



The End of Blind Faith?

Civil Society and the Challenge of Accountability, Legitimacy and Transparency

Kumi Naidoo

Kumi Naidoo is the Secretary-General and CEO of CIVICUS: World Alliance for Citizen Participation, an international alliance of civil-society organisations dedicated to strengthening citizen participation and civil society worldwide. He was recently appointed by the UN Secretary-General to the Panel of Eminent Persons on UN Civil Society Relations.

For further information, see www.civicus.org

“CSO public engagement is not an aberration that needs to be justified, but a necessary component of how democratic politics has to work. No apology needs to be made or justification given – it is the right of any citizen, individually or collectively to seek better alignment of policies with their interests or concerns. The crucial issue then becomes the strength – not the legitimacy – of voice in terms of altering policy or regime behaviour.”

Alan Fowler, President, International Society for Third Sector Research

Background

Civil-society organisations (CSOs) have historically played a crucial role in tackling issues of transparency, legitimacy and accountability within governments and businesses, with many positive results. It is perhaps inevitable, therefore, that political and business leaders at the national and global level have become anxious about the impact of civil-society advocacy. Some government leaders have suggested that, since they have been elected, only they should be able to develop and implement public policy. They argue that civil-society organisations can never have the legitimacy of democratically elected representatives.

Most governments and intergovernmental bodies embrace the role of citizen groups who seek to provide support, services and direct programmes of relief and assistance to communities and individuals in need. This delivery or operational role at the *micro* level is seen as filling the gaps

that government is unable to meet and is seen as an uncontroversial foray into the public space. But, even in democracies, they play a crucial role in bringing the concerns of interest groups to legislators and improving the political process. CSOs’ efforts at policy impact at the *meso* level, or their efforts to address core questions of governance and structural and systemic change at the *macro* level, raise many doubts on the part of political and business leaders.

The debate about civil-society accountability must take account of the reality that democracy at the local, national and international levels is experiencing what many now call a democratic deficit. Surveys reveal declining levels of citizen trust in political institutions. In many democratic systems ‘form’ has largely overtaken the ‘substance’ of democracy: elections may be held, but fewer and fewer people are choosing to vote and the meaningful interface between citizens and the elected are

minimal between election periods. Elections run the risk of becoming preordained, elite legitimating processes and are, in some cases, not delivering genuine democracy. Affiliation with traditional political parties is on the decline as the parties themselves are characterised by a growing lack of internal democracy or fail to address issues that citizens believe are important. The influence of moneyed interests in many political systems is also turning citizens away from traditional engagement in favour of new forms of participation. Further, media independence and critique is also diminishing and, in an age of aggressive spin-doctoring, citizens are often separated from the full story about public concerns.

Alan Fowler correctly suggests that the confusion between the principles and mechanisms of democracy compounds its weakness. The principle of citizen control over those who exercise power and authority in their name is not the same as the mechanism of parties and periodic voting. Viewed from these two angles, the democratic deficit is in part a product of the fact that 'modern' mechanisms no longer adequately deliver the principle leading, *inter alia*, to political complacency bolstered by 'politics as entertainment',

concentrated media ownership and so on.

He further observes that more fundamental in relation to the public role of CSOs is the fact that, by its very nature, representative democracy produces median or compromise public policies that are suboptimal for any one group. Election processes supposedly alter the direction and balance around which compromise is negotiated and then delivered through public-mandated and -financed means. Consequently, every group in (a democratic) society has both motive and right to lobby, agitate, plead, etc. for policy reform that serves their interests better. This continual pressure for adjustment is inherent to the system.

Factors driving this debate within civil-society organisations

Over the last ten years we have seen a growth in attention to various legal, fiscal and other matters relating to regulation and self-regulation of the NGO, non-profit or voluntary sectors in different parts of the world. This area of activity was also accompanied by new explorations into such issues as NGO-government relations, NGO-business relations, as well as internal NGO challenges ranging from the question of the financial and broader sustainability of the NGO

sector to questions about the professionalisation of NGO work. What, then, are the factors and developments that are driving initiatives by civil society to tackle the challenge of accountability, legitimacy and transparency?

1. Increased influence has brought increased responsibility

Since the early 1990s, the world has witnessed what some have called a 'global associational revolution' and a 'power shift'. This describes the large growth in the sheer number of citizen-driven organisations that have emerged to respond to a wide variety of challenges facing humanity. Sometimes these have occurred with the support of governments; sometimes this has happened despite government, and even in the face of active opposition of some governments. This rise in influence and presence is now largely recognised. In the light of this context, many civil-society leaders have argued that this increased influence, indeed power and presence, brings with it increased responsibilities and public accountabilities. Consequently, they have invested time and effort in promoting a range of experiments in terms of developing self-regulation frameworks and have begun to debate these issues in earnest.

2. Countering government discourses around representativity

Notwithstanding the much greater acceptance of the role of NGOs and other civil-society groupings in the public life of their societies, several government and business leaders have been found to question the legitimacy of the NGO role in public life generally and in social advocacy in particular. The argument put forward by these government figures is that, unlike elected governments who derive their legitimacy from the electorate, and business leaders who are at least accountable to their shareholders or the bottom line, NGO workers are largely self-appointed 'do-gooders' who are not accountable to anyone other than themselves.

To combat this line of thought it has become necessary for NGOs to demonstrate their public support and develop new accountability mechanisms about both their internal practice as well as their external relations with a range of constituencies with which they interface on an ongoing basis. Most importantly, of course, are the very communities in whose name resources are leveraged to undertake certain pieces of work, as well as donors and other societal stakeholders.

“What is at question is whether government has the capacity or ability, or indeed whether it is desirable for the day-to-day practice of NGOs, to be policed by a government department”

While it may be obvious that CSOs generally need to develop new paradigms for improving their accountability, the starting point need not be apologetic for our work and efforts. In fact, several have encouraged elected governments to not interpret a victory at the ballot box as a blank cheque to rule without ongoing reference to their citizenry in between election periods. This is especially true in the growing number of countries where large numbers of citizens are turning away from formal electoral processes, and there is real evidence of a huge chasm between elected public officials and their citizens. Needless to say, this troubling discourse from elements in some governments is an important factor, driving the thinking of several NGO leaders in different parts of the world. They want to assert that they are not shy about accountability and they are prepared to take the lead to develop mechanisms to undertake this effectively.

3. The failure of government regulation of NGOs

In most countries the government imposes levels of control over the registration, management and funding of CSOs. Some could view this as public accountability; others might argue that charity, non-profit or NGO legislation is often more limiting than

enabling. In thinking about new paradigms and how we must foster greater social inclusion and legitimacy in our work, NGOs, acting independently and in alliance, need to consciously promote the presence of ordinary citizens in their actions and the public sphere.

Given this context, and the fact that governments have tried to set up regulatory bodies to control the NGO sector, in the main the specific role of policing practice is one that is extremely difficult even for a well-functioning government department to do. One is not suggesting that government does not have a right, or that it is inappropriate for it, to have an internal capacity to conduct its relations with the NGO community, and to work with them to set in place various enabling laws. This is largely unchallenged. What is at question is whether government has the capacity or ability, or indeed whether it is desirable for the day-to-day practice of NGOs, to be policed by a government department. In short, it is difficult to legislate and implement a culture of ethics and accountability, and many NGO leaders have sought to develop codes of conduct before governments seek to set up such rules.

“recent attacks on CSO legitimacy and accountability, as being currently led by the American Enterprise Institute, ironically itself an NGO with a distinctive conservative political brand, should be viewed as an opportunity as well as a threat”

4. The conservative agenda

CIVICUS and its allies have argued that recent attacks on CSO legitimacy and accountability, as being currently led by the American Enterprise Institute, ironically itself an NGO with a distinctive conservative political brand, should be viewed as an opportunity as well as a threat. Naomi Klein, the Canadian activist, has noted that NGOs with strong social and economic justice agendas are coming under increasing attack from conservative quarters in the US and elsewhere, ostensibly because of a lack of accountability, but in reality for more dubious political reasons. We need to be vigilant, tracking the debates and discourses around these issues as they emerge and setting new agendas for improved governance in all institutions. We need to use this opportunity to develop a new governance offensive – an offensive that fundamentally challenges the governance dysfunction we currently experience in many national contexts and within global governance institutions, such as the United Nations, IMF, WTO and the World Bank.

But how do NGOs compare with organisations from other sectors? The One World Trust/Charter 99 report *Power without Accountability* was launched in January 2003. It is the

first report of its kind to compare the accountability of intergovernmental organisations (IGOs), transnational corporations (TNCs) and international NGOs. It considered two out of eight dimensions of accountability and found that aspects of the governance of NGOs are better than for the other two groups. On the downside, NGOs are on the whole much less transparent. This is often due to the fact that resource constraints usually limit the publications of such simple transparency tools as annual reports, particularly for smaller organisations in developing countries.¹

5. Fragility in current NGO practice

Another major factor driving the need for self-regulation has been the much-publicised cases of financial incompetence and in some cases fraudulence in a few NGOs in different parts of the world. While it is worth noting that the scale of these irregularities is probably minuscule compared to governmental and business-sector conduct, the public rightfully expects a much higher standard of conduct from civil-society groups that rely in the main on voluntary contributions. The two areas that have been most problematic are human resources and financial management. In both these areas, however, we should also note that several donors have been lacking in

¹ www.oneworldtrust.org/Cb99/btmlGAP/report/report.htm

helping to develop the financial and managerial capacity of NGOs, instead saying that they will support only programme costs. Another internal weakness of NGOs has sometimes been their poor communication and reporting systems. Several advocates of self-regulation have ensured that there have been explicit approaches on communications and reporting that are enshrined in the appropriate documents.

6. Intra-sectoral tensions

The heterogeneity of the NGO sector, with a wide variety of types, sizes, themes, personalities and structures, has often made it difficult to think about a single framework within which this mosaic of organisations should conform. Many have rightfully argued that one of the greatest strengths of the NGO sector is precisely its diversity and to try to straitjacket all organisations to conform and perform in a particular manner is ill advised and inappropriate.

However, what is being advocated does tend to take this into account and in fact part of the driving force has been the need to develop a set of rules that will also deal with several tensions within the sector as they pertain to such issues as funding,

taxation, access to public facilities and so on.

7. The growth of diaspora and other cross-border philanthropy

The last three decades have seen the significant rise of people who have their roots in the poorer regions of the world and have become highly successful in the industrialised world. Even though they have secured huge sources of wealth, they do not generally appear to be inclined towards setting up big foundation infrastructures to do their grant-making. Given that they might sometimes be far away from their historical homeland, they want to be able to rely on a set of public assessments and records that will distinguish bona fide NGOs from those that are not. Some of the efforts in this area have also been inspired by this growth and is likely to become more important in the years to come. The same also applies more generally to cross-border grant-making, which is also on the rise.

8. Indigenous resource mobilisation

With foreign donor funding drying up or reducing significantly in many parts of the world, NGOs have been recognising that for a greater sustainability for their work they are going to encourage more local resource mobilisation. This will often

take the form of raising resources from individual citizens who are willing to support various good causes. However, unlike with distant donor agencies, local residents appear to be more critical and questioning about who are good performing entities and which ones are ineffective. Consequently, the greater need to develop a local fundraising revenue pool has also spurred some of the work around improving civil-society accountability and transparency.

9. Taxation

Another significant driver influencing work around civil-society accountability is that of taxation. In several countries, and the number is growing, there are tax breaks both for the NGOs as well as the donors – sometimes for both institutional as well as individual citizens making donations. To be able to benefit from these benefits where they exist, the Ministry of Finance generally sets a high threshold of accountability and reporting and this is a necessary condition in beginning a dialogue with such ministries regarding the introduction of NGO-friendly tax regimes.

10. Advocacy benefits for NGOs

In several countries, particularly where national umbrella networks of NGOs exist, NGOs have been trying to

negotiate with government and business for reduced rates for goods and services consumed by the sector. In some countries, these have included special rates for postal services; in others it has been relief from municipal taxes where NGOs own property, in so far as government is concerned. As far as business is concerned, some civil-society networks have pursued reduced rates for medical aid and pension funds for NGO staff, and preferential rates for a broad range of commercial goods and services consumed by the NGO sector. For progress to be made here there needs to be some accountability framework to ensure that such schemes are not undermined by bogus institutions and corrupt individuals benefiting from them.

These various factors have different applicability in different contexts and prove even more difficult for transnational civil-society actors whose accountability is not linked simply to the country or countries in which they are legally registered but linked to a broader transnational constituency.

Addressing the definitional challenges

At both the national and global level today, civil-society networks are investing significant efforts in

“accountability is concerned with the obligation to justify words and deeds to society in general, and to a specific set of internal and external stakeholders”

improving their accountability, transparency and legitimacy, and importantly these efforts are growing in scope and scale. It is important to clarify some of these terms that are often used interchangeably but actually describe different areas of challenge for CSOs.

Firstly, accountability has three levels to consider.

1. **Upward accountability.** With regard to *upward* accountability to funders and meeting the formal requirements of regulatory provisions where they exist, this is probably where CSOs are the strongest.
2. **Downward accountability.** As far as *downward* accountability to the people who are being served or the constituency in whose name the rationale for existence is achieved in the first place, there is definitely room for improvement even though resource constraints often militate against this.
3. **Horizontal accountability.** *Horizontal* accountability or peer accountability requires much greater effort and attention. Failure to address this question could lead to unnecessary duplication, a failure to forge the appropriate

synergies and the wastage of resources. There are many positive examples of how civil-society groups are working together more closely: for example, the joint campaign against small arms by Oxfam International and Amnesty International is a case in point. The OSANGO (Organisational self-Assessment for NGOs) tool developed by CSOs in South Asia (see Jagadananda’s article, this issue) and Latin America has been a positive step forward in building up an internal organisational culture about the effectiveness of CSOs in achieving their mission.

Overall, then, accountability is concerned with the obligation to justify words and deeds to society in general, and to a specific set of internal and external stakeholders. It embraces the actors, mechanisms and institutions by which civil-society organisations are held responsible for their actions and would include financial accountability as well as performance accountability more broadly.

Secondly, transparency refers more to processes, procedures and values that ensure accountability and which characterise an organisation’s day-to-day work. They are prevalent in civil society’s method of work and the

existence of appropriate systems and how these relate to the functioning of CSOs. They can be fairly and accurately judged by stakeholders by using benchmarks that measure the levels of openness about such issues as clarifying programme approach and content, from whom and where resources are raised, and how are they spent. The use of ‘public hearings’ at the community level and ‘social audit’ processes are gaining momentum.

Thirdly, legitimacy is understandably a heavily contested term. It usually implies that an organisation is authentic and is justified in its actions. Legitimacy could be derived from many sources, including membership or constituency, legal recognition, experience, or relevant knowledge of the issues at stake. Civil-society organisations face a critical challenge in their justifications for voicing their opinions or speaking on behalf of others, especially vulnerable or marginalised communities. A distinction is made here between legitimacy and representativity. Few CSOs, with some notable exceptions such as trade unions, or professional associations, claim to formally represent their members. This does not, however, detract from the question of CSOs having a legitimate right to bring citizens’ concerns into the public sphere.

There is a powerful accountability measure built into the public life of citizen organisations. It is what we have called the ‘**perform or perish**’ principle. Unlike governments, who are guaranteed a revenue stream from taxation, not a single cent raised by civil-society organisations is raised on the basis of obligation, irrespective of whether the resources come from individuals, foundations, businesses or government entities. If CSOs do not *perform* on the basis of their stated vision, mission and programmes, they essentially *perish*.

CSO accountability mechanisms

The question about how NGOs develop and retain public trust and credibility has plagued many NGO activists over the last two decades. A range of accountability mechanisms are being used by CSOs to proactively and self-critically take responsibility for their organisational structures, operations, policies and activities. These tools are far from mutually exclusive and, in many instances, combinations of these techniques are integrated in order to meet the different demands of ‘upward’ and ‘downward’ accountability. These include:

- **Self-regulation mechanisms.** This has been by far the most predominant response by CSOs in

attempting to improve the regulatory environment governing their institutions as well as exploring complementary self-regulation efforts. The challenge has been met in some instances by the formation of national coalitions of NGOs who develop their own code of ethical practice in an effort to improve transparency and public accountability. In other cases we have seen formal initiatives such as the Philippine model of certification driven from within the NGO sector with government recognition for the process. In South Africa, in 1997, the NGO community developed a code of ethical conduct. Similar efforts are under way in about 40 countries around the world and are growing. At the global level, we have seen efforts now to develop similar guidelines for human rights organisations led by the International Council for Human Rights Policy and the Humanitarian Accountability Project in Geneva (see Agnès Callamard's article in this issue), to explore the challenges facing relief and humanitarian organisations operating transnationally.

- **Governing boards**, comprised of individuals external to the organisation, that are selected by and operate according to clearly

defined and transparent procedures. The specific tasks of governing boards vary, but they are generally intended to act as guardians of the interests of the organisation's membership or constituency, while also ensuring that the organisation operates in a way that is in compliance with both statutory obligations and in accordance with its own mission and values.

- **Standards for disclosure and public reporting** are determined in some countries by national legislation, but are adopted by CSOs in other contexts on a voluntary basis. Vehicles such as annual reports, organisational or project evaluations, strategic plans based on external assessments, and regular communications (newsletters, updates, briefs) can provide channels for public access to information about the organisation's work, financial status, governance structure and operational impact.
- **Consultative and participatory mechanisms**, which allow for the meaningful involvement of diverse constituencies (including beneficiaries) in the organisation's work, from project planning to evaluations.

“We need to ensure that any accountability framework does not become a gate-keeping instrument and that it is open to reflection, evaluation and change over time”

Some words of caution

Civil society must strive for maximum transparency and accountability in its work. At the same time, we must be willing to defend the rights of citizens and their organisations to participate actively in public life. We have fought long and hard to create the space to practise active citizenship. We should not give this up without a vigorous fight. This is urgent given that, under the guise of the so-called ‘war on terrorism’ discourse, civil liberties are coming under attack and civic space is being reduced in several countries around the world. In the end, a disciplined, united and well-informed civil-society community, backed by the positive attitudes and support of ordinary citizens, should prevail. NGOs must build on these and other models and work together to increase their own accountability without losing flexibility or their genuine contact with the grass roots. To ignore the issue, or to fail to address it adequately, will leave the sector open to further and perhaps more effective attacks in the future.

We need to recognise that this work is challenging and is a learning process for all of us involved in it throughout the world. In particular we need to recognise the following issues very actively and vigilantly:

1. The NGO sector is not homogenous and its diversity needs to be acknowledged at all times.
2. In attempting to draw lessons from other countries, we need to recognise that we cannot have a ‘one size fits all’ approach; local circumstances must be taken into account and existing models are likely to need some form of adjustment at the very least.
3. This process ultimately involves people who can bring a lot of their individual socialisation, baggage and ideological bias into this work; therefore the highest levels of integrity, transparency and openness need to be built into any process seeking to develop accountability frameworks.
4. We need to ensure that it is not only service-delivery organisations that are brought into the frame but also those that are oriented more towards advocacy work.
5. We need to ensure that any accountability framework does not become a gate-keeping instrument and that it is open to reflection, evaluation and change over time. The same kind of transparency and public accountability we strive to

achieve in NGOs needs to be part of any resultant framework.

While efforts to develop self-regulatory frameworks and broader accountability protocols might appear to be daunting and overwhelming, they can also be exciting and developmental. Therefore, whatever methodology a country or region or sector chooses to pursue, it is critically important that the very process of

choosing the methodology is a transparent, inclusive as well as an educational and capacity-building one. People should be empowered as a result of this process and the public at large should be engaged wherever possible. To meet this challenge we need to explore ways in which we can mainstream this process. But we should also not rush the process; 'more haste less speed' should inform our approach.