

Giving ourselves the means to fight against the impunity of attackers of humanitarian workers

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A deadly summer. The numerous killings of aid workers in recent months have rekindled the debate in the aid community. Should legal safeguards be added to the acceptance of risks and the strengthening of security protocols? Philippe Ryfman sets out his point of view, questioning a specific qualification and highlighting the scandal of impunity.

Seven humanitarian workers (six French and one Nigerien) working in Niger for the non-governmental organisation (NGO) ACTED and their guide were assassinated in Kouré, near Niamey, on 9 August 2020. They simply wanted to enjoy a relaxing time before resuming their harassing and high-intensity work in the service of vulnerable populations. It was a massacre, a fitting term for a deliberate execution, in cold blood and in atrocious conditions. Not naming the exact scene of the crime is an unhealthy and questionable understatement.

One subject chasing the other, this massacre is no longer in the news, even if it made a brief return with its claim by Islamic State on 17 September. However, if dignified and just tributes have been paid to the victims, this absolute crime can in no way be considered an unavoidable fatality, another way of euphemising it. On the contrary, its extreme seriousness should prompt us to return to it and to engage in a fundamental reflection on its true nature and hence the measures to be adopted to prevent its repetition. For it is far from being an isolated act.

A statistic published a few days later on the occasion of World Humanitarian Day on 19 August (the date commemorating another massacre¹) confirms this. It shows an increase of 18% in one year in the number of victims (killed, wounded or abducted) among humanitarians: 2019 was thus the most violent year since the creation of this measurement tool². Despite sometimes ambiguous analyses, attacks against humanitarian staff – whatever their nationality, religion, gender or skin colour – are therefore most of the times neither the result of chance nor exceptional phenomena. On the contrary, they reflect the deliberate targeting of humanitarian personnel by those who have commissioned and ordered them, whether States or armed groups.

Other assaults took place shortly before as well as since the Kouré massacre. In July, in Nigeria, five aid workers – including an employee of *Action contre la Faim* – kidnapped in June by a group affiliated to Islamic State in West Africa were killed by their captors. On 10 August, the director of the NGO *Agronomes et Vétérinaires Sans Frontières* in Guatemala died in an ambush in the north-east of the country. On 16 September, the attack by an armed group on a humanitarian convoy of the NGO World Vision in North Kivu (Democratic Republic of Congo [DRC]) caused the death of a humanitarian worker, with another seriously injured. Two days later, three Caritas employees were kidnapped, again in eastern DRC. This litany of attacks, kidnappings, assassinations and massacres is not acceptable. It cannot be reduced to the problem of security risks alone.

Admittedly, this macabre count has an intrinsic mathematical dimension: the constant increase in the annual

¹ The bomb attack on the United Nations office in Baghdad (Iraq) on 19 August 2003. Among the twenty-two victims were several humanitarian workers. Symbolically, since 2008, this date has been chosen by the United Nations for the annual tribute to the commitment and dedication of aid workers.

² World Health Organization, “World Humanitarian Day 2020: A tribute to aid workers on the front lines”, 19 August 2020, <https://www.who.int/news/item/19-08-2020-world-humanitarian-day-2020-a-tribute-to-aid-workers-on-the-front-lines>

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volume of humanitarian aid delivered around the world (it has increased tenfold in ten years) has a mechanical impact on the human resources responsible for delivering it. However, this aspect is hierarchically minor compared to the main cause of the growing insecurity of their working environment. That is to say, the accelerated deterioration in both acceptability and acceptance – i.e. the assent to and reception of the presence of impartial, neutral and independent actors by the various protagonists in armed conflicts. This regression – if not a first historically – is now taking forms of extreme radicalism, whereas in the past, there were mainly denials of access, expulsions or even imprisonment or sequestration for a limited period of time.

This rejection of humanitarian aid has various causes: legal (ignorance or questioning of international humanitarian law), sociological, anthropological, cultural and religious ones. In order to deal with this and protect their employees, humanitarian actors – NGOs, components of the Red Cross/Red Crescent Movement and specialised UN agencies – have gradually put in place a range of individual and collective measures combining drastic security standards, selection of nationalities, interculturality and dialogue as close to the field as possible with communities, social groups, civil society, leaders, religious leaders and belligerents. The Kouré tragedy will certainly lead to a further strengthening of this technical mechanism³ and to the reformulation, already recurrent, of a demand for increased legal protection⁴. However, in the face of this extreme rise in risks, in which the politico-ideological factor is becoming a major factor – it would be a mistake to conceal it –, this will only be a partial response to the almost general impunity of the perpetrators and sponsors of such crimes.

It is therefore crucial to fight it by giving ourselves the means to do so. Both as a means of ensuring justice is done, but also as an instrument of deterrence or at least limitation of such acts. Fighting against this impunity means first of all being clear about the exact criminal law characterisation, without euphemism. In this respect, the fact that, in France, the judicial investigation has been entrusted to the National Anti-Terrorism Prosecutor's Office (*Parquet national antiterroriste* – PNAT in French) calls for serious reservations. Although this mass massacre bears some similarities to various acts of terrorism in recent years, to reduce it to this is to equate this category of criminals with perpetrators of attacks among others.

Rather than categorising it as “terrorism”, shouldn't the category of “crime against humanity” have been retained? This would then have led to entrusting the investigations to the “Crimes against humanity, crimes and war crimes” unit, itself attached to the PNAT. While the extension of the notion of crime against humanity to attacks against humanitarian workers is certainly a subject of debate – including within and between organisations – it is nevertheless worth considering. After all, they are civilians, objects of murder or other inhumane acts in many cases for what they are, i.e. impartial third parties. Moreover, the criminalisation of “war crimes” is already accepted (within their definition) for attacks against so-called “protected persons”, of which humanitarian personnel are precisely part (see Additional Protocol I of 1977 to the Geneva Conventions). Finally, certain criminal offences require a specific designation in order to combat them more effectively. The debate that has been going on in recent years about the notion of “femicide”, in France as in other countries, is an illustration of this.

The lack of any distinctive characterisation of the murder of a humanitarian aid worker has, in any case, just shown its dreadful consequences with the release on 3 September 2020 – in the context of the demands made by the Taliban in Afghanistan – of the two perpetrators of the murder of Bettina Goislard, a French national who was the representative of the United Nations High Commissioner for Refugees in Ghazni, in 2003. Despite the efforts of French diplomacy, the release could not be prevented. It could have gone differently with an *ad hoc* specification.

³ That is to say, probably an increase in the use of distance technologies (drones, autonomous vehicles, robots, etc.), real-time tracking and geolocation of all movements, as well as their break-up into micro groups travelling in separate vehicles. The indirect but inevitable consequence of this would be to reduce the dimension of human solidarity, exchange, dialogue and sharing of aid workers with the vulnerable populations receiving aid.

⁴ In September 2020, there was much talk of a draft resolution of the United Nations General Assembly (UNGA) or the Security Council (UNSC) recalling or even redefining various norms of international humanitarian law in this regard. The purely virtual holding – due to the Covid-19 pandemic – of the UNGA, the paralysis of the UNSC due to rivalries between powers and above all the disagreements on the content of such a resolution – including within the humanitarian community – have not so far led to any concrete initiative.

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Beyond this and in order to put an end to the scandal of impunity, NGOs should not rely solely on States, international organisations or courts, but should take matters into their own hands. Firstly, by building a coalition – with the support of researchers, experts and citizens – to ensure that the specific nature of abuses against humanitarians in situations of armed conflict is recognised, so that an appropriate penal policy can be drawn up. Secondly, by documenting, exchanging and pooling the information that each party collects on potential perpetrators, sponsors and accomplices in order to build up reliable and constantly enriched databases.

In recent years, several humanitarian organisations have begun to work on this issue⁵. They have, however, done so at their respective levels, without any real exchanges, or sharing of the same codes. The increased risk and the demand for justice should lead them to move to a higher level and to take strong initiatives. Since this mobilisation must be long-term in order to be effective, it could involve the creation of a collective structure, with sufficient resources, in the form of a specialised centre. It would both support advocacy in this area and document, centralise and share the data collected on the abuses suffered and their alleged perpetrators and sponsors, before communicating them (where appropriate) to national or international jurisdictions. Various historical precedents attest to the relevance of such a method, from the Simon Wiesenthal Centre or the work of Beate and Serge Klarsfeld for the identification and prosecution of civil or military actors of the Shoah, to the Collective of Civil Parties for Rwanda (*Collectif des parties civiles pour le Rwanda* in French) of the Gauthier couple. By showing the way, French NGOs – as is often the case – would play a pioneering role.

Translated from the French by Derek Scoins and Capucine Coninx

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Philippe Ryfman is a specialist in non-governmental and humanitarian issues on the international scene. A barrister at the Paris Bar, he is also an Honorary Professor and Research Fellow at the Université Paris 1 Panthéon-Sorbonne. His latest work, codirected with Sandra Szurek and Marina Eudes, is *Droit et pratique de l'action humanitaire* (Paris, LGDJ, 2019). He is also a member of the Steering Committee of the review *Humanitarian Alternatives*.

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⁵ So did, for example, *Action contre la Faim-France* following the massacre of seventeen of its employees in 2006 in Muttur, a town in eastern Sri Lanka. Over the years, the NGO has accumulated and cross-checked a series of information on the possible sponsors and presumed perpetrators of this other mass crime. See Anne Poirer's remarkable documentary on the subject, very symbolically entitled « Muttur : crime contre l'humanitaire » (Albert London Prize 2007). Similarly, the NGO ACTED has extensively documented the assassination by decapitation claimed by Islamic State of one of his British employees in Syria on 14 September 2014.