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Negotiating Access: A Process for Addressing Humanitarian Mandates in Sierra Leone

INTRODUCTION

In Sierra Leone today, the humanitarian agencies have access to approximately one third of the country, and less than half of the population. People affected by the war have, for the most part, had to come to us, rather than basic humanitarian support being available closer to conflict-affected areas. This is the lowest point thus far in a difficult conflict that has affected the lives of millions of civilians. As the government's control of the country has fluctuated, so too has the ability of UN and NGOs to reach those most affected by the conflict. The recent events in the country have resulted in large scale abuses of human rights and significant reduction in the area of the country controlled by the elected government of Ahmed Tejan Kabbah. These factors have forced a re-examination of the priorities and methods of humanitarian agencies in their attempts to carry out their basic mandates.

The most recent Security Council resolution called specifically for humanitarian aid to be provided without prejudice to all affected people in Sierra Leone (Security Council resolution 1231 (1999), point 4. The UN "Calls upon all parties to the conflict in Sierra Leone fully to respect human rights and international humanitarian law and the neutrality and impartiality of humanitarian workers, and to ensure full and unhindered access for humanitarian assistance to affected populations"). Other aspects of International Humanitarian Law specifically endorse the need to take action (Specifically, the Geneva Conventions (1949), the Geneva Protocols on the protection of people in armed conflicts (1977), the Convention relating to the Status of Refugees (1951), and Protocol Relating to the Status of Refugees (1967)). Steps must be taken to establish a process by which the humanitarian needs of Sierra Leone can be addressed at the same time as other political agendas. Indeed, OCHA believes that humanitarian considerations are an integral part of any peace process.

This document should be viewed initially as a discussion document, exploring issues related to humanitarian access, and a possible process by which such an agenda can be advanced. There are a large number of difficult issues which are only touched on here. It is hoped that this can stimulate a wider discussion about the best way forward which firmly acknowledges the lessons from past experiences elsewhere, as well as remaining rooted in humanitarian law.

ISSUES IN SIERRA LEONE

In the past, it has proved difficult for humanitarian agencies to consistently gain access to rebel controlled areas in Sierra Leone. As the war intensified in 1995, discussions focused increasingly on how to respond to the needs of an inaccessible population in rebel controlled areas. ICRC negotiated an agreement with the Government of Sierra Leone and the RUF to provide food and medical support to civilian populations in RUF controlled areas. MSF also negotiated a very short term agreement to carry out immunisation activities in rebel controlled areas. This was followed by the Abidjan peace accord, which specifically allowed for humanitarian access to all areas of the country. However, the failure of the parties to the conflict to implement the peace accord effectively prevented any implementation of aid programmes across the country, which remained limited to government controlled areas. The ICRC humanitarian services had been halted by the AFRC coup in 1997, amidst allegations that aid was not directly reaching beneficiaries in rebel-controlled areas, and that aid assets were being used for non-humanitarian activities (It is important to note that these allegations are contested by the ICRC and the humanitarian community).

The military coup in May 1997 had an important impact on the ability of humanitarian agencies to reach beneficiaries. For the first four months of the AFRC's rule, it was technically possible to drive to, and even operate in, all areas of the country. However, emergency operations were constrained by security-related factors, although all humanitarian agencies maintained a strong presence in Sierra Leone. Throughout the Junta's rule, medial supplies and other non-food items continued to enter Sierra Leone to be used in existing emergency programmes. Scaled-back food aid programmes continued using in-country stocks. International and local verification proved that this aid was directly reaching the most vulnerable beneficiaries. However, as stocks began to run out, an ambitious plan to replenish food stocks was introduced. This operation involved the transfer of food primarily from Guinea to Sierra Leone by road. This was intended to take place within the context of the Conakry Peace Accord (November 1997).

which specifically allowed for humanitarian aid to continue, and new mechanisms to be developed to facilitate the process. However, this failed to happen as a lack of political will effectively prevented such a visible aid programme from taking place. Eventually, the security situation deteriorated so far that it proved impossible to transfer and store food until after the February 1998 intervention that led to the re-establishment of the Kabbah government.

As 1998 progressed, the issue of access became increasingly important as rebel forces demonstrated their ability to move through Sierra Leone, and to successfully plan and implement military attacks. The AFRC/RUF brand of political violence and human rights abuses increased the number of IDPs in government-controlled areas, and increasingly restricted the number of areas humanitarian workers could access. This culminated in the fighting in January 1999, which led to the afore-mentioned decrease in the number of government/ECOMOG controlled areas.

The events of the last few years have highlighted a number of key points that will affect any possible negotiations on access:

♦ Armed groups have not always respected the rights, impartiality and mandate of humanitarian aid agencies and workers. RUF affiliated forces have attacked aid workers and looted humanitarian assets, while ECOMOG/government forces, contrary to Government and ECOMOG High Command orders, have detained and harassed aid workers, and commandeered their assets. The most significant outcome of this was the requested withdrawal of the ICRC from the country, following the revived allegations by government about their involvement with the RUF.

♦ The commitment of the Government of Sierra Leone to facilitate country-wide humanitarian programmes, before progress on the peace process, has been questioned.

♦ Security considerations must be paramount, especially given the tradition of violence on the part of the RUF.

♦ Humanitarian considerations have failed to be an integral part of major interventions and decisions about Sierra Leone, and have not been sufficiently respected or prioritised by political actors. It is crucial that future negotiations and processes on peace or other aspects of the conflict place humanitarian concerns alongside military and political issues at the time of discussion.

♦ One key constraint has been the difficulty in finding points of contact who could speak for the AFRC/RUF alliance. The inability to sit down and negotiate severely damaged the prospects of negotiating access.

COMPARATIVE SITUATIONS - LIBERIA AND SUDAN

Sudan

Sudan is the largest and best known aid operation that involves support for civilian groups on both sides of a conflict. Over the period of 10 years, hundreds of millions of dollars have been spent on a large logistics and implementation programme in war affected areas of Sudan. While the debate on the efficacy of Operational Lifeline Sudan (OLS) is complex, a number of key lessons can be drawn from Sudan's experience for Sierra Leone. First, it was seen as virtually impossible at one stage in Sudan to reach agreement on negotiated access. Opposition from government was fierce, and the initial agreement to begin work was very basic. Second, an agreed framework was crucial in the ability of OLS to keep working for as long as they have. This allowed security breaches to be addressed with either side, and the chance of accidental injuries

to be minimised. Also, the total disclosure of information to both sides minimised accusations that OLS was hiding information and carrying out its own agenda. Third, management of OLS proved to be a difficult issue, especially when government tried to gain more control of the process. Considerable time and consultation is required to create a management structure that can be accepted by all within such a programme. Fourth, the experience of OLS shows us that it is crucial to have committed and able staff at all levels of such a programme. Normal inter-agency rivalry can be exploited and magnified despite people of good will working within a clearly understood system. Finally, continuous and strong sensitisation process that focuses on humanitarian principles in general, and the rights of the civilians in conflict, in a language that was clearly understandable to the combatants, was necessary to make OLS work on a day to day basis.

Liberia

Liberia is another country in the sub-region which has had a complex civil conflict, where it became necessary to consider the idea of negotiated access for humanitarian aid. Again, there was resistance to the idea from at least one party to the conflict (ECOMOG), which wished to retain overall control of humanitarian aid through a security 'umbrella'. This would effectively have given them control over where and when aid should be delivered. However, the warlords in charge of the different factions were broadly in favour of aid in their areas. Given that many of them were based in Monrovia, it became possible to get specific approval for a given intervention. However, it was then necessary to follow-up with negotiations at regional, district, town and village level to ensure the security of aid personnel and assets. This then allowed an initial assessment, followed by interventions deemed necessary. Some types of relief were easier to protect and implement than others. Most interventions were done with escorts in the vehicle, who were unarmed.

NEEDS OF HUMANITARIAN ACCESS IN COMPLEX EMERGENCIES

♦ **Security:** The appalling violence and brutality frequently witnessed in this conflict raise this point to the top of any negotiations involving cross border or cross line operations. Regular access to RUF controlled areas requires a total and comprehensive assurance of security from the RUF,
ECOMOG and CDF commanders and field units. It is preferable that this should not involve armed escort on either side, as this often increases the chance of hostilities involving aid workers.

♦ **Transparency:** Experience from other cross-line or cross-border operations strongly suggests that absolute transparency is needed in both the negotiations and practice of running across line operations.
Procedure and individual missions must be totally clear and visible to all parties to the conflict, and external observers.

♦ **Assessment:** The basis for all operations in Sierra Leone should be based on needs identified by inter-agency assessment missions. Political and/or military involvement in such decision-making should be strongly resisted.

♦ **Logistics:** In the case of Sierra Leone, most relief items will be transported by road due to the lower cost and greater capacity of trucks, and the lack of large airstrips in the country. This could be supplemented by helicopter/light plane operations carrying light cargo and passengers.

♦ **Impartiality & Neutrality:** Ordinarily the most difficult concepts to apply in practice is when emergency aid, often inevitably due to the complexity of the situation, is said to support one or both sides of a conflict. Despite this, the basic concept remains fundamental for decision-making when providing humanitarian aid. Civilians affected by the conflict have an equal right to receiving humanitarian aid no matter which side of the lines they are located.

♦ **Verification:** It is crucial that humanitarian agencies can satisfy themselves that the aid is reaching the beneficiary, without significant diversion to combatants. In Sierra Leone, mechanisms for this exist in government controlled areas. In RUF controlled areas, verification of end use should be an important part of any framework governing cross line access.

♦ **Independence:** While it is important that humanitarian issues should be part of any peace or political process, humanitarian law and practice clearly states that it should not get interrupted by any halt in these processes. Indeed, flexibility should be built into any cross-border or cross line operation to continue work if the peace process is interrupted, and to adjust according to any fighting which might be occurring in target areas.

♦ **Partnership:** As in other conflicts, the implementation capacity of the UN, and in some cases of the International NGO's, is limited. Mobilisation of all humanitarian players in the same direction is critical, including national NGOs and civil society groups. The principles of flexible specialisation should be used in the planning process, applied as a series of partnerships between groups and individual organisations.

THE PROCESS

The UN Humanitarian Co-ordinator and his OCHA team believe that an important opportunity is within reach of the humanitarian community to address the needs of the conflict in Sierra Leone. For the first time in some years, it appears that the right combination of political and humanitarian needs necessary to achieve access to all areas of the country may be available. Due primarily to the on-going efforts to start a peace process in Sierra Leone, the leadership of both parties to the conflict is accessible for negotiations. Additionally, the presence of the SRSG, who has been

expressly charged by the UN Secretary-General to facilitate the work of the humanitarian community, will be able to support this process as part of his wider mandate to support the peace process in Sierra Leone.

We believe that this process is possible while understanding the considerable difficulties of successfully negotiating and implementing humanitarian programmes across the country. The chances of success will be substantially increased if there is a unanimous agreement on the principle and mechanisms of achieving this goal amongst the members of the Contact Group on Sierra Leone, international NGOs, UN Humanitarian Agencies, and UNOMSIL. If this unanimity can be achieved, negotiation with the parties to the conflict is likely to have a greater chance of success.

The negotiation process can be divided into two parts: negotiation of the principle and acceptance of humanitarian access, and negotiation on the mechanism of access.

NEGOTIATION OF PRINCIPLE

International Humanitarian Law should form the basis of any negotiation with the parties to the conflict. Additionally, there is a considerable weight of precedent from numerous other conflicts around the war.   The key emphasis should therefore be on taking advantage of the opportunity provided by the current political environment, and ensure that future dialogue on this subject can take place, alongside other negotiations. In particular, OCHA is optimistic that the forthcoming Lomé talks will present an opportunity for starting this process, in as much as the talks constitute a rare occasion to define the way forward towards peace, and an overall increase in the welfare of the people of Sierra Leone.

Negotiations on principle should aim at the following objectives:

♦   Unhindered humanitarian access to all areas of the country.

♦   To agree that the negotiation and implementation of such a process should take place under the   principles contained within the Humanitarian Code of Conduct. This specifically addresses the   humanitarian principles which will continue to be used in the decision-making process, and
        operational guidelines. (The Code should appear as an annex to this document.)

♦   Establish a timetable for future meetings. If discussions take place on the subject in Lomé, a firm   date for a subsequent meeting should be established.

NEGOTIATION OF THE MECHANISM

There are three possible approaches to the next stage of negotiations, once the issue of principle has been agreed on:

1. Individual humanitarian agencies, based on their own mandate and the needs of their beneficiary groups, could negotiate access mechanisms directly with government and RUF authorities. It is likely that this would lead to a multiplicity of different mechanisms, but may facilitate a more rapid start to some types of humanitarian programmes, such as mass immunisations.

2. A global access mechanism could be negotiated that would be intended to simplify and standardise methods of intervention for a cross-line operation. This may take longer to negotiate than individual agency agreements.

3. A possible compromise approach could be the gradual 'ramping-up' of humanitarian cross-line or cross border operations on a consensual and inter-agency basis. An initial sectoral approach on a small scale could be viewed as a way of building of confidence and precedent, in addition to meeting the immediate humanitarian need. This could be heavily monitored on an inter-agency basis to establish the mode of operations in the parties' eyes.

OCHA and the Humanitarian Co-ordinator favour the second and third approaches. Security issues can be better addressed with a common mechanism that does not, for example, have different approaches to armed escorts across lines. Verification procedures are particularly important for those disbursing commodities that do not involve immediate consumption or usage. The assurance (verified on an inter-agency basis) that beneficiaries are receiving aid under the principles of neutrality and impartiality is absolutely central to the prospects of continuing to meet the mandates of all humanitarian agencies. Finally, the possibility of advancing gradually will allow for a gradual building of confidence, and establish important precedents that further the sustainability of any operation.

Whichever mechanism is selected, there are a number of common elements and requirements that would have to be discussed internally within the humanitarian community, and then implemented.