Chapter 10
Accountability to disaster-affected populations

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Introduction

The growth of civil society and the multiplication of non-governmental organizations (NGOs) have constituted one of the prominent features of the latter part of the 20th century.1 Not surprisingly, another prominent feature during this same period has been the call for greater accountability. At an international level, it has resulted in the setting up of temporary international tribunals and the International Criminal Court. More generally, it has contributed to the increasing use of human rights standards in defining and assessing the actions of states as well as corporations2 and other non-state actors3.

NGOs are frequently the instigators of calls for greater accountability. At the same time they have, themselves, been the subject of increased scrutiny. In some instances, this has constituted nothing less than intimidation in disguise.4 In many cases, however, the call for greater accountability has come from within civil society itself, in particular from the relief sector, including donors, United Nations (UN) agencies and NGOs.

This self-awareness is attributed to what may be referred to as the 'evaluation revolution' of the last 20 years; the quantitative and qualitative explosion of evaluations and studies into disaster work, itself a product of increased concerns among relief actors with quality performance and impact. The Joint Evaluation of the International Response to the Genocide in Rwanda5 is often seen as a turning point in the increased awareness of accountability and quality.

Evaluations have identified the need to strengthen accountability and in particular highlighted the inconsistent quality of assistance provided to people affected by disaster, as well as the absence of formal consultation with, and response mechanisms for, those affected by humanitarian crises. Other issues identified include the bypassing of local capacities, a lack of coordination between humanitarian actors, unequal or insufficient funding of humanitarian interventions and the frequent targeting of civilians and relief workers in warfare.

Immediately after the publication of the Rwanda evaluation in 1996, attempts were made to implement one of the main recommendations from the evaluation – to establish an independent humanitarian accountability mechanism. The initiative was carried forward in the United Kingdom as the Humanitarian Ombudsman Project.
At an international conference in Geneva in March 2000 it was realized that an international ombudsman was not the way forward, but that there was a genuine interest in some form of institutionalized accountability mechanism. Thus, the humanitarian accountability project (HAP) was born, its aim to identify, test and recommend a variety of accountability approaches.

**The challenges**

Actors concerned with strengthening accountability and setting up accountability mechanisms in disaster settings are confronting many challenges, not the least of which is the absence of an international legal and/or ethical framework common to all actors. International disaster relief is characterized by a number of complexities.

Firstly, there are a multitude of actors involved, such as UN agencies, international NGOs, local NGOs, peacekeeping forces and governments of the countries in which the operations are taking place. Secondly, such actors have different mandates – for NGOs these are self-assigned, for UN agencies they are assigned by the international community and for governments they are determined by parliaments or electorates. Finally, international disaster relief originates from different countries in a variety of situations.

One key issue is the determination of the international legal standards applicable to this multitude of actors. In their absence, ethical principles common to all must be identified. The International Disaster Response Law (IDRL) Project has moved a long way towards addressing these issues as far as non-war situations are concerned. In armed conflict situations, international humanitarian law (IHL) remains the most important point of reference for all actors involved. However, the Geneva Conventions, as crucial as they are, have little to say on the duties and rights of relief agencies, except for the obligations of impartiality and the formal request for the passage of relief.

Further, in both IDRL and IHL, one crucial and nagging question remains: What are the duties and obligations of non-state actors (that is, international and local NGOs and UN agencies) vis-à-vis the populations they are to assist? By agreeing to provide services, do these actors enter into a special relationship with populations in crisis which, by extension, imposes upon them certain responsibilities (for example, the concept of affirmative duty)?

Traditionally, public international law has focused almost exclusively on the actions of states or state agents, however there have been instances where non-state actors have also been included. Examples of this include the international treaties to end slavery, which prohibit the actions of individuals, in particular slave traders.4

Interpretations of international human rights law have also held governments responsible for their failure to act with due diligence vis-à-vis the actions of private individuals or institutions.7 In these instances they have also been found directly responsible for the activities carried out by these non-state actors when they have contracted out or delegated activities to these actors.

For example, in looking at health care and housing, the Committee on the Elimination of Racial Discrimination noted that protection of rights,
may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State Party concerned to ensure the effective implementation of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State Party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.¹

The Committee on the Rights of the Child in its 2002 discussion on the private sector as service providers insisted on the primary responsibility of the state for compliance with the provisions of the Convention on the Rights of the Child.¹ In particular, states were deemed to have an obligation to set standards in conformity with the convention and ensure compliance through the implementation of appropriate monitoring of institutions, services and facilities of both public and private actors.

But the committee also called on all non-state providers to respect the principles and provisions of the convention. It encourages non-state service providers to ensure that service provision is carried out in accordance with international standards, especially to the convention. It further encourages non-state service providers to develop self-regulation mechanisms, which would include a system of checks and balances.

Non-state actors have also been found to be directly responsible, including under international human rights law.⁶ Hence, the activities of multinational corporations and other businesses have been assessed for their compatibility with human rights. For example, the NGOs Amnesty International and Human rights Watch⁴ have sometimes assessed compliance and at times these corporations have been found to be in violation.

Within the disaster relief and humanitarian sectors, the questions regarding the legal and ethical responsibilities of organizations vis-à-vis affected populations have tended to be overlooked, or overshadowed by another set of relationships, namely, those between the organization and the host state. Similarly, debates on humanitarian actions and ethics have increased focus on financial accountability between humanitarian agencies and donors, as well as accountability between governments and the military in relation to civil actors.

In recent years, the new humanitarian landscape⁴⁴ as it has been labeled, has led practitioners and observers to raise serious questions about the humanitarian principles and standards applicable to civil organizations, in particular neutrality and impartiality. This new landscape has also prompted many calls for humanitarian actors to reclaim ownership over humanitarianism, a return to the sources often loosely and incompletely associated with independence.¹⁵

Rarely, however, has the call for reclaiming humanitarianism been associated with beneficiaries or the crisis-affected communities. Yet, the nature of the relationships between the relief organizations and disaster-affected populations and their perceptions of each other are central to this exercise. Indeed, as the UN High Commissioner for Refugees (UNHCR) Inspector General recently stated: “Our best protection is always national and local understanding and support.”¹⁶
Why accountability?

The necessity of accountability in the context of disaster relief stems first and foremost from a simple rationale: for a variety of reasons, relief actors do exercise influence and power over the lives of crisis-affected individuals and communities. Building a culture and practice of accountability within the humanitarian sector requires the acknowledgment that in providing relief, humanitarian actors often acquire great power.

They acquire the power to decide who receives assistance and who does not; what will be given, when and where; where people will go; what they will eat; what clothes and shelter they will have; and how much private and social space they will enjoy. In some circumstances, this humanitarian power can be abused, as illustrated by the UNHCR and Save the Children (UK) report on the sexual violence and exploitation of refugee children in Guinea, Liberia and Sierra Leone.

The humanitarian community has acknowledged that meeting emergency needs should be undertaken in conjunction with efforts to promote durable solutions, and that crisis-affected populations must have a say in decisions that affect them. The call for a rights-based approach to humanitarian work and the increasing number of rights-based and participatory field initiatives indicate a change in thinking and practice within the sector.

What is needed is the move from ad hoc initiatives to a comprehensive and systematic integration of rights-based, participatory, and accountable approaches to humanitarian work. As reactions to the 2002 UNHCR/Save the Children report highlight, all humanitarian agencies are tainted with the same brush. They are and will be held collectively responsible for the abuses of power, negligence, or incompetence of some of their members, and more generally for inconsistency in quality.

Responsibility for an activity must be assessed through a focus on the intentions or rationale for conducting the activity, as well as the activity itself and its consequences.

In the past, there has been a focus on only the first of these factors, whereby meaning well has tended to exonerate organizations from their responsibilities, even when something has gone badly wrong. This approach is ethically and legally problematic.

The new humanitarian landscape has also shown this to be dangerous and short-sighted. Relief actors are paying too high a price for relying purely on their good intentions, particularly when these intentions become misinterpreted or deliberately distorted.

Accountability defined

Traditionally, accountability has been defined as the duty to provide an account. According to Edwards and Hulme, “accountability is generally defined as the means by which individuals and organisations report to a recognised authority, or authorities, and are held responsible for their actions.”
Another operational framework of accountability includes an added dimension. This dimension suggests that to enable power-holders or duty-holders to account for their actions, there must be preliminary steps undertaken which allow citizens, staff, service users and others to ask questions or report complaints. Therefore, the definition of accountability adopted by HAP includes two sets of principles:

- Individuals, organizations and states must account for their actions and be held responsible for them.
- Individuals, organizations and states must be able to safely and legitimately report concerns, complaints, and abuses, and get redress where appropriate.

Putting these principles into operation is best summarized through a framework with five main elements:

- Who is accountable? Duty-bearers with a responsibility towards crisis-affected populations, including governments, armed forces, NGOs, the International Red Cross and Red Crescent Movement and UN agencies.
- To whom are they accountable? Duty-bearers are accountable, first and foremost, to populations and individuals affected by disaster and conflict. They are also accountable to their staff and donors.
- For what purpose are they accountable? To meet responsibilities as defined by international legal standards, ethical principles, and professional, agency or inter-agency codes, standards or guidelines.
- How are they accountable? They are accountable through the establishment of mechanisms at field, headquarters and inter-agency levels. These include, setting standards and indicators, monitoring activities, investigating complaints, reporting to stakeholders and identifying duty-holders.
- What are the outcomes? This will result in changes in programmes and operations, sanctions, recognition, awards and redress.

**Testing a field accountability mechanism**

HAP was set up in Geneva, in February 2001, to respond to concerns among humanitarian organizations of the lack of accountability towards crisis-affected populations. Its main purpose was to propose and establish a permanent accountability mechanism. Between 2001 and 2003, some 70 staff and consultants have worked to fulfill this mandate. Operations have been carried out in Afghanistan, Cambodia and Sierra Leone, to test approaches to field-level accountability.

One of the main findings was that a working model for external monitoring and accountability will best work within a self-contained environment, such as a camp. In different humanitarian contexts, for example where large numbers of disaster-affected communities are spread over a wide region, full coverage requires the deployment of many monitoring and redress teams.

Thus, a more cost-effective and sustainable way of ensuring accountability to populations affected by disasters is to work through existing operational agencies and to ensure that they, individually but preferably collectively, implement strong accountability mechanisms.
On the basis of these findings and evaluations, the HAP trials have moved progressively from HAP being the sole accountability mechanism (as in Sierra Leone), to supporting other agencies in setting up or strengthening their own accountability mechanisms (as undertaken in Cambodia). The Afghanistan trial served as the connection or transition between the two approaches.

In Sierra Leone, the feasibility of a trouble-shooter or constable mechanism was tested. A number of accountability issues were investigated, resulting in the rapid redress through a direct approach to the individuals primarily responsible for handling the situation. HAP experienced some success in identifying and bringing up solutions or redressing problems and concerns. But its impact did not extend beyond the particular beneficiaries concerned nor did it allow for sustainable institutional change within the participating agencies.20

In Afghanistan, HAP opted for an accountability approach with a monitoring and facilitation function. Issues of concern were identified and investigated and then raised confidentially in bilateral meetings with the primary duty-bearers, with the objective of identifying solutions and/or redress. Depending on the outcome of the discussion, the issues could also be shared amongst a larger group, in the context of coordination meetings.

In addition, training and workshops were held with the purpose of increasing understanding and awareness on accountability. The monitoring role established the legitimacy and credibility of the operation and the facilitation function was useful for humanitarian agencies. However, the needs and demands were higher still, with agencies wanting technical and strategic support for accountability in order to implement institutional change.21

The approach used for the last field trial was the outcome of the lessons learned from the two previous trials. In Cambodia, HAP acted as a monitoring and technical support agency. HAP worked jointly with volunteer agencies to monitor and respond to beneficiaries’ concerns, assess organizational practices, provide accountability training, and identify a permanent accountability mechanism in Cambodia.

The Cambodia field trial demonstrated the added value of the monitoring and technical support model, and its potential for sustainability. Agencies welcomed the dual monitoring and active learning components and have taken steps to implement accountability recommendations. The Cambodia trial also confirmed the rights-based approach adopted throughout.22

The field trials also underscored a number of findings:

- The model of an external monitoring and accountability body works best within a self-contained environment. In other contexts, it is preferable to work through existing operational agencies and to ensure that they, individually but preferably collectively, implement strong accountability mechanisms.

- Accountability towards beneficiaries cannot be sustainable and institutionalized unless greater efforts are made towards improving and strengthening self-regulation, at both the agency and inter-agency levels. No single independent body, as effective and large as it may be, can meet the needs of the millions of humanitarian claimants.
A more sustainable approach for a HAP mechanism consists of assisting and supporting agencies in improving their own internal capacity for accountability, and in developing a collective and permanent mechanism of accountability in the field of operations.

**Options for a permanent accountability mechanism**

A number of options for a permanent accountability mechanism were identified on the basis of HAP field operations, in addition to the research and advocacy work undertaken. These options included:

- closing down or prolonging the pilot phase;
- creating a technical support agency;
- creating an international self-regulatory body;
- creating an international watchdog; and
- in the course of a mission to Kabul, some HAP stakeholders also suggested the need to strengthen government capacity for regulation.

These options were discussed by HAP member agencies. The prolonging or closing down of the pilot phase was rejected. An obvious drawback with the second option was the fact that technical support cannot operate in a vacuum; it requires prior commitment to strengthen accountability and to monitor its impact.

The main limitations of the fourth option — the so-called whistle blower option — involved establishing the identity of the watchers and the challenge of bringing tangible change in real time to a very large population. Finally, it was felt that the fifth option did not build on the primary strengths of HAP and its members, and that other agencies were better placed to strengthen governmental capacities.

However, the second and third models were ultimately seen as complementary, rather than competing. Members expressed a preference for a membership-based organization that could both provide technical and strategic support to its members while monitoring progress. It will thus prioritize standard and policy setting, capacity building, sharing experiences, and identify various approaches towards complaints handling, monitoring and reporting.²⁴

**Self-regulation**

In self-regulation, rules are developed, administered and enforced by those whose behaviour is to be governed, with the ultimate aim of improving the services offered to claimants. A self-regulatory scheme may be developed by a single organization but is more frequently developed at inter-organizational or sector level.²⁵

Good practice in self-regulatory schemes, as HAP research notes, includes:

- standards, rules or codes;
- participation by those whose interests the standards, rules or code are designed to protect;
- transparency;
- mandate or authority from members to monitor and enforce collectively agreed rules;
- revision and updating of rules;
- accreditation of those members who follow agreed rules; and
sanctioning of those members who fail to follow agreed rules.

Within the humanitarian sector, inter-agency bodies or schemes have been created, a number of which meet some of the above characteristics. They include inter-organizational umbrella groups such as InterAction, People in Aid, Sphere and the UK Disasters and Emergencies Committee.

Rules, codes or standards have also been developed, and their implementation supported through technical training, publications and advocacy. However, with a few exceptions, the implementation of these codes is not monitored, nor is anyone assigned responsibility for ensuring that they are implemented. Thus, despite the plethora of humanitarian inter-agency initiatives intended to ensure better quality, accountability or coordination, few qualify as self-regulatory according to the definition above.

Activities and mechanisms typically lacking include:

- beneficiary participation;
- monitoring;
- means of investigating complaints or redress procedures;
- accreditation; and
- publication of findings.

**The role and responsibility of humanitarian organizations**

Meaningful self-regulation also requires a focus and insistence on individual responsibilities. However, this is not sufficient in itself. Self-regulation must also include the relief organizations themselves and the focus they place (or do not place) on accountability towards affected populations and on accountability at large. Thus, the development of accountability at both field and headquarters level requires an examination of how the organization guides and influences the conduct of its field workers.

This finding was also highlighted by the Inter Agency Standing Committee Task Force in the context of its work on protection from sexual exploitation and abuse.

"Accountability needs to be addressed both collectively and at individual agency level. The sustainability and effectiveness of mechanisms to protect against sexual exploitation and abuse require commitment expressed by management. Managers must be tasked with promoting a culture of protection in which exploitation and abuse is not tolerated and reports of possible violations are treated seriously and confidentially. Coordination between agencies is also essential to ensure a common approach to protect against sexual exploitation and abuse and to foster a concept of collective responsibility. For each country in humanitarian crisis, a properly representative team, including UN agencies, and relevant national and international NGOs should be established to address this issue on behalf of the humanitarian community." 

Many other factors support the localization of responsibility for accountability at organization, leadership, and management level.
Firstly, relief organizations constitute a legal entity with a set of corporate responsibilities, including as employer and manager of financial and fiscal responsibilities. They constitute a moral entity as well. Their staff acts on behalf of the collective purpose and according to collective directives.

Whilst the relief sector has often been characterized by the absence of a management culture and the preeminence of individualized rather than collective positions, this does not negate the previous two facts. These are the characteristics of a sector which has valued and encouraged the moral autonomy of its individual members, because of the overall nature of the work and the requirement of speed.

This does not mean that organizations do not carry responsibilities. At the most basic level, organizations requiring their personnel to act semi-autonomously must recruit competent individuals, train them, and sanction them whenever their activities are not conducted with the diligence required. Furthermore, the high value placed on autonomy does not displace the organization's responsibilities towards its own personnel and towards its beneficiaries.

Through the established practice of listening and responding to disaster-affected populations, changes in practices at the field level require broader transformations. In the first instance, this must occur at the level of the relief organizations themselves in the value they place on accountability as a key determinant and characteristic of interventions and interactions.

In many ways, building and institutionalizing accountability towards disaster-affected populations shares many similarities with other transformative processes at sector and organization levels. Experience with such transformations highlights the necessity of a clearly enunciated organizational commitment and the allocation of appropriate resources (financial and human) for the changes to take place.

**HAP International**

In January 2003, 15 humanitarian agencies initiated Humanitarian Accountability Partnership International (HAP International), an organization whose mission is to uphold the highest standards of accountability through collective self-regulation. Its vision is of a humanitarian sector with a trusted, transparent and accessible accountability mechanism.

To achieve its vision, HAP International has developed the model of a membership-based, self-regulatory body that prioritizes external, peer and self-monitoring; complaints handling; compliance procedures; and a staircase approach to performance improvement. A staircase approach means that member agencies are not all expected to implement accountability principles in the same fashion and at the same pace.

Upon joining, member agencies are requested to develop their own accountability work plan with benchmarks and time frames. Each member agency develops and reports on its own accountability work plan, which also serves as the basis for external monitoring and performance assessment.
Conclusion

The creation of a permanent humanitarian accountability mechanism is part of a sector-wide effort to reclaim humanitarianism. This effort is occurring in the midst of militarized and contested environments, which are characterized by the targeting of civilians and relief workers; lack of access to crisis-affected communities; and the blurring of the distinction between humanitarian and military activities. Last year, humanitarians also had to confront the issue of abuse of humanitarian aid from within its own ranks.

Courageously engaging with some of the sector practices is critically important. Heroic behaviour, speed, efficiency, and logistics, qualities which have long been associated with humanitarian activities have achieved a great deal in the alleviation of suffering and in capturing (Western) imaginations and purses. But they borrow too heavily from the images of the military sector. They also have done little to educate on the principles guiding relief actions.

At issue here is the weak public understanding that relief work should be based on ethics, accountability and the strength and dignity of crisis-affected individuals. Not enough has been done to uphold the principles of impartiality, independence and accountability and therefore to maintain the distinctive features of relief agencies originating from the international solidarity movement or mandated by the UN.

If the restoration of human dignity constitutes the raison d’être of humanitarian action, it is imperative that the recipients of this action are able to exercise their rights. These include access to information, a say in decisions that affect them, and the ability to seek redress where appropriate.

This in turn requires that crisis-affected populations be provided with sufficient information to form an opinion, and that their views be solicited and heard. Crucially, their feedback and suggestions should be responded to, and their complaints and concerns should be the object of proper mechanisms of investigation and redress.

Only through accountability to those whose lives it most affects, can humanitarian action truly fulfill its objective to safeguard and uphold the well-being and dignity of those who have been affected by disasters and armed conflicts.

1. In the last decade the number of international NGOs (INGOs) above has more than quadrupled from 6,000 to 26,000. See Jane Paterson, “NGO legitimacy after the battle of Seattle”, Accountability Quarterly 15, 1st quarter 2001, p. 6.


4. See for instance the launching by the American Enterprise Institute in June 2002 of a watchlist, whose main focus are NGOs. See also Alan Rusbridger, "NGOs under pressure on relief funds", Financial Times (13 June 2003).


12. Arthur C. Helton and Gil Loescher, “NGOs and Governments in a New Humanitarian Landscape”, Oxfam, Council on Foreign Relations (June 24 2003) Tragically, Arthur Helton was one of the victims of the deadly bombing of the UN Headquarters in Baghdad in August 2003, while Gil Loescher was critically wounded.


16. The necessity to effectively involve displaced communities was highlighted by the UN Secretary-General in his 2001 report to the UN Security Council.


27. They include, in addition, CARE International, Catholic Agency for Overseas Development (CAD), Caritas Internationalis, Dunia, the Danish Refugee Council, the International Federation of Red Cross and Red Crescent Societies (IFRC), the International Rescue Committee, Medicin, Norwegian Refugee Council (NRC), Office of African p


30. Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief (see Box 1.2).