SECURE ACCESS IN VOLATILE ENVIRONMENTS

SAVE

Humanitarian access negotiations with non-state armed groups

INTERNAL GUIDANCE GAPS AND EMERGING GOOD PRACTICE

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Executive Summary

This paper seeks to provide an overview of the operational challenges and emerging good practices in negotiations on humanitarian access with non-state armed groups (NSAGs) during humanitarian responses in high-risk countries. It draws primarily on research conducted for Secure Access in Volatile Environments (SAVE), a three-year research programme (2013–2016) exploring the question of how to deliver a high-quality[1] humanitarian response amid high levels of insecurity.[2] The research involved extensive fieldwork in four of the most dangerous aid settings during those three years: Afghanistan, South Central Somalia, South Sudan and Syria.[3] Interviews with senior managers of key national and international aid organisations in these countries constitute the main evidence base for this research. The interviews are complemented by the results of an online multilingual survey of 242 practitioners working in the four countries.

In each of the four cases of civil conflict, the humanitarian presence in NSAG-controlled areas was significantly smaller than in government-held areas (Stoddard and Jillani, 2016a), primarily due to the perceived security risks of working in NSAG areas, and not to their humanitarian needs. This was the case partly because a large majority of humanitarian agencies failed to engage strategically with both state and non-state stakeholders in high-need areas,[4] and donors tended to side with state authorities and/or oppose NSAGs. Contrary to common assumptions, the research also suggested that the following factors are unimportant or not strong correlates of whether humanitarians manage to negotiate access with NSAGs: the number of NSAGs and their complexity; an NSAG's attitude towards humanitarians; an NSAG's internal coherence; and interference by the host government.

Many of the field staff interviewed and surveyed for this study expressed uncertainty about whether such contact with NSAGs was even allowed. While examples of good practice were found in each country, especially among the International Committee of the Red Cross (ICRC) and a handful of organisations accustomed to working in conflict environments, these examples tended not to reflect a consistent organisational approach. Indeed, organisational capacities for negotiating access with NSAGs were generally sub-optimal. In many country contexts, the humanitarian communities and their strategic response plans failed to uphold the humanitarian principles of impartiality, i.e. they were unable to respond to needs regardless of the group in control of the territory. The operational guidance and policies of organisations did not cover many of the problems repeatedly encountered during negotiations.

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[1] In accordance with the definition presented in the main SAVE report (Haver and Carter, 2016), this paper conceptualises high-quality aid as aid that "is relevant and addresses priority needs; is timely; avoids duplication with other actors; preserves the dignity of recipients; and minimises the potential of aid to do harm."

[2] SAVE focused on three areas: presence and coverage (see Stoddard and Jillani, 2016a); access and quality (see Haver and Carter, 2016); and accountability and learning (see Steets et al., 2016). For more on the methodology of the research informing this paper, see Haver and Carter, 2016.

[3] The original selection of country case studies in 2013 was made using the Aid Worker Safety Database, which identifies countries with the highest number of security incidents suffered by aid workers, relative to their number in the field.

[4] There is a dearth of data on humanitarian needs in areas controlled by armed opposition groups. However, given the severity and scale of armed conflict in these areas, the lack of basic development and, and humanitarian responses that are often reduced in scale, such areas presumably have disproportionately low humanitarian indicators.

This resource paper first reviews some of the main guidance documents and existing studies about current practices in access negotiations (Sections 2 and 3). Next, it draws on research conducted in the four countries to outline some of the current guidance gaps and to suggest potential solutions where possible. In particular, the paper examines: direct versus indirect negotiations (Section 4); negotiations with multiple NSAGs (Section 5); the inter-agency aspects of access negotiations (Section 6); and internal policies and guidance on negotiations (Section 7). This is not an exhaustive list, but rather a selection of the most pressing challenges faced by the organisations interviewed. The main SAVE report on access and quality elaborates on other topics, such as the political contexts in which these negotiations take place (Haver and Carter, 2016). Further discussion on situations in which strategic compromises with NSAGs might be acceptable and useful can be found in the resource paper on decision-making in high-risk environments (Haver, 2016).

In the four high-risk countries examined, humanitarian practitioners were divided over the question of whether negotiating with NSAGs for humanitarian access is (a) acceptable or not, and (b) authorised or not. If it is indeed acceptable and authorised, what is the most effective way to conduct a negotiation? Many staff on the frontlines were unsure about whether their organisations would permit them to negotiate, and support or protect them to that end. At times, organisations' senior management created an environment of intentional obscurity about internal policies and directives on the topic, due to the sensitive nature of the task and particularly to avoid running afoul of donor governments' political concerns and counter-terrorism legislation. Promoting or preserving the political and operational independence of humanitarians is key to addressing not only the problems highlighted above, but also a more tangible gap: the lack of strategic management of humanitarian access negotiations with NSAGs. This paper presents a functional checklist for the development of internal policy on this topic (Section 7).

Local staff living in an area in which an NSAG operates – as opposed to international staff or national staff from other parts of the country – were the ones who most frequently negotiated for access. However, they were also the most unsure if negotiations were permitted and were often given the least training, mentoring and guidance. Very few organisations negotiated directly for humanitarian access with NSAGs. Rather, the majority of such negotiations were conducted indirectly, through community elders or informal government or justice structures. There appeared to be little reflection on whether these are the most appropriate means for negotiating access, as well as few attempts to explore options for direct negotiations. This paper cannot offer unequivocal proof that direct negotiations are generally more effective, but according to peer-ranking exercises, the vast majority of organisations with relatively good access in the SAVE country contexts were also amongst the minority that negotiated directly. Nonetheless, indirect negotiation has its uses, and given the dearth of guidance on indirect negotiations, this paper outlines the relative merits and risks of indirect negotiations in order to support the decision-making and strategy of field practitioners.

Negotiating access grew in complexity when agencies were managing simultaneous relationships with multiple NSAGs. It was further complicated by having to deal with other humanitarian agencies that may have separate lines of dialogue with or positions on NSAGs. The most pragmatic course of action in dealing with multiple NSAGs depended on the behaviours and interests of the NSAG in question and varied by country, but tensions inhibiting inter-agency access negotiations were recurrent throughout, despite attempts by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and Humanitarian Coordinators to centralise these functions in some contexts. However, many practitioners affirmed that bilateral relations would still be necessary even if inter-agency or collective negotiations proved effective.

Inter-agency initiatives were seen as helpful for setting broad ground rules or engaging at senior levels, but they were hampered by the political and operational limitations of the UN. Furthermore, they were not seen as an effective substitute for bilateral relations with key stakeholders at the local level. It was unclear whether UN agencies in most contexts, despite their country-wide mandates, had the capacity to lead or support actual negotiations, in terms of context analysis, tactical planning and scenario design. But ad-hoc, local-level coordination between agencies is essential and would be aided by greater organisational capacity, greater internal accountability for negotiations and mechanisms for managing tensions that arise from the confidentiality requirements of bilateral negotiations.

These are the main challenges currently facing access negotiations with NSAGs: humanitarian organisations tend not to approach negotiations in a strategic manner; they tend to shy away from engaging NSAGs in cases where donors or the UN are politically aligned with host governments; and when negotiations do take place, frontline negotiators and those managing them do not receive adequate guidance, training and support. As humanitarians, we must redress this state of impairment and imbalance, both internally and as a community, if we are to lead and coordinate an impartial and neutral response to the needs and suffering of people in high-risk environments.

1. Introduction

This paper seeks to provide an overview of the recurring operational challenges and emerging good practices that were empirically observed in negotiations on humanitarian access with non-state armed groups (NSAGs) during humanitarian responses in high-risk countries. It draws primarily on research conducted for Secure Access in Volatile Environments (SAVE), a three-year research programme exploring the question of how to deliver a high-quality humanitarian response amid high levels of insecurity. The research involved extensive fieldwork in four of the most dangerous aid settings during those three years: Afghanistan, South Central Somalia, South Sudan and Syria. Interviews with senior managers of key national and international aid organisations in these countries constitute the main evidence base for the present paper (Haver and Carter, 2016).[5] The interviews are complemented by the results of an online multilingual survey of 242 practitioners working in the four countries.

This report has seven sections. Sections 2 and 3 provide an overview of pre-existing research and guidance, and of the state of practice in terms of humanitarian access negotiations with NSAGs in each of the four countries. Sections 4, 5, 6 and 7 explore sub-topics and emergent practice in the differing approaches to humanitarian access negotiations in the four countries, such as decisions regarding direct versus indirect negotiations, problems of negotiating with multiple NSAGs, problems of coordinating with other humanitarians and institutional problems that inhibit negotiations. Where appropriate, we offer guidance based on what appears to be working in the field or what is recognised as a significant gap. Section 8 concludes the report and provides a series of recommendations.

Full acknowledgements for the wider research component can be found in the main SAVE report (Haver and Carter, 2016). Particular credit goes to the extended research and analysis team, all research and workshop participants, and the UK Department for International Development. The authors would like to thank specifically Adele Harmer (Humanitarian Outcomes) for support and guidance, as well as peer reviewers Joe Belliveau (Conflict Dynamics International) and Claude Bruderlein (ICRC) for their attention and insight.

2. State of the literature on negotiating with non-state armed groups

2.1 Current theory and practices outlined in literature

In its three-year study on humanitarian negotiations with non-state armed groups (2012–2014), the Overseas Development Institute (ODI) concludes that aid agencies need to engage with all parties to the conflict in "careful and sustained dialogue" to effectively reach civilians in need of assistance and to advocate on issues of protection. While humanitarian organisations are present in NSAG-controlled areas, and many engage in frontline negotiations with NSAGs, senior managers are often unaware of how ground-level staff obtain access (Jackson, 2014) or prefer not to know. Many agencies engaging with NSAGs have not sufficiently developed or prioritised the time, resources and capacities of staff to effectively do so (Jackson, 2014). Various other multi-country studies (e.g., Jackson, 2016; MacLeod et al., 2016; Jackson, 2014; Magone et al., 2011) and single-context case studies (Belliveau, 2015 on Somalia; Carter, 2014 on Afghanistan; Maxwell et al., 2014 on [South] Sudan) examine different aspects of humanitarians' interaction with NSAGs. Some focus on the perspectives of NSAGs themselves, some recount the personal reflections of practitioners, and some offer organisational accounts or lessons learned, including about red lines established, communication between the two sides, and how agencies did or did not work together to engage NSAGs.

The literature, however, has not sufficiently examined the question of what it means to conduct an effective access negotiation – specifically, whether the desired process and/or outcome of a negotiation is achieved. Negotiation theory recognises that some negotiation outcomes are highly improbable, as they are outside the 'Zone of Possible Agreement' (e.g., Sanders, 2013; Lewicki et al., 1999; Fisher and Ury, 1983), but that this does not render such negotiations fruitless in terms of relationship building and communication (ICRC, 2015), especially since NSAG positions change over the course of a conflict. Recent work has explored different ways of understanding humanitarian negotiation (Grace, 2015): is it power- or interest-based, or is it driven by basic human needs, behaviour or culture, or – the most likely scenario – by a combination of some or all of these aspects? Creating consensus on, and even awareness of, the purpose and concept of humanitarian access negotiations not only lies beyond the scope of this practice-focused document, but also has yet to be done, whether internally or across the community of practitioners working on humanitarian negotiations. Nonetheless, this report examines the process of humanitarian access negotiations in order to move towards improving or promoting the practice of such negotiations.

More generally, humanitarian negotiations with NSAGs can have objectives related to either humanitarian access or humanitarian protection, or to both (Mancini-Griffoli and Picot, 2004). Humanitarian organisations with dual mandates for assistance and protection are disproportionately more likely to negotiate with NSAGs. For example, Keogh and Ruijters (2012) look back at three decades of the UN Refugee Agency (UNHCR)'s engagement with NSAGs and found that despite having no official policy at the time, UNHCR almost always engaged either directly or indirectly with NSAGs. A similar finding with regards to the ICRC (2015) suggests that just as many access negotiations were conducted with NSAG counterparts as with government officials. Despite UNHCR and ICRC each having mandates for both humanitarian assistance and protection, it is generally recognised across the literature that engagement with NSAGs is primarily for humanitarian access (including security), and that humanitarian protection objectives are usually a latent secondary factor, if addressed at all (Jackson, 2016; ICRC, 2015; Maxwell et al., 2014; Keogh and Ruijters, 2012), mostly due to the "fear that wider engagement would prejudice their relations with the NSAG, impede access, endanger staff or compromise principles" (MacLeod et al., 2016, p. 48).

All studies underline the importance of specialist training and analysis on access negotiations in potentially improving humanitarian outcomes. MacLeod et al. (2016), for instance, conclude that "there is a greater need for professional humanitarian players with deeper political training in order to navigate the nuances of changing humanitarian space. Such professionalism is needed in order for humanitarian negotiations to steer through complex situations" (p. 6). Research involving consultation with a range of NSAGs[6] themselves also strongly suggests that it is possible to negotiate humanitarian access in a principled manner:

"[NSAGs] express overwhelmingly positive attitudes towards IHL [International Humanitarian Law], including humanitarian access ... [but] their comprehension of relevant rules on humanitarian access is limited and significantly influenced by whether humanitarian agencies have directly engaged with them on these issues ... [They] overwhelmingly claim to allow humanitarian access and want aid agencies to operate in areas they influence or control ... [and] feel entitled to regulate and control humanitarian access."
Jackson, 2016, p. 6

NSAGs, of course, have other calculated reasons for promoting humanitarian action in their areas of control, such as enhancing their political legitimacy and control (Jackson, 2012 and 2014; ICRC, 2015). Humanitarians must remain aware of this. MacLeod et al.'s (2016) depiction of how humanitarian access has been shaped strategically by NSAG interests aptly summarises a recurring challenge of managing relations with NSAGs that sometimes have contradictory interests and attitudes:

"In Afghanistan, for example, NSAGs disrupt aid supply by attacking the UN, the Red Cross, and other humanitarian agencies ... At the same time, NSAGs ... put effort into developing positive relations with humanitarian organisations ... as they can see the benefit in humanitarian deliveries to territory under their control. Throughout the whole period, the security of humanitarian agencies has been directly impacted by the strategy of insurgents either to encourage or discourage the delivery of humanitarian assistance."
MacLeod et al., 2016, p. 11

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[6] **Jackson (2016) conducted research on NSAGs from Burma/Myanmar, Colombia, the Democratic Republic of the Congo, Iraq, Palestine, the Philippines, Sudan, Syria and the Western Sahara. It should be noted that in some contexts, not all of the armed groups were engaged for the research, including some Islamic fundamentalist groups in Iraq and Syria.**

This suggests that negotiations between humanitarians and NSAGs are iterative, if not strategic, and that NSAGs are usually open to negotiations. Conversely, it is often unclear whether humanitarians are institutionally (not locally) open to negotiations with NSAGs. When they do, it is highly unlikely for humanitarians to be strategic in their engagement. But it is clear that humanitarian organisations have generally given greater priority to negotiations with NSAGs for access, compared with negotiations for protection outcomes. Less research is also available on the latter. This document focuses on humanitarian access negotiations with NSAGs, but it acknowledges that humanitarian protection negotiations with NSAGs is a rich subject in need of further research and progress.

Key lessons-learning documents:
- Keogh, S. and Y. Ruijters (2012), *Dangerous Liaisons? A historical review of UNHCR's engagement with non-state armed actors*. Geneva: UNHCR.
- Magone et al. (2012), *Humanitarian Negotiations Revealed: The MSF Experience*. London: Hurst & Co.
- Carter, W. (2014), 'Negotiating Humanitarian Access in Southern Afghanistan: Communications, Coordination and Complexity' in *Humanitarian Exchange*, Vol. 61. London: ODI.
- Jackson, A. (2014), *Humanitarian Negotiations with Armed Non-State Actors: Key Lessons from Afghanistan, Sudan and Somalia*. London: ODI.
- Maxwell et al. (2014), *Looking back to look ahead? Reviewing key lessons from Operation Lifeline Sudan and past humanitarian operations in South Sudan*. London: Secure Livelihoods Research Consortium.
- Belliveau, J. (2015), *Red Lines and Al Shabaab: negotiating humanitarian access in Somalia*. Oslo: Clingendael Institute/NOREF.
- Grace, R. (2015), *Understanding Humanitarian Negotiation: Five Analytical Approaches*. Boston: Harvard University.
- ICRC Humanitarian Negotiation Exchange (2015), *Analytical Report on ICRC Negotiation and Mediation Practices*. Geneva: ICRC.
- Jackson, A. (2016), *In Their Words: Perceptions of Armed Non-State Actors on Humanitarian Action*. Geneva: Geneva Call.
- MacLeod et al. (2016), *Humanitarian Engagement with Non-State Armed Groups*. London: Chatham House.

2.2 Available guidance

In addition to this research are guidance documents on humanitarian access negotiations (listed below) – notably, products by UN OCHA (2006) and the Centre for Humanitarian Dialogue (2004). But the guidance documents largely predate the research described above. There are some exceptions: Swiss Federal Department of Foreign Affairs (FDFA) published in 2014 a practitioners' manual that broadly covers humanitarian access and also includes sections on access negotiations; additional resources are outlined below.

Another form of guidance are trainings on humanitarian access, which have been delivered in various contexts, particularly by organisations such as Conflict Dynamics International (CDI) and Professionals in Humanitarian Assistance and Protection (PHAP). Some organisations also have their own robust internal training packages. There has been clear progress on this topic within the humanitarian community. In 2015, the ICRC, UNHCR, WFP, MSF and the Centre for Humanitarian Dialogue jointly established the Centre of Competence on Humanitarian Negotiation. It focuses on analysing and sharing practices in humanitarian negotiations among practitioners.

While some observers (e.g., Grace, 2015) have criticised the available guidance as having a weak theoretical foundation, this field-based research suggested that the main problems are a lack of institutional uptake of existing guidance. Additional problems arise from the challenges of dealing with multiple aid actors and with NSAGs. These issues are discussed in the document.

Key guidance documents:
- Mancini-Griffoli, D. and A. Picot (2004), *Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflict*. Geneva: Centre for Humanitarian Dialogue.
- McHugh, G. and M. Bessler (2006), *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners*. New York: UN OCHA.
- Thompson, E. (2008), *Principled Pragmatism: NGO Engagement with Armed Actors*. Geneva: World Vision International.
- Swiss Federal Department of Foreign Affairs (2014), *Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual*. Version 2. Geneva: Swiss FDFA.

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3. Current practice in Afghanistan, Somalia, South Sudan and Syria

This section summarises the main findings of the SAVE research as they concern access negotiations. The research was conducted from 2014 to 2016 in Afghanistan, Somalia, South Sudan and Syria. It involved 519 interviews with aid organisations and other stakeholders in field, capital and headquarter locations; 789 in situ conversations with affected communities; several field-level workshops; and an online multilingual survey of 242 practitioners (see Haver and Carter, 2016 for more detail on the methodology).

The SAVE research on presence and coverage found that "in each case of civil conflict, humanitarian coverage was proportionally greater in areas of government control" (Stoddard and Jillani, 2016a). Given that areas outside of government control have disproportionally smaller scales of development investment and infrastructure for health, water, sanitation and education, and given that they frequently witness more-severe levels of armed conflict, it is assumed that these areas have sectorally different (and proportionally greater) humanitarian needs. There is, however, a dearth of empirical needs data from NSAG-controlled areas. Nonetheless, evidence suggests that humanitarian presence is heavily influenced by security conditions (Stoddard and Jillani, 2016a), posing challenges to the ideal of humanitarian agencies providing a coordinated, impartial and neutral response.

The sub-sections below analyse aid agencies' approaches to and perspectives on humanitarian access negotiations in the four contexts, when such negotiations did occur. The central determinants of successfully negotiating access into NSAG-held areas appear to be deciding to negotiate with NSAGs in the first place, taking a strategic approach towards negotiations, and investing in staff competence.

3.1 How do humanitarian agencies approach access negotiations, and why?

First of all, what are the agencies that decide to negotiate with NSAGs? Just over half of the individuals surveyed suggested that their organisations engage in access negotiations with NSAGs. Many individual interviewees and survey respondents were sceptical of whether negotiations were worthwhile endeavours that can help to safely provide assistance to people in need. This scepticism was often due to significant fragmentation within armed groups or a group's hostile position towards aid agencies. For example, a diaspora-led INGO working in Syria stated:
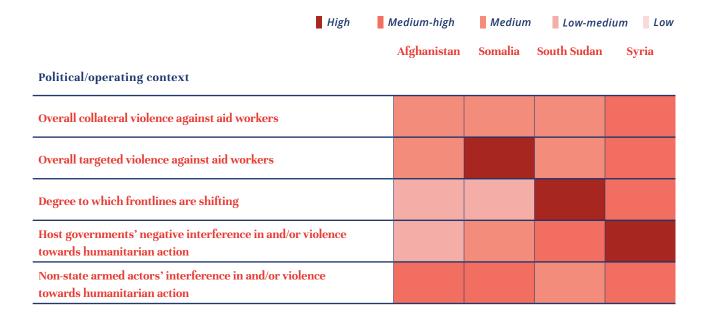
"We had to make a decision about whether to continue working in areas controlled by the Islamic State (ISIS). We decided to stop working there, because we didn't want to enter direct negotiations with them. This was too risky for us – you upset one of them, and you find out that all of your staff are dead."[7]

As another example, a UN agency staff member in South Sudan said that even though the agency had obtained permissions and assurances from higher-level NSAG authorities, there were often problems at checkpoints because the NSAG fighters manning them had not been communicated the permission for movement or activity. Long periods of time were required to contact the commander who had granted the permission, e.g. via use of a phone tree. Sometimes the permission was meaningless if NSAG fighters could make their own decisions: "Command and control structure doesn't exist. A checkpoint one day is perfectly fine, and then in the afternoon they're drunk and don't let you through." Another UN agency staff member in South Sudan was sceptical of security assurances:

"You can speak with the authorities and commanders, but you hang up the phone after the negotiation and your assurances are in the air … you don't know the pressure of influence coming from other guys around him, who wants what. It's a house of cards."

The table below summarises the political contexts in which agencies negotiated humanitarian access with NSAGs in each of the four countries. The table also indicates the main configurations of humanitarian access negotiations – joint or bilateral, direct or indirect – in each country context, by type of actor.

Table 1: Key differences between context and humanitarian organisations' approaches to access negotiations in the four countries, mid-2014 to mid-2016[8]

Legend: ■ High ■ Medium-high ■ Medium ■ Low-medium ■ Low

Political/operating context	Afghanistan	Somalia	South Sudan	Syria
Overall collateral violence against aid workers	Medium	Medium	Low-medium	Medium
Overall targeted violence against aid workers	Low-medium	High	Low-medium	Medium
Degree to which frontlines are shifting	Low	Low	High	Medium-high
Host governments' negative interference in and/or violence towards humanitarian action	Low	Low-medium	Medium	High
Non-state armed actors' interference in and/or violence towards humanitarian action	Medium-high	Medium	Medium-high	Medium-high

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7 Whilst ISIS may not be the best example of an NSAG that humanitarians may need to interact with, this sentiment was often expressed by organisations that were sceptical of potential negotiation outcomes with specific NSAGs.

8 The categorisations are indicative only, based on the authors' judgment. They are intended to illustrate broad differences and similarities between the contexts, and to give the reader an idea of the main contextual factors examined.

| | High | Medium-high | Medium | Low-medium | Low |

	Afghanistan	Somalia	South Sudan	Syria
Political/operating context				
Number of non-state armed groups	Medium	Medium	Low	High
Non-state armed groups' internal coherence	Medium	Medium	Low-medium	[varies]
Level of coherence and trust between non-state armed actors and local population	Medium	Low-medium	Medium	[varies]
Donor governments' level of interest in the conflict	Medium-high	Medium-high	Low-medium	High
Donor governments' support for host government	Medium-high	Medium-high	Low	Low
Donor governments' antipathy towards major non-state armed group(s)	Low-medium	High FN. 9	Low-medium	[varies]10
Humanitarian access negotiations with non-state armed groups[11]				
NNGO, bilateral, direct	Low-medium	Medium-high	High	Medium-high
NNGO, bilateral, indirect	Medium-high	High	High	High
INGO, bilateral, direct	Low-medium	Low-medium	Medium	Low-medium
INGO, bilateral, indirect	Medium-high	High	Medium	Medium
UN, bilateral, direct	Low	Low-medium	High	Medium
UN, bilateral, indirect	Medium	Medium	Medium	Medium
Joint, UN-led, direct	Medium	Medium-high	High	Medium
Joint, NGO-only, direct	Low	Low	Medium	Medium
Common positioning	Low	Medium	Medium	Medium
In summary				
Degree to which difficulty of operating context negatively affects humanitarian access negotiations	Medium	Medium	Medium	Medium-high
Overall propensity to negotiate	Low-medium	Medium	Medium-high	Medium

9   Al Shabaab has been designated as a terrorist group by several governments.

10   High for Islamic State, medium-high for other designated groups (e.g., Jubhat Al Nusra), low for many moderate groups.

11   For Syria, this portion of the table covers only cross-border aid operations from Turkey and northwest Iraq.

The SAVE research suggests that humanitarian access negotiations with NSAGs varied in each context, but that there was an overall inconsistency between the propensity of humanitarians to negotiate and the relative difficulty of negotiation with NSAGs. When examining the external factors, there does not seem to be a clear relationship between an organisation's propensity to negotiate access with NSAGs on the one hand, and the number of NSAGs present, the level of NSAGs' violence towards humanitarian operations and NSAGs' internal coherence on the other hand. Rather, the tendency to negotiate was dependent on other contextual factors. The research suggests that the political positions of donor governments and the UN vis-à-vis host governments and the NSAGs they were fighting against were a relatively strong determinant of whether aid agencies negotiated humanitarian access with NSAGs. In settings where the conflict was more dynamic, where the front lines frequently shifted and where humanitarian operations had higher mobility (namely South Sudan and Syria), more negotiations seemed to take place.

The table below outlines the range of NSAGs present in each country context and describes who was talking to whom.

Table 2: Who is negotiating with whom for humanitarian access in the four contexts, mid-2014 to mid-2016

	Main non-state armed groups	Approaches to negotiated humanitarian access
Afghanistan	• Islamic Emirate of Afghanistan (Taliban) • IEA splinter faction • Haqqani Network (designated[12]) • Hizb-I Islami Gulbuddin • Islamic State [Khorasan] (designated) • Tehreek-e Taliban Pakistan (designated) • Islamic Movement of Uzbekistan	Both INGOs and NNGOs tended to negotiate indirectly through community elders, with health-focused NGOs sometimes negotiating through the 'shadow' provincial health director. UN agencies conducted high-level negotiations directly with the opposition government in exile, but rarely negotiated with NSAGs in-country or at local levels. Exceptions were indirect negotiations by UN agencies at a local level, carried out by the Polio Eradication programme. There were few formal joint negotiation processes, with the exception of the high-level UN discussions. Although donor and UN interest in the country was strongly skewed in favour of government capacity building, humanitarian agencies have worked in areas where designated groups were active, particularly in southeastern Afghanistan. Humanitarian presence in the country was relatively static, as negotiations take time to progress.

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[12] **'Proscribed' or 'designated' groups, sometimes referred to as Designated Terrorist Groups (DTGs), are groups or individuals featured on "lists that are created and maintained by the government of each state and/or the UN Security Council. These lists vary according to each state's definition of terrorism and its particular political or security considerations. They introduce various measures (depending on the laws of a particular state) against the DTGs that are designed to freeze their assets and that prohibit anyone under the jurisdiction of that state from making any resources available to DTGs ... One of the key concerns of humanitarian organizations is the administrative burden of staying cognizant of and compliant with all the different lists published by each state and regional and international body" (NRC, 2015). Different governments maintain different lists, which means that some groups will be designated by one government and others by multiple governments. For example, the Islamic Emirate of Afghanistan (Taliban) is currently designated by the governments of Canada, Kazakhstan, Russia and the United Arab Emirates, but not by Australia, the United Kingdom or the United States. Above, NSAGs are indicated as designated if the majority of reported institutional funding for the humanitarian response in the country comes from donors that have designated these groups as terrorist organisations.**

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	Main non-state armed groups	**Approaches to negotiated humanitarian access**
South Central Somalia	• Al Shabaab (designated) • Various clan militias	Only a few aid agencies worked in Al Shabaab areas. Those that worked in these areas tended to negotiate indirectly – via community elders and other interlocutors – with Al Shabaab for access. International or other senior staff sometimes had limited visibility on the content and participants of the negotiations. NGOs and the UN have not engaged in any formal joint negotiation processes with NSAGs. Al Shabaab's violence tended to target the African Union Mission to Somalia (AMISOM) as well as UN agencies, complicating joint NGO-UN negotiations.
South Sudan	• Sudan People's Liberation Movement/ Army in-Opposition • South Sudan Liberation Movement • Nuer White Army • South Sudan Democratic Movement • Lord's Resistance Army	Many NGOs and UN agencies engaged in direct negotiations with NSAGs at field level. International staff were generally not targeted for violence in the field, and they were often the ones carrying out negotiations. There were no designated terrorist groups, and donors and the UN appeared comfortable in negotiations with NSAGs. Humanitarian presence in the country was highly mobile, requiring frequent negotiations for access, particularly by air. Many NGOs relied on the integrated UN mission for air transport, security management and force protection for road convoys, which prevented them from fully taking advantage of relationships with NSAGs and other armed actors. There were attempts at joint negotiation processes, led by UN OCHA or WFP, which NGOs engaged with, but not without practical complications.
Syria[13]	• Free Syrian Army 'aligned' • Islamic Front 'aligned' • Islamic State of Iraq and Syria (designated) • Jubhat Al Nusra (designated) • People's Protection Unit (Kurdish YPG)	Almost no international staff entered Syria from Turkey, although NGOs often had senior national staff based in-country. However, many functions were remotely managed[14] from Turkey, where some NSAGs also had covert representation. Negotiations were mostly driven through field-based staff, who primarily worked indirectly through local councils or sharia courts, although some attempts occurred in Turkey or at 'zero point' crossings. Humanitarian presence in the country was relatively mobile in response to new needs. While NGOs sometimes self-organised for joint negotiations in specific areas, these were generally conducted bilaterally. Attempts at 'common positioning' by all humanitarian agencies and NSAGs were also led by UN OCHA. ISIS is a designated group with clear territorial control. Juhbat Al Nusra, as an Al Qaeda affiliate, were also periodically designated. Kurdish NSAGs were often designated by neighbouring Turkey (from which remote/cross-border operations are mounted) as extensions of the transnational Kurdish (PKK) movement, although many donors considered them a moderate group (and militarily support their counterparts in neighbouring Iraq). Some other NSAGs, particularly those aligned with the Free Syria Army, were previously backed by foreign donors.

[13] **For Syria, this portion of the table covers only cross-border aid operations from Turkey and northwest Iraq.**

[14] **In this sense, remote management encompasses both remote partnerships, where an INGO partners with an NNGO across the border, and remote control, where senior or monitoring staff are unable to directly visit field offices and project sites.**

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As the table highlights, South Sudan differed from the other countries by the absence of designated NSAGs and by relatively greater openness about aid agencies engaging in direct negotiations for access, which are characterised by international staff involvement[15] and clearer directives from country management. In the other three countries (Afghanistan, Somalia and Syria), there was less internal accountability for and control over the negotiations taking place, and the majority of negotiations were delegated to field-based staff. There were also weaker attempts at collective negotiations in these three countries.

The SAVE research finds that aid agencies across the four countries were generally more hesitant to engage in negotiations with designated NSAGs, compared with those who have not been designated (Haver and Carter, 2016; see also NRC, 2015). This is further confirmed by an analysis of humanitarian presence (see Stoddard and Jillani, 2016a). Very few practitioners recognised this systemic bias.[16] The bias is driven partly by "uncertainty, risk aversion and anxiety with regard to potential legal liability arising from the proliferation of material support provisions" (Mackintosh and Duplat, 2013; NRC, 2015). Humanitarian actors frequently need to engage with parties to the conflict, including NSAGs, in order to enable access, and they are permitted to do so under international law. Furthermore, most interpretations of the major donors' current counter-terror legislation do not suggest that speaking with a designated NSAG in order to enable access constitutes material assistance to that group, which has been criminalised (for example, see Burniske et al., 2014; Mackintosh and Duplat, 2013). Nonetheless, lingering uncertainty about when aid or negotiation constitutes material assistance has had a chilling effect, such that many agencies are hesitant to work in areas controlled by designated groups – or, if they do, they avoid speaking with them (NRC, 2015).

The threat of prosecution under counter-terror legislation was not the only restraining factor. The terrorist designation itself seemed to feed an organisation's fear of being viewed as politically tainted by working 'on the other side' (see also Jackson, 2014). The political positioning of a group was as important as the official terrorist designation. In Syria, for example, aid agencies expressed much greater concern about potential diversion to ISIS than to Jubhat Al Nusra, despite the fact that both are designated terrorist groups. Similarly, aid agencies were hesitant to engage directly with the Taliban at field level in Afghanistan due to donor governments' opposition to them, even though they were not officially designated as terrorists by the main donor countries. Neither did the general level of host government interference in humanitarian action (or its opposition to engagement with NSAGs) appear to be a strong factor in whether agencies directly engaged with NSAGs. Non-governmental organisations working in South Sudan and Syria (from Turkey) were undeterred from engaging with NSAGs in those countries despite experiencing government interference, while NGOs in Afghanistan were least likely to engage in direct negotiations with NSAGs, despite the relative lack of government interference.

Systemic political, and to a lesser extent legal (counter-terrorism) and reputational, risks have impaired many humanitarian agencies from attempting to negotiate in order to reach those in most need of assistance, regardless of whether they are inside or outside of government-controlled areas. That is to say, strategic humanitarian responses are neither fully impartial nor neutral, for humanitarian agencies generally lack or have not exercised their operational independence to negotiate humanitarian access with NSAGs. The problem is compounded by humanitarian staff members' mixed attitudes and low awareness of humanitarian access negotiations with NSAGs. The reasons for these attitudes are further examined in the next sub-section.

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[15] It should be noted that, at the time, the Sudan People's Liberation Movement/Army in-opposition (SPLM/A-IO) were politically interested in international recognition, with enabling aid agency access being an obvious benefit in this political objective. Other NSAGs did not always share this ambition.

[16] Only 11 per cent of respondents in a SAVE survey asserted that the risk of prosecution through counter-terror legislation is a primary factor in their decision to work in such areas or not.

3.2 Attitudes to humanitarian access negotiations with non-state armed groups

The SAVE research finds that many staff were unclear not only as to how to engage with NSAGs, but also whether they were even allowed to do so, given internal or external forces such as organisational policy, managerial direction and domestic and international law. On average, only around half of survey respondents[17] felt that it was acceptable for humanitarians to communicate directly with non-state armed groups. Afghanistan had the lowest positive response, with only 36 per cent of respondents believing direct communication to be acceptable; in contrast, there was a positive response of 55 per cent in Somalia, 64 per cent in South Sudan and 57 per cent in Syria.

In all four countries, there were high numbers of violent acts perpetrated by NSAGs against humanitarians. This suggests that variance in conflict intensity or insecurity was not a strong determinant of whether aid agencies were more or less predisposed to negotiating access with NSAGs. Many respondents believed that whether or not negotiations were acceptable depended on the type of NSAG, and that this, in turn, depended on whether or not the NSAG had been designated a terrorist organisation by a government.

There were notable disparities between international and national staff perspectives on the acceptability of negotiations with NSAGs: 61 per cent of international staff believed such communications were acceptable, while only 36 per cent of national staff believed likewise. The disparity was most pronounced in Afghanistan, where only 16 per cent of national staff believed such communications were acceptable – considerably lower than the results for Somalia (50 per cent), South Sudan (57 per cent) and Syria (50 per cent). The precise reasons for such variances between expatriate and national staff attitudes to access negotiations remain unclear. But they may include the greater predisposition of national staff against NSAGs (they may be, e.g., not interested, less trusting, politically biased, personally aggrieved, more fearful of government backlash or placed at increased risk in terms of safety, legality and reputation) and the naïve optimism of international staff regarding the nature of an armed group. Another reason may be that international staff are better informed about the fact that such negotiations are in fact acceptable under international norms and frameworks.

In Afghanistan, research showed that there were entrenched patterns of presence causing access inertia (Stoddard and Jillani, 2016a). It is possible that over the years of a response in which the organisations have not changed presence, national staff understand direct communication with NSAGs as either not allowed or unnecessary and undesirable. For example, an international staff member at an INGO said, "Officially we don't have any contacts with parties to the conflict at the field or provincial level, only by our Country Representative in Kabul. Unofficially … national staff have connections in the field with a range of stakeholders." This type of disparity was frequently reported in all the SAVE country contexts. Local staff often engaged at the lower levels to some extent, regardless of official policy or directive. One Afghan NNGO staff member stated: "Our senior personnel at the provincial level should think about who they should be negotiating with … We usually rely on community elders, but sometimes they can't talk to the commanders, or they may not know about the humanitarian principles."

Overall, the SAVE research suggests that general attitudes to humanitarian access negotiations with NSAGs is mixed at best, 'unprincipled and damaging' at worst, and most likely 'ill-informed and inconsistent'. There are notable differences in attitude between international and national staff, with the former more in favour of such negotiations, and the latter biased against them. This is of particular concern because, as outlined in the next sub-section, responsibilities for negotiating access are often delegated to local, national staff.

[17] Survey respondents were primarily drawn from country programmes that had participated in the SAVE research or in trainings related to humanitarian access, targeting a cross-section of staff within the country by management level, sector and theme. It is assumed that they are more likely, out of all staff in the country programme, to have been involved in access negotiations.

3.3 Types of organisations and staff involved in negotiations

There were differences in organisation type and attitudes to communication with NSAGs. Some 62 per cent of responding staff from UN agencies were in favour; international NGOs (INGOs) were slightly less positive, at 51 per cent; national NGOs (NNGOs) were the most conservative, at 33 per cent. While the precise reasons for such variances are unclear, one might surmise that UN agencies are likely more confident about their positions due to their intergovernmental status and mandate, and that they would be better protected in legal and security terms. NNGOs, in contrast, are protected on neither account.

The type of humanitarian organisation (e.g., INGO, NNGO, UN) was not a strong determinant of whether surveyed staff reported that their organisation communicated with NSAGs (the only exception, and a small one at that, were INGO staff, who were slightly more likely to report that their organisation communicated with NSAGs). By contrast, the differences between expatriate and local staff were marked in Afghanistan, Somalia and Syria (but not in South Sudan). In both Afghanistan and Somalia, proportionally more international staff than national staff acknowledged that their organisation communicated with NSAGs (50 versus 37 per cent in Afghanistan; 34 versus 19 per cent in Somalia); the opposite was true in Syria, where proportionally more national staff (63 per cent) than international staff (55 per cent) reported there were communications with NSAGs. These differences broadly correlate to overall programming approaches. In the three countries where remote management and/or partnerships[18] were much more common (Afghanistan, Somalia and Syria), the difference between international and national staff perceptions was sharper. In these contexts, international staff were seemingly less likely to really know about the type of negotiations that occur between field-based staff and NSAGs, or if they even occur. This could be considered an additional risk for organisations adopting remote management approaches.

As for the kinds of staff involved, agencies in Afghanistan, Somalia and Syria tended to delegate humanitarian access negotiations with NSAGs to national staff in field locations. This was often done in an unclear and unaccountable manner, to the extent that they were on many occasions not explicitly tasked by senior management. A majority of survey respondents (68 per cent) reported that negotiations (both direct and indirect) were conducted by national staff who come from the area where the armed actor operates; fewer were conducted by international staff (25 per cent), and far fewer by national staff originating from another part of the country. In several of the other countries surveyed (e.g., Central African Republic, the Democratic Republic of the Congo), as well as South Sudan, the proportions were slightly more balanced, with less pressure placed on national staff and more international staff directly communicating with NSAGs.

In all four countries, national staff were more likely to report that communications were indirect rather than direct. Given that the majority of respondents stated that access negotiations were delegated to local staff who were from the area in which the NSAG was active, this may suggest that some international and senior staff have a skewed understanding of access negotiations – that is, they believe that national staff are in direct contact, while often they are actually only working through intermediaries. These types of misunderstandings and limited awareness were also made clear during interviews, with different levels of staff within the same organisation often reporting diverging practices.

Despite the delegation of high-risk negotiations to local staff, there appeared to be a lack of training in communications with NSAGs. On average across the four contexts, only a quarter (26 per cent) of survey respondents confirmed that any staff from their organisation had been trained in how to communicate with NSAGs in the past two years, and over half (56 per cent) confirmed that no such training had been provided. On average, UN agency staff were slightly

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[18] **In this sense, remote management encompasses both remote partnerships, where an INGO partners with a national NGO across the border, and remote control, where senior or monitoring staff are unable to directly visit field offices and project sites.**

more likely to have received training (33 per cent) than INGOs (23 per cent) and NNGOs (24 per cent). Altogether, this indicates that although there is some recognition of the need for training in the highest-risk countries, the amount of training currently delivered in this high-risk and delicate practice is inadequate, particularly since it is often delegated to field staff. The fact that UN agencies, which frequently programme through implementing or cooperating partners, receive the most frequent training in access negotiations compared to INGO and NNGO counterparts, which then directly implement programmes, further highlights the imbalance in demand and provision for such training.

To summarise this sub-section, the organisations and types of staff that were generally farthest from humanitarian field operations in NSAG areas (e.g., UN agencies, international staff) were most in favour of, and most trained in, humanitarian access negotiations with NSAGs, while the least trained staff were primarily those to whom the responsibility to negotiate was delegated. More problematically, the ability to oversee, control and manage such negotiations from country leadership to field staff (particularly in remote management set-ups) was unclear. This situation must be redressed by developing national staff capacities for negotiation (including addressing their concerns or questions about it) and ensuring there are systems and capacities for country leadership to effectively oversee, control and manage field-based negotiations.

It is clear that our ability as humanitarians to strategically respond in an impartial and neutral manner to needs and suffering wherever they are found is systematically challenged by the lack of operational and political independence; low levels of awareness of, and negative attitudes to, negotiating access with NSAGs; and insufficient capacities at the right levels to conduct or manage humanitarian access negotiations. In spite of these problems observed in the four SAVE contexts, there have been some emergent promising practices and nuanced approaches to handling the arising dilemmas. There are also critical gaps that can be immediately rectified. The subsequent sections of this paper highlight specific aspects that are not yet well-covered in research or operational guidance – namely, the decision to negotiate directly or indirectly; how to handle negotiations with multiple NSAGs; how to handle inter-agency coordination; and how to strategically manage, as institutions, access negotiations with NSAGs.
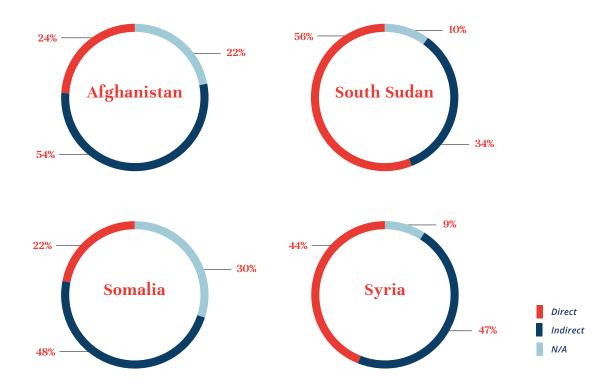
4. Direct versus indirect negotiations

In Afghanistan, Somalia and Syria, many agencies that were communicating with non-state armed groups did so indirectly, while direct negotiations were more prevalent in South Sudan. According to a peer-ranking of which humanitarian agencies were best able to access affected people in each country context, the vast majority of the top five agencies for each country (85 per cent) were explicitly involved in direct access negotiations with NSAGs – in sharp contrast to the average proportion of humanitarian agencies involved in direct negotiations (33 per cent). Observations regarding the relative merits and risks of indirect negotiations are nonetheless outlined in this section, particularly given that operational guidance on indirect negotiations remains underdeveloped.

In indirect negotiations, discussions were often conducted through intermediaries, such as local elders and other known or respected persons in the affected community. A key factor driving whether aid organisations negotiated directly or indirectly with NSAGs appears to have been the view or relationship of donor governments (or inter-governmental organisations) with regards to parties to the conflict (Haver and Carter, 2016). Unlike the other three countries, in South Sudan, the main donor governments are not closely aligned with either party to the conflict, and aid agencies are more comfortable having direct negotiations with NSAGs. In Afghanistan and Somalia, by contrast, donor governments and the UN are much more closely aligned to (and indeed some donor governments are fighting alongside) central governments, and aid agencies are significantly more predisposed against direct negotiations.[19] Agencies in South Sudan also asked local communities and partners to negotiate for security assurances, but this was generally seen as insufficient, and negotiating directly with potential perpetrators of security incidents was usually seen as necessary.

On average across all SAVE contexts, slightly more than half of staff who reported that their organisation communicates with NSAGs did so indirectly, such as through elders or community members. However, there was significant disparity between the country contexts, particularly in the proportion of organisations engaged in direct negotiations. In South Sudan, 63 per cent of contacts with NSAGs were described as direct, while in Afghanistan, less than half this number (31 per cent) were direct communications, the majority being indirect. Syria and Somalia fell in between these two. The chart below summarises these differences.

[19] For example, less than one-fifth of survey respondents in both country contexts affirmed that they conducted direct negotiations, whilst approximately twice the number of people affirmed their organisations were engaged in indirect negotiations.

Figure 1: Percentage of staff surveyed who reported that their organisation engaged in direct versus indirect negotiations with NSAGs in the four countries (2016)

Direct vs. indirect access negotiations with NSAGs, by country

Afghanistan — 24% Direct, 22% N/A, 54% Indirect

South Sudan — 56% Direct, 10% N/A, 34% Indirect

Somalia — 22% Direct, 30% N/A, 48% Indirect

Syria — 44% Direct, 9% N/A, 47% Indirect

Legend: Direct, Indirect, N/A

While there may be obvious differences between NSAGs in South Sudan and NSAGs in Afghanistan that might explain why fewer organisations were willing to engage directly with NSAGs in the latter (e.g., perpetration of violence, hostile rhetoric, organisational structure and control, presence of designated groups), the differences between NSAGs in Syria and Somalia and NSAGs in Afghanistan are less obvious. In fact, all of the risk indicators for direct engagement with NSAGs are arguably higher in Syria than in Afghanistan. This suggests that decisions to engage directly or indirectly were based on logic that is globally inconsistent, were personality-driven, were influenced by donor politics or were simply uninformed (which also helps explain the very weak correlation between conflict intensity or security incidents on the one hand, and willingness or propensity to engage in humanitarian access negotiations with NSAGs on the other). All of these options suggest that humanitarian agencies and organisations might look to develop clearer policies in the area, and to become stronger about resisting donor government policies (or donor influence) that might restrict them from taking steps to reach people in need. In essence, humanitarians must better protect their operational independence as a prerequisite for humanitarian access negotiations with NSAGs and in order to provide relevant and timely assistance to those most in need.

Using community elders or other third parties as intermediaries can certainly be helpful in some stages of humanitarian access negotiations, especially when armed groups have covert networks within communities. For example, a national NGO staff member in Somalia reported that when Al Shabaab had mostly withdrawn from the area, but still had influence as a covert group, it became problematic for the organisation to gain permission for travelling, training and monitoring. It had to use intermediaries to connect with the Al Shabaab members in charge. In Southeast Afghanistan, an INGO local staff member described how the organisation

received death threat letters, purportedly from the Taliban. After asking community elders to look into the matter, however, they found that the letters were written not by the Taliban, but by an aggrieved local person; Taliban-sympathising community members then urged the person to stop sending the letters.

Unlike South Sudan, the majority of humanitarian access negotiations in Afghanistan, Somalia and Syria were performed indirectly. For example, in Kandahar, Afghanistan, some organisations, during the needs assessment stage, consulted not only community elders but also other stakeholders such as 'Mullahs' (religious scholars and elders) and 'Mirabs' (people who control irrigation flows). In Somalia, organisations often capitalised on the personal connections of local traders. In northern Syria, organisations engaged semi-formal Sharia courts for protection and security assurances, medical staff to act as neutral middlemen, and local (opposition) councils and their relief committees to act as intermediaries with beneficiaries and armed groups, and to help with transportation and logistics.

Indirect negotiations through community intermediaries have benefits, particularly by boosting an agency's negotiation leverage. In Somalia, when discussing how to resist attempts of extortion or pressured diversion, an INGO local staff member said, "In Al Shabaab areas, they have the upper hand, [so we] have elders and structures to pressure local authorities if necessary … [We] need to be able to stand our ground and have connections with elders." An NNGO in Afghanistan described a situation in which non-local NSAGs had mounted an illegal checkpoint, where they kidnapped a staff member who was travelling in a low profile manner and confiscated his vehicle. Local elders were quick to mediate the abductee's release, emphasising that the organisation had conducted good work in the area and putting pressure on the group. The organisation believed that had it not had the trust of the community, it would have been unable to mobilise community elders in this way.

While communicating with NSAGs through intermediaries has become somewhat of a standard practice in high-risk settings, it nonetheless appears to have sometimes been adopted because organisations are too risk-averse to attempt direct engagement. This is the case particularly (but not exclusively) with groups designated as terrorists. However, despite such engagement being an accepted practice, neither operational guidance nor the majority of lessons-learned documents explain in detail how to effectively manage intermediaries in negotiations. It was not apparent from the research that organisations had thought through the comparative risks and advantages of using third parties as intermediaries. Table 3 summarises the key risks and advantages of using intermediaries, as identified by respondents.

Table 3. Key risks and benefits of using intermediaries for humanitarian engagement with non-state armed groups

Risks	Benefits
• Intermediaries may have a harder time than aid organisation staff to represent the interests, humanitarian principles and international standards of humanitarian agencies • Lack of certainty about whether intermediaries are saying the right things • Intermediaries may exploit or manipulate the process, or they may take actions that are detrimental to humanitarian action • Can be slower, sometimes more resource-intensive and less predictable • Intermediaries' influence over the group may change over time, sometimes corresponding to how many compromises they have made • Intermediaries' interests in supporting the process may change over time • Both intermediaries and their negotiating counterparts may leave or be killed, and all the benefits are lost because there was no institutional relationship with the NSAG • Increased safety risks for intermediaries and their families • Security assurances gained through third parties are more likely to be insufficient	• Intermediaries may have more leverage or influence over NSAGs than aid agencies • It may be easier for intermediaries to physically meet with NSAGs, particularly if the group is covert and hidden within communities • There is less risk of cultural or contextual misunderstanding in communications with NSAGs, and intermediaries may be able to leverage cultural (e.g., religious, tribal) value systems better than local aid staff • Security risks, particularly abduction, for the humanitarian organisation may be reduced; intermediaries may also be able to resolve incidents that arise better than the aid agency itself • Reputational risks, particularly with host government, can be limited more easily • If a negotiation through local intermediaries goes poorly, the damage to access is localised (by contrast, if direct discussions initiated at a senior level go poorly, damage can be more far-reaching)

Understanding the organisational dynamics of NSAGs, including internal power struggles and economic interests, is an important step.[20] An INGO staff member in Afghanistan described how the organisation engaged local commanders both directly and indirectly (through local elders) to seek permission to start an emergency education programme in a contested area in Northwest Afghanistan, and it believed that it had gained an assurance or permission directly from a commander. But another commander soon approached the organisation, claimed that he was actually in charge of the matter and demanded that it close down the programme. "Your actor mapping and power analysis needs to be very good, or you can wind up engaging with the wrong people," the staff member said. Similarly, in northwest Syria, an INGO staff member said, "I've had five to ten incidents where we've gone to the wrong people [and had to] go lower or higher than [our normal point of contact] to resolve the issue. Sometimes [the normal point of contact] has tried to manipulate the situation, or they had a personal issue against foreign organisations." Because it is often difficult to analyse the local context through direct engagement only, it can be useful to use both lines of communication simultaneously.

For both direct and indirect approaches, it can take a long time to establish relationships.[21] One way to accelerate this process is to request a designated liaison person – a supporter either within the community or from the armed group. In South Sudan, for example, one organisation reported that after the first few meetings, it would request a lower level liaison

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[20] Instructions are further outlined in the 'Actor Analysis' section of the Practitioners' Manual on Humanitarian Access (Swiss FDFA, 2014).

[21] In this context, relationship building is viewed as a core element of humanitarian access negotiations, but is distinct from the process of negotiation itself.

officer from the NSAG for more-routine communications because it realised that the main commanders were 'very busy'; in Malakal, for example, there were three liaison officers dedicated to humanitarian organisations 'full time'. Elsewhere, however, it was prudent not to depend on a single interlocutor, but rather to tap into local, informal governance structures. As previous research suggests, complex governance structures tend to crystallise within and around armed actors during protracted relief operations (Jackson, 2014).

BOX 1. INDIRECT NEGOTIATIONS FOR HUMANITARIAN ACCESS IN NORTHERN SYRIA

In Syria, an INGO staff member described how the organisation learned to resolve problems with the commanders of a local NSAG that was aligned with the Free Syrian Army (FSA). Initially, the INGO asked a staff's family member, who had personal connections to (but was not a member of) a local NSAG to help resolve an incident of diversion of a food aid truck. Unfortunately, this approach did not work, and another incident took place: a local NSAG commander "tore up the beneficiary lists", was hostile to field staff and demanded free baskets for his fellow NSAG members. The INGO worked through civil structures instead and reduced tensions by emphasising that the local community and civil governance structure had been involved in the beneficiary selection process and had asked the organisation to help civilians in the area. Because the INGO demonstrated that it had built legitimacy from the local community rather than only trying to leverage personal contacts, it was able to eventually enable principled humanitarian access in the area.

More broadly in non-government-controlled Syria, local councils controlled by opposition groups have sometimes been used to pressure military units to stop interfering in humanitarian programming, particularly since organisations have been quick to suspend operations in the area. This tactic has been used in northwest Syria with regard to Jubhat Al Nusra, for example. Given the scale and urgency of programming, organisations have become adept at leveraging public pressure through their intermediaries, effectively as a negotiating tactic, against armed groups. In many cases, if the organisation prolonged the suspension, armed groups were compelled to stop interference, and even to apologise.

In parts of Syria where community-based governance structures (e.g. local councils) were not functioning or were not powerful enough to influence armed groups, informal justice structures, such as Sharia courts, were another option. This was particularly relevant when religious legitimacy was a motivating leverage for the NSAG in question. Here, for example, is the account of a staff member from an INGO operating WASH and shelter programmes in northern Syria (before they were forced to reduce their programming in that area): "We didn't have many trusted interlocutors in ISIS areas, and so there was a lack of information. With an armed group like ISIS, you don't want to [formally] recognise them, but you have to engage with them on a higher level than just the local authorities, because it functions like a state actor. So, we have to work through the court system, provide comparative Sharia law studies [to justify our request] … There are ways to be effective." Understanding how NSAGs interpret and relate to the (somewhat abstract) concepts, explanations and translations of key terms relevant to humanitarian access are crucial to effective communication and negotiation, and require investment in each country context.

5. Negotiating with multiple non-state armed groups

Much of the globally-available guidance on negotiating humanitarian access, probably for ease of readership, focuses on bilateral negotiations carried out through a series of 'access advocacy' meetings or communications (e.g., Swiss FDFA, 2014; UN OCHA, 2006). The reality is often more complicated, according to humanitarian staff in Afghanistan, Somalia, South Sudan and Syria. Effective humanitarian negotiations were rarely achieved through an exclusively bilateral relationship, and most often required the simultaneous management of multiple relations and negotiations. How do we manage our relationship with the formal Afghan government if we decide to continue negotiations with the Taliban? How can we seek security assurances from NSAG commanders without getting expelled by the host government? How do we ensure an impartial needs-based response in northern Syria or South Sudan, where local commanders refuse to let assistance travel cross-line if there are needs within their own territory? How should we adapt our humanitarian access negotiations with NSAGs in Somalia if we know that other organisations have already made less-principled concessions to armed actors in the same area? The task of counterbalancing these factors and managing relations with multiple NSAGs was found to be one of the most problematic aspects of access negotiations for agencies engaged in them.

Working in certain areas instead of others had the potential to cause frictions with NSAGs. How different parties to the conflict perceived aid agencies' relations with other parties could be extremely important, with catastrophic consequences if not managed well. Some organisations opted to first conduct bilateral outreach to other groups. In Somalia and Syria, for example, agencies often accommodated the demands for assistance made by different NSAGs. This was seen as a tolerable conditionality in order to be able to access the most vulnerable people living in NSAG areas of control. Organisations working in Lower Shebelle (Somalia), for example, often negotiated extensively about the position of bore wells. The agreed-upon locations were often based not only on a strict assessment of need, but also the preferences of different clans. This flexibility often allowed programmes to proceed, but had both negative and positive effects on inter-clan conflict.

It is important to reflect on this tension between different humanitarian principles: to preserve (at least the perception of) neutrality, organisations sometimes accommodated demands for assistance made by different NSAGs even if needs in those areas were not the highest – in doing so, these organisations compromised their impartiality. When confronted with this dilemma, practitioners often justified their approach by saying those areas still had humanitarian needs that met their targeting or vulnerability criteria. But they acknowledged that they would not have prioritised these project locations (or beneficiaries) had it not been for the intervention of the NSAG. The problem and solution mix ethical and pragmatic trade-offs, which are further outlined in the SAVE paper on ethical decision-making (Haver, 2016).

Similarly, aid organisations reported occasionally organising simultaneous distributions in areas controlled by different parties to the conflict. This was seen as a measure to visibly demonstrate neutrality. In South Sudan, for example, a UN staff member stated:

"We plan assistance to happen simultaneously in two locations under two lines of control. This could be accused of buying access, but for us, it's about managing perceptions of neutrality. It's fine for us to assist a relatively lesser-in-need area in the government-controlled area of Mayendit Town, while assisting a much larger population in severe need on the other side of the line."

Similarly, in non-government-held parts of Syria, several agencies described transparency – making clear that you are negotiating with all sides – as having a positive effect on an organisation's reputation. But this approach can also exacerbate rather than reduce tensions. In South Sudan, a UN agency staff member described a situation in the Shilluk area of Wau State, where food assistance to communities in an NSAG-controlled area on 'the other side of the river' had caused problems with commanders. According to the staff member, the local general claimed that the agency was "feeding the enemy, so we don't trust you anymore." The staff member said, "They talk about understanding the need for humanitarian aid for civilians and that it's important, but there's such a deep distrust [if] they know it's [effectively] support for the enemy." Another UN agency staff member said:

"We never discuss our relationship with the other side to them. It makes them very upset. The degree of trust from both sides is low ... We've mentioned it in the past. For example: when the Sudan People's Liberation Army (SPLA) told us we couldn't fly because the Shilluk were close, so they couldn't guarantee our safety, and we said, 'Don't worry about that, we've talked to Shilluk about it', and they [SPLA] got really aggressive. So we decided we will never mention contact with the other. It doesn't matter how much we tell them we're neutral and don't share info with the other side. They don't believe it."

In different contexts, organisations have different opinions of the helpfulness of openness and transparency. These views are often shaped at the local level, based on the negotiation outcomes and the risks for NSAGs themselves. Having the capacity to manage multiple relations is key to successful negotiations.

The sheer number of NSAGs in some areas can make negotiations extremely challenging. For example, an INGO country representative in Aleppo, then in Turkey, said that "armed groups are so fragmented, so it's very difficult to negotiate with them ... It was 43 armed groups on my list at some point that I had to speak with. It makes negotiation impossible." But there are solutions. One response has been the Joint Operating Protocols (JOPs) on the inter-agency aspects of negotiations. The JOPs (outlined in the next section) promote a consistent but non-coordinated standard of negotiated terms of access regardless of which agency is speaking to which NSAG. Another response has been to identify the most influential groups in an area and to analyse the groups that are subordinate to them, e.g., through actor analysis (Swiss FDFA, 2014). An INGO Country Director in northern Syria said, "If [we] identify three or four groups in an area that are affiliated with the Free Syrian Army or Ahrar Al Sham, then we would go speak directly with the FSA or Ahrar Al Sham." The underlying point may be that contexts with multiple NSAGs may require humanitarians to make greater country-level investments into capacities and resources for access negotiations.

6. Inter-agency aspects of negotiations

The way in which some humanitarian organisations negotiate for access can impact other organisations. Aid agencies can be played off one another or undercut if they have not agreed on red lines or informal ground rules (Jackson, 2014). In many circumstances, it may simply be impractical or counterproductive for multiple organisations to maintain bilateral relations with a particular NSAG. Aid agency staff interviewed for this study acknowledged these dynamics and reported that their negotiated (or assumed) access arrangements are interdependent on the behaviour and actions of other humanitarian organisations.

Inter-agency initiatives appear at times to be helpful for setting broad ground rules or engaging at senior levels, but are rarely sufficient in themselves for achieving a single agency's access objectives. In nearly all circumstances, bilateral relations and negotiations remain essential. But ad-hoc, local-level coordination between agencies can help prevent agencies from being played off each other (e.g., a new agency agrees to terms differing from those of the pre-existing agency, and the latter are more preferable to the NSAG, but not to long-term humanitarian operations – this is particularly evident in financial and security matters) and would be aided by greater organisational capacity and greater transparency of negotiations.

During the period in which the SAVE research was conducted (2014–2016), several types of inter-agency or joint initiatives existed in Afghanistan, Somalia, South Sudan and Syria, whereby agencies came together to negotiate access with NSAGs. The UN led many of these initiatives, such as in South Sudan and Syria. While some of the joint negotiation initiatives had a moderately positive impact, many aid agencies did not see them as an effective substitute for bilateral negotiations. It became problematic for many NGOs and some UN humanitarian agencies when UN integrated missions led joint negotiations, due to the UN's potential conflicts of interest (political or state building versus humanitarian objectives) and the consequent difficulty of maintaining humanitarian independence. In Afghanistan, for example, inter-agency approaches to negotiating for access have been problematic because trust and consensus between agencies were slow to form. This was particularly true throughout the multinational stabilisation interventions of the past decade, which tended to polarise the aid community. Many agencies, especially in Syria, expressed preference for bilateral engagement and stressed that too much information sharing was counterproductive or dangerous, an opinion that obviously reduces the propensity for inter-agency coordination.

Nonetheless, in South Sudan and Syria, agencies did engage in ad-hoc, local-level coordination to devise joint approaches to negotiations, and this cooperation was seen as essential. In South Sudan, for example, some organisations collectively decided to suspend their operations in an area in response to interference by local authorities or threats to staff safety. In Syria, several INGOs coordinated their responses to demands made by the Islamic State. By contrast, in Afghanistan, the tendency to negotiate indirectly with the Taliban and other groups (e.g., via local elders) and the high degree of local variation have limited the usefulness of joint local approaches.

Humanitarian organisations have differing views on the value of entering into collective negotiations with NSAGs. Some organisations see the benefits as increased negotiating power and reduced risk of inconsistent messaging or of agencies being played off one another. As one UN agency staff member working in southern Afghanistan stated:

"We need to de-conflict our approaches. If we dealt with them collectively it would be more powerful. We also don't know if we're giving them different messages. We have a comprehensive response plan (which we let both sides of the conflict know about) and then they grant us access ... This piecemeal response by different agencies shouldn't happen. We should have one response and mechanism."

Other organisations were more likely to cite the drawbacks of joint approaches. They worried about paying for other organisations' mistakes; increased time and transaction costs spent to bring smaller organisations on board; and an increased likelihood that NSAGs would seek to divide and conquer. Agencies cited examples of NSAGs deciding to make an example of organisations by punishing the stronger ones, which had taken the lead in inter-agency negotiations and would have otherwise been left untouched. For example, the larger agencies working in Pagak (South Sudan) were effectively intimidated by NSAGs when they volunteered to take a leadership role in coordinating and representing other humanitarian agencies. An INGO staff member in South Sudan explained the organisation's preference for a bilateral approach:

"Personally we're not interested in a common [humanitarian] platform. Our security comes down to perception management. If we try to do that together, it's very difficult. We need to demonstrate impartiality, why we're here. Once you start trying to do that together, it's very difficult."

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BOX 2. CHALLENGES OF COORDINATING INTER-AGENCY ACCESS NEGOTIATIONS IN SOUTH SUDAN

An INGO staff member in South Sudan described a situation in which there were competing interests within the humanitarian community regarding whether to handle access negotiations jointly or separately. The INGO wanted to go into an area under the radar, but a UN agency urged it to proactively communicate what it was going to do beforehand. The INGO was sceptical, believing its security to be at greater risk by taking this course of action. At the same time, another UN agency was separately negotiating with NSAGs in the area. While there was a desire to let "the [NSAG] commissioners in those three counties understand that we're coordinating in Juba so they can't play us against each other" (UN official), the reality was that separate tracks of discussions were unfolding in an uncoordinated fashion. From another UN agency's perspective, it was preferable to have only one agency that is engaged and coordinated: "The SPLA really don't like multiple groups coming into an area to do the same thing. They don't like the idea of multiple boat movements going across the river, and they can't control the ops."

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In Afghanistan and Somalia, Western military and political stabilisation efforts have created divides between humanitarian and humanitarian/development aid actors, in terms of where they operate and how they position their work. UN agencies in both countries have much closer relationships with the host governments, in that they also provide development support or support UN peace operations, for example. Many NGOs saw this as limiting the UN's ability to negotiate effectively with NSAGs for humanitarian access. This was problematic because UN agencies shape strategic humanitarian response and funding, and generally dominate international positioning in the country.

More broadly, inter-agency tensions between NGOs and IGOs (inter-governmental organisations, particularly the UN) over their position in humanitarian access negotiations were noted by many of the respondents across the four countries. This is manifest partly in the fact that UN country missions often have integrated mandates (i.e., hybrid and relief), even if particular agencies have specific humanitarian-focused mandates, and partly in the fact that non-UN humanitarian agencies are largely dependent on UN air logistics for access throughout the country. Investment in the pooled resources of non-UN humanitarian air assets to visit areas outside of the UN system may improve negotiated access arrangements for the wider humanitarian community that is not bound by narrower IGO/UN policy and stricter security management. For example, some non-UN organisations in South Sudan reported better relations with local authorities when they were seen as separate from UN agencies and met separately from them.

South Sudan and Afghanistan have proven difficult settings for joint negotiations. There have been more promising developments in northern Syria, where inter-agency negotiations appear to have had a positive impact. While still working with the same inter-agency tensions, the agencies in northern Syria have found a solution that seemingly avoids the problem of increasing the liability of organisations and also promotes consistency of approach – by developing a common text or ground rules for bilateral engagement between humanitarian agencies and NSAGs, called the Joint Operating Protocols. This has improved the coherence of messaging and agreements, while not limiting or constraining organisations by involving them in wider initiatives.

BOX 3. JOINT OPERATING PROTOCOLS IN SYRIA

In early 2014, when ISIS's expansion led to increasingly frequent aid diversions, four INGOs working in eastern Aleppo put together a joint text to communicate their humanitarian positions to the NSAG. The text was later shared with the NGO Forum, and OCHA then further developed it into a joint declaration, called the Joint Operating Protocols. They were meant to be relevant for use in a wider geographic area and with other NSAGs. By late 2014, following an outreach process led by OCHA, about 35 out of the approximately 50 NSAGs active in northern Syria had signed on to the JOPs. Some agencies were sceptical of its impact, but the majority of respondents were positive. Several INGO staff members said that the JOPs were an important resource for field staff and help "everyone to be on the same page". At least one INGO invested time into training staff on its application.

The Joint Operating Protocols were a coordinated approach in which common standards were agreed upon, but they did not constitute a joint negotiation as such. However, there are other models for inter-agency coordination of access negotiations, occupying different places between collective negotiations at one end of the spectrum and common ground rules at the other. A review by the Norwegian Refugee Committee (NRC) on 'inter-agency access mechanisms' (i.e., broader than just negotiations) concludes that there is no single blueprint for access coordination structures that would work in any context. Rather, the optimal setup depends on the types of access constraints and the types, positions and interests of actors in the country. The report did note that both formal and informal access initiatives, including a separate mechanism for NGO access coordination, improved outcomes for humanitarian access. Having a way for NGOs to coordinate on access (separate from UN bodies) was seen as promoting open information sharing, which in turn enabled better decision-making by individual agencies, while also creating more opportunities for collaborating on access problems (O'Rourke, 2016).

7. Internal policies and guidance on negotiations

Echoing previous research (Jackson, 2014), the hundreds of interviews conducted with senior-level field staff in the four SAVE counties suggested that most organisations still lack sufficient policy and guidance on negotiations. This overarching problem has constrained humanitarian access negotiations with NSAGs on the ground. The guidance gaps can also pose security, legal and reputational risks. Because staff are unsure of what they are allowed to say or do, they may take mis-steps. In all four countries, field staff undertaking negotiations were found to be insufficiently guided, supported and protected by internal policies.

In almost all conflict contexts, humanitarian organisations must engage with NSAGs in some fashion in order to enable access, and many do so despite there being no official organisational policy guiding them. Meanwhile, a few aid organisations appear to have policies against negotiations. As an INGO staff member working from Turkey into Syria said, "[Our] policy says not to negotiate, but it's impossible not to. It's normal that you need to negotiate to enable access, and if it's not through you, then it could happen through local partners." This presents a problem, wherein field staff are often already engaging with NSAG members, regardless of whether the organisation has made a formal decision to do so or has provided direction or parameters for such engagement.

This has created a great deal of uncertainty for field staff, particularly those working in areas where NSAGs are designated under counter-terror legislation. For example, an international staff member of an INGO working in Syria stated:

"Even if we had the opportunity to speak to this group, I would think twice. I would have a lot of personal responsibility, and it could put me at personal risk, particularly as I live in London. I could easily be in trouble … You're not a UN OCHA guy in New York or an ICRC delegate in Geneva, you don't have the profile to speak to these people with protection. In theory, I could meet them. There are interlocutors for all the armed groups here."

This is just one of the many areas of uncertainty for field staff. Other uncertainties include how proactive or passive staff should be, which principles can or cannot be compromised for the purpose of accessing vulnerable persons, what can be communicated, and how an organisation protects staff who engage in negotiations. This uncertainty, as well as the disconnect between practical issues of frontline humanitarian organisations and internal policies, suggest that humanitarian access – including but not limited to negotiations – is not yet appropriately managed.

For humanitarians, strategic management might be defined as the formulation and implementation of major objectives and initiatives by an organisation's senior management, sometimes as far up as its board of directors. To make decisions strategically, an organisation needs to consider its current resources and the internal and external environments in which it operates. This involves the development of policies and plans, the allocation of sufficient resources and the implementation of control measures. While humanitarian agencies strategically manage most areas of their operations (e.g., programming, finances, security, logistics, advocacy), most of them have yet to do the same for access issues.

Moreover, clear guidance on humanitarian access negotiations with non-state armed groups is critical, given that such negotiations increasingly take place (whether or not this is internally known), and often do so in an uncontrolled and unsupported manner. Research for this study indicates that very few humanitarian agencies have explicit policies, plans, resources or management mechanisms for direction, quality control and accountability with regards to humanitarian access negotiations with NSAGs, and no organisation covers all these issues. The available guidance (e.g., McHugh and Bessler, 2006; Swiss FDFA, 2014) rarely speaks to the senior/global management levels of organisations; instead, it focuses on the development of country/area management capacities. Many organisations intentionally obfuscate by failing to develop policies outlining their engagement with NSAGs. Research for this study suggests that aid agency senior management often seeks – consciously or not – to avoid running afoul of donor governments' political considerations (see also Stoddard and Jillani, 2016a).

This obscurity or wilful ignorance of humanitarian access negotiations at the top level of organisations is perhaps one of the main challenges to access in the field. Without clear policy reference and global/regional direction, Country Directors feel unsupported in their exploration and pursuit of humanitarian access negotiations with NSAGs. This has forced humanitarians in the field into dilemmas in which they either do not explore such options to reach the most vulnerable people, or proceed on personal risk.

At a minimum, there is a need for an organisational policy position, one that can be communicated to all regional, country and area managers. If humanitarian access negotiations with non-state armed groups are deemed potentially permissible, then agencies should also have a framework or plan for each country that details how such negotiations will be handled. The key policy question may be the following: To what extent is an organisation ready to compromise its sacred humanitarian principles, its security and its reputation for the purpose of gaining sub-optimal access arrangements to populations in need? Once the idea of such compromises is accepted, the issue becomes technical in nature (i.e., training, representation, policies, monitoring).

This document does not offer a template, but instead suggests a 'functional checklist' to support humanitarian agencies as they draft their own internal policies (see Box 4). It is based on some of the challenges, uncertainties and dilemmas faced by national and international humanitarians in high-risk countries, as observed through the SAVE field research. This checklist provides a series of questions for agencies to reflect upon, to ensure that their policy is robust enough to be relevant to actual problems identified by field staff.

BOX 4. FUNCTIONAL CHECKLIST FOR HUMANITARIAN ACCESS NEGOTIATION POLICIES

1. Do the policies define whether your organisation is, in principle, open to negotiating for humanitarian access with any armed group, some armed groups or none?

    a. If none, do they define which actions staff and management must take if non-state armed groups communicate or interact with them?
    b. If some, do they clearly outline the rationale for assessing whether one armed group may be permissible over another?

2. Do the policies define at which levels the decision to negotiate should be made, how often the decision should be reviewed and what information is required to inform that decision, such as:

    a. Weighing the comparative risks against aid recipients in decision-making on whether to negotiate;
    b. Consideration of other ongoing access negotiations (e.g. those of other organisations, inter-agency processes, etc.);
    c. Analysis of armed groups (such as their composition, interests, behaviours or perceptions of humanitarians);
    d. Legal and political analysis;
    e. Analysis of what an independent and neutral approach might mean in practice?

3. Do the policies outline key responsibilities at different levels (e.g., HQ, regional, country, sub-country structures) to drive, support and oversee humanitarian access negotiations?

4. Do the policies outline expected indicators in terms of quality, performance and results for humanitarian access negotiations?

5. Do the policies include instructions for what information can be shared and not shared with other actors, including:

    a. Bilaterally, with other humanitarian agencies;
    b. Multilaterally, with humanitarian coordination mechanisms (e.g., UN OCHA, NGO forums);
    c. With host governments;
    d. With donor agencies and/or donor governments;
    e. With inter-governmental bodies, including the UN?

6. Do the policies specify what kind of legal support will be provided to staff involved in humanitarian access negotiation decision-making and consider the different laws in:

    a. Host countries, i.e., country of operation;
    b. Home countries, for expatriate nationals;
    c. HQ countries, under which senior management and the board of directors are liable;
    d. Major donor countries relevant to the country programme in question?

7. Do the policies consider how resources will be made available, in terms of:

   a. Implementation, including staff and logistics;
   b. Technical expertise, quality management and standards development;
   c. Training for staff;
   d. Security, particularly that of communications and data?

8. Do the policies specify whether or how decisions and developments in humanitarian access negotiations should be documented, reported and reviewed at different levels of the organisation?

9. Do the policies draw parameters for the types of strategic compromises, including principled compromises, that are acceptable during access negotiations?

10. Do the policies specify how staff who are most exposed during access negotiations will be protected from additional risks to their safety and legal status, both now and in the future?

8. Conclusion and recommendations

Humanitarian access negotiations with NSAGs have become increasingly important, though they are still crystallising as a technical field of practice in the majority of organisations. This and other research suggests that many aid agencies are open to (directly or indirectly) negotiating with NSAGs or are already doing so, but that there is a need for clearer direction, improved competencies and capacities to perform, dedicated resources and operational support, and robust strategies to conduct negotiations that are based on pragmatic and contextualised interpretations of the humanitarian principles.

This paper has synthesised some of the research findings on how agencies engaged with NSAGs in four of the highest-risk contexts for aid agencies during the time period studied (2014-2016). It has focused on several areas in which there are gaps in guidance (in the wider body of literature as well as internally within organisations) and lessons learning: deciding how to negotiate or communicate with NSAGs (i.e., directly or indirectly); what to do when there are multiple NSAGs; how to handle negotiations when other agencies may be taking similar actions; and how to develop internal policies and guidance on negotiations.

The full research found that the vast majority of organisations respected by peers for having the best ability to access those most in need were engaged in direct negotiations (see also Haver and Carter, 2016). In contrast, the majority of organisations in the four SAVE countries were not engaged in direct negotiations with NSAGs; many were indirectly engaged. While they have specific merits and advantages, indirect negotiations were often not adopted for these reasons, and efforts to explore the viability and value of direct access negotiations were rare.

Each of the four country contexts – Afghanistan, Somalia, South Sudan and Syria – revealed a distinct approach to negotiations, with differing outcomes in terms of quality of access. The approaches adopted by country programmes often appeared to be strongly influenced by donor and UN positioning towards the parties to the conflict, which made them sub-optimal in terms of outcomes. More negotiations took place in more fluid conflicts, with more mobile humanitarian responses. In contrast to the influence of donor and UN positioning, the general level of host government interference in humanitarian action (or their opposition to engagement with NSAGs) did not appear to strongly impact whether agencies directly engaged with NSAGs. Whether an NSAG was a designated terrorist group in and of itself was also not a primary determinant of whether agencies were willing to negotiate with them.

Many aid workers mistakenly believed that humanitarian access negotiations were unacceptable under international norms and frameworks, to their donors or within their own organisation's policy. In this regard, national staff were slightly more sceptical than international staff of whether access negotiations would be successful; despite this, national staff were more frequently the ones engaged in (indirect) access negotiations. Lacking clear global policies, country-level management tended to delegate negotiation responsibilities to local field staff, often with only implicit instructions and little by way of training, direction

or accountability structures. In only one of the four contexts (South Sudan) did agencies report that international staff were regularly negotiating directly with NSAGs; this was also the only country context in which both donors and UN agencies openly communicated with NSAGs. In Syria, where the major donors have not aligned with the state, and have promoted or significantly funded humanitarian action in NSAG-controlled areas, humanitarian access negotiations were also better developed. It was clear that donor positioning was a strong determinant of whether humanitarians would negotiate with NSAGs to reach those most in need, which runs contrary to the humanitarian principles of impartiality and neutrality. This underlines the importance of protecting organisations' operational independence when pursuing humanitarian access negotiations.

South Sudan was also the only context in which there were clear coordinated negotiation mechanisms with NSAGs for specific aid operations – albeit with mixed outcomes. While there were examples of inter-agency initiatives helping to set broad ground rules (as in Syria) or engage at senior levels (as in Afghanistan), they have also been hampered by the political and operational limitations of the UN, and they are not an effective substitute for strong bilateral relations with key stakeholders at the local level.

A number of factors continue to fuel a sense of secrecy about access negotiations with non-state armed groups. These include aid organisations' failure to outline clear policies or to make strategic investment in negotiations. They also include a generally low level of awareness and confidence among staff about the substance of counter-terrorism legislation and the legal norms and frameworks underpinning engagement with non-state armed groups for the purpose of access. This situation has contributed to sub-optimal levels of engagement with NSAGs and missed opportunities for increasing access to vulnerable people living in areas where such groups are active.

Humanitarian organisations and inter-agency mechanisms need to approach access negotiations strategically, and not shy away from engaging NSAGs in areas where donors or the UN are politically aligned with host governments. Where negotiations are happening, humanitarian organisations need to support frontline negotiators and their management with adequate guidance, training and support.

Recommendations

AT THE GLOBAL LEVEL:

1. Humanitarian organisations with operations in countries where non-state armed groups are active should develop and disseminate internal policies on humanitarian access negotiations.

2. There should be continued advocacy efforts to promote the political and operational independence of humanitarian action, particularly in relation to donor governments, and of agencies and country programmes themselves to ensure that they adhere to and exercise operational independence.

AT THE COUNTRY LEVEL:

3. Every humanitarian organisation should formally decide whether or not to negotiate with non-stated armed groups active in its country of operation, and whether to do so directly or indirectly.

4. Field-based staff, including local staff, should receive appropriate training in and explicit guidance on humanitarian access negotiations with non-state armed groups.

5. Aid agencies should seek to understand the specific political motivations of donor governments and UN peace operations, and how these motivations may be influencing their ability to negotiate with non-state armed groups. In some countries, depending on the UN's political positioning and field capacities, NGOs may need to initiate joint, NGO-led initiatives to support access negotiations and preserve their operational independence; this may include investment in non-UN air logistics.

FOR FURTHER RESEARCH AND GUIDANCE:

6. Take steps to understand the underlying attitudes and practices of national staff regarding humanitarian access negotiations, given the disparity between international and national staff perspectives on whether such negotiations are acceptable.

7. Conduct exploratory research on the inclusion or integration of protection objectives in humanitarian access negotiations with non-state armed groups.

8. Devise operational guidance for the effective management of intermediaries used in indirect negotiations with non-state armed groups for humanitarian access.

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