

## **HUMANITARIAN ACCOUNTABILITY: KEY ELEMENTS AND OPERATIONAL FRAMEWORK**

The experience of implementing accountability<sup>1</sup> principles and mechanisms within and outside the humanitarian sector suggests that a system of humanitarian accountability should take into account the context of humanitarian actions and that it must be based on agreed principles. Accountability should also be built into operations and organizational systems. These elements of accountability and their operational dimensions are now considered in turn.

### **I – HUMANITARIAN ACCOUNTABILITY: KEY ELEMENTS**

#### **1. Taking the Context into account**

The context of humanitarian actions includes:

- The *full range of actors and stakeholders* involved in the response to humanitarian crisis, and their different levels of duties or obligations. A system of accountability should not focus on one actor, stakeholder or type of intervention at the expense of others.
- The *military and political context* within which humanitarian actors operate. Factors to consider include: violations of international humanitarian law by armed groups or governmental troops, threats to the life of staff or to operations, lack of access, political manipulation of humanitarian assistance, absence of political leadership or political solutions to the crisis.
- The *financial context* within which humanitarian actors operate. There may be, for example, insufficient overall funding for humanitarian operations; an imbalance in resources provided, with some operations over-funded and others under-funded; short-term funding working against a more strategic and longer-term approach to relief; increased bilateral funding, which may fuel competition between agencies and work against co-ordination.
- *The organizational context*. This begins with understanding the organizational ethos, mandate, mission, and role of individual organizations. It is also important to take into account the extent of the organization's responsibility towards its staff and volunteers, the intended beneficiaries, and other stakeholders.

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<sup>1</sup> The Humanitarian Accountability Project has adopted a definition of accountability as involving two sets of principles and mechanisms: those by which individuals, organizations, and States account for their actions and are held responsible for them, and those by which individuals, organizations, and States may safely and legitimately report concerns, complaints, and abuses, and get redress where appropriate.

## 2. Adopting a principled approach

- Accountability is concerned with the development of an *ethical* approach to all aspects of humanitarian work. It also requires clarity about the responsibilities or duties of individuals, organizations and the sector as a whole. However, because so many ‘actors’ are involved, it is important to distinguish between different types and levels of responsibilities. For instance, the responsibilities of armed forces and the standards by which their actions are to be monitored are very different from the responsibilities of humanitarian NGOs or UN agencies.
- Humanitarian accountability is not only concerned with financial and upward reporting. *Accountability to the least powerful* is essential to the principles and activities of humanitarian work and this requires an understanding of the *power dynamics* in any given situation.
- As well as the disaster-affected populations they are trying to serve, organizations should be responsible and accountable to field-workers, other staff and volunteers.

## 3. Operational considerations

Accountability must be built into organizational and operational systems. This requires:

- *Full commitment* from organisational policy-makers and those allocating resources. Since introducing or strengthening systems for accountability may require *organizational change*, a communication strategy involving all levels and programmes within an organization is crucial.
- Insistence on *good practices and self-regulation mechanisms, at field, organizational and sector-wide level*. This involves developing, implementing and monitoring good practice guidelines, codes of conduct and internal management processes based on accountability. Staff should be assigned specifically for this purpose.
- *An acknowledgement* that tasks and “duties” have to be performed (by *duty-holders*) and that these performances have to be monitored (by *duty-bearers*).
- *Agreed standards or benchmarks* are essential for the implementation of humanitarian work, as well as to ensure due and fair process.
- *Mechanisms* for listening, evaluating and responding to the information generated, as well as mechanisms for informing and reporting are required.
- Acknowledgement that the *sector as a whole* has a responsibility to ensure that its members meet an established minimum of expectations and professional standards.

A further question to ask is whether a sole reliance on self-regulatory mechanisms is sufficient. The majority of professional sectors (medical, judicial, police, public administration, etc.) recognize that a system without external and *independent regulatory, monitoring and response mechanisms* may be neither principled, nor effective. Independent bodies are required to ensure that an effective and principled accountability system is put into place. Similarly, however, a sole reliance on independent mechanisms will not be sufficient, effective or wise. Among other things, it will give sole regulatory

authority to mechanisms or bodies, whose modus operandi may differ greatly from those of the humanitarian sector. Independent mechanisms or bodies should be called upon when the issues to be considered are beyond the mandate of self-regulatory bodies or as part of an appeal process.

## **II – HUMANITARIAN ACCOUNTABILITY: OPERATIONAL FRAMEWORK**

The proposed framework includes several elements<sup>2</sup> grouped under five headings<sup>3</sup>.

### **1. WHO IS ACCOUNTABLE?**

- **Duty-bearers**

### **2. TO WHOM?**

- **“Affected” individuals or communities**
- **Other stakeholders**

### **3. FOR WHAT?**

- **To meet commitments as defined by standards and benchmarks**

### **4. HOW?**

- **Monitoring: listening, reviewing, evaluating**
- **Responding**
- **Informing and reporting**
- **Identification of duty-holders**
- **Self-regulation and independent mechanisms**

### **5. FOR WHICH OUTCOME?**

- **Changes in programmes and operations, awards, redress, sanctions**

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<sup>2</sup> Some of these elements have been identified by John Borton, Peter Raynards, Sara Davidson, the Institute for Social and Ethical Accountability and the HAP. Others were suggested by Kate Gilmore, Interim Secretary General of Amnesty International, personal communications, March 2001.

<sup>3</sup> See Peter Barberis in “The New Public Management and a new Accountability” in *Public Administration*, Vol.76, Autumn 1998, p.466; John Borton, “Accountability in the international humanitarian system,” in *Accountability Quarterly*, 1<sup>st</sup> quarter 2001; Peter Raynard, “Mapping Accountability in Humanitarian Assistance”, ALNAP, May 2000. Raynard identifies four main tenets of accountability: agreement of clear roles and responsibilities, taking action, reporting and responding.

## **I-WHO IS ACCOUNTABLE? DUTY BEARERS**

A variety of actors, who are accountable or who should be held accountable, are involved in humanitarian crisis. They range from national governments, their military forces and armed groups, to donor governments, aid agencies, and members of affected populations. They are referred to as “duty-bearers” to acknowledge the fact that they have been attributed and/or have attributed to themselves a set of duties.

Determining who are the duty-bearers constitutes a fundamental step towards accountability. It entails acknowledging and **naming** the various responsibilities of the actors involved in humanitarian operations, their differences and the division of labour.

Below is a possible list of duty-bearers. Their preliminary classification is based on an approximate international legal nexus and level of responsibilities under international law.

### **Governments involved in the crisis, including:**

- Government(s) of the crisis-affected country and others directly involved in the crisis
- Public officials
- Local authorities
- National armies
- Security forces
- Para-military forces

### **Armed groups, including:**

- Political leaders
- Armed forces

### **International, regional and/or national peace-keeping forces**

### **Foreign or third party governments, including:**

- Governments providing economic, or political support to the parties to the conflict or to the country in crisis
- Governments involved in military transfer, training, and/or support to any parties to the conflict

### **Inter-governmental agencies, involved in the crisis, including:**

- United Nations (Security Council, General Assembly, Secretary General, Special

Representative or other representatives of the Secretary General)

- Regional bodies (e.g. Organisation of African Unity, Organisation of American States, European Union)
- Other inter-governmental bodies (e.g. NATO)

### **The International Committee of the Red Cross (ICRC)**

### **Funding states, including:**

- Governments funding humanitarian assistance, either as part of multi-lateral efforts or in a bi-lateral fashion

### **Funding “agencies,” including:**

- Inter-governmental agencies
- National agencies
- Private donors

### **UN “operational” agencies, including:**

- UN operational or coordinating agencies (e.g. UNHCR, UNICEF, WFP, WHO, OCHA, etc.)

### **International and local NGOs**

### **Affected Communities**

- leaders and individuals

## **II – TO WHOM ARE THEY ACCOUNTABLE?**

Duty-bearers are accountable to a number of individuals or agencies, usually referred to as stakeholders<sup>4</sup>.

Each of the duty-bearers identified above is accountable to a number of stakeholders, many of which differ from one duty-bearer to the next. However, they all have one stakeholder in common: **the individuals and communities directly affected by the crisis and the humanitarian operations.**

As emphasised earlier, one of the key elements of accountability is that it requires an understanding and recognition of *power* and in particular of the power one may hold over others. In the context of a crisis the primary stakeholders include all of the individuals and communities affected by the crisis and by the subsequent humanitarian operation.

These affected individuals or communities include first and foremost the “*intended beneficiaries*” of the humanitarian operation or the victims of the crisis. Three main factors should guide the approach to defining and working with beneficiaries:

- 1) the acknowledgement that there is not one entity called “intended beneficiaries” or victims, but a multitude of individuals who may group or identify themselves according to a variety of markers, such as ethnicity, religion, age, gender, education, villages of origin, language, etc. This diversity must be taken into account.
- 2) the role of “leaders”, whether self-proclaimed or not, and the necessity to address their role and position in a critical fashion;
- 3) the instrumentalization of the beneficiaries by political or armed groups, and therefore the risk that any “listening and responses” processes and accountability mechanisms may benefit one particular political interest or threaten others.

In addition to the intended beneficiaries, two other categories of people may be directly affected.

In situations of mass displacements, either internal to a country or outside a country’s boundaries, affected populations include the **local population**, who may and in most cases may not be included in the humanitarian assistance programme. Yet, their interests, concerns or complaints ought to be addressed.

The third group of affected individuals includes the **humanitarian actors** themselves, who may be the object of harassment, who may be unable to operate, or, in the worst case, may be kidnapped or deliberately targeted for killings.

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<sup>4</sup> As Peter Raynard highlights in his work on the humanitarian system, NGOs in particular face the challenge of multiple stakeholders and multiple accountabilities. He addresses the challenge by relying on the concept of “relational accountability”, that is, by defining an organisation not as a set of functions but as the accumulation of a set of relations with its various stakeholders. Elaborating on the example of the United Nations High Commission for Refugees (UNHCR), he suggests that stakeholders are those who are affected by, or affect, the actions of the UNHCR in its response to a humanitarian crisis. “The UNHCR will have a prime responsibility to the affected population but its ability to meet that responsibility will depend on the actions and influences of other stakeholders.” In Peter Raynard, “Mapping Accountability in Humanitarian Assistance”, ALNAP, May 2000.

**Other stakeholders:**

Below is a preliminary list of other stakeholders to whom duty-bearers involved in humanitarian crisis are accountable<sup>5</sup>. It is by no means exhaustive.

**1. Governments, their representatives, and armed forces may be accountable to:**

- affected populations
- the international community
- regional bodies
- parliaments (for example, by a vote of non-confidence)
- electorate/citizens (elections, referendum, mass rally, etc.)
- others

**2. Armed groups, their political leadership and/or their armed forces may be accountable to:**

- affected populations
- the international community (international, regional or national criminal courts through the principle of Universal Jurisdiction, etc.)
- national government
- their political, military or economic backers
- others to be identified

**3. Inter-governmental bodies may be accountable to:**

- affected populations
- member states
- executive and/or legislative branches
- donors
- others to be identified

**4. UN agencies may be accountable to:**

- affected populations
- their board or executive committee
- governments, including the government of the country where they are operating
- donors
- other UN agencies
- NGOs
- their staff and volunteers
- others to be identified

**5. International and national NGOs may be accountable to:**

- affected populations
- their boards
- their donors (including donor states or agencies, the public at large)
- other organisations or agencies
- the government and the population of the country where they are operating
- their staff and volunteers
- others to be identified

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<sup>5</sup> See John Borton, 2001, Op. cit.

### **III - FOR WHAT ARE THEY ACCOUNTABLE?**

Actors involved in humanitarian operations are accountable for meeting their commitments and responsibilities as defined by contractual agreements and legal obligations, their mandate or mission, ethical or professional standards, etc.

#### **1. Responsibilities and obligations**

Agreed standards and benchmarks and a clear understanding of rights, responsibilities or duties are essential to accountability. What form do these responsibilities take?

- Responsibilities may be legal obligations as determined by international and/or national legal standards as well as contractual agreements.
- Responsibilities may also be determined by (self-regulatory) organisational or sector-wide benchmarks, standards or codes.
- Finally, duties may also be ethical obligations or moral rules that individuals feel bound to follow, for reasons linked to religion, community membership or personal convictions<sup>6</sup>.

Defining standards and responsibilities in humanitarian operations poses a number of challenges:

- Crisis situations fall within different legal frameworks, depending on the nature of the crisis. Unless a government declares a state of emergency, international human rights standards and domestic law will apply and determine the obligations on various duty-bearers, principally the state (but not exclusively). In times of public emergency, a government may suspend the application of certain human rights<sup>7</sup>. In some of these situations, the laws of war may apply, although different laws will apply depending on whether the conflict has been defined as international or not.
- There is no single legal framework applying to all actors involved in a humanitarian operation, with the possible exception of the domestic legal framework of the country where the crisis is taking place.
- Not all legal and other standards necessarily define the nature and extent of the responsibilities of duty-bearers vis-à-vis affected communities and/or the rights of affected individuals.

As a result, it is not always possible to clearly determine where responsibilities begin and end<sup>8</sup>. This is one of the main challenges facing those involved in humanitarian operations.

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<sup>6</sup> See International Council on Human Rights Policy. *Taking Duties Seriously: Individual Duties in International Human Rights Law*, Geneva: 1999, pp.13-18. The Council identifies three types of individual duties which may be found in international human rights standards: duties of individuals vested with State authority to respect, promote and protect human rights, duties of individuals to exercise their rights responsibly and more general duties that individuals have towards others and their community.

<sup>7</sup> Some human rights can never be suspended, such as the right to life, freedom from torture and slavery, freedom of thought, conscience and religion, recognition as a person before the law.

<sup>8</sup> Peter Raynard quotes one of his interviewees as saying: "It is difficult to understand where responsibilities begin and end because they are not clearly laid out. For example, the World Food Programme will make excuses when accused of not supplying food, that they were not given sufficient resources by donors. Then, when you challenge the donors about this, they will say they were not asked or that they had competing demands. The problem is that responsibilities are diffused".

## 2. Organisational and sector-wide standards and references:

A major development in the last decade has been the focus on **quality standards** and quality settings at the organisational and inter-agency level.

The development of standards or references for good practices may have involved several organisations. These inter-agency initiatives include: Red Cross and NGO Code of Conduct, the Sphere Project, Quality Platform, People in Aid; Reach Out, umbrella organisations (such as SCHR<sup>9</sup>, Interaction, etc.) and networks (such as ALNAP<sup>10</sup>); etc.

Individual humanitarian organisations have also invested in the enhancement of quality by various means.

### **Organizational initiatives: a brief overview**

- A focus on their human resources policy: e.g. recruitment, training, performance assessment, etc.
- A focus on “learning”
- The development of a stakeholders’ survey (see for instance Oxfam)
- Financial audit, coupled (more rarely) with social audits
- Increased commitment to transparency, at least within some organisations
- A focus on evaluations, both internal and external
- A focus on training, e.g. on international legal standards, on protection, etc.
- Development of internal quality standards related to specific aspects of their activities. This development has certainly characterised the sector as a whole, as demonstrated by the speed and efficiency of many humanitarian responses to crisis
- Adoption of inter-agency quality standards
- Adoption of “new” approaches to activities, e.g. a rights-based approach
- Etc.

In recent years, some of these initiatives have been critically analysed and reviewed, particularly with regard to human resources, recruitment, staff retention, staff development, performance assessment. All these areas continue to be difficult. These

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<sup>9</sup> SCHR. Standing Committee for Humanitarian Response

<sup>10</sup> The Active Learning Network for Accountability and Performance in Humanitarian Action is an inter-agency forum of donors, UN agencies, NGOs and academic institutions working to improve learning and accountability in the international humanitarian system.

problems are not unique to the humanitarian sector. They may be exacerbated by the nature of the work (emergency-driven, volunteer-based, short-term contracts), which does not necessarily allow for thorough recruitment and assessment, let alone appropriate training. Nevertheless, the quality of the staff recruited and the quality of the work environment are instrumental in ensuring the quality of the activities carried out and of their impact. Any agency committed to enhancing quality must focus on the agents of quality, and not only on the outputs.

Evaluations have also been the object of an increasing number of critiques<sup>11</sup>, both because of their methodological and conceptual flaws, and because of their institutional ineffectiveness.

Most organisations have developed guidelines, protocol and tools to enhance the quality of specific activities. Notwithstanding the fact that this constitutes a great step forward, two issues can be highlighted:

- Quality commitment must be not only formulated in terms of output and performances, but also in moral and ethical terms.
- Quality standards must be monitored, and actions taken whenever these standards or guidelines have not been met, or are shown to be insufficient or ineffective.

### **3. Mapping out standards and references**

Below is a brief overview of the standards and references, which define or affect the nature and impact of the activities, and therefore of their quality.

#### **A - Legal standards**

- 1. International and regional legal standards, such as:** international humanitarian law (IHL), international human rights law, the Refugee Convention, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), etc. These texts codify the obligations of governments (and armed groups in the case of IHL) vis-à-vis civilian populations as a whole or specific groups of individuals (such as children, women, refugees, etc.).
- 2. Domestic legal standards of the country/countries where the crisis is taking place (the Constitution, criminal law, civic organisations law, etc.)**
- 3. Domestic legal standards of the humanitarian actors' country of origin**

#### **B - *The Guiding Principles on Internally Displaced Populations (IDPs)***

Although this is not a legally binding document, it is nevertheless a crucial reference tool for crisis situations, in that it identifies the rights of IDPs and the obligations of the various actors involved in protection and assistance.

#### **C - Resolutions of the UN Security Council, or General Assembly**

#### **D - Humanitarian actors' mandate (UN agencies, ICRC, peace-keeping forces, etc.)**

#### **E – Memorandum of Understanding, contracts or agreements**

- 1. Between various operational partners and between partners and governments**
- 2. Between donors and agencies**

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<sup>11</sup> Borton, 2001, op. cit.

**F – Self-regulatory inter-agency or sector-wide humanitarian standards or references**

1. These standards may be specific and “technical” (such as Sphere sectoral standards, People in Aid, Coordination Protocol) or they may aim at identifying broader principles of actions (such as the Code of Conduct, the Humanitarian Charter).
2. Standards may also be derived from other professional sectors, such as the medical sector.

**G – National self-regulatory standards, references or benchmarks**

1. **At national “operational” level:** organisations involved in a specific operation may come together to determine collectively the nature and scope of activities (for example, the Code of Conduct) and co-ordination mechanisms.
2. **At national “headquarters” level:** agencies in a given country may come together to determine collectively the nature and scope of their activities or of some of their activities (such as the Disasters Emergency Committee (DEC) in the UK).

**H - Organisational standards, references or benchmarks**

1. These may include: a mission statement, a code of ethical conduct (with a focus on the beneficiaries), quality standards, planning and evaluation, internal control and sanctions, gender-specific guidelines, child rights guidelines, etc.

## **MAPPING STANDARDS, REFERENCES AND BENCHMARKS BY SOURCES**

### **INTERNATIONAL STANDARDS**

- **LEGAL STANDARDS**
- **GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**
- **INTERNATIONALLY DETERMINED MANDATE**
- **UNITED NATIONS RESOLUTIONS UNHCR GUIDELINES FOR THE PROTECTION OF REFUGEE WOMEN, EXCOM RESOLUTIONS, ETC.**

### **STANDARDS AND REFERENCES AT “HOST COUNTRY” LEVEL**

- **LEGAL DOMESTIC STANDARDS**
- **POLICY OF HOST GOVERNMENT**
- **MEMORANDUM OF UNDERSTANDING**
- **INTER-AGENCY REFERENCES, (e.g. Codes, co-ordination, etc.)**

### **STANDARDS AND REFERENCES AT “HOME COUNTRY” LEVEL**

- **LEGAL DOMESTIC STANDARDS**
- **POLICY OF HOME GOVERNMENT**
- **CONTRACT WITH GOVERNMENTAL FUNDING AGENCIES**
- **INTER-AGENCY REFERENCES, ETC.**

### **STANDARDS AND REFERENCES AT THE INTER-AGENCY OR “SECTOR-WIDE” LEVEL**

- **HUMANITARIAN CHARTER**
- **RED CROSS AND NGO CODE OF CONDUCT**
- **PEOPLE-IN-AID CODE**
- **SPHERE SECTORAL STANDARDS, ETC.**

### **STANDARDS AND REFERENCES AT THE ORGANISATIONAL LEVEL**

- **MISSION, VALUES AND ETHICS**
- **CODE OF CONDUCT**
- **QUALITY STANDARDS**
- **GUIDELINES, ETC.**

## **IV – HOW ARE THEY ACCOUNTABLE?**

### **1. THROUGH MONITORING: LISTENING, REVIEWING AND EVALUATING**

This step of accountability involves identifying and implementing mechanisms of inquiry at field and other levels, and identifying the actors responsible for these inquiries. The objective of monitoring mechanisms is to provide reasonable assurances that the actors involved in humanitarian operations, including governments, UN agencies and NGOs meet their obligations or achieve their mission and objectives reliably, efficiently and in an ethical manner.

As far as humanitarian actors are concerned, these mechanisms may be implemented at field, organisational, and sector-wide levels. They may be the responsibility of individual humanitarian organisations, of several agencies, of external regulatory agencies (for example, donor evaluation) and/or of bodies with a self-assigned mission.

On the basis of a review of existing initiatives, the HAP has identified a number of monitoring activities, which may be undertaken at field and organisational level as part of an accountability scheme towards crisis-affected populations. They include listening and other forms of consultation, needs assessment, a social and ethics audit, real-time evaluation, performance assessment, programme assessment, critical incident review, a “complaints” bureau and procedure, etc<sup>12</sup>. Many of these activities are undertaken by organisations themselves, as part of a self-regulatory system. Others are undertaken by entities other than the humanitarian organisations, such as donors.

### **2. THROUGH RESPONDING:**

This step involves developing and implementing mechanisms of response, following monitoring, and identifying the actors responsible for this stage. All actors involved in humanitarian operations, from governments to local NGOs should, as a matter of policy, respond to the data gathered through monitoring.

As far as humanitarian actors are concerned, these mechanisms may be implemented at field, organisational, and sector-wide levels. They may be the responsibility of individual humanitarian organisations, of several agencies, of external regulatory agencies, and/or of bodies with a self-assigned mandate.

Preliminary research tends to indicate that although monitoring of humanitarian operations has improved greatly over the last decade, mechanisms of response are weak or often lacking, whether at field, organisational or sector-wide level.

For instance, although evaluations and listening exercises have become a common feature of humanitarian operations, humanitarian organisations and the sector as a whole have shown little propensity to implement and institutionalise their recommendations, or act upon the findings<sup>13</sup>.

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<sup>12</sup> Please refer to HAP Briefing Notes 4 and 5.

<sup>13</sup> Please refer to HAP Briefing Note 5, and to HAP website, Gujarat reports (available on [www.hapgeneva.org](http://www.hapgeneva.org))

### **3. THROUGH INFORMING AND REPORTING:**

Definitions of accountability place great emphasis on reporting. This mechanism is crucial in that its implementation potentially allows for the realisation of two principles guiding accountability: transparency and trust. However, this realisation is not straightforward.

For a start, informing and reporting by governments or other political leadership may be biased and determined by motivations and factors that have little to do with the well-being of the crisis-affected populations.

For a number of years now, humanitarian actors, including NGOs and UN agencies, have strengthened and increased their reporting to stakeholders and the public at large. At the same time, however, reporting is often limited to financial reporting and the identification of activities or programmes. The actual impact of activities is more rarely the object of public reports<sup>14</sup>. Even more unusual is reporting to, or informing, crisis-affected populations about the activities undertaken on their behalf<sup>15</sup>. As with the other mechanisms, informing beneficiaries and reporting to them could be part of a self-regulatory scheme (for example undertaken by the humanitarian actors themselves) or it could be initiated by other bodies as diverse as donors agencies, the media or other independent watchdogs.

### **4. THROUGH IDENTIFYING DUTY-HOLDERS**

Duty-holders are bodies or individuals responsible for holding duty-bearers to account and for ensuring that the mechanisms put into place and their outcomes meet standards of fairness and justice.

Conceptually speaking, one may distinguish between two types of duty-holders: self-regulatory or “independent” bodies.

#### **1. Self-regulatory bodies**

Self-regulation is based on a situation where rules are developed, administered and enforced by the people whose behaviour is to be governed. Self-regulatory scheme may be devised at the organisational and inter-agency or sector-wide level.

Self-regulation does not eliminate the need for duty-holders. On the contrary. The effectiveness of self-regulation will be greatly determined by the existence and performance of identifiable duty-holders, that is, of individuals or groups of individuals responsible for monitoring, investigating and ensuring appropriate responses.

The measure of any good self-regulatory scheme is, among other things, how it ensures openness and accountability, public confidence, statement of values and standards of

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<sup>14</sup> After many years of criticism directed at their lack of transparency, some UN agencies have now developed a more transparent approach to communications and reporting. The UNHCR evaluation and policy unit, for instance, is a particularly good example of transparent reporting, an example that could be emulated by NGOs.

<sup>15</sup> See the various HAP reports on Gujarat and field-level actions ([www.hapgeneva.org](http://www.hapgeneva.org))

behaviour, beneficiary participation and above all mechanisms for monitoring and updating the scheme in the light of changing expectations and circumstances<sup>16</sup>.

**A good self-regulatory body at the inter-agency or sector-wide level should:**

- **ensure beneficiary participation**
- **be transparent**
- **have the mandate or authority to monitor and enforce agreed rules**
- **update rules**
- **accredit**
- **remove its endorsement from a non-complying organisation**
- **include a right of appeal**

Within the humanitarian sector, a number of inter-agency bodies or schemes have been created, some of which meet some of the above characteristics of self-regulatory bodies. They include, for instance, umbrella organisations (for example, Interaction, People in Aid, DEC, etc.) At the operational level, agencies have come together to create mechanisms to ensure better coordination, strategic planning and quality of activities. A number of codes or standards have been developed, and their implementation has been co-ordinated through training, publications, advocacy, etc. With a few exceptions (e.g. monitoring of Interaction PVO standards, the Ethiopian NGO Code Observance Committee), the implementation of these codes is not monitored, and no one has been assigned the responsibility of ensuring that they are implemented.

Overall, out of the plethora of humanitarian inter-agency initiatives aimed at ensuring better quality, accountability, or co-ordination, very few currently qualify as self-regulatory in the light of the above definition.

Self-regulation at the individual organisational level may be more developed. Humanitarian organisations have invested a great deal in enhancing their performance and the quality and effectiveness of their activities and staff. The main questions are whether the various initiatives and guidelines are monitored, and by whom<sup>17</sup>. Equally important is whether organisational self-regulatory schemes and bodies are concerned with accountability to the beneficiaries.

In contrast with the NGO sector in general, and the humanitarian sector in particular, other professional sectors (such as the medical sector) and governmental administration are self-regulated through a plethora of bodies and mechanisms. While not all of them have demonstrated effectiveness in ensuring accountability to the service used, they nevertheless constitute crucial instruments in fostering or strengthening the quality of services and trust. These may include: International professional associations (such as the International Council of Nurses), national professional associations (UK General Medical Council for doctors, French Ordre des Médecins), sectoral ombuds offices (such as those for Swiss public transport, UK health ombuds offices), internal complaints and

<sup>16</sup> Eddie Adlin Yaansah, "Code of Conduct for NGOs in Ethiopia" in *The International Journal of Not-for-profit Law*, vol.1, issue 3, 1999.

<sup>17</sup> The HAP has commissioned a study of the "accountable organization," which aims to identify a set of recommendations towards ensuring greater accountability.

redress procedures and duty-holders within governmental agencies or professional sectors.

#### **SELF-REGULATORY BODIES AT THE INTER-AGENCY LEVEL**

##### **Overall, incomplete self-regulation within the humanitarian sector:**

- **UMBRELLA ORGANISATIONS**, e.g. Interaction, SCHR, etc.
- **NATIONAL INTER-AGENCY INITIATIVES**, e.g. the Ethiopian NGO Code Observance Committee
- **INTERNATIONAL INTER-AGENCY INITIATIVES**, e.g. People in Aid, Sphere, HAP, etc.

##### **Exceptions:**

- **NATIONAL OR SECTOR –SPECIFIC ASSOCIATION**, e.g. Australian Council for Overseas Aid, DEC, etc.

##### **Activities and mechanisms often missing:**

- **Publication of findings**
- **Monitoring and investigation**
- **Internal complaints and redress procedures**
- **Accreditation**
- **Beneficiary participation**

##### **Possible missing bodies:**

- **International association of humanitarian organisations**
- **National associations of humanitarian organisations**
- **Self-regulatory body or association in countries of operations (where there are no national associations)**
- **Others to be identified**

## **2. Independent bodies**

The main independent body responsible for monitoring NGO activities is the state. The main instrument is the law. Legal standards, be they civic, criminal or other, define the rights of NGOs and their obligations. “Self-regulation should be encouraged, but both logic and experience suggests that it cannot, realistically, be expected to be a substitute for basic laws<sup>18</sup>.” In addition to the law, governments may also establish independent bodies, responsible for monitoring specific aspects of NGOs activities (such as the UK Charity Commission). NGOs, like the private sector, may also be the object of governmental regulations because of the nature of the services they are providing, for example, those of a public interest nature, such as health or shelter services.

<sup>18</sup> International Center for Not-for-profit Law, *Handbook on good practices relating to Non-Governmental Organizations*, Chapter M ([www.icnl.org/handbook/](http://www.icnl.org/handbook/))

**NATIONAL INDEPENDENT BODIES  
“REGULATING” NGOS:**

- **government**
- **domestic courts**
- **independent regulatory bodies, e.g. UK Charity Commission**
- **media and other independent watchdogs**
- **others to be identified**

**SOME INDEPENDENT DUTY-HOLDERS FOR  
GOVERNMENTS**

- **parliament and parliamentary committees**
- **national audit office**
- **independent commission or expert, nominated by government or parliament**
- **ombuds office**
- **national human rights institutions**
- **international human rights, trade, economic, etc. institutions**
- **regional or international inter-governmental bodies and courts**

**V – FOR WHICH OUTCOME?**

This step includes developing and agreeing on rewards, sanctions, redress, and reparations. This step should also include changes in policies, programmes or procedures.

Key questions include: what rewards, sanctions and compensations can be provided? Who will impose sanctions if any? What is the appeal process? How is the overall system to be improved?

Not surprisingly, in their current composition humanitarian operations are characterised by the near-absence of accountability outcomes. Even in worst-case scenarios, little or no individual redress is offered to the person(s) affected. Few, if any sanctions are imposed whenever the system fails to deliver and the various actors fail to meet their duties or responsibilities. This absence of sanctions may be said to characterise all levels of intervention.

As far as governments are concerned, the principle of national sovereignty has meant that accountability outcomes at an international level have been difficult to implement. While progress has been made in recent years for the worse cases (for example, crimes against humanity) through the creation of international tribunals (such as the International

Criminal Tribunal for the former Yugoslavia -ICTY) and in the future the creation of an international criminal court, the absence of enforceable accountability outcomes of governments remains very much the rule.

Funding states, whenever they are shown to have responded to an emergency crisis in an insufficient fashion, or a self-motivated one, face no sanctions for their failure to provide sufficient funds in a crisis. UN agencies or international NGOs who fail to perform face no formal, public or transparent sanctions for their failure and the same may be said of individuals within these organisations. In a worst-case scenario, avoidable mortality among the intended beneficiaries is unlikely to trigger any inquiry (at best, an internal investigation) or sanctions, even when deaths can be imputed to incompetence or malpractice. External constraints do not explain or justify everything<sup>19</sup>.

This, however, does not imply that no sanctions are applied. They are, but in a covert fashion. One of the most frequent is a donor's decision to stop funding a particular agency or remove one agency from the "good agency" list. This type of accountability outcome fails to meet basic standards of fairness, justice and transparency. The agency, which is a "victim" of the covert sanction has no right to discuss or appeal the decision or to defend itself. The criteria for removing organisations from a donors' list are unclear, open to individuals' interpretations, manipulations and self-interest. Such a system also fails to address the necessity of accountability outcomes for the benefit of crisis-affected populations.

Clearly, sanctions mechanisms should be the last resort and should be accompanied by rewards, or public acknowledgement or recognition of what was done well. However, standards whose violations are not sanctioned or whose violations do not even carry the possibility of sanctions lose their credibility. Sanctions should be applied in a graduated manner with the greatest effort being concentrated on persuasive activities at the base of an "enforcement pyramid", with the severest sanctions being reserved for the worst failures.

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<sup>19</sup> See, for instance, Peter Salama, Nan Buzard and Paul Spiegel, "Improving Standards in International Humanitarian Response: The Sphere Project and Beyond" in *JAMA*, vol.286, no.5, August 1, 2001. The authors point out that external constraints did not fully account for the massive mortality in Ajiep, southern Sudan during the famine of 1998 or for the prolonged mortality due to measles in the Somali region of Ethiopia during the famine of 2000.