



APPEL DE GENÈVE  
GENEVA CALL

In Their Words



IN THEIR WORDS: PERCEPTIONS OF ARMED  
NON-STATE ACTORS ON HUMANITARIAN ACTION

ACRONYMS .....	3
ABOUT THE AUTHOR .....	4
ABOUT GENEVA CALL .....	4
ACKNOWLEDGEMENTS .....	4
<b>EXECUTIVE SUMMARY</b> .....	5
Introduction .....	5
Key findings .....	5
Implications for the WHS and the Humanitarian Community .....	7
<b>1 INTRODUCTION</b> .....	8
<b>2 METHODOLOGY</b> .....	9
<b>3 FINDINGS</b> .....	10
<b>3.1 Perceptions of Humanitarianism</b> .....	10
Understandings of humanitarian action .....	10
Understandings of humanitarian principles .....	10
Expectations of behaviour and action .....	12
<b>3.2 International Humanitarian Law and Access</b> .....	12
Attitudes towards IHL .....	12
Familiarity with the rules of IHL pertaining to humanitarian access .....	14
<b>3.3 Regulation of Humanitarian Action</b> .....	16
Attitudes towards humanitarian action .....	16
Policies governing humanitarian access .....	16
Bodies or structures governing humanitarian action .....	19
Conditions for the denial or suspension of access .....	20
Targeting aid workers .....	21
<b>3.4 Perceived responsibilities of ANSAs     toward civilians and relief activities</b> .....	22
<b>4 CONCLUSIONS AND RECOMMENDATIONS</b> .....	24
<b>5 REFERENCES</b> .....	26
<b>6 ANNEXES</b> .....	29
Annex A: Questionnaire addressed to selected ANSAs .....	29
Annex B: List of ANSAs consulted .....	30

*This study was produced by Geneva Call  
with the support of the Swiss Federal Department  
of Foreign Affairs.*

“In their words” is a series of studies published by Geneva Call which present and analyse the perceptions of armed non-State actors (ANSAs) on humanitarian issues.

In addition, Geneva Call developed [www.theirwords.org](http://www.theirwords.org), a unique directory of commitments made by ANSAs on international humanitarian law (IHL) and international human rights law (IHRL). [www.theirwords.org](http://www.theirwords.org) contains over 500 online documents, including unilateral declarations and statements, internal policies and regulations, and agreements made by ANSAs with governments, inter-governmental or humanitarian organizations. The publication of such documents does not mean endorsement by Geneva Call, nor that the commitments made by ANSAs are compliant with IHL and IHRL, nor that they have been implemented and respected in practice.



APPEL DE GENÈVE  
GENEVA CALL

47, chemin de la Chevillarde • 1224 Chêne-Bourgeries  
P.O. Box 334 • 1211 Geneva 4 • Switzerland  
T. +41 22 879 10 50 • F. +41 22 879 10 51  
info@genevacall.org • www.genevacall.org

#### Follow us on:

 [appel.de.geneve](https://www.facebook.com/appel.de.geneve)

 [genevacall](https://twitter.com/genevacall)

**Graphic Design:** [www.kathleenmorf.ch](http://www.kathleenmorf.ch)

**Cover Photo:** Santa Blanca. Check-point of the Ejército Zapatista de Liberación Nacional. Mexico, 1994.  
© ICRC / THIBAUT, Emiliano

**Printing:** [www.imprimerie-villiere.com](http://www.imprimerie-villiere.com)

**Paper:** Printed entirely on FSC recycled paper  
using organic inks

© Geneva Call, May 2016

ABC	ABBREVIATION	DEFINITION
A	APCLS	Alliance des patriotes pour un Congo libre et souverain (Alliance of Patriots for a Free and Sovereign Congo)
	ANSA	Armed Non-State Actor
F	FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
	FDLR	Forces démocratiques de libération du Rwanda (Democratic Forces for the Liberation of Rwanda)
	FSA	Free Syrian Army
I	ICRC	International Committee of the Red Cross
	IHL	International Humanitarian Law
J	JEM	Justice and Equality Movement
K	KNPP	Karen National Progressive Party
	KNU	Karen National Union
L	LTTE	Liberation Tigers of Tamil Eelam
M	MILF	Moro Islamic Liberation Front
	MSF	Médecins Sans Frontières (Doctors Without Borders)
O	OLS	Operation Lifeline Sudan
S	SLM/A-AW	Sudan Liberation Movement/Army-Abdul Wahid faction
	SLM/A-MM	Sudan Liberation Movement/Army-Minni Minawi faction
	SPLM-N	Sudan People's Liberation Movement-North
	SRRA	Sudan Relief and Rehabilitation Agency
U	UNOCHA	UN Office for the Coordination of Humanitarian Affairs
W	WHS	World Humanitarian Summit
Y	YPG	Yekîneyên Parastina Gel (People's Protection Units)

## ABOUT THE AUTHOR

Ashley Jackson is a Research Associate with the Overseas Development Institute specializing in humanitarian dialogue with armed groups. She has spent several years working on the ground in humanitarian emergencies and conflict

situations with the UN, Red Cross, and other organizations, as well as conducting research and policy analysis on humanitarian access issues.



## ABOUT GENEVA CALL

Geneva Call is a neutral and impartial humanitarian organization dedicated to promoting respect for international humanitarian norms in armed conflict and other situations of violence by armed non-State actors (ANSAs). The organization focuses on armed movements that operate outside effective State control and are primarily motivated by political goals.

Geneva Call's key tool for engaging with ANSAs is an innovative instrument known as the *Deed of Commitment*, which allows ANSAs—as they cannot sign international treaties—to undertake to abide by specific humanitarian norms. Three such *Deeds of Commitment* have been developed to date: the *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*, in 2000; the *Deed of Commitment for the*

*Protection of Children from the Effects of Armed Conflict*, in 2010; and the *Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination*, in 2012. Geneva Call also assists ANSAs with training on international humanitarian law (IHL) and encourages them to integrate IHL into their codes of conduct and other internal regulations.

Since its creation in 2000, Geneva Call has engaged in dialogue with around 100 ANSAs worldwide. More than half of them have signed one or several *Deeds of Commitment* or made similar undertakings. Geneva Call monitors and supports the implementation of these humanitarian commitments.

## ACKNOWLEDGEMENTS

The author and Geneva Call would like to thank all those who contributed to this study. Special thanks go to Olivier Bangerter, Gerard McHugh, Brian McQuinn, and Guilhem Ravier for their very helpful comments on an earlier version of the study. The author would also like to thank several individuals who provided background information and analysis on the ANSAs surveyed, or

valuable input into the research process, including Antonio Galli, Jonathan Loeb, Irina Mosel, and several others who prefer not to be named. Sradda Thapa provided immensely valuable editing support. Pascal Bongard coordinated the study and helped secure ANSAs' contributions with the support of his colleagues at Geneva Call.

## Introduction

As humanitarian actors<sup>1</sup> increasingly operate in situations of internal armed conflict, the importance of negotiating with ANSAs to ensure access has come to the forefront. Yet humanitarians on the ground and the broader international humanitarian community often fail to understand ANSAs' perspectives and motives and, as a result, struggle to engage with them effectively.

On 23-24 May 2016—following a two-year consultation process that involved people affected by humanitarian crises, governments, civil society, humanitarian organizations, and other key stakeholders—the United Nations Secretary-General will convene the first World Humanitarian Summit (WHS). The purpose of the WHS is to set an agenda for humanitarian action to collectively address today's most pressing humanitarian challenges. However, ANSAs—which play an integral role in allowing or hindering humanitarian operations in conflicts from Syria and Somalia to Colombia and the Central African Republic—were not consulted in this endeavour. This study aims to address this gap and contribute to a better understanding of ANSAs' perceptions on humanitarian action.

Between June 2015 and February 2016, Geneva Call consulted 19 ANSAs (and several relief organizations affiliated with these groups) in 11 countries. The ANSAs participating in this survey were selected by Geneva Call. The research approach is described in the methodology section, and a list of the ANSAs consulted is provided in Annex B.

---

## Key findings

### Understandings of humanitarian action:

Despite the diversity of the ANSAs consulted, there is a high degree of uniformity in many of the views expressed on a range of issues related to humanitarian action and access.<sup>2</sup> Many of the ANSAs consulted see humanitarian action, in broad terms, as alleviating suffering or providing relief to those affected by armed conflict or natural disaster. Very often, they only refer to assistance; the protection of civilians, or related protection issues, is rarely mentioned. Additionally, the ANSAs consulted see a direct link between the integrity and quality of assistance, on the one hand, and the humanitarian agency's adherence to the principles of neutrality, impartiality, and independence on the other.

### Knowledge and acceptance of humanitarian principles:

The ANSAs consulted are broadly familiar with the core humanitarian principles. Though the two principles are sometimes conflated, neutrality and impartiality are integral to the acceptance of aid work by these groups. Independence is important as well, but ANSAs recognize that geopolitical concerns, funding, and other factors challenge the ability of humanitarian actors to be independent in practice. With all of the principles, the focus is on observed behaviour (rather than, for example, where an agency's funding comes from). Although, at times, ANSAs have sought to co-opt humanitarian aid or undermine humanitarian principles (much like States sometimes do), there is also a strong expectation that humanitarians should keep to their principles.

---

<sup>1</sup> In this study, the terms "humanitarian actors", "relief organizations", "humanitarian agencies", "humanitarians", and "aid workers" are used interchangeably.

<sup>2</sup> Drawing on the Swiss Federal Department of Foreign Affairs' practitioners' manual on humanitarian access in situations of armed conflict (2014),

humanitarian action is defined here as encompassing humanitarian assistance and protection, whereas humanitarian access is defined as "access by humanitarian actors to people in need of assistance and protection and access by those in need of the goods and services essential for their survival and health, in a manner consistent with core humanitarian principles."



**Acceptance of IHL:**

The ANSAs consulted express overwhelmingly positive attitudes towards IHL, including humanitarian access. This is true even among those with only notional understandings of IHL and documented histories of violations. Additionally, several ANSAs offer nuanced critiques of international law in direct relation to how it affects them or their concerns. They express frustration that they are largely excluded from the development of IHL and that States are rarely held accountable for arbitrary denial of access or other violations.

**Lack of knowledge of the rules of IHL relating to humanitarian access:**

Although the ANSAs consulted express support for IHL, 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. Consequently, there is greater expressed acceptance of IHL where there has been long-term humanitarian engagement. This underscores the importance of donors supporting and humanitarian agencies conducting a sustained dialogue with ANSAs. This should include repeated dissemination of IHL at all levels, including rules about access.

**Support for humanitarian action:**

The ANSAs consulted overwhelmingly claim to allow humanitarian access and want aid agencies to operate in areas they influence or control. Every single movement surveyed has relationships with humanitarian actors other than Geneva Call. These range from Hamas coordinating with the International Committee of the Red Cross (ICRC) in Gaza on the evacuation of the wounded, to the Moro Islamic Liberation Front (MILF) and UNICEF agreeing to an action plan to end the recruitment and use of child soldiers, and the Sudan Liberation Movement/Army-Minni Minawi faction (SLM/A-MM) participation in a humanitarian-facilitated prisoner exchange.

**Regulation of humanitarian access:**

All of the ANSAs consulted feel entitled to regulate and control humanitarian access. Many have some form of policy governing access and have created structures to coordinate, facilitate, and monitor humanitarian action. Access is, without exception, tied to specific conditions. Some of these conditions are consistent with IHL as many ANSAs emphasize the importance of humanitarians behaving in accordance with the principles of neutrality, impartiality, and independence. Many also consider themselves responsible for the security of aid workers in their areas. However, it is important to note that the degree to which ANSAs' "rules" are applied in practice is not examined in this study, and there are documented instances of the arbitrary denial of humanitarian access, aid diversion, and attacks on aid workers by some of the ANSAs consulted.

**Expulsion of and attacks on aid workers:**

Failure to secure consent for aid activities or follow "the rules" imposed by the ANSAs interviewed are seen as the most likely factors to lead to the expulsion or harm of aid workers and their property. Some ANSAs consulted admitted to having expelled specific aid agencies that they believed were spying. Few, if any, ban specific types of humanitarian actors in general terms. The exception is Sudan, where ANSAs perceive the country's own humanitarian organizations, particularly those associated with the government, to be neither neutral, impartial, nor independent. Many ANSAs elsewhere are circumspect about denial of access and reluctant to elaborate on examples where aid workers have been either deliberately or mistakenly attacked.

**Perceived responsibilities towards civilians:**

The ANSAs consulted often differ on what they see as their responsibilities toward civilians. This is influenced by their degree of territorial control and objectives, the broader context (i.e. what assistance the government, other ANSAs, and aid agencies already provide), the conflict dynamics, and other factors. Many ANSAs feel responsible for the physical protection of civilians and express concern for their wellbeing. Some have established their own relief departments and report a broad list of services which they provide to civilians, including food distribution and medical care. Others, however, mention simply first aid or small, localized relief activities. Though only a few examples exist in practice, many ANSAs claim that they would be open to entering into humanitarian agreements with their enemy.

## Implications for the WHS and the Humanitarian Community

This study's central conclusion is that more principled and consistent engagement with ANSAs on IHL is urgently needed. The fact that the ANSAs consulted understand the spirit of the core humanitarian principles and support humanitarian action is positive. However, several important issues demand action from the humanitarian community. First, there is still confusion about the rules of IHL concerning humanitarian access. ANSAs cannot comply with rules that they neither know about nor understand. Second, several ANSAs feel that humanitarians have not engaged with them proactively or impartially. Non-engagement or fragmented, ad hoc engagement ultimately hinders compliance with IHL and contributes to access constraints. Third, ANSAs' acceptance of humanitarian principles leads to high expectations that humanitarians will also adhere to those principles. It is critical that humanitarians be well versed in the principles and act accordingly. Perceptions that humanitarians are not sticking to their principles have dangerous consequences, ranging from denial of access to attacks on aid workers.

Finally, the WHS's exclusion of ANSAs is not unique. It is symptomatic of a more widespread failure among the humanitarian community to engage with ANSAs in international normative and policy processes. This is ultimately counterproductive to the goal of securing safe humanitarian access in conflicts worldwide. ANSAs' compliance with IHL is likely to improve if they are more actively consulted about the creation and implementation of the rules they are expected to abide by, as well as during broader discussions around access and humanitarian action. States are likely to resist such participation, but identifying creative ways to stimulate dialogue with ANSAs and enhance their buy-in to these processes deserves greater attention than it has been given to date.

Engaging with ANSAs is increasingly important as the majority of conflicts in which humanitarian actors operate are intra-State. Security incidents affecting aid workers have more than tripled over the past decade, and there is a growing concern over the role ANSAs have in such insecurity.<sup>3</sup> Moreover, when ANSAs control territory, and therefore access to populations, humanitarians have to negotiate access so as to be able to deliver aid. Yet the vast majority of humanitarian agencies fail to engage effectively with ANSAs, and it is the aid workers and those in need of their help who suffer the detrimental consequences. Humanitarian agencies that do engage with ANSAs are often hesitant to admit that they do so, particularly when such groups are labelled as “terrorists”; they are often reluctant to share their experiences with other aid workers or publicly speak about them.

On 23–24 May 2016, the United Nations Secretary-General will convene the WHS in Istanbul, Turkey. As the first-ever summit of this scale, its goals are to identify solutions to today’s most pressing challenges in meeting the needs of people affected by conflicts and disasters and to set an agenda for keeping humanitarian action fit for the future. The WHS will bring together key stakeholders in humanitarian action, including governments, civil society, humanitarian organizations, people affected by humanitarian crises, and new partners such as the private sector. However, one important group has been missing throughout the consultations leading up to the WHS and is excluded from the summit itself: ANSAs.

To date, little substantive research has been conducted on how ANSAs perceive humanitarian action.<sup>4</sup> A growing body of literature exists on humanitarian negotiations with specific groups in Afghanistan, Somalia, and Sudan<sup>5</sup>, and alongside this, some important work has been done on ANSAs’ attitudes towards IHL and the protection of civilians.<sup>6</sup> Nonetheless, given the recent nature of this work and the limited breadth of its coverage, ANSAs’ views are often neither known nor adequately understood. Without this understanding, aid agencies are missing an important part of the access “puzzle”. Without understanding why aid workers are or are not attacked, they cannot adequately protect their staff; without understanding why access is denied or facilitated by ANSAs, it is impossible to resolve blockages. Thus, the present study aims not only to address a gap in the WHS process but also to contribute to a better understanding of ANSAs’ views on humanitarian action, including humanitarian access and principles.

<sup>3</sup> Attribution for these attacks is complex and figures are incomplete, but ANSAs are by no means the only parties responsible. Data on attacks are sourced from the Aid Worker Security Database, update December 2014, with figures referring to 2004–2014, available at <https://aidworkersecurity.org/incidents/report/summary>

<sup>4</sup> One notable exception is Brabant and Vogel (2014) with regards to ANSAs in the Democratic Republic of Congo (DRC).

<sup>5</sup> See Jackson and Giustozzi (2013); Jackson and Aynte (2014); Loeb (2014); Mosel and Jackson (2014).

<sup>6</sup> See Bangarter (2011 and 2012); Bellal and Casey-Maslen (2011); Hyeran (2015); Mattiolo, Casey-Maslen and Priddy (2014), and Sivakumaran (2012).





Interview of the APCLS by Geneva Call, DRC, 2015. © Geneva Call

Between June 2015 and February 2016, Geneva Call consulted 19 ANSAs (and several relief organizations affiliated with these groups) active in 11 countries. ANSAs were selected based on the following three criteria: the existence of a situation of armed conflict or armed violence; the existence of challenges to humanitarian action; and, the existence of a dialogue with Geneva Call. They are diverse in terms of size, organizational structure, motivations, and the extent of their territorial control. A standardized questionnaire, provided in Annex A, was used to guide the consultation process. The pre-existing relationships between Geneva Call and the ANSAs consulted vary from a nascent dialogue to an in-depth interaction over many years.<sup>7</sup>

All the ANSAs consulted have received training on IHL or specific humanitarian norms and signed one or several *Deeds of Commitment*. As such, their responses must be situated within the longer-term engagement that Geneva Call has undertaken with these groups. Although the researchers explained that consultations were voluntary and not tied to any potential benefit, it is important to acknowledge that this prior engagement may have influenced, or at least shaped, what the ANSAs said. On the one hand, Geneva Call's relationships with the leaderships of these movements provided unparalleled access to top-tier decision-makers who otherwise would have been difficult to reach and a greater ability to ask sensitive questions. On the other hand, this relationship may have influenced in some ways the answers that respondents provided. Additionally, the study's focus—presenting ANSAs with an opportunity to express their views publicly and potentially enhance their image—may have encouraged them to speak more positively about humanitarian action and their policies toward it.

It is important to highlight that although Geneva Call engages with a wide range of ANSAs, those consulted do not constitute a representative sample per se. However, to provide a more comprehensive picture, the report's analysis of the ANSAs consulted is compared and contrasted to that of the publicly available policies and statements made by other armed groups<sup>8</sup> as well as previous research conducted by the author.<sup>9</sup>

A list of the ANSAs consulted is provided in Annex B. The names of two groups have been kept confidential: the first group's name is not mentioned at its request, and the second group's name is being withheld to avoid politicized reactions to the study. A third movement is named in the annex but not directly quoted, as per its request. Nonetheless, consultation with these ANSAs contributed to the overall analysis.

Given the difficulty in consulting ANSAs (particularly within a short period of time), the survey methods varied. Most groups (13 of 19) responded in a written form, with complete and thorough answers to the questionnaire prepared by Geneva Call. Written contributions were submitted either by members of the leadership (Chairman, Commander in Chief, Secretary General, Secretary for External Affairs, or individuals with similar stature) or the ANSAs' legal advisors, relief coordinators, or spokespersons. Leaderships approved the vast majority of the contributions. For the six other ANSAs, consultations took the form of face-to-face interviews or group discussions. In the majority of cases, these face-to-face consultations also involved the groups' leaders; where this was not the case, they were held with senior representatives (such as spokespersons, military commanders, and legal advisors). An effort was made to interview female representatives of the groups, but this was more difficult with some ANSAs. Ultimately, women from six of the 19 ANSAs participated in the consultation process.

As this study is an overview of ANSAs' main views on humanitarian action and their own responsibilities to civilians, the author did not seek to verify each claim made. Stated perceptions and assertions may not reflect the full picture of events on the ground. Nonetheless, in order to contextualize the statements made by the ANSAs consulted, the author conducted several additional interviews with aid workers, researchers, academics, and others with direct or indirect experience of the groups surveyed. Given the sensitive nature of the substance of these discussions, these interviews were conducted on a confidential basis, with non-attribution so as to encourage frankness.

<sup>7</sup> For background information on Geneva Call's engagement with the ANSAs consulted, please refer to: <http://www.genevacall.org/where-we-work/>.

<sup>8</sup> Many of the ANSA documents drawn upon in this study are available at: [www.theirwords.org](http://www.theirwords.org).

<sup>9</sup> See note 5.

The following chapter presents findings on the four key issues that were examined with the ANSAs consulted. The first section explores views on humanitarianism in general as well as the three key principles of neutrality, impartiality, and independence. The second section analyzes ANSAs' understandings of and attitudes toward IHL, specifically in relation to humanitarian access. The third section looks at the ways in which ANSAs seek to regulate humanitarian access. The final section looks at what they perceive to be their own responsibilities towards civilian populations in the areas under their influence or control.

### 3.1 PERCEPTIONS OF HUMANITARIANISM

#### Understandings of humanitarian action

Each ANSA's understanding of humanitarianism is heavily influenced by direct experience and context. When asked to define humanitarian action, many of the ANSAs consulted provide tautological responses (for example, one movement describes it as "every person, organization, or institution, or association providing humanitarian assistance"). Many also refer to the work of specific humanitarian actors such as the ICRC, UNICEF, Doctors Without Borders / Médecins Sans Frontières (MSF), or UN Office for the Coordination of Humanitarian Affairs (OCHA). Humanitarian action is understood, in broad terms, as alleviating suffering or providing any relief intended to meet the needs of those affected by conflicts or disasters.<sup>10</sup> Protection is rarely mentioned, with the focus placed heavily on assistance. Those groups that do mention protection often link protection to justice and accountability for abuses, and they are more likely to see human rights organizations as humanitarians and/or feel that monitoring human rights abuses are within the remit of humanitarianism.

Humanitarian action is expected to adhere to high standards. For example, the People's Protection Units (YPG) and the Free Syrian Army (FSA) Fastaqem describe it as motivated by purely humanitarian concerns.<sup>11</sup> More commonly, humanitarianism is regarded as above or outside the politics of the conflict. Nonetheless, it is seen as necessarily principled and this link to principles is integral to its acceptance by ANSAs. At times, this theoretical conception of humanitarian action conflicted with the behaviour of the humanitarians observed by ANSAs in real-life interactions. This is explored in greater detail later on.

<sup>10</sup> Consultation with the FDLR, July 2015; consultation with the FSA Fastaqem, August 2015; consultation with the KNU, August 2015; consultation with the SLM/A-MM, September 2015.

#### Box 1: Core Humanitarian Principles

##### Neutrality:

Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious, or ideological nature.

##### Impartiality:

Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress, and making no distinctions on the basis of nationality, race, gender, religious belief, class, or political opinions.

##### Independence:

Humanitarian action must be autonomous from the political, economic, military, or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

Sources: ICRC (1979), Swiss Federal Department of Foreign Affairs (2014).

#### Understandings of humanitarian principles

Most of the ANSAs consulted are familiar with the core humanitarian principles and consider that these should guide humanitarian action. When explicitly asked about neutrality, impartiality, and independence, they express positive views of these principles. Several ANSAs also feel that principles such as humanity, transparency, and do-no-harm are important.

##### Neutrality and impartiality

The majority of the ANSAs consulted regard neutrality as essential to the safety of aid workers and integral to them being allowed access to areas under their control. The consequences of non-neutrality are seen as harmful to others; the YPG consider that partisan actors distributing relief could potentially be aggravating their conflict. Some groups, such as the FSA First Brigade and the Islam Army, also feel that non-neutrality would immediately render a humanitarian actor a party to the conflict.<sup>12</sup>

Impartiality is also important. The Justice and Equality Movement (JEM) argues that it would be extremely difficult

<sup>11</sup> Consultation with the YPG, August 2015; consultation with the FSA Fastaqem, August 2015.

<sup>12</sup> Consultation with the FSA First Brigade, August 2015; consultation with the Islam Army, October 2015.

for humanitarians to defend “discriminative action in the humanitarian business. If humanitarian actors do not demonstrate impartiality [...], authorities will not allow them to operate freely and their safety might be jeopardized by the same people who have been discriminated against.”<sup>13</sup> The Sudan People’s Liberation Movement-North (SPLM-N) states that partiality—organizations “operating on political, religious, and racial bases”—is the only grounds on which they would deny access to areas under their control.<sup>14</sup> The YPG explicitly recognize the importance of organizations working with all sides in the conflict. They claim that they do not see those working in government-controlled areas as necessarily partial to the regime and underscore the importance of impartiality in relation to providing assistance to affected populations, regardless of their political orientation.<sup>15</sup> Similarly, Saraya Ashura/Popular Mobilization Units state that “it is essential to provide aid support, even for the wounded terrorists,”<sup>16</sup> a reference to the Islamic State group fighters.

Neutrality and impartiality are often seen as inextricably linked and are at times conflated. Many of the ANSAs consulted do not seem able to distinguish between the two concepts, frequently using the word “neutrality” to describe both neutrality and impartiality or using the terms interchangeably. For example, the SLM/A-MM considers neutrality to be a “basic requirement” for access.<sup>17</sup> Yet when asked how aid workers should demonstrate this, the SLM/A-MM says that they should be impartial and “provide humanitarian assistance equally to all.”<sup>18</sup> Similarly, in response to the question about how humanitarian actors should demonstrate their neutrality, the FSA First Brigade states that they should do this “by standing at the same distance from everyone and serving everyone regardless of the political orientation, race or religion.”<sup>19</sup>

However, not all the ANSAs consulted feel that both neutrality and/or impartiality are essential features of humanitarian work. Hamas, for example, considers that political neutrality is not a defining feature of humanitarianism, “as a political party can provide humanitarian work and this [lack of neutrality] is not a defect.” It regards humanitarian assistance as neutral in character, even if those providing it are not wholly neutral entities; to support this, Hamas cites the fact

that the US government provides neutral humanitarian assistance “in spite of some issues in the Arab world.” Impartiality, defined by Hamas as treating everyone “as a human being, regardless of religion, sex, race, and offer[ing] him [the] humanitarian assistance he needs regardless of any political background,” is seen as essential.<sup>20</sup>

### *Independence*

The majority of the ANSAs consulted strongly believe that humanitarian actors should be independent and somehow held accountable for that independence. They feel that military or political interference could prevent those who need assistance from having access to it.<sup>21</sup> It is also clear that if humanitarian organizations are not perceived to be independent, they would not be allowed to operate. In several instances, ANSAs hint that aid workers in such situations could be put at risk. Others feel that although independence is an important ideal, it is nearly impossible to achieve it in operational terms. For example, one group explains that humanitarians are “conditioned by factors such as the political contexts in which they emerge, their sources of funding and the status of their relationship with the authorities.”<sup>22</sup> While there is an understanding of these constraints and pressures, it is important to point out that this does not correlate with ANSAs relaxing their expectations that humanitarians nonetheless behave in an independent manner.

Although the criterion for independence varies, there is a strong—near exclusive—focus on observed behaviour. With some exceptions, few ANSAs feel that the nature of funding sources has an impact on independence. One group sees the importance of independence as ensuring that their actions are “not to be affected by, or adopt positions in the interests of, any political power.”<sup>23</sup> When pressed to describe how independence could be demonstrated, many ANSAs circle back to impartiality or neutrality in their activities. The MILF, for instance, points to one humanitarian organization that does not “allow any person to board their vehicle if such person is identified with any of the warring parties, AFP [Armed Forces of the Philippines] or MILF”, as an example of how independence could be demonstrated in practice.<sup>24</sup>

<sup>13</sup> Consultation with the JEM, September 2015.

<sup>14</sup> Consultation with the SPLM-N, June 2015.

<sup>15</sup> Consultation with the YPG, August 2015.

<sup>16</sup> Consultation with Saraya Ashura/Popular Mobilization Units, February 2016.

<sup>17</sup> Consultation with the SLM/A-MM, September 2015.

<sup>18</sup> Consultation with the SLM/A-MM, September 2015.

<sup>19</sup> Consultation with FSA First Brigade, August 2015.

<sup>20</sup> Consultation with Hamas, September 2015.

<sup>21</sup> Consultation with Hamas, September 2015; consultation with the KNPP, September 2015.

<sup>22</sup> Consultation with an ANSA, November 2015.

<sup>23</sup> Consultation with an ANSA, September 2015.

<sup>24</sup> Consultation with the MILF, June 2015.

### Expectations of behaviour and action

Although the ANSAs consulted support these core humanitarian principles, they do not always see humanitarian actors as adhering to them. The SPLM-N feels that “each organization has its own ideas,” and it asserts that “no actors fulfill all three principles.”<sup>25</sup> This sentiment is echoed in Darfur, where the Sudan Liberation Movement/Army-Abdul Wahid faction (SLM/A-AW) states that “some organizations, especially national ones, are infiltrated by the government and not abiding by these principles.”<sup>26</sup>

There are other, more insidious factors that lead to perceptions of bias, such as fraud, diversion of aid, and lack of accountability. In some cases, standard humanitarian practice—for example, targeting specific populations to the exclusion of others—creates perceptions of partiality. Several ANSAs complain that humanitarian actors are more present in government areas. The Karen National Progressive Party (KNPP), for example, says that “most humanitarian actors come through the government side and can’t see what happens in the ethnic-controlled areas, so they need balance.”<sup>27</sup> The Democratic Forces for the Liberation of Rwanda (FDLR) think that the vast majority of agencies are “partial” because they “provide aid in a discriminatory manner according to the status,” excluding Rwandan refugee populations from assistance. In their opinion, agencies should provide assistance “without any distinction between refugees or Congolese because our needs overlap.”<sup>28</sup> Similarly, the Alliance of Patriots for a Free and Sovereign Congo (APCLS) feels that aid agencies are partial because they distribute relief in some areas but not in others.<sup>29</sup> Other ANSAs are disappointed that humanitarian agencies do not respond more quickly or adequately to crises. With reference to a large-scale killing of civilians in northern Iraq that made international headlines in 2014, one movement asked, “How many human rights organizations or aid organizations mobilized to meet the vital needs of these people? Is this not a question that has to be asked? ... Not a single humanitarian or aid organization took action.”<sup>30</sup> Another movement complains that there are no longer any international humanitarian organizations present in areas under its control in Darfur.<sup>31</sup>

<sup>25</sup> Consultation with the SPLM-N, June 2015.

<sup>26</sup> Consultation with the SLM/A-AW, August 2015.

<sup>27</sup> Consultation with the KNPP, September 2015.

<sup>28</sup> Consultation with the FDLR, July 2015.

<sup>29</sup> Consultation with the APCLS, July 2015.

<sup>30</sup> Consultation with an ANSA, September 2015.

<sup>31</sup> Consultation with the SLM/A-AW, August 2015.

<sup>32</sup> Most ANSAs consulted have committed to abide by IHL and/or specific humanitarian norms (such as the ban on AP mines or the prohibition

### 3.2 INTERNATIONAL HUMANITARIAN LAW AND ACCESS

#### Attitudes towards IHL

The ANSAs consulted express overwhelmingly positive attitudes towards IHL, including the rules about humanitarian access.<sup>32</sup> This is true even among those with only a notional understanding of IHL and documented histories of violating IHL. One movement, for example, calls them “good and important rules.”<sup>33</sup> However, there are several important factors to remember.

First, there is a built-in selection bias in that these ANSAs are already engaged with Geneva Call, which indicates some level of acceptance of IHL. Whether this acceptance results in compliance with IHL by the ANSAs’ members is not always evident in practice. This echoes a 2004 ICRC study that found that favourable attitudes towards IHL did not necessarily extend to their application.<sup>34</sup> There are many reasons for this gap between statements and action: ANSAs may not always have the internal cohesion or organizational capacity to enforce consistent compliance. Complying with IHL requires time and sustained investment, and many groups may not have devoted the necessary resources and attention to doing so. In other cases, they may value some tenets of IHL over others, or they may not be thoroughly familiar with all of the provisions of IHL. The interests and structures of ANSAs, along with their perceptions of humanitarian actors, are not static; they are iterative and evolve over time in response to various internal and external factors.<sup>35</sup>

Second, few ANSAs would like to be portrayed as attacking aid workers or denying civilians aid. Indeed, many see themselves as defenders of the defenseless. They often want to be seen as coherent and organized enough to abide by internationally accepted rules. As the Karen National Union (KNU) representative states: “although I don’t know all rules, I do think we should take part and fulfill our responsibilities.”<sup>36</sup>

of child recruitment and use in hostilities) through various means (unilateral declaration, Deed of Commitment, code of conduct, command orders, action plans, special agreements, etc.).

Copies of these commitments are available on [www.theirwords.org](http://www.theirwords.org).

<sup>33</sup> Consultation with the Islam Army, September 2015.

<sup>34</sup> See ICRC (2004).

<sup>35</sup> For one example of how this worked in Darfur, see Loeb (2013);

for a broad-based analysis, see Kalyvas (2006).

<sup>36</sup> Consultation with the KNU, July 2015.



Third, many ANSAs consulted recognize the practical benefits of professing and demonstrating support for IHL. The FSA First Brigade feels that “respecting [IHL] promotes the personal and group values,” whereas the Islam Army sees IHL as a “core part of the individual and group behaviour of the faction’s members, and it reflects the morals that should be complied with during battles.”<sup>37</sup> IHL echoes local or traditional values that may already be ingrained in societies and accepted as the norm. Many of these ANSAs also rely on the support of the population and serious violations of IHL would threaten that. As Bangerter points out<sup>38</sup>, military efficiency can be an important motive for supporting IHL. Rules are essential to keeping fighters disciplined, and the resulting cohesion is required to achieve military and political objectives in the long run.

Where written documents are available, explicit reference to the provisions of IHL can be found. Codes of conduct, which generally outline the rules and responsibilities that ANSAs set out for their members, are one example of this;<sup>39</sup> public statements and communiqués are others. Reflecting prolonged international engagement, the MILF has released numerous statements affirming its commitment to IHL on issues of access, prohibition of the use of child soldiers and kidnapping for ransom, and eliminating the use of anti-personnel mines.<sup>40</sup> However, as an ICRC study of armed group codes of conduct found<sup>41</sup>, ANSAs commonly incorporate the principles embodied in IHL without explicit reference to IHL itself. Finally, written access agreements—however informal—also allow them to express their adherence to IHL. These include various operational “ground rules” agreed between ANSAs and humanitarian actors (UN and/or NGO consortia) to govern their interaction. This has been the case in Darfur, southern Sudan, and elsewhere.

Nonetheless, several of the ANSAs consulted offer nuanced critiques of international law in direct relation to how it affects them or their concerns. For some of them, notably Sudanese movements, there is frustration with the State-centric nature of international law, particularly regarding the need to obtain consent from host States to gain access to contested areas. Several ANSAs also complain about the lack of pressure exerted by the humanitarian community

on obstructive States and the dependency of some humanitarian actors—particularly UN agencies—on consent from the host State. For instance, the SPLM-N strongly feels that “international law is on the side of States ... State actors have all the power from the rules emanating from WWII.”<sup>42</sup> The Sudanese government’s denial of access to South Kordofan and Blue Nile, combined with humanitarian workers’ fear that they will be expelled from Sudan if they are found to have been crossing borders or front lines without Khartoum’s consent, deeply frustrates the SPLM-N. From its perspective, there have been concrete consequences to what it sees as a failure of international law. Unsurprisingly, the SPLM-N would like to see stronger provisions in IHL to enable non-consensual access, such as “a humanitarian law that will ensure that governments will not infringe humanitarian access.”<sup>43</sup> Additionally, the KNU laments, with particular reference to the aid-related dividends of the peace process, that it is “marginalized by the norms of political legality and formal diplomacy... [whereas] the government has already got an upper hand before, and now in the peace process, most of the funding has gone through the government entities.”<sup>44</sup>

### Box 2: IHL Obligations of ANSAs Regarding Humanitarian Access

As per customary IHL, all parties to an armed conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief—which is impartial in character and conducted without any adverse distinction—for civilians in need, subject to their right of control.<sup>45</sup> While consent from all parties concerned must be sought for legal and practical reasons, it cannot be withheld arbitrarily. Starving the civilian population as a method of warfare is prohibited.<sup>46</sup> In addition, humanitarian relief personnel and objects must be respected and protected,<sup>47</sup> and the freedom of movement of authorized humanitarian relief personnel must be ensured.<sup>48</sup> Parties to the conflict, however, have a right to supervise the relief operations and impose certain restrictions, but movements may only be temporarily restricted in case of imperative military necessity.

<sup>37</sup> Consultation with the FSA First Brigade, August 2015; consultation with the Islam Army, September 2015.

<sup>38</sup> Bangerter (2011).

<sup>39</sup> For more on armed groups’ codes of conduct, see Bangerter (2012).

<sup>40</sup> These include, but are not limited to UNICEF and MILF (2007), MILF and UN (2010), as well as the MILF statement on kidnapping and its signing of the Deed of Commitment banning AP mines (both in 2002). All available on [www.theirwords.org](http://www.theirwords.org).

<sup>41</sup> See ICRC (2011)

<sup>42</sup> Consultation with the SPLM-N, June 2015.

<sup>43</sup> Consultation with the SPLM-N, June 2015.

<sup>44</sup> Consultation with the KNU, July 2015.

<sup>45</sup> See the ICRC Customary IHL Database, Rule 55, online at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule55](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule55).

<sup>46</sup> Rule 53 of the ICRC Customary IHL Database.

<sup>47</sup> Rules 31 and 32 of the ICRC Customary IHL Database. This means, first and foremost, that humanitarian relief personnel and objects must not be attacked. The parties must also do their utmost to prevent relief from being diverted or looted and to ensure the safety of convoys.

<sup>48</sup> Rule 56 of the ICRC Customary IHL Database.



### Familiarity with the rules of IHL pertaining to humanitarian access

Among the ANSAs consulted, there is overwhelming support for IHL and principled humanitarian action. However, when specifically questioned about the rules of IHL governing humanitarian access, the vast majority of ANSAs consulted feel that they do not have a complete understanding of them and are not able to elaborate on what they entail. Even ANSAs with comparatively good knowledge of IHL refer to its provisions on access in broad terms (i.e. “prohibiting access is a war crime” or “humanitarian access must be unhindered”). Again, this includes ANSAs that have specifically referred to IHL, in broad or precise terms, in written documents on humanitarian access. Additionally, just five ANSAs made unprompted references to respecting protective emblems.<sup>49</sup>

Among the ANSAs consulted, there are varying levels of familiarity with the tenets of IHL in general, although the majority has received at least some IHL training. More established, older movements with a higher degree of exposure to the international community, like Hamas, are significantly better informed. They make reference to distinction, proportionality, and the prohibition on targeting medical personnel.<sup>50</sup> Others, however, are distinctly vaguer, referring to IHL as important, but without being able to elaborate specific relevant rules or tenets.

In some cases, understandings of IHL are obviously shaped by context and circumstance. This is most clearly the case with armed movements in Darfur and South Kordofan/Blue Nile—both crises where the humanitarian community has a long history of engagement and negotiation with the groups in question. The SLM/A-MM makes reference to



IHL training session for Sudanese Liberation Army combatants by the ICRC, Sudan, 2006. ©ICRC / HEGGER, Boris

<sup>49</sup> Consultation with the FSA First Brigade, August 2015; consultation with the Islam Army, September 2015; consultation with the JEM, September 2015; consultation with an ANSA, August 2015; consultation with Saraya Ashura/Popular Mobilization Units, February 2016.

<sup>50</sup> Consultation with Hamas, September 2015.

humanitarian corridors and cessations of hostilities as periods particularly favourable for access, perhaps reflecting the practical link that often exist between the 2005 pre-Darfur Peace Agreement ceasefire commissions and humanitarian negotiations.<sup>51</sup> Similarly, the JEM makes reference to working according to the ground rules established by UNOCHA in 2005.<sup>52</sup> In the case of Darfur, there has been little humanitarian engagement with these ANSAs in recent years (particularly when compared to the period prior to the 2009 expulsions of NGOs by the Sudanese government) which could explain their references to experiences during a much more intensive period of access negotiations.

In South Kordofan and Blue Nile, ground rules are frequently mentioned. These are probably in reference to the principles established in previous decades through Operation Lifeline Sudan (OLS), which marked a watershed moment in humanitarian negotiations with ANSAs in an internal armed conflict.<sup>53</sup> They might also be a reference to subsequent efforts, such as the Nuba Mountains Programme Advancing Conflict Transformation (NMPACT). This positive legacy of intervention has had lasting impacts, including making the SPLM-N more receptive to the humanitarian community and its principles.

### Box 3: The Question of Adherence

Examining whether the groups surveyed adhere to IHL goes beyond the scope of this study. However, it is important to put their claims into perspective.

There are several reasons for ANSAs adhering to and implementing IHL on the ground, the first being command and control. More established groups with effective command and control are not inherently predisposed to respecting IHL, but they are more likely to have the internal coherence and willingness to ensure that their fighters receive, understand, and follow orders. They are also more likely to have the internal capacity to deal with and understand IHL at the top levels of leadership; some ANSAs, for example, have dedicated legal advisors who are well-versed in IHL and the provisions surrounding access. Additionally, some parts of IHL may reflect values an ANSA already holds and be adopted naturally, whereas other groups will identify with those values less.

By contrast, ANSAs are unlikely to observe IHL if it gives them a perceived military disadvantage. This is particularly true if, as Bangerter points out<sup>54</sup>, the

ANSA believes that its survival is at stake. It may also be true earlier on in the development of an armed group, before it fully understands the negative consequences of its actions, or where the group lacks the coherence or strength to implement a different strategy. One ANSA interviewed describes how, early on in its struggle, the use of violence against civilians suspected of collaboration with the enemy was a tactical choice undertaken by some military commanders. The group later revised its internal policies to prevent the targeting of civilians, including armed civilians, and investigated subsequent incidents involving civilian casualties.<sup>55</sup>

Additionally, the degree to which policy documents are operational (such as with codes of conduct)—versus the degree to which they are used for propaganda purposes (such as public statements)—will also determine the integrity of a group's stated commitment to the rule of principled access. ANSAs may also be willing to use the language of IHL, when it suits them, to communicate with a specific audience, even if their overall compliance with the provisions of IHL is inconsistent or nearly non-existent.

<sup>51</sup> Consultation with the SLM/A-MM, September 2015.

<sup>52</sup> See Understanding between the United Nations, International Non-Governmental Organizations (INGOs) and SLM concerning humanitarian operations in SLM controlled and contested areas, in Loeb (2013).

<sup>53</sup> For more on the OLS, see Maxwell, Santschi, and Gordon (2014).

<sup>54</sup> See Bangerter (2011).

<sup>55</sup> Consultation with an ANSA, September 2015.

### 3.3 REGULATION OF HUMANITARIAN ACTION

#### Attitudes towards humanitarian action

The ANSAs consulted overwhelmingly see themselves as enabling humanitarian access and want aid agencies to operate in areas under their influence or control. Every single movement surveyed is able to cite examples of collaboration and coordination with humanitarian actors other than Geneva Call and claims to have facilitated humanitarian action. This ranges from Hamas' coordination with the ICRC in Gaza on the evacuation of the wounded, to the MILF's agreement with UNICEF to an action plan to end the recruitment and use of child soldiers, and the SLM/A-MM's participation in a humanitarian-facilitated prisoner exchange. In addition, numerous ANSAs consulted talk about coordination with local aid organizations, such as the Free Medical Union or the Rojava Association for Relief and Development in Syria. Many articulate their core rationale as being one of both self-interest and concern for civilians. For example, the JEM states that it supports humanitarian access because "the beneficiaries are our families," and the APCLS states that it cannot arbitrarily obstruct humanitarian access because local communities "would not understand."<sup>56</sup> The FDLR say that they would only restrict access if the security of aid workers and/or beneficiaries were threatened.<sup>57</sup>

#### Policies governing humanitarian access

However much they express a willingness to facilitate humanitarian access, none of these ANSAs favour humanitarian access without prior consultation and/or their consent. Without exception, access is tied to specific conditions. All of the ANSAs surveyed feel they have a right to regulate humanitarian access. They see themselves as governments in waiting, or as de facto governments of the areas they control. Most have some form of policy or procedure in place, however loosely articulated, to regulate humanitarian access.

Few of the ANSAs consulted have *detailed* or *specific* written policies on access. The KNU is perhaps one exception. The KNU Policy for Humanitarian Assistance states, among other conditions, that aid delivery must be conducted "in accordance with the international norms and standards" and that "there shall be no discrimination with respect to race, religion or gender."<sup>58</sup> In general, however, many of the ANSAs that lack specific written access policies nevertheless incorporate broad tenets or principles related to humanitarian access and respect for humanitarian operations into their codes of conduct<sup>59</sup>, unilateral declarations<sup>60</sup>, special agreements<sup>61</sup>, or other documents such as ceasefire or peace agreements<sup>62</sup>.

In general, such policies are broadly articulated—with an emphasis on principles and values—and do not spell out the specifics of ground rules for negotiating access. The MILF, for example, in its Rules of Engagement, refers to the protected status of healthcare facilities and workers and the Red Cross and Red Crescent emblems. Furthermore, it commits to prohibit attacks on relief operations and, in a subsequent agreement, to facilitate the provision of aid.<sup>63</sup> The ANSAs in Sudan yielded a multitude of examples of provisions for and commitments to access embedded in ceasefire and other humanitarian agreements. These include the humanitarian ceasefire agreement signed between the Government of Sudan, the SLM (at that time, united), and the JEM in 2004, which incorporates commitments to unrestricted access.<sup>64</sup> The ground rules on humanitarian access agreed between humanitarian agencies and the SLM in 2005 are more detailed. In this latter document, the SLM agrees to facilitate access and ensure the safety of humanitarian staff and property, whereas humanitarian agencies agreed to notify their movements and provide the name, age and gender of the staff involved for the SLM to approve access.<sup>65</sup> The JEM and the SLM also issued a unilateral statement condemning violence against aid workers.<sup>66</sup> Another example is the Nuba Mountains Ceasefire Agreement signed by the Government

<sup>56</sup> Consultation with the JEM, September 2015; Consultation with the APCLS, July 2015.

<sup>57</sup> Consultation with the FDLR, July 2015.

<sup>58</sup> See KNU (2014).

<sup>59</sup> For example, see *Ejército de Liberación Nacional (1998)* and *National Transitional Council/Free Libyan Army (undated)*, available at [www.theirwords.org](http://www.theirwords.org).

<sup>60</sup> For example, see the letter from Abdul Malik Badr al-Din al Huthi to Human Rights Watch, 22 June 2009, available at [www.theirwords.org](http://www.theirwords.org).

<sup>61</sup> For example, see *Government of Mozambique and RENAMO (1992)*, *SPLM (1995)*, *Government of Sudan, SPLM/A and UN (1999)*, *Government*

*of the Republic of the Philippines and the National Democratic Front of the Philippines (1998)*, and *Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (1999)*, available at [www.theirwords.org](http://www.theirwords.org).

<sup>62</sup> For example, see *Republic of Congo and the Self-Defence Forces of the Resistance (1999)*, *Somali factions (various) (2002)*, *Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties (2003)*, *Government of Nepal and the Communist Party of Nepal-Maoist (2006)*, and *Government of Indonesia and the Free Aceh Movement (2007)*, available at [www.theirwords.org](http://www.theirwords.org).

<sup>63</sup> See MILF (2006 and 2009).

of Sudan and the SPLM/A. It commits the parties to “facilitate humanitarian assistance through the opening of humanitarian corridors and creation of conditions conducive to the provision of urgent humanitarian assistance to displaced persons and other affected persons.”<sup>67</sup>

During the consultations, all the ANSAs are able to clearly articulate a list of specific terms and conditions for humanitarian access. Some of these are consistent with IHL, in that many groups emphasize the importance of humanitarians behaving according to the principles of neutrality, impartiality, and independence. To some degree, this overlaps with expectations that aid be needs based and appropriately monitored:

*Aid should be “unconditioned by the donors which might influence the public opinion or force them to undergo certain decisions” and “adhere to the laws and principles of humanitarian action, with respect to transparency, justice, impartiality, neutrality, and independence... according to the local needs of the targeted communities.” – YPG*

*“Local authorities, through the SRRA, must ensure that aid is distributed fairly to civilian beneficiaries. Diversion of aid from intended beneficiaries is regarded as a breach of humanitarian principles.” – SRRA*

*“Humanitarian actors should be impartial and make no discrimination among beneficiaries. They should be also as independent as possible and accept funding only from democratic States that support IHL.” – Polisario Front*

*“The delivery of humanitarian assistance shall be based on the needs of the local community [...] and the local community and organizations shall be allowed to participate in the management of it.” – KNU*

*“Humanitarian organizations should respect their principles and involve the local populations more. They should also better supervise their local staff [in reference to mismanagement and fraud].” – APCLS*

Just like many recognized governments, the ANSAs consulted believe they are entitled to control and regulate humanitarian activities. The KNPP, for example, feels that a lack of prior notification or clearance is undesirable, insisting that aid actors should coordinate with their central and township administrators.<sup>68</sup> Similarly, another group says that it is “necessary to coordinate the logistical and security conditions which make access viable,”<sup>69</sup> whereas the MILF feels it is both its duty to regulate the passage of these agencies and its right to know how their activities would benefit civilians.<sup>70</sup>



Karen National Union policy for humanitarian assistance. Burma/Myanmar, 2014.

<sup>64</sup> See Government of Sudan, SLM, and JEM (2004).

<sup>65</sup> According to Loeb, the nationality and ethnicity of aid workers was the most contentious issue of the agreement. The SLM wanted the names and nationalities of every staff member travelling into its areas so that they could vet all Sudanese staff. This concern stemmed from the entrenched belief held by the SLM that the Government of Sudan was trying to infiltrate rebel territory and that some national aid workers were government agents spying on its behalf. See Loeb (2013).

<sup>66</sup> See JEM and SLM Unity (2008). In this statement, both movements also commit to “strengthen their efforts to trace and intercept carjacked vehicles and stolen aid materials that might move through our areas

of control.” Similar commitments are also made in the Darfur Peace Agreement, which prohibits all attacks, harassment, abduction, intimidation, and injury to humanitarian workers, the seizure of their equipment and property, as well as any actions that impede or delay the provision of humanitarian assistance (article 24).

<sup>67</sup> See Government of Sudan and SPLM/A (2002).

<sup>68</sup> Consultation with the KNPP, September 2015.

<sup>69</sup> Consultation with an ANSA, November 2015.

<sup>70</sup> Consultation with the MILF, June 2015.



Several movements, all with significant territorial influence or control, request that humanitarian actors register with them before starting work. Some claim that they require agencies to sign written agreements or MoUs, along with pledging to adhere to or signing codes of conduct; others rely on verbal agreements alone. The justifications for this were manifold. Some insist that such control allows them to ensure that the agencies present are engaging in purely humanitarian work and abiding by the principles of neutrality, impartiality, and independence. The JEM, for example, justifies this on security grounds, stating that it needs to ensure that aid activities are genuine and “not an enemy plot disguised in humanitarian attire. [...] For humanitarian workers not to be targeted by mistake, they need to have distinct marks on their vehicles [...] and to have established contacts with [our] liaison officers.”<sup>71</sup>

Many ANSAs feel it is necessary to know the location and remit of humanitarian actors’ activities in order to ensure their security. They do not allow third-party security arrangements or personnel such as escorts on territory they control. The FDLR, for example, states that access is conditional on security being guaranteed by the FDLR alone.<sup>72</sup> Many of the ANSAs consider themselves to be responsible for the security of aid workers in their areas, and so they need to know where aid agencies are working and what they are doing in order to inform their rank and file members active in those areas. The KNU claims to issue permits and identity documents to facilitate the safe passage of registered agencies.<sup>73</sup> Similarly, the APCLS states its concern over the potential for aid to create violence or conflict and says that it sometimes finds it necessary to ask humanitarians to postpone activities due to security conditions or to “reinforce security in order to ensure that the beneficiaries are not subject to looting or attacks.”<sup>74</sup>

#### Box 4: Taxation and Fees

Access negotiations often involve discussions about ANSAs levying taxes and fees on humanitarian actors. This differs in several important ways from the ad hoc extortion or diversion of aid that are both common practices among some ANSAs. Taxes are structured and consistent, and are often redistributed within the ANSAs to fund the salaries of the rank and file, governance activities (such as relief activities or services), or combat-related activities.

Taxes might include registration fees, such as those levied by Al-Shabaab on aid agencies before and during the 2011 famine, ranging from USD 500 to USD 10,000. One Al-Shabaab fighter felt these fees were justified in the larger context of protection as a monetized commodity in Somalia: “We are the government of this area and responsible for your security; unfortunately we do not have enough to pay our soldiers so you should pay us for providing protection.”<sup>75</sup> These were often accompanied by taxes levied on specific projects, variable according to the scale, value, and nature of the project, as well as other conditions.<sup>76</sup> By contrast, the Afghan Taliban does not, as a policy, tax activities seen as purely humanitarian or in the interests of public welfare (such as mosque or madrasa construction); however, construction or road building projects may be taxed at 10%–20% and

projects implemented by private companies at 20%. This is by no means a new phenomenon: during the conflict in Eritrea (with Ethiopia) in the late 1990s, some armed groups reportedly demanded aid workers pay a 50% tax on their earnings.

Aid agencies often seek to persuade ANSAs to exempt them from such taxation, not only because it is a violation of the principle of independence but because of the political and legal consequences. This is particularly true where the UN or national governments list groups as “terrorist organizations”, as is the case with Al-Shabaab and has been the case with certain segments of the Afghan Taliban. In the case of the US, providing “material support” to a foreign terrorist organization is punishable by fines of up to USD 1 million or up to 15 years in prison. In reality, refusal to pay may result in a complete refusal of access. According to former MSF president Rony Brauman, “The question is often not whether to pay them but how much to pay.”<sup>77</sup> Given the repercussions of such actions, few aid agencies are transparent about these compromises and dilemmas and willing to discuss them publicly.

*Sources: Jackson and Aynte (2013); Jackson and Giustozzi (2012); IRIN (2011)*



### Bodies or structures governing humanitarian action

Nearly all of the ANSAs consulted have established structures in place to coordinate, facilitate, and monitor humanitarian action as part of their broader mechanisms of governance.<sup>78</sup> The creation of these institutions may be driven by multiple factors, ranging from a desire to control aid agencies to a belief that being seen to provide services will increase their legitimacy and support among civilians. The size, age, structure, and territorial control of each movement shape how—and to what extent—they seek to regulate humanitarian access. Structurally, ANSAs might have a shadow ministry, an individual focal point, or a commission in charge of humanitarian activity. For example, the KNU authorizes humanitarian organizations operating in its areas through its Office of the General Secretary (in liaison with its health and welfare department), as does the Polisario Front through its “Ministry of Cooperation”. The JEM also claims to have a secretariat responsible for humanitarian work but, given its lack of concrete territorial control, its remit or actual influence is limited at present.<sup>79</sup> The role of the SRRA, which was consulted independently from the SPLM-N for this study, is to coordinate humanitarian assistance in SPLM-N-controlled areas and to “evaluate the work of NGOs, working with them, sharing views, and evaluating their operation.”<sup>80</sup> Even relatively new ANSAs, including FSA factions, have reportedly established offices or branches to coordinate relief.

How well these structures function in reality is variable across armed movements, over time, and across areas of territorial control. As Jackson and Giustozzi find with regards to the Taliban’s humanitarian aid structures<sup>81</sup>, there is a tendency to use institutions, commissions, or committees for political propaganda purposes. It may be that these institutions are mainly for image enhancement purposes (particularly early on), giving the ANSA a veneer of State-like sophistication. Alternatively, the variable functioning of these institutions may be because they are in the process of establishing themselves and lack technical capacity.

As territorial control waxes and wanes, the meanings and power of these institutions and processes change. In the case of the SPLM-N, the SRRA rose out of the post-2011 resurrection of the civilian administration that had initially been formed in the previous period of conflict in the early 1990s.<sup>82</sup> Al-Shabaab established a network of humanitarian coordination officers during the height of its territorial control, with a relatively advanced system for negotiating access. Predictably, this deteriorated when Al-Shabaab’s territorial control declined.<sup>83</sup> This underscores the importance of taking a long-term view of ANSAs and seeking to understand their internal modes of governance, bearing in mind that what existed before may be recreated or adapted as the dynamics of the conflict shift.

The degree of humanitarian activity taking place and the kind of relief activities common to such contexts (i.e. large scale famine relief, disaster response, and displacement) also shape the ways in which communication and negotiation are governed. In many cases, ANSAs create humanitarian coordination structures and appoint “humanitarian aid coordinators” (or similar roles) in response to the humanitarian community’s demands for organized communication and liaison. According to aid workers involved in negotiations on the ground, this was certainly the case early on in the conflict in Darfur and with the creation of the SRRA.<sup>84</sup>

<sup>71</sup> Consultation with the JEM, September 2015.

<sup>72</sup> Consultation with the FDLR, July 2015.

<sup>73</sup> See KNU (2013).

<sup>74</sup> Consultation with the APCLS, July 2015.

<sup>75</sup> Jackson and Aynte (2013, p. 18).

<sup>76</sup> Other conditions included requiring aid agencies to hire individuals selected by Al-Shabaab, to facilitate monitoring of aid and/or enable Al-Shabaab to distribute food directly to the intended beneficiaries. Al-Shabaab also often prohibited agencies from employing Somali women (except for the provision of medical care) and from conducting proselytization. See *ibid.*

<sup>77</sup> As quoted by IRIN (2011). See also Magone, Neuman, and Weissman (2011), in particular the Somalia story, pp.77-94.

<sup>78</sup> The exceptions comprised a handful of smaller movements with limited or no territorial control.

<sup>79</sup> Consultation with the JEM, September 2015.

<sup>80</sup> Consultation with the SPLM-N, June 2015.

<sup>81</sup> See Jackson and Giustozzi (2012).

<sup>82</sup> See Mosel and Jackson (2013).

<sup>83</sup> See Jackson and Aynte (2013).

<sup>84</sup> Consultation with a former aid worker, October 2015; interview with a former aid worker, October 2015. See also Government of Sudan, SLM and JEM (2004).

### Box 5: Eastern DRC: The Consequences of Avoiding Contact with Armed Groups

A 2014, the International NGO Safety Organization commissioned a study of the perceptions that armed groups in eastern DRC had of humanitarian aid and actors. It found that the understanding of humanitarian principles was relatively widespread. Although there were some misinterpretations regarding the application of these principles and a heterogeneous ability to distinguish between aid actors, the armed group members interviewed generally welcomed humanitarian aid as long as it was impartially and neutrally administered. One fighter told researchers that, “all NGOs contact me before travelling” and that they understood that “to work, NGOs need to talk to all those who have weapons.” Another fighter talked about a specific NGO that had worked well when there was a war between the FARDC and armed groups, because “they spend and help everyone, they remain neutral.”

However, the study pointed to serious shortcomings in terms of humanitarians’ proactive engagement with armed groups. More than half (55%) of the NGO workers surveyed stated that their NGOs had no contact with the armed groups, even when these were very present in their area of intervention. Despite welcoming aid, some members of the armed groups expressed frustration with aid agencies or sought to deny or restrict access due to suspicions about the motives of NGO staff members. Yet these frustrations often arose as a result of a lack of communication, poor quality and poorly managed projects, clientelism, aid diversion, and misunderstandings. Additionally, the fragmented and dynamic nature of armed groups in eastern DRC meant that consistent and repeated communication with individuals at all levels of each armed group was required to maximize access and improve understanding of humanitarian practices and principles.

Source: Brabant and Vogel (2014)

### Conditions for the denial or suspension of access

Failure to obtain consent from ANSAs or to abide by the conditions they impose are seen as the most likely factors to lead to the expulsion of or harm to aid workers and their property. Both Hamas and the KNPP refer to instances where they expelled actors who had not sought prior permission to work.<sup>85</sup> Perceived violations of humanitarian principles are also likely to result in suspension or denial of access. The SPLM-N, for example, state that the only criteria that would lead it to deny access are if an organization were ideologically or politically motivated—although it is unclear whether this applies to any political stance or only to those organizations with ideals and politics at odds with the SPLM-N’s.<sup>86</sup> Others, including the YPG and the Polisario Front, are more direct, stating that access would be denied if aid were seen to benefit or explicitly support the enemy.<sup>87</sup>

The ANSAs consulted do not seem to discriminate significantly between the activities undertaken by humanitarian actors. However, some sectors and activities, such as demining, appear to be more sensitive than others.<sup>88</sup> This is consistent with research conducted on the Afghan Taliban and Al-Shabaab,<sup>89</sup> as the sensitive nature of demining generally presents unique challenges to negotiating access. Some aid agencies are more welcomed than others, but this is highly context-specific.

Few ANSAs ban specific types of humanitarian actors in general terms—though they frequently struggle to distinguish between humanitarian organizations and other actors associated with the international community (such as UN peacekeeping forces, in one case). The exception is Sudan, and the justification for banning certain organizations is implicitly tied to principles. In nearly every dialogue with the Sudanese movements consulted (both those in Darfur and those in South Kordofan and Blue Nile), they express the belief that Sudanese national aid workers or organizations are neither neutral, impartial, nor independent, and are working for the government.<sup>90</sup> Some ANSAs may ban specific aid actors that they believe are spying, as Hamas stated that it had done on one occasion.<sup>91</sup> Such incidents are found across various contexts, as was the case when Al Shabaab expelled specific aid agencies<sup>92</sup> and, more recently, when

<sup>85</sup> Consultation with Hamas, September 2015; consultation with the KNPP, September 2015.

<sup>86</sup> Consultation with the SPLM-N, June 2015, and the SRRA, September 2015. The SRRA also adds that humanitarian actors should not interfere in SPLM-N internal politics.

<sup>87</sup> Consultation with the YPG, August 2015; consultation with the Polisario Front, September 2015.

<sup>88</sup> Consultation with Hamas, September 2015.

<sup>89</sup> See Jackson and Giustozzi (2013) and Jackson and Aynte (2013).

<sup>90</sup> Consultation with the SLM/A-AW, August 2015; consultation with the SLM/A-MM, September 2015; consultation with the SPLM-N, June 2015.

<sup>91</sup> Consultation with Hamas, September 2015.

<sup>92</sup> In 2008, Care and the International Medical Corps were expelled after being accused of providing information to the US that Al-Shabaab believed led to the killing of its first leader, Aden Hashi Ayro. Similarly, in 2009, Al-Shabaab banned the UN Mine Action Service (UNMAS). See Jackson and Aynte (2013) and Associated Press (2011).

MSF was expelled from eastern Ukraine.<sup>93</sup> This is not to suggest that aid agencies or their employees were in fact spying on the ANSAs in question but rather that this is the reason given for justifying the expulsion of aid workers.

Many of the ANSAs interviewed are predictably circumspect about denial of access, saying that they could not necessarily remember any instances of this happening, although they did not exclude the possibility that it had.<sup>94</sup> Others qualify their statements by saying that they accept “genuine” humanitarian actors and deny “suspicious” ones. This gives ANSAs significant leeway in denying access, above and beyond any agreed or enforced rules that might exist. Others point to the actions of national governments, which are often culpable of denying or obstructing humanitarian assistance: why should ANSAs be expected to comply with the law when even governments do not adhere to them? This is particularly salient where governments have a history of denying access, as in Sudan. As one ANSA pointed out, “sovereignty should come after humanitarian considerations and not the contrary.”

### Targeting aid workers

Most ANSAs claim not to target aid workers and to recognize them as civilians. Many feel, however, that aid workers could lose this protection if they collaborate with enemy forces. Collaboration ranges from importing weapons to recruiting members. The degree to which these assumptions are merely suspicions, or are borne out by fact, is unclear.

While many of the ANSAs consulted do not systematically target aid workers, there have been documented attacks on aid workers and their property by members of several of these movements. When pressed on these issues, a number of explanations are offered. In reference to a spate of carjackings and other attacks on aid workers, one group claims that this violence was driven by the frustration of some military commanders over a flawed peace process and was directed towards aid workers because they were representatives of the international community. Some ANSAs blame other parties to the conflict, claiming that kidnappings and targeted attacks had been carried out in order to make them look guilty and thus undermine support for their cause. In rare instances, ANSAs take full responsibility for attacks but claim that they have made mistakes in identifying targets.



An ambulance destroyed during the fighting in Misrata. Libya, 2012. © ICRC / HU, Xiangqun

<sup>93</sup> *Agence France Presse* (2015).

<sup>94</sup> *Consultation with the SLM/A-MM, September 2015.*

### Box 6: The Targeting of Aid Workers in Afghanistan: the Case of Faryab

Research conducted in 2013, in the northern Afghanistan province of Faryab, provides an insight into the ways in which the Taliban's perceptions of aid workers were shaped by events well beyond their control. Several Taliban members blamed aid workers for recent airstrikes and night raids in their area of operation. One commander stated that: "My attitude was good until a few months ago. But after the killing of our brothers in an airstrike and arrests by the PRT [Provincial Reconstruction Team], we became very angry. I am sure our hideouts were disclosed by these NGOs or their spies. Otherwise, how did they know whether we were in a mosque or a house or a garden?"

Several of those interviewed believed that airstrikes could only have been so precisely targeted if they had been based on local intelligence. As the only perceived "outsiders" frequently traveling to and from the area, aid workers were believed to have provided this intelligence. One fighter recounted how they organized an attack on the staff of the NGO to ensure that "they will never do this again."

Although the Afghan Taliban's 2006 version of its code of conduct stated that NGO workers were "tools of the infidels" and thus legitimate targets, this provision was omitted from later editions of the code. Hence, at the time of the incidents described, the Taliban had a written policy in place not to attack aid workers. When interviewed, the local Taliban in Faryab stated that they were aware of this policy and generally adhered to it, but they felt the extreme threat posed by the perceived behaviour of the NGOs appeared to provide a justification to violate these rules.

Source: Jackson and Giustozzi (2013)

### 3.4 PERCEIVED RESPONSIBILITIES OF ANSAs TOWARD CIVILIANS AND RELIEF ACTIVITIES

Although there is a remarkable level of consistency to the responses across most of the areas surveyed, ANSAs diverge considerably on one topic: their own obligations to provide relief to affected populations (depending on their degree of territorial control, objectives, and other factors). Many ANSAs refer to their concern and responsibility for civilian populations and a desire to see them receive assistance and protection. However, only one movement mentions the obligations of States in coordinating and organizing the delivery of humanitarian assistance to populations living on their territory.<sup>95</sup> The obligations listed by all the other ANSAs bore little direct link to the responsibilities articulated under IHL, but rather seem to reflect the groups' aspirations for statehood and their visions of what that State would provide.

Some of the ANSAs consulted have created their own relief or welfare departments and report a broad list of services, which they provide to local populations, from food distribution to healthcare. More established groups, which control populated territory, like Hamas (which is, in fact, a *de facto* authority in Gaza), the Polisario Front (which administers refugee camps in Algeria), or the KNU, are more likely to have institutionalized these commitments. Others talk more modestly about providing first-aid to those wounded in the conflict or digging wells, while emphasizing their lack of resources to do much more. At a minimum, the majority of ANSAs feel that they were responsible for providing physical protection to civilians (including aid workers). In one instance, an ANSA felt obligated to avoid any relief activities that might expose the population to attacks by government forces.<sup>96</sup>

Responses are also profoundly shaped by the broader context (i.e. what the government, other ANSAs, and aid agencies provide). Analysis of the literature on armed groups helps explain why shadow governments are likely to mimic State structures in terms of governance structure and provision while capitalizing on areas of State weakness by providing better quality services in areas or sectors where the State performs poorly. In his academic work on "insurgent

<sup>95</sup> Consultation with an ANSA, November 2015.

<sup>96</sup> Consultation with the SLM/A-MM, September 2015.



governance”, Mampilly finds that the Liberation Tigers of Tamil Eelam’s sophisticated, extensive system of governance and service provision largely mimicked the Sri Lankan State system—with improvements where public opinion of State services was particularly poor.<sup>97</sup> Mampilly contrasts this with the SPLM/A’s limited efforts to provide services in territories previously governed by a State that had been largely absent. This theory was borne out in Afghanistan, where the Taliban created shadow ministries, very much in parallel to the government’s ministries, and prioritized justice in order to capitalize on popular discontent with the formal justice system.

When asked whether, and under what conditions, ANSAs might work with enemy forces towards humanitarian objectives, responses varied. Many of the groups consulted claim that they may agree to externally mediated humanitarian action such as humanitarian corridors, demining, or prisoner exchanges. Apart from those that are actively engaged in peace processes or have signed ceasefire agreements (such as the MILF), few ANSAs state that they have actually done so in practice. The APCLS, for example, says that it has handed over captured FARDC officers to the government in the presence of UN peacekeepers and has facilitated the evacuation of wounded enemy ANSA fighters to medical facilities.<sup>98</sup> The SLM/A-MM and FSA Fastaqem claim to have facilitated prisoner exchanges through the ICRC.<sup>99</sup>



*YPG members rescuing Yezidi civilians fleeing the Islamic State group in Sinjar, Iraq, 2014.*

<sup>97</sup> See Mampilly (2007 and 2011).

<sup>98</sup> Consultation with the APCLS, July 2015.

<sup>99</sup> Consultation with the SLM/A-MM, September 2015; consultation with the FSA Fastaqem, August 2015.



Although the ANSAs surveyed in this study varied in objectives, size, territorial control, political and religious orientation, and a number of other factors, there is a surprisingly clear uniformity of views on several key issues regarding humanitarian action and access. The following recommendations specifically aim to feed into the WHS process, with implications for donors and humanitarian actors alike.

**Build on ANSAs' existing acceptance of principled humanitarian action through dialogue and training on the rules of IHL governing humanitarian access.**

The ANSAs consulted are broadly familiar with the core humanitarian principles. Not only do they agree with these principles but they also expect aid agencies to abide by them. Of course, ANSAs may at times conflate some principles (notably neutrality and impartiality) and seek to co-opt humanitarian aid or otherwise undermine humanitarian principles for their own benefit—much as States do from time to time. However, they ultimately recognize that humanitarian principles are fundamental to the integrity and quality of humanitarian assistance, and this acceptance can provide fertile common ground for future engagement.

The widespread lack of knowledge about the rules of IHL governing humanitarian access is a more problematic issue and must be addressed across contexts. Although ANSAs may understand concepts like “distinction” or other rules of IHL directly related to the conduct of hostilities, this does not extend to humanitarian access. Humanitarians cannot expect ANSAs to comply with rules they do not know about or grasp. This requires sustained dialogue, dissemination, and training to ensure that ANSA leaderships and rank and file members understand their obligations concerning access and implement them in practice.

**In order to improve humanitarian access, engagement with ANSAs must be more proactive, consistent, and long-term.**

In several cases, the ANSAs consulted strongly feel that the humanitarian organizations have not engaged with them in an appropriate, proactive, or impartial manner. In some contexts, engagement is hindered by external political pressures, with perilous consequences for aid workers and civilians alike. Some States, including donor States, have listed several of the movements interviewed as “terrorist groups”, which has led some agencies to avoid direct engagement with them for fear of falling afoul of counter-terrorism legislation. Aid agencies elsewhere (as in Sudan) fear that engaging with ANSAs could lead to expulsion from areas under government control. These are dilemmas to which there are no easy answers. The bottom line, however, is that non-engagement or limited, ad hoc engagement with ANSAs ultimately hinders their compliance with IHL. A more sinister consequence of any lack of engagement is that it can fuel dangerous perceptions of humanitarian actors as non-neutral and partisan. Aid agencies should invest in relationship building with all the parties to armed conflicts and develop strategic engagements with ANSAs.<sup>100</sup> Those that have done so have had more consistent and sustained access. When ANSAs' policies are consistent with IHL, they can serve as a basis for negotiating humanitarian access.

<sup>100</sup> *Guidance and good practice on humanitarian engagement with ANSAs exists. See, for example, Bellal and Casey-Maslen (2011), McHugh and Bessler (2006), and with specific regard to protection work, ICRC (2013).*

**Humanitarians must practice stricter and more consistent adherence to humanitarian principles.**

The ANSAs consulted very much expect humanitarians to behave in ways that demonstrate their neutrality, impartiality, and independence. It is thus critical that humanitarian actors be well versed in these principles and apply them in practice. Any perceptions that humanitarians are not adhering to their principles can have dangerous consequences, ranging from denial of access to attacks on aid workers and their property. This underscores the importance of humanitarians not only behaving in accordance with humanitarian principles but also carefully monitoring and managing ANSAs' perceptions of them in order to avoid misunderstandings. This is key to building trust and acceptance between parties to conflicts and securing safe access.

**ANSAs perceive the international legal system as biased and privileging States; their greater inclusion in international discussions on emerging IHL issues and implementation challenges merits further examination.**

Although they have obligations under IHL,<sup>101</sup> ANSAs cannot become parties to international treaties, and they have generally been excluded from participating in the development of IHL. Existing treaties and their compliance mechanisms remain State-centred. This must not prevent ANSAs from respecting the law and expressing adherence to it. Indeed, greater inclusion in international normative and policy processes could enhance their ownership and boost compliance. There are precedents for ANSA participation in treaty negotiations<sup>102</sup> and even accession to treaties.<sup>103</sup> These precedents arose at a unique moment in history (during decolonization), and States are likely to resist any repetition. This issue nevertheless deserves more serious consideration. Involving ANSAs in the creation of new norms, as well as in the interpretation and implementation of existing norms, should be encouraged. This could be done by collecting ANSAs' views through bilateral consultations and/or in multilateral meetings.<sup>104</sup>

Finally, the ANSAs consulted in this study often refer to political issues when asked to make recommendations on how to improve humanitarian conditions. Many see humanitarian crises and needs as rooted in conflicts that can only ultimately have a political solution. This is beyond the scope of this survey but indicative of a shared understanding—across conflicts—of the roots of humanitarian crises and the very political nature of their resolution.

<sup>101</sup> ANSA parties to non-international armed conflicts are bound by common Article 3 to the Geneva Conventions, customary IHL, and, where applicable, Additional Protocol II. Additional Protocol II applies to non-international armed conflicts which take place in the territory of a State party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

<sup>102</sup> From 1974 to 1977, eleven national liberation movements participated as observers in the deliberations of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which adopted the Additional Protocols to the Geneva Conventions. See Sivakumaran (2012 and 2015).

<sup>103</sup> The provisional government of Algerian Republic acceded to the Geneva Conventions two years before Algeria gained independence as a State. See Sivakumaran (2012 and 2015).

<sup>104</sup> See Sassoli (2010) and Rondeau (2011).

- Agence France Presse. 2015. 'Ukraine rebels says MSF banned for *espionage*.' 25 October.
- Associated Press. 2011. 'Somali militants to lift ban on aid groups amid food crisis.' 7 June.
- Bangerter, Olivier. 2012. *Internal Control: Codes of Conduct within Insurgent Armed Groups*, Occasional Paper 31. Geneva: Small Arms Survey.
- Bangerter, Olivier. 2011. 'Reasons why armed groups choose to respect international humanitarian law or not.' *International Review of the Red Cross*, Vol. 93, No. 882, pp. 353-84.
- Bellal, Annysa and Stuart Casey-Maslen. 2011. *Rules of Engagement: Protecting Civilians through Dialogue with Armed Non-State Actors*. Geneva: Geneva Academy of International Humanitarian and Human Rights Law.
- Brabant, Justine and Christoph Vogel. 2014. *Dans les yeux : La perception de l'aide et des acteurs humanitaires par les combattants irréguliers de la République démocratique du Congo*. London: INSO.
- Boone, Jon. 2010. 'Taliban call for joint inquiry into civilian Afghan deaths considered.' *The Guardian*. 16 August.
- Clark, Kate. 2011. *The Layha: Calling the Taliban to Account*. Kabul: Afghanistan Analysts Network.
- ELN (Ejército de Liberación Nacional). 1998. 'Acuerdo de Puerta del Cielo (Puerto del Cielo Agreement)'. 15 July.
- Government of Indonesia and the Free Aceh Movement. 2007. 'Cessation of Hostilities Framework Agreement Between Government of the Republic of Indonesia and the Free Aceh Movement.'
- Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties. 2003. 'Peace Agreement between Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties.' Accra: 18 August.
- Government of Nepal and the Communist Party of Nepal (Maoist). 2006. 'Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist)'. 21 November.
- Government of Mozambique and RENAMO (Mozambican National Resistance). 1992. 'Joint declaration between the Government of Mozambique and RENAMO on the Guiding Principles of Humanitarian Assistance.' July 16.
- Government of the Republic of the Philippines and the National Democratic Front of the Philippines. 1998. 'Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law.' The Hague: 16 March.
- Government of Sierra Leone and the Revolutionary United Front of Sierra Leone. 1999. 'Statement by the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone on the Delivery of Humanitarian Assistance in Sierra Leone.' Lome: 3 June.
- Government of Sudan, SLM (Sudan Liberation Movement), and JEM (Justice and Equality Movement). 2004. 'Protocol on the Establishment of Humanitarian Assistance in Darfur.' N'Djamena: 8 April.
- Government of Sudan and the SPLM/A (Sudan People's Liberation Movement/Army). 2002. 'Nuba Mountains Cease-Fire Agreement.' Burgenstock: 19 January.
- Government of Sudan, SPLM/A (Sudan People's Liberation Movement/Army) and the UN (United Nations). 1999. 'Agreement on the Implementation of Principles Governing the Protection and Provision of Humanitarian Assistance to War Affected Civilian Populations.' Geneva: 15 December.
- ICRC (International Committee of the Red Cross). 2011. 'A collection of codes of conduct issued by armed groups.' *International Review of the Red Cross*, Vol. 93, No. 882, pp. 483-501.
- ICRC (International Committee of the Red Cross). 1979. *The Fundamental Principles of the Red Cross: commentary*. Geneva: ICRC.
- ICRC (International Committee of the Red Cross). 2013. *Professional Standards for Protection Work*. Geneva: ICRC.
- ICRC (International Committee of the Red Cross). 2004. *The Roots of Behavior in War: Understanding and Preventing IHL Violations*. Geneva: ICRC.
- IRIN. 2011. 'Aid Policy: The Politics of Humanitarian Principle.' 28 October.

- Jackson, Ashley and Antonio Giustozzi. 2013. *Talking to the other side: Humanitarian engagement with the Taliban in Afghanistan*. HPG Working Paper. London: Overseas Development Institute.
- Jackson, Ashley and Abdi Aynte. 2013. *Talking to the other side: Humanitarian engagement with Al-Shabaab in Somalia*. HPG Working Paper. London: Overseas Development Institute.
- JEM (Justice and Equality Movement) and SLM-Unity (Sudan Liberation Movement-Unity). 2008. 'The Geneva/Darfur Humanitarian Dialogue: statement by the opposition movements.' 11 July.
- Hyeran, Jo. 2015. *Compliant Rebels: Rebel Groups and International Law in World Politics*. Cambridge: Cambridge University Press.
- Kalyvas, Stathis N. 2006. *The Logic of Violence in Civil Wars*. Cambridge: Cambridge University Press.
- KNU (Karen National Union). 2013. 'Policy on Humanitarian Operation in Ceasefire Zone.' Kawthoolei: Office of the Supreme Headquarters, Karen National Union. 25 March.
- KNU (Karen National Union). 2014. 'Policy for Humanitarian Assistance.' Kawthoolei: Office of the Supreme Headquarters, Karen National Union. 11 June.
- Loeb, Jonathan. 2013. *Talking to the Other Side: Humanitarian Engagement with Armed Non-State Actors in Darfur, Sudan, 2003–2012*. London: Overseas Development Institute.
- Magone, Claire, Michaël Neuman, and Fabrice Weissman. 2011. *Humanitarian Negotiations Revealed: The MSF Experience*. London: Hurst & Co.
- Mampilly, Zachariah Cherian. 2007. *Stationary Bandits: Understanding Rebel Governance*. Los Angeles: UCLA PhD dissertation.
- Mampilly, Zachariah Cherian. 2011. *Rebel Rulers: Insurgent Governance and Civilian Life during War*. Cornell, NY: Cornell University Press.
- Mattirolo, Marina, Stuart Casey-Maslen, and Alice Priddy. 2014. *Reactions to Norms: Armed Groups and the Protection of Civilians*. Geneva: Geneva Academy of International Humanitarian Law and Human Rights.
- Maxwell, Daniel, Martina Santschi, and Rachel Gordon. 2014. *Looking Back to Look Ahead? Reviewing key lessons from Operation Lifeline Sudan and past humanitarian operations in South Sudan*. London: Overseas Development Institute.
- McHugh Gerard and Manuel Bessler. 2006. *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners*. New York: UN.
- MILF (Moro Islamic Liberation Front). 2002. 'Deed of Commitment under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action.' 7 April.
- MILF (Moro Islamic Liberation Front) Central Committee. 2002. 'Resolution to reiterate MILF policy of strongly and continuously condemning all kidnap for ransom activities in Mindanao and everywhere, and to take drastic action against the perpetrators of this heinous crime in all MILF (Moro Islamic Liberation Front) areas.' 26 February.
- MILF (Moro Islamic Liberation Front). 2006. 'General Order 2, Rules of Engagement.' 14 June.
- MILF (Moro Islamic Liberation Front). 2009. 'Agreement on the Civilian Protection Component of the International Monitoring Team.' 27 October.
- Mosel, Irina and Ashley Jackson. 2013. *Talking to the Other Side: Humanitarian Engagement with Armed Non-State Actors in South Kordofan and Blue Nile*. London: Overseas Development Institute.
- National Transitional Council/Free Libyan Army (undated). 'Guidelines on detention and use of violence.'
- Republic of Congo and FADR (Self-Defence Forces of the Resistance). 1999. 'Ceasefire and Ending Hostilities Agreement between the High Command of the Security Forces and the High Command of the Self-Defence Forces of the Resistance (FADR).' 29 December.
- Rondeau, Sophie. 2011. 'Participation of armed groups in the development of the law applicable to armed conflicts.' *International Review of the Red Cross*, Vol. 93, no. 883, pp.649-672.
- Sassoli, Marco. 2010. 'Taking armed groups seriously: ways to improve their compliance with international humanitarian law.' *International Humanitarian Legal Studies*, Vol. 1, pp.5-551.

Sivakumaran, Sandesh. 2012. *The Law of Non-International Armed Conflict*. Oxford: Oxford University Press.

Sivakumaran, Sandesh. 2015. 'Implementing humanitarian norms through non-state armed groups.' In Krieger Heike, ed. *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*. Cambridge: Cambridge University Press, pp.125-148.

Somali factions (various). 2002. 'Declaration on Cessation of Hostilities, Structures and Principles of the Somalia National Reconciliation Process.'

SPLM (Sudan Peoples' Liberation Movement). 1995. 'SPLM/OLS (Operation Lifeline Sudan) Agreement on Ground Rules.'

SRRA (Sudan Relief and Rehabilitation Association). Undated. 'Policy Framework.'

Swiss Federal Department of Foreign Affairs. 2014. *Humanitarian Access in Situations of Armed Conflict, Practitioners' Manual, Version 2*. Bern: Swiss Federal Department of Foreign Affairs.

UN (United Nations) and MILF (Moro Islamic Liberation Front). 2010. *Action Plan between MILF and the UN in the Philippines regarding the issues of recruitment and use of child soldiers in armed conflict in Mindanao*. 20 January.

UNICEF (United Nations Children's Fund) and MILF (Moro Islamic Liberation Front). 2007. 'Joint Communiqué between UNICEF and MILF' 12 February.



---

**ANNEX A: QUESTIONNAIRE  
ADDRESSED TO SELECTED ANSAS**


---

**Your views on humanitarian action in general**

- Whom do you consider to be a “humanitarian actor”?
- What is your understanding of “humanitarian action”?
- Are there principles that should guide humanitarian action, in your opinion? If yes, which principles should apply and why? Should humanitarian actors be neutral? If yes, why? Can you give an example of how they should demonstrate this neutrality? Should humanitarian actors be impartial? If yes, why? Can you give an example of how they should demonstrate this impartiality? Should humanitarian actors be independent? If yes, why? Can you give an example of how they should demonstrate this independence?
- Are you familiar with the rules of international humanitarian law (IHL) relating to humanitarian access? If yes, can you give examples? What is your opinion of these rules? Do you consider yourselves to be bound by these rules? Why or why not? Are these rules reflected in your internal policies?
- Do you have established criteria or conditions for allowing humanitarian access? What are these conditions? Would you ever prevent access for humanitarian relief for civilians in need? If yes, under what circumstances?
- Do you have established internal policies governing your relations with humanitarian actors (for example, are there designated liaison persons or bodies who negotiate access, are there signed/verbal agreements with specific humanitarian actors, etc.)? What motivates you to engage, or not engage, with humanitarian actors? Would you ever target aid workers or consider them as combatants? If yes, under what circumstances?
- What responsibilities do you think you have towards civilians? Where do these responsibilities come from?

**Your views on humanitarian action in your context**

- What are the main needs civilians have in your areas? What should be done, and by whom, to address these needs?
- Which humanitarian actors operate in your areas?
- What are your views on the work being done by these humanitarian actors? Which ones are serving effectively the needs of people affected by armed conflict in your areas? Why? What makes them more effective?
- Are there any humanitarian actors that you have refused to allow access to or cooperate with? Why? Are there any activities that you have not permitted? Why?
- How can your cooperation with humanitarian actors operating in your areas be improved?

**Your own actions**

- Which actions have you taken to help victims of conflict in your areas? Do you have established your own organizations to provide humanitarian relief for civilians in need in your areas?
- What are the main challenges you face when seeking to provide humanitarian relief in your areas? What should be done, and by whom, to address these challenges?
- Do you cooperate with humanitarian actors in your areas? If yes, with which ones? What do you expect from such cooperation? Do you have agreements with humanitarian actors? If not, would you agree to consider such agreements? Under what conditions?
- Do you have humanitarian agreements with your enemy (for example, to facilitate aid delivery, vaccination campaigns, prisoner exchanges, etc.)? If not, would you agree to consider such agreements? Under what conditions?
- What messages or contributions, if any, do you want to convey to the World Humanitarian Summit?

**ANNEX B: LIST OF ANSAS CONSULTED<sup>105</sup>****Burma/Myanmar**

Karen National Union (KNU)  
Karen National Progressive Party (KNPP)

**Colombia**

Fuerzas Armadas Revolucionarias de Colombia –  
Ejército del Pueblo (Revolutionary Armed Forces  
of Colombia–People’s Army) (FARC–EP)

**Democratic Republic of Congo**

Alliance des patriotes pour un Congo libre et souverain  
(Alliance of Patriots for a Free and Sovereign Congo) (APCLS)  
Forces démocratiques de libération du Rwanda  
(Democratic Forces for the Liberation of Rwanda) (FDLR)

**Iraq**

Popular Mobilization Units / Saraya Ashura

**Palestine**

Hamas

**Philippines**

Moro Islamic Liberation Front (MILF)

**Sudan**

Justice and Equality Movement (JEM)  
Sudan Liberation Movement/Army-Abdul Wahid faction  
(SLM/A-AW)  
Sudan Liberation Movement/Army-Minni Minawi faction  
(SLM/A-MM)  
Sudan People’s Liberation Movement-North (SPLM-N)

**Syria**

Islam Army  
Free Syrian Army (FSA) Fastaqem  
FSA First Brigade  
Yekîneyên Parastina Gel (People’s Protection Units) (YPG),  
in cooperation with the “Democratic Self-Administration  
of Rojava”

**Western Sahara<sup>106</sup>**

Popular Front for the Liberation of Saguia el-Hamra  
and Rio de Oro (Polisario Front)

<sup>105</sup> Note that two additional ANSAs were consulted but remain anonymous for reasons stated in the methodology section.

<sup>106</sup> Western Sahara, formerly a Spanish colony, is a disputed territory claimed by both the Kingdom of Morocco and the Polisario Front. It has been on the United Nations list of Non-Self-Governing Territories since 1963.





**APPEL DE GENÈVE  
GENEVA CALL**

47, chemin de la Chevillarde • 1224 Chêne-Bourgeries  
P.O. Box 334 • 1211 Geneva 4 • Switzerland  
T. +41 22 879 10 50 • F. +41 22 879 10 51  
info@genevacall.org • www.genevacall.org  
[📘 appel.de.geneve](https://www.facebook.com/appel.de.geneve) • [📷 genevacall](https://www.instagram.com/genevacall)