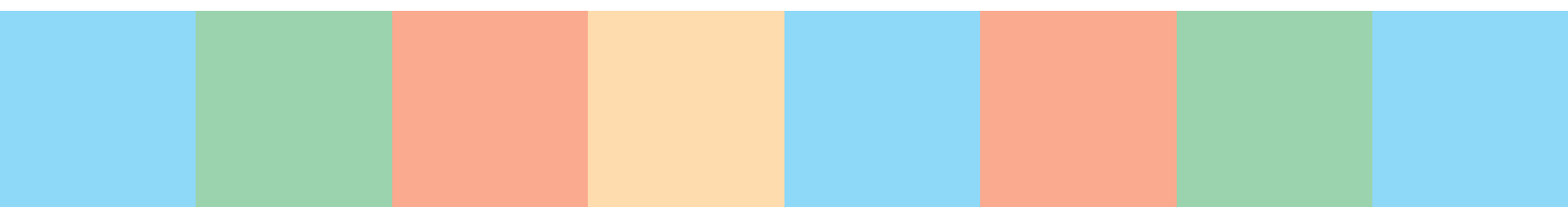


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Seminar on Humanitarian Access, Protection and Assistance under Constraints

SUMMARY CONCLUSIONS



Foreword

On 7th November 2012, the Global Protection Cluster organised a seminar on “*Humanitarian Access, Protection and Assistance under Constraints*”. Participants from the humanitarian and protection sectors – including UN, NGO, intergovernmental organizations, and donors - gathered to discuss current challenges in ensuring protection and respect for humanitarian principles where humanitarian access is becoming increasingly difficult. In this context, they also examined ways of improving operational capacities for protection delivery and assistance to affected civilian populations.

The round-table discussion focused on academic research, policy and best practice in the coordination of protection and humanitarian assistance under conditions of limited access. Specific examples of how humanitarian space was maintained through negotiation and dialogue with states and organised armed groups were examined in light of challenges to humanitarian principles, perceptions of stakeholders, and the strategies employed in different operations.

The concept and mainstreaming of accountability towards beneficiaries and the often difficult compromises considered when programming for protection in this context, were also addressed. In light of these discussions, the adoption of a common framework for operational and strategic decision-making was given a heightened focus throughout the seminar.

The following note summarizes the discussions and recommendations made and serves as a basis for policy development, guidance and advocacy on humanitarian access.

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I. Context where humanitarian access is constrained

A) General context

The environment in which humanitarian agencies and their staff protect and assist affected populations continues to be dominated by large scale displacement as a result of armed conflict, predominantly of a non-international character, and natural disasters. Non-international armed conflicts pit governments against non-state armed groups or, alternatively, armed groups vie between themselves for supremacy in part or in all of a territory of a state. In some situations, extra-national actors, including other states, engage with or are suspected of engagement with one or other of the armed groups consequently blurring accountability under international law.

In parallel, the regulation and/or restriction of humanitarian assistance and provision of protection is often imposed by governments and armed actors as part of a military strategy in order to support war efforts or to fuel strategic interests or propaganda. This may also apply to situations of displacement due to natural disasters: authorities may perceive or portray protection and humanitarian assistance as interfering in their internal affairs, or as creating obstacles for the accomplishment of their political and strategic objectives. Types of restrictions imposed include but are not limited to the use of discriminatory immigration policies, the imposition of lengthy administrative procedures or travel bans on humanitarian organisations.

In addition, grave violations of human rights and international humanitarian law including the deliberate targeting of civilians, sexual violence and recruitment of children into armed groups continue to be common in conflict situations while the targeting of international humanitarian personnel is also on the rise.

The lack of commitment by non-state actors to protect civilian populations under their control coupled with the absence of an effective legal frameworks for the protection of civilians in such contexts have also fostered a growth in influence of criminal organizations. In some regions, the economics of crime and associated violence are inhibiting not only humanitarian assistance but also any purposeful humanitarian dialogue and negotiations. The parallel lack of capacity and/or engagement by some states to ensure protection of their populations or to provide and facilitate humanitarian access to persons in need has frequently created opportunities for criminal groups to act with impunity.

B) Operational considerations

In addition to the threats imposed by state or non-state actors, indirect constraints may also prevent humanitarian assistance from reaching those in need. Security and administrative rules of organisations may constitute an impediment to protection and assistance if they are not adapted to the context or if they are politically biased. Also, the domestic laws of states, both donors and host states, may hinder organisations from engaging with armed actors listed as terrorists or providing humanitarian services in areas controlled by these groups.

The purported “politicization of aid” and the blurring of lines between political and humanitarian goals also restrict the ability of humanitarians to reach affected populations. Panellists highlighted the particular challenges faced by humanitarian agencies operating in the context of UN Integrated Missions. In this context, the association of Protection Cluster (and others) Lead Agencies (i.e. those agencies with coordination responsibilities) with Missions having a political or security mandate can be negatively perceived by parties to a conflict, and also by the affected populations. Such perceptions are further enhanced where the Mission prioritizes its political mandate over other responsibilities.

The lack of clarity on the rules of engagement with regard to liaison, dialogue, negotiation, etc., between the military components of a UN mission vis-à-vis non-state armed elements/groups also reduces the capacity of the former to provide physical protection and assistance to civilians at risk.

From the operational perspective, concerns were raised in relation to the lack of accountability to affected populations particularly in the coherent identification and response to urgent protection and assistance needs. In some situations, this has deflated the confidence of affected populations in many of the prominent humanitarian actors and led them to seek assistance from other non-accredited, less well known or unconventional sources whose motives are often unclear and whose accountability is non-measurable. More disturbing is where it has reinforced non-state actors’ control over specific groups. Panellists emphasised the necessity for humanitarian coordination to actively engage with all relevant actors in a more strategic manner.

In some high-risk operations, security measures have obliged humanitarian personnel to restrict their movement to the extent of their “bunkerization” in heavily fortified compounds, which has often resulted in their isolation from affected populations.

The participants were in consensus that protection advocacy has failed to address concerns related to humanitarian access and the protection of civilians. Public denunciation of human rights abuses and violations of international humanitarian law by or a dogmatic insistence on respect for humanitarian principles have been ineffective for the most part.

Furthermore, participants agreed that advocacy during emergencies emphasized access for life-saving material assistance purposes but did not focus on meeting the broader protection needs of populations. This has narrowed and weakened the life-saving role and impact which advocacy may have.

The seminar also looked at the issue of remote humanitarian management. This approach was originally aimed at transferring the coordination and monitoring of some (core) activities to national staff members or partners in situations where access was limited for expatriates. However, panellists agreed it is generally recognised that the success of remote management has been difficult to measure. It has reduced the quality, control and oversight of protection and assistance activities and increased the risk of diversion and abuse. It also places national and local staff and partners at risk (‘transfer of risk phenomenon’) and increases the distance between humanitarian agencies and beneficiaries.

II. Way forward: coordination and programmes under limited access

Some organisations are more nimble and successful than others in gaining or maintaining access. It is impossible to pinpoint any single access “strategy” that would be successful across different contexts. What works to overcome access constraints in one country may not work or be counterproductive in others. This being said, the seminar identified key activities that Humanitarian Coordinators, Protection Clusters and Agencies can undertake to expand or preserve access:

A) Information management and analysis of humanitarian access constraints and incidents

Humanitarian Coordinators and Protection Clusters have a central role in identifying opportunities and designing access strategies. The first phases in the development of any access strategy are to document the situation of the affected population; identify protection and assistance needs; and highlight the source of problems where protection and assistance is unavailable or denied.

The Access Monitoring & Reporting Framework (AMRF) is a tool used by OCHA Country Offices to collect and analyse data on the impact of constraints on the humanitarian response. This framework identifies nine types of incidents where access can be constrained, and their impact on delivery of assistance to affected populations. A set of context-specific indicators for each type of constraint has been developed for specific protection issues, such as direct threats against humanitarian workers, restrictions on or obstruction of conflict affected populations’ access to services and assistance, and to post-distribution looting of relief items.

In this regard, and as part of their general assessment and monitoring approaches, Protection Clusters need to increase their focus on information gathering and analysis of the impact of humanitarian access constraints. This analysis integrates the AMRF indicators into the Protection Cluster assessments. Overall, coordination by Protection Clusters with Humanitarian Coordinators, Humanitarian Country Teams and OCHA must be improved to address protection related constraints. Advocacy and negotiations with governments and non-state actors must be more focused on identifying the most urgent needs and in establishing priorities.

B) Strategy and programme planning

In strategic and operational (programme) planning, HCs, HCTs and individual agencies must seek to mitigate and manage security risks to continue their protection and assistance delivery. Risk mitigation must be integral to strategic initiatives on access and should be factored into all response planning. Advocacy and negotiation must also reflect the risks and opportunities identified. Humanitarian coordination fora and agencies must shift focus to balancing operational risks with helping populations in urgent need of protection and humanitarian assistance.

Moreover, where access is limited, humanitarian actors must confront and decide on the compromises to be made in protecting affected populations without jeopardizing a longer-term respect for established humanitarian principles and minimum operating standards. This includes when and how to deal with armed actors, including non-state armed groups, or deciding when leaving affected populations to existing coping mechanisms is the best option.

However, it was noted that complying with the humanitarian imperative to save lives and alleviate suffering can contradict the requirement to remain neutral, independent and impartial. Participants recommended that humanitarian coordination fora and organisations develop context specific internal and emergency-wide “red lines” that specify acceptable actions in specific situations. This includes the use of armed guards, paying for access and/or for delivering assistance. Humanitarian Coordinators, HCTs and Protection Clusters in particular have an important role in defining the “red lines” beyond which humanitarian actors should not engage.

Participants considered the roles of Humanitarian Coordinators, HCTs and Protection Clusters as essential in mainstreaming protection in humanitarian response. While preserving humanitarian space can result in improved access and hence improved protection for vulnerable populations, mainstreaming ensures a protection orientation to all humanitarian activity through which to deliver life-saving protection and humanitarian assistance.

With regard to physical protection, the role and involvement of the HC and the Protection Cluster in the establishment of strategies and programmes for the Protection of Civilians was underlined by panellists. Reviewing lessons learnt and good practices in joint leadership between state, protection and development agencies in the field of Rule of Law and Security Sector Reform, participants raised the need for Protection Clusters to address the Protection of Civilians more forcefully. In addition, for the longer term strategies, coordination and co-leadership with development agencies should include a Protection of Civilians component in planning the progressive transfer of protection responsibilities to national authorities.

UN programmes developed to support security forces are subject to the Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP). This means that the risks of providing such support needs to be assessed in advance and programme implementation must be closely monitored to identify and/or obviate potential breaches or violations of rights. Whenever violations occur, a thorough evaluation is required. The policy does not envisage the provision of support to non-state armed groups / irregular militias.

C) Advocacy and negotiation

Noting that the primary responsibility to protect affected populations lies with states or with non-state parties to the conflict that control the territory according to IHL, Protection Clusters must try to tackle humanitarian constraints at their source by identifying and documenting the risks and engaging with those in control to cooperate on access, protection and assistance. The role of persuasion by the Protection Clusters does not exclude public advocacy though this activity is best undertaken by Humanitarian Coordinators.

Protection Clusters and partners can conduct broad-based advocacy both in-country and at the global level and provide advice to governments and donors on the protection of IDPs and affected populations.

While there is no agreement among humanitarians as to whether the task of negotiating humanitarian access with non-state armed groups can be left to implementing organisations, the roles of Humanitarian Coordinators and Protection Clusters are crucial in establishing common approaches and strategies for humanitarian access.

Participants recognised the custodial competency and role of the International Committee of the Red Cross (ICRC) in promoting IHL and the conduct of general advocacy on questions of access. However, negotiations with governments and non-state entities on behalf of the broader humanitarian community remain the responsibility of the United Nations.

III. Conclusions and recommendations

1. Humanitarian actors consistently face dilemmas when attempting to maintain or increase access to affected populations. In this regard, they need to ensure balance between the respect for humanitarian principles and the need to adapt their activities to the conditions under which the provision of protection and assistance can be undertaken in specific context. They must also ensure not to compromise their longer-term credibility or to risk harm to affected populations. Humanitarian Coordinators and Protection Clusters act as catalysts for the broader humanitarian community in promoting access. Each should engage in continuous dialogue with its partners to evaluate whether a specific context allows for effective and principled delivery of protection and assistance or, whether compromises to maintain a minimum level of access would be too great and foil longer term humanitarian response efforts. When seeking to increase access, Protection Clusters should not neglect community based approaches. The role of Protection Clusters in support of Humanitarian Coordinators is essential in engaging with national authorities to call upon on their responsibility to ensure protection and assistance to their populations.
2. Most participants agreed that past efforts to exert public pressure on governments and de facto authorities have been largely ineffective. They emphasised the need to redirect protection advocacy from public denunciation to supporting program implementation. The less operational actors are better placed to undertake public advocacy. Increased efforts by HCs, HCTs and individual agencies are needed at the country level in coordination with partners to define coherent positions on humanitarian access, protection and assistance. This includes advocacy for and requests to lift specific restrictions on humanitarian activities.
3. In many of the countries where access is severely restricted, non-conventional actors may exert influence over national authorities or non-state actors. Getting such actors on board may prove challenging. However doing so could potentially be a sound strategy for increasing humanitarian access. Protection Clusters must identify which non-conventional actors are particularly influential in a given context and seek to link and harmonize their actions with them as appropriate.
4. HC, HCTs and Protection Clusters must support partners in negotiating access and building acceptance and confidence in the humanitarian imperative. Protection Clusters must support protection outreach initiatives and networking capacities of stakeholders.
5. The role of HC and Protection Clusters is crucial in mainstreaming protection into partner's programmes and activities. This includes engaging with non-state actors and other non-conventional actors to ensure adherence to the humanitarian principles and a rights based approach.

6. Humanitarian coordination must maintain close contact with local authorities and traditional leaders and invest strategically in networking with all relevant groups before and during project implementation. The role of humanitarian coordination is essential to ensure that programs are implemented in close cooperation with local communities and that the development perspective is integrated into all humanitarian exit strategies.
7. Protection Clusters must facilitate and support joint programme initiatives with national authorities and development actors in the areas of Rule of Law and Security Sector Reform.
8. Protection Clusters must encourage and advise the Humanitarian Coordinators to continue liaising with Governments, non-state actors and donors to facilitate access and physical protection where populations are at risk. OCHA must support this process.
9. Individual actors in the Protection Clusters must have minimum technical expertise and operational capacity to be able to contribute to initiatives for the continuous improvement in humanitarian access. The Protection Clusters, therefore, need to ensure that membership is subject to these minimum requirements.
10. The humanitarian imperative to save lives and alleviate suffering can contradict efforts to respect the humanitarian principles of impartiality, neutrality and independence. This may directly influence the degree of humanitarian access. Humanitarian coordination should define the “red line” beyond which humanitarian actors should not engage.
11. Humanitarian coordination fora must support their partners to ensure consistent decision making. Protection Clusters must not create dogmatic “red lines” and should adopt a systematic reasoning process based on commonly agreed principles and standards. Humanitarian principles and the needs of affected populations must be weighed against each other and be balanced with considerations regarding accountability and the potential effects of seeking to provide protection and assistance.