

Accountability for Protection Delivery

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In preparing for this presentation, a couple of recent documents drew my attention. The first, a recent ODI Humanitarian Policy Group report by Sorcha O'Callaghan and Sara Pantuliano, the second, the terms of reference for the review of the use of UNHCR ExComm's conclusions on International Protection.

The HPG study begins with the following statement:

*"HPG asserts that there are three main factors in civilian safety. The first, and most critical concerns the actions and motives of the parties to a conflict: the degree to which warring parties adhere to the rules of war is the fundamental factor in the level of risk facing civilians. The second concerns the steps that civilians themselves take to protect themselves from the direct and indirect consequences of the actions of warring parties. The final factor concerns the interventions of third parties in protecting civilians It is only when protection by national governments is inadequate, due either to a lack of willingness or capacity, that external actors from the international community may have a responsibility to protect civilians in other countries."*¹

What seems to be implied here is that states and presumptive authorities pose the greatest threat to civilians – either through sins of omission (failing to protect) or sins of commission (perpetrating refoulement, war crimes, crimes against humanity or other egregious human rights abuses). In contrast "third parties" or "external actors" represent a source of benign protective power available as a matter of last resort in cases of state failure. By extension, these "external actors" and "third parties", which I suppose might include institutions such as UNHCR, the ICRC and NATO, apparently pose no threat to civilians, presumably for the sole reason that they are mandated to provide protection, or because they are NGOs driven by their humanitarian commitment. The HPG paper also seems to imply that civilians in general pose no threat to other civilians.

There are surely some rather shaky assumptions here. First amongst which is that if a mandate to protect is a guarantor of protective behaviour, logically it would follow that UNHCR and the ICRC would only be concerned with cases of abuse perpetrated by non-state actors since states are also founded upon a mandate to protect. That states sometimes fail in their mandate provides sufficient evidence that the presence of a protection mandate or policy is, on its own, insufficient to prevent negligent or abusive behaviour in practice by any institution; NGOs and UN bodies included.

Indeed, we know that vulnerable persons have been abused by peace-keepers, aid officials and NGO staff. We also know that "third parties" and "external actors" have often been unable or unwilling to prevent civilian-on-civilian abuse in refugee camps. We must therefore acknowledge the proven fact that aid agencies, peace-keepers and civilians - refugees included - are also capable of committing human rights violations, and of being complicit with abuses perpetrated by others. Sexual exploitation and abuse of vulnerable people is, according to recent reports, a widespread problem associated with the international aid and peace-keeping systems. Given the quite extraordinary power asymmetry between aid providers and aid recipients, it is also clear that aid agencies have the potential to cause damage to the interests of civilians through badly conceived or badly implemented aid programmes. The circumstances under which aid agencies

¹ Sorcha O'Callaghan & Sara Pantuliano; Protective action – Incorporating civilian protection into humanitarian response. HRG Report 26 – December 2007

operate often places them in a situation of *de facto* impunity. Use of expired pharmaceuticals, inadequate water disinfection and sanitation, flawed housing reconstruction designs come to mind as possible threats to the safety of civilians that may arise from professional misconduct, and that could conceivably be classed as criminal negligence, and that might form the basis of charges of corporate killing.

In other words, there is a case for protecting civilians from the unintended and inadvertent actions of aid agencies too. But how big a threat are they? I believe that it is possible to construct a plausible argument that would attribute a significant proportion of disaster related deaths to the inadequacy of aid agencies. For example in the DRC, 90% of the 5 million war-induced deaths were preventable by simple nutrition support and basic health interventions. Yet at no time during the last 8 years has the humanitarian system planned a response commensurate with those needs. While the apparent failure of the aid system to protect civilians in the DRC does not excuse the state for its' shortcomings, it does however suggest that there may be a degree of culpability within the aid system for the consequences of critical shortfalls in aid assistance. Of course the extent and degree of culpability could be debated *ad nauseam*, but the important point is that humanitarian sins of omission can be as deadly as sins of commission, and that the aid system can be guilty of both. So, while there is some logic in concentrating upon the biggest perpetrators of threats to the safety of people of concern to protection agencies, there is also a strong argument, with prior apologies for mixing my metaphors, for getting one's own house in order first, not least so one is not reminded that people in glass houses should not throw stones.

The second document that made we wonder whether current thinking about international protection was consistent with HAP's views on accountability was the ToR for reviewing EXCOMM's conclusions on international protection. This document refers to "*key stakeholders, including states, UNHCR, other international and regional organisations, NGOs and legal practitioners*". While the list does not exclude the possibility that refugees and persons of concern to UNHCR may be included in the comprehensive list of key stakeholders to be prepared for the review, it seems surprising that those people who are the subjects of the policy and practices relating to international protection are not the first on the list of those who will be consulted over the impact of EXCOMM's conclusions. This is not to say that the process of consultation would be unproblematic, but that alone would not seem to justify excluding the principal stakeholders from participating in some manner or other in this review.

Of course I realise that I am not making any original points here, and that there are very real difficulties in translating principles into practice. However, that is what the Humanitarian Accountability Partnership was set up to help its members to do. HAP was founded upon the principle that protection (i.e. the quality of humanitarian space) begins at home. Or, put another way, HAP members first have a responsibility to protect disaster survivors from negligence or abuse by their own staff, and second a responsibility to refer to competent authorities when they witness abuse by other parties, including abuse perpetrated by refugees or other disaster survivors. As we now begin to roll out our certification scheme for compliance with the HAP Standard in Humanitarian Accountability and Quality Management, it seems to us that many of our collective anxieties about the difficulties and risks of being accountable to disaster survivors are less well founded than even the optimists had thought. HAP members are not being swamped by bogus claims, complaints and lawsuits, neither is their security being compromised, nor is their independence or autonomy being undermined. Instead, transformative experiences of improved impact, effectiveness, efficiency, security, staff and beneficiary satisfaction are in fact the norm.

Let me conclude this presentation with a few observations drawn from HAP's experience of turning principles into practice.

- Ensure that the development of policy (standards, benchmarks, projects etc) is conducted as a dialogue between principals (i.e. in this instance, those with a legitimate claim for protection) and agents (i.e. those with the responsibility for providing the relevant protection services or protection-sensitive assistance), with advice from third parties (i.e.

experts, donors etc). The question I believe is not whether this should form the basis of protection policy, but how such a process can be satisfactorily and safely conducted.

- Work from and towards a broad consensus about what is mission critical, affordable, measurable and practicable when “delivering” protection. Let us start from what we agree on. What are the areas of consensus that we can begin to work together on?
- Heed the long-established maxim that “extreme cases make bad laws”. Design protection policy and practices that are suitable for most contexts. What works in most circumstances?
- Develop policy compliance exoneration mechanisms for extreme cases where attenuated policies (“in the circumstances this is the best that we can do”) are justifiable. The simple question here, is can we agree on a ranking of protection principles?
- Remember Amartya Sen’s observation that opacity is the friend of abuse and that transparency fosters accountability, and that accountability in turn lays down the most solid and durable foundations for protection. What can we do to improve our communications about protection to all stakeholders?
- Finally, enjoy the mutuality of accountability and the reciprocity of protection. Put in a rather different way, these could be described as the principles embodied in the expression, “you scratch my back and I’ll scratch yours”. Several of HAP’s members have reported that their own security has been greatly improved through the application of improved programme quality assurance practices that, most critically, incorporate safe and accessible complaints-handling mechanisms.

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