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HUMANITARIAN SAFETY AND SECURITY: OBLIGATIONS AND RESPONSIBILITIES TOWARDS LOCAL IMPLEMENTING PARTNERS

Background Paper for Policy Recommendation Development

Regional Risk Management Conference
From Field Workers to Policy Makers
24-25 February 2011
Bangkok

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Introduction

THIS IS A WORKING DOCUMENT

Commissioned by Church World Service Pakistan/Afghanistan this background paper aims to influence further debate and policy developments concerning safety and security of aid workers. Specifically, the paper addresses the core theme of responsibility. It will address questions of who is responsible for the safe access to vulnerable populations, and will attempt to define what exactly responsibility means in terms of safety and security within the international aid sector.

The following information draws on global sources. Although the focus of the paper is the Asia Pacific region, some issues discussed in this report may be relevant to other geographic regions.

The purpose of this paper is to firstly summarize recent developments in risk management of aid organizations, introducing the most prominent challenges to safe delivery of assistance, and proposes recommendations and principles for improving aid worker security through engagement with civil society and governments.

The process of formulating policy recommendations will be as follows:

- (1) From 1 February, this paper will be distributed to participants, stakeholders and other relevant networks
- (2) During the upcoming conference (Bangkok, 24-25 February 2011), two workshops will be held where participants will be asked to contribute to the substantive content of this report and any subsequent policy papers that may be produced. The key objectives for the workshops is to capture policy recommendations from the expertise and knowledge of local aid practitioners.
- (3) The final policy recommendations will be presented on 15 March 2011 to participants, stakeholders and relevant networks, along with a request to endorse the paper.
- (4) By the end of April 2011, the paper will be publicized at an event in Bangkok and widely distributed.

Through this consultation and communication process, CWS Pakistan/Afghanistan and CWS Asia Pacific hope to create ownership and include as many people and organisations as possible.

The Current Situation, Framework and Strategy

Improved information and knowledge management by aid organizations, combined with policy and academic research efforts allows us to analyze the state of insecurity of the aid sector. Evidence-based statistics¹ suggest that aid workers are subject to harm almost daily. Recent data demonstrates that attacks on aid workers have increased significantly over the past four years, with an increasing number of these incidents being politically motivated and directly targeting aid workers. In 2009, 278 aid workers were victims of serious security incidents. Of these 102 lost their lives², meaning on average for that year one aid worker was killed every three days. Acknowledging that the global aid workforce has increased significantly over the past decade, which would naturally lead to an increase in reported incidents, these statistics are very useful in helping us identify and understand a changing security environment.

International legal frameworks and humanitarian principles cannot provide realistic protection to individuals and organizations that offer assistance to populations in need. In past decades, the presence of aid workers, especially foreign aid workers, in conflict, post-conflict or disaster context was accepted, or at least tolerated by others in these environments. Today this is no longer the case, leaving aid organizations vulnerable to an increasing number of threats. Some individuals or groups who hold strong political or ideological views rarely perceive foreign assistance as a neutral, impartial or independent action. The aid organizations that provide assistance have to work harder on developing and maintaining acceptance by governments and the communities they work for and with.

Acceptance of foreign assistance may be described as obtaining the political, social and economic consent for an organization's presence and programmes, and is a fundamental requirement for the safe and effective delivery of assistance. In some contexts acceptance by individuals or groups may be difficult if not impossible to obtain. *Tolerance* of the aid activities/actors rather than the explicit consent required may also be misinterpreted as *acceptance*. Generally a combination of both acceptance and tolerance will be evident when perceptions of aid organizations are examined in any given context. One key challenge is accurately assessing the level of acceptance, and treating identified risks through community-based security strategies.

Assessing the risk environment, particularly safety and security risks, requires technical skills and expertise. Aid organizations have invested considerably in recent years to obtain these skills and improve their internal capacity to accurately assess and effectively manage safety and security risks. Collective knowledge has been produced to develop good practices and to a certain extent, common standards. The ODI's Good Practice Review 8 Operational Security Management in Violent Environments³, and InterAction's Minimum Operating Security Standards are two examples. Applying this knowledge and implementing security management systems in an ongoing and necessary part of aid programming and some organizations are coping with this better than others. While we must acknowledge the positive and proactive steps that are evident throughout the sector, there is room for improvement. Too often aid organizations fail to prioritize their limited resources away from core programmatic expenses in order to meet safety

1 <http://www.odi.org.uk/resources/download/3250.pdf>

2 <http://www.odi.org.uk/resources/download/3250.pdf>

3 Good Practice Review No. 8; Operational Security Management in Violent Environments (2nd edition), Overseas Development Institute, London, 2010.

and security costs. Instead organisations adopt a higher level of risk on the assumption they will not require the safety and security services and assets. Likewise organizations fail to adequately self-assess their own capacity to work safely in the specific context, leaving themselves exposed to risks due to ineffective risk assessments and lack of technical skills and knowledge.

Attitudes and behaviours of aid workers towards safety and security remain inconsistent. The causes of these inconsistencies are many and varied, including an organization's tolerance to taking or avoiding risks, their specific missions or mandates, the quantity and quality of security management resources available to them, as well as external influences from the environments in which they work. Another key challenge for aid workers is how to navigate these inconsistencies when sharing the humanitarian space with others, due to the fact that the actions of one individual, group or organization can have an affect on all others in the same space. This is particularly important when these actions have a safety and/or security impact.

Systematic approaches to safety and security management are necessary if aid organizations are to effectively reduce workplace risks to an acceptable level. Security management systems need to demonstrate compliance with regulatory and legal frameworks, and accountability for the decisions staff take when managing security risks. Policies guiding these systematic approaches are becoming commonplace in the sector with many aid organizations developing security policies, crisis management policies, health and safety policies, etc. These documents communicate an organization's guiding principles and their position regarding safety and security issues, and the responsibilities expected of all staff.

Humanitarian reform⁴ aims to improve the effectiveness of humanitarian response through ensuring greater predictability, accountability and partnership. This includes strengthening partnerships between the United Nations agencies and non-UN actors. In 2005 the IASC established the Humanitarian Network for Asia Pacific⁵. Serving to improve inter-agency coordination and information exchange, this network is well-placed to influence debate on safe access and safe delivery of assistance. For reform to succeed it needs to acknowledge the changing security environment that aid workers are facing and ensure matters of predictability, accountability and partnership all consider and integrate safety and security.

Who is Responsible?

Responsibility for safety and security of aid workers is the key notion that this policy paper aims to address.

How is responsibility defined, understood and communicated within an organization, alliance or the sector?

Firstly we need to clarify what this term means when applied to the safety and security policies of aid organizations. Does the term refer to the organization or the individual? The answer is both. It may be argued that the notion of responsibility extends beyond the employer / employee relationship of aid organizations, but also includes their donors, home and host governments, communities and the affected populations. The safe access to vulnerable populations and the safe delivery of assistance to these populations is a collective responsibility.

4 <http://ochaonline.un.org/roap/WhatWeDo/HumanitarianReform/tabid/4487/Default.aspx>

5 <http://ochaonline.un.org/roap/WhatWeDo/IASCHumanitarianNetworkforAsiaPacific/tabid/4497/Default.aspx>

In general terms responsibility is defined a number of different ways depending on the context in which it applies⁶. These are:

- (5) the state or fact of having a duty to deal with something or of having control over someone,
- (6) the state or fact of being accountable or to blame for something,
- (7) a thing that one is required to do as part of a job, role, or legal obligation,
- (8) a moral obligation to behave correctly toward or in respect of [someone or something].

Responsibilities infer obligations by and towards others. With this in mind the above definitions provide two separate lines of consideration when applied to the aid sector – the legal obligation and the moral obligation.

⁶ Source: New Oxford American Dictionary, 2010.

Who is paying the price?

The legal framework

Security policies of aid organizations often refer to the responsibilities of staff and include positions on accountability and compliance. Few however make explicit reference to responsibilities in terms of employer's and employee's legal obligations. This may be due to a lack of understanding of applicable legal frameworks and how these frameworks apply to the notion of duty of care. "Duty of care" and "legal liability" have recently become topics of interest to aid organizations indicating an acknowledgment by some members in the sector to take the matter more seriously than before.

In simple terms, it will be law that determines the extent to which someone is responsible for the safety and security of others.

Where this issue gets complex is in determining *which* laws apply, and such decisions usually require expert legal advice and will often involve multiple jurisdictions. For example, a Danish-based and registered non-governmental organization in receipt of USAID funding and implementing programmes in Pakistan, will likely be subject to Danish, United States and Pakistani laws and other regulatory frameworks.

Referring to laws from multiple jurisdictions, a recent white paper published by a leading commercial risk management service provider noted:

"Although some of the laws may be somewhat different in how they articulate the employers' Duty of Care, they focus on the general obligation of the employer to protect the physical and mental health, safety, security and well-being of employees..."⁷.

Responsibilities of aid organizations (as employers) towards their employees are becoming increasingly understood, and have clear legal foundations. Less clear however is the extent to which similar legal obligations apply to the aid organization's associated personnel and specifically to their local implementing partners. The notion of duty of care requires the aid organization to demonstrate reasonable steps are being taken to safeguard their staff. Should the notion apply equally to implementing partners? Are they not carrying out the same duties as an employee, but with different contract terms and conditions? Where legal frameworks are unclear to sufficiently address these questions, our moral obligation to safeguard others is introduced. A key question to be addressed when determining obligations towards local partners is:

But for the actions and influence of the international aid organization, would the local organization (the implementing partner) be present in a certain location, conducting a certain programme activity?

If the answer is "No" it is reasonable to suggest that the contracting party (the international aid organization in this example) has some level of responsibility towards the other party. This does not suggest that the INGO should be directly responsible for the safety and security management of the local partner, but does suggest that the INGO has a duty to ensure risks are being identified and treated (and would generally be in their interest to do so due to the potential negative impact should the partnership fail).

7 International SOS White Paper Series, "Duty of Care of Employers for Protecting International Assignees, their Dependents, and International Business Travellers", written by Dr. Lisbeth Claus, 2009; page 21.

Risk Transfer to Local NGOs

Where does moral obligation fit in?

Our moral obligation should be present and in harmony with our legal obligation. Considering responsibilities in moral terms presents a number of challenges for aid workers and their employers.

Can we afford to take a principled moral position regarding our local partner's safety and security? What are the costs, the risks, the benefits of doing so?

Unlike legal obligations, which are imposed on individuals and organizations by virtue of being part of civilized governed societies, moral obligations are mostly a personal choice. Individuals may choose to be morally bound by a certain set of principles or values, and are therefore free to determine the extent to which moral obligations influence their responsibilities regarding safety and security of local implementing partners.

Some international NGOs have addressed the issue of responsibilities towards local partners in their security policies. Becoming increasingly common is a policy position stating that local implementing partners are responsible for their own safety and security management. Provided this position conforms to the applicable legal frameworks and is clearly communicated to potential partners, the position presents a solution. But is this a practical and sustainable solution, or simply an act of risk transfer? Implementing the policy position would require a certain level of due diligence to inform any decisions on engaging or working with others.

Working with local partners is a common practice in the aid sector. This approach to program delivery may be more cost-effective for some INGOs, or may be part of a deliberate capacity-building effort, or may allow foreign organizations to gain proxy access to vulnerable populations in contexts where their direct access is problematic. When choosing this method of operating organizations should be aware of any potential risk transfer. Risk transfer occurs “when an agency consciously seeks someone else to carry out certain activities in a highly insecure context”⁸. In fact, risk transfer may occur at any context, and may not always be a conscious decision.

Where risk transfer is identified, or is being considered as part of a deliberate program plan, the notion of responsibility must be examined. If the transfer is occurring within an organization (E.g. From one group of staff to another) the organization's risk owners have a legal obligation to ensure duty of care. This is generally not the case when the transfer occurs between two or more organizations, each with their own separate legal identity. In cases of risk transfer from a INGO to a local implementing partner, it is the INGO's moral obligation that should guide decisions relating to the partner's safety and security. These decisions should aim to provide a level of risk management support that would be considered as fair and reasonable in the context. For example if an implementing partner is assessed as being exposed to a high level of risk as a result of the partnership, the INGO may provide access to safety and security management training for the local partner.

Providing assistance to vulnerable populations is a necessity that will continue for the foreseeable future. Aid organizations will continue to be confronted with safety and security challenges. These organizations should always act in manner that demonstrates they are meeting their legal and moral obligations. Likewise, the collective responsibility to ensure the safe delivery of assistance requires donors, governments and other civil society actors to take reasonable and meaningful steps to meet their legal and moral obligations. Where such steps are considered ineffective, or the responsible organization simply does not participate, influence through advocacy and communications is necessary.

8 Good Practice Review 8; Operational Security Management in Violent Environments (2nd edition), Overseas Development Institute, London, 2010.

Recommendations

A set of recommendations for improving aid worker security with respect to its engagement with civil society organizations, communities and governments will be informed by outputs from the upcoming consultative workshops at the Regional Risk Management Conference in Bangkok, 24-25 February 2011.

Civil society groups are recommended to:

- Ensure internal policies explicitly communicate their position regarding safety and security of staff, partners and associated personnel.
- Clearly demonstrate decisions and actions that meet legal and moral obligations towards staff, partners and associated personnel.
- Communicate their safety and security concerns to donors, governments or other civil society groups to ensure a collective response towards developing and implementing solutions.
- Through local, national or regional forums, identify key individuals or groups likely to have influence on the security environment and engage with them as necessary to support safe access to populations.

Donors are recommended to:

- Improve existing accountability mechanisms regarding safety and security requirements prior to approving grant applications.
- Hold grant-recipients to account for any acts of safety and security negligence.
- When implementing partners use grants, ensure appropriate risk and capacity assessments have been conducted.
- Increase the amount of available funding for safety and security resources.

Governments are recommended to:

- Clearly demonstrate compliance to applicable international legal frameworks concerning the protection of civilians.
- Upon consenting to the presence of foreign aid organizations, demonstrate respect for humanitarian principles and exercise a policy of non-interference at all levels of the administration.

Proposed guiding principles

A set of principles intended to guide future policy development will be informed by outputs from the upcoming workshops the Regional Risk Management Conference in Bangkok, 24-25 February 2011.

Proposed guiding principles may include:

Collective Responsibility

Safeguarding aid workers requires a collective responsibility by individuals and organizations including governments, aid donors, aid organizations and their staff and associated personnel, and the communities they work for and with. This collective responsibility enables legal and moral obligations to be effectively applied to the safe delivery of assistance to populations in need.

Indicators

- State authorities, donors and civil society groups openly communicate their individual responsibilities towards the safe delivery of assistance.
- State authorities, donors and civil society groups can demonstrate decision-making processes leading to actions and desired impacts in support of aid worker safety and security.

Consultation & Communication

Dialogue between individuals and groups who hold the collective responsibility towards the safe delivery of assistance to vulnerable populations is key to ensuring effective actions are being taken to meet their obligations.

Indicators

- State authorities, donors and civil society groups have an open exchange of information and ideas aimed at safeguarding aid workers.
- All relevant stakeholders are actively participating in dialogue through formal or informal means.

Due Diligence

Partnerships between foreign aid organizations and local implementing partners is informed by competent risk assessments. Aid organizations will ensure the capacity of local implementing partners to manage their safety and security risks is appropriate for the task and operating context.

Indicators

- Safety and security risk assessments are conducted and where possible include input and consultation with proposed or existing local implementing partners.
- Organizations considering partnerships have assessed their own capacity to treat identified risks and successfully implement the desired programmes.

Capacity Building and Preparedness

Partnerships will be supported by strategies to build the capacity of local organizations to manage safety and security risks, and integrate safety and security standards into their workplace culture. Contracting organizations will demonstrate a commitment to supporting their partners through the provision of skills and knowledge, information exchange, and mentoring.

Learning & Development – Learning and development of safety and security skills and knowledge is a proactive and ongoing action to build the capacity of NGOs and their local implementing partners.

Indicators

- Local implementing partners have access to safety and security management training courses and support resources.
- Aid organizations are able to demonstrate an increase in the quantity and quality of trained staff.

Definitions

Acceptance Approach – An approach to security that attempts to negate a threat through building relationships with local communities and relevant stakeholders in the operational area, and obtaining their acceptance and consent for the organization’s presence and its work.⁹

Tolerance – The ability or willingness to tolerate something, in particular the existence of opinions or behavior that one does not necessarily agree with.¹⁰

Responsibility – (1) the state or fact of having a duty to deal with something or of having control over someone; (2) the state or fact of being accountable or to blame for something; (3) a thing that one is required to do as part of a job, role, or legal obligation; (4) a moral obligation to behave correctly toward or in respect of [someone or something].¹¹

Obligation – A course of action to which a person is morally or legally bound.¹²

NGOs – Non-Governmental Organizations refers to organizations, both national and international, which are constituted separate from the government of the country in which they are founded.¹³

NGHAs – Non-Governmental Humanitarian Agencies (NGHAs) has been coined to encompass the components of the International Red Cross and Red Crescent Movement – The International Committee of the Red Cross, The International Federation of Red Cross and Red Crescent Societies and its member National Societies – and the NGOs as defined above. This code refers specifically to those NGHAs who are involved in disaster response.¹⁴

IGOs – Inter-Governmental Organizations refers to organizations constituted by two or more governments. It thus includes all United Nations Agencies and regional organizations.¹⁵

Civil Society – Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women’s organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.¹⁶

9 Good Practice Review 8; Operational Security Management in Violent Environments (2nd edition), Overseas Development Institute, London, 2010.

10 Source: New Oxford American Dictionary, 2010.

11 Source: New Oxford American Dictionary, 2010.

12 Source: New Oxford American Dictionary, 2010.

13 <http://www.icrc.org/eng/resources/documents/misc/code-of-conduct-290296.htm>

14 <http://www.icrc.org/eng/resources/documents/misc/code-of-conduct-290296.htm>

15 <http://www.icrc.org/eng/resources/documents/misc/code-of-conduct-290296.htm>

16 The London School of Economics Centre for Civil Society’s working definition - http://en.wikipedia.org/wiki/Civil_society