



PROTECTION

POSITION PAPER

SOLIDARITÉS INTERNATIONAL - NOVEMBER 2016

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GLOSSARY

“Remedial” protection activity: A “remedial action is any activity aimed at restoring people’s dignity and ensuring adequate living conditions subsequent to a pattern of abuse (through rehabilitation, restitution, compensation and reparation). The remedial activities are developed in the long-term and aim to help the people coping with the effects of a specific pattern of abuse. It can include health recovery, family reunification, support for livelihood, access to housing, trainings, judiciary survey, compensation, etc.” (Inter-agency Standing Committee, *Growing Sheltering Tree: Protecting Rights through Humanitarian Action, Programs and Practices, Gathered from the field*, 2002, Geneva, p.11)

“Responsive” protection activity: A “responsive action is any activity undertaken in connection with an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects.” (Inter-agency Standing Committee, *Growing Sheltering Tree: Protecting Rights through Humanitarian Action, Programs and Practices, Gathered from the field*, 2002, Geneva, p.11)

“Environment-building” protection activity: “Any activity aimed at creating and/or consolidating an environment – political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of the individual.” (Inter-agency Standing Committee, *Growing Sheltering Tree: Protecting Rights through Humanitarian Action, Programs and Practices, Gathered from the field*, 2002, Geneva, p.12)

Do no harm: “When international aid is distributed within a context of violent conflict, it becomes a part of this context and therefore also a part of this conflict. Although aid agencies often seek to be neutral or non-partisan toward the winners and losers of a war, the impact of their aid is not neutral with respect to the evolution of the conflict.” (Mary B. Anderson, *Do No Harm: How Can Aid Support Peace – Or War*, 1999)

Protection: “Individuals have a legal status that is defined by national and international laws. This status is the basis on which their protection is ensured, in the context of society.” (Françoise Bouchet-Saulnier, *Practical Guide to Humanitarian Law*, La Découverte, Paris, 2006)

ACRONYMS

DRR	Disaster Risk Reduction
ECHO	Humanitarian Aid and Civil Protection of the European Commission
FAO	Food and Agriculture Organization of the United Nations
GENCAP	Gender Standby Capacity Project
IASC	Inter-Agency Standing Committee
OCHA	Office for the Coordination of Humanitarian Affairs of the United Nations
PROCAP	Protection Capacity Standby Project
SI	SOLIDARITÉS INTERNATIONALE

INTRODUCTION

PURPOSE OF THE

POSITION PAPER



1

SOLIDARITÉS INTERNATIONALE (SI) works in contexts where the basic principles of population protection are not always guaranteed, either due to conflict situations, natural disasters, internal disturbances or discrimination.

Likewise, the populations SI aims to help naturally have particular vulnerabilities to protection risks. This is the case, for example, for women, young girls (who are more vulnerable to human trafficking and forced prostitution) and boys (who are vulnerable to forced conscription).

This therefore has an impact on the position of the organization by virtue of the fact that it carries out activities in the aforementioned situations.

In addition, a certain number of the building blocks for a "protection" approach feature in the organization's charter.

These three factors – the influence of the contexts in which SI operates, the nature of the aid recipients and the basic principles of its action – are key in the design of projects carried out by the organization.

In this framework, this document aims to formalize already existing institutional practices or trends including sensitivity to conflicts and abuse in terms of protection and the influence of this sensitivity on program design, implementation and evaluation.

**SOLIDARITÉS
INTERNATIONAL
MANDATE AND
VALUES:
THE CHARTER**



2

Some of the articles in the charter deal specifically with principles or modes of action in direct relation to protection.

Article 1: General Principle: SOLIDARITÉS INTERNATIONAL's vocation is to provide humanitarian aid and to carry out actions of solidarity, to assist populations threatened by war or by political, ethnic, economic or any other kind of oppression.

Article 1 does not deal directly with the organization working on issues related to protection, however, it alludes to the fact that they must be taken into account when planning interventions (if only by respecting the "do no harm" principle).

Therefore Article 1 implies that the organization carries out programs referred to as "remedial" in terms of protection.

SI does not aim to cover all of these "remedial" programs' activities, but some of them (supporting livelihood and access to housing) are included in what is indicated by Article 1 of the charter.

Article 2: SOLIDARITÉS INTERNATIONAL is **unbiased** and does not support any political, economic, ethnic or religious group.

Article 3: Aid is given **without any discrimination** and is always adapted to the specific situation of the targeted population.

These two principles (independence and impartiality) are vital for an intervention seeking to strengthen the protection of civil populations.

By having these principles as the basis of its action, SI pledges not to aggravate pre-existing tensions and therefore not to generate increased risks for the populations receiving aid.

Article 8: As a witness of the difficult conditions into which it gets involved, SOLIDARITÉS INTERNATIONAL attempts to inform and, if necessary, to alert public opinion.

By reserving the right to bear witness to, and therefore have a much more direct influence on, the occurrence of rights violations, SI commits here, in a much more precise way, to protection objectives this time known as "responsive" and "environment-building".

DEFINING PROTECTION



3

The idea of protection within humanitarian action came into being at the end of the cold war. According to the Inter-agency Standing Committee (IASC), it “encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. HR law, IHL, refugee law)”¹. However, this definition is considered to be very large and in practice there are as many approaches to protection as there are stakeholders. In Françoise Bouchet-Saulnier’s *Practical Guide to Humanitarian Law*, protection also has the following definition: “the protection of individuals stands at the crossroads between the

defense of individual rights and the constraints relating to public safety”². Its foundation is therefore primarily legal.

Two situations therefore appear: the conflict framework and the non-conflict framework, to which different bodies of law apply. They will be defined in the following pages.

As a preamble, it should be pointed out that one should not confuse the notions of protection and physical safety or security, which humanitarian organizations are not dedicated to guaranteeing.



1- IASC, *Protection of Internally Displaced Persons Policy*, 1999.

The definition was adopted from a 1999 International Committee of the Red Cross (ICRC) Workshop on Protection.

2- "The only entities that can assure the safety of individuals are those that control the use of public force" (*Practical Guide to Humanitarian Law*, Françoise Bouchet-Saulnier, La Découverte, Paris, 2006).

3.1 THE LEGAL FRAMEWORK (HARD LAW)

a. Non-conflict situations (including internal disturbances and internal tensions)

National law (which must conform to the rights in the international Human Rights conventions - principle of hierarchy of norms³ -) applies.

In exceptional circumstances (internal disturbances for example), the State could be required to suspend the normal application of certain individual rights. This is what is known as a state of emergency, a state of siege or a state of exception.

However, even in these circumstances, the State cannot suspend the application of certain rights (fundamental human rights) called inalienable, non-derogable or inviolable human rights. In particular, these include the legal guarantees.

The following legal corpus forms the basis of Human Rights:

- The Universal Declaration of Human Rights (1948);
- International Covenant on Civil and Political Rights (1966);
- International Covenant on Economic, Social and Cultural Rights (1966).

These different texts guarantee the following fundamental rights and freedoms:

- Right to physical and mental integrity;
- Freedom of movement;
- Personal freedom, freedom of thought, freedom of assembly and freedom of association;
- Right to equality, right to property and the right to realize aspirations;
- Right to participate in political life.

These various texts have regional interpretations (European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and American Convention on Human Rights (1969) for example) and variants according to different topics (Convention on the Rights of the Child (1989) for example).

b. Conflict situations

In conflict situations, given the potential exposure of civil populations to an adverse party's authority or to their own authorities, the national State's protection is no longer enough. The State then commits to respect International Humanitarian Law (IHL), made up of four Geneva Conventions (1949) and two additional protocols (1977).

IHL defines categories of protected people and goods including, for example, civil populations, injured people, prisoners

of war, hospitals and civil infrastructure. The rights and guarantees defined for each category of the population differ depending on their protection needs. IHL also establishes the mechanisms which help to monitor whether the guarantees granted by IHL are being respected. The violation of these rights is potentially a war crime.

3 - In line with the Universal Declaration of Human Rights adopted by the 58 Member States of the United Nations General Assembly on 10 December 1948 (resolution 217 A (III)).

3.2 SOFT LAW

This involves decisions adopted by collective bodies (judicial or non-judicial) of international or inter-governmental organizations (versus the norm adopted by the explicit consent of the States).

Even if the legal strength of soft law is relative (non-binding), it must be

taken into consideration as it has moral strength by representing the position (recommendations, decisions and resolutions) of States on a particular subject.

a. Displaced persons

Although the “Guiding Principles on Internal Displacement” (1998) are non-binding, they guide the actions of the United Nations and NGOs in carrying out protection activities related to internally displaced persons. The

text is based in particular on the Human Rights Declaration and IHL and partly comes from the 1951 Refugee Convention.

b. Fundamental rights in relation to SI’s action

During the 1990s, after the outbreak of multiple civil wars, a new concept emerged: human security⁴. It considers threats to means of existence, health and the environment, rather than just physical security, as was previously the case. Some stakeholders thus rely on this prism to redefine a right-based intervention.

• Right to water and sanitation

The first explicit recognition of access to water as a fundamental right dates from the International Conference on Water and the Environment in Dublin (1992) where it was declared “vital to recognize the **basic right** of all human beings to have access to **clean water** and sanitation at an **affordable price**”.

Today, the right to water is recognized as the “right for everyone, whatever their economic situation, to have a minimum quantity of water of a certain quality to

meet their essential and health needs⁵”. The United Nations General Assembly’s decision dated 28 July 2010 also made drinking water and sanitation a human right for everyone – enough water for someone to:

- satisfy their essential needs such as drinking, food preparation, hygiene and cleaning;
- ensure that pets and domestic animals have enough to drink;
- water small food-crop production for the family (vegetable garden).

• Right to food

The Universal Declaration of Human Rights (1948) declares that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...”. Nearly 20 years later, the International Covenant on Economic, Social and Cultural Rights (1966) expanded upon these ideas by highlighting

4 - Concepts defined in the Agenda for Peace (1992) and the UNPD Human Development Report (1994).

5 - H. Smets, «Le droit à l'eau», European Council on Environmental Law, (2002)

the “right of everyone to... adequate food” and by recognizing “the fundamental right of everyone to be free from hunger”.

At the 1996 World Food Summit in the Rome Declaration on World Food Security, the heads of 18 countries and the European Community reaffirmed “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”.

- **Right to housing**

Article 25 § 1 of the Universal Declaration of Human Rights highlights that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing...”. Article 11 § 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also indicates that: “the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

3.3 REFUGEES

Refugees do not benefit from the protection of a State. They thus receive international protection by the 1951 Refugee Convention, implemented by the Office of the United Nations High Commissioner for Refugees (UNHCR).

The main role of the UNHCR is thus to ensure that refugees who are no longer able to benefit from protection from their

State of origin can apply for asylum from the host State.

In the meantime, UNHCR is supposed to ensure that camps are secure, that refugees are not being repressed or being forcibly repatriated and that they have human living conditions (coordination of aid relief).

3.4 METHODS OF PROTECTION ACTIVITIES

Three approaches to protection can be distinguished⁶:

- Stand-alone protection for which the program's objective is exclusively linked to the protection of people, for example medical and legal support of a victim of gender-based violence. According to the Global Protection Cluster (GPC), established in 2005, there are four categories of stand-alone protection activities: child protection, gender-based violence, mine action and housing, land and property.
- Integrated protection which involves including protection objectives within other assistance programs, for example referring people who need protection services.

- Mainstreaming protection (protection as an approach) which incorporates protection principles throughout the program: do no harm, equality, accountability and participation/strengthening abilities. The underlying goal of this approach is to limit the risks created or heightened by aid (secondary risks). An example could be the choice of where to put latrines and the lighting to use in order not to expose users to risks of aggression. **In reality it involves good programming practices.**

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6 - ALNAP, *Evaluating protection in humanitarian action: issues and challenges*, 2014

**PROTECTION AT
SOLIDARITÉS
INTERNATIONAL**

4

Even though most of the activities SI carries out in the field do not directly relate to “protection” activities, SI implements de facto remedial, responsive and environment-building actions. In addition to the independence and impartiality principles which guide SI’s action, the two types of responses proposed (integrated and mainstreaming) are developed throughout the project cycle, from the needs analysis, through the concrete implementation stage to the evaluation of the actions’ effectiveness.

4.1 THE TIME FOR ACTION

a. Beforehand - in the initial assessment

As SI works both in peaceful but troubled contexts or in conflict areas, it cannot design a program without carrying out an in-depth analysis of protection risks.

Indeed, this helps to take into consideration protection issues from the design stage of the program, especially in order to avoid increasing already-existing risks, or create what is generally called “secondary protection risks” (do no harm principle).

Thus this allows SI to implement the impartiality principle during the program design stage (which in itself avoids creating an additional risk for aid recipients in terms of access and/or acceptance).

Finally, this approach helps to prevent SI from being exploited by stakeholders (for example, during a food crisis orchestrated by the authorities or an opposition group) or worse, from legitimizing some rights violations or their perpetrators.

To carry out this analysis, SI respects the following two steps:

- **Listen to the people of concern**

The methodology must be participatory as the populations are most aware of the risks they face and the measures they can take to protect themselves. It is therefore necessary to put the aid recipients at the heart of the consultation process in order to identify these protection strategies so that, insofar as they do not have a negative impact, the program does not endanger these strategies.

- **Determine the nature of rights violations and abuse**

SI also identifies the main protection issues, their nature and the motivations and interests of their perpetrators (sensitivity to conflicts and disturbances⁷), in order to design programs which are not likely to accentuate the risks for the beneficiary population, or create new risks.

b. Program design


As indicated above, whilst SI does not carry out “stand alone” protection actions, it does carry out remedial actions which often respond to abuse.

The nature of an activity can be determined by the protection issues, like for example, choosing to distribute food to displaced populations to avoid having them going back to their crops if access is dangerous.

Likewise, SI can choose to support populations’ livelihoods by taking into consideration the most frequent violations of rights and survival strategies developed in order to avoid erosive strategies in particular.




7 - Applying conflict sensitivity in emergence response – Current practice and ways forward – Nona Zicherman, with Aimal Khan, Anne Street, Heloise Heyer and Oliver Chevreau – Overseas Development Institute – Humanitarian Practice Network 2011.

 **Example SI** - This was particularly evident in the Democratic Republic of the Congo (DRC), where SI went to support populations displaced as a result of war-like actions, by providing them with aid in terms of non-food items and water, sanitation and hygiene (WaSH). For example, support was given to income-generating activities, activities which had been designed to stop people from resorting to prostitution or any other particularly dangerous activity (collecting wood for heating for example). (2013)

In northern Lebanon, as part of a response to the crisis in Syria, SI carried out multi-purpose money transfers in order to reduce the number of Syrian refugees (those who were most vulnerable in a socio-economic sense) resorting to negative strategies, such as intense indebtedness or child labor. Without this support, some households would have also been under constant threat of eviction from their landlord. This aid therefore aims to mitigate the risks facing the populations affected by the crisis and to improve their dignity. (2014-2016)

Determining the location of activities is also motivated by protection risks: in particular, when planning a WaSH activity, the preliminary location of works will be determined by its proximity to where the beneficiary populations live in order to avoid sexual violence, if this has been identified as an especially prominent issue.

 **Example SI** - In northern Lebanon, a sub-section of the refugee populations did not have valid papers allowing them to pass the various check points around where they lived. Such restrictions could make it impossible to gain access to certain services and facilities. SI therefore chose to reach out via home visits in order to avoid additional journeys, but also to refer households or individuals to primary health services and legal assistance for example. (2015-2016)


Targeting beneficiaries for a program can also take into consideration the vulnerability to particular threats, in addition to the needs. The target criteria thus incorporate the risks of different age, gender and social, ethnic and religious groups analyzed during the assessment.

c. During the implementation stage

- **Mainstreaming protection - implementing good programming practices**

SI's approach, based on an analysis of the situation in terms of protection and program design, generally aims to limit secondary risks or to not increase primary risks (do no harm). The same applies to the concrete implementation of programs.

Beyond program design or activity selection, certain choices will be made in order to minimize the protection risks during the implementation stage.

 **Example SI** - In the Democratic Republic of Congo, one of the most widespread violations of IHL is the pillaging or destruction of civilian property. Thus, this issue is considered when designing the distribution of non-food items or fairs (for example the nature of non-food items, distance between the distribution area and areas where people live, and preliminary interactions with armed groups and warring parties). Likewise, when implementing sanitation programs, attention is given to the relevance of distinguishing between the facilities (latrines) for women and girls and for men and boys so as to avoid increasing risks linked to gender issues. [2013]


Furthermore, during the implementation stage of a program, SI makes a mechanism available to beneficiaries which registers complaints and feedback and responds to them. These mechanisms help to reveal potential secondary risks. They help the organization to readjust its practices during the intervention and function as a real-time monitoring tool.

- **Integrated protection**

In some contexts, depending on the associated risks and relevance, SI can incor-


porate protection activities within its assistance programs. These activities can include:

▶ Sharing information on rights and services: SI may need to inform the populations affected by a crisis about relevant legal frameworks and access to basic services (location, opening hours, cost, etc.).

 **Example SI** - In northern Lebanon, within its program supporting empowerment and structuring refugee sites, SI incorporated a reminder module within its training curriculum on the definition of a refugee, their main rights and the services available. The municipalities were also informed in order to encourage the authorities to appropriate protection strategies. SI did not, in any circumstances, substitute for specialized stakeholders but relied on the relationships forged with the populations and on its sound knowledge of the area to take on capacity-building and community mobilisation activities. [2015]


▶ Referring a case requiring a protection action from a specialized agency: SI refers cases, whether individual or collective, needing physical or legal protection (gender-based violence, legal assistance and land assistance for example) to organizations which are qualified in the relevant area. This referral must be done to the stakeholders who are best equipped to respond according to the contexts (cluster, UNICEF and Save the Children for child protection cases and the UNHCR for refugee protection cases for example). The case must be **monitored** until a decision has been made by the agency as to whether to respond to the need or not.

However, several conditions must be fulfilled for SI to actually proceed to a referral: willingness on the part of the beneficiary, absence of additional risks and respect of confidentiality for beneficiaries and the organization.

 Example SI - In Myanmar, DRC, Haiti and Lebanon, SI referred people needing protection services to specialized agencies. (2015-2016)

► Alert and assistance for protection or facilitating access to protection services: if there is no specialized protection stakeholder in the intervention zone, SI raises awareness in order to encourage specialized agencies to set themselves up there. Depending on its abilities and those of its partners, SI can also decide to provide assistance aiming to protect or facilitate access to protection services. In these cases, specialist stakeholder support must be organized for SI teams, in particular in


terms of psychosocial support, security and data protection.

 Example SI - In Afghanistan, SI implemented an Individual Protection Assistance program funded by DG ECHO. Monetary transfers were made to households with protection risks or abuse victims. SI received training from the Norwegian Refugee Council (NRC) to carry out selection interviews. (2015)

► What SI does not do: SOLIDARITES INTERNATIONAL does not directly implement the following activities: psychosocial support, medical treatment, legal assistance and advice, family reunification, mine clearance and engagement with armed groups⁸ (DDR, interposition).

d. After program implementation

SI's missions monitor and evaluate the quality of the projects carried out. Some of SI's missions involve dedicated monitoring and evaluation teams who aim to monitor and check that good program practices are being implemented, thus mainstreaming protection practices.

 Example SI - In DRC, these monitoring and evaluation teams in particular who were in contact with the protection clusters, thus updating their knowledge of the practices and formats used. This enabled the program to benefit from genuine technical and qualitative support on the subject. After evaluation, the teams produced a report which identified the failures noted and recommendations for remedial actions. Regular monitoring of these recommendations was also carried out. (2013)



8 - Negotiation for a site access is not included here

4.2 ADVOCACY/WITNESSING

SI can act as witness to situations observed by its teams in the field in order to make an operational and humanitarian advocacy. However, before acting as a witness, an in-depth discussion of the benefits and risks for beneficiaries is carried out, as in some contexts public testimony can lead to access being closed off⁹.


This method of intervention can/should only be used in very specific conditions:

- when it will not expose the beneficiary populations to risks of increased violations;
- and it will not trigger a loss of humanitarian access for the organization (if this loss of access is considered as more damaging for the beneficiary populations).

4.3 NECESSARY COORDINATION FOR EFFECTIVE PROTECTION INTERVENTIONS

As already mentioned several times, SI does not aim to carry out “stand alone” protection projects. Indeed, SI recognizes that this sector of activity requires technicality and know-how which it would be dangerous to claim to have if it is not the case. However, SI is aware that complementary approaches from various stakeholders present in the field of humanitarian operations are a key factor for the quality of protection and aid activities.

Thus, SI regularly attends protection clusters. This allows the organization to update its practices in terms of the respect of protection standards in aid operations. This also allows SI to share its analysis of rights violation phenomena in its intervention zones.

 **Example SI** - This is especially true in the DRC where, as a result of response programs to population movement, SI is present in a large number of zones and thus over the years has become a key observer of trends. (2008-2016)

9- Refer to the advocacy positioning paper to come



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