Geneva Call
Appel de Genève

Negotiation of humanitarian access in North Kivu:

the perception of armed non-State actors, communities and humanitarians

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Table of Contents

Acronyms

ANSA   Armed non-State Actor
DRC   Democratic Republic of Congo
FARDC   Forces Armées de la République Démocratique du Congo
FIB   United Nations Force Intervention Brigade
ICRC   International Committee of the Red Cross
IFRC   International Federation of the Red Cross
IDP   Internally Displaced People
IHL   International Humanitarian Law
IHRL   International Human Rights Law
MONUSCO   United Nations Organisation Stabilisation Mission in the DR Congo
MSF   Médecins Sans Frontières
NGO   Non-Governmental Organisation
NIAC   Non-International Armed Conflict
PNC   Police Nationale Congolaise
UNHCR   United Nations High Commissioner for Refugees
UNICEF   United Nations International Children's Emergency Fund
UNSC   UN Security Council
UNSCR   UN Security Council Resolution
UXO   Unexploded Ordnance
WFP   World Food Programme

1. Resume

This report seeks to shed light on the humanitarian access negotiation practices of NGOs operating in North Kivu. It aims at identifying the modalities and practices of NGOs in regard to negotiating access and to conducting their operations on the ground. It also looks at the perception of NGO activities by armed non-State actors (ANSAs) and communities and tries to discern the impact of these perceptions on access.

As the starting point of this research, we can make two observations in relation to the humanitarian community in the Eastern DRC:

1. There is a reduction of available funds to respond to the humanitarian needs in the zone, as the funds are transferred to other geographical areas in need of humanitarian aid.

2. The emergence of new security threats for humanitarians and other NGOs in the zone.

Based on a number of working hypothesis described in the methodology section, this research analyses how the decrease in funding impacts programmes, implementation modalities and access. It also explores the comprehension of humanitarian principles by communities and armed non-State actors (ANSAs), and through this, the perception of NGOs operating in North Kivu. This exercise, in turn, offers valuable insights on access, or the lack thereof, for NGOs.

Key findings of the study include:

1. The concepts of **neutrality, impartiality, and independence matter deeply to communities and ANSAs,** although they typically framed their concerns in a grounded, outcomes-oriented manner instead of as a discussion of abstract principles or normative frameworks. Community members were especially able to give nuanced answers on questions related to the humanitarian principles.

2. Slightly less than half **of NGO representatives** across a range of mandates—and fewer than two-thirds of purely humanitarian NGOs—**could name the four humanitarian principles.** The remaining respondents either had only some knowledge of the humanitarian principles' framework, or simply could not name any of the principles when asked. NGO representatives had a **differing understanding of how to operationalize humanitar-**

ian principles, leading to different actions on the ground, which were informed by the same principle. Also, NGO leadership figures and field staff did not share the same understanding of humanitarian principles.

3. **Access negotiations have,** up to this point, **been conducted in a semi-formal manner;** few organizations have distinct policies or training related to access negotiation, although security officers from different NGOs maintain contact and share information through meetings and social media.

4. Both community members and ANSAs noted that **NGOs with teams of mixed nationalities tended to be more credible;** international staff were perceived as being less susceptible to corrupt practices as they are less subjected to social pressure than national staff members.

5. Community members and ANSAs tended to **perceive NGOs as important economic actors,** and most of the concerns they voiced centred around the provision of jobs for local communities and financing for local organizations. Community members were only secondarily focused on the content and execution of NGO projects. They even mentioned that the situation in some communities was worsened by NGO projects.

6. Communities and ANSAs alike tend to entertain **suspicion against NGOs,** in particular in terms of support to ANSAs, in the case of communities, and spying, in the case of the ANSAs.

7. **Criminal actors** pose a serious threat to NGOs operating in North Kivu. Their non-organised nature and anonymity prevent NGOs from resorting to standard access negotiation strategies. Here, community buy-in to NGO projects has proven key to improve safety and access.

8. **Security incidents involving ANSAs remain a concern:** while attacks by ANSAs represent the least common form of violence against NGOs, the attacks that do occur are much more likely to explicitly target those NGOs. At the same time, both NGO and ANSA members noted that ANSAs are often willing to provide security for NGO operations, either by preventing criminal attacks on NGOs or (in isolated cases) by pressuring criminals to release kidnapped NGO staff. This shows the relevance of ANSAs in regard to NGO safety.

9. **Community acceptance of NGOs emerged as a key security factor,** both for accessing ANSA-controlled territory but also against criminal predation. Probability of access guarantees increase if the NGO maintains relationships with trusted interlocutors in project areas, follows through on its promises and responds to local needs. NGOs are constantly subject to a form of cost-benefit analysis by local actors. Those NGOs who bring benefits to local communities are accepted; those who do not may be marked as targets for robberies or harassment.

10. Communities did not **distinguish between humanitarian or protection actors, on the one hand, and peacebuilding and stabilization actors on the other.** Rather, communities tended to place some level of responsibility for conflict resolution on all international actors. For that reason, despite (or perhaps, because of) the continued presence of NGOs, some communities expressed scepticism that external actors were actually willing or able to contribute towards resolution of the ongoing conflict.

11. NGOs surveyed as part of this research project noted that **their programming had been subject to drastic changes because of a lack of funding, most notably the closing of field offices and a decrease in the numbers of international staff:** lower numbers of NGO bases and permanent installations led to a worsening of access and of project quality, and the decrease of the numbers of international staff resulted in a shift of security risks onto national staff, who were expected to accept risks that international staff would be shielded from.

12. **ANSAs went out of their way to encourage an NGO presence in the areas under their control.** In contrast with past studies, ANSAs were reluctant to call attention to specific failures of NGOs. As ANSAs are typically well-networked with local politicians and commercial networks, they may have strong incentives to attract as many NGOs as possible.

The bulk of the data used was collected during an eight-week period of field research, in which project staff interviewed representatives of NGOs and UN agencies, community members, local authorities, civil society representatives, officers from state security services, and representatives of armed non-state actors (ANSAs). Altogether, the study comprised 69 interviews and 10 focus group discussions. The interview topics included access; perceptions of NGOs by community members and ANSAs; the humanitarian principles of humanity, neutrality, impartiality, and independence; and the obligations of various actors under international humanitarian law (IHL).

The report begins with a recap of the presence of aid agencies and NGOs in eastern DRC and a discussion of security threats related to criminal actors, as opposed to ANSAs, and a presentation of the legal and philosophical context underlying the humanitarian principles and IHL. The report then presents the findings of the research, including a sum-up of access strategies used by NGOs; critiques of those strategies, including a description of the dynamics that result from a lack of funding to NGOs; and the specific consequences of violations of various humanitarian principles. The report then discusses findings regarding the perception of NGOs by communities and ANSAs and closes with a set of key takeaways and recommendations.

This report encourages NGOs to enact and communicate the humanitarian principles, and to engage communities in dialogue around the meaning of the principles and their application to the specific context. Community acceptance of NGOs emerged as a crucial factor for security and access. Broadly, this report proposes that NGOs reform their practices and policies across three areas:

- Analysis, including an analysis of local power structures, relationships between ANSAs and communities, and the roles of international and national staff;

- Communication, especially two-way communication with communities and ANSAs, since it is not enough for NGOs to simply comply with obligations (such as the respect of humanitarian principles) but they must be seen to behave and act accordingly; and

- Programming, including programming that is accountable to local communities and that includes rigorous training of staff on negotiation skills and the humanitarian principles.

Some recommendations presented in this report constitute best practices in the humanitarian field, known to any humanitarian, development or peacebuilding actor seeking to provide qualitative assistance and services, and thus are not necessarily new, as such. However, the fact that such recommendations emanate from this study shows that such practices are currently not fully applied in the North Kivu context. Also, the communities' positions in regard to the NGO projects and access underline the relevance of existing best practices.

2. Methodology

2.1 Existing literature and research methodology

Up-to-date literature on humanitarian negotiation and ANSAs' perception of humanitarian aid in the DRC is rather scarce, with the exception of a study conducted by Christoph Vogel and Justine Brabant analysing the perception of humanitarian workers by ANSAs in the DRC, also touching upon negotiation methodologies[1]. Geneva Call previously conducted a study looking at perceptions of humanitarian action by ANSAs more broadly, in several contexts, including the DRC[2]. There is an existing literature on ANSAs' attitudes on IHL and protection of civilians in general, as well as on humanitarian negotiations with specific ANSAs[3].

The particular approach of this study is to aim to shed light on the humanitarian access negotiation practices of NGOs operating in North Kivu. It aims at identifying the modalities and practices of NGOs in regard to negotiating access and to conducting their operations on the ground. Furthermore, it looks at the perception of NGO activities by armed non-State actors (ANSAs) and communities and tries to discern the impact of this perception on access. It also analyses the understanding, by NGOs, communities and ANSAs, of the humanitarian principles.

This research is based on a number of working hypotheses, formulated at the very beginning of this project. The research methodology basically sought to verify (or falsify) these hypotheses and to consequently present recommendations to improve access and programme implementation in North Kivu.

The working hypotheses were the following:

1. The quality of programming has been affected by the decrease of available funding, thus creating dissatisfaction among beneficiary populations.

2. This level of dissatisfaction has put in danger the control mechanisms of communities, who have previously been more vocal in condemning kidnappings and robberies against humanitarian personnel.

3. Humanitarian actors have reduced the presence of international staff in the field, given the increased risks of kidnapping.

4. Through this, humanitarian actors have transferred a significant amount of risks onto national and local staff.

5. National and local staff are subjected to social pressure during their deployment to the field, given their belonging to the milieu (family pressure, community pressure etc.). The significance of this pressure has led national staff in certain NGOs to demand the presence of an international staff member at their side during field deployment.

6. This situation has led to a vicious circle, in which loss of access has caused a lack of respect of humanitarian principles, thus leading, again, to lack of access.

The study followed a qualitative approach, focusing on interviews and focus group discussions with implicated parties. Altogether, the study comprised 69 interviews

NGOs: Definitions and mandates

A non-governmental organization (NGO) is, for the purposes of this report, defined as a non-profit organization, organized at the national or international level, engaged in humanitarian activities, advocacy, health care, or human rights. This study focused on NGOs with the following mandates (note that other types of NGOs exist, although they were not consulted for this study):

Humanitarian NGOs: The primary focus of the study, defined as NGOs that deliver material aid to crisis zones for the purposes of meeting immediate needs. This can include medical care, food, tarps, or basic infrastructure such as latrines or water systems.

Protection NGOs: Organizations that focus on humanitarian protection, including policy advocacy on behalf of vulnerable populations, and protection against sexual violence. While humanitarian protection focuses on information and capacity-building, some NGOs combine protection activities with distributions of goods or food.

Peacebuilding/stabilization NGOs: Organizations that attempt to build or reinforce social structures that prevent, or resolve, conflict.

1. Brabant and Vogel, *In Their Eyes: The perception of aid and humanitarian workers by irregular combatants in the Democratic Republic of the Congo.* International NGO Safety Organization (2014)

2. Ashley Jackson, *In their Words: Perceptions of Armed non-State Actors on Humanitarian Action,* Geneva Call (2016)

3. Such as William Carter and Katherine Haver, *Humanitarian access negotiations with non-state armed groups – Internal Guidance Gaps and Emerging Good Practice,* SAVE – Secure access in volatile environments (2016); Hyeran, Jo, *Compliant Rebels: Rebel Groups and International Law in World Politics,* Cambridge University Press (2015); Ashley Jackson and Antonio Giustozzi, *Talking to the other side: Humanitarian Engagement with the Taliban in Afghanistan,* HPG Working Paper: London: Overseas Development Institute (2013); Ashley Jackson and Abdi Aynte, *Talking to the other side: Humanitarian Engagement with Al-Shabaab in Somalia,* HPG Working Paper: London: Overseas Development Institute (2013); Bellal, Annyssa and Stuart Casey-Maslen, *Rules of Engagement: Protecting Civilians Through Dialogue with Armed non-State Actors,* Geneva Academy of International Humanitarian and Human Rights Law (2011).

and 10 focus group discussions. Those interviewed mainly included staff from national (7) and international (31) NGOs (41 interviews in total; comprising 24 NGOs focused on humanitarian aid; 2 with peace-building/stabilization mandates; 8 with pro-tection mandates; and 4 other NGOs with mixed or unusual mandates), civil society representatives, traditional authorities (17 interviews), community members (10 focus groups, 6 different communities)[4] and ANSA representatives (4 interviews, 4 different ANSAs). Also included were UN agencies, MONUSCO civilian represent-atives and FARDC officers. The bulk of the interviews was carried out in person in Goma, although the study team made four trips to different areas of Masisi to collect information from sources there. Community representatives from Walikale and Rutshuru were also consulted, either by phone or in person.

ANSAs were selected on basis of rep-resentation. The study team consulted ANSAs of different ethnic and language groups, including members of both foreign and Congolese ANSAs. Communities, too, were selected on the basis of representa-tion; the majority of community members interviewed lived in areas under ANSA control, and communities represented a range of ethnicities and language groups. A range of individuals in each community were selected for interviews and focus groups, from government officials to civil society and religious leaders, to farmers and laborers. As much as was possible, the focus groups attempted to balance the numbers of men and women present in each discussion.

In addition, several donor organizations were asked to complete a short online survey. The survey focused on the re-quirements for implementing partners concerning community engagement and interactions with ANSAs.

Finally, the study drew on quantitative data provided by several partner organ-izations. This data described trends in the frequency and motive of attacks and security incidents in which NGO staff had been involved.

To encourage frankness, all interviews were conducted on a confidential basis; interviewees were assured that their state-ments would not be attributed to them.

A final note: Actors in the eastern DRC often have motives and agendas of their own, and both community members and ANSA representatives tend to have experience in interacting with NGO members and re-searchers. No source can be said to be truly "independent" or "objective", and so the information from each source was evaluated on the basis of the biases or agendas that that source might represent. That said, the narratives advanced by community members, ANSA representatives, and NGO employees converged more often than they disagreed; indeed, all actors seemed to have a vested interest in continuing and improving service delivery from NGOs to communities.

2.2 Challenges and weaknesses

Several challenges were apparent in the collection of interview data. First, given the circumscribed geographical scope and limited number of samples, we should be cautious in extrapolating or generalizing the findings of this research.

Second, many of the interviews (and almost all of the focus group discussions) were conducted with the aid of an interpreter. Although the interviewers attempted to correct any miscommunications or misin-terpretations, it is likely that some nuance was lost in translation.

Case example: Overlapping political-military networks

ANSAs in the eastern DRC tend to be highly integrated with, and often subordinate to, political networks and other armed actors in their immediate areas. In one meeting conducted for this study, the research team met with several members of an ANSA; a local poli-tician was also present. Over the course of the meeting, the politi-cian dominated the conversation, often cutting off other participant's mid-sentence or contradicting the viewpoints of the ANSA represen-tatives. As the research team left the meeting room, the research team noted the presence of multiple members of the Police National Congolaise—armed with AK-47s and at least one grenade launcher—who were serving as a security detail for the politician at the meeting. This example illustrates the overlapping networks and alliances among AN-SAs, politicians, and state security services.

NGOs should be careful to unders-tand and map the power structures of the areas in which they operate; ANSAs are sometimes (but not always) subordinate to the wishes of politicians, customary authorities, or other civilian power structures, and understanding these power structures can assist the task of access negotiation.

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4.   A note on terminology: because community perceptions and agency are central to a proper understanding of acceptance and access, this report avoids usage of the word "beneficiaries" to describe those members of the Congolese population who interact with NGOs. The term "community members" is used throughout the report to refer to those individuals instead.

Third, as noted above, almost every actor in the eastern Congo has an interest in NGOs being able to continue their work, and this interest may have informed the answers that interviewees provided to the study team.

Finally—and especially in the case of AN-SAs—there was a certain amount of selection bias present in the choices of interviewees. The ANSAs who were interviewed for this study were groups with whom Geneva Call already had an existing relationship and were therefore likely to be more open to NGO access and to encouraging greater NGO presence than other groups would. In addition, the 4 ANSAs consulted had received, each at a different level, sensitization on international humanitarian law from Geneva Call, and, in one case, had signed the *Deed of Commitment*[5] *for the Protection of Children from the Effects of Armed Conflict* with Geneva Call. Therefore, the ANSAs in this study cannot be said to be a purely representative sample of ANSAs in North Kivu or the DRC as a whole.

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5.   The *Deed of Commitment* is an innovative mechanism that allows armed non-State actors (ANSAs) to pledge to respect specific humanitarian norms and be held publicly accountable for their commitments. ANSAs cannot become parties to relevant international treaties, and are generally precluded from participating in norm-making processes. Consequently, ANSAs may not feel bound to abide by rules that they have neither put forward nor formally adhered to. Sometimes they are simply not aware of their obligations under international humanitarian law. The *Deed of Commitment* process gives ANSAs the opportunity to formally express their agreement to abide by humanitarian norms and take ownership of these rules. For more information, see: https://genevacall.org/how-we-work/deed-of-commitment/

3. An overview of NGOs in North Kivu

3.1 Historical background of UN and NGO presence in eastern DRC

The DRC has been in conflict since 1996, with diverse phases of differing intensity. The transnational, very ethnic nature of the conflict is complicated even more by the fact that DRC is one of the richest countries in the world in terms of raw materials. This has led to the emergence of self-defence militias, as well as to an extreme fragmentation of the ANSAs and a volatile systems of alliances.

While before the 1990s, only a few humanitarian organizations were present in the DRC, notably *Médecins Sans Frontières* (MSF), Oxfam and the UNHCR, nowadays there are more than 200 humanitarian organizations working in the DRC, with Goma being one of the country's most important "humanitarian hubs"[6]. While humanitarian needs in the DRC have been persistent over several decades, the humanitarian crisis reached a peak with the First Congo War (1996-1997) and the Second Congo War (1998-2003)[7]. Even though there has been a number of attempts to end the conflict, such as the cease-fire of Lusaka (1999), the Sun City Agreement (2002) and the Global and All-Inclusive Agreement (2002), conflict in the DRC is ongoing. The DRC today still classifies as a non-international armed conflict (NIAC)[8]. The process to disarm and integrate armed groups into the state security forces has still not been concluded and there remain more than 130 different ANSAs in the Kivus alone[9].

Furthermore, the DRC is host to the largest UN peacekeeping mission, the "United Nations Organization Stabilization Mission in the Democratic Republic of the Congo" (MONUSCO) worldwide, which consists of more than 16,000 military personnel[10]. As part of the MONUSCO, the United Nations Force Intervention Brigade (FIB) is a military formation mandated by the UN Security Council (UNSC) in 2013 to carry out military operations against selected ANSAs in the DRC. The FIB has repeatedly been criticized for blurring the mandates between peacekeeping and peace enforcement, at the same time being a peacekeeping force, but also directly engaging in hostilities[11].

Due to the long-term presence of the UN and various aid agencies, both the civilian populations and the armed actors in the DRC are familiar with these institutions, even though there is not necessarily precise knowledge about their distinct mandates, as we will see later in this report. But this familiarity does play a key role in access.

Finally, there exists a certain level of "NGO fatigue" being experienced among both donor agencies and civilian communities. NGOs in North Kivu have lost significant amounts of funding in recent years, as other regions of the country (and especially Tanganyika Province and the Kasais) have seen acute emergencies recently erupt, but the humanitarian needs in North Kivu have remained. Many of the NGOs consulted for this study note that donor organizations are showing signs of wea-

riness with the protracted crisis in North Kivu, especially since no end to the conflict (and, thus, the level of humanitarian need) is in sight. Curiously, several community members made similar comments, noting that the situation remains poor despite two decades of NGO presence.[12] For that reason, despite (or perhaps, because of) the continued presence of NGOs, some communities expressed skepticism that external actors were actually willing or able to contribute towards resolution of the ongoing conflict.

> ## Finding: communities not distinguishing mandates
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> Communities did not distinguish between humanitarian or protection actors from peacebuilding and stabilization actors. Rather, communities tended to place some level of responsibility for conflict resolution on all international actors. For that reason, despite (or perhaps, because of) the continued presence of NGOs, some communities expressed skepticism that external actors were actually willing or able to contribute towards resolution of the ongoing conflict.

6.   Alice Obrecht, *Dynamic gridlock: Adaptive Humanitarian Action in the Democratic Republic of Congo.* ALNAP Country Study. London: ODI/ALNAP, (2018), p. 8.

7.   Further reading on the First and Second Congo War: Jason Stearns, *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa.* New York: Public Affairs, 2012; Gérard Prunier, *From Genocide to Continental War – The 'Congolese' Conflict and the Crisis of Contemporary Africa,* Hurst, 2009;

8.   A. Bellal (ed), The War Report 2017, Geneva Academy, p. 30 and 31, available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%20Armed%20Conflicts%20in%202017.pdf

9.   Suluhu, Armed Group Maps, October 2017, https://suluhu.org/congo/mapping/ (retrieved 30 Jan 2019)

10. UNSCR S/RES/2409 (2018), p. 10.

11. See for example Lars Müller, 'The Force Intervention Brigade—United Nations Forces beyond the Fine Line Between Peacekeeping and Peace Enforcement', in: *Journal of Conflict and Security Law*, Volume 20, Issue 3, 1 December 2015, Pages 359–380, https://doi.org/10.1093/jcsl/krv005

12. Communities did not distinguish between humanitarian or protection actors (whose interventions are designed to meet basic needs during conflict) on the one hand and peacebuilding and stabilization actors (whose interventions are designed to bring about an end to a conflict) on the other. Rather, communities tended to place some level of responsibility for conflict resolution on all international actors; indeed, many community recommendations concerned advocacy or conflict resolution in addition to more material concerns such as NFIs, food, or infrastructure improvement.

3.2 Security incidents: ANSAs and criminals

Despite the proliferation of ANSAs, the most worrisome dynamic (in terms of access for aid agencies) is the rise of criminality. According to data from various agencies collected between 2016 and 2018, criminal elements were responsible for nearly three times as many security incidents involving NGO staff than ANSAs or state security services combined. Nationwide, anonymous criminals were responsible for 319 NGO security incidents during that time period. During the same period, 74 NGO security incidents involving state security services were reported. Only 46 such incidents involving ANSAs were reported in that time period.[13] NGO representatives and community members noted, though, that anonymous "criminal" acts are often carried out by ANSA members or state security services agents operating incognito and on their own. The true numbers will therefore differ slightly.

Finding: ANSAs as security threats

While attacks by ANSAs represent the least common form of violence against NGOs, the attacks that do occur are much more likely to explicitly target NGOs. At the same time, both NGO and ANSA members noted that ANSAs are often willing to provide security for NGO operations, either by preventing criminal attacks against NGOs or (in isolated cases) by pressuring criminals to release kidnapped NGO staff. This shows the relevance of ANSAs in regard to NGO safety.

However, security incidents involving ANSAs remain a source of concern. The same data indicated that a given ANSA-involved security incident was quite likely to be targeted at an NGO (31 out of 46, or 67%, of ANSA-involved incidents had NGOs as their primary targets; the remaining 33% affected NGOs but did not explicitly target them). Fewer than 50% of the recorded criminal incidents, and only 42% of the incidents involving state security services, explicitly targeted NGOs. In other words, while attacks by ANSAs represent the least common form of violence against NGOs, the attacks that do occur are much more likely to explicitly target NGOs. If ANSA attacks on NGOs are more targeted than other forms of violence, then access negotiations represent an important means of reducing the number of these attacks.

During the course of this study, nearly one-third of NGOs could name incidents in which members of their organization were the victims of attacks, robberies, or kidnappings with financial motives; only one could name security incidents that involved ANSA members. In fact, both NGO and ANSA members noted that ANSAs are often willing to provide security for NGO operations, either by preventing criminal attacks on NGOs or (in isolated cases) by pressuring criminals to release kidnapped NGO staff. That said, the data show that attacks by ANSAs on NGOs still occur with some regularity, and so ANSAs should not be forgotten when it comes to planning for NGO safety and security.

Criminality poses unique complications for humanitarian access. In contrast to both ANSAs and state security forces, where there is a clear identity, criminals remain anonymous actors. For this reason, NGOs cannot resort to standard access-negotiation strategies, since they lack definite points of contact or representatives for criminal groups and networks. However, this study did identify certain strategies that NGOs may undertake to prevent criminal attacks. Those strategies are discussed later, in section 4.

3.3 Normative frameworks and the humanitarian principles

International humanitarian law regulates the conditions for providing humanitarian relief during both international and non-international armed conflicts.

Legally, the conflict in the DRC is a non-international armed conflict (NIAC), governed by Common Article 3 to Geneva Conventions, the Second Additional Protocol to the Geneva Conventions, and customary international humanitarian law.[14] Under these norms, aid organizations are allowed to carry out humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction and subject to the consent of the parties. In addition, subject to their right of control, the parties must allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need. In other words, the conditions for humanitarian relief in NIACs are:

1. First, relief must be humanitarian, impartial and conducted without any adverse distinction. Practically, this means that aid organizations have no right of access if they take side in a conflict or distribute aid on any other basis than need. This does not preclude aid organizations from distributing aid by prioritizing the most vulnerable.

2. Second, relief action is subject to the consent of the parties to the conflict.

3. Third, if humanitarian aid fulfils these conditions, the parties must allow and facilitate the rapid and unimpeded passage of such humanitarian relief, subject to their right to control.

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13. These data are drawn from the database of an organization which preferred to remain anonymous.

14. A. Bellal (ed), The War Report 2017, Geneva Academy, p. 30, available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%20Armed%20Conflicts%20in%202017.pdf

In principle, humanitarian relief personnel and objects are civilian and as such must be respected and protected from attack. In addition to protection from attack, this includes the prohibitions of

- Destruction, misappropriation or looting of humanitarian relief objects.

- Harassment, intimidation, physical violence, kidnapping, hostage-taking and arbitrary detention of humanitarian relief personnel.

Deliberate attacks against humanitarian relief personnel and objects entitled to civilian status are a war crime.[15]

3.3.1. Humanitarian relief

The meaning of humanitarian relief is further expanded and clarified in the Proclamation of the Fundamental Principles of the Red Cross and the IFRC Humanitarian Code of Conduct. The Red Cross produced four key principles to guide humanitarian work, including:

- Humanity: The imperative to protect life, health, and dignity for the human being.

- Impartiality: Non-discrimination as to race, political beliefs, nationality, religion, or class, and a focus on providing aid with need as the sole criterion.

- Neutrality: The need to avoid taking sides in any armed conflict or engage in political or religious controversy.

- Independence: The imperative to maintain autonomy from governments and other actors.

Three of these principles—humanity, impartiality, and neutrality—were later codified by the United Nations, in General Assembly Resolution 46/182.[16]

Although developed originally to serve as a guide for the various Red Cross organizations in different nations, the humanitarian principles have attracted a wide following. As of this writing, 755 humanitarian agencies have signed the IFRC Code of Conduct, and these four principles continue to serve as the standard for NGO best practice.[17]

3.3.2 Consent of the parties

Humanitarian relief is subject to the consent of the parties. While there is some controversy about whose consent is required,[18] the majority position is that during non-international armed conflicts, consent of the state in whose territory the humanitarian relief action is intended is always required, including for territory controlled by ANSAs. As a matter of practicality, such consent should also be sought from the ANSA party concerned. If an offer of services is made to a party to an armed conflict, the party cannot arbitrarily withhold such consent,[19] i.e. the party must provide a valid reason why such consent is withheld.[20]

The primary obligation to provide for the needs of the civilian population is on states. ANSAs that control territory during a non-international armed conflict also have an obligation to meet the needs of the civilian population if the state party is unable or unwilling to discharge its obligation. When an impartial humanitarian organization asks for consent from a state to provide its services because a party to an armed conflict, whether a state or ANSA, is unable or unwilling to fulfil its obligation to meet the needs of the population, states must grant consent.

3.3.3. Allow and facilitate humanitarian relief, subject to the right to control

Although parties cannot arbitrarily withhold consent, they may exercise control over the relief action. In other words, once consent is obtained, the implementation of humanitarian relief is conditioned by the consent and subject to the right to control of the parties.

Parties to an armed conflict are entitled to control humanitarian relief, for example with measures to verify the humanitarian nature of the relief or technical arrangements for the practical delivery of the relief. Such technical arrangements may serve to assure the parties that humanitarian relief is exclusively humanitarian, including by checking that consignments do not include weapons or other military equipment. Technical arrangements may also aim to ensure the safety of humanitarian convoys, for example by requiring convoys to use prescribed routes at specific times. However, it is only in exceptional circumstances that military necessity or

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15. Article 8(2)(e)(iii).

16. Neither the Code of Conduct nor a UN General Assembly Resolution are legally binding. However, the humanitarian principles may be viewed as international "soft law", representing the best advice of legal experts and experienced practitioners.

17. A fuller discussion of IHL frameworks and the humanitarian principles is outside of the scope of this study. However, interested parties would do well to consult the following sources: *Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework*. Swiss Federal Department of Foreign Affairs (2014); or Hugo Slim, *Humanitarian Ethics: A guide to the morality of aid in war and disaster*. Oxford University Press (2015).

18. See the 2016 Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, commissioned by the United Nations Office for the Coordination of Humanitarian Affairs, Section D, available at: https://docs.unocha.org/sites/dms/Documents/Oxford%20Guidance%20pdf.pdf; ICRC, Report of the 32nd International conference of the Red Cross and Red Crescent: IHL and the Challenges of Contemporary Armed Conflict, 2015, Section on humanitarian assistance, p. 26 onwards. The report is available at: https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf

19. While the consent from ANSAs is not required as a matter of law, if an offer of service is made to an ANSA, they cannot arbitrarily withhold consent. See also *ICRC, Commentary of the First Geneva Conventions,* 2016, §779 onwards, available at: https://ihl-databases.icrc.org/ihl/full/GCI-commentary.

20. For guidance on the meaning of arbitrary withholding of consent see the 2016 Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, commissioned by the United Nations Office for the Coordination of Humanitarian Affairs, Section E, available at: https://docs.unocha.org/sites/dms/Documents/Oxford%20Guidance%20pdf.pdf

imperative security reasons may justify temporary and geographic restrictions for humanitarian aid. Military necessity or imperative security reasons do not justify general refusal for humanitarian relief. As for consent, technical arrangements shall not be imposed arbitrarily, i.e. in a manner that is unreasonable.

The right to control is mitigated by the requirement that passage shall be rapid and unimpeded, which, amongst others, means that:

- parties are to abstain from harassment;

- parties should reduce administrative procedures, waive, reduce or expedite custom inspections, and ensure that no additional or more burdensome requirements are added on a local level. The aim is to accelerate the delivery of humanitarian aid.

When assessing whether the parties violate their obligation to grant rapid and unimpeded passage, the key consideration is the impact of control measures on relief operations as a whole.

4. Observations on access negotiations, humanitarian principles and the perception of NGOs in North Kivu

4.1. NGOs in North Kivu: access methodologies

The majority of NGOs interviewed for this study stated that they have no formalized process or method for negotiation of access to areas controlled by ANSAs. Only 20% had definite, written procedures and practices; 37% had some form of training or informal policies for staff members who carried out negotiations; and another 37% named no formal structures at all. The remaining 6% had policies against interaction with ANSAs in any form.

However, most NGOs followed strikingly similar patterns of access negotiation. NGO security officers named several thriving informal networks for the collection and dissemination of access knowledge and practices. In particular, there exists a semi-formal collection of security officers of the various agencies based in Goma,

Finding: NGO access methodologies

Access negotiations have, up to this point, been conducted in a semi-formal manner; few organizations have distinct policies or training related to access negotiation, although security officers from different NGOs maintain contact and share information through meetings and social media.

who keep in touch through both face-to-face gatherings and social media, and who share tips and information about the best practices for negotiation of humanitarian access. Further, the vast majority of NGO security officers are Congolese, not international staff, and many have worked for multiple NGOs in succession. Likely because of the combination of these dynamics, the different NGOs operating out of Goma have adopted negotiation practices that closely mirror each other.

Three dominant strategies for negotiating access were visible:

- one for organizations that could contact ANSAs directly,

- one for organizations who—for various reasons—felt that they could not directly contact members of ANSAs[21]

- And another one for NGOs directly engaging ANSAs on a specific thematic as part of their projects.

However, all three strategies relied on acceptance from members of communities, and especially from local leaders and customary authorities, as the key to guaranteeing acceptance from ANSAs.

4.1.1. NGOs with direct contact to ANSAs

Those NGOs who had the ability to directly contact ANSAs tended to follow the same general pattern: when an NGO wanted to begin a project in a new area, a member of the NGO (usually the security officer, but sometimes a local staff member or a lead-

ership figure) would reach out to various networks to obtain contact information for authorities, civil society members, or other interlocutors in the area who could facilitate an initial contact with ANSA leadership figures. In this search, the NGO member would typically mobilize the personal networks of project staff who were local to that area, as well as inquiring with other NGOs active in the zone. NGO representatives repeatedly noted the importance of coordination structures.

As noted above, ANSAs in North Kivu are typically well-networked with political and customary authorities in their area. Since those same authorities are usually publicly-known (and have an interest in assuring aid flows to their communities), they may serve as a potential interlocutor between NGOs and ANSAs. Other potential interlocutors included health structures (who, under IHL, are obligated to treat wounded combatants of all sides, and are therefore generally known and trusted by all armed actors) or civil society networks. One community leader noted that the family members of ANSA leaders are often known by communities—and sometimes work for NGOs—and that those family members can sometimes serve as an initial point of contact.

Once a trustworthy interlocutor with extensive local contacts has been found, the NGO typically requests that interlocutor to introduce them, and their projects, to ANSAs in the area. The NGO also usually requests the interlocutor to provide them with the contact information (usually, a phone number) for an ANSA representative, to ensure continuous communication.

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21. Although other organizational differences had an impact on access negotiations, the presence or absence of organizational restrictions made the largest difference. National NGOs had somewhat more security concerns than did international NGOs, but the methods of negotiating access were quite similar—especially since national staff members tended to take responsibility for access negotiations even at international NGOs. The presence of permanent field staff—discussed later in this report—did seem to positively impact the capacity of an NGO to negotiate access.

At this point, some NGOs attempt to meet face-to-face with the representatives of ANSAs in the area; security officers emphasized the value of personal contact to build relationships and cement trust. However, some NGOs opt not to meet directly with ANSAs, preferring to limit their interactions to telephone communication.

Once initial contacts and relationships are established, NGOs vary in the amount of their continued contact with ANSAs. However, the majority of NGOs noted that they kept in regular contact with ANSA leaders, especially before larger projects or vehicle movements.

4.1.2. NGOs without direct ANSA contact

Some NGOs, however, diverged from the pattern described above. These NGOs were prohibited, for various reasons, from direct contact with ANSAs. The reasons for this prohibition differed; several NGOs worked

Donor policies

Some NGOs reported donor policies restricting them from contact with certain sanctioned individuals. In addition, several donors noted that they require their implementing partners to restrict their contact with members of state security services (police, army, and intelligence services) because contact with those forces would impinge on the neutrality of the NGO. One donor stated that state security services are "illegitimate."

However, these results were not universal. Other donors noted that contact with state security services was encouraged, or at least acceptable, for the success of the project.

in security-sector reform, for example, and had concerns that their activities with members of state security services would sour their interactions with ANSAs. Others voiced principled concerns—most notably, that NGO attention could potentially confer undue legitimacy to ANSAs. Most common, though, were NGOs whose donors forbade contact with members of ANSAs[22].

These NGOs followed a similar pattern as that laid out above; except that they limited their sensitization and outreach to the community leaders and other interlocutors, relying on those actors to advocate on the NGO's behalf to any armed actors in the area. In that way, these NGOs were able to ensure there was a comfortable buffer between themselves and ANSA members, while still spreading information about the benefits of their activities.

4.1.3. NGOs involved in ANSA engagement

A third, and final, subset of NGO negotiation strategies concerned those organizations whose activities involved direct outreach to, or engagement with, ANSAs themselves. These organizations' activities included the disposal of unexploded ordinance (UXOs), the demobilization of child soldiers, or IHL education—and thus necessitated the active participation of ANSA members, not merely their assent. These were often the organizations with the best access and the strongest relationships with ANSAs. Successful NGOs were able to frame their project activities as being directly beneficial to the ANSAs themselves (either by removing a direct physical threat, as in UXO disposal, or through capacity-building, as in IHL education) and were typically well accepted by ANSAs[23].

4.1.4. Access negotiations – success or failure

The success or failure of access negotiations depended on two factors: first, the

ability of the NGO to create relationships with trusted interlocutors in project areas; and second, the NGO's capacity to follow through on its promises and respond to local needs. Several NGO respondents characterized both communities and ANSAs as taking a pragmatic approach to NGO evaluation, noting that NGOs are constantly subject to a form of cost-benefit analysis by local actors. Those NGOs who bring benefits to local communities are accepted; those who do not may be marked as targets for robberies or harassment. It is worth noting that NGOs providing direct aid, particularly assistance whose impact is obvious and can immediately be seen by communities (such as health or food assistance), are more easily accepted than protection or peace-building NGOs whose projects have a long-term impact. When asked, ANSA and community representatives remembered and named more easily those NGOs providing direct aid.

With the exception of those NGOs who were restricted from interactions with ANSAs, the majority of NGOs surveyed expressed a belief that it was necessary, and helpful to a project, to contact local ANSAs before beginning a project in a new area. NGO representatives emphasized the value that regular communication with ANSAs (and other local authorities) could bring to project implementation in terms of access and security. However, respondents also noted the inherent dangers in maintaining excessively close relationships with well-established ANSAs, stating that they would often attempt to bargain for goods, telephone credit, or other favours in exchange for access.

In contrast to humanitarian negotiation in other contexts (for example, Operation Lifeline Sudan in the 1990s) NGOs were extraordinarily reluctant to enter into written agreements with ANSAs[24]. None of the NGOs surveyed indicated that they had formed written access agreements with ANSAs, and most NGOs displayed

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22. Several NGO representatives reported that some donor agencies restrict implementing partners from interacting with individuals under international sanctions. However, NGOs tended to over-interpret this directive, and cut off most or all contact with ANSAs to ensure that they were not interacting with sanctioned individuals.

23. These results were born out in our own interviews with ANSAs; all ANSAs interviewed were open to further NGO presence in their areas, and 3/4ths signaled a willingness to learn more about IHL and the various UN and NGO systems, even though this was not a question that the survey team asked directly.

Finding: community acceptance key for access

Community acceptance of NGOs emerged as a key security factor, both for accessing ANSA-controlled territory but also against criminal predation. The probability of access guarantees increases if the NGO maintains relationships with trusted interlocutors in project areas, follows through on its promises and responds to local needs. NGOs are constantly subject to a form of cost-benefit analysis by local actors. Those NGOs who bring benefits to local communities are accepted; those who do not may be marked as targets for robberies or harassment.

concerns about the legality and legitimacy of such an agreement. In all cases, contact between NGOs and ANSAs was limited to semi-regular, semi-formal conversations, either by telephone or face-to-face.

Interestingly, NGOs typically stated that they preferred to negotiate access with ANSAs one-on-one, instead of as part of a consortium or bloc. Those NGOs who had less experience or fewer structures for negotiation noted that they rarely had the opportunity to enter into negotiating blocs with other organizations; higher-capacity NGOs stated that they preferred to negotiate in their own right. Especially since interpersonal relationships and trust-building are so important to their negotiation strategies, high-capacity some NGOs (especially those NGOs with better-established local relationships) repeatedly voiced a concern that other partners might behave poorly or act in ways that would damage their credibility.

In rare circumstances, NGO representatives could recall times when an actual situation dictated that a coordinated group of NGOs would negotiate access as a group; but as a general rule, NGOs negotiated access on an individual basis[25].

4.1.5. Communities and security

Overall, community acceptance emerged as one of the strongest factors that could increase NGO security and access. As stated above, some NGOs keep up communications with community leaders who they know would pass on word of their projects to ANSAs in the area, and do not interact with ANSAs at all.

NGOs reported that communication with communities formed a valuable part of a security strategy. In the wake of serious security incidents, for example, NGOs would suspend activities in an area while communicating to local leaders that they could not continue to operate while security threats existed. These strategies were reported to help restore safety for NGOs in the aftermath of a security incident.

NGOs and community members alike noted that, with several exceptions, the majority of ANSAs in the DRC are enmeshed in local community structures and open to the presence of NGOs.

Further, a range of interviewees noted that ANSAs often act in coordination with—or are even subordinate to—civilian authorities, especially customary authorities. This was borne out in the observations of the study team. In one example, project staff met with a local politician and several ANSA representatives. The politician clearly commanded the respect and deference of the other individuals in the room, often interrupting other speakers and contradicting their points of view.

Finally, both NGOs and community representatives repeatedly emphasized that the best ways of contacting ANSAs for the purposes of access negotiations is through a trusted local interlocutor, and even local authorities, who can broker communications and introduce the NGO to the ANSA. Community networks, then, are an essential element of access negotiations.

The FARDC

Several FARDC officers were interviewed for this study. Generally, these officers stated their support for NGO projects and expressed a wish to be more involved. While FARDC officers stated that NGOs rarely contact them for security advice or to advertise their movements, they maintained that some NGOs do keep in touch—and that the FARDC facilitates the access of those NGOs as best they can. One officer was able to show text messages between himself and other offices, communicating that an NGO had contacted his office to inform him of their movements, and requesting that other FARDC officers ensure that the route was secure.

While FARDC officers were able to name certain principles (notably, neutrality) and tenets of IHL, they did not show advanced levels of knowledge of international normative frameworks. Furthermore, officers noted that rank-and-file soldiers were not guaranteed to have even a basic knowledge of IHL or knowledge of the differences between different humanitarian actors.

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24. See, for example, the SPLM/OLS (Operation Lifeline Sudan) Agreement on Ground Rules, signed by representatives of both Operation Lifeline Sudan and the Sudan People's Liberation Movement/Army, which was still a non-state actor at that point in history. A copy of the agreement may be found online at http://theirwords.org/media/transfer/doc/sd_splm_a_1995_06-231ae906230a30c0a15a29fa99e67511.pdf

25. The UN Office for the Coordination of Humanitarian Affairs (OCHA) has made some headway in developing a mechanism for the follow-up and resolution of access problems. The development of that mechanism was underway during the course of the research period. See "2018 Plan de réponse d'urgence : Provinces du Nord-Kivu et de l'Ituri (RD Congo)." UNOCHA.

ANSAS and the principles

ANSAs seemed largely unconcerned with violations of the humanitarian principles. Those ANSA representatives interviewed for this study did not react strongly to the scenarios of principles violations that were discussed in Part IV. However, ANSAs did name several concerns of their own.

Of particular concern were potential neutrality violations in which ANSAs accused NGOs of funneling money or support to their rival ANSAs. Two of the groups interviewed stated that this had occurred; this was the only incident in which ANSAs were willing to name specific examples of a violation of a humanitarian principle.

Other neutrality-related concerns had to do with information-sharing. ANSA representatives expressed concern that NGOs were sloppy with information, especially information that could be used by rival armed actors against them.

Finally, ANSAs—like communities—expressed anger at examples of NGO corruption or profiteering, noting that such incidents ran counter to the stated purpose of NGO presence (i.e. the humanitarian imperative—the preservation of human health and life).

Both community members and NGO staff noted that guaranteeing security against criminal attacks is much more difficult than negotiation with ANSAs, especially since criminal groups are usually relatively small and maintain their own anonymity. However, community members did note several points of leverage that could be used to increase the safety of NGOs operating in criminal-heavy zones.

Interviewees repeatedly stated that criminals are usually drawn from one of three groups: rogue FARDC members; ANSA members operating anonymously; or members of local communities. In the case of rogue FARDC soldiers, community acceptance may not help; other strategies may be needed. With ANSA members or community members, however, community-based mechanisms may be helpful to deter criminality.

With respect to ANSAs, the same structures of negotiation and communication may be used to induce ANSAs to more scrupulously control their members. While this is necessarily a more delicate negotiation—because it can imply that ANSAs are not fully in control of the soldiers under their command—ANSAs may be open to such an offer, since (as noted above) they have concrete incentives to allow NGOs to access their territories.[26]

And finally, communities can also assert some level of control over criminal elements, although this can be uncertain. As one NGO representative put it, criminals are less likely to target NGOs who are widely perceived as bringing valuable services or helping their communities. One NGO stated that their heavily community-centric approach was effective in preventing criminal attacks against them; that same NGO was widely cited by communities as being highly thought-of. Several community leaders agreed that an NGO's positive reputation could provide some measure of protection from criminals.[27] However, several others noted the inherent difficulties in communicating or negotiating with criminal groups.

4.2. The "vicious circle" of funding, access, and project quality

The study was conducted after several years of diminishing funding to NGO activities in North Kivu. For a variety of reasons (NGO representatives noted the emergence of several acute crises in Tanganyika and the Kasais, as well as a general feeling of "donor fatigue" towards the eastern DRC) the amounts of available funding have been declining in recent years[28]. This lack of funding has contributed to certain knock-on effects and vicious cycles, which increase the difficulty for NGOs who wish to access conflict-affected areas. Most notably, from an access perspective, are the decrease in NGO field presence and the lowered presence of international staff in field locations.

Finding: decreasing field presence and transfer of risk to national staff

The NGOs surveyed for this research noted that their programming had been subject to drastic changes because of a lack of funding, most notably closing field offices and a decrease in international staff: a lower number of NGO bases and permanent installations worsened access and project quality, and the decrease in international staff resulted in a shift of security risks onto national staff, who were expected to accept risks that international staff would be shielded from.

26. As noted below, ANSAs may have an interest in providing security for NGO activities. Three of the four ANSAs interviewed for this study volunteered their willingness to provide security for NGOs in their areas of influence.

27. This was illustrated by a recent case, mentioned by several members of the community, where an NGO was a victim of a criminal car robbery. The whole community publicly demonstrated its disapproval and even helped to find and arrest one of the criminals. It is, however, noteworthy that the incident affected an NGO bringing direct aid to the community and that the situation could have been different if the victim had been an NGO implementing a project whose positive impact on the community would be less straightforward (let's say an NGO with a protection mandate)

28. This is true in most humanitarian crises in the world today, although the DRC remains one of the most-underfunded crisis areas. See "Alarming lack of funding claims lives," Norwegian Refugee Council (2018). https://www.nrc.no/news/2018/july/alarming-lack-of-funding-claims-lives/

Nearly half of all NGOs surveyed noted that their programming had been subject to drastic changes (such as, for example, being forced to close field bases) because of a lack of funding. Creating and maintaining relationships—with community members, local authorities, and ANSA representatives—is key both to establishing community-level trust and ensuring access to conflict-affected areas and to ensuring that local communities understand NGO projects and priorities (and in assuring that NGOs understand communities' needs). In the absence of a permanent presence, NGOs are reduced to short-term site visits to implement projects. Although the impact of a lack of field presence is hard to quantify, both NGO members and community members repeatedly noted that the lower number of NGO bases and permanent installations worsened access and project quality.

NGO representatives noted that the lack of funding is manifested in other ways; notably, less money leads to fewer international field staff, which can impact projects in surprising ways. Less funding push organizations to reduce the numbers of international staff on their payrolls, and increasingly restrict their international staff to Goma. NGO staff members noted that international staff are often insulated from risk by being kept in Goma; several NGO employees noted a disturbing trend wherein national staff would be asked or expected to accept risks that international staff would be shielded from.

Reduced field presence of international staff affects perceived project quality. A range of interviewees—including community leaders, an ANSA representative, and several NGO employees—noted that international staff are perceived to be more "neutral" (or, at least, to have fewer vested interests in local dynamics) than national staff are. Along the same lines, nearly every NGO interviewed for the survey agreed that national staff members (and especially local staff) are subject to immense social pressures that international staff, for the most part, are able to avoid. NGO staff and community leaders repeatedly stated that national and local staff are vulnerable to pressures from authority figures and ANSAs to divert aid or distribute jobs to authorities or their followers. One respondent (an employee of a Congolese NGO) noted that he had been forced to leave his hometown for a year, because he opposed a local chief on a decision about implementation of a project. Other Congolese NGO staffers confirmed the trend, noting that several of their colleagues had been forced to flee to Rwanda, after they received death threats for refusing to bribe local authorities. In addition, local leaders can pressure national staff members by threatening their families. International staff are protected from these threats and pressures, both because they are perceived to have more "backing" or authority from their organizations and because they (usually) have no family members in project areas and no barriers to simply evacuating if they anger a local authority[28].

As a result, the risk of corruption and diversion of project funds is increased by a lack of international field staff. Several of the NGOs consulted for this study were explicitly aware of these dynamics and endeavoured to have international staff present at every field site (and made sure that any "unpopular decisions" were issued by internationals, not national staff). Other organizations came up with inventive ways of combating this problem; one NGO made sure that all national staff in the field carried the contact information of an international project manager, who could be easily contacted via telephone if an unpopular decision needed to be made. Others simply made sure to sensitize local authorities at the outset of the project, to remind them that corruption or diversion of goods weakens the value of a project to the local community[30].

Corruption and access

Because of security concerns, interviewees (and, especially, staff members of national NGOs) gave mixed responses on whether "corruption" was, ultimately, a good or bad thing. Several community members and NGO national staff (representing a more jaded outlook) stated that small amounts of corruption are acceptable, if they ensure the project's success. NGO employees noted times when they felt certain that ANSAs would benefit from their distributions—but continued anyway, for the benefit of the civilian population.

One local NGO defended the practice of bribery at length, noting that, if they did not give ANSAs some share of the goods from an aid distribution, those ANSAs would likely take a similar or greater quantity by force from the civilian population. The NGO stated that it was better for all actors to simply give ANSAs or local authorities a small share and ensure a smooth project. However, this strategy is to be avoided as it constitutes direct material support to ANSAs.

Finding: perception of mixed teams

Both community members and ANSAs noted that NGOs with teams of mixed nationalities tended to be more credible; international staff were perceived as being less susceptible corrupt practices, because they are less subjected to social pressure than national staff members.

29. International staff are not immune from this type of conflict. For example, one respondent noted that physical fights had broken out at one of their bases because of a personal disagreement between the head of office and a community member. International staff are, however, more able to simply leave an area if such a conflict becomes too intense.

30. In addition to the obvious effects of corruption—i.e., the loss of goods or money—being seen as complicit in corruption hurts an NGO's reputation, which can have negative effects on community acceptance. While some community members voiced a level of understanding for the pressures of the field, the majority stated that corruption among NGOs, even coerced corruption, negatively impacted that NGO's reputation.

It should be noted, though, that this increased risk of corruption is not due to international staff being "more principled" or "less corrupt" than national staff; rather, the difference is due to the lessened social pressures and greater mobility that international staff enjoy. Also, whatever the reality may be, what matters is that national staff is perceived by communities as more open to corruption.

Understandably, if a community perceives that an NGO is less able to carry out quality programming (either because of the lessened knowledge or acceptance from a lower field presence, or a rise in corruption from the social pressures brought to bear on national staff members), the acceptance and enthusiasm that the community accords to that NGO may suffer. Since (as noted in section 4.1.5) community acceptance represents a key factor in NGO security with respect to both ANSAs and criminals, this lack of acceptance can result in less safety, and therefore, lower rates of access. The combination—noted explicitly by one re-

spondent—is a vicious circle, in which lower funding leads to less access, which lowers the quality of NGO projects. The lessened project quality has negative effects on community acceptance, which leads to worse security and therefore less access; and so, the cycle repeats. There are means and methods, of course, to counteract this vicious circle; some of them are named in the recommendations of this report.

4.3. The Humanitarian Principles

4.3.1 A note on methodology

As stated earlier, this study assessed the comprehension of the four humanitarian principles (humanity, neutrality, impartiality, and independence[31]) by NGOs, communities and ANSAs and, secondly, how NGO programming is viewed and what this means for access negotiations. This second element was accomplished by describing hypothetical scenarios in which an NGO violated one of the humanitarian principles and allowing interviewees

(community members and ANSAs) to explain the consequences of that violation. The scenarios were designed to describe situations that were likely to occur (or had already occurred) in the course of NGO interventions. Interviewees were given only a description of events, not of the motivations or reasons behind those events; this was to assess the motivations that community members would assign to different actions undertaken by NGOs.

4.3.2. Knowledge of the principles

4.3.2.1 NGOs and the humanitarian principles

NGO interviewees did not show consistent knowledge of the humanitarian principles. Of those interviewed, fewer than half were conversant in the framework originally articulated by the ICRC and the United Nations. The remaining respondents either had only some knowledge of the humanitarian principles framework, or simply could not name any of the principles when asked.

"Decrease of NGO field presence" vicious circle
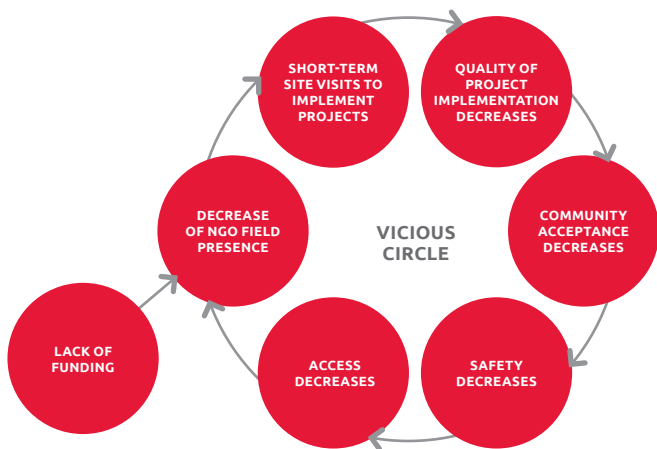
" Decrease of international staff presence" vicious circle
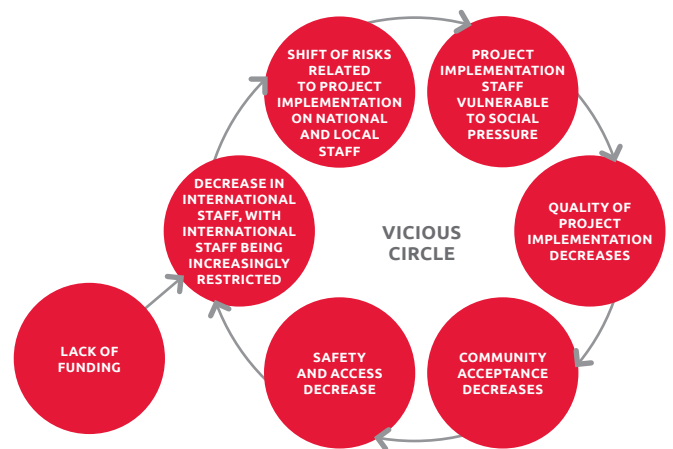
31. Originally articulated by the International Committee of the Red Cross, these principles have become a central piece of humanitarian identity. Three of these principles—humanity, impartiality, and neutrality—were codified by the United Nations General Assembly in UNGA Resolution 46/182. One of the most in-depth analyses of these principles can be found in Slim, *Humanitarian Ethics.* And, as noted in section 3.3, the respect of these principles constitutes a condition for the consent of parties to conflict for humanitarian assistance.

Finding: differing understanding of humantiarian principles and their operationalization

NGO representatives had a differing understanding of how to operationalize humanitarian principles, leading to different actions on the ground. Also, NGO leadership figures and field staff did not share the same understanding of humanitarian principles.

The organizations who could not name the four principles were more likely to work in security sector reform, stabilization, peacebuilding, or other areas that are not classically humanitarian. Still, even among NGOs with purely humanitarian mandates, more than a third of interviewees exhibited some level of difficulty in naming and discussing the humanitarian principles. Of those organizations, national NGOs were disproportionately—but not exclusively—represented.

Of those NGO representatives (slightly more than a third of the total) who had imperfect knowledge of the principles framework, many showed some level of confusion about the various frameworks and international standards that could potentially apply. Commonly, NGO representatives would be able to name one or more of the humanitarian principles but would not be able to name all four—or would mix in other principles or standards from IHL or from humanitarian operating guidelines, naming such principles as Do No Harm or "transparency." Often, organizations would have their own sets of core values or principles, and NGO representatives would often confuse the humanitarian principles with their own organization's core values.

One complicating factor was that certain NGOs did not conceive their own missions or identities as being classically "humanitarian" and therefore did not feel as much allegiance to the humanitarian principles. Organizations whose mandates and projects concerned peacebuilding, security-sector reform, or development maintained internal codes of conduct and principles that were different from the classical articulation of the humanitarian principles.

Adding to the confusion, NGO representatives often gave articulations or explanations of the principles that that led to different, sometimes even opposed action on the ground. The principle of neutrality, especially, was interpreted in different or even contradictory ways by different actors. Certain NGOs stated that their communication and interaction with ANSAs was directly informed by the principle of neutrality; since their organizations were by necessity in contact with government structures, they felt compelled to be in contact with ANSAs in their areas of operations in order to demonstrate that they were acting as neutral outsiders to the conflict. Conversely, other NGOs stated that they explicitly forbade discussions with ANSAs because they felt that such communication would infringe on their own neutrality. Experienced practitioners noted their concerns that there were very few individuals in the NGO system who could articulate a clear and comprehensive understanding of the humanitarian principles.

And finally, even if leadership figures could clearly articulate an understanding of the humanitarian principles, it became clear

Finding: NGO knowledge of humanitarian principles

Less than half of NGO representatives across a range of mandates—and fewer than two-thirds of purely humanitarian NGOs—could name the four humanitarian principles. The remaining respondents either had only some knowledge of the humanitarian principles framework, or simply could not name any of the principles when asked.

that understanding was not always shared by field staff. One interviewee noted an incident in which several bags of food remained as leftovers from a distribution; in a clear violation of the neutrality principle, NGO staff distributed them to members of an ANSA who happened to be in the area, thus providing material support to the group.

However, some organizations had a very high level of understanding of the humanitarian principles. Typically, these were organizations with an institutional history of adherence to the principles (most clearly, the ICRC—as the body that generated the principles in the first place—has a strong commitment to the humanitarian principles). Moreover, those organizations put an emphasis on training those staff members who were most likely to be in contact with communities—especially drivers, security guards, and field staff—and on encouraging internal debate over the application of the principles.

4.3.2.2 Community knowledge

Very few community members had formal knowledge of the humanitarian principles, although some members could name one or two of them. Community members tended to have little formal knowledge of the international system outside of their direct experience. Almost all community members (and ANSAs) could name those NGOs with which they interacted directly, but had difficulties naming other NGOs. They were also much more likely to name organizations that provided services with clearly visible outcomes (for example, NGOs that provided medical services or food distributions), suggesting that those actors are more easily accepted than, for example, protection agencies whose effects may be less visible.

Others could recall times when community members (usually civil society representatives or customary authorities) received training on the humanitarian principles, though that knowledge was rarely spread to other members of the community. However—as discussed below—it was clear that the concepts of neutrality, impartiality, and independence were important to community members, even if they had very little formal knowledge of the subject.

Scenarios of violations of principles

Community members/leaders and ANSA representatives were presented with the following scenarios, and asked "how would this impact the reputation of the NGO in question?" Each scenario was designed to describe a violation of one of the humanitarian principles. These scenarios intentionally describe situations that are likely to occur in the course of humanitarian interventions.

Neutrality: "An NGO arrives in the DRC to implement humanitarian projects but refuses to work in areas controlled by ANSAs. The NGO only helps communities in areas controlled by the government."

Impartiality: "An NGO arrives in your area, but their projects only assist members of one ethnic community and ignore people of other ethnicities."

Impartiality follow-up: "An NGO works only with IDPs, who are of a different ethnic group than the rest of the population. The NGO does not work with non-IDPs."

(This question was added to assess how community members would perceive NGOs whose projects accidentally favored one ethnic group or another. NGO representatives had previously named that they found themselves working only with individual ethnic groups, simply because members of those ethnic groups were uniquely vulnerable.)

Independence: "An NGO arrives in your area, who receives directions and finance from MONUSCO/the Congolese government."

Asked separately, in the form of one question about MONUSCO and one question about the DRC government. Because MONUSCO's Force Intervention Brigade carries out active armed interventions in support of the Congolese government, they are considered a belligerent in the conflict. However, perceptions of MONUSCO differed drastically from perceptions of the government, as discussed below.

4.3.2.3 ANSA knowledge

ANSA representatives displayed a range of degrees of familiarity with the humanitarian principles, which roughly correlated with the sophistication that ANSA displayed. One ANSA representative—who described a relatively advanced set of internal structures and codes of conduct that encouraged members to follow IHL—noted that his group had been trained on the humanitarian principles by the ICRC. Another ANSA named no such internal structures and displayed little formal knowledge of the principles. And two ANSAs surveyed claimed to be familiar with the humanitarian principles but stopped short of naming or discussing them explicitly, which perhaps indicates that they did not possess a significant command of the principles.[32] It should however be noted that all four ANSAs surveyed had previously been in contact with Geneva Call, and several of them explicitly mentioned that the bulk of their knowledge of IHL and of the humanitarian principles came from training that Geneva Call had conducted.

4.3.3 Scenario testing

As laid out above, the interviews of ANSA representatives and community members/leaders included questions on hypothetical scenarios of violations of the humanitarian principles. The scenarios described situations that were likely to occur in the course of humanitarian interventions and were presented as a narrative of events only—i.e., the interviewer did not define the motivations or reasoning behind the hypothetical acts, merely the acts themselves. This was to assess the motivations that interviewees who were community members would ascribe to acts taken by NGOs.

In general, community members—even those who had never had any formal training on the humanitarian principles—were able to give nuanced answers about poten-

Finding: ANSAs' and communities' understanding of humanitarian principles

The concepts of neutrality, impartiality, and independence matter deeply to communities and ANSAs, although they typically framed their concerns in a grounded, outcomes-oriented manner instead of as a discussion of abstract principles or normative frameworks. Community members were especially able to give nuanced answers on questions related to the humanitarian principles.

tial violations of neutrality, impartiality, and independence. Community members and leaders gave differing answers on the reputational impact of principle violations, indicating that the interpretation of specific acts may differ from place to place or from person to person. Typically, community members' answers were articulated in grounded, outcomes-oriented ways, with community members likely to discuss the concrete outcomes (or lack thereof) of a principle violation. Allegiance to "principles" or "rules" did not factor much into community members' answers; they focused more on concrete outcomes or consequences.

The concepts (and especially questions concerning independence of NGO agencies) were heavily filtered through communities' experiences. Different communities gave different answers, and their justifications for those answers usually drew on past experiences with the UN or NGO systems and the distinct takeaways from those

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32. ANSAs consistently attempted to signal familiarity with, and openness to, the NGO system; ANSAs, NGO representatives, and community members all stressed that ANSAs encourage the presence of NGOs in their territory. Thus, there is some incentive for an ANSA representative to attempt to signal familiarity with the humanitarian principles, even if he or she does not actually know them. Further discussion of this dynamic can be found in section 4.5.

experiences. Community members were typically happy to discuss the reasons behind the answers that they gave and did not shy away from prescribing courses of action for NGOs.

Surprisingly, ANSAs were typically less strident and more accepting of potential violations of principles.

4.3.3.1 Neutrality

The scenario used to test reactions to neutrality violations was as follows: "An NGO arrives in the DRC to do projects but refuses to work in areas controlled by ANSAs. The NGO only helps communities in areas controlled by the government." Interviewees were then asked to elaborate on the potential consequences that such a course of action could hold for that NGO.

This scenario elicited a range of reactions. Two thirds of community leaders, and 50% of the focus groups (five out of ten), agreed that this was a poor course of action for the NGO to take, and would have negative consequences. Some community leaders suggested that this would be tantamount to "abandoning," or discriminating against, the population of ANSA-controlled zones. Other community members simply acknowledged the reality of the situation and noted that many NGOs lacked either the capacity or the willingness to operate in ANSA-controlled zones, but did not suggest that the NGO was worthy of blame for its failure. One respondent noted that it was acceptable if an NGO felt that they could not work in ANSA-controlled areas, but that the NGO should at least admit the reasons behind its choice to avoid those zones. And one respondent simply noted that NGOs in government-controlled areas often put pressure on the FARDC to behave well towards civilians; by the same logic, he said, NGO presence could have the same effect on ANSAs.

ANSA representatives did not react strongly to this scenario, perhaps because they are accustomed to being avoided by NGOs.

They typically stated that NGOs would be welcomed in their areas of influence but held no particular grudge against those NGOs who avoided them. Two ANSAs made certain to underline that they had no conflict with the government of the DRC.

4.3.3.2. Impartiality

This question was framed in ethnic terms. Interviewers stated: "An NGO arrives in your area, but their projects only assist members of one ethnic community and ignore people of other ethnicities," and asked what the impact of such a course of action might be. As a follow-up, interviewers asked: "An NGO works only with IDPs, who are of a different ethnic group than the rest of the population. The NGO does not work with non-IDPs. What effects does this have for the NGO?"

Community members and leaders were typically the most categorical in their responses to this question. Only one of 17 community leaders interviewed did not name this as a problem; focus groups with community members were likewise nearly unanimous in their condemnation of ethnic favouritism. Community members were very unlikely to view this as an accident. And despite the fact that interviewers did not specifically ask about violence, five of the community leaders interviewed and 50% of the focus groups noted that ethnic favouritism could lead to a breakout of fighting—either within the community or against the NGO in question. One community elder, when asked to respond to this scenario, simply lowered his gaze to the ground and whispered *"hakuna Amani"*, which translates into "no peace".

After ascribing a positive motivation to the NGO in this instance through the follow-up question (making it explicit that the NGO was motivated by a desire to help the most vulnerable members of a community, who simply happened to all be of the same ethnic group), interviewees were slightly less harsh but still unlikely to relent. Half of those surveyed stated that such a course

of action would still be unacceptable; most of the rest cautioned that the NGO would have to be extremely proactive in communicating to the community that their choice of beneficiaries was not the result of ethnic discrimination.[33]

Again, however, ANSA respondents seemed not to care as much as community members did. In fact, three of the four ANSAs surveyed found a way to redefine the scenario in a manner that would be favourable to NGOs. One ANSA representative stated that, in such a situation, he would assume that the members of the favoured ethnic group were simply needier than the rest of the community (and he gave this answer before the interviewer asked the follow-up question that contained that exact scenario). Another ANSA representative—from an ANSA that attempted to portray itself as a bulwark against Rwandan "invaders"—stated that ethnic favouritism would be acceptable as long as the NGO was helping vulnerable Congolese ethnic groups. Implicit in his response was the suggestion that assistance to Rwandophone ethnic groups (sometimes accused of being "non-Congolese") would not be acceptable.

4.3.3.3 Independence

This scenario was given in two parts. First, community members were asked: "An NGO arrives in your area, who receives directions and finance from MONUSCO. What is the impact on the NGO?" Then, the question was repeated, but with "MONUSCO" replaced by "the Congolese government."

Responses to the question on MONUSCO had a broad range and depended much more on the community's individual experience with MONUSCO than on the category that MONUSCO held of being a "belligerent" in the armed conflict. Over 50% of individual interviewees and 100% of focus groups responded that a MONUSCO-funded or –directed project would be accepted in their communities, though some named conditions (primarily, the necessity of allegiance to other principles

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33. Interviewers added this question specifically because this scenario had been described by several NGOs: that IDPs were typically the most vulnerable members of a community but, at times, belonged to a different ethnic group than that of the rest of the community. NGOs in this situation, then, should be extremely careful about how they proceed, and may wish to consider supplementary projects with other community members as a means to increase their credibility.

of neutrality and impartiality). However, some views were more nuanced. Some community members displayed a level of distrust towards MONUSCO; one noted that he would trust MONUSCO to protect NGOs but not the general population. Another local leader stated that MONUSCO was seen as neutral in intercommunal conflict, but not in conflict between the FARDC and an ANSA. Other responses took a more conspiratorial bent, accusing MONUS-CO of actively collaborating with ANSAs. However, the clear difference between favourable and unfavourable answers was past experience; those communities that had had positive experiences with MONUS-CO (for example, through interactions with MONUSCO funding bodies or civilian offices such as the Stabilization Support Unit) generally indicated an openness to MONUSCO involvement, while those who had had negative experiences (of, for example, a lack of protection from peacekeepers during armed conflict) were far more sceptical. These findings are telling; NGO respondents named a certain amount of anxiety at the prospect of being identified as partners of MONUSCO and expressed concern that MONUSCO partners (especially local implementing partners) were mixing mandates by taking on both stabilization- and humanitarian-oriented projects. However, community members (and ANSAs) tended not to attach much significance to MONUSCO affiliation. These particular fears may be unfounded—especially since community members were often unable to distinguish between MONUSCO and the various UN agencies anyway.

The question on government support and financing drew odd responses. Generally, community members asked during focus group discussions voiced no serious concerns with government-backed projects, especially if those projects remained neutral and impartial. Community leaders (asked in individual interviews) gave a very different picture, however, with a clear majority expressing distrust of the government and naming concerns of corruption, electoral manipulation, and collaboration

with ANSAs. It is possible that community members in focus groups did not want to be seen as publicly speaking against the government; alternately, perhaps community leaders were more aware of past government abuses and keener to avoid them in the future.

Surprisingly, ANSAs voiced very few concerns with the potential of MONUSCO or government involvement in NGO projects. One ANSA representative noted that his forces would likely avoid areas where MONUSCO peacekeepers were present, to avoid conflict, but that MONUSCO support to NGOs was acceptable. Another noted that MONUSCO support to NGOs was fine, as long as those NGOs maintained the other humanitarian principles. Likewise, none of the groups voiced a problem with government involvement in NGO projects; several ANSAs took the opportunity to note that they did not view themselves as being in opposition to the government and would happily accept more state presence in their areas.

4.4. Familiarity of communities and ANSAs with the international system

In addition to questions on the humanitarian principles, community members were asked about their familiarity with the different organizations and agencies that made up the international system. Interviewees were asked to name the NGOs active in their area and asked if they could identify the differences between NGO employees, MONUSCO "Black UN" staff and vehicles, and the staff and vehicles of "Blue UN" agencies such as UNICEF or WFP.[34]

Again, formal community knowledge in this area was low; no community members or leaders reported having been trained about differences, although some individuals in regions with high levels of UN/NGO intervention had learned the differences themselves. Communities were typically quite knowledgeable about the projects and activities of UN or NGO actors in their vicinity and could discuss the strengths and weaknesses of individ-

ual projects and actors. However, their knowledge stopped there. Even relatively well-educated community members were surprised to learn of the formal differences between, for example, MONUSCO and UNICEF. Only one respondent (the president of the local civil society coordination structure in an area with heavy UN/NGO presence) was able to articulate the differences between MONUSCO and the various UN agencies.

Perceptions and the principles

Some of the complaints against NGOs corresponded directly with (perceived) violations of the humanitarian principles, even though community members rarely framed them in those terms. For example:

Neutrality: Community leaders often had concerns that NGOs were lending support to ANSAs, either by providing them with food or goods or by hiring their members as project staff.

Impartiality: Community members and leaders noted that NGOs sometimes seemed biased for or against certain ethnic groups in their interventions—which was consistently named as a factor that could lead to violence or social strife.

Independence: Communities had few independence-related concerns, although they typically showed an extra level of skepticism towards those projects that involved government staff, viewing them as more likely to be corrupt.

Humanity: Community members occasionally voiced a belief that NGO employed were present only to make a salary—which runs contrary to the principle that NGO projects should take as their greatest priority the preservation of human life, health, and dignity.

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34. The Black UN/Blue UN labels refer to the vehicles driven by Department of Peacekeeping Operations and UN agency staff, respectively. DPKO vehicles have the letters "UN" painted on their sides in black, while UN agency vehicles display the same letters in blue.

ANSA representatives were somewhat more conversant in these differences, although for the most part they did not go into detail. ANSA representatives were, for the most part, straightforward about acknowledging that the rank-and-file soldiers in their various groups were unlikely to understand the differences between the various international actors, underlining that a significant portion of their soldiers are illiterate.

4.5. Perception of NGOs by communities

Communities had a range of perceptions of NGOs, though three stood out: communities most often perceived NGOs as valuable economic actors, mediocre service providers, or untrusted outsiders.

The bulk of communities' concerns related to NGOs as economic actors and focused more on the economic benefits that NGO presence brings. In fact, for all but the most destitute interviewees (for example, IDPs living in a camp that had not received NGO support in roughly two years) the economic benefits of employment and commerce were more pressing concerns than the actual projects of NGOs.

Finding: NGOs as economic actors

Community members and ANSAs tended to **perceive NGOs as important economic actors,** and most of their voiced concerns centered around provision of jobs for local communities and financing for local organizations. Community members were only secondarily focused on the content and execution of NGO projects, and even mentioned that the communities' situation was even worsened by projects.

To illustrate, while communities often made requests for further NGO presence in their areas, they rarely focused on the projects that NGOs carry out. Instead, their requests focused on the economic benefits of permanent NGO presence—for example, jobs for community members, rents for landlords, or money injected into local businesses like bars and restaurants. The benefits of NGO *presence,* therefore, were conceived of much differently than the benefits of NGO *projects,* and the former was much more highly weighted than the latter. In fact, some community members noted that the main factor driving ANSA recruitment and criminality in their areas was the lack of employment prospects for young people—and noted that the best way for NGOs to prevent violence in an area was to provide jobs for those who might otherwise be tempted to resort to violence for their livelihoods.

Of course, the benefits of NGO projects were a topic of discussion as well; here, however, the sentiments of community members were more mixed. While some community members reported that NGO projects had been helpful and met their needs, the majority of those interviewed stated that NGOs rarely met the priority needs of the community and—occasionally—worsened the situation through their presence.[35] Several community members also voiced a level of "NGO fatigue"—noting that, more than 20 years into the protracted crisis in the eastern DRC, NGOs had not been able to put an end to the conflict.[36] That said, most communities indicated that they would continue to accept services and goods from NGOs (and, generally, encouraged further NGO presence) even if those services were not always what they felt they most needed.

Finally, communities sometimes expressed a mistrust of NGOs, accusing them of sometimes supporting ANSAs, discriminating along ethnic lines, and corruption. While this category of complaint was the least common, it is also potentially the

Finding: suspicions against NGOs

Communities and ANSAs alike tend to entertain **suspicion against NGOs,** in particular in terms of support to ANSAs, in the case of communities, and spying, in case of the ANSAs: *"NGOs have the right to meet with whoever they want; but don't spread information about us to our enemies!"*

most serious; ethnic discrimination, in particular, was named as a factor that could contribute to serious social strife. Some interviewees (both community members and NGO staff) gave concrete examples of financial corruption that had occurred; one person shared a story of a "food for work" program that an NGO had run, in which the staff members responsible for the program had required kickbacks from community members who had been selected as workers. Others named NGO complicity in corruption regarding local authorities or ANSAs; community members repeatedly named the practice of hiring ANSA members or family members of local authorities as project staff, as a means of providing financial incentives to those actors. In part because of concerns such as these, multiple community leaders stressed the delicate nature of access negotiations with ANSAs. Community leaders noted that, while negotiation and dialogue with ANSAs was necessary and helpful, onlookers could easily arrive at the wrong idea of the content of those interactions. With this in mind, interviewees advised NGOs to inform community members and leaders of their interactions with ANSAs, to prevent misinformation and rumour formation.

Community members accused NGOs of not particularly caring about durable solutions.

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35. Specifically, multiple members of one community named a road rehabilitation project that had recently taken place in their area, which had left the road in worse condition than when it had begun. The NGO in question had also relied on labor from local communities and had not yet paid those laborers at the time of the interview.

36. This finding suggests that community members still have a level of disconnect between the various mandates of different organizations. Humanitarian NGOs are not tasked with ending conflict, but rather with meeting basic needs in a crisis context. However, community members did not seem to make that distinction.

More than one community member accused NGOs of "only being here for a salary" and not being invested in meaningful solutions.

Perhaps most concerning (for the NGO sector as a whole) was the tendency of some community members to perceive individual organizations as representing "NGOs" as a whole. One ANSA represent-ative explicitly noted that infractions by one NGO would impact negatively on the reputations of other organizations; other interviewees—especially community mem-bers—did not make the connection explicit but would simply refer to "NGOs" as a group without differentiating between different actors. While this phenomenon was by no means universal—indeed, community members usually had a good command of the differences between the organizations with whom they interacted regularly—it does indicate that, in the eyes of at least some actors, misbehaviour by one NGO

Finding: ANSAs encouraging NGO presence

ANSAs went out of their way to encourage NGO presence in the areas under their control. In con-trast with past studies, ANSAs were reluctant to call attention to specific failures of NGOs. ANSAs are typically well-networked with local politicians and commercial networks, they may have strong incentives to attract as many NGOs as possible.

can often have spill over effects onto the reputations of others.

4.7. Perception of NGOs by ANSAs

ANSAs seemed to perceive NGOs as being helpful and wanted. Certainly, ANSAs went out of their way to encourage NGO presence in the areas under their control. In contrast with past studies, ANSAs were reluctant to call attention to specific failures of NGOs.[37]

ANSAs surveyed for this study did their best to appear welcoming towards NGOs and attempted to portray themselves as legitimate actors with respectable political agendas. Two of the ANSAs stated that their *raison d'être* was the protection of civilian groups that they felt a connection to—generally, civilians of the same ethnic group as the ANSA—and that they are ready to disarm whenever the protection of these groups by force no longer was required. Three of the four ANSAs de-clared their desire to learn more about international humanitarian law in regard to humanitarian access.

Three of the four ANSAs interviewed indi-cated their willingness to provide security arrangements with NGOs operating in their zones (contingent, however, on communi-cation from those NGOs).[38] Anecdotally at least, ANSAs follow through on their security offers in at least some occasions; NGO representatives named two separate incidents in which ANSAs had deployed their own forces to attempt to secure the safe release of NGO staff who had been kidnapped.

As discussed above, ANSAs were the least likely to object to any of the scenarios involving violations of humanitarian prin-ciples and were likely to attempt to justify those violations—inventing explanations

for those violations that did not reflect poorly on the hypothetical NGO. Although ANSAs did name several examples of un-acceptable behaviour by NGOs—financial corruption, information mismanagement, and support to rival ANSAs were three such examples—on the whole they were more likely than community members to forgive violations or invent justifications to help NGOs save face.[39] As stated above, ANSA representatives were typically the most eager to signal their willingness to host NGOs, and the most willing to forgive or justify principles violations. Although the research from this study cannot conclusively identify the reasons for this, there are a few possible explanations.

First, ANSAs may simply conceive of con-cepts like neutrality in ways that are dif-ferent from the conceptions of civilian community members. In interviews, ANSA representatives underlined the importance of secrecy and information management; one ANSA official noted that NGOs *"have the right to meet with whoever they want; but don't spread information about us to our enemies!"* Another ANSA stated that their main concern with NGO presence was the potential for spies or "enemies" to infiltrate the ranks of NGOs and gain access to ANSA territory. While ANSAs may not be much concerned by NGOs who avoid them, they displayed concerns about the information management of those NGOs who did access their territories.

How to interpret these results?[40] As stated previously, multiple interviewees noted that the spouses and dependents of ANSAs often received aid from NGOs, and so ANSA commanders may have direct incentives to facilitate NGO access. This was a point made by community members and NGO staff alike.[41] Second, since ANSAs are typically well-networked with local politicians and

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37. See, for example: Brabant and Vogel, (2014). Brabant and Vogel note that, while ANSAs typically encouraged NGO presence, they also had specific criticisms of NGO projects, corruption, and recruitment methods. ANSAs surveyed for this study likewise encouraged NGO presence but, for the most part, shied away from offering specific criticisms of NGOs. Instead, they offered general advice about what actions to avoid or correct.

38. One ANSA went so far as to post visible guards along the route that the survey team took to exit the area—signaling their willingness and capacity to provide safe passage for NGOs.

39. ANSAs concerns about information management, corruption, and profiteering mirrored findings from other, similar studies of ANSA behavior in other conflict zones. See, for example, Ashley Jackson, "Negotiating perceptions: Al-Shabaab and Taliban views of aid agencies." Humanitarian Policy Group (2014).

commercial networks, they may have strong incentives to attract as many NGOs as possible. Further, since ANSAs are susceptible to be influenced by local civilian authorities, they may be incentivized to facilitate NGO access to gain more standing with those authorities. ANSAs may want to signal their legitimacy—both with local communities and with international interveners—and encouraging NGO presence may be one way of building credibility. But this, on its own, does not explain the extent to which ANSAs were willing to go out of their way to welcome NGOs. Although a conclusive answer to this question is outside of the purview of this study, it may be that ANSAs have a significant interest in signalling their credibility and legitimacy both to NGOs and the UN (and thus decreasing the likelihood of sanctions or unwanted attention from MONUSCO peacekeepers) but also to the communities and authorities in the areas in which they operate.[42] Since many ANSAs work in partnership with local authorities, they may have a strong desire to establish themselves as "team players" and be seen as bringing in shipments of food and supplies.

In sum, ANSAs seemed to view NGOs as helpful interveners, although they did not articulate clear reasons behind their view. With the exception of specific neutrality violations, ANSAs seemed less concerned than community members or local leaders about violations of the humanitarian principles.

4.8 ANSAs' internal structures and formal knowledge of IHL

 All of the ANSAs surveyed had some level of awareness of their own duties towards civilian populations, although certain ANSAs were more sophisticated in that conception than others. Three of the four groups acknowledged an explicit duty to facilitate NGO access for the benefit of civilians, although these obligations were not always framed in terms of IHL.

In terms of internal structures, three of the four ANSAs surveyed noted that they had an internal code of conduct that governed the behaviour of their members.[43] The same three noted the existence of designated contact points or internal structures for coordinating with NGOs, suggesting a certain amount of familiarity with the NGO system.

One ANSA surveyed had a relatively advanced internal structure for dissemination of its code of conduct, which included (or so claimed the ANSA representative) IHL education for each ANSA member.

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40. NGO representatives and community leaders generally characterized ANSAs as being eminently pragmatic; with the exception of certain "extreme" groups or individuals (such as the Lord's Resistance Army or the former Mai Mai commander Ntabo Ntaberi Cheka) respondents—both community leaders and NGO representatives—generally felt that ANSAs could be relied upon to act in their own pragmatic best interests. It is assumed for the purposes of this analysis that ANSAs would only accept NGO presence if such presence were beneficial to them in some way.

41. Further, since ANSA members rarely wear formal uniforms, they may benefit from aid from NGOs who simply do not know that they are members of a belligerent group. One ANSA commander interviewed for this study had a newly-constructed outdoor latrine, built by an international NGO, just outside his home.

42. Previous studies on ANSA behavior support this proposition, noting that external legitimacy is often highly sought-after by ANSAs with political goals or agendas. Reyko Huang, "Rebel Diplomacy in Civil War." International Security, Volume 40, Number 4, Spring 2016, pp. 89-126.

43. Internal codes of conduct are not rare among ANSAs. The codes of conduct of several ANSAs in the eastern DRC, including the Alliance des Patriotes pour un Congo Libre et Souverain (APCLS) and the Nduma Defence of Congo-Rénové (NDC-R), may be found at www.theirwords.org.

5. Key takeaways and recommendations

5.1 Key Takeaways

In terms of the perception of NGOs, several distinct patterns emerged. Communities and ANSAs typically viewed NGOs both as important economic actors and also as distrusted and inscrutable outsiders. Both of these views were tinged with expressions of misunderstanding and confusion about NGO mandates and priorities, particularly around topics that were not directly related to local project implementation. In spite of some expressions of distrust, however, communities and ANSAs both encouraged further NGO presence. NGOs and communities repeatedly noted that the presence of international staff was helpful for acceptance; internationals are perceived as being more impartial and, due to being an "outsider" to the local society, being better-placed to withstand the pressures that local authorities and ANSAs can bring to bear on project staff, and thus being less susceptible to corruption.

Regarding humanitarian principles, a key takeaway is that the principles matter to ANSAs and communities, not in terms of the legal or philosophical framework they represent but in terms of the local outcomes that they facilitate. Most importantly, views and understandings of neutrality, impartiality, and independence are highly situated in individual and collective experience—and, thus, will be different from site to site.

In terms of security and access, community acceptance emerged as a key factor. Because of the high level of influence that communities have over both ANSAs—especially those ANSAs with whom they share ethnic ties—and criminal actors, maintaining a good reputation among community members is a key factor in gaining acceptance and security. Crucially, this reputation management needs to occur both with local leaders and influential figures, but also with the general population.

Finally, it should be underlined that perceptions of NGOs and UN agencies are deeply situational and will vary among different communities and ANSAs. The lived experience of an individual or a community is the defining factor in determining that actor's perceptions. Most importantly, those attitudes and perceptions will be nearly impossible to assess without direct interaction and dialogue.

5.2 Recommendations for NGOs

Strikingly, few of the recommendations in this section directly concern the act of negotiation. Although capacity around negotiation and interpersonal diplomacy was mentioned as a helpful factor, the majority of the recommendations here are geared towards improving the real and perceived credibility of aid actors—or, stated differently, in performing and communicating activities and mindsets that increase trust and credibility among community members.

Generally, the themes that emerged concerned the necessity of taking a situated approach to access, foregrounding communication and understanding of local structures and perspectives, and tailoring approaches to the specific felt needs of the community. The themes discussed here assume that community acceptance is the key starting point to access, although they include recommendations for direct contact with ANSAs and proactive strategies against criminal groups.[44]

Some recommendations presented in this report constitute best practices in the humanitarian field, known to any humanitarian, development or peacebuilding actor seeking to provide qualitative assistance and services, and thus are not new in their kind. However, the fact that such recommendations emanate from this study shows that such practices are currently not fully applied in the North Kivu context main, and that these best practices remain relevant.

The recommendations here are loosely grouped into three categories: analysis, communication, and programming.

5.2.1 Analysis

A solid analysis of local dynamics, networks, and needs forms the basis of any acceptance strategy. NGOs wanting to improve their access and acceptance should develop policies and guidelines to:

1.   Carry out analyses of the structures of power and influence in the areas in which they work, considering the heavily interlocking networks between

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44. Community members and NGO representatives noted other security strategies that could be helpful against criminals—internal information management, the varying of routes and routines, and transferring money through mobile networks like Mpesa or Airtel Money, for example—but, as these strategies concern security risk mitigation instead of negotiation, they are not discussed in depth here.

civilian/customary authorities, state security forces, and ANSAs. NGOs should bear in mind that, even in areas that are not formally administered by the Congolese state, ANSAs may at times be subordinate to civilian power structures (and especially those customary structures which share an ethnic identity with the ANSA in question).

2. Carry out inquiries into the level of understanding that community members have of the NGO/UN system, and the specific ways in which communities understand and interpret the concepts of neutrality, impartiality, and independence.

3. Endeavor to understand the capacity and internal narratives of ANSAs in the areas in which they work. If an ANSA self-identifies as, for example, a community self-defence force, it will be more open to negotiation and discussion with NGO employees who approach them with that understanding. Understanding the capacity of an ANSA (including its relative size, education levels of its leadership, and alliances or rivalries with other ANSAs) provides valuable information as well.[45]

4. Internally, NGOs should carry out an analysis of the social location of their different staff members and understand the particular strengths and weaknesses that international staff, national (but non-local) staff, and national local staff bring to the table. In general, international staff are less subjected to local social pressure (and are therefore perceived as being more impartial) than national staff and may be better placed to be the "bearers of bad news." Conversely, international staff lack local networks and language

skills. Local staff members have the strongest community networks but are also the most susceptible to social pressures. National non-local staff may be somewhere in the middle—with some community connections and networks, but a level of distance from local dynamics, yet still often perceived as susceptible to corruption.

5.2.2 Communication

Several veterans of NGO operations in the DRC noted that the most common error among NGOs is the failure to adequately communicate with communities. Building relationships and social capital is best done via face-to-face conversation with local leaders and community members—and may be the least-expensive and most-effective change that NGOs can make.

Specifically, NGOs should institute policies that encourage the following:

5. Take a "communication" approach—not a "compliance" approach—to their own obligations under international law and the humanitarian principles. In other words, it is not enough for NGOs to simply comply with obligations. NGOs should communicate their obligations of neutrality, impartiality, and independence (and their understanding and interpretation of those obligations) to communities, to clarify misunderstandings and to build trust and shared expectations.[46]

6. Communicate clearly about security concerns with ANSAs and communities. ANSAs may be willing to provide a secure environment for humanitarian action and thus improve access. Inform all actors that violence against NGOs inhibits their ability to provide services.

7. Stay proactive in identifying interactions that may look suspicious to outside observers and communicate the content of those interactions to actors who were not present. This is especially crucial in access negotiations with ANSAs; community members repeatedly stressed that access negotiations were acceptable (and necessary) but that community members can become suspicious of NGO-ANSA interactions. Proactive communication around contacts with ANSAs may help to allay suspicions and prevent the spread of rumours.

8. Communicate the functions and divisions of the broader NGO and UN systems to communities, to aid the ability of communities to understand and interact with those systems.

9. Convey the specifics of project goals to communities, and—crucially—allow local leaders and communities the opportunity to give input and guidance to projects.

10. Inform ANSAs of any contacts or communications with other ANSAs. If an NGO is discovered to be communicating with multiple ANSAs (especially rivals) then all actors may lose trust; if an NGO is forthcoming about their contacts and clarifies that they are for the purposes of access negotiations only, ANSAs will be more inspired to trust the NGO.

11. Develop ways to communicate the specific benefits of NGO projects to different actors, including those actors who do not directly benefit from those projects (for example, by reminding local elites that while they may not directly benefit from projects aimed at the most vulnerable, members of their community will).

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45. Brabant and Vogel offer a detailed breakdown of negotiation strategies with different types of ANSAs on pp. 20-22 of *In Their Eyes*.

46. This advice mirrors that of a similar report on humanitarian negotiation in Afghanistan and Somalia, in which the author stated: "It is not enough for aid agencies to simply claim to act impartially, neutrally and independently: they must be seen to behave accordingly and deliver high-quality, needs-driven programming." Jackson, "Negotiating Perceptions" p. 1.

5.2.3 Programming and capacity

The quality of programming emerged as the most immediately important factor for acceptance, access, and safety; simply put, communities are more likely to advocate in favour of those NGOs who they perceive as bringing credible and valuable services. In particular, NGOs should:

12. Involve community members and leaders in the planning and execution of projects, both to ensure that projects meet the community's priority needs, but also to improve access and build local economic capacity by providing jobs.

13. Train all staff, including drivers and security guards, on the humanitarian principles and the core values of the NGO. Since a disproportionate amount of contact with local communities happens through drivers and security guards, NGOs should ensure that those staff members receive the training that would permit them to represent the organization, and its projects, in a constructive way.

14. Train all staff—again, including drivers and guards—on interpersonal diplomacy and negotiation.

15. Codify guidelines and policies for access negotiations, especially for larger NGOs who may have multiple different staff members leading negotiations at different times.[47]

16. Develop a strategy for permanent presence in (or regular contact with) those communities who host NGO projects, to provide for updated needs analyses, communication, and relationship-building. If financial constraints preclude the presence of bases, NGOs can consider developing alternative strategies such as third-party independent monitoring, networks of "focal points" or local project committees comprised of community members or complaint mechanism such as a dedicated phone number.

17. Consider a mixed-teams approach that combines local staff, national non-local staff, and international staff.

18. Fulfil any obligations that have previously been communicated. Unmet promises may deeply damage the NGO's credibility.

5.3 Recommendations for donors

While donor organizations do not carry out front-line negotiations for access, they have a valuable opportunity to influence the policies of implementing partners. Donors should:

19. Fully fund the humanitarian response in the DRC, including providing adequate funding for security staff, permanent field presence and sufficient staff and time in order to repeatedly and consistently communicate with ANSAs and communities.

20. Encourage implementing partners to develop comprehensive plans and policies for access negotiations.

21. Encourage implementing partners to uphold humanitarian principles—and also to educate communities about humanitarian principles and allow opportunities for dialogue and feedback.

22. Consider relaxing restrictions that would reduce contact or negotiations between implementing partners and ANSAs.

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47. Multiple models and guides exist for developing a cohesive negotiation policy. Two examples are: *Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual*. Swiss Federal Department of Foreign Affairs (2014); and McHugh and Bessler, "Humanitarian Negotiations with Armed Groups: A Manual for Practitioners." UNOCHA (2006).

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Annexes

ANSA interview guide

ANSA NAME:

RESPONDENT NAME:

DATE:

PLACE:

Theme: knowledge/attitudes towards NGOs/UN:

1. Which NGOs active in your area? Describe their mission? Logo? Sector/type of work?

2. What types of humanitarian access are you familiar with? (Direct assistance x Camp management)

3. Generally, do you want NGOs to carry out interventions in your area?

4. Should an NGO contact you before beginning an intervention? Why or why not? What are the consequences of lack of contact?

5. If an NGO wanted to contact you for the first time, what would be the best way?

6. Do you have structures, policies or and instisutions (focal point) in place internally to facilitate contact with humanitarians? How that works?

7. Do individual soldiers recognize NGO in the field? Do they know and make the differences between NGOs, "blue UN", and "black UN"? Can you share your understanding of those differences?

Theme: principles:

1. Do you/your soldiers know the humanitarian principles?

2. Do you find that NGOs comply with the humanitarian principles of neutrality, impartiality, and independence?

    A. If an NGO were to work only in areas controlled by the government, how would that affect their reputation among community members in your area?

    B. If an NGO were to work only with members of one particular ethnic group, how would that affect their reputation among community members in your area?

    C. If an NGO were seen to be taking direction from monusco in its projects, how would that affect their reputation? What about direction from the army or government? What about direction from other ANSAs?

3. Are there other obligations, besides these principles, that NGOs must uphold to ensure access or safety?

4. How do you understand humanitarian access? (Access to territory, area x Access to beneficiaries)

Theme: obligations:

1. Are you familiar with international laws on facilitating access to NGOs?

2. Are you aware of any other obligations that your group has towards NGOs?

3. Are you aware of any obligations that your group has towards civilians, under international law or otherwise?

4. Do you have internal policies that reflect the ihl rules? Do you have procedures, institutions for educating your members about those laws?

5. Do you have an internal (written) system of sanctions for attacks on NGOs? Has it been applied in the past?

Theme: past incidents:

1. Have you had access negotiations with NGOs before? Did they proceed well?

2. What kind of relationship do you prefer with NGOs—telephone contacts? Face to face contacts? Written agreements?

3. Has a negotiation ever failed or broken down? Why?

4. Have you ever banned or restricted an NGO from your area? Why?

5. Have NGOs ever paid you taxes or access fees in order to access your area?

6. How do you evaluate the quality of NGO programs/work? How does it affect attitudes towards NGOs? Is there anything you would reproach them ?

7. Do you prefer to interact with national or international staff from an NGO? Why? Does one or the other do a better job of up-holding the principles?

8. What else negatively (or positively) impacts attitudes towards humanitarian NGOs?

Theme: safety of access:

1. Where there any recent security incidents touching NGOs? What kind? Why do you think that happened? What do you think about it ? Avez-vous reagi ? Comment ?

2. Are there "criminal groups" in the area? What precautions to take? Does communication with armed groups increase safety from criminal groups?

3. If NGOs coordinated with you, would that help with safety concerns with criminal groups?

4. If NGOs upheld the humanitarian principles, would that increase safety?

Focus group discussion guide

LOCATION:
....

RESPONDENT POPULATION:
....

NUMBER OF WOMEN:
....

NUMBER OF MEN:
....

TOTAL NUMBER OF PARTICIPANTS:
....

DATE:
....

1. In general, over the past two years, have the activities of aid/development organizations gotten better or worse? How? Why do you think this is true?

2. To what extent do NGOs interact with the community? Are there ways they should interact more/less/differently?

3. Have you been sensitized on the differences between NGOs, monusco, and UN agencies?

4. Have you been sensitized on the humanitarian principles?

    A. If an NGO were to work only in areas controlled by the government, how would that affect their reputation among community members in [area]?

    B. If an NGO were to work only with members of one particular ethnic group, how would that affect their reputation among community members in [area]?

    C. If an NGO were seen to be taking direction from monusco in its projects, how would that affect their reputation? What about direction from the army or government?

5. Are there other principles that NGOs should follow, or things that NGOs should do or not do in communities?

6. Where there any recent security incidents touching NGOs? What kind? Why do you think that happened? What do you think about it ?

Community leaders interview guide

Guide to collecting data from civil society actors

ACTOR/HEAD OF LOCAL ORGANISATION (LOCATION, GROUP, CHIEFDOMS/SECTORS):

RESPONDENT NAME:

PLACE/VILLAGE:

DATE:

1. Which NGOs are active in your area??

2. In general, over the past two years, have the activities of aid/development organizations gotten better or worse? Why do you think this is the case?

3. How do ngos interact with the community in your area?

4. As the head of a local authority/community, how do you perceive the work of ngos in your area?

5. In your opinion, are there particular aspects that NGOs should take into consideration to improve their work in your area? If yes, what are they?

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6. In the last six months, have there been security incidents affecting humanitarians (ngos, UN agencies) in your area? If yes, what type of incidents?

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6.5 How do you explain this?

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7. Do you think that the way that NGOs work and/or interact with the NGO community can have an impact on their security in your area? If yes, how?

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8. In general, are you aware of the difference between NGOs, the "blue" united nations and the "black" united nations? Do communities distinguish between the activities of other NGOs?

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9. Have you or the community been trained on humanitarian principles?

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10. Examples of main violations:

A. If an NGO works only in government-controlled areas, what impact would this have on its reputation among community members from the (region)?

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B. If an NGO were to work only with members of one particular ethnic group, how would that affect their reputation among community members in [area]?

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C. If an NGO was seen to be cooperating with or even taking direction from Monusco in its projects, how would that affect their reputation? What about direction from the army or government?

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11. Are there other principles that NGOs should follow or do you have other advice on what they should or should not do to effectively carry out their activities in your area?

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12. What community pressures do you believe exist regarding local/national NGO staff? If an NGO staff member sets a rule or principal after being pressured to do so, how would the community perceive this?

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13. Are there NGOs who work in the areas controlled by armed groups? If so, what do you think of this practice? (Please explain why)

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14. What advice would you give NGOs who wish to improve their relationship with all stakeholders, even armed groups, in order to reach their beneficiaries?

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