and separation, disarmament, demobilization and reintegration (DDR) programmes can enhance the protection of civilians and the civilian and humanitarian character of sites while, at the same time, providing longer-term solutions for combatants and fighters.

DDR is a voluntary process, based on a political agreement, which consists of reintegrating combatants/fighters into civilian life after removing their weapons. It offers access to protection and reintegration measures (e.g. education, vocational training, income-generating activities, psychosocial support) to combatants/fighters who wish to disengage and return to civilian life. The ultimate objective of DDR is not just to provide an effective solution to deal with separated combatants/fighters, but to contribute to a significant reduction in violence and destabilization. DDR should not be confused with screening, separation, weapons searches or other measures to maintain the civilian and humanitarian character of sites.

Two key conditions are necessary to implement DDR programmes: (i) a peace agreement which has the buy-in of the parties, and (ii) a minimum level of security in place in the area. In the absence of these conditions, alternative programmes have been developed and implemented by the UN DPKO and partners in the CAR, DRC, Haiti and Mali, such as:

- **Community violence reduction programmes:** Flexible, community-based programmes containing elements of reconciliation, dialogue, prevention and conflict resolution/peace-building. They aim at reintegrating former combatants/fighters into society with the involvement of the community. These programmes have increased social cohesion by promoting a stronger, more stable community and thereby contributing to an overall decrease in violence. Such programmes may entail focusing on areas particularly prone to violence, engaging with at-risk youth-at-risk and community members, and working with reliable partners.
- **Pre-DDR programmes:** Designed in the CAR for fighters who do not fulfil the eligibility criteria of a DDR engagement (i.e., have not formally disarmed, weapons are being temporarily stored) and can benefit from vocational training and income-generating programmes.

In order to find effective solutions to handle separated combatants/fighters, it is important for humanitarian actors to:

- identify which programmes offered by the DPKO and partners are the most feasible for the specific operational context and the special needs encountered;
- explore, through cooperation and coordination with the DPKO and partners, the extent to which such programmes contribute to maintaining the civilian and humanitarian character of sites by offering a tool and a perspective to former fighters to renounce lastingly their military activities; and
- consider options for advocating for realistic programmes (vis-à-vis the DPKO and partners) to be put in place in certain cases, without compromising humanitarian principles.

Mitigating consequences of the presence of militants and armed elements in sites

The civilian and humanitarian character of sites is compromised when militants find their way into sites. Sites or parts of them can be used as bases by combatants/fighters and the civilian population can be used as human shields; or sites can be transformed into “rest and recuperation” places for combatants/fighters visiting family members. Government armed forces entrusted with managing sites or ensuring their security can likewise compromise the civilian character of sites by virtue of their armed presence in and around sites. More generally, the presence of any persons carrying weapons (armed elements), whether or not such weapons are intended for military use, may generate certain protection risks.¹⁸

Under such circumstances, the protection and security of sites and their civilian populations may be seriously undermined. Attacks against sites, harassment, forced recruitment and sexual and gender-based violence are some of the protection concerns that may arise from the presence of militants in sites. Additionally, government authorities might perceive the entire population of a site as being complicit with other parties to the conflict. As such, they may push for camp closure, thus leading to premature and/or forced return. Humanitarian actors could therefore explore the following measures and approaches, in accordance with their expertise and mandate:

- **Prevent and mitigate risk exposure** with the following measures: locating (or relocating) sites away from military bases and border areas when possible or needed; ensuring to the maximum extent feasible physical protection in and around sites by security actors not involved in the ongoing armed conflict or, should such actors be involved in an armed conflict, locating them at the outskirts of sites; identifying people at risk of recruitment (both voluntary and forced) and informing them of the implications of recruitment on their civilian (and, if applicable, refugee) status; adopting particular measures to ensure the protection of children (including from recruitment); increasing

18 The term “armed elements” thus refers to all individuals carrying weapons irrespective of their legal status, including civilians who carry weapons for reasons of self-defence or reasons unrelated to military activities.

security measures (such as community policing or police posts) with the active involvement of camp managers; and establishing SOPs for managing incidents in relation to specific threats, including the presence of militants or armed elements.

- **Pursue community-based protection approaches**, starting with actively engaging a site's civilian and host populations in a dialogue to understand their perspectives and perceptions, including priority concerns and existing coping mechanisms.¹⁹ Assess the role these populations can play in advocating and negotiating directly with militants or armed elements for their own protection, and empower these efforts. Other useful steps may include raising people's awareness of their rights, basic protection principles and key messages; putting in place channels and processes for people to report their concerns related to the presence of militants or armed elements in the camp and other protection issues (e.g. through camp managers); and implementing activities aimed at strengthening people's resilience by reducing their exposure to threats and the need to resort to harmful coping mechanisms.
- **Engage in a protection dialogue with government authorities and non-State parties to the armed conflict.** Humanitarian actors should reach out to all concerned actors at all levels (e.g. the State, organized armed groups, individuals or groups engaged in criminal activities) in order to leverage different entry points and centres of power and decision-making. A variety of approaches can be pursued (e.g. bilateral and confidential dialogue, public advocacy) and complemented by capacity-building and training activities, which can be mutually reinforcing (e.g. engaging the authorities on technical issues such as developing SOPs can build trust and open communication channels). They should seek to leverage actors such as special rapporteurs, donors, regional actors and, depending on the context, religious leaders and faith groups).

In pursuing the above-mentioned measures, humanitarian actors need to understand and leverage their complementary mandates, roles and working modalities. It is equally necessary to share information, while respecting working modalities (including confidentiality and data protection), for the purpose of joint analysis and to agree on the operational challenges that need to be addressed as a matter of priority. Finally, close collaboration is important for developing key protection messages for dialogue and advocacy with other actors.

Conclusion

Confronted with multiple challenges in preserving the civilian and humanitarian character of sites during armed conflict, humanitarian actors need to draw on all applicable legal frameworks to ensure a broad protection perspective and to find

¹⁹ Coping mechanisms may include voluntary recruitment for survival or income-generating purposes.

practical solutions. Identification and separation mechanisms need to be transparent. Security safeguards must integrate the perceptions that civilian populations sheltered in sites have vis-à-vis their own security and possible sources of threats. Humanitarian actors need to be sensitive to the security concerns of militants once identified and separated, including by pursuing, for example, voluntary community violence reduction programmes.

Importantly, preserving the civilian and humanitarian character of sites demands reinforced complementarity and greater cooperation among humanitarian actors. This in turn should serve the larger aim of enhancing the protection of persons affected by armed conflict, particularly IDPs and refugees. An ongoing protection analysis needs to be systematically shared to inform a common understanding among humanitarian actors of the issues at stake. Humanitarian actors must likewise find effective ways to coordinate their negotiation and dialogue with primary duty-bearers at all levels, building upon their respective mandates and expertise, and respecting inherent constraints.

The challenges and dilemmas associated with preserving the civilian and humanitarian character of sites often exceed the capacity of humanitarian actors. As such, it becomes necessary for humanitarian actors to reach beyond their community in order to engage a broader network of stakeholders, leveraging and, where feasible and appropriate, mobilizing action on the part of political, security, human rights, peace-building and development actors. In doing so, however, the focus needs to be on complementarity, and humanitarian principles need to be preserved alongside distinctions with regard to mandates, roles and responsibilities. Voluntary violence reduction programmes for organized armed groups belonging to a party to a conflict offer one example of joined-up and innovative action. Such initiatives require humanitarian actors to develop a deeper understanding of the added value and limitations that actors beyond their community can have on the protection of affected populations, and accordingly, the most appropriate ways these actors can be integrated into the operational response.

Acknowledgements

The following persons contributed to the writing of this aide-memoire:

For the ICRC: Emmanuelle Birraux, Emmanuel Colineau, Angela Cotroneo, Helen Obregón Gieseken and Guilhem Ravier.

For UNHCR: Caroline Dulin Brass, Elizabeth Eyster and Gregor Schotten.

Special thanks go to Ralph Mamiya and Silke Rusch from the UN Department of Peacekeeping Operations for their valuable input.