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Promoting humanitarian principles: the southern Sudan experience

by Iain Levine

Abstract

Operation Lifeline Sudan (OLS) seeks to integrate humanitarian principles and the protection of civilians within its mandate and operations. This paper details the ways in which these laws and principles were promoted through negotiation, advocacy, dissemination and training and the monitoring and follow-up of violations and abuses. It seeks to distil specific lessons from working with armed opposition movements, as distinct from sovereign governments, in particular the concern of humanitarian agencies that they may provide or be seen to provide legitimacy to those who mistreat their populations.

Aid agencies working in south Sudan have sought to place the protection of civilians and the integrity of humanitarian assistance at the centre of their mandate. This approach sees complex emergencies as social and political phenomena, as much crises of human rights as of humanitarian need. In such situations, the victims of conflict require not only material assistance but also protection of their safety, dignity and basic human rights. A fundamental assumption of the paper is that, as pointed out by the detailed Joint Evaluation of Emergency Assistance to Rwanda (1996), lack of coherent political and policy leadership amongst aid agencies has led to many of their programmes failing those whom they seek to help.

Protection of civilians is achieved through the application of international law and principles such as the primacy of the humanitarian imperative, neutrality, impartiality, accountability, transparency and the protection of victims. The challenge lies not simply with the definition of the legal and ethical standards but in their implementation and enforcement.

The OLS experience is used to highlight broader dilemmas confronting the international humanitarian community. These include the lack of coherent political leadership in most humanitarian programmes, sovereignty issues, the trade-offs between protection and assistance, the role of coordination in defining and protecting mandates, and the conditions under which the withdrawal of assistance might be considered morally acceptable.

Underpinning this paper is the assertion that humanitarian principles and standards should lie at the centre of such programmes. While recognising that political authorities are ultimately responsible for protecting civilians and the integrity of humanitarian assistance, implementing agencies and those who fund them also need to address these issues more effectively.

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Iain Levine is currently employed by the Office of Emergency Programmes, UNICEF, New York where his main focus is the promotion of child rights in complex emergencies. The views expressed in this article are the responsibility of the author alone and do not reflect those of UNICEF or of Operation Lifeline Sudan.

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1

Background

“When I feed the poor, they call me a Christian; when I ask why the poor are hungry, they call me a Communist”
 Helder Camara¹

1.1 Complex emergencies and dilemmas for humanitarian agencies

The post-Cold war transformation has been truly momentous. While much of the world moves towards globalisation and economic interdependence, large areas of Africa and the former Soviet Union witness unprecedented challenges to the nation-state. Declining economic resources, uneven social and economic development, lack of democratic space and weak national identity (versus strong ethnic identity) have all contributed to the phenomenon of failed or divided states in countries as economically and politically diverse as Iraq, the former Yugoslavia, Sudan, Somalia and Zaire.

It is not necessary to embrace wholly Robert Kaplan’s (1994) apocalyptic view of the world to recognise that the often brutal conflicts which both grow out of and contribute to state fragmentation and collapse have been catastrophic for the poor and disempowered, leading to societal breakdown, the abuse of human rights on a massive scale and extraordinary humanitarian need. In such situations the monopoly of violence is no longer to be found in the state but increasingly among non-state entities.

The brutality and disorder that characterise the underlying internal conflicts, in so many of today’s complex emergencies, constitute major threats to humanitarian action and many fundamental ques-

tions for its practitioners and policy-makers. Over the past decade, there has been an improved understanding of the dynamics of conflict and its role in disaster creation. At the same time, an increasing body of literature has analysed and documented the complex impact of humanitarian interventions on the political economy of war (for example, Duffield, 1994; Macrae and Zwi, 1994). Both strands of thinking have highlighted some of the profound ethical, political, legal and programmatic challenges of humanitarian activities. These include:

- the erosion of respect for values and international standards affecting both civilians and humanitarian staff and the particular plight of the internally displaced;
- growing threats to the independence of humanitarian action as aid has too often become a substitute for political action;
- the lack of clarity of humanitarian mandates with respect to wider military, political, human rights and development agendas;
- with increasing recognition of the political causes of humanitarian action, intense questioning of traditional principles such as neutrality and impartiality;
- fears that humanitarian aid strengthens war economies and thus prolongs conflict;
- continuing uncertainty over international legal and political responses to sovereignty and the vexed question of access.

Such dilemmas beg major questions: can one

effectively achieve aid objectives in the context of extreme violence? How can humanitarian agencies confront rather than ignore the disaster-producing policies of war itself and the conduct of warring parties? How can one create an environment in a war situation whereby humanitarian aid can be delivered more effectively? Not surprisingly, given the inability of current humanitarian mandates to provide the required guidance to practitioners, there is little consensus on these issues. Indeed, the divergence of opinion among the humanitarian community and those who comment upon it can rarely have been greater. Approaches to some of these problems include the ‘new interventionism’ of Bernard Kouchner and the Médecins Sans Frontières (MSF) philosophy of *droit d’ingérence* (the right to interfere); the ‘humanitarian intervention as a form of neo-colonialism’ often heard in leftist circles, the ‘humanitarian assistance is so inherently flawed that it does more harm than good’, argument of African Rights; and the ‘humanitarian intervention prolongs conflict and legitimises thugs’ school of thought. In addition, there are those such as the International Committee of the Red Cross (ICRC) who insist that neutrality and impartiality remain constant and necessary values in the pursuit of humanitarianism, the radicals who want to jettison neutrality for solidarity with oppressed peoples and the global isolationists such as Jesse Helms who think that we shouldn’t get involved at all.

This paper does not attempt to answer many of these questions. What it tries to do, from a practitioner’s perspective, is to describe and reflect upon one experience: an attempt to define and apply humanitarian principles in the midst of conflict in southern Sudan in areas controlled by three non-state entities. In describing this experience from the point of view of one of those involved, it will seek to analyse the impact of this experience and draw possible lessons for practitioners elsewhere.

1.2 The south Sudanese context

History of the conflict

Sudan became independent from Britain in 1956. Like so many countries in the continent, its boundaries were artificial creations of colonial and occupying authorities and bore little relation to the cultural and political reality. In the case of Sudan, the boundaries brought together the predominantly Islamic north with the mainly Christian and animist south (see map on pages 16 and 17). Southern

Sudan contains most of the country’s natural resources — oil, fertile agricultural land, gold and, most crucially, the waters of the Nile — but the political and economic power in the country has always rested in the north.

Within months of independence, as predicted by many Sudanese, the ethnic and religious divide provoked a political crisis leading to civil war which lasted until 1972 when the Addis Ababa Agreement hammered out a degree of autonomy for the south. From 1972 until 1983, south Sudan was governed by a regional government based in Juba and the region experienced its only sustained peace for more than 40 years.

The relative stability of this period ended in 1983 with the imposition of *Sharia* or traditional Islamic law by the government of President Numeiri over the whole of the country — despite the virtual absence of Moslems in the south. This provoked a mutiny which began in the government garrison in Bor and led to the creation of the Sudan People’s Liberation Movement/Army (SPLM/A) under the leadership of John Garang. War had restarted, although even at this early stage there was deep division between those — such as Garang himself — who advocated a united, secular Sudan and those who sought self-determination and secession for the south. Such divisions were to prove profoundly damaging in later years.

For five years the war raged virtually unnoticed internationally. Then in 1988, a major famine — triggered by the combined effects of drought and conflict — occurred in northern Bahr-el-Ghazal, in the eastern part of southern Sudan. Despite the existing news blackout, the international media did pick up the story and covered the famine which is estimated to have killed approximately 250,000 people.

The resulting pressure forced the United Nations (UN) to act, and Perez de Cuellar, the then Secretary-General appointed James Grant, executive director of UNICEF, as his Special Envoy for Sudan. Grant shuttled between Khartoum and the south and after a number of meetings, managed to gain an unprecedented agreement: the UN could provide humanitarian assistance to both government and rebel-controlled areas with the consent of the Government of Sudan and the SPLA. This was enormously significant. Until this point, some NGOs had worked in south Sudan in areas controlled by the SPLA but obviously without government authorisation and therefore ‘illegally’. This agreement

allowed the UN — with other humanitarian partners — to deliver assistance to all conflict-affected populations without military assistance or a Chapter VII resolution.² Thus was Operation Lifeline Sudan born.

In 1991 there were two events of major significance for southern Sudan, although their ramifications for OLS were as yet inchoate. In August, Riek Machar, a member of the Nuer — the second major tribe in southern Sudan — and one of the senior SPLA commanders, issued what became known as the Nasir Declaration. It announced that he had overthrown John Garang as leader of the SPLM/A. This internal coup failed and the SPLM split: SPLM-Torit and SPLM-Nasir (later known as SPLM/A and SSIM/A, respectively). This split was to have major and disastrous humanitarian consequences. In late 1991 and during much of 1992, inter-factional fighting led to bloody attacks and massacres on civilian populations in Bor, Ayod and elsewhere. According to Human Rights Watch Africa (1994), many hundreds of civilians were killed, often cruelly, and thousands of cattle appropriated. The fighting provoked a major humanitarian crisis particularly in the ‘hunger triangle’ of Bor, Ayod and Waat and massive displacement.

Next month, the southern movements were rocked by another crisis: the overthrow of Mengistu Haile Mariam, the president of Ethiopia who had been a staunch ally. As a consequence, the SPLA had to move its bases and training camps out of Ethiopia, thousands of people returned to Sudan and the SPLM was forced to establish its operational bases inside the country. Not only did the SPLM lose very important political, military and logistical support — with serious consequences for its ability to wage a war — but it was also forced to reassess its relationship with the people it was seeking to liberate.

Until the time of the split and the overthrow of Mengistu, the SPLM had functioned as a predatory guerilla movement. It had given little thought to political mobilisation and sensitisation and pursued the offensive against the government as its first and probably only aim. The two crises of 1991 triggered the inevitable political crisis in the movement when previously taboo topics such as democracy, accountability and human rights were forced back on to the agenda as the movement realised that it would have reconsider its relationship with the population.

The move towards greater liberalisation and democratisation has been slow and painful with many false starts, unfulfilled commitments and small gains followed by backward steps. However, as will be stressed later in this paper, it was the internal pressure for change, culminating in the SPLM Chukudum Convention of April 1994, and the SSIM Akobo Convention of August 1994 in which the two movements committed themselves to democracy, civilian administration and respect for human rights, that made the humanitarian principles initiative possible. It is difficult to imagine how this OLS initiative could have happened without the window of opportunity created by these political developments.

South Sudan and Civil Society

Profound underdevelopment and a historical lack of attention to the south ensured that the extent and the quality of essential services were very poor even prior to the outbreak of the current war. The war has had and continues to have a devastating effect on the access of Sudanese civilians to basic services such as health, education and clean water. Displacement, destruction of infrastructure, destruction of markets, the closing down of virtually all training institutions and restrictions on travel, have all reduced the availability of and access to basic services. In some areas, such as the Nuba mountains and eastern Upper Nile, these services are effectively non-existent.

For a variety of historical and cultural reasons and particularly because of the wars which have dominated life for much of the last 40 years, southern Sudan has rarely benefited from good and accountable government and has not had an opportunity to develop an active and self-confident civil society — despite the existence of strong traditional authorities and values. This has had serious implications for the creation of accountable systems of both humanitarian relief and civil administration and the involvement of the people in the protection of their rights or in determining the shape of their own lives. Southern Sudanese have very little awareness of their rights *vis-à-vis* their rulers and there is no tradition of local human-rights lobbies. This had created a serious challenge for the humanitarian principles programme since the usual allies one would seek — the press, church groups, women’s groups — either don’t exist or have no real history of involvement in such work.

Box 1

Operation Lifeline Sudan: a brief history

As the armed opposition movement went through its own crises, OLS was changing enormously. It had been established in March 1989 as a short-term relief operation to provide food and other necessities to war and drought-affected populations. Though not short of crises of its own, including the killing of three expatriate staff in 1992, over the years, it has grown and developed. Eight years old at the time of writing, it has grown into a multi-million dollar relief and rehabilitation programme. Since 1992, it has been coordinated by the UN Department of Humanitarian Affairs (DHA) and is led by a Coordinator for Emergency Relief Operations (UNCERO) based in Khartoum. In the so-called southern sector, operating out of Nairobi mainly into the rebel-controlled areas of southern Sudan, UNICEF acts as the lead agency working alongside WFP and some 40 international and Sudanese NGOs. In essence, the UN provides the overall legal, political, logistics and security framework while the NGOs implement most of the OLS programmes together with counterparts in government and rebel-controlled areas.

In principle, it is the UN Emergency Relief Coordinator (UNCERO) based in Khartoum, that manages OLS, reporting to the Department of Humanitarian Affairs. In practice, however, distinctive coordination and implementation structures have emerged in both government-and rebel-held territory. In government-held areas of the country — the so-called northern sector — the structure of relief operations reflects traditional coordination mechanisms, whereby DHA provides a light framework, liaising with the government and collating information. In the southern sector, OLS provides an integrated logistics and security framework within which UNICEF, WFP and the NGOs implement their programmes.

The distinctiveness of these two management and coordination regimes becomes apparent in areas such as Bahr-el-Ghazal (see map on pages 16 and 17) where towns are held by the government while rural areas are controlled by rebels. OLS staff working in these two sectors, sometimes within miles of each other, have only the most limited information about each other's work, report to very different management structures and operate according to different policies, principles and security procedures.

Activities carried out by OLS agencies include not only traditional relief activities — food aid, health, water and sanitation, distribution of shelter etc. — but also primary education, teacher training, family reunification, livestock programmes, training of community animal health workers and capacity building for local institutions.

South Sudan and threats to humanitarianism

As in all complex emergencies, the conflict in south Sudan presents huge operational and programmatic problems growing out of virtually negligible infrastructure, limited resources, reduced access in the rainy season, high turnover of expatriate staff and inadequate numbers of trained local staff. More fundamentally, the context is one in which there have been — and continue to be — real challenges to the pursuit of a humanitarian mandate. The most important of these are the following:

2.1 Denial of access

Negotiated access, the basis of OLS, is both its greatest strength as well as its greatest weakness, since it allows government and armed opposition movements to deny OLS access to people in need. The continuing prohibition on access to the SPLA-controlled areas of the Nuba mountains — an area of enormous humanitarian need and appalling human-rights abuses — or the denial of flight permission to the displaced peoples' camp of Labone during a recent cholera epidemic, highlight the power which the government continues to exert over OLS and its capacity to hamper operations. The armed opposition movements have, although to a lesser extent, also denied OLS access to key locations, usually citing security considerations.

2.2 Human rights abuse

Major abuses of human and child rights by all the

warring parties have been extensively documented by Amnesty International, Human Rights Watch (Africa), the UN Special Rapporteur for Human Rights, Christian Solidarity International, the *Baltimore Sun* and others. These include massacres of civilians, rape, recruitment of children into the military, bombings of civilians and relief centres, extrajudicial killings and imprisonment, child slavery, and the misuse of humanitarian assistance. This reflects a general and international tendency, noted by a number of commentators including Summerfield (1996), to use terror and violence against civilians and humanitarian staff as a deliberate tactic of war. The results of such tactics have been:

- the erosion of traditional values caused by a breakdown of community structures;
- the marginalisation of traditional authorities;
- the destruction of the judicial system;
- a strain on economic resources and kinship ties; and
- the general culture of violence that prolonged warfare creates.

2.3 Misuse of humanitarian assistance

Scott and Prendergast (1996) identify a number of ways in which warring parties exploit humanitarian assistance for their own benefit: manipulation of population movements, denial of access, diversion and looting, taxation of the population or of aid

agencies through demands for bribes, checkpoint payments and the like. Macrae and Zwi (1994) analyse the use of food as a weapon of war through what they describe as acts of omission (failure to act) attacks of commission (attacks on the means of producing and procuring food) and acts of provision (differential supply of food). Although the level of misuse of humanitarian assistance in southern Sudan has probably not been as great as in some other countries such as Somalia, many instances of misuse — attributable to all sides — have occurred throughout the history of OLS and continue. In Eastern Equatoria in December 1994, children died as a direct result of the theft of food taken by soldiers. Such abuses of aid, often allowing large quantities of food and other essential supplies to be used in support of the military, inevitably fuel the claims of those (for example, Dommen, 1996) who argue that humanitarian assistance prolongs war and thus the suffering of civilian populations.

2.4 Threats to the security of humanitarian workers

Though less dangerous than some war areas such as Burundi or Chechnya, south Sudan has seen a number of threats to and violations of the safety and security of relief staff. Three expatriate OLS staff and one journalist were killed in 1992 and the Sudanese staff member of an international NGO in 1996. Forty-one international relief staff were taken hostage in 1995 by various of the parties to the Sudanese conflict and a further 29 in 1996. In addition, there were some 35 evacuations of OLS personnel for security reasons between mid-1995 and mid-1996.

A single statistic highlights the extraordinary disruption to programmes caused by the threat to humanitarian workers' freedom to operate. In 1995, vaccination rates for children in Bahr-el-Ghazal declined to just 6 per cent of the 1994 levels, due, essentially, to the havoc wreaked by Kerubino Kwanyin Bol, a dissident militia commander, which in turn forced most NGOs to stop working.

2.5 Neutrality and impartiality

Being seen to maintain the neutrality and impartiality of humanitarian assistance is increasingly difficult. 'If you're not part of the problem, you're part of the solution' sums up the attitudes of many on all sides of conflict. In south Sudan, all the warring parties have, at various times, accused OLS of siding with their enemies. Some in

the SPLA claim that OLS was responsible for the 1991 split; the government has at various times accused OLS (and ICRC) of transporting arms to opposition groups; and all sides routinely accuse OLS of partiality in the amounts of aid distributed and in the position taken with respect to abuses of humanitarian assistance. The signing of a peace charter by the SSIM and the Government of Sudan in April 1996 which heightened political tensions between the movements, exacerbated these difficulties and placed OLS under even more pressure not to take sides.

2.6 Distinction between military and civilians

International humanitarian law and principles are predicated upon a clear distinction between military and civilians. Such a distinction rarely exists in south Sudan with traditional cattle raids and the 'official' war often difficult to separate and many people moving easily between the two categories. One problem arose over the use of food aid: could a woman receiving food from WFP be told not to feed her father, husband or son if — as often happens — he returned home at night to sleep in the family hut? Clearly not. And, ironically, given the emphasis placed on traditional values as the basis for humanitarian principles, one movement actually denied its responsibility for a massacre of civilians by claiming that it was a cattle raid for which they were not responsible.

2.7 Specific problems of working in areas controlled by non-state entities

Increasingly, aid agencies work in areas under the control of armed opposition movements, 'non-state entities' in legal parlance. These may vary from well-organised *de facto* administrations to gangs of heavily armed thugs. The legal and political status of these groups *vis-à-vis* the international community is usually unclear. Their structures are often poorly defined and the extent to which outsiders are prepared to enter into relationships with them determined by political as well as humanitarian concerns. There are two particularly critical issues of relevance to the pursuit of humanitarian principles in areas controlled by non-state entities.

Legal commitments

Although governments often sign international

treaties and conventions which they have little intention of respecting, they have at least made formal and binding commitments against which their people and the international community in general, can seek to hold them accountable. Armed opposition movements — though they may control the lives of many thousands of people — have no formal legal recognition and therefore cannot accede to official international legal obligations such as human-rights treaties or the Geneva Conventions. OLS therefore had to agree with the SPLM and SSIM (and later SPLM-United) that they would make formal and written commitments to certain treaties and conventions though this would not be recognised at any international level.

In addition, the breakdown of the legal system — police and civil courts in particular — had a profound impact on local capacity to enforce law and order and respect for human rights. Though the restoration of the justice system tends not to be seen as a priority for humanitarian programmes, the experience of southern Sudan indicates that, in long-term emergencies, this should be an integral part of any humanitarian operation.

Legitimacy

The continuing inability of the international community to deal with the ambiguous status of non-state entities reflects, in part, the fear of legitimising armed opposition groups. The real status of these rebel movements is often difficult to determine: does the movement control populations or simply terrorise a broad area? Does it decide access to those in need? Does it have a formal structure from which one can demand accountability? For political and legal reasons, donor governments may be reluctant to engage with movements at the political level for fear of offending the government of that country and may therefore be reluctant for NGOs which they fund to do likewise. On the other hand, rebel movements may have the support — covert or otherwise — of donor governments (for example, US support for UNITA

in Angola, or the Nicaraguan Contras) or be regarded with enormous suspicion and distaste. Rebel movements may have their own humanitarian wings (REST, ERA, SRRA) to provide an acceptable, caring face to the outside world and represent a legitimate channel for humanitarian assistance. The international humanitarian community must decide how to ensure access to populations in need without providing political recognition and legitimacy to armed thugs.

These issues were brought to the fore with the demands of two dissident military commanders: Lam Akol of the SPLM (United) and Kerubino Kwanyin Bol. Their demands exposed the lack of consensus between those who argued against formal acknowledgement of these movements for fear it would prolong the conflict and those who claimed that neutrality meant equal engagement with all provided that certain guarantees — independent access, independent monitoring, establishment of humanitarian need and commitment to humanitarian principles — could be met. Lam Akol’s movement was eventually accepted as a formal counterpart in 1996. Kerubino has yet to be considered, by OLS, as the leader of a genuine movement.

2.8 Threats to humanitarian assistance: conclusion

The problem was clear. UNICEF as lead agency for OLS (southern sector) recognised that violations of human rights and abuses of humanitarian assistance were occurring in its areas of operation. It recognised the need to confront these issues. It recognised the immorality of ‘trading’ access for an agreement not to speak out about these abuses. It recognised the inadequacy of humanitarian assistance that provides goods and services without protecting civilians. It recognised — as did the great Helder Camara in the quotation that prefaces this piece — that it would be praised for feeding people but not for questioning the behaviour of warring parties that created their hunger. The question remained: What should be done?

3

Ground Rules and humanitarian principles

3.1 Ground Rules as a framework for collaboration

At this point, it should be made clear that the humanitarian principles initiative described in this paper was carried out by OLS (southern sector) operating out of Nairobi in territory controlled by armed opposition movements. The initiative has not, to date, been launched in government areas though, at the time of writing, plans are in hand to do so. Though the initiative was discussed at length with colleagues from the northern sector, it was felt inappropriate for the government areas for two main reasons:

- The government is already a signatory to both the Convention on the Rights of the Child (CRC) and the Geneva Conventions (though not, in fact, to the Second Protocol which governs internal conflict).
- The UN could not expect to pursue the same kind of relationship with a sovereign government as it did with armed opposition movements. Therefore all references to OLS refer to its southern sector with UNICEF as its lead agency.

The first OLS Ground Rules were drafted at the end of 1992 following the killing of three expatriate OLS workers and a journalist. Their principal aims were to impose a set of rules on the armed opposition groups with the aim of guaranteeing the safety and well-being of OLS staff and to clarify

certain rules and regulations relating to the use of radios, vehicles and the like. These Ground Rules had a number of weaknesses: they were impositions of regulations upon the political authorities with no real corresponding obligations for OLS agencies, they failed to define the purpose or the objectives of humanitarianism and they made no provision for either the dissemination of the Ground Rules or for dealing with allegations of violations.

Despite these limitations, the Ground Rules did, however, have an important role to play in mediating the relationship between OLS agencies and counterparts. It seemed obvious that their revision could provide the basis for an agreement with dealing with abuses of humanitarian assistance, the safety of staff and the treatment of the population. By late 1994, OLS southern sector recognised that, were it to evolve, it needed an improved framework of collaboration and engagement with the armed opposition movements.

The most effective way of confronting the tactics and policies of the warring parties was felt to be through negotiating a revised set of Ground Rules but with significant differences from the original 1992 version. The new ones would need to:

- represent a joint commitment by humanitarian agencies and the rebel movements with obligations placed on both sides; it seemed clear that this was the only way that we would be able to promote a response to the

- kinds of problems identified;
- bring together the delivery of humanitarian assistance and the protection of civilians as integral and inseparable parts of their mandate;
- define the principles which underlie and ensure the integrity of humanitarian assistance;
- set out mechanisms for the promotion of the Ground Rules and for dealing with allegations of their violation.

What was being contemplated therefore was a complete redefinition of the relationship between OLS and the southern opposition movements. And at the heart of that new relationship would be a statement of humanitarian principles.

3.2 Objectives of the OLS humanitarian principles programme

The underlying ethical position of the humanitarian principles programme was based upon two fundamental assumptions:

- That the protection of the safety and dignity of victims of conflict is an integral part of a humanitarian mandate. Though this stance flew in the face of conventional wisdom, it was difficult to see how a normatively based position could be otherwise.
- That access to humanitarian assistance is a fundamental right and that the integrity of humanitarian assistance — ensuring its timely arrival to the right people — must be protected.

These positions drew upon two principal influences. The first was the Convention on the Rights of the Child (CRC) which entered into force in 1990. The CRC has become a principal framework for UNICEF in the elaboration of what it refers to as rights-based programming rather than needs-based programming. Therefore UNICEF was determined to emphasise the point, expressed most succinctly by a group of British Labour MPs in 1993 at the height of the bombing of Sarajevo, that ‘humanitarian intervention borders on hypocrisy when the children we feed are subsequently decapitated by Serbian shells’.

The second influence in the definition of OLS’s normative position was UNICEF’s mandate as coordinating humanitarian agency: its Department of Humanitarian Affairs (DHA) hat. As in all DHA-

led programmes, the humanitarian coordinators are responsible for advocacy and the promotion of DHA’s ‘Respect for Humanitarian Mandates in Conflict Situations’. This document defines the promotion of humanitarian principles and the protection of civilians as integral to its mandate (although the document was only discovered by OLS after the programme had been launched).³

In an effort to promote and protect these normative positions, the objectives of the humanitarian principles programme were defined as follows:

- To define and defend the OLS humanitarian mandate: to ensure that assistance reaches the neediest and that civilians are protected.
- To increase awareness and observance of humanitarian principles through dissemination and advocacy at all levels of society.
- To strengthen the commitment of the political authorities to these principles.
- To monitor and document violations.

The question was how to define the standards that would achieve the protection. Though many commentators have written of the growing interdependence of human-rights law and humanitarian law (see Darcy, 1997), in the case of OLS, it was recognised from the outset that political constraints would prevent that. At the same time as OLS began planning the humanitarian principles programme, Gaspar Biro, the UN Special Rapporteur for Human Rights, had recently been made *persona non grata* by the government for critical reporting and Human Rights Watch Africa had issued an even more critical report on the human rights situation in south Sudan. To have brought up human rights would have undoubtedly attracted an immediate and very negative response from the government.

The challenge therefore was to identify the tools needed for promoting the ethical standards required. The Geneva Conventions with their additional Protocols — which seek to ensure that those fighting conform to basic rules with respect to non-combatants, including medical and relief personnel — were an obvious choice. Although there are often problems related to the application of the Geneva Conventions, particularly in internal conflicts, common Article 3 which makes up part of customary international humanitarian law provides most of the basic principles which guarantee the protection of the civilian population.

The second instrument chosen was the CRC, which

is perhaps the most under-rated tool of humanitarianism. It is the most ratified human-rights treaty in the world with 190 governments behind it. It is also the most comprehensive since it deals with political and civil liberties as well as social, economic and cultural rights. With, typically, more than 50 per cent of war-affected people being children, it covers the largest and most vulnerable segment of the population. Critically, it has powerful moral weight since it builds upon the inherent neutrality of children. OLS was therefore able to integrate the CRC into the Ground Rules and, in doing so, gained an extremely important commitment from the movements.

While the Geneva Conventions and the CRC provided the legal bases for the protection of

civilians, it was also necessary to define the internally recognised humanitarian principles which OLS would invoke to protect the integrity of humanitarian assistance. These were essentially culled from various documents and resolutions. The challenge was both to state the principles and also to define their application and the responsibilities assigned to either side of the conflict and the humanitarian agencies operating under the auspices of OLS.

3.3 Principles upon which the Ground Rules are based

These principles are attached in full in the Ground Rules in the Annex. They include all those shown in Box 2, below.

BOX 2

Principles upon which the Ground Rules are based

The right to humanitarian assistance

International legal scholars have argued long over whether there is any legal right to humanitarian assistance. The Ground Rules sought to take a clear normative position on the issues: that all those in need have a right to it.

Neutrality

There is a growing literature against neutrality and in favour of solidarity. For OLS, with a mandate to provide assistance on all sides, the idea that one cannot be neutral in the face of genocide is an intellectually and morally seductive argument, but of little practical value. The Ground Rules therefore defined neutrality, in the ICRC sense, as the refusal to take sides in the conflict or to use the provision of assistance to promote any political or religious agenda.

Impartiality

Again, the ICRC definition of impartiality (Plattner, 1996) was used: the provision of humanitarian assistance on the basis of need alone, taking no account of race, religion, political affiliation or any other factor but those of humanitarian need and practicality such as security and access.

Accountability to donors and beneficiaries

The Ground Rules made great efforts to define accountability in an operational sense including: ensuring appropriate end use of supplies provided; fair distribution to identified civilian beneficiaries; and involving them in all decision-making.

Transparency

Openness in reporting and decision-making was called for in the first OLS agreements and is essential for credibility. Agreement was not always reached though on how far transparency should go.

Capacity building

An OLS programme for this was started in 1993 providing support to the humanitarian wings of the movements and to Sudanese NGOs. This initiative was reinforced in the Ground Rules as OLS agencies committed themselves to strengthening the capacity of local institutions, including the humanitarian wings of the rebel movements, and to facilitating and coordinating sustainable, effective and efficient humanitarian assistance. They also committed themselves to ensuring that humanitarian assistance strengthened local structures — rather than establishing parallel structures.

Protection of civilians and relief staff

The statement of humanitarian principles included a specific commitment to the protection of civilians and to the two conventions — CRC and Geneva Conventions — that ensure the well-being of children and non-combatants.

The remaining part of the Ground Rules sought to define the mutual obligations and daily responsibilities of the different actors in the promotion of the humanitarian principles. For example, humanitarian agencies were forbidden to transport armed or uniformed personnel — an obvious reference to the principle of neutrality and not taking sides. While the commitment by humanitarian agencies (section B, 3/Annex 1) to offer the highest possible standards of service was seen as essential to accountability.

3.4 Negotiating the Ground Rules

It took roughly six months to negotiate the Ground Rules with the members of SPLM and the SSIM, culminating in their signature by Commanders-in-Chief John Garang and Riek Machar, respectively, in July and August 1995. (The SPLM-United of Lam Akol signed one year later.) The intention had been to have one document signed by all parties, but instead bilateral agreements were made with each movement. Differences between the agreements were negligible and to all intents and purposes, the example of the agreement between OLS and the SPLM given in Annex 1, is the same as the others.

Although negotiations were lengthy and sometimes difficult, they proved to be an important part of the process of cementing a genuinely joint commitment to the humanitarian principles, at least on the part of some in the movements. Perhaps the most frequently asked questions at this time were ‘What was in it for the movements? Why bother to sign up?’ A number of reasons can be cited.

First, it is often forgotten just how heterogeneous the movements are. While some hardliners believe that there is no place for human rights at a time of conflict, others genuinely committed to democratisation and human rights felt this initiative strengthened their case. As mentioned before, change was possible because of a window of opportunity created by the internal changes in the movements. Second, the movements were keen to improve their international credibility and recognised quickly that commitment to humanitarian principles and to the two conventions would further it. While it was not for OLS to determine the political future of south Sudan, members felt that control of territory brought with it serious responsibilities for the well-being of the rights of people living there.

It was not always easy going. Tensions sometimes ran high and there were some in the movements who believed that our stance was intrusive and went beyond our mandate. One senior SPLM official accused us of tying the movement’s hands behind its back by promoting the Geneva Conventions. Fortunately, these were in a minority.

Other NGOs were also unsure of this new initiative though, in retrospect, we did not do enough to involve them — or the donors — in the process. While supportive of principles to protect staff and supplies, some were uncomfortable at the thought of having to become human rights monitors and worried that by so doing, they might jeopardise their programmes.

Implementation

4.1 What is the underlying approach?

Two principal concerns guided the OLS approach in the development of its humanitarian principles initiative.

Linking traditional values to international humanitarian principles

From the start, OLS was conscious of the need to think carefully about the cultural applicability of the humanitarian principles enshrined in the Ground Rules. The differences between the Western liberal approach and that of other cultures and political systems were clearly highlighted at the Vienna Conference on Human Rights of 1993. This was of concern because any dissemination of humanitarian principles, if it was to be relevant to people who had never heard of the Geneva Conventions, would have to begin with people's own moral and ethical principles; and also because we had to be conscious of those principles which were less likely to be accepted because of conflicts with traditional or other values held by the rebel movements.

As Donnelly (1990) argues, the idea of human rights entails a certain individualism and a standard charge against the conventional Western liberal conception of human rights — which many (including African Rights, 1996) have accused OLS of representing — is that it fails to encompass the communal aspect of human existence. Some argued that the traditional

Sudanese attitude towards the relationship between individuals and their society was governed much more by the individual's responsibilities to that society rather than *vice versa*. This argument was countered by concentrating upon the principle of protection of the safety, dignity and well-being of the individual as an act of *justice* rather than a right. By arguing that this was aimed at protecting the lives and well being of women and children, we were able to argue a case that was true to our principles and our own belief in the universality of values, without conflicting with southern Sudanese values.

Sustainability

While UNICEF, as lead agency, took responsibility for promoting OLS's humanitarian mandate and principles, it could not and should not be a policeman for humanitarian principles. What was clear from the outset was that for the Ground Rules to have any impact, there would have to be joint commitments to a common set of principles and standards by all OLS agencies and the political authorities based upon a policy of constructive engagement. This meant that, from the outset, the programme had to advocate not only the principles themselves but the fact that the only guarantee of respect for these principles in the long term was for Sudanese institutions to take them on as their message and their cause.

This was difficult. There is very little tradition of an active and vocal civil society in southern Sudan.



Political repression, war, low levels of education and lack of resources have all had a negative impact on the development of civil society. And although a number of Sudanese NGOs have emerged in recent years, they have rarely had the resources or the skills to campaign effectively or bring about real political change. As described later, OLS has spent a lot of time and effort — not always successfully — identifying potential partners and seeking ways of strengthening them to enable them to take over the leadership role.

4.2 Promoting humanitarian principles

Disseminating humanitarian principles

There was little doubt that promoting adherence would require a massive dissemination effort. The questions which came up in discussion with the counterparts in planning the programme were: to whom? where? by whom? and how? Most of these issues were straightforward to resolve and needed little discussion. The targets had to be the influential parties in southern Sudan: military, civilian and humanitarian officials, religious leaders, women’s leaders, Sudanese NGOs, traditional chiefs and elders. Plus, of course, the staff of the humanitarian agencies. Although some argued that separate workshops should be held for the military given the specific messages to be directed at them, it was eventually decided to integrate them with rest of the population — a decision that was, with hindsight, correct. For example, when talking about the recruitment of children into the military, it was important to tell both the military commanders and the parents of the children *together* that this was not to be allowed under the movements’ own commitment to the CRC. That the dissemination should take place in southern Sudan in the major relief centres was also agreed without hesitation.

To date, over 3,500 people — Sudanese and foreigners, military and civilian — have attended Ground Rules workshops in over 35 different locations, and dissemination has been jointly carried out by OLS and the humanitarian wings of the respective movements.

It was hoped that dissemination might be carried out jointly with ICRC, a guardian of international humanitarian law. Despite many discussions and various requests from OLS to ICRC to work jointly and many attempts to find ways around the various objections raised, ICRC has refused to work with UNICEF and the Sudanese counterparts on disseminating the Geneva Conventions, arguing that this would compromise their neutrality and independence. As a result, south Sudan became, rather absurdly, the first battleground in the world where UNICEF disseminated the Geneva Conventions ahead of ICRC. Then, the most difficult question to answer was: how could the dissemination be made interesting and relevant?

Understanding traditional values

At the beginning of each workshop, seminar or dissemination session with the southern Sudanese on the Ground Rules, we would begin by asking those present to tell us what were the traditional values and practices relating to: the care and protection of children; the protection of civilians in conflict and the sharing of resources with the most vulnerable in times of need. The idea behind these three categories was, of course, that we would seek to link them with the CRC, the Geneva Conventions and principles that sought to guarantee the fair and impartial delivery of humanitarian assistance to those most in need. The responses that emerged from this process, although varied depending on the audience, its level of education, its ethnicity and background, were typically those set in Box 3 opposite.

Box 3

Southern Sudanese traditional values and practices relating to the protection of children and civilians in conflict and sharing resources in times of need

Protecting children

- Children were prohibited from going to fight until after initiation into adulthood.
- Children used to be protected by society *in general* because they belong to the entire community.
- Children were provided with food first before anybody else in the family.
- Children of the vanquished were not killed by the victor if left behind.
- Traditionally, children were taken away from areas of conflict.
- Children were protected by bringing them up in the proper way, by caring for them when sick, hungry, dirty and by teaching them traditional ways of looking after cattle, cooking and cleaning.
- Children could not be killed according to Nuer law; if a child was killed, his/her life must be compensated with a hundred cows.
- Children who have lost their parents were cared for by relatives, friends or others in the community.

Protecting civilians in conflict

- Women, children and the elderly were not killed in battle or when captured.
- Women and children were free to move in any location without being killed.
- Civilians were kept in the background and never allowed near the battle lines or conflict areas; thus, only combatants used to die in war.
- Traditionally, a woman would throw herself on her husband if he had been injured to prevent him from being killed.
- Battles were fought in neutral ground away from population centres.
- Before fighting began, the chiefs had to agree the issue was worth shedding blood over.

Sharing resources in times of need

- Food and shelter were shared with those who lost their possessions in a war.
- Chiefs sometimes requested community members to help those in need.
- The Nuer shared their goods during the time of need; if anybody lost his or her property, the others contributed after performing some rituals; people who lost their goods could stay with others who had something to eat if it could not be divided.
- In case of famine, relatives gave cows to the most vulnerable.
- In the Acholi tradition, a family or relatives gave food to the needy.
- Traditionally, during the time of scarcity, women and children were given first priority when sharing anything for survival — men would always have last priority.

How values have changed

- Women and children are killed today in armed attacks: both in fighting between the movements and in cattle raiding.
- Attacks take place directly on villages where civilians are living and without warning.
- Resources are often not shared out as they used to be; kinship structures no longer function as previously.
- Children may not be cared for by relatives or others in the community if their parents die.
- Raiding is often no longer for the benefit of the whole community, but only for those who have carried out the attacks.

Why have values changed?

Answering this question is critical since it discusses how traditional values and thus humanitarian principles can be reclaimed. The major issues that have emerged are as follows:

- Breakdown of traditional authorities and their marginalisation by political movements.
- Disruption of transmission of traditional values by community separation.
- Brutalisation caused by war and pervasive insecurity.
- Poor discipline of military.
- Availability of weapons.
- Lack of resources which makes it harder to

- support others.
- Changes in household composition, particularly the increase in female-headed house holds.
- Relief dependency.
- Influence of foreign values through colonialism and the movements themselves
- Absence of a civil legal system and the weakened influence of customary law.

These points emerged out of long and often intense debate. What surprised us was the extent to which people criticised the movements, and the passion with which this was conducted. On more than one occasion, we had to stop discussion while tempers cooled. Many debates were fascinating. For example, the main reason that people often gave to explain the killings of civilians in attacks was the availability of modern weaponry. The AK47, they would argue, can kill many people quickly and indiscriminately from a great distance, in contrast to spears and bows and arrows. We would ask the question: who kills the child: the AK47 or the man holding it? This would then stimulate further debate on the mentality of those who kill, the influences on them and the weakening of traditional values and authorities.

An interesting issue that arose was the culture and ideology of the movements themselves. Some ex-members would quote the marching songs they had learned (‘Anyone who stands in my way, I will kill him, even if he is my father’, and ‘My food comes from the barrel of my gun.’) as evidence that the movements’ ethos did not come from traditional Sudanese conflict and cattle raiding. Although others insisted that the songs were taken out of context, it was accepted that the movements had done little to educate their soldiers about the importance of treating civilians decently.

By the end of these discussions, we would try to show that the vast majority of humanitarian principles — including those enshrined in the two conventions — were virtually identical to traditional values and that reclaiming these values would ensure the commitment of the movements to the Ground Rules.

Different perceptions

While the link to traditional values was important, particularly for the dissemination work, it also highlighted some important problems and differences of understanding. The most important of these were:

the concept of a right, and the definition of a child (the latter having important implications for the recruitment of children into the military and the abduction of children during cattle raids).

Childhood in southern Sudan usually ends, in community perception, with the initiation of boys to manhood and with puberty in girls. At this point, both boys and girls take on the privileges and responsibilities of adulthood. Initiation for boys formerly had been between the ages of 16 and 18. With the absence of so many adult men, however, the age of initiation has fallen — sometimes as low as 12 or 13. Our idea that children only become adults at 18 provoked amusement as well as serious practical problems of application. For example, some southern Sudanese argued that the ban on recruitment under the age of 15 was not appropriate for Sudan because they did not recognise our definition of childhood and that once initiated, whatever his age, a young man was entitled to be taken into the military since, by tradition, the bearing of arms in defence of his community was part of his obligations.

The dissemination programme demonstrated above all the power of certain ideas to transcend race, religion, language, culture and socio-economic circumstances. An example comes from the very first Ground Rules workshop in Leer, south Sudan. We were explaining the CRC to 150 local people gathered in the church, including soldiers, officials, women’s leaders, religious leaders, teachers, health workers and others. When we came to Article 39 of the CRC, we explained that under the terms of the Ground Rules, the movement had pledged not to recruit children under 15. The reaction of the participants was unexpected: they burst into applause with the women ululating ecstatically. They had suffered terribly from the recruitment of children, many of whom never returned. That a white, middle-class, western liberal man could reach out to such different people with an ideal that resonated with them, confirmed our belief in a universalist position and gave us the confidence to confront those who had argued that our work was culturally inappropriate and irrelevant.

4.4 Capacity building

Support for the establishment of a local lobby on child rights and humanitarian principles was early identified as a primary strategy. Groups identified as being key to the whole process included the New Sudan Council of Churches (NSCC) — the um-

brella body for the southern Sudanese churches in rebel-controlled areas, the South Sudan Law Society — the first southern Sudanese human-rights group, and Sudanese NGOs. Despite various workshops and seminars which invariably concluded with statements of support for the promotion of humanitarian principles themselves, very little progress was made. The churches were reluctant to become involved for fear of offending the movements or being seen as partisan. In addition, the government prohibited the first proposed initiative: the setting up of a humanitarian principles committee that would serve as a forum for these issues.

Although technical support through training was critical to the development of a southern Sudanese humanitarian lobby, more important were efforts to encourage and motivate the institutions of civil society — churches and NGOs in particular — to recognise that this work was relevant and important and that they had a role to play. Perhaps the most important initiative was a workshop held with the New Sudan Council of Churches in mid-1996. The workshop sought to analyse the Geneva Conventions and the CRC in the light of Christian teachings, and convince church leaders that these issues were not political but central to their faiths.

4.5 Monitoring

While dissemination and capacity building were given priority in the humanitarian principles activities, there was a need to monitor allegations of violations for two reasons: to provide a basis for measuring the impact of the activities and to be able to respond and seek redress. Major difficulties in monitoring the Ground Rules have been:

- The reluctance of NGOs and others to provide information to UNICEF on sensitive topics. Most agencies have worried that their ability to continue their programmes might be compromised if they were seen to have provided information to UNICEF on these issues.
- The failure to gather and centralise information about Ground Rules violations. Information has often trickled in via second- and third-hand sources, distorted and long after the fact. This has prevented UNICEF from providing necessary follow-up.
- Clear indicators are lacking. How does one measure a failure to be accountable to the local population? Or behaviour by an NGO that contravenes neutrality?

In most cases, information has been gathered from a variety of sources. When there are serious allegations of killing of civilians or misuse of humanitarian assistance, OLS staff — together with counterparts — have carried out investigations *in situ*. In addition, counterparts have carried out their own investigations in cases of misuse of humanitarian assistance by the military, for example.

4.6 Follow-up to Ground Rule violations

Enforcement

Enforcement of the Ground Rules is a critical element in establishing the credibility of the humanitarian principles programme. OLS's inability to enforce them and apparent timidity in the face of egregious violations of the Ground Rules — killing civilians, recruiting children, diverting humanitarian assistance — has generated much criticism and many searching questions about the validity of the whole exercise. It is important to look at what was done and why, to analyse such criticism.

The absence of an effective judicial system or of a tradition of real community participation was always going to make enforcement of the Ground Rules difficult. For this reason, Section G of the Ground Rules (see Annex), which dealt with the resolution of problems, identified the Joint Relief and Rehabilitation Committees (JRRC) as the guardians of the Ground Rules. These committees had been established, in some areas, to provide some kind of grass-roots coordination of humanitarian programmes and usually involve community leaders, political authorities, as well as representatives of OLS agencies. In that sense, they were the nearest that south Sudan had to a village development committee, and thus seemed the logical body to investigate violations.

The same section of the Ground Rules also sought to promote the principle that, whenever possible, violations should be dealt with at field level, by the parties involved and in a spirit of collaboration — not confrontation. For some of the minor incidents — small thefts, minor fallings out, disagreements about the way in which an intervention was managed — there has been some success with local-level reconciliation.

Alternative responses that have been suggested include public condemnations of the perpetrators, withdrawal of humanitarian assistance or a reduction

in capacity-building support to the humanitarian wings of the movements.

Public condemnation of violations

OLS has followed a strict policy of not publicising reports of its investigations into Ground Rules violations, but taking them up directly with the movements responsible behind closed doors.

Many Sudanese have argued with us that the culture of respect for human rights is far from being embodied in the movements and that only public condemnation will effect change. The SPLM was especially critical of the decision not to go public with the findings of the report made on SSIM attacks against civilian population in SPLM areas.

This issue goes to the heart of the protection and assistance debate: the trade-offs that have to be made by a body that seeks to provide both services to the population. In this respect, UNICEF has taken its lead from UNHCR and ICRC, which only make public criticisms in exceptional circumstances. We felt that to make public condemnations of either side in the conflict, would have exposed us to adverse response, risked service delivery and enmeshed us in factional fighting.

Withdrawal of humanitarian assistance

There have been occasions when OLS agencies have withdrawn, temporarily, from an area because the operating environment made work impossible. WFP has done this when the harassment of food monitors and the level of ‘taxation’ reached such extortionate levels that fair and accountable distribution was

impossible. However, the option of deliberately withdrawing humanitarian assistance from those in need because of abuse by the local political or military authorities has always been rejected despite pressure from donors and NGOs. The reason given is that the imposition of sanctions against humanitarian action — whatever the provocation — violates the very right to humanitarian assistance which the Ground Rules uphold.

Inevitably, this has created dissent. Internationally, there is a growing recognition that aid can do harm and prolong conflict. It can also buttress undemocratic, unaccountable and brutal regimes. And given that OLS has few alternative enforcement possibilities, many have argued that we must be prepared to apply this sanction.

Withdrawing capacity-building support

The last possible response would have been to cut back or even withdraw from providing capacity-building funding to the humanitarian wings of the movements. While this would have ‘punished’, there was little evidence that it would have changed behaviour and probably would have weakened our most important allies within the movements. The point has been made before but can hardly be overemphasised: the need to support strategic allies within south Sudan and different southern Sudanese institutions as a way to promote humanitarian principles.

While it is probably too early to make a definitive judgement on the correctness of the OLS response, it is unlikely that it will, in the short-term at least, change dramatically.

5

Issues and Implications

5.1 Successes

As the first major independent review of OLS (1996) noted:

“The use of the Ground Rules is still under development. The Review Team is therefore not in a position to comment on the extent of its success; there is certainly a need for further research on the issue. At the same time, the Review Team noted that, by the very fact that it is one of the few programmes in south Sudan that is actually documenting how the war is being fought and attempting to do something about it, the use of the Ground Rules deserves special mention. Indeed, the use of Ground Rules has achieved a rare thing in relief work. Whereas usually aid agencies disregard human rights as the price to be paid for access, the Ground Rules have brought human rights and humanitarian aid together.”

The Ground Rules approach, as currently existing in the south, should be developed as a framework of a signed OLS agreement between the UN and all warring parties.”

The major success of the Ground Rules and the humanitarian principles initiative is a raised awareness of their relevance in south Sudan and the international community. There is a recognition that such principles are central to a humanitarian programme and the linking of protection and assistance as inseparable parts of its mandate.

While some see continuing Ground Rules violations as reflecting the weakness of the enforcement capacity of all concerned, it was never expected that the culture of war would change overnight. What is important is that, despite the violations, there are new attitudes towards the integrity of humanitarian assistance and the need to protect civilians. These attitudes do not necessarily spring from the purest of motives, but are no less real for that. To be approached by a commander in the field and asked what to do about a 14-year-old boy who volunteers for the military is a step forward in attitude, given that the subject of child recruitment was virtually taboo as recently as three or four years ago.

5.2 Continuing problems

The humanitarian principles programme has had some success in promoting changing attitudes towards the well-being of civilians and the integrity of humanitarian assistance, but abuses still occur. Reasons for this include the lack of enforcement capacity mentioned above, the limitations of civil society and the time required to change the war culture to one of humanitarianism.

Another reason for the programme’s limited success is that the Ground Rules are still seen as OLS’s responsibility by most Sudanese and as UNICEF’s responsibility by most NGOs. Despite the advocacy and capacity-building efforts, Sudanese institutions have yet to take the lead on this issue, though

progress has undoubtedly been made. This highlights the difficulties in finding a balance between showing leadership and not taking control. In retrospect, it might have been better to move more slowly and spend more time in developing strategic Sudanese allies.

While dialogue with NGOs on the issue has improved, many still regard humanitarian principles as outside their mandate and of real relevance only when it involves their staff or supplies. Many of them also tend to see humanitarian principles as something that the warring parties need to live up to rather than obligations on themselves. Donors, NGOs and UN agencies need to recognise that their responsibilities include professionalism and standards of implementation, capacity building in the broadest sense, including the promotion of community involvement, and participation in decision-making and accountability to beneficiaries.

The absence of an effective justice system and a culture of respect for human rights and law and order has also constrained the programme. Ultimately, only major improvements in this area will ensure that humanitarian principles are respected. Additionally, there are still no real sanctions against those who violate humanitarian principles or human rights. This issue needs further debate and discussion, with the involvement of the rebel movements, civil society and humanitarian agencies.

The failure of the northern sector to promote a parallel initiative, for reasons already discussed, has laid OLS open to charges of lack of neutrality. As the SPLM and SSIM often pointed out, we were demanding higher standards of them than of the government. This was a reasonable accusation: all warring parties should be held to the same standards.

5.3 Lessons for humanitarian agencies and for other complex emergencies: some tentative conclusions

The protection of the safety and dignity of populations can and will only be achieved through good governance that respects the rights of the people and an empowered civil society that has the knowledge, capacity and the confidence to demand them. Humanitarian principles can ultimately only be guaranteed if issues of governance and accountability of authorities to their populations are addressed. Armed opposition movements must

make the same commitment to international standards as governments. Humanitarian agencies can and must be prepared to confront these issues as part of their mandate.

Great debate continues among scholars and practitioners on whether or not there is a need for new international standards or more rigorous and effective application of existing standards, particularly with respect to the internally displaced for whom no special body of legislation exists. On the basis of the OLS experience, it is argued that more rigorous promotion and enforcement of existing legislation and principles — including national legislation as well as international conventions and principles — would resolve many of the problems of civilians in conflict and the abuse of humanitarian assistance.

There need to be clear criteria for engagement with armed opposition movements so that exacerbating conflict by encouraging factions can be avoided. The following are suggested:

- the group must have independent control of territory and population;
- it must have a recognised structure;
- it must have a political agenda and objectives;
- it must have a proper humanitarian wing;
- this humanitarian wing or entity must make a clear commitment to some form of Ground Rules and their humanitarian principles, and should demonstrate the capacity to manage programmes with staff who can carry out these activities.

The formalisation of these, or similar criteria, might allow donors and implementing agencies to engage more systematically with armed opposition movements on the subject of accountability, without the fear that they will be accused by governments of legitimising outlaws and bandits. What the humanitarian community — including OLS — has failed to do, is identify the best interests of those living under the control of groups whose respect for human rights is non-existent.

There remains a need for the international community to clarify the relationship between sovereignty and humanitarian intervention and the denial of access to those in need. As far back as 1992 the then UN Secretary-General, Boutros Ghali, described a re-examination of sovereignty as ‘the major intellectual exercise of our time’. This exercise

Annex 1

SPLM/OLS Agreement on Ground Rules

[NB. The example which follows is the agreement signed between the SPLM/OLS. Although signed separately, the content of the agreements with other movements was, to all intents and purposes, the same.]

This agreement is intended to lay out the basic principles upon which Operation Lifeline Sudan (OLS) works and to lay out the rules and regulations resulting from such principles. It seeks to define the minimum acceptable standards of conduct for the activities of OLS agencies and Sudan Relief and Rehabilitation Association (SRRA), as the official counterpart in areas controlled by the Sudan People's Liberation Movement/Army (SPLM/A).

We, the undersigned, enter into this agreement in a spirit of good faith and mutual cooperation in order to improve the delivery of humanitarian assistance to and protection of civilians in need.

In signing this agreement, we express our support for the following international humanitarian conventions and their principles, namely:

- i. Convention on the Rights of the Child 1989
- ii. Geneva Conventions of 1949 and the 1977 Protocols additional to the Geneva Conventions

A. Statement of Humanitarian Principles

1. The fundamental objective of OLS and SRRA is the provision of humanitarian assistance to populations in need wherever they may be. Such humanitarian assistance seeks to save life, to ease suffering, to promote self-reliance, self-sufficiency and the maintenance of livelihoods. The right to receive humanitarian assistance and to offer it is a fundamental humanitarian principle.

2. The guiding principle of OLS and SRRA is that of humanitarian neutrality — an independent status for humanitarian work beyond political or military considerations. In other words:

- i. Humanitarian aid must be given according to considerations of human need alone. Its granting, or its acceptance must not be made dependent on political factors or upon race, religion, ethnicity or nationality. It must not seek to advance any political agenda. Where humanitarian assistance is inadequate to meet the needs of all, priority must be given to the most vulnerable.
 - ii. The passage of humanitarian assistance to populations in need should not be denied even if this requires that aid passes through an area controlled by one party in order to reach the needy in another area, provided that such passage is not used for military advantage.
 - iii. Relief assistance is provided solely on the basis of need; those providing assistance do not affiliate themselves to any side in the ongoing conflict.
 - iv. The only constraints on responding to humanitarian need should be those of resources and practicality.
3. All humanitarian assistance provided is for the use of identified civilian beneficiaries. Priority must at all times be given to women and children and other vulnerable groups such as the elderly, disabled and displaced people.
4. Those carrying out relief activities under the auspices of OLS must be accountable to the beneficiaries and their representative structures in first place, and to those who fund the activities. This places the following obligations on the various parties:
- i. those rendering humanitarian aid have a duty to ensure its appropriate end use. This includes a right to monitor and participate in the distribution of humanitarian aid on the ground in partnership with SRRA.
 - ii. local authorities, through the SRRA, must ensure that aid is distributed fairly to civilian beneficiaries. Diversion of aid from intended beneficiaries is regarded as a breach of humanitarian principles.

iii. decision-making on the selection of beneficiaries and the monitoring of the use of inputs and resources must be, and be seen to be, transparent and responsive to broad-based decision-making at the level of affected communities. Local authorities and relief agencies should involve local representatives of communities in the processes of targeting and monitoring of aid. Where possible, this should be done through the Joint Relief and Rehabilitation Committees which include elected community representatives.

5. OLS is based on the complete transparency of all its activities. This means that local authorities have the right to expect that OLS agencies provide full information regarding the resources to be provided. In return, it is expected that local authorities will report honestly and fairly in all their dealings with OLS with respect to needs identified, populations in need, use of resources, etc.

6. All humanitarian actions should be tailored to local circumstances and aim to enhance, not supplant, locally available resources and mechanisms. Strengthening local capacity to prevent future crises and emergencies and to promote greater involvement of Sudanese institutions and individuals in all humanitarian actions is an integral part of OLS's humanitarian mandate.

7. The fundamental human right of all persons to live in safety and dignity must be affirmed and supported through appropriate measures of protection as well as relief. All those involved in OLS must respect and uphold international humanitarian law and fundamental human rights.

8. Bona fide staff members of OLS agencies and others living, working or travelling in Sudan under the auspices of OLS have the right to go about their business freely and without restraint provided that they adhere to these Ground Rules and to local laws and customs. In all their dealings, relief workers and local authorities must demonstrate mutual respect.

B. Mutual Obligations

1. All externally supported programmes and projects in SPLM/A-controlled areas, must be approved by the SRRA (both locally and at SRRA head office) prior to their implementation. NGOs or UN agencies are responsible for ensuring that such approval is obtained in writing. Project implementation should be based upon a letter of

understanding between the agency, SRRA and OLS which defines roles, responsibilities and commitments of all sides plus procedures for resolving differences and grievances.

2. All UN/NGO workers are expected to act in accordance with the humanitarian principles previously defined: provision of aid according to need, neutrality, impartiality, accountability and transparency. This includes non-involvement in political/military activity. NGOs and UN agencies must not act or divulge information in a manner that will jeopardise the security of the area.

3. All UN/NGO workers must show respect for cultural sensitivities and for local laws and customs. Relief agencies must ensure that their staff are familiar with these laws and customs.

4. UN agencies and NGOs shall strive to offer the highest possible standards of service to their beneficiaries. This means that all agencies commit themselves to recruiting only those staff judged to have adequate technical and personal skills and experience required for their work.

5. UN agencies and NGOs must ensure that all their staff living, working or visiting Sudan are bearers of valid entry passes from the respective political authorities.

6. The SRRA must commit itself to the humanitarian principles defined above and not allow itself to be motivated by political, military or strategic interests. It should seek to provide an efficient and effective coordinated information and planning service for relief and rehabilitation activities.

7. The SPLM/A recognises and respects the humanitarian and impartial nature of UN agencies and those NGOs which have signed a letter of understanding with UNICEF/OLS and SRRA.

8. The SRRA should facilitate the flow of relief goods and services and provide accurate and timely information regarding the needs and the situation of civilians in their areas.

9. Local authorities assume full responsibility, through the SRRA for the safety and protection of relief workers in areas under their control. This responsibility includes:

- i. providing an immediate alert to relief workers in potentially insecure areas;

- ii. facilitation of safe relocation when necessary;
- iii. protection from any form of threat, harassment or hostility from any source; relief staff or agencies are not expected to pay for such protection either of themselves or of their property.

10. UN/NGO compounds should be respected as property of these institutions. Those living in these compounds have the right to privacy and compounds should only be entered with the permission of their residents. No military or political activity should take place in these compounds and no personnel bearing arms may enter them except when the safety of their residents is threatened.

C. Use of relief property and supplies

- 1.i. All UN/NGO property, including vehicles and property hired by UN/NGOs, is to be controlled and moved at the discretion of UN/NGOs or their agencies, unless such property is formally donated to another party. Project agreements between NGOs, SRRA and UN/OLS should clearly define which assets will remain the property of the agency concerned and which are project assets which must remain in Sudan even when the agency concerned leaves temporarily or permanently.
- ii. Those assets defined as agency assets remain the effective property of the agency at all times and may be removed whenever a project terminates or an agency withdraws from a location for whatever reason.
- iii. Project assets are those which are for direct use by project beneficiaries or are integral to the running and sustainability of the project. These goods remain the property of UN/NGOs until formally handed over to the SRRA or local communities and their leaders. Decisions regarding the distribution and use of such items should be made, whenever possible, jointly between NGOs and local authorities, under the auspices of the Joint Relief and Rehabilitation Committee following the humanitarian principles stated above.

2. UN and NGO flags are for exclusive use by these agencies.

3. UN and NGO staff will be allowed unrestricted access to their communication equipment and to exercise normal property rights. Except for emergencies, all messages should be written and recorded. Use of UN/NGO radios or

other communication equipment will be limited to information on relief activities only. All messages will be in the English language. Operation shall be by a locally designated radio operator seconded and selected jointly by the local authorities and relief agencies. Whenever necessary, UN/NGO personnel will be allowed to transmit their own messages.

4. No armed or uniformed personnel is allowed to travel on UN/NGO vehicles: planes, boats or cars. This includes those vehicles contracted by UN/NGOs.

D. Employment of staff

1. All UN agencies and NGOs have the right to hire their own staff as direct employees. These agencies should be encouraged to employ appropriately qualified and experienced Sudanese as part of a capacity building strategy.

2. In the cases of Sudanese staff seconded to an NGO supported project (e.g. health staff), appointments and dismissals are made by the local authority in consultation with the agency which is expected to support payment of that worker's incentives. The number of workers to be supported must be agreed jointly. An NGO or a UN agency may ask the local authorities to withdraw seconded staff considered incompetent, dishonest or otherwise unsuitable for their jobs.

3. Local authorities should ensure that the Sudanese staff of UN/NGOs and especially those staff who receive special training programmes to upgrade and improve their skills, are exempted, whenever possible, from military or other service so that they can contribute to the welfare of the civilian population.

E. Rents, Taxes, Licences, Protection money

1. No UN/NGO should be expected to pay rent for buildings or areas which are part of their work, for example, offices or stores when they have built these buildings themselves or where they are donated by the local authority.

2. In the case of public buildings which are being rented by an NGO as living accommodation, a reasonable rent may be paid by the NGO/UN agency to the civil administration. Genuine efforts should be made to make moves towards standardisation of these rents.

3. All OLS agencies shall be exempt from customs duties for supplies (including personal supplies) and equipment brought into Sudan. Any taxes to be paid will be agreed between the agency concerned and the local authority as part of the project agreement.

F. Implementation of this agreement

1. All signatories to this agreement must accept responsibility for ensuring that it is disseminated to all their officials and staff working in Sudan. It should also be publicised in public places in Sudan to ensure that local communities and beneficiaries understand its principles and rules.

2. UNICEF/OLS, together with the SRRA will be responsible for ensuring the holding of workshops and meetings in all key locations in which the principles and rules of this agreement are explained and discussed with all relevant personnel.

3. The SRRA is fully responsible for ensuring compliance with this agreement by the local authorities and communities.

4. Joint Relief and Rehabilitation Committees established in all relief centres and involving all relevant actors should meet together on a regular basis to plan, implement and monitor the delivery of humanitarian assistance. These committees will be regarded as the custodians of the principles of this agreement at local level and responsible for

ensuring that the rules are upheld and respected by all sides.

G. Mechanisms for resolving alleged violations of Ground Rules

1. In cases where allegations of non-compliance with this agreement are made, all parties commit themselves to resolving differences as speedily as possible in an attitude of good faith.

2. Where alleged violations of Ground Rules have occurred, the allegation should be documented in writing by the complainant.

3. The issue should then be taken to the local Joint Relief and Rehabilitation Committee, where this exists.

4. If unresolved, it should then be discussed at local level with meetings between the area secretary of the SRRA, the county Commissioner and the local head of the UN/NGO, together with the UNICEF/OLS Resident Project Officer, where appropriate.

5. If the issue remains unresolved at local level, it should be referred to central authorities in writing to be dealt with by the senior officials of the agencies concerned, i.e. the SRRA head office, the head of the NGO and, if appropriate, the UNICEF/OLS coordinator.

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Endnotes

- ¹ Bishop of Recife, Brazil and renowned spokesman against oppression during the military dictatorship.
- ² Chapter VII resolutions allow the Security Council to authorise intervention in a country by the UN or a member state in the interests of regional or international peace and security.
- ³ The document states that: 'Civilians have the fundamental right under international humanitarian law to be protected from attacks, torture and other forms of attack on their physical and moral integrity.' It also states: 'The fundamental human right of all persons to live in safety and dignity should be supported through appropriate measures of protection as well as relief.'

Acronyms

CRC	Convention on the Rights of the Child
DHA	United Nations' Department of Humanitarian Affairs
ERA	Eritrean Relief Association, the relief wing of the Eritrean People's Liberation Front
ICRC	International Committee of the Red Cross
IHL	International humanitarian law comprising the Geneva and Hague Conventions
JRRC	Joint Relief and Rehabilitation Committee
NSCC	New Sudan Council of Churches
OLS	Operation Lifeline Sudan
RASS	Relief Association of South Sudan, the humanitarian wing of the SSIM
REST	Relief Society of Tigre, the humanitarian wing of the Tigrean People's Liberation Front
SSIM/A	South Sudan Independence Movement/Army led by Dr Riek Machar
SPLM/A	Sudan People's Liberation Movement/Army led by Dr John Garang
SPLM/A-United	Sudan People's Liberation Movement/Army (United) led by Dr Lam Akol
SRRA	Sudan Relief and Rehabilitation Association, the humanitarian wing of the SPLM
UNICEF	United Nations Children's Fund
UNITA	Uniao Nacional para a Independencia Total da Angola (led by Jonas Savimbi, this group has fought the Angolan Government since 1975)
WFP	World Food Programme

References

- African Rights (1996) *Imposing Empowerment*. African Rights, London.
- Darcy, J. (1997) Human Rights and International Legal Standards: What Relief Workers Need to Know. *Relief and Rehabilitation Network Paper 19*, Overseas Development Institute, London.
- Dommen, E. (1996) Humanitarian Aid in the Cycle of Armed Conflict. *DHA News No. 19*, June/August.
- Donnelly, J. (1990) Human Rights and Western Liberalism. In A. An-Naim and F. Deng (eds.) *Human Rights in Africa: Cross-Cultural Perspectives*. Brookings Institution, Washington.
- Duffield, M. (1994) Complex Emergencies and the Crisis of Developmentalism. *IDS Bulletin: Linking Relief and Development* 25(3), October.
- Human Rights Watch/Africa (1994) *Civilian Devastation: Abuses by All Parties in the War in Southern Sudan*. Human Rights Watch, New York.
- Kaplan, R. (1994) The Coming Anarchy. *Atlantic Monthly*, February.
- Karim, A. et al. (1996) *Operation Lifeline Sudan: A Review*. Birmingham University, Edgbaston and Department of Humanitarian Affairs, Geneva.
- Macrae, J. and A. Zwi (eds.) (1994) *War and Hunger*. Save the Children, London.
- Plattner, D. (1996) ICRC *Neutrality and Neutrality on Humanitarian Assistance*. International Review of the Red Cross. March-April 1996
- Prendergast, J. and C. Scott (1996) *Aid and Integrity: Avoiding the Potential of Humanitarian Aid to Sustain Conflict: A Strategy for USAID/BHR/OFDA in Complex Emergencies*. Washington.
- Steering Committee for the Joint Evaluation of Emergency Assistance to Rwanda (1996) *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*. p199. Copenhagen.
- Summerfield, D. (1996) The Impact of War and Atrocity on Civilian Populations: Basic Principles for NGO Interventions and a Critique of Psychosocial Trauma Projects. *Relief and Rehabilitation Network Paper 14*, Overseas Development Institute, London.

RRN

Background

The Relief and Rehabilitation Network was conceived in 1992 and launched in 1994 as a mechanism for professional information exchange in the expanding field of humanitarian aid. The need for such a mechanism was identified in the course of research undertaken by the Overseas Development Institute (ODI) on the changing role of NGOs in relief and rehabilitation operations, and was developed in consultation with other Networks operated within ODI. Since April 1994, the RRN has produced publications in three different formats, in French and English: Good Practice Reviews, Network Papers and Newsletters. The RRN is now in its second three-year phase (1996-1999), supported by four new donors – DANIDA, ECHO, the Department of Foreign Affairs, Ireland and ODA. Over the three year phase, the RRN will seek to expand its reach and relevance amongst humanitarian agency personnel and to further promote good practice.

Objective

To improve aid policy and practice as it is applied in complex political emergencies.

Purpose

To contribute to individual and institutional learning by encouraging the exchange and dissemination of information relevant to the professional development of those engaged in the provision of humanitarian assistance.

Activities

To commission, publish and disseminate analysis and reflection on issues of good practice in policy and programming in humanitarian operations, primarily in the form of written publications, in both French and English.

Target audience

Individuals and organisations actively engaged in the provision of humanitarian assistance at national and international, field-based and head office level in the 'North' and 'South'.

The Relief and Rehabilitation Network is supported by:

Ministry of Foreign Affairs
DANIDA

ECHO

Department of Foreign Affairs, Ireland

Department of International
Development (NEW LOGO!)