

CLOSING THE GAP: Implementation of Protection of Civilians Policies

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ABOUT CENTER FOR CIVILIANS IN CONFLICT

Center for Civilians in Conflict (CIVIC) is an international organization dedicated to promoting the protection of civilians caught in conflict. CIVIC's mission is to work with armed actors and civilians in conflict to develop and implement solutions to prevent, mitigate, and respond to civilian harm. Our vision is a world where parties to armed conflict recognize the dignity and rights of civilians, prevent civilian harm, protect civilians caught in conflict, and amend harm.

CIVIC was established in 2003 by Marla Ruzicka, a young humanitarian who advocated on behalf of civilians affected by the war in Iraq and Afghanistan. Building on her extraordinary legacy, CIVIC now operates in conflict zones throughout the Middle East, Africa, Europe, and South Asia to advance a higher standard of protection for civilians.

At CIVIC, we believe that parties to armed conflict have a responsibility to prevent and address civilian harm. To accomplish this, we assess the causes of civilian harm in particular conflicts, craft practical solutions to address that harm, and advocate for the adoption of new policies and practices that lead to the improved well-being of civilians caught in conflict. Recognizing the power of collaboration, we engage with civilians, governments, militaries, and international and regional institutions to identify and institutionalize strengthened protections for civilians in conflict.

OVERVIEW:

CIVIC has long championed the adoption and implementation of national protection of civilians (POC) policies or strategies. These policies are intended to translate rhetorical support for POC into concrete commitments and enhanced resources, with the goal of improving protection outcomes for conflict-affected civilians. With advocacy by CIVIC and many other civil society organizations, the United Nations (UN) Secretary-General has made the creation of POC policies at the national level a primary recommendation in his annual reports on the protection of civilians in armed conflict since 2017. In fact, the 2018 report calls on all Member States to develop a “national policy framework that builds upon good practice and establishes clear institutional authorities and responsibilities for the protection of civilians and civilian objects in the conduct of hostilities.”¹

Despite high-level support for national POC policy frameworks, little has been written about the implementation of these policies, and ultimately, their impact on the lives of conflict-affected civilians. CIVIC set out to learn from its own experiences, other policy movements and normative developments, and academic literature to answer the following questions:

- What is required to build support for a national POC policy and get it enacted?
- What factors affect whether POC policies are implemented once adopted?
- What conditions need to be in place to ensure that POC policies result in meaningful improvements in the lives of civilians caught in conflict?

This policy brief outlines CIVIC’s preliminary conclusions to these vital questions, finding that having a broad POC policy accompanied by a clear implementation plan is the best route to ensure operationalization of policy commitments. Moreover, our research points to the importance of having influential “champions” to advocate for the policy and its implementation; clear roles and responsibilities designated across relevant departments and agencies; dedicated resources for policy implementation; and effective communication and coordination between stakeholders in order to close the gap between the promise invoked by a national policy and the reality experienced by civilians in conflict.

BACKGROUND:

For nearly 20 years, CIVIC has provided technical advice and input into the formulation of national and multinational policies aimed at curbing civilian casualties, enhancing transparency and accountability for civilian harm, and establishing parameters for providing amends or post-harm assistance. CIVIC played a major role in calling for changes to pre- and post-strike measures to prevent civilian casualties during U.S. operations, resulting in an Executive Order issued by President Obama in July 2016.²

More recently, CIVIC joined a dozen organizations to shape the Department of Defense (DoD) interim policy on condolence payments for civilians harmed as a result of U.S. military operations³ and a forthcoming comprehensive DoD Instruction on Minimizing and Responding to Civilian Harm in Military Operations.⁴ Similarly, CIVIC co-authored an indirect fire policy for the African Union Mission in Somalia (2011),⁵ contributed immensely to the NATO Policy on the Protection of Civilians (2016) and to the development of the accompanying POC Handbook (ongoing), and has been feeding into national policies being revised and generated by the United Kingdom and the Netherlands, respectively.

CIVIC has also worked closely with countries experiencing armed conflict to establish strong

policy commitments on the protection of civilians. In 2017, following two years of advocacy by CIVIC and others, the Afghan government adopted a landmark national civilian casualty mitigation and prevention policy. This policy -- which has been acknowledged though never publicly released -- highlights the need for greater capacity to assess patterns of civilian harm, analyze and learn from civilian harm incidents, and feed those lessons into planning for future operations. Afghanistan’s national policy also commits the government to deliver comprehensive training on civilian harm mitigation to all Afghan National Defense and Security Forces and provide effective and streamlined post-harm assistance for civilians harmed in conflict. In Nigeria and Ukraine, CIVIC has advocated for and provided expert support in developing draft policy frameworks that set out the governments’ obligations and aspirations to improve POC -- these policies are awaiting approval.

THEORIES ON SUCCESSFUL POLICY IMPLEMENTATION:

The push for national policy frameworks on POC is based on a theory that if a policy is adopted, then a government or institution will have a higher level of commitment to protect civilians and can be held accountable for taking concrete actions to fulfill that commitment. CIVIC and other organizations have made the creation of national POC policies a priority, knowing the power of such frameworks to signal the importance of POC, put POC squarely on the policy agenda, and stimulate critical reforms and reflections that will ultimately lead to a reduction in civilian harm. However, CIVIC is mindful that the adoption of a policy is only the first step in a longer process of changing armed actors’ culture and behavior.

The reality is that there are different stages of policy implementation and multiple barriers that are likely to impact successful operationalization of a POC policy. Fortunately, there is a wealth of literature examining the political and social dimensions of policy implementation, as well as the role of a policy’s content, in determining whether

and how policies are implemented.

How do different political situations and policy language influence policy implementation?

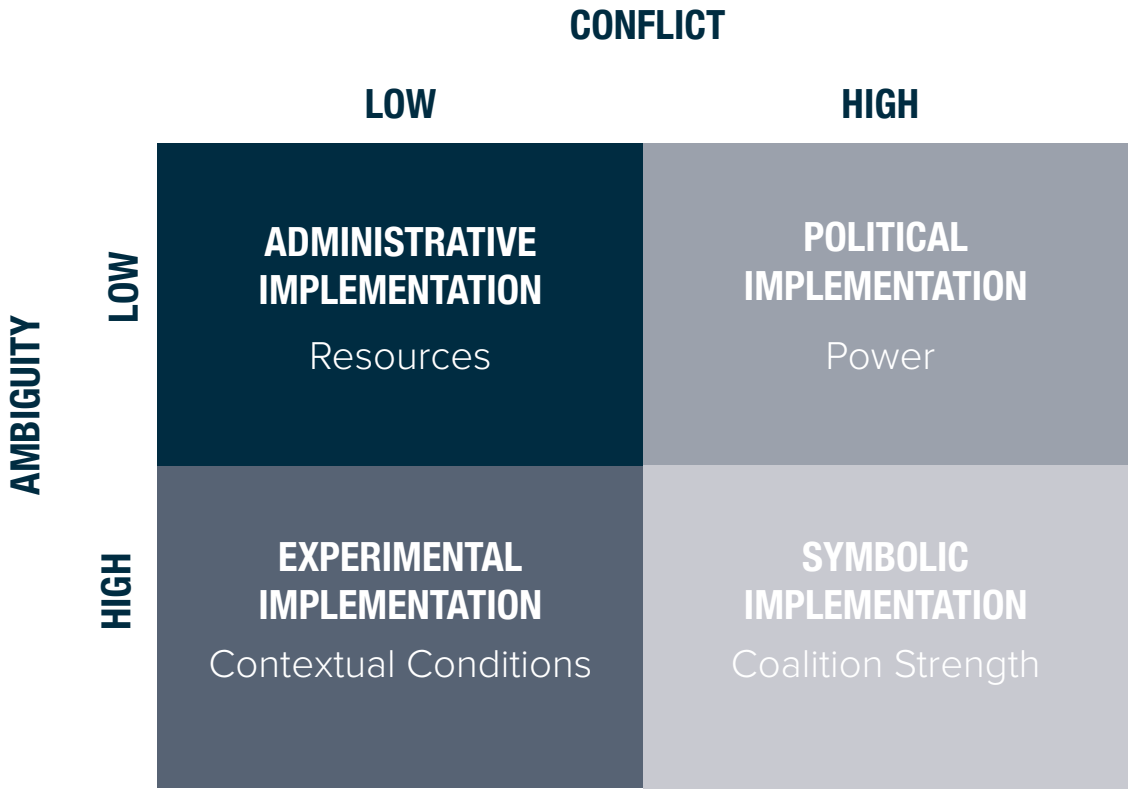
One model of policy implementation focuses on the intersection of political and social climates (general attitudes) and the clarity of the language in the policy itself. At its core, this model identifies different policy environments and what determines successful implementation within them, using two axes: ambiguity and conflict. In this model - Matland’s ambiguity-conflict matrix⁶ - ambiguity is defined in relation to the goals of the policy and/or the means necessary to carry out the goals of the policy. Conflict refers to the political, cultural, social, or other forms of disagreement surrounding the policy.

Of the four implementation categories represented in Figure 1, **administrative implementation** is the most conducive to POC policy implementation. This model exists when the policy language and

commitments are clear to those responsible for implementing the policy and there is little political or social controversy surrounding the policy. While this model is ideal, due to the sensitive nature of POC policies, there may be some controversy associated with their implementation (e.g., a government may be concerned that adhering to a POC policy could put its military at a disadvantage vis-à-vis armed actors that disregard their legal, ethical, and strategic obligations to protect civilians). If there is no controversy surrounding the adoption of a POC policy and the language in the proposed policy is clear, the potential barrier to successful policy implementation could be access to the resources necessary to realize the policy’s intent.

Political implementation exists when there is low policy ambiguity but high policy conflict. As mentioned above, adopting a national POC policy may be controversial in some contexts. The political model may also arise in circumstances when the policy’s origin is external to the

Figure 1. Matland’s ambiguity-conflict matrix



government, i.e., it is required by a parliament or results from civil society pressure, rather than motivated by an internal assessment of need. This means even if the language in the policy is clear, political and societal conflict surrounding the policy may prevent it from reaching its full potential. In this case, whether a policy is implemented or not depends on the will of those in positions of power. They would need to overcome pushback against the policy and enforce commitments despite objections. This could further inflame those who disagree with the policy, likely undermining the long-term success of policy implementation.

Another category of policy implementation is **experimental implementation**, which involves high policy ambiguity and low policy conflict. In this scenario, the outcomes of the policy are determined by contextual conditions. Meaning, if the language in the policy is not explicit, successful implementation will depend on who is implementing the policy at a sub-national level. For example, an official in province A may interpret the language and commitments in a POC policy differently than a similarly ranked official in province B. Additionally, province A may have access to more resources needed to implement the POC policy than province B. Therefore, a comparison of implementation in province A to province B would show a difference in successful implementation.

The final category -- **symbolic implementation** -- is the least conducive for successful policy implementation. This model exists when the language in the policy is unclear to those responsible for its implementation and there is high political and social opposition to the policy. In this model, implementation is determined by the strength of coalitions. A supportive local coalition may be able to ensure the implementation of an unclear and controversial policy. Conversely, a coalition may act to undermine successful policy implementation. Like the experimental model, implementation success will vary by region due to differences in coalition strength and interpretation of policy commitments.

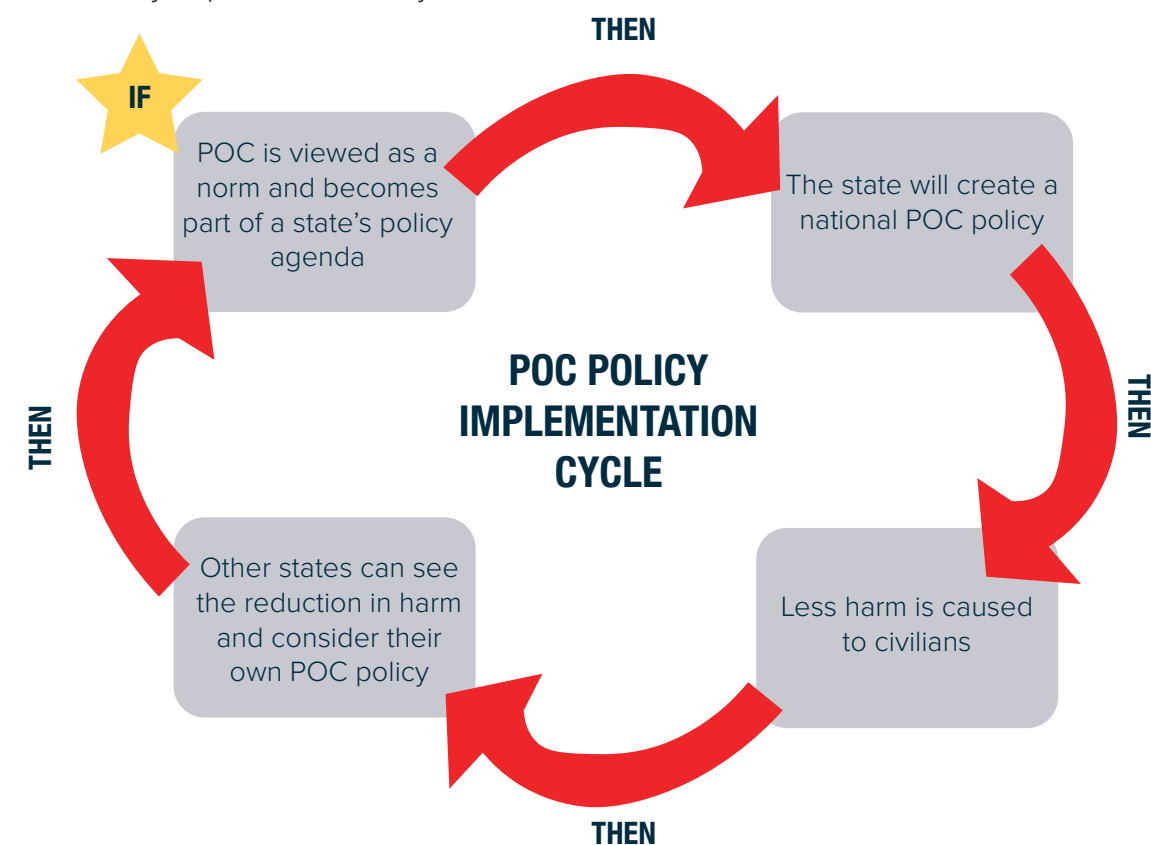
How does international norm adaptation relate to policy implementation?

Most policy implementation literature focuses on the sub-national or national level and rarely looks at policy implementation on a multinational level. CIVIC engages with both national and multinational actors, therefore it is important to understand what makes policy implementation successful both within and between states. While the literature surrounding policy implementation at a multinational level is scarce, there is a wealth of information surrounding international norm adaptation and policy diffusion that provides some useful insights.

International norms are agreed upon standards of expected behavior by the majority of states and are deemed crucial for societies to flourish.⁷ Norms within a state can spread to other states and create international norms. Norms are not always the result of the implementation of a new policy; in fact, norms can lead to the implementation of new policies and commitments.⁸ This is because norms become internalized within states and cultures, and one way a state internalizes a norm is through policy implementation. Once one nation adopts a policy based off of a norm, other states may choose to adopt a similar policy, leading to policy diffusion (see Figure 2).

Policy diffusion is defined as “resulting from one of two broad sets of forces: one in which mounting adoptions of a policy alter the benefits of adopting for others and another in which adoptions provide policy relevant information about the benefits of adopting”.⁹ The first force, in the context of CIVIC’s work, is the least concerning because one state adopting a national POC policy should not infringe on the benefits of another state adopting a POC policy. Instead, CIVIC is likely to encounter the second force wherein successful implementation of a POC policy generates relevant information, good practices, and outcomes that could be used to influence other states to initiate POC reforms and improvements. This creates a virtuous cycle wherein one state adopts a POC policy and realizes the benefits in the form of less harm to

Figure 2. POC Policy Implementation Cycle



civilians. Other states, then, see the value of having a national POC policy and embark on the process of creating their own policy framework.

How does a state's concern about its reputation affect policy adoption and implementation?

There are conflicting theories on the relationship between the willingness of a state to implement policies and concerns about their international reputation. Some theorize that a state may value its economic reputation more than its social or political reputation. A government may be more willing to comply with international laws that favor them economically and less willing to comply with international laws that improve other aspects of their reputation.¹⁰ In this scenario, it would be more difficult to persuade a government to adopt a national POC policy on the basis of improving the state's reputation. In a scenario in which public officials highly value their political or social reputation, it may be less difficult to persuade the state to adopt and

implement a national POC policy. Thus, CIVIC and other parties interested in proposing national POC policies -- and seeing them implemented -- should first consider whether or not a country prizes having a positive international reputation when it comes to POC and human rights.

LESSONS FROM OTHER SECTORS FOCUSED ON POLICY ADOPTION AND IMPLEMENTATION:

The case of Women, Peace, and Security (WPS) National Action Plans

Policy attention to the unique needs and contributions of women and girls in armed conflict and other situations of violence coalesced in the passage of UN Security Council Resolution 1325 in October 2000. This resolution addresses how women and girls are differentially impacted by conflict and recognizes the critical role that women can and already do play in the prevention

and resolution of conflicts, peace negotiations, peacebuilding, peacekeeping, humanitarian response, and post-conflict reconstruction. It also calls on all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.¹¹

The primary way the WPS agenda has been implemented is through National Action Plans (NAPs). Since 2005, 72 UN Member States have put the tenets of Resolution 1325 into action through the development of NAPs or other national level strategies. The NAP process assists countries in identifying priorities and resources, determining their responsibilities, and committing the government to action.¹² Yet, how such policies are operationalized vary by state.

While there are general calls for action made by the UN, Member States can choose how they actualize their commitments under Resolution 1325. Uneven implementation of WPS commitments across states has led to conflicted views on the efficacy of the resolution, with some praising its implementation and effectiveness, others disparaging its implementation and effectiveness, and many feeling its implementation and effectiveness is positive in some ways and negative in others.

Those who believe that the resolution was effective note that it validated the gendered experiences of women in armed conflict, put women at the forefront of states’ security and defense agendas, and highlighted the significant role women should play in peacekeeping, peacebuilding, and other peace and security initiatives. Those who critique the effectiveness of the WPS agenda state that problems with implementation have led to little meaningful change. For example, a NAP may require that women in conflict-affected areas participate in peacebuilding, but it may not specify what that participation should look like. This could lead to temporary participation, symbolic roles, and cultural resistance.¹⁵ The problems with implementation are thought to be the result of

Case Study: Women, Peace, and Security within Armed Forces

Given UN Security Council Resolution 1325’s language that “all parties to armed conflict... respect international law applicable to the rights and protection of women and girls, especially as civilians,” armed forces play a crucial role in advancing the WPS agenda. Australia’s military provides a positive example of how WPS policies can be incorporated into the culture and practices of state armed forces. Part of the success of Australia’s implementation lies in how WPS imperatives were framed by the government and the military. The lack of inclusion of a gendered lens in military operations was framed as a strategic liability rather than a human resources error or political trend. For instance, the Australian military conducted campaigns on sexual assault and lack of women’s participation in the senior ranks and major operational roles, framing these issues as deterrents to successful military operations. As a result of the implementation of its WPS policy, Australia saw a marked increase in women occupying important technical roles, combat roles, and military leadership positions.¹³ This implies that how a policy is framed plays a critical role in its implementation. Additionally, the successful operationalization of WPS in Australia’s military is credited in part to support by senior military leadership, as the Chief of the Defense Force assumed responsibility for its implementation.¹⁴

mistrust between states and the UN, political polarization, lack of political will, social or cultural resistance to the aims of WPS, and loose interpretations of policy commitments, which leads to insufficient allocation of resources and personnel.¹⁶

In 2015, the UN commissioned a report on the implementation of the WPS agenda. The report recommended a series of actions



Women, Peace and Security: Security Council Open Debate, October 2019. UN Women/Ryan Brown

based on lessons learned. Most pertinent to the implementation of POC policies are the recommendations for civil society: a) institutionalizing the participation and consultation of civil society and conflict-affected women in decision-making processes, including the development, implementation, and monitoring of NAPs; b) establishing, financing, and supporting knowledge-sharing mechanisms between civil society and government; and c) creating and maintaining a safe and enabling environment with access to justice and accountability for human rights violations. A final recommendation targets the lack of capacity, funding, and political will for NAP implementation, imploring UN Member States, international organizations, and civil society to establish funding targets for projects addressing women’s specific needs, including 15 percent of peacebuilding funds.¹⁷

Lessons from the WPS experience suggest that NAPs largely exist within the **symbolic implementation** category outlined by Matland

(1995), where there is high policy ambiguity and high policy conflict. According to Matland (1995), implementation of the WPS agenda will rest on the strength of the coalitions that advocate for it.¹⁸ And, indeed it seems as if coalitions play a key role in implementing WPS commitments. There are many international and local organizations that solely focus on the successful implementation of Resolution 1325. Examples of such organizations include PeaceWomen (Women, Peace and Security Program), the NGO Working Group on Women, Peace, and Security, Women in Peacebuilding Network in Ghana, Women in Security, Conflict Management and Peace in India, and Women for Peace and Justice in Iran. Such organizations are pivotal to ensuring successful implementation, as they maintain pressure on and provide support to national and sub-national government bodies responsible for adhering to NAP obligations. On the other hand, a coalition opposed to WPS could prove to be detrimental to successful implementation. If coalitions are not strong enough to shift local attitudes, it is possible for cultural

resistance to undermine the achievement of the WPS agenda’s ambitious goals.

Are the challenges regarding WPS similar to POC policies?

The implementation problems associated with the WPS agenda could similarly hinder POC policy operationalization. POC policies are likely to encounter these problems if they are implemented in a policy environment of high ambiguity and high conflict. CIVIC often provides guidelines or drafts national POC policies and can thus influence, to some degree, the clarity of the initial policy language. CIVIC does not, however, control the final policy language. As long as the goals and means to achieve those goals are clearly articulated in the final policy, ambiguous language will not negatively impact policy implementation. If political conflict is present, CIVIC and its allies may need to embrace different strategies and tactics to ensure a policy is passed and is ultimately implemented in a way that results in strengthened protections for civilians.

FINDINGS FOR THE SUCCESSFUL IMPLEMENTATION OF POC POLICIES:

Delegation of tasks and allocation of resources

CIVIC’s research found that it may be beneficial for a national POC policy to use broad language to appeal to a diverse set of stakeholders and get buy-in across the institutions responsible for peace and security matters. However, if a policy is too ambiguous, there needs to be clear written guidance on who is responsible for implementing what portion of the POC policy and where the resources to implement the policy will come from. A POC policy should address the “why” and “what” of POC and affirm the state’s commitment, while the guidance document or implementation plan should contain practical information on the “how” and “who”. Without clear delegations of authority and resources, it is likely that POC policy commitments will remain on paper and will not translate into meaningful improvements in the lives of conflict-affected civilians.

To overcome these obstacles, CIVIC and other organizations interested in POC policy development and implementation should:

- Encourage the development of national POC policies that clearly set out why POC is important, how reforms and improved practices will accrue benefits to the country and conflict-affected civilians, and what commitments the government is making to enhance the protection of civilians;
- Marry aspirational policy language and commitments with subsequent guidance that details how these commitments will be implemented and who will be responsible for implementing them; and
- Advocate for the allocation of sufficient resources and personnel to implement the policy’s tenets and commitments over time.

Time to cultivate relationships

A potential drawback to POC policy implementation (national or otherwise) is that it is an inherently slow process because it requires time to cultivate relationships with high-level government, military, and security officials. This is due to regular turnover in senior positions and even administrations, the sensitive nature of civilian harm, pre-existing attitudes towards POC, and the perception by government officials of the involvement of international NGOs in security and defense issues.

To overcome these obstacles, CIVIC and other organizations interested in POC policy development and implementation should:

- Set realistic expectations with donors supporting POC policies on what can be achieved within a specific timeframe and how unplanned events may shift priorities and affect outcomes; as such, adequate resources will need to be dedicated, over a reasonable period of time, to realize the adoption and enactment of POC policies;
- Plan for sustained engagement with high-

level officials, including those in more stable positions like those in the civil service and in the legislature; and

- Develop a clear and concise brief -- in the local language -- on the value of POC policies and how they can help advance existing legal and political commitments that can be given to a multitude of stakeholders, especially within the government, military, and legislature.

The role of positive and negative perceptions

State actors’ perceptions of POC can help or hinder POC policy implementation. There are four main fears that governments and security officials have expressed to CIVIC when it comes to adopting and operationalizing POC policies:

1. Creating a national POC policy will give opposing forces a strategic advantage as they will know the military’s constraints and commitments, but will not operate by the same rules;
2. A POC policy will reduce a military’s freedom of action by requiring it to abide by higher standards than those required by law and devote time or resources to policy implementation;
3. POC policies will lead to additional accountability measures and scrutiny that the government does not want (e.g., for violations of international humanitarian and human rights law or lack of adherence to domestic laws and policies); and
4. A government’s -- or the military’s -- reputation will be tarnished if there is a gap between a POC policy’s aspirations and the reality on the ground (e.g., if forces are found to be responsible for large numbers of civilian casualties).

To overcome these obstacles, CIVIC and other organizations interested in POC policy development and implementation should:

- Make the language in the public POC policy broad while creating a detailed implementation plan;
- Conduct expert trainings and briefings for conflict-affected civilians; local, national, and international NGOs; media outlets; and influential civil society actors, religious authorities, and community representatives to build a strong and enduring coalition to push for the adoption and full implementation of POC policies;
- Develop a framework to evaluate the implementation of the policy and hold state actors responsible for fulfilling policy commitments;
- Cultivate influential “champions” for POC within the government, military, and legislature that can make the case that preventing and mitigating harm to civilians is a legal, ethical, and strategic imperative;
- Articulate the consistency of the policy with existing legal obligations and norms, noting that POC policies help governments realize and operationalize their commitments under international humanitarian and human rights law; and
- Emphasize the international prestige that may come with having a POC policy and being proactive in addressing shortcomings in policy and practice.

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Cover Image:

A man walks past the wreckage of a building at the site of a VBIED attack undertaken by the militant group al Shabaab in the Somali capital of Mogadishu on October 15, 2017.

AMISOM Photo / Tobin Jones



Children at the Protection of Civilians (POC) Site 3 in Juba, which is run by the UN Mission in South Sudan (UNMISS), January 2015. UN Photo/JC McIlwaine

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