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MEASURING THE WAY FORWARD IN HAITI: GROUNDING DISASTER RELIEF IN THE LEGAL FRAMEWORK OF HUMAN RIGHTS

Amanda M. Klasing, P. Scott Moses, and Margaret L. Satterthwaite

ABSTRACT

This article provides results from an online survey of humanitarian workers and volunteers that was conducted in May and June 2010. The purpose of the survey was to understand how the humanitarian aid system adopts or incorporates human rights into its post-natural disaster work and metrics. Data collected from Haiti suggest that humanitarians have embraced a rights-based approach but that they do not agree about how this is defined or about what standards and indicators can be considered rights-based. This disagreement may reveal that humanitarians are aware of a mismatch between the rights-based approach to post-disaster humanitarian work and the legal framework of human rights. Using participation and accountability as examples, this article identifies and examines this mismatch and suggests that the humanitarian aid system should more fully embrace engagement with the human rights framework. To do so, the article concludes, humanitarian actors and the human rights community should have an open dialogue about the development of metrics that accurately reflect and monitor adherence to the legal framework of human rights. This would allow the humanitarian aid system to ensure its interventions enhance the capacity of the disaster-affected state to fulfill its human rights obligations, and would allow humanitarian and human rights actors alike to measure the impact of such interventions on the realization of human rights in post-natural disaster settings.

INTRODUCTION

On January 12, 2010, a catastrophic earthquake hit Port-au-Prince, Haiti, killing more than 222,570 people and injuring an estimated 300,572 people.¹ Approximately 2.3 million people—almost 25% of the entire national population—were displaced.² The largely centralized Government of Haiti suffered extensive losses, with the death of thousands of civil servants and the destruction of virtually all of the major landmarks in the city, government ministries, and basic infrastructure.

People around the world responded quickly with an outpouring of humanitarian support. Haiti, long described as “the Republic of NGOs,” experienced a new influx of humanitarian organizations, including inter-

national agencies and non-governmental organizations (INGOs). INGOs organized rapid interventions across many sectors including food aid and nutrition, water and sanitation, housing and shelter, health care and psychosocial support, education, and camp management. In the short-term, donors pledged more than \$5.3 billion to assist the Haitian government in its rebuilding efforts, plus \$10 billion in long-term reconstruction assistance over the next decade.³ This was on top of almost \$1 billion raised through a United Nations flash appeal.

Most of the INGOs active in Haiti's post-earthquake effort belong to a humanitarian aid system made up of a wide array of actors that assist disaster-affected communities. During the last three decades, this system has become formalized, including through the development of standards and measurable indicators aimed at improving INGO performance, quality, and accountability. These standards and metrics include those developed by the Sphere Project and the Humanitarian Accountability Partnership (HAP), which are discussed in greater detail below. At the same time, many humanitarian organizations have incorporated rights-based language and approaches into their work.

The humanitarian aid system regularly employs benchmarks and indicators to monitor its work and is experienced at applying these metrics in post-natural disaster interventions. By contrast, the human rights advocacy community has less experience both in utilizing benchmarks and indicators and in monitoring rights in post-natural disaster situations. Recognizing that humanitarian actors often are the primary actors working with rights-holders after a natural disaster, we provide results from an online survey of humanitarian workers and volunteers that was conducted in May and June 2010. The purpose of the survey was to

understand how the humanitarian aid system adopts or incorporates human rights into its post-natural disaster work and metrics. Data collected from Haiti suggest that humanitarians have embraced a rights-based approach but that they do not agree how this is defined or about what indicators/benchmarks can be considered rights-based. This disagreement may reveal that humanitarians are aware of a mismatch between the rights-based approach to post-disaster humanitarian work and the legal framework of human rights. Using participation and accountability as examples, we identify and examine this mismatch and suggests that the humanitarian aid system should more fully embrace engagement with the human rights framework.

We conclude that to do so, the humanitarian actors and the human rights community should have an open dialogue about the development of metrics that accurately reflect and monitor adherence to the legal framework of human rights. This would allow the humanitarian aid system to ensure that its interventions enhance the capacity of the disaster-affected state to fulfill its human rights obligations, and would allow humanitarian and human rights actors alike to measure the impact of such interventions on the realization of human rights in post-disaster settings.

Section I presents the survey methodology, and Section II provides survey results. Section III analyzes the data addressing the internalization of rights-based language in the field of humanitarian assistance, while also identifying a lack of uniformity in both the understanding and application of rights-based approaches as exemplified by the differing rights-based standards adopted by several INGOs active in Haiti after the earthquake. Section III also examines how the Sphere Project's Minimum Standards in Disaster Response and the Human

Accountability Partnership (HAP) Standard—chosen for their prominence, common use, and acceptance as “best practice” within the humanitarian aid system—integrate specific understandings of participation and accountability, and identifies how these understandings differ from the legal human rights framework. Specifically, this section reveals that the relationship of humanitarian action to the state—the primary actor responsible for human rights under international law—is not systematically reflected in rights-based humanitarian standards and indicators.

Finally, Section IV concludes that in order to ensure the lasting positive effects of humanitarian action on the rights of disaster-affected communities, the humanitarian aid system should draw more directly, where possible, upon the human rights legal framework. Engagement with this framework will allow humanitarians to identify the ways in which their work can strengthen relationships between rights-holders and duty-bearers. This engagement will also explicitly reintegrate the state as a key actor in response efforts during disaster scenarios, working toward continued respect, protection, and fulfillment of human rights fundamental to all persons, even those affected by disaster.

I. METHODOLOGY

An online survey was conducted in English and French between May 18 and June 15, 2010. This survey was originally designed and conducted as part of the research for Satterthwaite’s “Indicators in Crisis: Rights-Based Humanitarian Indicators in Post-Earthquake Haiti,” which appeared in the *NYU Journal of International Law & Politics* in 2011, and from which the introduction and methodology sections of this article draw heavily. NYU’s University Committee on Activities Involving Human Subjects provided review of the research and informed

consent protocol for this survey, which gathered responses from 138 unique participants who met the inclusion criteria of working in the humanitarian or development fields and having worked full-time in or in relation to Haiti at some point during the preceding two years. The respondents in this convenience sample were recruited through online postings on humanitarian sites, targeted emails to the Haiti-based Humanitarian Clusters (the coordination mechanisms for emergency responders), and individual emails to humanitarians listed in the system’s “3W” (“Who, What, Where”) report for Haiti, which lists key contacts within the humanitarian aid system for a given emergency.

Rather than supplying a definition, the survey asked respondents to define the term “indicator” in relation to their work. Reflecting the range of different—and often interchangeable—terms used in the humanitarian sector, questions referred to “indicators or benchmarks” and did not explore the difference between these concepts. Similarly, the concept of the “rights-based approach” was not defined. Respondents were asked to define the term themselves and to report whether they were using such an approach. They were also asked whether and why the approach was more or less relevant to Haiti than to other emergencies.

Another question sought humanitarians’ opinions about whether and how specific indicators were rights-based. These indicators were either drawn directly from indicators in wide use in the humanitarian sector or they were designed based on industry standards (see discussion below). Respondents were also asked to supply their own example of a rights-based indicator.

II. RESULTS

The online survey collected data from 138 unique respondents. Not all respondents answered every question; thus, the data responsive to some questions are more robust than others. Both the number of respondents who answered questions and the corresponding percentages are provided below.

Respondents and their work

Sixty-three of 138 (46%) respondents identified as female, and 93 of 138 (67%) identified as non-Haitians. The majority of respondents, 60 of 110 (55%), came from INGOs, and the rest represented a diverse group of national and other international

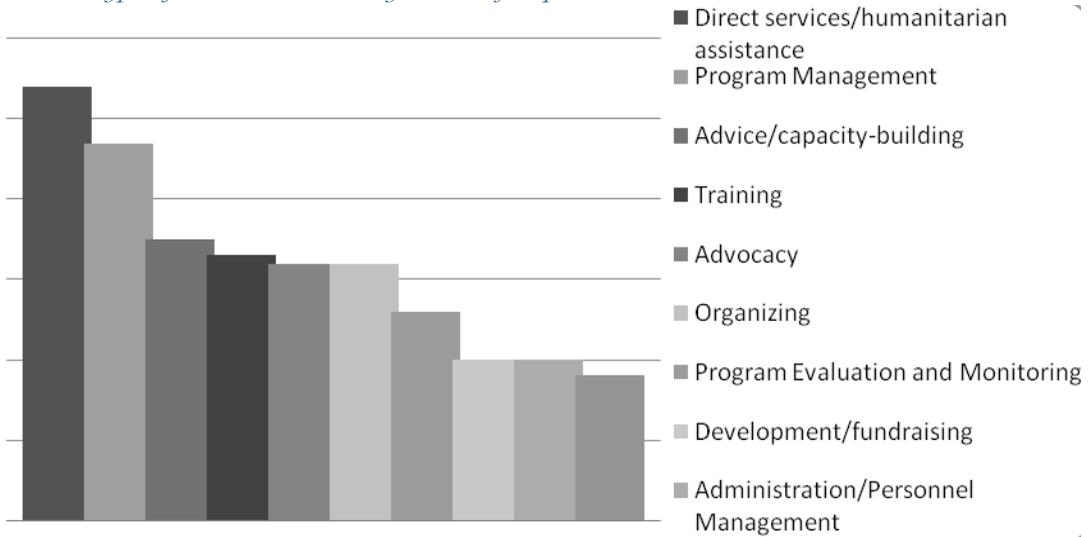
institutions (see Table 1). Of the 110 respondents, most worked or were working in Haiti. Thirty-four (31%) worked in field offices, with an identically sized group in regional or country offices. Eighteen (16%) operated out of headquarters offices; 5 (5%) in field offices outside of Haiti; and 4 (4%) in regional/country offices outside of Haiti. The remaining respondents were based in other locations.

Respondents had assorted responsibilities across a variety of technical sectors, with the work of many respondents not limited to a single function or sector (see Tables 2 and 3).

Table 1. Types of organizations employing survey respondents

Type of Organization	Number of Respondents	Percentage of Total Respondents
International NGO	60	55
International organization (UN, OAS, etc.)	18	16
Other	9	8
National NGO based in Haiti	6	5
National NGO based outside Haiti	6	5
Donor/Funder	4	4
Independent consultant/Trainer	4	4
Academic institution	3	3
Total	110	100

Table 2. Types of Haiti-related work by number of respondents*



*Some respondents indicated multiple types of Haiti-related work

Table 3. Technical sectors

Sector	Number of Respondents*	Percentage of Total Respondents*
Shelter, settlement, non-food items, camp management	38	35
Water, sanitation, and hygiene	31	28
Health services and systems	30	28
Food security, nutrition, food aid	29	27
Education	29	27
Human rights/Protection	27	25
Gender-based violence, women's rights, gender equality	26	24
Agriculture	25	23
Environmental protection	22	20
Psychosocial	21	19
Other	20	18
Economic recovery and growth	16	15
Rule of law, judicial reform, legal reform	12	11
Logistics and telecommunications	11	10
Rights of the disabled	6	6
Total	109	100

*Some respondents selected multiple sectors

Familiarity with and application of rights-based approaches

Eight-five out of 100 (85%) respondents reported being at least somewhat familiar with international human rights treaties; they were less familiar with Sphere, Inter-Agency Standing Committee (IASC) guidelines, and the HAP Standard (77 out of 101 [76%]; 66 out of 98 [67%]; 52 out of 97 [54%], respectively). Fewer respondents actually had hard or soft copies of these standards available to them in their Haiti-related work. Sixty-three out of 101 (62%) had copies of the Sphere Handbook; 54 of 100 (54%) had international human rights treaties; 48 of 97 (49%) had IASC guidelines; and 29 of 97 (30%) had the HAP Standard.

A large majority, 63 of 74 (85%) reported using a rights-based approach in their Haiti-related work. Moreover, 64 of 92 (70%) stated that they use indicators or benchmarks (quantitative or qualitative).

Among 56 respondents, 24 (43%) used indicators or

benchmarks daily; 18 (32%) weekly; 11 (20%) monthly, with the remainder using them less often.

Those responding to questions on indicators and benchmarks reported using indicators or benchmarks in many different capacities in their Haiti-related work, with the majority of respondents using them to design and implement projects and programs (see Table 4).

Those responding stated that indicators or benchmarks were made available to a range of stakeholders. Fifty-one out of 53 (96%) said indicators or benchmarks were made at least rarely available to international organizations (UN and/or others); 50 out of 55 (91%) to funders; 48 of 53 (91%) to beneficiaries; 43 of 51 (84%) to the public (via Internet/media/reports); and 41 of 50 (82%) to the host country government.

Responses to questions regarding the impact of a

Table 4. Use of indicators/benchmarks in Haiti-related work

Use	Number of Respondents*	Percentage of Total Respondents*
Designing projects/ programs	49	83
Implementing projects/ programs	48	81
When reporting to donors/funders	4	78
Evaluating projects/ programs	43	73
Training staff/volunteers	32	54
As an example of good or best practice	31	53
When reporting to beneficiaries	26	44
When reporting to host government	22	37
When conducting advocacy	21	36
Other	4	7
Total	59	100

*Some respondents selected multiple uses

rights-based approach in Haiti were overwhelmingly positive (see Table 5).

Table 5. Questions regarding the impact of a rights-based approach in Haiti

Does a rights-based approach in Haiti...	Yes	No	Total Respondents
Ensure the service provided/work done is in line with human rights standards?	58 (92%)	5 (8%)	63 (100%)
Ensure the inclusion of vulnerable and marginalized groups and persons?	56 (92%)	5 (8%)	61 (100%)
Improve the impact of your work?	59 (91%)	6 (9%)	65 (100%)
Make your work more accountable to beneficiaries?	54 (87%)	8 (13%)	62 (100%)
Ensure the active participation of beneficiaries?	51 (86%)	8 (14%)	59 (100%)
Make your work more accountable to funders?	50 (85%)	9 (15%)	59 (100%)
Make your work more transparent to funders?	47 (81%)	11 (19%)	58 (100%)
Make your work more transparent to beneficiaries?	48 (80%)	12 (20%)	60 (100%)
Improve the efficiency of your work?	50 (79%)	13 (21%)	63 (100%)
Make your work more transparent to the host country government?	43 (78%)	12 (22%)	55 (100%)
Make your work more accountable to the host country government?	41 (72%)	16 (28%)	57 (100%)

Likewise, responses to questions regarding the impact of using indicators/benchmarks in Haiti were similarly positive (see Table 6).

Considering indicators or benchmarks in a more general context, responses varied. Forty-six out of 53 (87%) respondents believed indicators or benchmarks improved the accountability of programming; 44 of 52 (85%) believed they improved the transparency of programming; and 31 of 51 (61%) believed they were more objective than other forms of impact measurement.

Identifying limitations, only 21 out of 51 respondents (41%) agreed with the statement, “Indicators/benchmarks are usually accurate in the emergency context.” Furthermore, 37 out of 50 (74%) agreed that “indicators/benchmarks can skew programming because they become the goal even when other aims should be more important.” Though 49 out of 58 (84%) respondents believed it was possible to design indicators/benchmarks that are rights-based, 34 of 51 (61%) claimed “indicators/benchmarks are difficult to design because data is often missing in humanitarian emergencies.”

Table 6. Questions regarding the impact of using indicators/benchmarks in Haiti

Do you think your use of indicators/benchmarks in Haiti-related work...	Yes	No/Don't Know	Total Respondents
Improves the efficiency of your work?	52 (96%)	2 (4%)	54 (100%)
Improves the impact of your work?	54 (96%)	2 (4%)	56 (100%)
Ensures the inclusion of vulnerable/marginalized persons and groups?	50 (93%)	4 (7%)	54 (100%)
Ensures that the services provided are in line with human rights standards?	49 (92%)	4 (8%)	53 (100%)
Makes your work more accountable to funders?	51 (91%)	5 (9%)	56 (100%)
Makes your work more transparent to funders?	48 (89%)	6 (11%)	54 (100%)
Makes your work more transparent to beneficiaries?	46 (84%)	9 (16%)	55 (100%)
Makes your work more transparent to beneficiaries?	47 (85%)	8 (15%)	55 (100%)
Makes your work more accountable to beneficiaries?	46 (84%)	9 (16%)	55 (100%)
Ensures the active participation of beneficiaries?	45 (83%)	9 (17%)	54 (100%)
Make your work more transparent to the host country government?	40 (82%)	9 (18%)	49 (100%)
Makes your work more accountable to the host country government?	36 (73%)	13 (27%)	49 (100%)

III. DISCUSSION

The survey data suggest that the integration of rights-based approaches into the humanitarian system is widespread. The majority of respondents asserted some familiarity with international human rights treaties, and almost half reported having access in their immediate working environment to texts of human rights treaties. Perhaps surprisingly, more respondents were familiar with human rights treaties than with standards and indicators developed for use specifically by humanitarian actors, namely those of Sphere and HAP. The same very high percentage—85%—of respondents indicating a familiarity with human rights treaties also reported using a rights-based approach to their Haiti-related work. While respondents were overwhelmingly positive about the impact of a rights-based approach and the benefits of indicators/benchmarks in their Haiti-related work, fewer agreed that indicators/benchmarks are accurate in emergency settings like Haiti, with a majority believing that indicators/benchmarks can skew programming.

While the survey results suggest that representatives of the humanitarian aid system in Haiti have internalized rights-based language and use a rights-based approach, the data suggest that practitioners have differing understandings of what a rights-based approach actually means and how it should be applied. These differences can be more fully understood by moving beyond the survey data to compare the differing concepts of a rights-based approach in use by different INGOs, and by identifying key principles of human rights, such as participation and accountability, and comparing their legal content to corresponding concepts in the humanitarian aid system.

This section provides a brief background on the his-

tory and development of humanitarian-specific indicators. It then discusses the rights-based approach grounded in a legal framework of human rights. Then, the section contrasts the conceptualization of two key rights-based principles—participation and accountability—from the perspective of the humanitarian aid system and that of the human rights legal framework. The section concludes by suggesting that the humanitarian aid system's rights-based approach is not sufficiently grounded within the legal framework of rights. To ensure it is so grounded, this section suggests that the tool of indicators and benchmarks could be adapted to transform the rights-based approach from an abstract framework into a concrete process by drawing more directly from international human rights law. The authors suggest a dialogue be opened between humanitarian actors and the human rights community to develop metrics that better reflect and monitor human rights in post-disaster settings within a legal framework.

Background

While more detailed, complex histories have been provided elsewhere, it is sufficient for this brief article to note that the systematic integration of human rights standards into operational humanitarian assistance programming tools can be traced to humanitarians' distress about their role in several well-known emergencies, especially the famine in Somalia in the early 1990s and the aftermath of the Rwandan genocide in 1994.⁴ In relation to Rwanda, prominent humanitarians and analysts found that humanitarian organizations, through the provision of assistance to individuals displaced by genocide, either failed to prevent or contributed to prolonged human suffering, and in some cases loss of life. Specifically, refugee camps outside of Rwanda were home to former leaders of the genocide, and aid distributed there was diverted to support military efforts

on behalf of resurgent génocidaires in Rwanda and the Congo. In this context, the Joint Evaluation of Emergency Assistance to Rwanda identified the need for humanitarian organizations to set up self-regulation schemes aimed at improving performance or, failing that, recommended that they should be subject to binding regulation schemes run jointly by INGOs and official agencies.⁵

By 1996, humanitarian organizations had set up the Active Learning Network for Accountability and Performance (ALNAP) and the “Standards Project,” which later became the Sphere Project, aimed at formulating standards for humanitarian assistance. Members of the humanitarian aid system identified the need to ensure their accountability to beneficiaries and other stakeholders. The “Humanitarian Ombudsman Project” researched potential models and determined that ombudsman systems—in which an external body is vested with power to find facts and impose sanctions—“were only effective in societies with well-established public services and fair, effective and accessible judicial systems.”⁶ Thus, following additional research during 2001-2003, it was decided “that humanitarian accountability could best be strengthened and implemented through the creation of a strong international self-regulatory body, able to insist on monitoring and compliance.” In March 2003, HAP became this self-regulatory body.⁷

Drawing together principles from international humanitarian law, international human rights law, and refugee law relevant to international humanitarian assistance, the Sphere Project Handbook begins with a humanitarian charter, which asserts that “all possible steps should be taken to alleviate human suffering arising out of conflict or calamity, and that civilians so affected have a right to protection and assistance.”⁸ This right to assistance was asserted to

be based on individuals’ “right to life with dignity” as guaranteed through human rights and humanitarian law concerning the right to life, the right to an adequate standard of living, and the right to be free from cruel, inhuman, or degrading treatment.⁹ This framing of rights, in which the content of the rights is set out clearly but the corresponding obligation to fulfill those rights is not articulated as binding on any specific body, is striking. This omission has remained an integral component throughout the evolution of the Sphere Project and other efforts at standardization developed by the humanitarian aid community.

Rights-based approach

The concept of the “rights-based approach” first emerged within the field of development, with the recognition that development projects that failed to explicitly incorporate human rights could be counterproductive to the fulfillment of rights.¹⁰ Recognizing that human rights should guide the way development projects are undertaken, rather than only the results they achieve, a rights-based approach focuses on the processes involved in development projects as well as outcomes. The United Nations system adopted a “Common Understanding” regarding the use of a rights-based approach in United Nations development programming in 2003.¹¹ The conceptual framework for this approach integrates the norms, standards, and principles of international human rights law into the plans, policies, and processes of development and incorporates the following elements: empowerment, indivisibility and interdependence of all human rights, non-discrimination and attention to vulnerable groups, accountability, and participation.¹²

In the development context, a rights-based approach is set apart from others in that it draws on the existing legal framework of human rights, which codifies relationships between rights-holders—those individuals

and groups with valid claims and legal entitlements—and duty-bearers, those with correlative obligations to those claims or legal entitlements. Traditionally, state actors, as the primary guarantors of rights within their jurisdiction, inhabit the role of duty-bearer. In some circumstances, non-state actors may serve as duty-bearers within the rights-based framework, and thus bear some obligations to rights-holders. It is this legal relationship between rights-holders and duty-bearers, and the accountability the latter has to the former, that distinguishes a rights-based approach from other approaches. The role of development assistance is thus to strengthen the opportunities for rights-holders to claim their rights, and the capacity of duty-bearers to respond to such claims and fulfill rights.

Drawing from a range of sources, including the articulation of the rights-based approach in the development context, as well as international human rights and humanitarian law, an ever-growing number of humanitarian organizations have developed distinct rights-based approaches to their disaster relief work. For example, one of the organizations responsible for a large number of managed camps of internally displaced people after the earthquake in Haiti, Concern Worldwide (Concern), states on its website that it is “guided by” codes of conduct and practice including the Code of Conduct of the International Red Cross and Red Crescent Movement in Disaster Relief, the Humanitarian Charter, the People in Aid Code of Practice in the Management and Support of Aid Personnel, the Sphere Project’s Minimum Standards in Disaster Response, and the HAP Standard.¹³

Catholic Relief Services (CRS), also deeply embedded in relief efforts in Haiti, affirms in its “Guiding Principles” that:

Every person has basic rights and responsibilities that flow from our human dignity and that belong to us as human beings regardless of any social or political structures. The rights are numerous and include those things that make life truly human. Corresponding to our rights are duties and responsibilities to respect the rights of others and to work for the common good of all.¹⁴

Likewise, other prominent humanitarian organizations operating in Haiti, including the American Refugee Committee, International Emergency and Development Aid, Première Urgence, Oxfam, World Vision, Save the Children, Croix Rouge de France, and Action Contre la Faim, adhere to their own set of guidelines and standards, including some form of rights-based standards. In the end, an organization’s “rights-based approach” is determined not only by the legal framework, but by the organization’s founders, governors, stakeholders, and others, rendering the term somewhat relative to the organization or group one happens to be addressing.

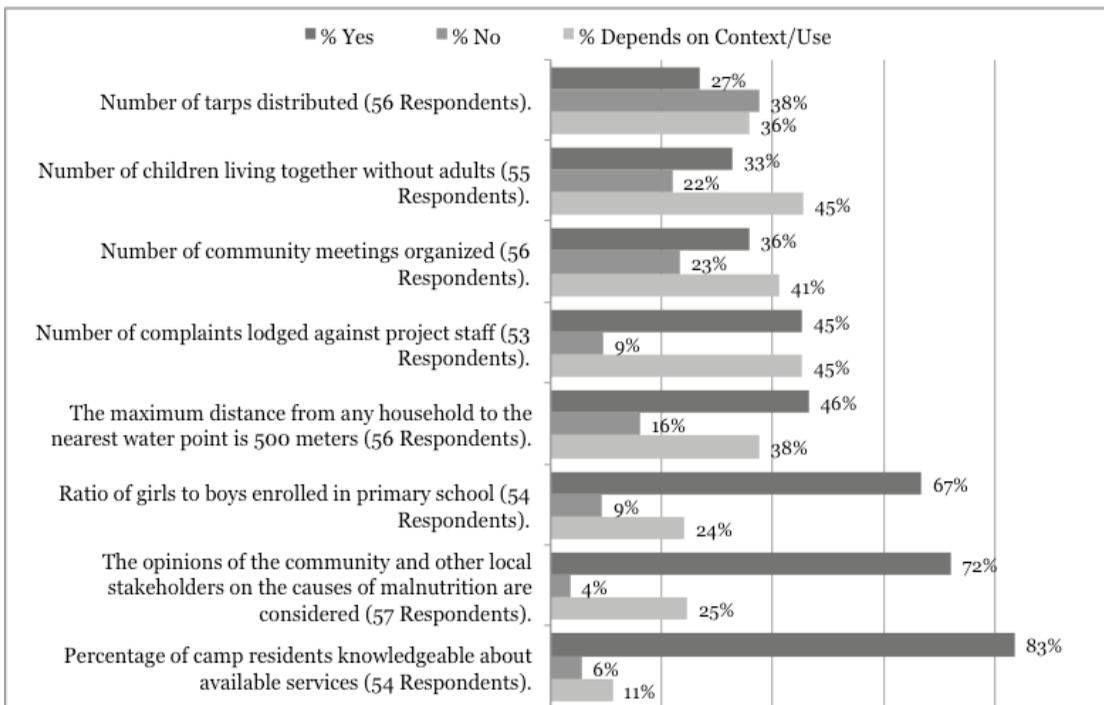
Each humanitarian organization defines a rights-based approach differently, varying widely as to whether or not, or to what degree, it establishes obligations in relation to its beneficiaries or to the disaster-affected state. The strength of a rights-based approach is that it delineates the different obligations of duty-bearers. All human rights—civil, political, economic, social, and cultural alike—impose three types of obligations: the obligations to respect, protect, and fulfill.¹⁵ The lack of any enumerated obligations for humanitarian actors could become problematic in natural disaster situations where the state, which is the primary guarantor of rights, is weakened by the disaster and is itself suffering from the effects of the disaster. It may be unable, due to the magnitude of the disaster, to respond effectively

to the vulnerability of rights-holders caused by the disaster. By allowing humanitarian organizations to operate within its borders to ensure the provision of services to its citizens and to prevent further suffering caused by the disaster, the state recognizes its inability to meet the needs and rights of its citizens, which in effect may outsource some of its obligations to a third party. However, doing so without a clear articulation of what obligations those third parties have taken on vis-à-vis the disaster-affected populations and in relation to the state can leave a gap in protection for those populations.

The lack of congruency in rights-based approaches used by different INGOs manifests in the data. While 85% of survey respondents asserted that they integrated a rights-based approach into their work in Haiti, respondents could not agree whether the key

professional standards developed for humanitarian organizations could be considered rights-based. Thirty-six out of 50 (72%) respondents believed Sphere’s Project’s Minimum Standards in Disaster Response were rights-based, while only 26 out of 48 (54%) and 22 out of 50 (44%) believed IASC guidelines and HAP Standard and benchmarks, respectively, were rights-based. Some of this disagreement reflects the way the standards themselves present their relationship to human rights: while Sphere explicitly claims to be rights-based, the HAP Standard embraces core rights principles such as participation and accountability but does not use the term “rights-based.” IASC’s voluminous guidelines and practice guides do not all claim to be rights-based, although many of these standards are identifiable as such. Similarly, respondents disagreed or were unsure about what qualified as rights-based indicators or

Table 7. Do you think the following indicators/benchmarks are rights-based?



benchmarks (see Table 7).

Two of the indicators included in Table 7 were taken from Sphere (maximum distance to a water point and opinions of community on causes of malnutrition). A Haiti-specific indicator was drawn from the UN system's humanitarian appeal for Haiti (number of tarps distributed). Several indicators were modeled on industry standards concerning participation and accountability in humanitarian response (number of community meetings organized, number of complaints lodged against project staff, and percentage of camp residents knowledgeable about available services). One indicator was modeled on *The Good Enough Guide: Impact Measurement and Accountability in Emergencies* (number of children living together without adults), and one was a substantive rights indicator (ratio of girls to boys enrolled in primary school).

At its worst, the conflicting understanding of rights-based approaches can inadvertently undermine the ability of affected populations to effectively demand their rights, because the definitions of rights-holders and duty-bearers, and the corresponding relationships and accountability between them, are blurred when humanitarian organizations operate within their own conception of a rights-based framework. Fundamental to a rights-based approach is the insight that a violation of rights must be remedied through recourse to the appropriate actor, and that external aid efforts should be aimed at guaranteeing that the appropriate actor has both the capacity and the will to provide such remedies. This key insight is lost amid the proliferation of approaches that seek to address the rights of affected populations, but do not systematically identify and seek to strengthen the corresponding obligations of the actors responding to the disaster. It is notable that this insight was one of

the factors in the decision by the humanitarian community not to adopt an Ombudsman mechanism: there was concern that assigning legal obligation to an external actor could displace the obligations that states had under human rights law.¹⁶

By adopting their own rights-based approach, humanitarian organizations may understand themselves to be directly fulfilling the human rights of beneficiaries, despite their well-protected independence and frequent lack of direct legal accountability to those beneficiaries. However, as discussed further below, if humanitarian organizations more explicitly engage in a legal rights-based framework, the state will be incorporated into the framework, and the relationship between rights-holders and duty-bearers, and their corresponding obligations, could be defined more clearly. By doing so, humanitarian efforts could reduce gaps in legal accountability for beneficiaries and build the capacity of the state to uphold its human rights obligations, thus furthering the ability of rights-holders to realize their rights.

Participation

The different concepts in humanitarian organizations' definitions of the rights-based framework can be more fully understood by comparing them with analogous principles at work in humanitarian settings as articulated by the Sphere Project's Minimum Standards in Disaster Response and the HAP Standard. As an example, this section will compare participation as a key principle of both human rights and in the Sphere Project standards and indicators. Participation is also a key element of the HAP Standard, but this section will focus on the principle of participation in the Sphere Project.¹⁷ Many of the issues related to participation highlighted in this section have been analyzed by humanitarian actors

themselves, though such analyses have tended not to engage with human rights law. As a result the concept of participation differs under humanitarian principles and human rights law. This creates a risk in a post-disaster setting that participation, as defined by humanitarians, will dilute the broader right to participation.

Though a full discussion on the legal framework of the right to participation is beyond the scope of this article, a basic understanding of the term demands a brief look at both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The UDHR specifically provides for the right to political participation.¹⁸ According to the UDHR, every person has the right to participate in the government of his/her country, either directly or through freely chosen representatives. The UDHR also extends the right to participate to include equal access to public service and to participate in the cultural life of the community. The right to participate, according to the UDHR, also includes the right to enjoy and share in scientific advancement and its benefits. The right to participation as adopted by the UDHR, thus, has a political, public, cultural and, arguably, an economic aspect.

The right to participation extends, however, beyond these rights to encompass a broad range of rights necessary for the “meaningful participation of those affected in decision-making.”¹⁹ Thus, the right to participation should be considered in the context of all the rights contained within the UDHR, including the general principles stated in Articles 6 and 7 of the UDHR, which acknowledge the right of all persons to be recognized before the law without discrimination and with equal protection under the law.

While the UDHR is in itself non-binding, many of its principles are encompassed in binding human rights treaties, including the ICCPR and the International Covenant on Economic, Social and Cultural Rights. For example, the ICCPR specifically provides individuals with the human right to participate in the political life of the community.²⁰ According to the ICCPR, all citizens have the rights to participate in the conduct of public affairs, to vote and to be elected and to have access to public service.²¹ The ICCPR also recognizes the same rights to recognition and equal protection under the law and to freedom of opinion and expression.²² In addition, the ICCPR offers insight into preconditions for meaningful and full participation. For example, everyone has the right to use his or her own language, an important condition to ensure participation is possible.²³ According to the Human Rights Committee (HRC), the UN body charged with monitoring the implementation of the ICCPR, the right to participate in the conduct of public affairs extends “to all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”²⁴

The Sphere Project’s 2004 Minimum Standards in Disaster Response, the version available at the time of the survey, provides an influential example of how humanitarian organizations have attempted to incorporate rights-based approaches into their work by seeking the inclusion of beneficiaries in programming. Sphere’s “Common Standard 1: Participation” requires that “[t]he disaster-affected population actively participates in the assessment, design, implementation, monitoring and evaluation of the assistance programme.”²⁵ To monitor compliance with the standard, three indicators are recommended. The first indicator tracks beneficiaries’ access to information, asking whether women, men,

all age groups, and vulnerable groups receive information about assistance and opportunities to provide feedback throughout all stages of the project cycle. This indicator also requires the inclusion of both disaster-affected populations and wider local populations. The second indicator looks at whether written objectives and plans of projects reflect “the needs, concerns and values of disaster-affected people, particularly those belonging to vulnerable groups, and contribute to their protection.”²⁶ The third indicator is that program designs maximize the use of local skills and capacities.

Survey respondents were asked whether certain participation indicators, drawn from various sources including the Sphere Project and human rights law, were rights-based. There was no clear agreement among survey respondents concerning which elements of participation are rights-based. While 83% and 72%, respectively, believed that “the percentage of camp residents knowledgeable about available services” and “the opinions of the community and other local stakeholders on the causes of malnutrition should be considered” were both rights-based indicators, only 36% believed “the number of community meetings organized” was a rights-based indicator.

Humanitarian agencies tend to frame participation for beneficiaries within the confines of specific programs—not in relation to the exercise of participation in public life more broadly. For this reason, the lack of uniformity among respondents concerning which participation-related indicators they considered to be rights-based seems understandable. While the data cannot reveal the exact reasons for this disagreement, they do suggest what seems apparent from practice: that humanitarian actors monitor participation within narrow confines, and not in relation to the broader right to participation. Since humanitarian organiza-

tions in many contexts control vast resources upon which the population may depend in order to survive, participation of that population in programming is certainly crucial. But focusing on such participation, without encouraging and enabling a more robust avenue for participation in public life, for example through community meetings, may ultimately fail to ensure the full human rights of beneficiaries.

Understanding participation through a human rights lens also requires the assignment of obligations to duty-bearers. The Sphere Project’s Minimum Standards in Disaster Response do recognize that humanitarian organizations have some responsibility—at least as a matter of good practice—to rights-holders. However, adherence to the standard does not ascribe a clear relationship between the organization, the state, and the disaster-affected and wider local population. This differs from the human rights framework, which does define relationships between duty-bearers and rights-holders and assigns duty-bearers the obligations to respect, protect and fulfill. With regard to participation, the obligation to respect would require all duty-bearers to refrain from interfering with the enjoyment of the right to participation and those rights required for achieving the right to participation. The obligation to protect would require duty-bearers to prevent third parties from violating the right to participation; while the obligation to fulfill would require duty-bearers to take measures necessary to fully realize the right to participation.

A more robust rights-based framework would provide clarity about the relationship between the humanitarian aid system, the affected community, the wider population, and the state. This in turn would bring clarity to the obligations the system has in each relationship. The Sphere Project’s Minimum Standards in

Disaster Response standards do not do this, however, because the focus is project-based; thus, participation as a right to be involved in public life more broadly is not addressed by Sphere.

Participation according to the Sphere Project standards requires that humanitarian organizations create opportunities for beneficiaries and the wider population to take part in programming decisions. This is an important precursor to the realization of human rights, but the human rights principle of participation is naturally much broader and aims to ensure that all persons within the territory of the state have a say in the life of the nation. While ensuring this right may seem daunting, a more robust rights-based approach to participation in humanitarian interventions would ensure that participation in humanitarian programs would not replace the broader right to participation, but would create the environment which would enable the realization of that right. In a disaster situation such as Haiti, where myriad organizations are providing services to hundreds of thousands of people, the result of the more limited version of the rights-based approach is that opportunities for participation may exist within self-contained spaces, but the wider right of participation in response and recovery is neglected or inaccessible to those most affected by the disaster. Defined with reference to human rights law, participation would focus on the role of humanitarian organizations in strengthening the ability of beneficiaries to participate in larger political processes, and on ensuring the state has the capacity needed to facilitate and respond to such participation while refraining from limiting it. While broad political participation certainly cannot be guaranteed through humanitarian action, it can be enhanced through humanitarian programming that aims to ensure the fulfillment of rights as set out in human rights law. Designing indicators and benchmarks to measure this impact would

help humanitarian workers measure the extent to which their work is truly rights-based.

Accountability

Like participation, accountability is a principle both of human rights law and of standards developed by humanitarian organizations. This section compares the concept of accountability in human rights law and in the HAP Standard. Accountability is a bedrock principle of human rights, undergirding all human rights treaties. For example, Article 2 of the ICESCR requires states immediately to take steps to implement economic and social rights, including through legislation; to be effective, such legislative enactments must include accountability mechanisms for breaches. Article 2 of the ICCPR sets out the right to a remedy for violations of the rights included in the Covenant. The right to a remedy is at the core of all human rights and requires states to set up systems that can ensure those who violate human rights are held accountable and that those wronged receive redress. As the UN OHCHR has explained, “the *raison d’être* of the rights-based approach is accountability.”²⁷ In the development field, a great deal of work has been done to emphasize how rights-based approaches can enhance accountability by directing resources and attention to accountability mechanisms such as courts, national human rights institutions mandated to investigate and remedy violations, or other systems of redress. To this end, rights-based development programming aims to directly strengthen both the capacity of the state to respond to human rights violations through its official agencies and the capacity of rights-holders to demand accountability of those responsible for fulfilling rights and redressing wrongs.

In the humanitarian setting, tools such as the HAP Standard have been created that aim to make human-

itarian organizations more accountable to those affected by disasters. HAP defines accountability as a means through which power is used responsibly, recognizing that humanitarian organizations wield often immense power in disaster situations independent of the state. Indeed, accountability for the humanitarian aid system has been explored outside of HAP by academics and humanitarian organizations themselves.²⁸ HAP understands accountability not as a right in and of itself, but as a process by which people affected by a humanitarian organization's exercise of power have their views taken into account. HAP assists organizations to evaluate, improve, and validate their accountability through training, capacity-building, and auditing via benchmarks that assess whether specific processes are followed to ensure accountability in practice.

The Standard developed by HAP addresses an organization's relationship to its beneficiaries, and seeks to improve the quality and impact of its actions. HAP has created an accreditation process, by which an outside auditor measures an organization's compliance with the HAP Standard. The HAP Standard and its benchmarks serve as the auditing guidelines for the accreditation process. In developing the Standard, HAP created a set of principles for humanitarian action, a set of humanitarian quality management benchmarks, and guidelines for working with humanitarian partners. Certification requires an organization to undertake an audit, adhere to the principles and to fulfill qualifying norms including: formally declare itself an INGO wherever the organization works, adhere to financial accountability laws, and publicly provide its accountability framework, including how it plans to ensure accountability to its stakeholders. The first HAP Standard was launched in 2007; the revised 2010 HAP Standard, largely a re-organization of the first version, was released after the survey was

conducted.

Accountability for HAP is not explicitly about ensuring human rights; it is instead a vehicle for increasing the quality and responsiveness of humanitarian services. This is achieved in part by ensuring that beneficiaries are given information about an organization's programs, are able to participate in programming and make their voices heard, and have access to mechanisms allowing them to make complaints about the organization. In many ways, these requirements mirror those of human rights law, which mandates that individuals have access to information about government programs, have the ability to participate in public life, and can access remedies when their rights are violated.

However, the same mismatch between humanitarian standards and human rights law as was uncovered in relation to participation is present in relation to accountability. While human rights law requires that individuals have access to accountability mechanisms and means of redress through state institutions, the HAP Standard is concerned with beneficiaries' ability to access these things vis-à-vis humanitarian agencies directly. This is an extremely significant first step, and it grows out of the very laudable desire by humanitarian actors to respond to the rights of beneficiaries to hold them to account. However, to improve the human rights situation for disaster-affected populations in a sustainable manner, humanitarian action should also contribute to the capacity of the larger accountability structures within the relevant state to respond effectively to the claims of rights-holders. This might mean that humanitarian organizations need to subject themselves to local accountability structures like national human rights institutions, which may be vested with jurisdiction to hear complaints by beneficiaries against organizations or their

staff. For example, following the 2004 Asian tsunami, the Sri Lankan Human Rights Commission established a Disaster Relief Monitoring Unit to process complaints concerning domestic and international relief agencies.²⁹ Or it might mean that humanitarian organizations should work alongside the local planning ministry to set up complaints-handling mechanisms for all humanitarian aid, instead of creating a multitude of complaints mechanisms, each tied to—and controlled by—the relevant organization.

The crucial difference between the accountability mechanisms recommended by the HAP Standard and those required by human rights law lies in their binding nature and their institutional location. Humanitarian agencies that create complaints mechanisms and robust feedback systems do enhance the accountability of the agencies to their beneficiaries through direct lines of communication between beneficiaries and agencies. But they do not purport to subject themselves to binding state-based mechanisms that could, for instance, insist on redress as required under human rights law should an agency's complaints mechanism be inadequate. Such mechanisms recognize beneficiaries as rights-holders and enhance the capacity of the state to insist on specific standards of conduct. For this reason, defining accountability often implicates the principle of participation, because accountability is inherently relational, requiring the definition of "to whom" an entity is accountable, and thus "is closely linked to the effective participation of people."³⁰

Humanitarian actors may resist the idea that a rights-based approach requires affirmative engagement with the state, especially with respect to accountability mechanisms. This is understandable, given that the HAP and Sphere Project standards developed out of conflict situations where humanitar-

ian organizations struggled to protect their role in situations in which the host state is corrupt, inept, or actively predatory. However, as natural disasters become increasingly more frequent and destructive, the humanitarian aid system will be called upon to operate in situations different from the origins of the standards that guide them. The earthquake in Haiti demonstrates that natural disasters can have devastating impacts on both populations and on states. While the capacity of a host state may be diminished by the cause of the emergency itself, the state remains the primary guarantor of rights, and humanitarian organizations' engagement with the state is required to ensure the protection of citizens' human rights. Attention should be paid in such circumstances to enhancing and improving the capacity of the ultimate duty-bearer—the state—to uphold the rights of disaster-affected communities. Thus, where the state is inept or temporarily disabled by disaster, the humanitarian community should work to ensure the capacity of governmental institutions is restored, in part by engaging directly with—and perhaps thereby improving—its accountability mechanisms.

One respondent to the open-ended portion of the survey complained that a rights-based approach to humanitarian aid shifts responsibility for fulfilling beneficiaries' rights to humanitarian organizations and away from donor agencies, host governments, and donor states. According to this respondent, a rights-based approach actively removes the accountability of these actors and places the blame for failures on INGOs, thus decreasing accountability overall, because there is no recourse for failures due to lack of sufficient funding or political will. This respondent calls for equal participation and accountability for all stakeholders. This insight is crucial, since it underscores that current rights-based approaches—by focusing on the accountability of INGOs sepa-

rately from that of legal duty-bearers—distort rather than strengthen the accountability structures under international human rights law. An explicit commitment to building the capacity of legal duty-bearers should be embraced, alongside the recognition that the means for doing so will vary according to context. Concrete mechanisms for measuring the impact of humanitarians on the capacity of duty-bearers to deliver accountability, including the use of indicators and benchmarks, could be designed through joint action between humanitarians and human rights advocates.

IV. CONCLUSION

The earthquake in Haiti wreaked catastrophic damage, and the humanitarian aid system responded with great dedication and alleviated much suffering. With the emergency phase complete, the long-term impact of processes begun in that phase will continue to be felt. The purpose of this article is not to assess or critique the quality of the humanitarian intervention in Haiti.³¹ Instead, drawing on a survey about how humanitarian actors in Haiti understood the rights-based approach and the role of metrics developed within the humanitarian aid system, we analyze how principles in the humanitarian aid system might differ in meaning and application from similar principles in the legal framework of human rights. In doing so, we expose the mismatch between the humanitarian aid system's understanding of a rights-based approach and the legal framework of human rights. We argue that a humanitarian response that does not engage with the legal framework of human rights may not properly define relationships between rights-holders and duty-bearers, may bypass the state, and may not fully enhance the ability of disaster-affected persons to benefit from two of the fundamental principles of human rights—participation and accountability.

The scale of the disaster in Haiti will require humanitarian organizations to continue to play a role in providing services to the people of Haiti for years, as reconstruction and development plans begin to address long-term needs. While the survey data suggest that many humanitarian workers recognize the importance and necessity of a rights-based approach, this article calls for a clearer definition of the approach, in particular suggesting that the humanitarian aid system should explicitly acknowledge and analyze its relationship with the state. To do so, humanitarian and human rights actors should work to develop metrics to ensure interventions are rights-enhancing. Recent work by the Sphere Project to more fully integrate human rights principles into its standards—especially through the creation of a new set of standards on protection—should be applauded; though, the implications of changes to the 2011 Sphere Handbook are yet to be determined.³² Similarly, HAP's work as a leader in recommending concrete steps to improve the accountability of humanitarian agencies through capacity-building and hands-on advice in very difficult circumstances must be recognized. Both agencies are undertaking important work on the ground in Haiti. Further steps are needed, however.

The state remains the primary duty-bearer in a post-natural disaster context. Interventions that seek to build the capacity of the state and that use of metrics to capture that capacity-building function should be an ultimate goal for the humanitarian aid system in the post-emergency phase of a natural disaster. Failing to involve the state adequately may lead to gaps in human rights protection, as disaster-affected people may lack avenues for participation or recourse for violations of their rights. Failing to measure that involvement through appropriate indicators and benchmarks will mean that the system cannot

account for the impact of such activities.

Ultimately, beyond Haiti, the humanitarian aid system—however well-intentioned, accountable, and participatory individual organizations intend to be—will fail to create lasting solutions for rights-holders unless it more robustly integrates human rights into disaster response. While rights-based language has taken hold among those providing humanitarian aid, ensuring that rights-based approaches fit within actionable human rights legal systems remains a work in progress. For the rights of persons affected by disaster to truly be protected, humanitarian actors and the human rights advocacy community must work together to develop metrics that more explicitly reflect the legal framework of rights and meaningfully support the disaster-affected state in meeting its human rights obligations.

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