Charity or rights? A human rights framework for complex emergencies

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This paper examines recent criticisms of non government organisations (NGOs) intervening in complex emergencies (ie, conflict-driven emergencies). It argues that humanitarian NGOs should develop their mandates to make the recognition and realisation of human rights their uppermost aim, focusing initially on the ‘positive’ rights of the International Charter on Social, Economic and Cultural Rights.

Calling for the adoption of a human rights framework for humanitarian interventions by NGOs may be considered impractical and inappropriate given the voluntary nature of NGOs and their status as charities. But it is time NGOs transcend philanthropy and recognise their responsibilities in terms of internationally recognised standards. Charity is an inadequate basis for humanitarian action and should not be carried into the next century.

There is nothing wrong with the heartfelt response which underlies true charity, but we must go further and recognise the right of the poor and vulnerable to international assistance. While religiously-based NGOs understand this as a rationale for their activities, here it is understood as a secular recognition of rights as formulated in international human rights law, particularly in the International Charter on Civil and Political Rights and the covenant referred to above.

Many NGOs do refer to rights in their mandates or programmes, but rights such as ‘basic rights’ are weaker formulations and have no basis in international law. The fact is, internationally recognised human rights are the most coherent and forceful expression of humanitarian ideals available - they transcend philanthropy. Why not base mandates and programmes on them? They set standards that can be estimated and debated by both the intervening NGO and the group or community concerned, thus inviting dialogue.

Critique of the political economists

North-South relations: A number of recent papers and reports have been critical of humanitarian responses to complex political emergencies. NGO interventions in southern Sudan and Rwanda have received particular attention. Criticism has come from academics (mainly political economists), human rights commentators (notably African Rights), campaigners for peace (including the Center of Concern in Washington), within some European NGOs and in the form of independent evaluations (in particular the recent Joint Evaluation of Emergency Assistance to Rwanda). Although critiques of NGO intervention have generally been made with the luxury of detachment from the responsibility of responding to emergencies and implementing recovery programmes, many of the arguments are partly true and NGOs can learn from them.

Critiques have commonly been written from a global political perspective in which the North is not committed to resolving political crisis or war in the South, or to financing the economic rehabilitation required for political stability. In effect, this abandons the South to a form of separate development (ie, apartheid). In this setting of disengagement, humanitarian aid has become ‘the principal means of political crisis management in a now marginal South’ (Duffield 1994:7), and international NGOs and organisations like the International Committee of the Red Cross have become ‘the proxy means of maintaining aid flows’ (Macrae and Zwi 1994:28). This failure manifested itself recently in Rwanda, where ‘humanitarian action substituted for political action’ (Eriksson et al. 1996:11).

The role of NGOs: NGOs cannot fill the void created by political disengagement. NGO mandates generally limit them to apolitical activities. Even if NGOs adopted a more political role they lack the expertise for the task; how would they be coordinated, for example, and what form of public accountability would keep them in check (see Prendergast 1995; de Waal 1994)? Moreover, it is difficult for NGOs to act in the international political arena since they lack an identity in international law. NGO mandates are not founded on international agreements, unlike the Red Cross and Red Crescent movement or international agencies like the United Nations High Commission for Refugees (UNHCR).

Although NGOs cannot take the lead in political engagement it is important for them to adopt a human rights framework, with or without a ready basis in international law. This is important for its own sake (transcending philanthropy), but it is also a vital foundation for a more coordinated rights-based approach to complex emergencies. Internationally recognised human rights provide the basis for common objectives and the space within which NGOs can negotiate discrete responsibilities. This is not to say that UN agencies should necessarily have the final word on NGO roles. Roles and responses would continue to be debated, but with reference to one set of overriding principles: human rights.

It is not just a matter of principle. It is important in terms of the effectiveness and accountability of humanitarian responses. In the context of Rwanda, Oxfam’s Emergencies Coordinator Nick Stockton (1995) has argued that the proliferation of NGOs intervening in humanitarian crises, with no internationally mandated responsibilities, has eroded accountability and compromised effectiveness.
Manipulation of humanitarian assistance: Critics of NGO responses to complex emergencies also argue that because NGOs have no mandate or ability to tackle the underlying political causes of conflict, they have become part of the problem rather than part of the solution. Duffield (1995:1) argues that humanitarian assistance has become ‘incorporated into the fabric of protracted crisis.’ Similarly, de Waal (1994:3) concludes that ‘relief aid delivered by international agencies has become integrated into processes of violence and oppression,’ and in Sudan specifically ‘relief is prolonging the war’ (1994:13). Part of the problem is that many NGOs lack the capacity to see the big picture or to analyse the root political causes of complex emergencies. This must be the case for NGOs that channel funds to emergencies through others and have no operational involvement themselves.

It has also been argued that NGOs are compromised with respect to human rights. NGOs face dilemmas when providing relief in cooperation with those in authority, who are suspected or known to be engaged in human rights abuses. This is a common problem in complex emergencies - deals have to be struck with the combatants just to operate. This was at its starkest in Somalia, where cases of money were handed over just to land planes and move relief around Mogadishu. NGOs have to recognise that in some instances relief assistance strengthens the hand of those who are driving the conflict, thereby making people more vulnerable in the most elementary sense.

In such circumstances, NGOs concentrate on their project - be it a feeding centre, health clinic or well digging programme - and do their best to deal with the problems that threaten to engulf them. In themselves these interventions are likely to be very valuable, but NGOs need to be mindful of one of the basic laws of complex emergencies: humanitarian assistance tends to be subverted when it is provided in cooperation with parties to a conflict. It is naive to believe that Captain so-and-so from the government, rebel or faction army can run two agendas - war and humanitarian relief. While some might try to create a space for humanitarian action, the prosecution of their struggle is the only reality and assistance will be used (where possible) in pursuit of war. Moreover, war is anarchic; relief supplies are gold and much of it will be looted, whether directly from NGOs or from those it is distributed to.

Political naïveté: If NGOs are unable to grasp the symbiosis between relief and war, critics argue it is because NGOs have a poor understanding of complex political emergencies. That is, NGOs are more or less ignorant of what Duffield (1995:1) terms ‘the operation of the internal sociopolitical dynamic of a protracted crisis.’ It is also argued that the developmental ideas NGOs apply to their programmes are inadequate because they lack a sociopolitical framework in which to analyse political crisis and conflict. NGOs are advised, in effect, to put their neutral, safe development philosophy back on the shelf and examine the hard political and human rights issues involved in complex emergencies instead. Some NGOs may be willing to take this criticism on board, but the problem for NGOs far from the conflict is: who will assist them to make this analysis? Can Australian NGOs rely on their international partners to do so?

Advocacy and criticism of combatants: It has been suggested that NGOs should do more to protect people’s rights and be less concerned about jeopardising their projects. Duffield, Macrae and Zwi (1994:228) observe generally:

While the international relief system has readily taken on a role in the provision of physical resources, it has been less active in developing strategies concerned for the protection of conflict-affected communities. NGOs and other operational agencies, such as UNHCR, have often been reluctant to speak out openly about human rights abuses, of which they often have direct evidence. The advocacy role of NGOs is frequently underplayed in favour of operational activities, despite, or perhaps because of, their often close relationship with bilateral and multilateral donor communities. The independence of many NGOs has thus become sacrificed to the wider international need to be seen to respond to humanitarian crises in an apparently ‘neutral’, apolitical way.

In the case of southern Sudan, the team reviewing the Sudan Emergency Operations Consortium (Duffield et al. 1995:226) noted that advocacy, especially public pronouncements, had long been a sensitive issue among NGOs:

For the sake of maintaining a presence, many have chosen silence. If anything, negotiated access has made this problem even more sensitive. Once access has been granted and accepted, it is not easy to maintain a critical independence. A significant part of advocacy within a negotiated programme therefore, frequently takes a less contentious form. That is, non partisan support for the often long-running peace process.

Some NGOs working in complex emergencies have supported advocacy at the institutional and international level; that is, by lobbying parties in the peace process. But NGOs generally refrain from issuing press releases criticising the warring parties and criticism is kept to private consultations and briefings for fear of expulsion. The NGOs concerned tend to place a higher value on their continued presence. After all, if an NGO cannot deliver its assistance and implement its projects it is no longer a player (and will be left with unspent funds). So NGOs tend to stay, rationalising that it is important that they remain as a moderating influence and as witness, and to gain information on which to base external advocacy. But one has to ask: at what point should NGOs regard the situation as intolerable and speak out about human rights?

I am reminded of the dilemma faced by Save the Children Fund (UK) in Uganda in 1984. We were aware that atrocities were being committed in the Luwero triangle north of Kampala - bodies were being dumped close to the roads. We stayed on
as witnesses, delivering relief and medical supplies and passing on information to the British High Commissioner. It was later said that the High Commissioner failed to pass this information on to the Foreign Office. Whether he did or not it was naive of us to expect any action from the British government when they were fully committed to Milton Obote.

With the wisdom of hindsight it seems we should have sacrificed our presence and campaigned against the ruthless practices of both Obote and Museveni’s forces. It would have led to the expulsion of Save the Children Fund (UK) and the loss of assets, but we were doing little good in Luwero. Indeed, it could be argued we did considerable harm by attracting people to relief centres where they became prey to government soldiers. Many men were murdered and many women were raped in the relief camps, and we were powerless to stop it.

This is not to say that NGOs have no role to play as a moderating influence or witness. The presence of NGOs can inhibit combatants, and material relief can help people in areas hit by conflict to remain in their homes or plant their next crop. This is vital to stem the tide of displacement that typifies conflict. The difficulty comes in balancing this role with responsibilities for human rights. A point will be reached where an NGO will have to raise human rights issues and by doing so put their continued presence in jeopardy.

This is where coordination between mandated agencies and NGOs is vital. It is as simple as ‘united we stand and divided we fall.’ Together, on the basis of a shared commitment to human rights, some attempt must be made in complex emergencies to impose a bottom line in terms of human rights. Individual NGOs should not be left to ‘go it alone’ in this respect.

**Developing a sociopolitical framework:** Another substantial criticism levelled at NGOs is that they allow themselves to remain politically ignorant of the circumstances in which they operate (see Duffield 1995; de Waal 1994). It is true that NGOs have only a sketchy idea of the conflicts they become involved in and that they are largely ignorant of the precise dynamics of each situation. Keen and Wilson (1994:209-10) argue that NGOs should closely examine the relationship between relief and the local political economy, and the ability of different groups to pursue their own economic and military strategies:

What is urgently required is a better understanding of the complex web of political and economic goals which together determine patterns of famine and relief during civil wars. These will include strategies for political and military control and for profit. They will also include strategies for survival and attempts either to maintain livelihoods or to develop new ones. Organisations involved in international relief need to think about how they are responding to the dynamics of conflict, about which strategies they should be facilitating, and which they should be discouraging.

Having established a basic sociopolitical frame of reference to inform programming, NGOs should try to comprehend what alternatives might emerge to existing sociopolitical structures if only to sharpen their understanding of the dynamics of change. If NGOs do not become versed in these areas, they run the risk of continuing to be manipulated into tolerating compromises which serve to maintain inequalities and conflict. NGOs must develop more critical political faculties.

**Accountability and effectiveness:** There is much to be said about accountability and effectiveness and NGOs are under increasing pressure to demonstrate their capacity in these areas. Slim and Penrose (1994:205) observe that:

> A persistent feature of humanitarian assistance in recent years has been the lack of a transparent system of evaluation and accountability of the international community’s response to emergencies.

If most emergency operations were laid bare, so all could see the weaknesses of UN agencies and NGOs, the public would lose confidence and it would take some time to explain why things are as they are. Rwanda was chaotic. It is in our interests that such chaos be revealed since it will lead to improvements. Furthermore, there should be more attention to the evaluation of responses to complex emergencies.

An often forgotten level of accountability is that owed to the groups and communities ‘targeted’ for assistance. Feedback from the people most directly concerned is generally missing, depriving us of the ultimate reality check.

**Talking human rights**

**Mandate to intervene:** The international community has a mandate to intervene in humanitarian crises. Strictly speaking, intervention should be in pursuance of the fulfilment of the human rights spelt out in international agreements. The right to intervene only flows from these rights, it does not exist for other purposes.

Sovereignty has generally been the obstacle to intervention on behalf of people’s rights, hence the emergence of operations based on negotiated access such as Operation Lifeline Sudan. Sovereignty has been overridden several times by the Security Council, commencing with the humanitarian operation in northern Iraq, but the Security Council appears to act in circumstances where the United States and its allies perceive a strategic interest. Where there is no such interest, people are left to the jaws of sovereignty. For example, the international community should be more interventionist in securing access to the Nuba Mountains in Sudan to stop the attempted genocide of the Nuba people. There is a very strong argument in international law for unilateral international intervention in this case. NGOs concerned about situations such as the Nuba Mountains should find their claim (on behalf of the people concerned) on international human rights law.

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One of the criticisms of international intervention is that too much emphasis has been placed on the right to conduct operations and protecting UN/NGO personnel, and not on protecting nationals from the conflict - let alone unravelling it. This is a complex issue, but the international community has been terribly ineffective in a number of recent emergencies, most notably in Rwanda. Foreigners were swiftly evacuated, but not many Rwandans were saved from the interahamwe militias.

**Founding humanitarian assistance on human rights:** There is a direct causal link between human rights abuses and humanitarian crises. Nevertheless, humanitarian aid is not currently founded on the rights of affected people and responses are limited to assistance. Redress and protection are rarely offered. These are underlying weaknesses of humanitarian aid as it now operates (see Tomasevski 1994; Slim and Penrose 1994; Human Rights Council of Australia 1994).

Humanitarian assistance can be strengthened by developing a sharper human rights focus, and NGOs should overhaul their mandates and adopt a human rights frame of reference. NGOs currently rely on a variety of inadequately defined ideals. Human rights would be a unifying principle between humanitarian actors and it would provide a coherent language and strong basis for advocacy (including advocacy directed at UN agencies).

This would not mean that all NGOs adopt an Amnesty International framework. Amnesty is concerned with a narrow range of human rights concerns: the protective or 'negative' rights of the International Charter on Civil and Political Rights. NGOs which currently describe themselves as 'humanitarian' rather than 'human rights' organisations would focus instead on the 'positive' rights of the International Charter on Social, Economic and Cultural Rights (eg, the right to food, health and shelter). It is significant that Amnesty now recognises the need to broaden its mandate into the 'positive' rights realm. In some ways Amnesty's success in highlighting the protective rights of the civil and political charter has narrowed the public's perception of human rights to the exclusion of the broader positive rights that underpin the 'right to development'.

If NGOs cannot change their mandate in the way recommended, changes are surely possible at other levels. In terms of strategic planning, NGOs can embrace human rights instead of half-hearted 'basic rights'. At the field level NGOs can develop an 'entitlement theory' to provide the link between their humanitarian response and the rights of the individuals, groups and communities 'targeted'. With respect to the latter, it is important to give people actual undertakings regarding project outcomes and to establish some machinery whereby NGO performance can be challenged (eg, through joint project steering committees). In terms of the orientation of staff, NGOs should encourage a more reflective and critical ethic rather than expect staff to internalise doubts, and foster a greater sense of responsibility towards those in whose name the NGO acts - be they refugees, displaced people or children.

One problem NGOs face in developing mandates which embrace human rights is a lack of status in international law. NGOs operate outside this framework and are, in this sense, 'non mandated' organisations. NGOs are not formally responsible for human rights. The governing boards of NGOs can amend the NGO's mandate, but there will be no mechanism by which they can be held accountable under international law. Perhaps this does not matter. In practice accountability is sometimes lacking with the mandated agencies as well. Being founded on an international agreement does not in itself guarantee accountability to the public or to beneficiaries for humanitarian interventions. Even though a reasonable framework for human rights in international conventions has been achieved, responses are frequently driven by the narrow interests of the countries intervening. By talking human rights NGOs may be able to contribute to bringing the mandated agencies back on track.

Another of the many difficulties that lie ahead is securing official donor support. The bottom line is that donors do not want to accept the financial obligation that would flow from the recognition of rights (Macrae and Zwi 1994). Assistance, as it is currently structured, leaves the donor in control. Rights are a different matter and would give validity to demands.

**NGOs and international law:** NGOs have no formal human rights responsibilities since they have not been party to any of the agreements that make up international human rights law. NGO mandates are not founded on international instruments, unlike the International Committee of the Red Cross for example. Nor do NGOs have any formal obligations to the people of the countries where they work, and no contracts are signed to create them. Many do, of course, express moral accountability to beneficiaries and counterparts.

NGOs are private voluntary organisations founded on charitable purposes. In Australia there is no formal restriction on political activity (unlike in the UK where charity law restricts NGOs to apolitical activities). The ethos of NGOs tends towards social justice and this is frequently translated into support for 'basic rights', apparently intending to incorporate both civil and political rights as well as social and economic rights (although the definition given for 'basic rights' is actually narrower than the content of the international instruments).

Introducing the term 'basic rights' in the place of human rights is a retrograde step, whatever the content of the term. Human rights clearly refer to international agreements and obligations, 'basic rights' do not. NGOs could found their work on human rights without taking on all the responsibilities this might entail by stating that their human rights work will be limited to activities directly linked, for example, to the relief of poverty, distress or suffering. In this way, mandates specific to each NGO could be maintained and carried into the human rights framework (eg, a focus on children).
Consequences of recognising rights

**Entitlement:** Recognising rights in the context of humanitarian assistance means recognising people’s entitlement to assistance. NGOs adopting a human rights framework will need to develop ways of enabling people to realise their rights and claim them. This is no easy matter in an emergency context. It involves:

- establishing mechanisms that people can use to activate an international response;
- concentrating more on enabling people to claim specific rights (eg, to food); and
- devising means by which NGOs can be held accountable to people seeking to exercise their rights.

To be more than rhetorical in their acceptance of rights NGOs should measure their progress in terms of the actual realisation of specific human rights. NGOs could, for example, frame their ‘critical indicators’ of progress around the question: *what human rights and whose human rights have been advanced by the intervention?* NGOs which are serious about these matters will simply have to be more sensitive to the wishes of beneficiaries. Emergencies are often taken as opportunities to do things over people’s heads, with no consultation whatsoever.

**Contingency planning:** NGOs operating in complex emergencies should include a contingency that they (or their partner NGO) may have to put programmes at risk by publicly condemning human rights abuses. In so doing the NGO would have to determine precisely what it would feel constrained to protest about and at what level. This amounts to drafting a human rights strategy for the complex emergency in question, including guidelines for field staff. Non operational NGOs should at least be alert to the need for such a strategy and ask their operational partners for one. Apart from the practical planning need for such strategies, they are a necessary consequence of adopting an overall human rights mandate.

But is this sound policy? Human Rights Watch has argued that ‘being consistent about human rights principles and opposing all forms of blackmail will lead to improvements in the longer term’ (quoted in Macrae and Zwi 1994). Similarly, de Waal (1994:36) argues that: ‘in the long term, more people will remain alive under more tolerable conditions if humanitarian relief is provided in a way that is consistent with basic human rights.’ Surely this is true. The immediate difficulty for NGOs is coordination. Each NGO will fear that if they are the only one to stand on principle they will forfeit their role to other NGOs which see no necessary connection between ‘humanitarian’ and ‘human rights’.

**Operational issues**

**Working with UN agencies:** The current paradigm seems to be a UN lead operation with NGOs taking on specific tasks (frequently as subcontractors). Working under the umbrella of a UN operation provides, at least potentially, a means of coordinating action and gaining some leverage over the warring parties. But there is a down side: it can also bring NGOs under the discipline of rules negotiated between the UN and warring parties, making NGO operations subject to their agreement. In other words, NGOs can become locked in and compromised by local and international realpolitik. NGOs can also find themselves gagged from certain types of comment, including criticism of a UN agency’s failure to address human rights abuses.

Another potential weakness of UN lead operations is the divided nature of the UN itself, which can manifest itself as operational competition between UNHCR, UNICEF or the World Food Programme, or between civilian and military components of a UN operation. A UN agency might even work against itself, as in the case of Operation Lifeline Sudan (OLS) where UNICEF/OLS in Khartoum deliberately played a non confrontational role in relation to the Government of Sudan’s human rights violations. The UN tends to develop operational structures which reinforce sovereignty, and the capital city headquarters tend to be unduly influenced by the government (eg, the UN Transitional Authority in Cambodia, UNTAC, was effectively captured by the State of Cambodia government in Phnom Penh and could not accept contrary views being put to it by some of its Military Observers deep in the field).

Another shortcoming of the UN is that it does not provide a policy framework or guidelines for NGOs on how they should relate to warring parties and their ‘civilian’ structures. This is particularly true of structures put in place by rebel forces. Another problem is that when the UN establishes a working relationship with a rebel force, generally with the relief wing of that force, it tends to become locked into the relationship despite NGO protests that those bodies have become dysfunctional and part of the problem (eg, the Sudan Relief and Rehabilitation Association). So despite the very great value of coordinated operations NGOs should not rely on the UN for ultimate guidance. NGOs must develop their own political compass in cooperation with other NGOs in similar circumstances.

**Human rights conditionality:** Should international assistance be made conditional on respect for human rights? Ideally yes, but it could never be an effective substitute for interventions aimed directly at a resolution of the political crisis. Moreover, it would only be feasible to attempt to tie aid to respect for human rights if monitors were deployed to provide the information on which to act. The governments concerned will usually strongly oppose the deployment of monitors. Even if the government acquiesced, as in the case of Rwanda, there remains the problem of adequately resourcing monitors (NGOs could consider directing funds into this area). Another possibility is the use of the military as human rights monitors. Military Observers appeared to be the most effective of the UNTAC components in Cambodia. The difference with the other components (CIVPOL and the various national battalions like DutchBat) was their experience. They were generally Lieutenant-Colonel rank...
or equivalent, with previous experience in blue beret
operations (Cyprus, Palestine, etc.). Military Observers are
unarmed and generally relate directly to the Liaison Officers
of armed groups.

**Partners for peace**: NGOs can play an important role in
helping to facilitate and strengthen peace efforts at the
community level. This is where NGOs have traditionally had
distinct competencies. It is, of course, no easy matter to
identify partners for peace. Everyone in authority seems to
be compromised, organised groups tend to reflect local
political interests, civil administrators tend to be weak,
churches and mosques frequently fail to stand up for the poor
and so on. Moreover, it can appear as though everyone is
cought up in the conflict and accepts its necessity.

Nevertheless there will always be people with an abhorrence
of violence and ready to work for peace. The difficulty is
knowing who to support and what process to facilitate. These
difficulties serve to underline the importance for NGOs of
developing a better understanding of the dynamics of conflict
and the need to incorporate conflict resolution and peace
building in the design of humanitarian programmes.

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