PART TWO • *The Report*

Chapter 1 • *Introduction*

1.0. Introduction and Background

In recent years humanitarian agencies have often debated how to improve their practice and make it more accountable to people receiving assistance. Critical efforts have been made to establish codes and analytical frameworks by which humanitarian action can be judged and to provide a basis for agreement on what constitutes good practice. The first of these efforts saw the establishment in 1992 of the *Code of Conduct for the International Red Cross Movement and International NGOs in Disaster Relief*. The code contains 10 points of good practice and was developed by representatives of a consortium of eight networks of humanitarian agencies, under the auspices of the Steering Committee for Humanitarian Response (SCHR). The aim of the code is to 'guard our standards of behaviour' by developing standards against which performance can be measured. By the end of 1997, 149 agencies had signed the code and 144 countries had pledged to promote it in their own countries.

The accountability agenda gained further momentum in the aftermath of chaotic relief operations in the Great Lakes Region of Central Africa, resulting in the development of other complementary initiatives:

- *The Sphere Project*, which is currently developing sets of 'minimum standards in humanitarian response' for different sectors of relief intervention. These are intended to serve as a charter of what beneficiaries have a right to receive. This is being carried out under the auspices of SCHR.

- *People in Aid*, a code developed to increase accountability to aid personnel. By providing a commitment to more effective management and protection for humanitarian workers, the code is intended to increase the quality and effectiveness of aid to beneficiaries.

- *Active Learning Network for Accountability and Performance (ALNAP)*, a network for discussing issues in this field. It seeks to gather, analyse and disseminate information and research on the unique challenges of evaluation and accountability posed by humanitarian agencies.

In spite of the diversity of agencies within the humanitarian system, these initiatives have helped to develop a common understanding of what is meant by standards of good practice. While there will be differences of opinion between agencies (indeed, this is probably a positive thing) real progress has been made towards developing a stronger basis for discussion and understanding. At the same time, it has proved more difficult to reach agreement on *how* these various codes and standards can be brought into operational decision making and, most importantly, *who* (if anybody) should monitor and enforce them. The Joint Evaluation of Emergency Assistance to Rwanda suggested that such a task might be carried out by an ombudsman's office and recommended that the international community should:

Identify a respected, independent organisation or network of organisations to act on behalf of beneficiaries of humanitarian assistance to perform the functions described in option (ii) .[including to] undertake regular field-level monitoring and evaluation of humanitarian assistance, and review the adequacy of standards followed, serve as an ombudsman to which any party can express a concern related to provision of assistance

This concept was revisited at the World Disasters Forum, held in London on 17 June 1997 . The theme was 'Accountability in Humanitarian Assistance' and one of the main conclusions was that 'there is a clear need for a body that reports on agencies in the field. However, at present there is very little consensus about how such a body would function' (World Disasters Forum, 1997) Furthermore, it was explicitly recognised that while non-governmental organisations (NGOs) have to respond to a wide range of interested bodies to whom they are accountable in some way, the current system is in no way accountable directly to beneficiaries or 'claimants' – the very people it purports to assist. The Forum's main recommendation, therefore, was to investigate the feasibility of piloting an Ombudsman for Humanitarian Assistance (HAO)

Why an ombudsman? The main rationale was that an ombudsman may be the most appropriate mechanism to help bridge the accountability gap between the agencies and the claimants There was a general consensus at the Forum that the humanitarian community in the United Kingdom (UK) needed to know more about this idea

The British Red Cross offered to coordinate the study on behalf of the NGO community in the UK Subsequently, the study was funded by the British Red Cross, the UK's Department for International Development and Oxfam Support was also provided by the Swedish Red Cross The work itself has been carried out by a working group of six people who have provided inputs at different times and on different subject areas (see Annex 3 for people involved and their roles)

1.1. Aims of the Study

The overall goal of this study is to provide sufficient information to the NGO community in the UK to enable it to act on the recommendations from this report at the World Disasters Forum on 10 June 1998 To achieve this goal, two specific aims are

1 To conduct research into the concept and practice of ombudsmen and to give some indication as to whether the ombudsman model can be adapted for use in humanitarian emergencies.

2 To initiate a process of consultation and dialogue with the NGO community in the UK in order to provide feedback on how such a concept can be expected to work in practice. This will provide a basis for any future collective action that needs to be taken.

Each of these discrete aims is clearly dependent for its success on the other While the background research provides a foundation for an understanding of 'what an ombudsman is', only through consultation and dialogue can we hope to conclude whether an ombudsman is a feasible option for the humanitarian sector. The study therefore combines research and an unusually high level of discussion and dialogue throughout

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[1] The World Disasters Forum is an annual event that provides a unique opportunity for key professionals in the humanitarian relief system to debate and act upon the principal themes in the latest World Disasters Report produced by the International Federation of the Red Cross

1.2. Aim One – Research

As part of the development of a project proposal for this study, the working group had a number of discussions with key professionals in the NGO community It emerged that, at the most fundamental level, an effective ombudsman in this sector should have two main interrelated functions first, to hear and act upon the grievances of unsatisfied claimants of humanitarian assistance, thus giving claimants a voice; and second, to monitor and assist with compliance by humanitarian agencies to accepted principles and standards of best practice.

The primary aim of the research component, therefore, was to assess the feasibility of an HAO to act on behalf of claimants and to assess if/how an HAO would assist agencies in complying with agreed standards and principles when engaged in humanitarian action. This aim has been achieved through four short studies.

Study 1   What is an ombudsman?
The first study investigated the concept, practice and experiences of ombudsman schemes. This involved a desk study of UK and international ombudsmen and a number of interviews with existing ombudsman schemes in the UK (see Annex 4 for a list of people consulted). A short paper has been drafted on the findings and a summary is presented in Chapter 2 of this report

Study 2   Alternative mechanisms of accountability
On the advice of the steering group, a second short study was undertaken to look at additional mechanisms of accountability that are used by other organisations and institutions These included accreditation, social auditing, watchdogs and stakeholder participation A short paper was drafted and some results are presented in Annex 1

Study 3   An HAO as a regulator or as a facilitator?
This study examines the various approaches available to an ombudsman in interpreting codes of conduct The findings from the research paper are reflected in Chapters 3 and 4 of this report.

Study 4   How would an HAO work in practice? Three case scenarios
As there was insufficient time to field test the model developed by the working group, three case scenarios were written which attempted to apply the model to real life situations Through these scenarios, it is possible to see what steps an HAO might take when engaged in duties in the field. It should be stressed that these scenarios have their limitations, as they are based on a number of assumptions and have not been tested. They do, however, provide a more tangible feeling for how an HAO might work. The scenarios are presented in Part III and are referred to in Chapter 4

The above papers and scenarios have been distributed among members of the steering group and other interested individuals from NGOs and other institutions They have also been placed on the Ombudsman Project website (see below)

1.3. Aim Two – Participation and Ownership

This study emerges from a recognition by the UK humanitarian community that something concrete was required to improve accountability towards claimants Ultimately, the NGO community in the UK has to have ownership of the HAO concept in order to be able to take it forward collectively This study therefore seeks to reflect the collective view of the entire British NGO community In practice, this has meant that, to the extent possible, each NGO that is involved in humanitarian assistance has to have been afforded the opportunity to provide meaningful input This has been achieved by using several processes

Face to face interviews
Track one of the consultation process involved face to face discussions with key people in most UK humanitarian agencies to discuss the concept and potential practice of an HAO Most of this work has been carried out by the project manager, who has conducted a total of 19 individual interviews Efforts have been made to ensure as much regular contact with each of these people as was feasible, with an opportunity to contribute to the study as it developed The project team estimates that this 'trawling process' included all of the major UK humanitarian agencies and several smaller agencies

In addition to talking to key agency representatives, the project manager has met with a range of people in the academic world and other international bodies, both in Europe and in the United States of America Of particular note are the World Bank Inspection Panel, the Consumers Association and a number of UN agencies Annex 4 provides a complete list of organisations and individuals consulted

Use of a reference group and a steering group
The second process involved establishing a steering group and a reference group to help set the direction of the project and provide reference points on progress The steering group was made up of senior representatives of UK humanitarian agencies, including some who are members of the Disasters Emergency Committee (DEC), an academic and a representative of the Department of International Development This group met every second month and was responsible for prioritising the main issues and objectives for the working group to take forward The terms of reference of the steering group and its membership are presented in Annex 3.

The reference group contained a wider selection of British NGOs (see Annex 3) and efforts were made to include the smaller agencies as well The project manager visited members of the reference group and a one-day workshop was held Presentations were made and discussions in smaller workgroups followed on the most pertinent issues Representatives from the Sphere Project and ALNAP were also invited and presented progress reports This allowed the reference group to see how the various initiatives complemented each other within a wider international picture.

Using the Internet to gather input from the beneficiaries or claimants
One of the most important reasons for embarking on this study was to address the challenge of hearing and acting upon the needs of potential claimants. It was impossible within the context of this study to go out and gather the views and opinions of those likely to be the recipients of humanitarian assistance The working group, therefore, has set up a web page for the Ombudsman Project, in an attempt to give groups based in the beneficiary countries of the South – individual NGOs, NGO umbrella groups, NGO consortiums and any other interested parties – a chance to comment on the study by responding to an on-line survey. This questionnaire is presented in Annex 5.

Of course, this initiative will not reach the real claimants of humanitarian assistance directly. Nevertheless, it can provide a preliminary indication of whether or not an ombudsman would be accepted and workable in the Southern context At the time of preparing this report, 20 responses had been received from various groups and the overwhelming number have given positive support to the project A progress report will be prepared at a later date. The web page and on-line survey can be found at *www.oneworld.org/ombudsman.*

1.4. Complementary Initiatives

A number of complementary initiatives are being carried out, all of which aim to improve accountability and performance The working group has recognised the importance of ensuring links with these initiatives and joint consultations and discussions have taken place with the Sphere Project, ALNAP and People in Aid Updates from the study have been presented at ALNAP meetings, and a representative from the Sphere Project has participated in the reference group workshop.

1.5. Structure of the Report

Part I   *Executive Summary*

Part II   *Main Report*

CHAPTER 1 INTRODUCTION This chapter was intended to provide a contextual description of how this study arose and the method by which the study was undertaken.

CHAPTER 2 WHAT IS AN OMBUDSMAN? This chapter reports on the research findings and provides examples of existing ombudsman offices It concludes that an ombudsman can be a useful and adaptable means of accountability.

CHAPTER 3: CHALLENGES FOR THE HUMANITARIAN SECTOR While Chapter 2 concludes that ombudsmen can be a viable means of providing accountability to claimants, there are specific challenges that are unique to the humanitarian sector and the British NGO community. These challenges arise from the consultations as well as from the relevant background research.

CHAPTER 4 HOW WOULD A HUMANITARIAN ASSISTANCE OMBUDSMAN OPERATE? Chapter 4 attempts to provide a possible model for an HAO that could be tested in the field The model draws upon the specific strengths of ombudsmen and seeks to address some of the challenges presented in Chapter 3

CHAPTER 5: CONCLUSIONS AND OPTIONS FOR NEXT STEPS. This chapter draws some general conclusions and presents two options for the NGO community to consider as a next step in this process.

Part III   *Scenarios*

Part IV   *Annexes*

ANNEX 1   Examples of Ombudsmen
ANNEX 2   Other Forms of Accountability
ANNEX 3   Steering Committee Members and Terms of Reference, Reference Group;
            Working Group
ANNEX 4   List of People Consulted
ANNEX 5   Internet Survey
ANNEX 6   Red Cross Code of Conduct

Chapter 2 • *What Is an Ombudsman?*

2.0. Introduction

The first part of this study provides an overview of the concept and practice of ombudsman schemes as they operate today. The study involved both primary and secondary research, including a review of the relevant literature as well as interviews with ombudsmen themselves. The purpose of this chapter is to understand how an ombudsman operates and to gain an appreciation of the successes, constraints and challenges that ombudsman schemes may face. It further enables us to begin to assess whether an ombudsman scheme may be adapted for use within the humanitarian assistance sector.

2.1. Origins and the Ombudsman Today

The historical origins of an ombudsman can be traced to eighteenth- and early nineteenth-century Sweden. The initial purpose of the post was to ensure that all public officials performed their duties with justice, honesty and public responsibility, and to hold them accountable for incorrectly applying laws, overstepping their authority and failing in their obligations to citizens. Essentially, the *raison d'être* of the ombudsman was to democratise public administration and humanise relationships between government and citizen.

Since the 1950s, the idea has gained considerable momentum and the institution of the ombudsman has become an embedded feature of 'civil society'. Ombudsmen now operate in over 40 countries on a national, state, regional or municipal level, both in the public and private sectors. In the UK at least 27 ombudsman offices are in operation and the trend indicates that this number will grow.

The ombudsman's role – to 'democratise public administration' – has not changed to a large extent since its origin, although the model has been adapted to respond to the varying needs of each sector. The ombudsman gives the consumers of any type of service, public or private, a voice in the delivery of that service and a means of redress, particularly where no alternative service is available.[2]

As in the UK, most ombudsmen operate within national jurisdiction; it should be noted, however, that at least two bodies operate within a transnational arena: the Maastrict Treaty led to

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[2] Where competition is diverse, consumers can choose to end the service and find an alternative means of provision, a course of action often termed 'exit'. In certain contractual arrangements, however, and in single-service provision, this is not usually an option.

the establishment of an ombudsman for the European Community; similarly, the World Bank Inspection Panel investigates any project financed by the Bank.

2.2. Key Characteristics, Operational Framework and Scope

Key characteristics of all ombudsman offices incorporate the notions of *accessibility* and *impartiality*. All provide instruments for processing grievances by members of the public. Where Ombudsmen vary is in their operational method and scope for redress. Annex 1 provides examples of ombudsman offices.

The operation of an ombudsman varies most significantly in how it initiates investigations. Here, two distinctive models can be found: the *proactive* and the *reactive* ombudsman. The reactive ombudsman waits for complaints and acts on issues or concerns that have been brought forward, while a proactive ombudsman seeks out matters of concern, undertakes inspections and initiates investigations without prompting. In Britain, for example, ombudsmen tend to be reactive offices that can only respond to complaints or grievances, acting as the last port of call in a formal complaints procedure. In Scandinavia, on the other hand, an ombudsman may initiate action and

Table 2.1. Critical Questions in Determining the Remit of an Ombudsman

Role	• What is the overall role and responsibility of the ombudsman? (Complaints handler and/or influential investigator?)
Complainants/ Requesters	• Who is the service provided for? (Individuals? Groups? Employees?)
Grievances covered	• What kind of grievances will the ombudsman handle? (Maladministration? Misconduct? Poor Service?) ▶ Or what will the ombudsman monitor? (Compliance with relevant laws? Codes of practice? Standards?) Against whom are the complaints lodged?
Grievances not covered	• What will the ombudsman not investigate? (Complaints which can be taken to a court or tribunal? Complaints by employees about their jobs?)
Procedure	• How does the ombudsman receive requests? (In writing? Telephone? Informal interview? How are grievances screened to establish whether they fall within jurisdiction?) • Does the ombudsman investigate grievances through interviews and fact finding? • Or does the ombudsman inspect and monitor conduct and practice, and initiate investigations where necessary?
Remedies	• What are the 'teeth' of the ombudsman? • Does the ombudsman recommend that the organisation does (or refrains from doing) something? • Or submit the matter to another body? • Or report observations to a body with the means to rectify or publicise its report, so exposing wrongdoing? • Or request notification of what has been done or is intended to be done?
Structure of the scheme	• How is the office structured? (Staffing? Funding?) • Who supervises the ombudsman scheme? Who appoints or elects the ombudsman? (In most cases, the scheme is overseen by a supervisory body or representative council.)

has an ongoing inspection role: the Public Justice Ombudsman, for example, keeps a watchful eye on public administration and takes action to ensure that standards are maintained. This distinction is critical in determining what 'triggers' an ombudsman might respond to.

The scope of the ombudsman is dependent upon the environment, framework and jurisdiction that are defined and agreed upon within the relevant sector. Variations are numerous. Who is eligible to complain must be determined, and how that complaint might be processed, either in writing or through other means. Some offices use panels, whereas others depend on the work of an appointed individual, processes utilised to engage both complainants and the organisation might be formal and informal, as might the recommendations for redress. In some instances one ombudsman might suggest a financial award, whereas another might utilise more formal means of sanctioning activity, such as recommending the withdrawal of operational capacity. Table 2.1 provides an overview of how the remit of an ombudsman's office is determined.

2.3. Limitations of the Ombudsman Concept

The most common criticism of the ombudsman system is that generally the function is not well understood. There is relatively limited documentation and information about their work, often confusion and uncertainty about their role, and with the proliferation of ombudsman offices in different sectors, the confusion can be exacerbated Although accessibility is said to be their key characteristic, ombudsman offices are frequently noted for their inaccessibility. Few citizens are aware of the different ombudsman schemes, how to reach them, or how to process a grievance Inaccessibility is the chief reason why ombudsman offices tend to be underutilised, especially by the most disadvantaged who are less likely to know of the existence of an ombudsman and have more difficulty in registering complaints or grievances It seems that many ombudsman schemes, particularly in Britain, are hidden by bureaucracy and formality and lack a human face. The question of visibility is linked to more general criticisms of the operational mode of the ombudsman as too reactive, waiting for complaints rather than taking the office to the public or initiating investigations.

The ombudsman office is also criticised for the fact that its effectiveness tends to depend upon the character and personality of ombudsmen themselves rather than on the system as a whole Regardless of their organisational framework, they are a highly personalised institution and success demands an individual or team who are perceived as independent and impartial, have relevant qualifications and in-depth knowledge of the sector, and can command respect and trust from all parties Furthermore, as people do not usually like to be 'investigated', the ability of the individual to encourage cooperation is of utmost importance

If the 'personality factor' is sometimes a deterrent, there are few other incentives to participation by organisations in an ombudsman's scheme Participation. and compliance with ombudsman decisions, are often reluctant, as organisations merely feel obliged to participate.[5] Perhaps as a consequence of this criticism, ombudsmen are rarely given the necessary authority to act forcefully in a given circumstance, nor are they provided with sufficient resources to undertake in-depth mediations or investigations.

Finally, since the ombudsman's powers are usually exercised in recommendation, there is a genuine concern that the ombudsman may lack 'teeth' For instance, the annual report (for many ombudsmen the only public document issued) is often considered an inadequate instrument for

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[5] In spite of this general criticism 99 per cent of decisions by ombudsmen within the UK are complied with (Interview with Consumers Association)

influencing administration procedures and practice, informing mass media and educating the public Moreover, an ombudsman is generally powerless to change or reverse decisions. Some believe that an ombudsman's powers as critic and reformer must be strengthened to influence changes in legislation and policy and not just administrative procedure. An ombudsman should be concerned not merely with laws or codes as they stand, but as they might be.

2.4. The Strengths of the Ombudsman Model

The merits of the ombudsman concept are considerable. The primary advantage of an ombudsman is the role of the office as a direct means of participation by members of the public In particular, where there is no option simply to have the service provided by an alternative body — the humanitarian sector is a case in point — an ombudsman gives people an active voice in a system that otherwise could leave them powerless.

Overall, the model has proved an effective means of protecting the citizen's interest, or right, to fair administration and good practice. The function helps to redress the balance in accountability and works well as a way of enhancing relationships between two parties and closing the gap between administrators and the administered

The ombudsman also plays a crucial role in improving the transparency of organisations by opening up operations to the public gaze The nature of an ombudsman as an independent body further strengthens its accountability function, as internal mechanisms are not open to full scrutiny Of course, an ombudsman can only work if its remit provides open access to its member organisations

The value of the system lies not only in obtaining redress for individual citizens, but also, for citizens at large, in encouraging administrative reform and improvement. Although it examines particular situations, in doing so it can often determine gaps or failures in the system as a whole and recommend improvements. Thus an efficient and accessible redress mechanism can satisfy the dual function of rectifying a single problem while creating the conditions for improved practice in the future This is in the interest of both the public and the service providers Furthermore, by publishing information on its activities, an ombudsman can extend these lessons to a wider community.

Finally, the flexibility of the original Swedish concept allows the system to be adapted to the activity to which it is applied, taking into account any cultural, legal, geographical or historical circumstances The challenge lies in providing a flexible remit. with sufficient authority to address the needs of each situation