



## TOWARDS A MORE ACCOUNTABLE HUMANITARIAN SECTOR

March 21, 2018

The [Oxfam sex abuse scandal](#) in Haiti is just the tip of the iceberg of unaccountable humanitarian action, and demonstrates the urgent need for improved accountability across the humanitarian aid sector. Sexual exploitation and abuse (SEA) is prevalent in the aid community: one [report](#) found that 23 non-governmental organizations (NGOs) in Haiti have had a sexual exploitation problem. Like Oxfam, NGOs often do not treat staff SEA as a legal matter or provide remedies to the victims. Legal obligations exist, but NGOs ignore them.

As with SEA, other accountability failures create anger and tension with local communities, and undermine humanitarian actors' effectiveness. These include failures in aid delivery, sustainability of development projects and, in the case of the [United Nations](#) in Haiti, immunity that results in impunity for recklessly introducing cholera. The [American Red Cross](#) refused to disclose information about its program in Haiti to U.S. congressional investigators after a scandal that the organization claimed to have provided homes to 130,000 Haitians but only built six permanent homes.

All of these accountability failures stem from a refusal of humanitarian actors to allow the people they claim to help - the government and people of Haiti and countries like it - exact any consequences for the humanitarian actors' failure to live up to legal and sector standards. Lack of accountability also reinforces the marginalization of inhabitants of global south countries and structures of racism.

Vetting staff for past complaints and allegations before employment, promotion or interagency transfer is crucial to preventing misconduct, as is maintaining a diverse and gender-balanced workplace. But accountability is essential to restoring trust of both beneficiaries and donors. A sector-wide accountability system must be established that recognizes the inherent power imbalance between aid workers and beneficiaries, and gives victims a mechanism to file a complaint on issues ranging from sexual misconduct to aid delivery.

### 1. Sector-Wide Inquiry

An independent inquiry should conduct a sector-wide review of accountability structures and procedures already in place. It should address what standards and agreements already exist to govern humanitarian actors and where the current processes are failing. The review should examine internal operations (interactions among foreign and local staff) and external (interactions between staff and aid beneficiaries). A sector-wide inquiry will reveal what kinds of complaint mechanisms are in place for victims, whether those mechanisms are accessible, what kinds of services are available to those who do report, and whether complaints are being resolved fairly and adequately.

### 2. Robust sector wide accountability standards

The humanitarian aid sector should adopt reporting and accountability standards for all external and internal operations. The sector, including NGOs, inter-governmental organizations (IGOs), and donor governments, have already committed, in principle, to a [rights-based approach](#) for aid distribution adopted by the UN, which: (1) prioritizes capacity-building of local governments and civil society; (2) ensures participation of communities receiving aid; (3) practices transparency by making information accessible to the community; (4) ensures accountability to the target communities and host government by providing monitoring, evaluation and complaint procedures; and (5) ensures

that the assistance does not discriminate against marginalized groups, particularly women, children, and elderly, disabled and LGBTQ individuals.

The rights-based approach should serve as the foundation for developing sector-wide accountability standards. A rights-based approach is not only [legally mandated](#) for state and non-state actors; it enables more successful outcomes because it ensures effectiveness and guides investment toward those actors that can ensure sustainability. Below is a framework for a uniform reporting and accountability mechanism, which reflects the rights-based approach and several best practice guides and codes of conducts adopted by NGOs, IGOs and multi-national corporations.<sup>1</sup>

### **3. Prohibit Sexual Exploitation and Abuse and Other Illegal Conduct**

An internal code of conduct must define SEA, establish clear penalties for perpetrators of SEA, and commit to reporting criminal conduct, especially sexual exploitation of minors, to law enforcement in the host country and other countries that may have jurisdiction under “sex tourism” statutes or on other grounds. These standards should conform to the laws of the host country, but additional restraints may be necessary to protect aid beneficiaries. For example, staff members should be prohibited from engaging in prostitution with an aid recipient even if prostitution is legal in the host country. Similarly, the aid organization should prohibit discrimination against LGBTQ individuals, even absent a lack of protection under the host country’s laws. Organizations must ensure that their subcontractors also effectively communicate, monitor and enforce the code of conduct.

### **4. Effective Complaint Mechanism**

An independent and transparent complaint mechanism is the foundation of a rights-based approach. It is critical to creating and maintaining an environment that prevents SEA and other misconduct. Staff should receive training and sign employment contracts outlining the organization’s code of conduct and grievance mechanism. The grievance mechanism should contain the following stages:

#### **a. Transparent, accessible and secure reporting**

**Secure and confidential.** Establish a single, comprehensive grievance mechanism that will address SEA and non-SEA violations. While SEA is egregious and has recently received attention, accountability is also necessary for other types of commonly reported violations, such as discrimination and failures in aid delivery. Provide a variety of reporting methods, including face-to-face intake, a physical and secure drop-box, telephone hotlines, internet links, and other means that promote access, in the local languages. Advertise and actively promote the mechanisms in a manner that is culturally appropriate and targeted to reach likely complainants. Every effort should be made to maintain confidentiality to the extent possible, but the general risk of disclosure should be made known to complainants. Staff members who suspect misconduct by a fellow worker should be required to report such concerns through the reporting mechanism. Adequate and confidential whistle-blowing structures must also be implemented to encourage complaints.

**Local Community Involvement.** Draft the organization’s code of conduct and grievance mechanism with input from local communities. Establish feedback mechanisms for suggestions on improvement. Collaborate with other aid agencies and experts in the host country on best practices. Consider a community-based reporting structure with an inclusive network of local organizations that can refer complaints to the organization involved in the grievance for follow up. Also consider supporting local organizations to receive and investigate complaints where the complainant fears the consequences of filing a complaint with the organization. The local organizations could also be supported to issue periodic reports on the humanitarian sectors’ progress in establishing accountability.

#### **b. Victim support and empowerment through the investigation**

**Independent.** If the investigation is handled internally in the organization, the individual(s) who receive and investigate complaints should have fluent language capacity and cultural knowledge, as well as independence in the investigation from those being complained against.

**Thorough and Expedient.** Every complaint should be investigated, whether it involves someone currently or formerly under the organization's control. When the perpetrator is not under the organization's control, the complainant should be referred to the appropriate organization or official. No complaint should be rejected as untimely. Complaints should be immediately investigated to promote access to witnesses, documents and other physical evidence that can be difficult to locate in a crisis environment. Complaints should be resolved expediently and within an indicative time frame.

**Empowerment.** Claimants and perpetrators should receive regular updates at pre-established intervals throughout the investigation. The process should be carefully explained to the claimant. Protective measures should be adopted to guard against the risk of re-victimization, such as prohibiting one-on-one closed door interviews and requiring a mixed-gender team of investigators to conduct interviews.

**Redress and Security.** Complainants should have access to medical and psychological services, emergency shelters, and legal assistance (e.g., to file paternity claims) related to the claims, and urgent material needs. If a complainant receives threats or fears retaliation from the perpetrator, the organization should make every effort to protect her or his safety and prevent re-victimization. Create a trust fund to provide complainants with these types of redress and compensation.

#### **5. Legal accountability that reinforce victims' right to legal action and host state sovereignty**

Grievance procedures must reinforce victims' right to legal action for criminal and tortious conduct. Aid organizations should consent to criminal and civil jurisdiction where necessary in order to facilitate victim access to all available remedies. If an investigation reveals evidence of criminal conduct, the case must be referred to national authorities in the host country, and other countries where jurisdiction might be established, assuming the complainant's informed consent. Agencies should cooperate with outside investigations (civil and criminal) by sharing internal investigation findings and providing access to documents, work-sites and staff. Cooperation with local authorities and investigations will often be a necessary but insufficient consequence given weaknesses in host state legal systems. However disclosure and cooperation with local authorities preserve and strengthen the host government's sovereignty and ensure aid personnel to not operate above the law.

#### **6. Ensuring Remedies for victims**

Aid agencies must adopt an effective and comprehensive approach to remedies that is transparent, culturally appropriate, tailored to the harm that has been suffered, and meets the needs of individual victims and communities under different circumstances. Remedies may include, but are not limited to, protection, internal discipline or termination of employment of the perpetrator, compensation, judicial accountability, arbitration, and reconciliation. Complainants impregnated by the perpetrator should have legal support to obtain child support orders. Feedback mechanisms should be designed to respond to complaints of failures in aid delivery that do not rise to the level of tortious conduct.

#### **7. Non-discrimination**

Complaint procedures and investigations should not directly or indirectly discriminate against vulnerable populations, such as aid beneficiaries, women, children, the elderly or LGBTQ individuals, or those without legal status in the host country. Complaints should be treated the same regardless of whether the complainant or the alleged perpetrator is a local or foreign national. Promoting women

and members of other groups at risk of exploitation to key positions will help eliminate discriminatory practices in policy-making and program implementation.

---

<sup>i</sup> See, for example, [Best Practice Guide, Inter-Agency Community Based Complaint Mechanisms, Protection Against Sexual Exploitation and Abuse \(2016\)](#); ; [Inter-Agency Standing Committee, Guidelines to Implement the Minimum Operating Standards for PSEA \(2013\)](#); [UN Guiding Principles on Business and Human Rights \(2011\)](#); [Guidelines For Setting Up a Community Based Complaints Mechanism Regarding Sexual Exploitation and Abuse By UN and non-UN Personnel \(2009\)](#); United Nations Secretariat, “Special measures for protection from sexual exploitation and sexual abuse”, [United Nations, ST/SGB/2003/13, Oct. 9, 2003](#), among others.