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## **Session 6: International Relief & Development NGOs**

### **International Relief and Development NGOs and the International Justice System**

**Discussion Paper By  
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This brief paper identifies multiple intersections between the major international relief and development non-governmental organizations (NGOs) and the international justice system. It suggests six specific ways in which the NGOs and the justice system might become more mutually reinforcing or at least diminish tensions between them over the next several years. It begins with an overview of these large NGOs and describes some recent trends in their evolution. In writing the paper, I have drawn in part on my decade as president of CARE USA and on my current role at the Hauser Center as chair of the facilitation group for the NGO Leaders Forum. The Forum brings together the heads of a dozen major U.S.-based relief and development NGOs, including those (such as CARE, MSF, Oxfam, Plan, Save the Children and World Vision) that are affiliated with global alliances.

Most of the large international relief and development NGOs began as humanitarian organizations, responding both to “natural” disasters, such as cyclones and earthquakes, and to man-made emergencies, including those resulting from armed conflicts, atrocities and massive displacement of people. CARE, for example, was formed to deliver food to hungry people in Europe and then in Asia in response to the threat of famine at the end of World War II.

Virtually all the major humanitarian organizations abide by a shared set of principles. The overriding purpose of their responses is to save lives and to relieve suffering. They seek to adhere to the principle of impartiality by targeting their support on the basis of human need, without regard to ethnicity, religion, race, caste or creed. As humanitarian actors, they also strive to maintain their independence. Their code of conduct forbids their becoming instruments of foreign policy, and, more broadly, they seek to remain

undeterred by pressures to pursue any but their humanitarian objectives. These NGOs debate among themselves the importance of observing neutrality toward repressive regimes; however, except in the case of regimes that commit the most extreme crimes against humanity, the NGOs do not usually take sides—at least not in ostensible ways.

### **Recent Trends in Evolution of Large Relief and Development NGOs**

Some of the large NGOs, such as MSF and the International Rescue Committee, are still mainly emergency response organizations. Most, however, have become increasingly oriented toward international development and poverty reduction. To one degree or another, the major relief and development NGOs also view their work in development as a means to help prevent violent conflict and gross injustices. These NGOs have evolved in other ways as well, including the following:

1. They are no longer “charities” in the traditional sense. They have taken on more of an edge and become more cause-related organizations.
2. Many NGOs, especially in Europe, have taken up rights-based approaches to their work in relief and development. In recent years, numbers of U.S.-based NGOs have begun to follow suit. In so doing, they have embraced the full panoply of civil, political, social, economic and cultural rights embodied in the Universal Declaration of Human Rights.
3. These organizations have increasingly focused not just on the proximate causes of poverty, such as disease, illiteracy and malnutrition, but also on such underlying causes as discrimination, social exclusion, abuse of power, corruption and violent conflict.
4. Whereas most relief and development NGOs once distanced themselves from politics, they now understand that their concerns about social equity questions, power relationships and distributive issues presuppose a political dimension to their work. Still, they strive to remain nonpartisan.
5. The same NGOs are no longer content with being viewed by their governments as implementing agencies. They seek a seat at the policy table on issues related to their mission, and they draw on their on-the-ground experience in the world’s poorest communities to advocate in behalf of them, whether it is for the international treaty to ban landmines, debt relief for the poorest nations or a peace settlement to the civil war in Sudan.
6. Most of the largest international NGOs have fashioned global alliances over recent decades, often in the form of federations or confederations. While these new forms of governance have proceeded by trial and error, they have increased the NGOs’ capacities to raise funds from governments and private donors, to deliver impactful programming and to influence the public policies of governments and multi-lateral organizations. Virtually all of these alliances have been grappling with how to incorporate “Southern” voices into their governance.
7. The number of international relief and development NGOs now total in the thousands, but a small fraction—no more than a dozen—dominate the field.

The budgets of these large organizations together exceed those of their UN counterpart agencies, and probably total half to two-thirds of the entire international NGO presence in most developing countries.

8. In recent years, the forums and networks for improved communication, coordination and cooperation among the large NGOs have increased in number and effectiveness (for example, in setting basic standards for responding to humanitarian emergencies), even if individual organizations still often go their separate ways at critical points (as they have in Sudan in the aftermath of the ICC indictments related to the Darfur crisis).

### **Multiple Intersections Between the Large NGOs and the Justice System**

There are multiple points of intersection between the relief and development NGOs and the international justice system. Most obviously, the two sets of actors literally intersect in that their respective missions point them to the same country settings. The large NGOs tend to be especially active in humanitarian relief in those countries where there are active investigations and advocacy efforts concerning alleged crimes against humanity, war crimes and genocide—in such places as Sudan, the DRC, Uganda, Rwanda, Sierra Leone, the Palestinian Territories and Cambodia. What draws the humanitarian NGOs is the acute human suffering and extreme poverty in the wake of violent conflict and human atrocities. What draws the justice investigators and advocates is the unspeakable crimes and presumption of impunity by the perpetrators. Both the humanitarian NGOs and the justice officials are intent on advancing justice. Whereas the former focus first and foremost on social justice, the latter are intent primarily on criminal justice.

There are other points of intersection between the relief and development NGOs and members of the international justice system. They include: (1) the need of each in its own way to determine how best to address crimes against humanity in specific settings and to prevent further victimizations; (2) the need in countries where gross violations have occurred for each to figure out whether and how to relate to governments, militias and other organizations whose senior ranks may contain important suspects; (3) the need of each to relate to powerful donor governments without compromising basic principles; (4) the need of both the relief and development NGOs and members of the justice system to have sufficient in-country access to do their job; and (5) the obligation of both to safeguard the security of their personnel and others who confide in them or depend on them.

### **Tensions and Challenges in the Relationship**

Given the visions, missions, and values of international relief and development NGOs, they are generally predisposed to support in principle a more robust and effective international justice system; yet they also harbor reservations. One basic concern, underscored by the unwillingness of the U.S. and China to ratify the Rome Statute, is the

perception that the international justice system (while ostensibly created to end impunity for the worst crimes against humanity) allows the most powerful nations to stand apart from it. Another is the concern that the international justice system and the humanitarian NGOs are too easily treated as the political and “moral” refuge of permanent members of the UN Security Council unwilling to take timely action to prevent crimes against humanity. The Council’s failure to prevent the genocide in Rwanda in 1994 remains an especially searing case in point.

More specifically, the international humanitarian NGOs have had concerns about the handling of particular international justice cases and have been challenged as to whether and how to relate to the International Criminal Court. Among these concerns, shared by local relief and development NGOs in the affected countries, have been their lack of understanding of the ICC’s purposes and procedures, a lack of sensitivity within the ICC to traditional forms of local justice and to local peace processes (as in northern Uganda), and the need for the ICC to connect more visibly with various segments of societies affected by its actions. Underpinning such issues is the cultural and geographic distance of the ICC from countries on which it focuses. Even with the ICC’s restricted mandate and its limited resources, however, it has shown increased willingness to engage in dialogue with elements of those societies and to consider the sequencing and timing of its actions within local contexts.

One of the most important tensions between the international relief and development NGOs and the international justice system stems from their different views of justice. Although the two views are interrelated and overlap, the relief and development NGOs see the arguments of the criminal justice advocates as being more absolutist, universalistic, individualistic and abstract. As advocates for social justice, they see themselves as taking positions that are more context-specific, communitarian, and concrete. Participants in the international justice system and human rights organizations tend to view the pursuit of criminal justice in cases of gross violations as a necessary component of a lasting peace. If such injustices are not resolved, they will fester and inevitably breed renewed violence and atrocities. Relief and development NGOs, working—sometimes on both sides of the lines of war—to save lives and relieve suffering, are more situational in their judgments. They may question criminal prosecutions that could (in their view) prejudice local or regional peace processes, exacerbate the violence, or result in life-threatening deterioration of basic services. They might agree that criminal justice should be a component of a lasting peace, but not necessarily a precondition for it.

Perhaps the most sensitive issue for international humanitarian NGOs in connection with the investigations and prosecutions of the ICC is the security of both the NGOs’ own personnel and the people whom they are there to support. The international humanitarian NGOs often run major operations in settings that can be volatile and dangerous. They may be managing camps, for example, for thousands of people in dire straits and delivering food, water, medicine and sanitation. The NGOs may employ

hundreds of workers, the vast majority of whom are local. The personnel of these NGOs see and hear about atrocities in the midst of humanitarian emergencies, and at times agonize over whether to speak out about them or to continue their humanitarian aid. And whether or not they speak out, they may be suspected of having done so or simply be “scape-goated,” putting them at physical risk, putting their organizations at risk of expulsion from the country and leaving the people whom they are there to support even more vulnerable.

By the same token, the investigators of the ICC itself also run serious security risks, as do the international human rights NGOs and most especially their local and regional counterparts. The jobs of justice investigators and human rights researchers “in the field” are primarily to take testimony and gather facts that may be threatening to offenders who have committed terrible crimes. And as in the case of the humanitarian NGOs, not only participants in the international justice system but also the people suspected of informing them are at risk of reprisals. Given the risks inherent in the ICC’s own work, it is to their credit that they have come better to understand the risks run by the humanitarian NGOs and to keep them at a safer distance. In the recent case of Darfur, however, that separation was not sufficient to prevent the government of Sudan from taking reprisals against 13 international NGOs and six local NGOs after the ICC’s indictment of President Al Bashir.

### **Seeking to Reduce Tensions and Promote More Mutual Reinforcement**

Acknowledging the shared commitment to a more just world by the international justice system and by international relief and development NGOs, there is a tension between the emphasis of the justice system on investigations and prosecutions for the most heinous crimes and the emphasis of the humanitarian NGOs on service delivery operations to save lives and relieve suffering of people in dire straits. I do not see these NGOs as part of the justice “system”—certainly not in any strict sense of the term. But they do have common interests; and they can—and should—be more mutually reinforcing. They—and the broader community that supports them—should work toward meeting the challenges and resolving the tensions that confront them. Here, I recommend six specific lines of action for consideration:

1. Insufficient attention has been given to the complementary relationship between the advancement of justice for crimes against humanity and the reduction of extreme poverty in the world’s poorest communities. Effectively tackling the underlying causes of poverty, including discrimination, social exclusion, abuse of power, corruption, repression and violent conflict, is critical to building hope and trust within societies, diminishing fear and resentment, and constructing societies that are more equitable, law-abiding, empowering and peaceful. Supporters of a workable international justice system should also be supporters of sustained commitments to reduce poverty, and advocates for

more inclusive and equitable development should be advocates for a more effective system of justice for the most horrendous crimes.

More concretely, relief and development NGOs—particularly those based in the United States—should follow the lead of their European counterparts and deepen their commitment to rights-based approaches to their work. For example, could they do more—through their programming and policy advocacy—to advance respect for the human rights of women, to foster gender equity and specifically to reduce violence against women, including rape as a weapon of war? And could they concentrate more of their programming on empowering communities and groups that suffer discrimination and exclusion because of caste or tribe?

2. Reparations for entire groups within society who have been singled out for extreme repression, exclusion and deprivation should be considered as a means of both contributing some semblance of justice and investing toward a better future for those groups and the societies of which they are part. In some cases, reparations may follow a judicial finding of culpability. In other cases, reparations might be granted through a political process to advance a sense of social justice. In situations where there is still distrust of the government or where the outreach of government is inadequate, international NGOs—preferably in partnership with local NGOs—might be used to deliver the reparations. Following the settlement of the civil war in El Salvador, for example, CARE partnered with local NGOs in using a GPS system to obtain title to land from the government for 30,000 ex-combatants. Might reparations usefully play a larger role in international justice? Should NGOs—international and local—be prepared to work with the international justice system in assisting the effective delivery of reparations to their intended beneficiaries?
3. The ICC should seek better to understand the relationship between its actions in pursuit of criminal prosecutions and the advancement of peace processes in the specific countries on which it focuses. To the greatest extent possible, the international justice system should buttress processes that might in fact lead to a durable settlement and should make every effort not inadvertently to undermine them. For their part, the relief and development NGOs need to understand better when and how prosecutions of crimes against humanity can advance peace. Is there opportunity for more structured dialogue on these questions between the two communities?
4. Some of the difficulties in relations between the ICC and international—and local—humanitarian NGOs may stem from inadequate financial and staff resources at the ICC. The Court needs—to the extent possible—to be better informed about the social contexts of its investigations and to demystify its objectives and procedures. While it has made progress on this front, it should think hard about how more effectively to engage with civil society, especially with various groups affected by its investigations, and how it can be more sensitive to them. Would this require more expertise and presence in the countries where the investigations take place? Would the ICC and relief and

- development NGOs welcome more ICC engagement with the societies where it is carrying out investigations? Could these NGOs help in facilitating such engagement?
5. The advocates for the international justice system must continue to broaden the coalition of its supporters, and press those governments that have yet to ratify the Rome Statute to do so. The major relief and development NGOs have built constituencies prepared to champion their cause and engage in policy advocacy in their home countries. Ratification by the U.S. is especially important, and these NGOs could help in making the case. Could the NGOs be induced to join the coalition? What would be needed to activate their support for ratification?
  6. Finally, the convergence of international human rights NGOs and international relief and development NGOs over recent years is to be welcomed. On the one hand, the human rights organizations, while still giving priority to political and civil rights, are becoming more open to social, economic and cultural rights. On the other hand, the relief and development organizations, while continuing to give priority to considerations of equitable development, are becoming more conscious of the importance of political and civil rights. As a result, organizations like Amnesty International and Human Rights Watch should be better positioned in the future to bridge the divide between the humanitarian and development NGOs and the international justice system. While increasing numbers of relief and development NGOs have ad hoc relations with human rights NGOs, might both criminal and social justice be advanced by a more structured ongoing dialogue?