



Australian Refugee Rights Alliance

"No Compromise on Human Rights"

Draft Discussion Paper

RE-DEFINING ETHICAL MISCONDUCT

Summary 2007

Comments Invited

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*Background paper including full references at:
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UNETHICAL TREATMENT OF DISPLACED POPULATIONS

This paper explores unethical practices of humanitarian organisations, and their staff, towards the displaced populations to whom they provide protection and assistance. This paper: explores how workers abuse or fail to uphold the inherent rights, capacities and dignity of displaced populations; considers mechanisms by which humanitarian organisations are accountable to these populations; and makes recommendations to increase accountability to displaced people.

INTRODUCTION

Frontline staff from UNHCR and its implementing partners often work in difficult conditions and face challenging issues, while providing essential assistance and protection to displaced populations. A rights-based approach to displacement shifts the focus of assistance from *need* to *entitlement*, and demands the recognition of rights delineated in human rights instruments. Many NGO and UNHCR staff strive to uphold the rights and dignity of displaced people. However, amid the positive and principled efforts of many, there are disturbing reports of unethical practice, staff misconduct and general 'inhuman' treatment of refugee populations. While explicit acts of misconduct can be recognised as such, more subtle violations of rights often remain undetected or are disregarded, despite a plethora of initiatives to improve NGO accountability.

RE-FRAMING AND DEFINING ETHICAL MISCONDUCT

To understand the different ways in which refugee agencies and their staff violate refugees' rights, these various violations have been categorised as: Actions; Language and Discourse; Organisational Structure; and Values and Ideologies. These categories form a framework to conceptualise and expand our understanding of ethical misconduct, and are not mutually exclusive. However categorised, all the examples of ethical misconduct outlined below have in common that they constitute a failure to regard displaced people as human beings, whose circumstances should not define their identity nor demean their dignity and value. The examples cited below are all actual behaviours and events documented in the field.ⁱ

Actions

Actions that constitute ethical misconduct are *behaviours*; which may be active or passive, criminal or non-criminal, violent and non-violent, and covert or overt.

- Displaced single mothers refused services and shelter because they were 'immoral', thus denying the women their only chance for protection. This also highlights the potential conflict between an NGOs underlying values and the human rights values that should underpin their work with refugee populations;
- UNHCR staff and NGOs restricting refugee women's involvement in camp management and justice systems, and disparaging the women who requested such involvement;
- The use of violence and force to control refugee behaviour, for example, beatings to force particular actions. This includes vicarious violence: threats of violence, and UNHCR staff arming some refugees with sticks to 'police' other refugees
- Exploitative sexual relationships with refugees; and criminal sexual violence;
- Underreporting or formal denial of gender-based violence in refugee camps;
- Head counts: 'rounding-up' refugees into fenced areas using armed police; and 'spot-checks' during the night and without regard for dignity and rights;
- Withholding food rations as a group punishment

Language and Discourse

In refugee discourse, a number of embedded terms convey ideas about refugees that range from patronising and devaluing, to framing refugees as unlawful and undesirable. It is within the nuances of language that 'people are harmed and helped'ⁱⁱ. Seemingly harmless words are often loaded with negative meaning.

- The description of displaced populations as *beneficiaries* or *recipients* is inconsistent with a rights-based approach. It validates the notion of aid as charity or a 'gift', and that those who receive it should be grateful and act accordingly. This reinforces a disparate power relationship, with passivity and powerlessness imposed on the refugee, compared to active and powerful roles for the 'benevolent helper.'
- *Empowerment* and *Capacity-building* are used with positive intention, but imply the absence of any capacity in the community receiving aid. This conceptualises populations as childlike and pathetic. It is difficult to discard these terms altogether, but important to be critical of what meanings they convey and the effect on refugees.
- *Illegals/Aliens/Scroungers* are terms that have slipped into common usage, and criminalise the act of seeking asylum (a right) and position the refugee as "other".

Organisational Structure

Some organisations abuse the rights of refugee populations through inadequate organisational structures, inadequate staff training/support, or poor accountability.

- Malpractice through false reporting of program outcomes or resources; eg food or medical supplies moved between locations, or discrepancies between official reports and unofficially acknowledged problems such as the prevalence of gender-based violence;
- Failure to involve the displaced population in decisions and actions affecting them; and otherwise ignoring their capacity and skills and their right to participation;
- The inadequate conduct of interviews, with inappropriate or unskilled interpreters, or with no interpreters, often with very serious negative consequences for refugees;
- Failure to hold staff to account for even serious unethical behaviour, such as simply relocating a staff member involved in corruption or criminal sexual conduct;
 - Inappropriate funding priorities: eg the purchase of a fleet of new cars while declining funding for inexpensive tools to enable income generation for refugees.
- Inadequate selection or training of local staff, eg failure to recognise and address racist, bigoted or other negative attitudes of these staff to the displaced population.

Values and Ideologies

Organisations do not necessarily hold values that are consistent with human rights principles, for example, some organisations work from a needs-based or charitable approach, which do not regard the fulfilment of rights as their mandate. In addition, though some may work from a human rights approach, they may also exhibit behaviours that are inconsistent with human rights principles. This is true for both organisations and individuals. This conflict between values and behaviours is exacerbated in under-resourced and/or difficult working environments, and as a result may be more likely to occur in humanitarian work.

- The prevalence of mistrust and antagonism between refugees and NGO/UNHCR staff; an "us" and "them" mindset, coupled with contempt towards refugees, and/or an attitude that refugees should be grateful for what they receive and not ask for more;
- Staff dismissive about seriousness of rape and sexual abuse: claiming it is culturally acceptable or treating it as a reproductive health issue rather a human rights violation;
- Agencies not taking into consideration safety of local staff (who make up 90% of field staff) in security policies (eg, training, briefing and equipment);
- Refusal of services and shelter to displaced single mothers by staff from a Christian organisation because they were 'immoral'.

ACCOUNTABILITY OF REFUGEE AGENCIES TO DISPLACED POPULATIONS

This unethical behaviour is inconsistent with UNHCR's mandate to "safeguard the rights and well being of refugees", and with the moral values and human rights principles of most humanitarian NGOs. How and why have the individuals and organisations involved in unethical practices not been held *accountable*?

Accountability is particularly important for refugee agencies as they have such great power over and impact

on displaced populations. With such influence and power comes responsibility; with responsibility should come accountability. NGO accountability is often skewed toward the more powerful stakeholders, but there must also be accountability to the weaker stakeholders, ie *downwards* as well as *upwards*. *“Humanitarian accountability is concerned with ethics, rights and responsibilities ... and agreed standards and benchmarks. [People] affected by disasters have a right to information, to participation, to be heard, and to redress.”*ⁱⁱⁱ

Tools for accountability

The 2002 UNHCR Code of Conduct^{iv} is a strong but non-binding statement of the expectations of UNHCR staff. It acknowledges the inherent power of its staff over refugees and the consequent potential for abuse; affirms commitment to human rights, the UN Charter, social justice and human dignity; and requires that all persons of concern be treated fairly and with respect and dignity. The examples above are violations of the Code, but there are no mechanisms for compliance or enforcement. UNHCR has recently been taking steps to improve accountability, redesigning its internal justice system and establishing an Ethics Office and whistleblower protection.

Implementing partners of UNHCR sign the Codes of Conduct of UNHCR, and of the Red Cross, the first sector-wide code to emerge (1994) and highly influential on subsequent accountability initiatives. The NGO community has developed many other tools to facilitate improved accountability,^v including downwards accountability, and there are recent efforts between the major initiatives to improve collaboration.

However almost all the tools rely on *self*-evaluation or are intended as tools to *guide* behaviour, not assess compliance or enforce standards. There appears to be little research or documentation on whether they do improve performance, outcomes or accountability to refugees. The occurrence of unethical practice indicates that they are failing; standards of conduct are not policed and breaches of standards have few or no consequences. It appears the practice of being accountable to behavioural standards and to displaced populations, and commitment to upholding human rights and dignity, are not entrenched in refugee agencies at operational levels.

CONCLUSION AND RECOMMENDATIONS

The rhetoric of the various accountability initiatives and codes implies that the humanitarian sector sees as desirable: accountability to displaced populations; and high standards of conduct based on human rights and human dignity. Existing initiatives rely on self-evaluation rather than compliance mechanisms, which appears to be inadequate in upholding appropriate human rights standards.

Recommendations:

1. Organisations re-examine their commitment to accountability and ethical conduct towards displaced people
2. Research and evaluation to: determine the prevalence of misconduct; assess the effectiveness of the current self-regulatory environment; recommend ways to improve accountability to refugees; and determine the appropriateness of alternative models. In particular, the voices of those affected must be heard in such research – the voices of displaced people on whom this has such a significant and damaging impact.

ⁱ From: Harrell-Bond, B, 2002, Can humanitarian work with refugees be humane? *Human Rights Quarterly*, vol 24, pp51-85; Pittaway, E & Bartolomei, L, *UNHCR and NGO attitudes towards refugees*, 2006, Unpublished paper, UNSW; Verdirame G & Harrell-Bond, B, 2005 Refugee protection: What is going wrong? In *Rights in Exile: Janus-faced humanitarianism*, Berghan Books, NY, pp 271-331.

ⁱⁱ Gee, J.P 2005 *Discourse analysis*, Routledge, New York p2

ⁱⁱⁱ HAP-I, quoted in Poletti, T, *Interagency Health Evaluations in Humanitarian Crises, A Background Issues Paper*, UNHCR and London School of Hygiene and Tropical Medicine, 2004

^{iv} UNHCR Code of Conduct and Explanatory Notes, UNHCR, Geneva 2004

^v For links to 25 such initiatives see <http://www.oneworldtrust.org/?display=ngoinitiatives>. Some of these initiatives are discussed in the full version of this paper.