
Ethical dilemmas posed by unethical behaviour by persons of concern

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What ethical dilemmas affect humanitarian agencies' responses to fraudulent behaviour by persons of concern? And how might refugee community structures be more involved in defining responses?

Fraudulent acts by persons of concern can have an impact on the quality of humanitarian programmes and on agencies' accountability to donors and the affected population at large. For example, UNHCR (the UN Refugee Agency) has long-established internal procedures to address fraud in the resettlement process, including through ensuring that investigations are carried out by experienced protection staff without prior involvement in the case. In 2017 UNHCR expanded the scope of its integrity efforts beyond the resettlement programme, producing guidelines to help

staff manage situations where a person may have fraudulently attempted or managed to obtain assistance and/or protection.

UNHCR recognises that the very circumstances in which most refugees live can contribute to reinforcing those triggers that may lead to unethical behaviour. Such triggers may be self-serving bias (that is, the tendency to consider actions committed by ourselves less harshly than the same actions committed by others) or rationalisation and minimisation of one's own wrongdoing (for example, because a small fraud is not perceived as having an impact on large

humanitarian agencies). These are common facilitators of unethical behaviour across societies, which may reasonably be expected to gain more weight in the context of forced displacement where access to life-saving assistance and durable solutions is at stake.

Complexity of imposing penalties

UNHCR's approach requires that once an investigation has established that fraud has been committed or attempted by persons of concern, corrective actions must be applied. Despite not being punitive in nature, these actions are likely to result in the loss of eligibility for the interventions or assistance accessed unethically. The corrective actions aim to put right the result of the fraud; for example, in cases of identity fraud, misrepresentation of family composition, fraudulent or fraudulently used documentation and similar types of fraud, corrective actions may involve closing a fraudulent refugee profile, correcting recorded family size, disposing of a forged document, and so on. Only in exceptional situations, when the fraud committed is particularly bad (and as a deterrence measure), temporary penalties such as removal of non-essential benefits may be imposed, with authorisation from UNHCR's Anti-Fraud Coordinator in Geneva.

However, where refugees commit fraud relating to cash assistance, the situation becomes more complex. Here an ethical judgement about the appropriate response will depend not only on the facts of the case but on several considerations including the local context (for example, whether the national authorities need to be involved) and the internal procedures of the agencies whose cash assistance programmes were affected by the fraud. Even if fraud only occurs sporadically and does not have a major impact, it challenges the real and perceived integrity of humanitarian programmes, and organisations (more often, individual managers) need to make ethically sound decisions about how to respond to specific cases.

For example, an important ethical question would be whether it is legitimate, in principle and in practice, to expect the refugee to return the misappropriated cash, and if this measure is seen simply as a

corrective action or as a penalty imposed on the individual. The answer will depend first and foremost on what the decision-maker considers that the aim of a corrective action should be in the context of cash assistance fraud. In other words, would justice be considered to have been done if the refugee who committed the fraud is prevented from continuing with his/her unethical behaviour – or when the cash balance is reinstated?

On the one hand, one may think that it is not sensible to demand repayment, in particular when the cash was used to meet basic needs; however, the rest of the recipients of assistance are likely to be facing similar challenges as the fraudster, and yet do not resort to fraud. On the other hand, if one considers that it is legitimate to expect that the cash is returned, is this always the case? Would this remain legitimate, for example, even when the only way to restore the cash is to temporarily reduce or cut future cash assistance for the individual who has committed the fraud – bearing in mind the possible impact of this on household members who were not involved in the act, and the potential deviation from the principle that life-saving assistance should not be withdrawn from refugees? One may be inclined to say that 'it depends' but on what it 'depends' remains debatable, and it is this sort of ethical dilemma that risks creating unfairness in the process.

Judgement criteria

Based on observations from the field, it appears that the criteria for judgement that organisations most commonly use tend to prioritise either the result or the principle. In the first case, a utilitarian perspective – aiming for the greatest good for the greatest number of people – would suggest that the misappropriated cash should be returned to the agency to eliminate the loss to the organisation and the refugee community at large, while also creating a deterrent. However, this fails to take into account important factors, such as the personal motivations and moral beliefs that led to the fraud (an area where the service providers may also have some responsibility) and the possible consequences of such corrective action.

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On the other hand, a perspective that prioritises the principle over the result implies recognition of the rights, duties and responsibilities of an individual without exception and regardless of the practical circumstances in question. Humanitarian work, however, is often undertaken in complex, difficult circumstances where one principle may have to be given priority over another. For example, the principle that humanitarian organisations must provide life-saving assistance to all refugees who need it is likely to be prioritised over the principle that fraud and corruption must be prevented and addressed. Through this lens, withdrawing assistance from the refugee who has committed the fraud would not be an acceptable corrective action.

Both approaches are too rigid to adequately address the complexities of cases like this, and making an ethical decision will instead mean finding a different approach to producing a moral judgement. Staff working for humanitarian organisations need to be able to make sound ethical decisions in complex situations; their organisations therefore need to establish a framework for providing the necessary training for them in questions of ethics and moral judgement.

Engaging refugee community structures

Looking at the wrongdoing of the refugee in light of the injustice caused to the refugee community, not the agency, would open a

space for community-based structures to provide constructive support in designing the correct response. As a first step, organisations might do well to engage refugee community structures in discussions on potential scenarios of unethical behaviour and thereby learn how the refugee community would assess such situations. If individual cases are then discovered, as long as protection and safety are ensured for all those involved and the process is closely monitored to avoid any harm or abuse (one cannot stress this enough), refugees' representatives may be asked to suggest what the fraudsters should do to reinstate their position and regain the trust of the community. They may, for example, recommend a period of voluntary work. When well managed and closely monitored, this approach can make the most of a corrective action that is at the same time both a significant exercise of leadership for the refugee community in holding its members accountable and, through positive peer pressure, a general deterrent to future fraud attempts.

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The views expressed are those of the author and do not necessarily represent the views of either of these organisations.

