Humanitarian Access
in Situations of Armed Conflict

Practitioners' Manual Summary
January 2017

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA

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INTERNATIONAL

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CONTENTS

Introduction

1.1
Overview

The guidance in this summary supports humanitarian practitioners in structuring an approach to humanitarian access. It is distilled from the methodology for securing and sustaining humanitarian access presented in *Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual, Version 2 (December 2014)*. The companion resource, *Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework, Version 2 (December 2014)* complements this summary and the Practitioners' Manual by providing more detail regarding the relevant provisions of the international normative framework.

The overall objective of this summary, the Practitioners' Manual, and the Handbook on the International Normative Framework is to contribute to improved humanitarian access in situations of armed conflict.

The approach described herein is rooted in the foundations of the core humanitarian principles and the international normative framework. The methodology guides practitioners through an analytical process leading toward the development and implementation of options to secure and sustain access. It also supports practitioners in confronting the dilemmas that may arise in the process.

> **The full length Practitioners' Manual and the Handbook on the International Normative Framework are available at www.fdfa.admin.ch and www.cdint.org**
>
> Practitioners looking to develop an **access strategy** based on this methodology are invited to consult *Annex IV 'Access Strategy Template'* of the full-length Practitioners' Manual (p.160).

1.2
Defining humanitarian access

Humanitarian access is defined here as:

Access by humanitarian actors to people in need of assistance and protection AND access by those in need to the goods and services essential for their survival and health, in a manner consistent with core humanitarian principles.
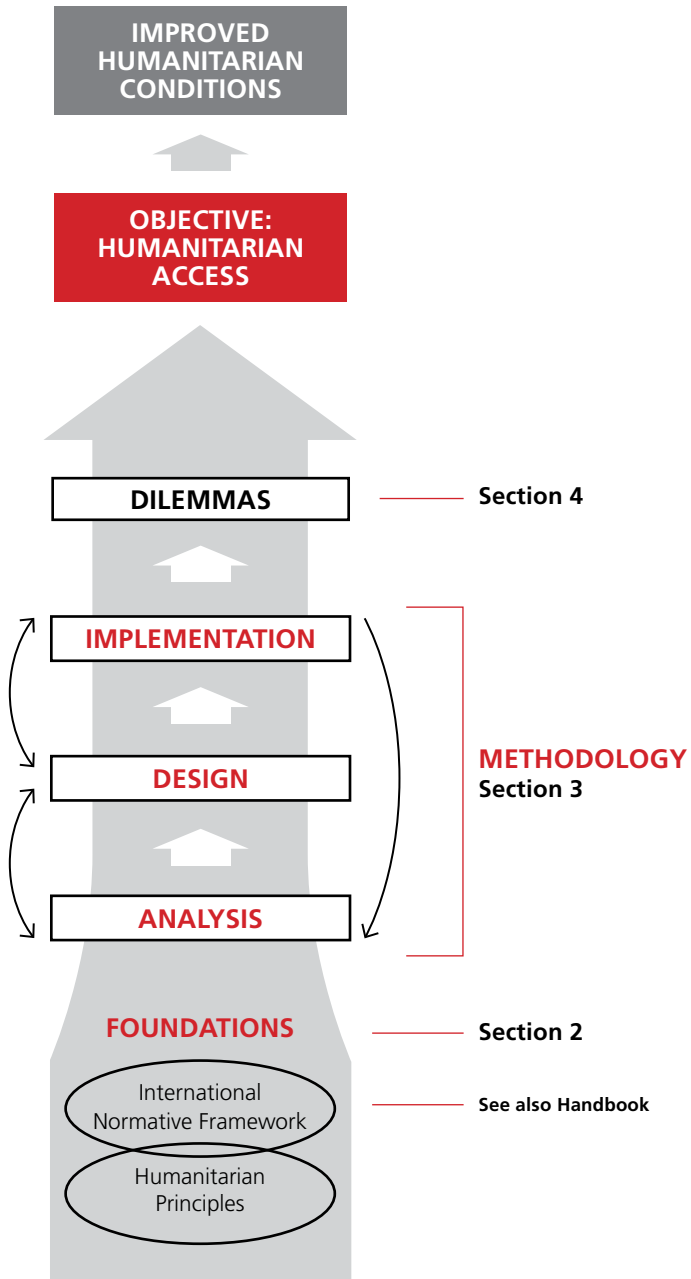
1.3

Humanitarian access in contemporary armed conflicts

Humanitarian practitioners seeking to secure and sustain humanitarian access in contemporary armed conflicts frequently face complex situations in which a wide range of factors and actors may influence access. States as well as non-State armed groups (NSAGs), for example, may present significant barriers to access, and may act aggressively or even violently toward humanitarians. Securing and sustaining access on the basis of an organization's distinct principle-based humanitarian character—particularly maintaining an organization's real and perceived neutrality, impartiality, and independence—has become increasingly challenging in many conflict situations.

Humanitarian organizations often confront important internal challenges as well, such as human resource constraints, limited capacity for context analysis or inadequate security systems. Faced with a multitude of external and internal challenges, practitioners frequently approach humanitarian access in an unstructured way, lacking a clear method. Structuring an approach can reveal numerous opportunities to improve access.

Figure 1 – Overview of Practitioners' Manual content and objective

IMPROVED HUMANITARIAN CONDITIONS

OBJECTIVE: HUMANITARIAN ACCESS

DILEMMAS — Section 4

IMPLEMENTATION

DESIGN

ANALYSIS

METHODOLOGY
Section 3

FOUNDATIONS — Section 2

International Normative Framework

See also Handbook

Humanitarian Principles

Foundations of Humanitarian Access

—

2.1
Overview

The approach to securing and sustaining access outlined in this summary is rooted in the core humanitarian principles and the international normative framework. These foundations underpin and inform the access methodology at every step.

2.2
Humanitarian principles

The core humanitarian principles are:

- **Humanity**: Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings.

- **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.

By clearly defining the motivations and purpose of humanitarian action, what it involves, and how it can be undertaken, the core humanitarian principles distinguish humanitarian assistance and protection from other forms of relief action. Adhering to these principles is critical to building trust and acceptance with all relevant actors, which can be a major enabler of humanitarian access.

In practice, working in accordance with humanitarian principles requires determined effort, persistence, and investment. It requires closely monitoring the quality, means, and effectiveness of delivering assistance and preventing resource diversion.

It also means negotiating with all relevant actors, exploring clear thresholds of what is acceptable and unacceptable, and ensuring that humanitarian work is both perceived as and is actually impartial, neutral, and independent.

For a tool to help operationalize the principles, see the *Principles in practice checklist* in *Annex IV: Practical Tools* in the full-length Practitioners' Manual (p. 152–153).

For guidance on what the principles mean for humanitarian access in practice, see *Table 1—Humanitarian principles applied to access* in the full-length Practitioners' Manual (p. 22).

2.3
International normative framework

The international normative framework is the second component of the foundations for humanitarian access. Four bodies of law within the international normative framework are especially pertinent to humanitarian access: (1) general international law, (2) International Humanitarian Law (IHL), (3) International Human Rights Law (IHRL), and (4) International Criminal Law (ICL).

A thorough presentation of the international normative framework pertaining to humanitarian access can be found in *Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework*.

2.3.1 Why the international normative framework matters

The international normative framework provides a common objective set of rules, the understanding and application of which can assist practitioners in:

- Specifying the duties and obligations of parties to armed conflict (States and NSAGs), third States not party to the conflict, humanitarian actors, and others concerning humanitarian access;

- Identifying the conditions under which humanitarian actors may access those not or no longer participating in hostilities who may be in need of assistance and protection; and

- Framing and conducting negotiations for humanitarian access with parties to armed conflict or other actors.

2.3.2 General international law and humanitarian access

The overall framing of humanitarian access under the relevant treaties and rules of general international law is based on the approach that:

1. States bear the primary responsibility for ensuring the basic needs of civilian populations placed under their control.

2. International law prohibits States from interfering directly or indirectly in the internal or external affairs of another State, where any such interference threatens the State's sovereignty, territorial integrity, or political independence

3. Insofar as States provide relief assistance while strictly respecting the principles of humanity, impartiality, and non-discrimination, an offer of relief action cannot be considered as an unlawful foreign intervention in the receiving State's internal affairs.

2.3.3 International humanitarian law

IHL is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflicts. It protects persons who are not or no longer participating in hostilities and restricts the means and methods of warfare. The main instruments of international law that contain provisions relevant to humanitarian access are: the four Geneva Conventions of 1949 and their two Additional Protocols of 1977.

IHL applies only in situations of armed conflict and distinguishes between two types of armed conflict:

- International armed conflict (IAC) (including military occupation), and
- Non-international armed conflict (NIAC)

The overall framing of humanitarian access under IHL is based on the approach that:

1. Relief actions must be humanitarian; they must be impartial, and must be conducted without any adverse distinction.

2. In IAC, other than occupation, States bear the primary responsibility for ensuring the basic needs of civilian populations under their control. If the population remains in need, third States or humanitarian organizations can offer relief assistance. Relief actions must be humanitarian and impartial, and conducted without any adverse distinction. Parties to armed conflict have an obligation to allow and facilitate relief assistance and access which

respects these principles. This obligation is subject to the consent of the relevant State and right of control of the parties concerned. Consent cannot be arbitrarily withheld (i.e., without valid reasons).[1]

3. In situations of occupation, the Occupying Power has a clear obligation to ensure that the basic needs of the population under its control are met and, in situations where the population is inadequately supplied, to allow and facilitate relief actions.

4. In a NIAC, relief actions for the civilian population, which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction, shall be undertaken subject to the consent of the State concerned, which cannot be arbitrarily withheld.[2] In addition, all parties must allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need, subject to their right of control.

2.3.4 International human rights law (IHRL)

Human rights are rights inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. IHRL lays down obligations of States, and in some situations NSAGs, to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals. IHRL applies at all times and therefore continues to apply, alongside IHL and ICL, during situations of armed conflict.

The overall framing of humanitarian access under IHRL is based on the approach that:

1. Insofar as humanitarian access directly affects availability of essential goods and supplies such as food, water and health care, it can be considered a critical element in fulfilment of the corresponding rights.

2. A State that claims it is unable to fulfil its legal obligations for reasons beyond its control, must show that it has made every endeavor to use all resources at its disposal in an effort to satisfy those minimum obligations.

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1 The use of starvation of the civilian population as a method of warfare is specifically prohibited in IHL Therefore, where the lack of relief would amount to starvation, there is no valid reason justifying a refusal of consent.
2 Protocol II Additional to the Geneva Conventions of 1949 (AP II), Article 18.

2.3.5 International criminal law (ICL)

ICL encompasses rules that prohibit certain conduct and makes perpetrators accountable for violating these rules.

The overall framing of humanitarian access under the relevant treaties and rules of ICL, including the Rome Statute of the International Criminal Court, is based on the approach that:

1. ICL reinforces IHL and IHRL by criminalizing war crimes, crimes against humanity, and genocide.

2. A war crime is a serious violation of IHL. A crime against humanity is an act or omission committed as part of a widespread or systematic attack directed against the civilian population, whether or not the situation is an armed conflict. Genocide includes acts intended to destroy, in whole or in part, a national, ethnical, racial, or religious group.

3. Intentional obstruction or denial of humanitarian access may constitute a crime under international law.

4. Direct attacks against humanitarian workers can amount to a grave breach of IHL and therefore constitute a war crime.

For additional guidance on the international normative framework, including the provisions most relevant to humanitarian access, see *Section 2.3: The international normative framework* (p. 25–44) and *Annex I: Important rules for humanitarian access* (p. 110–143) in the full-length Practitioners' Manual, as well as the Handbook on the International Normative Framework.

2.3.6 National legal, traditional, and customary norms

National legal, traditional, and customary rules and norms can be relevant to humanitarian access as stand-alone rules and norms or in the way they relate to the international normative framework. International law represents the minimum standards of humanitarian access. National laws cannot be less protective but can go beyond the provisions of international law. Nevertheless, national legal, traditional, and customary norms may not always align with international laws and norms and may present challenges or opportunities related to humanitarian access. Understanding, for example, how IHL relates to local religious laws or norms in conflict situations can provide valuable information for practitioners' interactions with local communities and parties to conflict.

Methodology

3.1
Overview

This section presents the methodology for developing and implementing a structured approach to securing and sustaining humanitarian access in situations of armed conflict.

3.2
Methodology PART I – Analysis

Analyzing the context and the factors and actors influencing access consists of three steps:

- Step 1: Frame the access context
- Step 2: Identify factors and actors
- Step 3: Analyze causes

Step 1: Frame the access context

Framing the access context involves the following activities:

Determine the type of armed conflict

Determining the type of armed conflict (e.g., NIAC) is the starting point for identifying which provisions of the international normative framework apply.

> **For further guidance**, see *Section 2.3: The international normative framework* in the full-length Practitioners' Manual (p. 29), and *Section 3: international humanitarian law* in the Handbook on the International Normative Framework (p. 22–35).

Analyze the conflict

Analyzing the nature and dynamics of the conflict can reveal important information that practitioners can use to focus their access-specific analysis and subsequently develop options. Practitioners can draw on different approaches to conflict analysis such as stakeholder analysis, systems analysis, and drivers of change to guide the process.

Assess humanitarian needs

Understanding the humanitarian needs of populations in situations of armed conflict helps practitioners to:

- Define the purpose for seeking access,

- Guide the development and prioritization of options, and

- Assess the potential benefits (humanitarian impact) of taking risks or weighing compromises in pursuing access.

For a selection of resources that can assist practitioners in the process of assessing humanitarian needs, see *Annex V: Additional resources on humanitarian access* in the full-length Practitioners' Manual (p. 165).

Determine the parameters of access

Practitioners can facilitate the analytical process by clarifying the actual or desired scope and form of access using the following parameters:

1. Access for what PURPOSE
2. Access BY WHOM
3. Access TO WHOM
4. Access to WHAT
5. Access WHERE
6. Access WHEN

For additional detail on determining the parameters of access, see *Annex I: Important rules for humanitarian access* in the full-length Practitioners' Manual (p. 110).
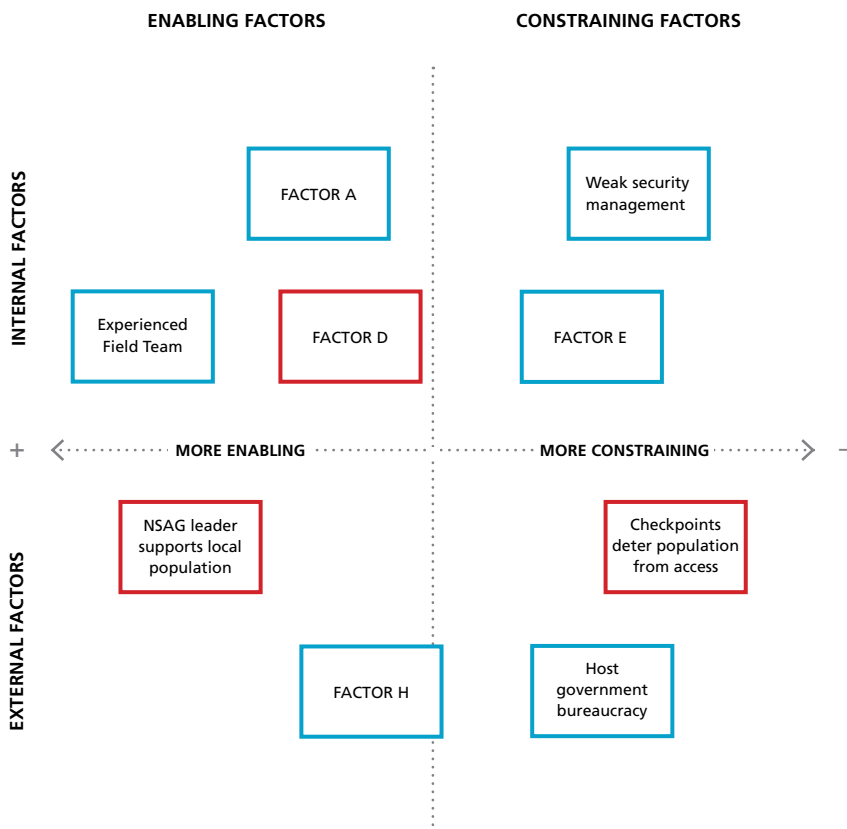
Step 2: **Identify factors and actors**

The second step in the methodology is to identify the factors and actors influencing humanitarian access and the relationships between them.

Identify the factors influencing access

A factor can be anything that directly or indirectly influences access. Factors may have a **positive enabling** influence on access, or a **negative constraining** influence. They may be **external** to the organization, such as ongoing hostilities, or they may be **internal**, such as the organization's security rules and procedures.

Humanitarian practitioners can use a graphical tool, such as that provided in Figure 2, to identify and categorize factors. It can be helpful to identify highly-specific rather than general factors.

Figure 2 – Sample factors diagram

ENABLING FACTORS   CONSTRAINING FACTORS

INTERNAL FACTORS

FACTOR A   Weak security management

Experienced Field Team   FACTOR D   FACTOR E

+ ⟨ · · · · · MORE ENABLING · · · · · · · · · · · · · · MORE CONSTRAINING · · · · · ⟩ −

EXTERNAL FACTORS

NSAG leader supports local population   Checkpoints deter population from access

FACTOR H   Host government bureaucracy

Red factors relate to population access. Blue factors relate to the organization's access.

Once a wide range of influencing factors are identified and categorized, practitioners can focus on the **priority factors**, i.e., those most relevant and critical to an organization's or people's access.

Identify and understand the actors influencing access

Identifying and understanding influential actors, such as NSAGs, State militaries, donors and many others, is essential to securing and sustaining humanitarian access.

Practitioners can categorize actors visually according to whether they are **internal** or **external** (to the organization), and the degree to which they are **enabling** or **constraining**. Figure 2 can be adapted to facilitate the process.

Once influential actors are identified and categorized, practitioners can focus on the **priority actors**, i.e., those most relevant and critical to an organization's access.

Exploring the **characteristics** of actors can assist practitioners in better understanding their nature and in identifying priority actors. Such characteristics may include:
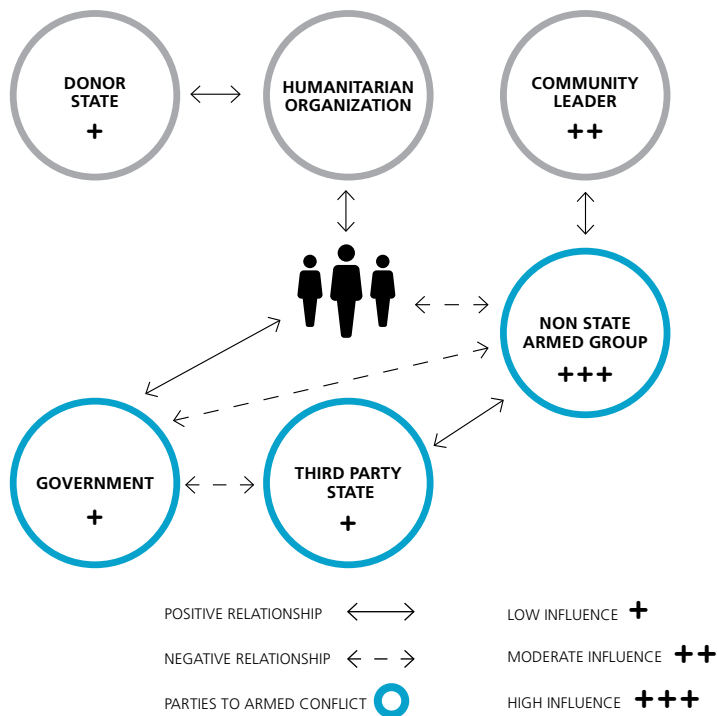
- **Interests** and motivations
- **Structure** (if the actor is a group or organization)
- **Constituency**, or those people the actor claims to represent or govern
- **Socio-cultural aspects**
- **Self-perception** and **the actor's perception of (other) humanitarian actors**
- **Influence** on access, and how the actor is influenced by other actors

For more in-depth guidance on actor characteristics, see *Table 6 — Learning about characteristics of influencing actors* in the full-length Practitioners' Manual (p. 58–59).

Map relationships between actors

Visually mapping the relationships between different actors can reveal layers of interconnection and influence (see Figure 3).

Figure 3 – Sample relationship map

POSITIVE RELATIONSHIP		LOW INFLUENCE +
NEGATIVE RELATIONSHIP		MODERATE INFLUENCE ++
PARTIES TO ARMED CONFLICT		HIGH INFLUENCE +++

Step 3: **Analyze causes**

The process of causal analysis—visually represented in Figure 4—takes a large, dense, and/or complex factor and breaks it down into its component parts. For example, a factor such as "insecurity" may be difficult to manage, but an underlying causal factor, such as "an NSAG's perception of humanitarian organizations as non-neutral," is more specific and therefore easier to develop options from.

Figure 4 – Causal analysis
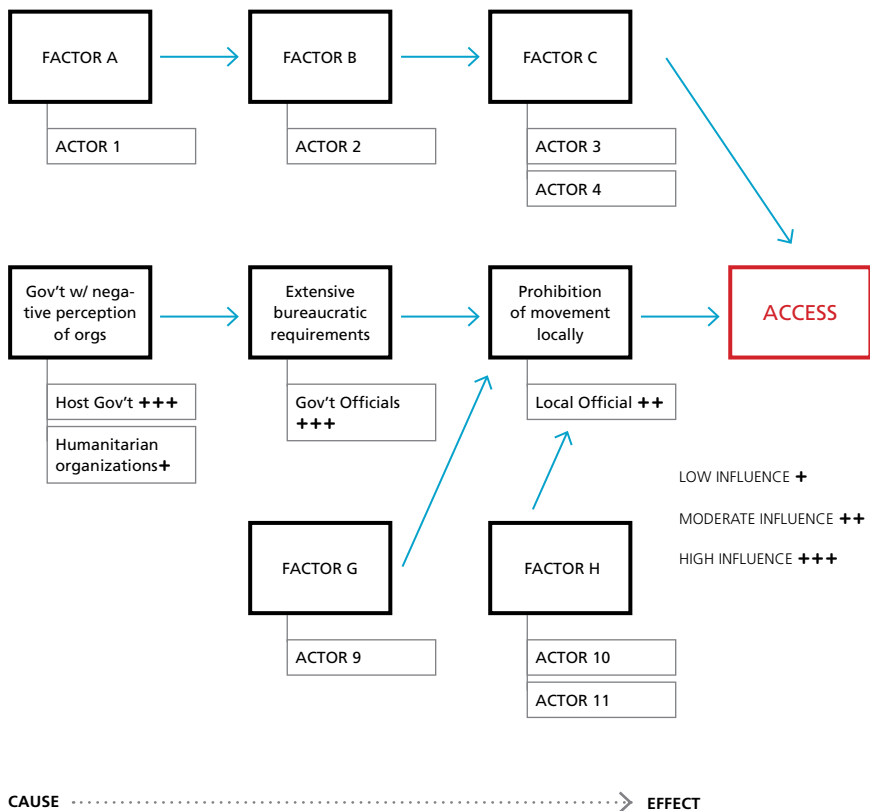
3.3
Methodology PART II – Design

This part of the methodology builds on the analysis conducted in steps 1–3 and consists of:

- Step 4: Develop options for access
- Step 5: Assess and prioritize options

Step 4: Develop options for access

Options are actions that practitioners can take towards securing or sustaining access to a population in need or facilitating that population's access to essential goods and services. The quality of analysis conducted in steps one through three of the methodology will significantly influence the possibility of generating effective options in this step.

Researching precedents and lessons learned can spark new ideas and reveal valuable insight on the types of options most likely to succeed. **Brainstorming** based on the analysis of factors and associated actors can also help generate options.

For further support for the brainstorming process, see *Annex II: Sample options related to common* constraints in the full-length Practitioners' Manual, which presents a list of example options linked to a range of potential factors (p. 144).
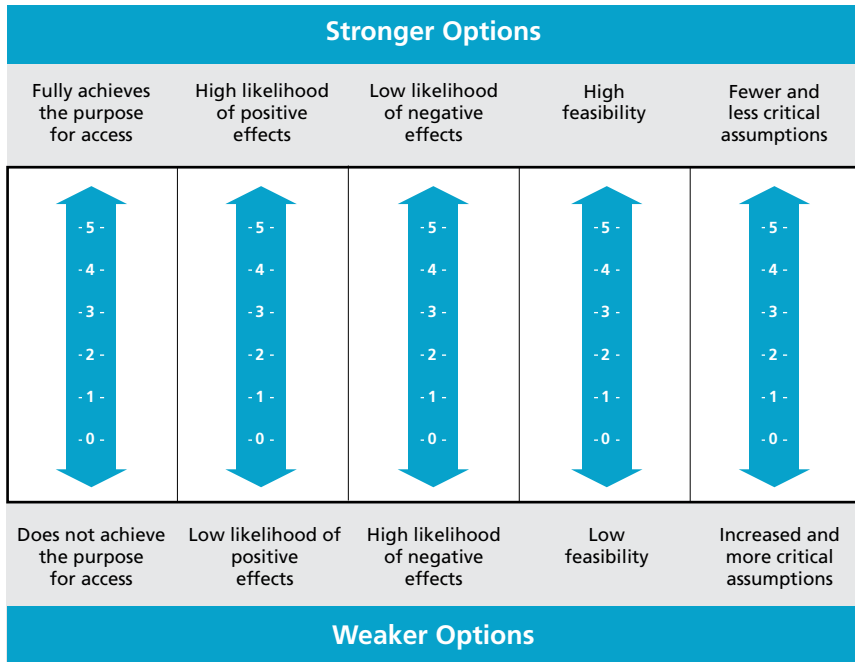
Step 5: **Assess and prioritize options**

Since the range of potential options can be wide and the capacity to implement them limited, it can be helpful to assess and prioritize the relative value of options using the following criteria:

- **PURPOSE**: weigh the extent to which an option has the potential to achieve the purpose for which access is sought.

- **EFFECTS**: assess the expected **positive** and potential **negative effects** of an option, considering such things as:
    - What degree and scope of humanitarian impact is it likely to have?
    - Will it increase security risk to staff, beneficiaries, or others?
    - Is it likely to cause harm in any way?
    - Is it in line with organizational policies and values?
    - Is it in line with core humanitarian principles?
    - Is it in line with the international normative framework?

- **ENHANCING AND MITIGATING ACTIONS**: consider further actions that could enhance an option's positive outcomes or mitigate its negative ones.

- **FEASIBILITY**: assess the **feasibility** of implementing the options. Consider issues such as:
    - Human resources (availability and competence)
    - Financial resources
    - Adequacy of accountability systems
    - Logistical capacity
    - Adequacy of the security management system
    - Opportunity costs of pursuing the option

- **ASSUMPTIONS**: identify, test, and monitor **assumptions**, such as those related to community acceptance, human resources capacity, and many others. Untested assumptions can increase uncertainty and detract from the value of an option or alternative. It is important to monitor assumptions throughout the implementation of options.

Figure 5 - Assessing options

Stronger Options				
Fully achieves the purpose for access	High likelihood of positive effects	Low likelihood of negative effects	High feasibility	Fewer and less critical assumptions
- 5 - - 4 - - 3 - - 2 - - 1 - - 0 -	- 5 - - 4 - - 3 - - 2 - - 1 - - 0 -	- 5 - - 4 - - 3 - - 2 - - 1 - - 0 -	- 5 - - 4 - - 3 - - 2 - - 1 - - 0 -	- 5 - - 4 - - 3 - - 2 - - 1 - - 0 -
Does not achieve the purpose for access	Low likelihood of positive effects	High likelihood of negative effects	Low feasibility	Increased and more critical assumptions
Weaker Options				

Scoring exercise

To facilitate the comparative process, practitioners can score the different options using the five categories presented in Figure 5.

For further guidance on scoring, see the *Assessing options—scoring exercise* in *Annex IV: Practical Tools* in the full-length Practitioners' Manual (p. 154–155).

3.4
Methodology PART III – Implementation

The third part of the methodology focuses on implementing options and includes:

- Step 6: Organize internally
- Step 7: Engage externally

For more guidance, see the *Implementation checklist in Annex IV: Practical Tools* in the full-length Practitioners' Manual (p. 156–157).

Step 6: Organize internally

Internal preparation and organization can increase practitioners' ability to successfully implement options and achieve desired outcomes. Consider the following points of guidance:

- Define roles and responsibilities
- Clarify funding arrangements
- Clarify the level within the organization at which action is required
- Identify the time frame for implementation
- Establish or clarify effective lines and means of communication
- Prepare for negotiations
- Keep records of the process and decisions
- Ensure adequate logistical preparations
- Establish a monitoring and evaluation system

For more guidance on establishing a monitoring and evaluation system, see *In Focus: Monitoring and Evaluation* in the full-length Practitioners' Manual (p. 48–49).

- Write an access plan or strategy

For more guidance on writing an access strategy, see the *Access strategy template* in *Annex IV: Practical tools* of the full-length Practitioners' Manual (p. 160–162).

- Plan for adjustments

Step 7: **Engage externally**

Successfully securing or sustaining access involves engaging multiple actors external to the organization. These can be people in need of assistance or protection, other humanitarian organizations, government officials, NSAGs, donors, civil society groups, and or others.

Two critical aspects of external engagement are **negotiations** and **coordination**.

Humanitarian negotiations

For detailed guidance on structuring an approach to humanitarian negotiations, refer to the IASC-endorsed manual: *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners* (New York: United Nations, January 2006), Gerard Mc Hugh and Manuel Bessler.

In the absence of active and ongoing negotiations, practitioners will rarely obtain or sustain humanitarian access. Developing an effective negotiations strategy and adequate skills can significantly boost an organization or coordination mechanism's chances of achieving access.

Consider the following in approaching humanitarian negotiations:

Preparation

- Where possible and constructive, liaise and **coordinate** with humanitarian partners.

- Define the **purpose** for entering into negotiations and the desired **outcomes**.

- Consider **possible alternatives** to a negotiated agreement, should negotiations fail.

- **Determine**, **map**, **and analyze the negotiating partner** and other influential actors.

- **Use the right negotiators**. Select and train the appropriate personnel.

- **Maintain separation between humanitarian and political negotiations**. Mixing them can compromise the impartial, independent, and neutral character of humanitarian negotiations.

During negotiations

- **Build consensus** among all negotiating parties on the **process** and modalities of negotiations.

- **Jointly identify the substantive issues** to be negotiated.

- Use **humanitarian principles**, **international law**, **and humanitarian policies** to help **develop and assess options** for possible agreement. Note that in some cases, legal arguments may not offer the best entry points for negotiating access.

- **Seek agreement** on the option(s) that arrive(s) at the best **humanitarian outcome**.

Following negotiations

- Clarify the **scope** of agreements and **how** they will be implemented, including all parties' mutual obligations. It can be useful to establish a dispute resolution mechanism.

- Identify mechanisms to facilitate (joint) **monitoring** and review of implementation.

Humanitarian coordination

In most situations, securing and sustaining humanitarian access is a common concern and endeavor, leading thus to some degree of collective action. Coordination can help avoid gaps and overlap in assistance, foster organizational synergies, and strengthen advocacy and negotiations related to humanitarian access. Approaching coordination thoughtfully and strategically can lead to the best outcomes. To facilitate the coordination process, practitioners can:

- Identify how coordination can support access, such as through information sharing, collective analysis, or joint assessments.

- Assess the potential for effective coordination, looking at factors such as common objectives, quality of relationships, willingness to share information, and leadership.

- Assess the potential benefits and risks of coordinating activities.

When opting for a coordinated approach, practitioners can consider the following complementary modes of action:

- Choose lead person(s)/organization(s)

- Coordinate at different levels (e.g., field, country, regional)

- Allocate tasks according to each organization's comparative advantage

- Exchange relevant information through an effective mechanism

- Negotiate jointly

- Establish or participate in an existing "access cell"/working group

Dilemmas

4.1
Overview

Practitioners may at times face difficult choices—some actions, though designed with the intent to improve humanitarian access, may have unintended negative consequences. This section provides guidance on identifying and working through such dilemmas.

4.2

Understanding dilemmas

Dilemmas are difficult choices between undesirable options which may involve trade-offs and potential compromises and which include actions that may run counter to the humanitarian principles, the international normative framework, and/or the humanitarian organization's core values or policies.

4.3
Guidance for working through dilemmas

For more information on how to facilitate working through a dilemma, see the *Dilemmas worksheet* in *Annex IV: Practical tools* of the full-length Practitioners' Manual (p.158–159).

The following points of guidance can assist practitioners in working through dilemmas.

Guidance Point A – Clarify available options

- **State the dilemma**. Describe the difficult choice, for example, "using armed escorts versus not using armed escorts."

- **Identify options related to the dilemma**. In the above example, options may include contracting armed escorts locally, having armed escorts provided by authorities, or not using armed escorts and instead using low-profile/ low-visibility methods to get personnel to the project site.

Guidance Point B – Explore the consequences and mitigation measures

- **Identify and assess expected consequences**, particularly the **negative effects** of options.

- Explore ways to **mitigate expected negative consequences** through measures that make available options more acceptable.

Guidance Point C – Apply thresholds of acceptability

- Determine if the expected consequences of an option cross the organization's **acceptable limits** in relation to the humanitarian principles, the international normative framework, and/or organizational core values and policies.

- Thresholds can be **relative** (shifting in relation to the potential humanitarian impact of the option) or **absolute** (independent of the potential humanitarian impact).

- Practitioners should only accept compromises of the core humanitarian principles or the international normative framework in **exceptional**, **limited**, and **time-bound** circumstances, based on agreed and clearly-defined criteria within or between organizations and with full knowledge of the consequences.

When faced with choices that may involve principled or other compromises, practitioners can consider:

- Whether there are unique circumstances that warrant an exceptional compromise, such as an immediate and serious security threat;
- The short- and long-term implications of the action;
- The potential impact on other humanitarian organizations; and
- The potential to set a precedent that could lead to further pressure from external actors, or lead to further compromises by the organization.

Determining thresholds of acceptability may require debate and interpretation and should be thoroughly discussed and ultimately agreed upon, explained, and communicated to all relevant individuals within and between organizations.