

U4 Helpdesk Answer 2017:10

Income and asset declarations for NGOs

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Query

What is the international established legal practice with regards to asset/wealth declarations of persons other than public officials, such as members of non-governmental organisations? Of interest are existing systems in member states of the EU, OECD and in the Eastern European/post-Soviet context. Also, what is the status of international scholarly discussion on the inclusion of members of non-governmental organisations in asset/wealth declaration systems?

Caveats

Since the practice of subjecting members of civil society to the same type of asset declarations public officials are often required to file is not common, this Helpdesk Answer focuses on the potential damages and risks of such an approach.

Summary

This Helpdesk Answer covers the use of income and asset declaration (IAD) regimes for non-governmental organisations (NGOs) and discusses whether this system is suitable for the sector. The first section gives a brief overview of the role of civil society in a democratic state. The second part covers the ways in which the space for civil society around the world has been threatened over the past two decades, including, for example, the restriction of foreign funding for civil society organisations (CSOs). This is then followed by a discussion on whether IAD systems, – originally designed for the public sector – are an appropriate tool to increase transparency and accountability among CSOs, based on the principles of democracy and the existing accountability relationships of civil society and different actors. The final section of this Answer provides an overview of different mechanisms to increase the levels of transparency in NGOs.

The importance of civil society in a democratic state

Freedom of association or assembly is a basic right enshrined in the Universal Declaration of Human Rights, embedded in the charters of regional bodies like the Organization of American States and the Council of Europe, and included in the International Covenant on Economic, Social and Cultural Rights and the United Nations Covenant on Civil and Political Rights. This right constitutes the foundation of a strong civil society and an essential component of pluralistic democracy, along with free and competitive elections, freedom of expression, freedom of religion and the rule of law (see United Nations 2012 and OSCE 2015).

Freedom of association is especially important because it allows for the formation of civil society organisations (CSOs) that can give a voice to popular causes, constituencies and ideas. CSOs can also act as a check on the government's actions, thus promoting transparency and accountability. For this reason, a strong and independent civil society is considered a pillar of good governance and an essential component of anti-corruption efforts (see Mungiu-Pippidi 2015). For example, CSOs played a significant role in many of the democratic transformations that took place over the past several decades, including in the Philippines, Ukraine, Serbia and South Africa (Freedom House 2008).

There are two ways in which civil society complements and enhances the workings of the existing accountability mechanisms. First, it adds new voices and concerns to the political agenda by raising novel issues and criticising existing public policies and legislation. Second, it can improve the quality of government by demanding accountability. CSOs often denounce violations of rights or breaches of law and due process, for example.

Many of the social movements that emerged in different democratic societies in the past decade have expressed identity and claims that were not represented or adequately processed by the existing mediating structures of political and economic society. The role of parties and interest groups as instances of political aggregation and mediation has been challenged increasingly by new social movements, NGOs, transnational organisations and civic associations.

A free and independent civil society also contributes greatly to the democratic process as part of its functions involve civic efforts to:

- monitor the behaviour of public officials and agencies to make sure they abide by the law
- expose cases of governmental wrongdoing
- activate the operation of horizontal agencies, such as the judiciary or legislative investigative commissions, that otherwise would not be initiated or only in a biased way

By exposing cases of governmental wrongdoing, human rights violations and activating reluctant state agencies of control and monitoring, civic actors make a crucial contribution to the enforcement of the rule of law and the fight against corruption.

The pushback against civil society

Over the past 15 to 20 years, however, organisations seeking to provide ordinary people with a voice or the ability to influence public policy have come under growing pressure from regimes that perceive them as a threat. Civil society organisations working on issues related to human rights, women's issues, corruption and abuse by security services, among others, have been particularly affected (Freedom House 2008). According to the 2017 Freedom in the World Index, for example, 2016 marked the eleventh consecutive year of decline in global freedom due to setbacks in political rights and civil liberties (Freedom House 2017).

Governments are using restrictions to target the groups that either pose the greatest threat to them or groups whose voices the government would rather the public did not hear. In a journal article drawing on fieldwork in China, Spires (2011) similarly finds that authoritarian regimes tolerate civil society groups “as long as particular state agents can claim credit for any good works while avoiding blame for any problems”.

One of the main restrictions that governments all around the world have started to promote are those on foreign funding. Between 1993 and 2012, over 40 countries restricted overseas financing to domestically operating NGOs (see Appendix 1). In a study on restrictions imposed on foreign funding, for example, Dupuy et al. (2016) found that restricting

countries are not confined to any given continental region but are instead scattered across sub-Saharan and Northern Africa, the Middle East, all parts of Asia, South America and Eastern Europe. The same study also finds that, politically speaking, the countries restricting civil society can be found across the autocracy-democracy spectrum. Most of them, however, are identified as anocracies, i.e. regimes featuring inherent qualities of political instability and ineffectiveness, as well as an “incoherent mix of democratic and autocratic traits and practices”.

Rutzen (2015) identifies patterns in autocratic countries where some allow CSOs to operate as long as they stay away from politics, while others co-opt CSOs and shut down those that resist (especially those receiving international funding). In desk-based research on civil society space, Hayman et al. (2013) find that “service delivery seems to be an accepted and often expected role for CSOs, but when they are perceived as engaging in more politically-sensitive areas, they are more likely to experience clamp-downs on their operations. They may be identified as political opponents and subject to attacks and harassment”.

Often, these laws also target specific types of NGOs, such as environmental, anti-corruption or human rights organisations (Dupuy, Ron and Prakash 2016). This trend is also backed by Civicus Monitor data, which also shows that governments are taking drastic measures to prevent people from criticising authority, engaging in human rights monitoring or calling for their basic social or economic needs to be met (Civicus 2017).

Rationale behind the pushback against CSOs

In July 2014, Viktor Orbán, Hungary’s prime minister, announced his plans to turn his country into an “illiberal state”. In that speech he claimed that the government was “not dealing with civil society members but paid political activists who are trying to help foreign interests” (The Economist 2014).

Similarly, in 2016, the Israeli parliament passed a controversial law compelling NGOs that receive more than half of their funding from foreign state entities to declare so publicly. Prime Minister Benjamin Netanyahu stated that:

The purpose of the law is to prevent an absurd situation, in which foreign states meddle in Israel's internal affairs by funding NGOs, without the Israeli public being aware of it. Unlike the left's claims, the law's approval will increase transparency, contribute to creating a discourse that reflects the Israeli public opinion, and will strengthen democracy.

Titled the NGO Transparency Law, the legislation came under fire from left-wing groups largely relying on funding from foreign governments as an attack against critics of Israeli policies towards Palestinians (Beaumont 2016).

These are only two examples of how heads of government claim to increase transparency to the civil society sector by imposing questionable restrictions. Governments often cite one or more of the following arguments as the motivation to pass legislation regulating CSOs:

- foreign influence in domestic/national affairs, or porous borders, with language involving nationalism and anti-foreign ideas (e.g. in particular Russia, China, India, Israel). This grew as a driver particularly after the “colour revolutions” in Eastern Europe in the 2000s (Ukraine and Georgia). These so-called national interests can cover a broad spectrum, from anti-LGBTI focus in places like Uganda to an anti-environmental one in Canada, depending on local circumstances (Carothers 2015).
- counter-terrorism or extremism is often evoked as a reason to justify foreign funding restrictions, shutting down organisations due to alleged connections to terrorists or persecuting NGOs under anti- terrorism laws. This emerged with the war on terror from 2001 onwards, particularly as associations were made between civil society and terrorism, and civil society with former US President Bush’s Freedom Agenda (Rutzen 2015). Examples range from Egypt, and a number of South Asian countries, and even countries that are not traditionally seen as threatened by terrorism (e.g. Cambodia) (Herbert 2015).
- CSOs as a threat to political power. International and local NGOs have become increasingly engaged in challenging governments with rights-based advocacy (Dupuy et al. 2014). Dupuy et al. (2014) identify that “governments are more likely to pass restrictive laws during, or shortly after, competitive legislative or executive elections”.
- the aid effectiveness agenda’s principles of country ownership,

coordination and harmonisation, and focus on budget support as a preferred modality. This moved much focus and funding to governments rather than civil society (Carothers 2015; Rutzen 2015; Dupuy et al. 2014).

- the need for transparency and accountability in the civil society sector and aid effectiveness and coordination when justifying restrictions on foreign funding for civil society (Rutzen 2015)
- legitimacy of some NGOs is considered a driver of restrictions. The often high levels of foreign funding for civil society has led to some “briefcase” NGOs, the dependence of many southern NGOs on northern funding and to a disconnection of civil society actors from their local constituencies. These factors have been used by opponents to portray civil society actors as foreign agents (Dupuy et al. 2014).

It is important to mention, however, that governments do not always package restrictive laws as such. In some countries, the government’s opposition towards civil society might become apparent in the government’s rhetoric and violent action against CSOs. Often legislation that harms civil society will be passed with seemingly good intentions (e.g. increasing transparency and accountability in the sector) or, in other cases, policy makers appear simply unaware of the negative consequences their policies may have on civil society. It is necessary to keep in mind, however, that the rules governing non-profit advocacy are never neutral (Berry and Arons 2003). If governments decide to intervene in the sector, they need to strike a careful balance that promotes accountability without compromising the freedoms of expression and association or unfairly targets or discriminates certain NGOs based on their social, political, religious views, etc.

This Expert Answer focuses on the issue of subjecting CSOs to a system of income and asset disclosure (IAD), similar to those in place for the public sector, to illustrate the reasons why tools often used to increase transparency and accountability in the public sector can be ill-suited to achieve the same goals in the non-profit sector.

IAD systems in the public sector

While a clear division between public duties and private interests has, in most countries, come to be recognised as a principle of good governance

(StAR 2012), the challenges of monitoring and enforcing ethical conduct in public office are continually growing. Increased cooperation between the public and private sectors has multiplied opportunities for corrupt practices and conflicts of interest (OECD 2005).

As barriers between public and private spheres continue to evolve, new pressures on traditional employment obligations and loyalties emerge. Against this background, the disclosure of interest and financial assets by public officials has become a popular tool to prevent and fight corruption. Article 8(5) of the United Nations Convention against Corruption (UNCAC), for example, mandates that:

Each State Party shall [...] establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

On the prevention side, IAD requirements can help heads of public institutions to prevent conflicts of interest among their employees and to resolve such situations when they arise, thus avoiding situations that may lead to inadvertent (or intentional) misuse of public resources. On the enforcement side, IAD requirements can provide one more source of information when investigating and prosecuting suspected illicit enrichment cases, thereby aiding asset recovery efforts (Burdescu et al. 2010). Moreover, IAD systems may also boost public trust in the integrity of government by sending a signal that public officials' finances are subject to scrutiny and that potential conflicts of interest are being monitored and addressed (StAR 2012).

According to World Bank data, as of 2017, 92% of countries in the world had a system of financial disclosure (Rossi, Pop and Berger 2017). Although laws differ from country to country and not all public officials are obligated to declare their assets and interests, high-level officials are generally included: 93% of covered countries require disclosure for cabinet members, 91% for members of parliament and 62% for high-ranking prosecutors. However, only 43% of countries provide the public with open access to public officials' financial disclosures, and only 36% systematically check public servants' disclosures for irregularities and inconsistencies (World Bank 2012).

Asset disclosure for CSOs – an emerging trend?

In March 2017, the Ukrainian president signed into force the “Law of Ukraine on Amendments to some Laws of Ukraine on specifics of financial control of some categories of officials” (Law no. 1975/19) aiming to update the category of persons who should provide income and asset declarations to inform the public about their wealth. The bill modifies Article 3 of the anti-corruption law to include, inter alia: “individuals who receive funds or property in the framework of implementation in Ukraine of programs (projects) of technical and other assistance, including non-repayable assistance, in the area of prevention, counteraction to corruption (directly or through third persons or in any other way as provided by the relevant program (project)).”

This may cover NGOs or implementing organisations’ staff, experts, consultants who receive salaries (fees) from donor-funded anti-corruption projects and those who provide other services or in any way benefit from such projects, even indirectly. For example, this provision may cover interpreters, caterers, janitors and other service providers if they are not legal entities. This provision in principle also covers participants of seminars, training courses, other events organised at the expense of anti-corruption projects (if such persons accept any benefits, even of low value, e.g. handout materials, meals, travel costs, accommodation).

The new law was received with criticism from national and international organisations and media outlets. NGOs, such as Freedom House and Transparency International, also criticised the move. Critics claim the amendment is discriminatory for singling out some NGOs and being unclear in identifying them, leaving room for selective suppression of those most critical of the regime. Those who fail to file declarations can face significant fines and jail sentences.

According to press reports, Poroshenko and his supporters claim that the new disclosure requirements for NGOs are based on international best practices, such as those of the United States, and European countries like Latvia, Portugal, Romania, where top NGO officials are also required to disclose their assets (Sukhov 2017). After extensive research and consultations with the local chapters of Transparency International, however, the Helpdesk was unable to find evidence confirming these claims from the Ukrainian government. Moreover, the

chapters in Latvia, Portugal and Romania all categorically denied the existence of laws obliging their staff to disclose assets or private interests. In the United States, the Internal Revenue Service (IRS) only asks for the disclosure of the salaries of the “organization's current and former officers, directors, trustees, key employees, and five highest compensated employees” in cases when they “received or accrued compensation from any unrelated organization or individual for services rendered to the filing organization” (IRS 2016).

Research revealed that a similar law has existed in India since 2013. According to this law, employees, officers, managers, directors and board members of NGOs that receive either (a) more than 10 million Indian rupees (approx. US\$154,000) in funding from the central government, or (b) more than 1 million Indian rupees’ (approx. US\$15,400) worth of foreign contributions are required to disclose their assets and liabilities to a competent authority. In addition, the office of the Lokpal (ombudsman) has the power to initiate anti-corruption enquiries into such NGOs, which can be prosecuted under anti-corruption legislation where financial irregularities are uncovered (All India 2016)

This approach is not due to a specific piece of legislation targeting NGOs and obliging them or their staff to make asset declarations. Instead, this is because the NGOs in India that fall into either of the above categories come within the remit of asset disclosure legislation targeted at public officials. According to the 2013 Lokpal and Lokayuktas Act, NGO staff and board members are defined as “public servants”.¹ It is unclear, however, whether there was a real rationale to include NGOs in the asset disclosure regime, or whether this is simply a by-product of the all-encompassing nature of the legal definition “public servant” in Indian legislation. Everyone working for an NGO that receives central government or foreign funding above the threshold is required to file an asset declaration, even those who receive no remuneration for their engagement.

1. According to Section 14(1)(f) of Lokpal Act, the act covers: “any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it”. Under Section 14(1)(g) and (h) “a director, manager, secretary or officer of any association or trust whether registered or not, receiving government funding or foreign funding will be a ‘public servant’ for the purpose of: 1. Prosecution of offences of corruption identified under the Prevention of Corruption Act, 1988; and 2. declaring movable and immovable assets for self, spouses and dependent children every year under Section 44 of the Lokpal Act.”

An attack on NGOs or a step in the right direction?

Given the reduced number of cases of IAD systems imposed on NGOs, it is difficult to assess whether this tool has indeed increased transparency and accountability in the sector. The evidence from India, however, suggests that the system has negatively affected the space for civil society.

Some NGOs allege that the new asset disclosure requirements are being used by the government to exert pressure on them: under the new rules, the Home Ministry can take action against foreign-funded NGOs if they are found to be misusing grants from overseas. In 2016, for instance, the government cancelled the licences of two NGOs (Lawyers Collective and Sabrang Trust) for this reason (Daily News and Analysis 2016).

The chairman of the Voluntary Action Network of India (VANI) alleges that the government has cancelled the licences of 10,700 NGOs for reasons such as the late submission of reports by less than 24 hours. He has also voiced his fears that the new requirements could provide an excuse for further state action against civil society actors (Civicus 2017). A further 17 European NGOs and the Ford Foundation have recently been prohibited from giving money to Indian NGOs, and those in the sector fear that the government could use the new requirements as part of a broader effort to exert pressure over NGOs they disapprove of (Civil Society News 2016).

NGOs are also worried by the fact that members of their boards who work for NGOs without taking a fee are included as public servants in the notification and will therefore have to make their assets public (Bhatnagar 2016). There are reports that many board members and trustees have resigned from their posts rather than submit themselves to the asset disclosure regime (Sampath 2016). Many of VANI's constituent members argued that asset and liability disclosure should be made at the organisational rather than individual level (Civil Society News 2016). NGOs have also criticised the fact that private sector enterprises are not included under the ambit of the Lokpal law to check private sector bribery and ensure transparency in that sector as well (All India 2016).

According to Civicus (2017), organisations that promote human rights, government accountability, environmental rights and equitable development policies are coming under particular pressure. Greenpeace India, for example, has been especially targeted as the government prevented one of

its staff members from travelling to the UK in January 2015 and froze the organisation's bank accounts. Furthermore, the government is currently investigating two of its Indian subsidiaries for tax evasion.

The experience of CSOs in India confirm some of the fears that international organisations, like the UN, have warned about the case of Ukraine, i.e. that such legislation may be easily abused by the government to restrict civil society and create an unfriendly environment for operation (UNDP 2017). These risks, however, are not the only ones that need to be considered.

The following sections explain why imposing a IAD systems on civil society might not only fail to increase transparency and accountability in the sector, but harm some of the fundamental rights upon which democratic regimes are based and, as a result, damage the quality of governance and democracy.

Are IAD systems suitable for civil society organisations?

As illustrated by the Indian case, extending the obligation to disclose assets and interests to individuals working for CSOs can easily become an excuse for governments to silence and harass NGOs. There are, however, other reasons why IAD regimes are not intended to be enforced outside the public sector. This section seeks to explain the reasons why doing so could endanger democracy rather than help prevent and fight corruption.

Basic democratic principles

Although a single, universally accepted definition of democracy does not exist, the essential idea of democracy is that the people have the right to determine who governs them. Citizens elect the principal governing officials and have the ability to hold them accountable for their actions (Lewis 1940; Bahmueller 2007). The notions of popular sovereignty and the limits to the powers of government are derived from John Locke's concept of the "consent of the governed", i.e. the idea that governments exist to protect the people's natural rights to life, liberty and property, and that if governments fail to do so then the people can ultimately exercise their right to rebel and

form a new government. Thus, political freedom lies at the heart of the concept of democracy (Bahmueller 2007).

The idea that democratic governments are defined by the presence of elections and the protection of fundamental freedoms lies now at the core of democratic theory. One of the most widely cited notions of democracy is Robert Dahl's idea of "Polyarchy". In his book, *Democracy and Its Critics*, Dahl (1989) depicts his vision of an ideal democracy as a system with free and fair elections, inclusive suffrage, rights to run for office, freedom of expression, alternative information and associational autonomy. Those institutions are meant to keep the elected officials in check and accountable to the ultimate authority, i.e. the citizens. More recently, Bühlmann (et al. 2008) argued that the three fundamental principles that determine the quality of democracy are:

- equality: particularly understood as political equality, means that all citizens are treated as equals in the political process, have equal rights to influence decision making and have equal access to political power
- freedom: refers to the absence of heteronomy, and freedom rights are above all rights which protect an individual from infringements by the state
- control: citizens ought to control their representatives in the government in order to secure freedom and equality. This control can be exercised vertically by means of elections or horizontally by constitutional checks and balances

What is to prevent the political officials holding the reins of state power from behaving opportunistically in policy making, elevating their own interests over those of voters? The promise of electoral democracy is that voters can hold political officials accountable for their policy choices, and thereby ensure a close connection between public will and public policy (Gailmard 2012).

IAD systems, as mentioned earlier, is just one of the tools to ensure that public officials behave responsibly, do not engage in corrupt practices or enrich themselves by abusing their power or the public funds they manage. Equating staff from civil society organisations to public officials thus distorts the intention and purpose of IAD systems, i.e. to promote accountability of public officials, prevent possible conflicts of interest and detect cases of illicit enrichment (UNDP 2017).

From the perspective of democratic theory, however, the most severe objection to extending such disclosure obligations to cover CSO employees is that doing so weakens the position of the people as sovereigns by assuming that accountability runs in both directions. To put this in the framework of the principal-agent theory: in a democracy, citizens are the principal(s) and politicians are the agents (Gailmard 2012), but by obliging citizens to submit themselves to the same transparency and accountability rules that apply to government, the relationship between the two actors becomes a game among equals.

Although this reasoning might appear highly theoretical, it has important practical implications. First, forcing private citizens to disclose their assets and interests violates their right to privacy as such disclosures demand a significant amount of personal data. While such interference is justified regarding public officials to hinder them from abusing their position for personal gain, it is not justified towards members of the general public who exercise certain civic activities. However, no such rationale can be found with regard to civil society, anti-corruption watchdog organisations and activists (UNDP 2017). Second, it might weaken some of the freedoms which are meant to protect the individual from the interference of the state, as illustrated by the Indian example.

Accountability presupposes rights of superior authority in the sense that those asking for accountability have the authority to demand answers and impose sanctions. This does not necessarily mean having the ability of formal enforcement or sanctioning power; it can also refer to our moral claim to assert rights or to the wrongdoing based on normative claims that legitimise the representative contract.

The different types of accountability for CSOs

The concept of political accountability refers to the responsiveness of governmental policies to the preferences of the electorate. Political accountability is intimately intertwined with the concept of democratic representation. It refers to a particular type of relationship that results in the act of delegating authority to a representative body, where the represented holds a claim to superior authority over those to whom it has temporarily delegated its power. The government is politically accountable if citizens have the means for punishing unresponsive or irresponsible administrations.

John Locke's notion of the social contract in his *Second Treatise of Government* from 1689 comes to mind: citizens elect officials to act as their representatives, and through this process of entrusting decision-making power to elected officials, these officials in turn have duties and responsibilities towards the populace. Key to this relationship is trust, which enables legitimacy. When breached through a violation of this social contract, public trust is eroded, which in turn undermines legitimacy.

Elections are often seen as the main mechanism of political accountability that the citizenry has at its disposal to reward or punish politicians. They provide a regular mechanism for citizens to hold governments responsible for their actions, forcing out of the office those incumbents who did not act in the best interest of the voters and re-electing those who did. It is from this position that politicians often question the political representativeness and legitimacy of CSOs. Needless to say, the question of accountability is essentially different for governments than for civil society actors.

Social movements and NGOs are not forced to compete in democratic elections or court different constituencies for votes (Peruzzotti 2006). This does not mean, however, that CSOs are not accountable to anyone. Given that these organisations fundamentally operate in the public sphere, where they develop counter arguments that challenge official or predominant interpretations, their credibility and public reputation is crucial to the success of their mission and activities. It is thus in their best interest to uphold high standards of behaviour and to develop a solid reputation (Peruzzotti 2006).

As a result, civil society organisations and movements are subject to the same informal controls and threats as political parties. But the fact that these mechanisms are informal does not mean that they are weak or ineffective: a scandal can have devastating effects for any civic organisation since it could even irreparably damage its public image and prestige (Gibelman and Gelman 2001). Once the credibility of an organisation is undermined, it is very difficult to reconstruct it and can have more devastating effects than losing a grant or having to pay a fine (Thompson 2002).

As illustrated by Anheier (2005), CSO accountability is a complex issue as these organisations are accountable to multiple stakeholders, including:

- members: in the case of membership-based organisations, such as advocacy groups, business and professional associations, or parent-teacher associations, since members trust the board with the governance of the organisation and the board is accountable to them
- supporters: such as individual donors, foundations, corporations, government agencies, and other organisations and groups that contribute financially
- beneficiaries and users: those who in one way or another receive this service or benefit from the activities after conversation, including the public at large
- paid and voluntary staff: those who work for the organisation on a full-time, part-time or voluntary basis, including consultants and advisors
- contractors and cooperating organisations: such as suppliers of material or purchasers of services, grant-making foundations, government agencies and other non-profit organisations that are part of common or joint programmes or projects
- public agencies: such as oversight and regulatory agencies

From the multiple stakeholders mentioned above, arise different forms of accountability, among them:

- performance accountability of the mission: activity fit, the performance of the chief executive and the staff, financial aspects (budget, audits, contracts, funds), programme oversight and programme development. NGOs can be held accountable for the effectiveness in fulfilling their mandate and the quantity, quality, impact and value for moneys of their operations, as well responsiveness to the beneficiaries.
- legal and fiscal accountability in terms of laws and regulations, in particular aspects related to the organisation's finances and tax status, but also in areas of labour law, and, depending on the field of operation, health, social welfare and environmental regulations
- accountability to the public at large as well as representative organisations and regulatory agencies, this includes publication of annual reports and other voluntary measures to keep the public informed about the organisation's mission and programmes. NGOs can also be held accountable for the independence and reliability of their organisational structures, with criteria such as the role and composition of the board, financial and management structures, human resource management policies and practices, etc.

While governments have every right to be concerned about CSOs not acting in the best interest of the public, extending the coverage of IAD systems to CSO staff does not seem to be a suitable way to address the issue. By doing so, governments ignore other forms of accountability that are already in place, such as the checks imposed by donors to guarantee the adequate use of funds they provided, and assume that it is the government's sole responsibility to guarantee CSO transparency. An effective accountability system for CSOs, however, needs to strike a balance between rights and responsibilities.

Efforts to improve the quality of civil society should not simply transplant solutions or mechanisms that are adequate for other spheres. Doing so could compromise the role of civil society as a field representing new actors and voices. It is therefore misguided to try "to establish government or privately run certification boards or to institutionalize formal structures of civil representation that grant the status of representative of civil society to a group of organizations" (Peruzzotti 2006).

Given that "the public interest" is a vague and amorphous concept, governments can try to ensure that (CSO) activities are openly disclosed and accessible for public questioning (Travaglini 2008). For this purpose, many democratic governments do demand CSOs to inform them of their activities and finances yearly. In the United Kingdom, for example, the economic and financial reporting of non-profits is governed by Accounting and Reporting by Charities: Statement of Recommended Practice (SORP). The model annual report that the SORP proposes provides a series of qualitative information, such as describing the evolution of the organisation during the accounting year of reference, as well as quantitative data (Travaglini 2008).

The SORP annual report must include:

- reference and administrative details of the charity, its trustees and advisors: this information specifies the organisation, its directors and any independent or dependent auditor
- structure, governance and management: the organisation must state its internal organisation, its choice of legal form, and its governance structure and rules
- objectives and activities: the institution must highlight its objectives, role and methods

- achievements and performance: the activities must also be shown through performance indicators or sectoral comparisons, to highlight the role and importance of organisation. This section must include fundraising activities and results.
- financial review: this section should present the financial position of the entity and explain the reserves and the change that occurred over the previous period, giving reasons for such change
- plans for future periods: here the organisation should present its objectives and plans for the next accounting year
- statement of financial activities: this document accounts for how the organisation has used its resources
- balance sheet: this document discloses assets and liabilities, including intangible assets
- cash flow statement: the document supplements the statement of financial activities, representing cash flows, their origins and their uses
- notes on the accounts: here the organisation should explain the accounting standards used and how they were interpreted

The annual report is then drawn up under the supervision of auditors, who may be independent (an independent person who is reasonably believed by the charity trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts) or internal, depending on the income levels of the organisation.

Other European countries, such as Italy and Spain, have similar requirements that allow governments, on one hand, to gather information about the activities, sources of funding and structure of the NGOs without having to subject them to more intrusive IAD systems that are specifically designed for the public sector and would thus also violate the right to privacy of private citizens working for CSOs.

Although the literature on this specific topic is limited, there is one situation where extending the obligation to comply with the IAD regime that applies to public officials would be appropriate for CSOs, i.e. when they de facto assume public functions and act as partners in governance. In such cases, a different yardstick should apply and formal mechanisms to regulate their activities must be established to be able to hold them accountable. Civic organisations that “co-govern” or that have assumed decision-making responsibilities are no longer external to political power and could thus be subject to IAD disclosure (Peruzzotti 2006).

For the reasons outlined above, i.e. the violation of the basic democratic principle of popular sovereignty and the complexity of CSO accountability, as well as the negative experiences from the Indian case, extending the obligation to disclose assets to staff working in such organisations does not seem to be suitable to make them transparent and accountable. Instead, efforts should go, first, in the direction of establishing more open and transparent organisations and developing civic actors whose behaviour is subject to more demanding ethical and legal standards. Second, effort should be made to improve the quality and openness of the public sphere to prevent its capture by a small group of corporations, the government, political parties, private interest associations (Peruzzotti 2006).

Increasing transparency in civil society

As mentioned before, accountability needs to be understood differently for CSOs and for the public sector: NGOs are subject to checks from their donors, the board, citizens and governments, but given that NGOs often play a role in making governments more accountable, regulation coming from government is often met with scepticism.²

Governance structures and standards

The governance structure of the organisation largely depends on the nature of the organisation, its constituency, its mandate and purpose, operations, and activities, etc. However, there is a broad consensus on some essential standards that cut across all organisations:

- by nature, NGOs should have a non-for-profit character, a legal entity identifying office holders and a clear mission
- NGOs should also have clearly defined governance structure and decision-making processes, membership rules and a description of the responsibilities, powers and duties of the governing body as well as its relationships to other organisational entities. Board members should be selected through transparent processes set out in publicly available policies, have defined terms of office, receive no remuneration beyond reimbursement of expenses and should not profit from the organisation's

2. This section is adapted from the previous U4 Expert Answer, Key features of NGO accountability systems.

assets. There should also be conflict of interest provisions for board members in place.

- board functions should be clearly separated from management and the CEO should not have a voting role on the board. Board competencies include the appointment and annual review of the CEO performance, the review of financial performance and statements as well as the responsibility to hire the auditor.
- The list of current board members should be publicly accessible, board meeting minutes should be recorded and decisions should be communicated to the membership in a comprehensive and timely manner, unless good reasons apply (privacy concerns).

A handbook of NGO governance provides a comprehensive checklist of criteria to look at for assessing the governance structure of the organisation (Wyatt, 2004). In addition, the U4 brief on NGO accountability provides a detailed list of indicators for NGO governance structures is reproduced in the appendix.

Integrity policies and systems

NGOs should also have strong internal integrity management systems in place and policies to prevent and effectively address corruption risks that also apply to partners and service providers.

A group of UK NGOs developed a set of principles and guidance to NGOs for countering corruption and bribery (Bond 2011). In addition to recommending an anti-corruption statement articulating the organisation's commitment to high ethical standards, the report highlights a number of key elements that should be considered for inclusion in the organisation's procedures, including provisions and guidance on bribery (especially for corruption-prone activities such as procurement), facilitation payments, payments under duress, gifts and hospitality, and political donations. The anti-corruption policy should be communicated to all partners, suppliers, contractors, intermediaries and other third parties.

Conflict of interest (COI) provisions are also an important component of an organisation's integrity management system, with a clear definition of what constitutes a conflict of interest and guidance for staff, volunteers and board members on handling conflicts of interest when they arise. Such policies

typically require that real or perceived conflict of interest or affiliation with actual or potential suppliers be disclosed, and that staff, volunteers or board members excuse themselves from decision-making processes in which they have a conflict of interest.

There should be clear guidelines under which conditions gifts and entertainment may be or may not be accepted (and reported) or family members may be recruited (or not). There should also be a clear process for COI management, including a public register of interests maintaining a record of staff/trustees current and past interests and positions that could create a conflict and training/awareness raising activities. An internal ethical body should also be appointed with clear terms of reference to advise and/or decide on such issues if required.

The obligation for staff to report corruption or any unethical behaviour should be backed by whistleblowing policies protecting those speaking out about abuses, corruption or mismanagement. In addition, there should be an effective complaint management system in place, with clear scope, procedures, internal and external complaints channels, timeframe for addressing complaints and an appeal process.

These integrity standards cutting across organisational management, project implementation, financial management and information disclosure can be addressed in a code of conduct. As self-regulation tools, codes of conduct are the most common approach to NGO regulation. In addition to setting core values and guiding principles, they typically provide for establishing strong oversight boards, complaints procedures, conflict of interest and whistleblowing provisions.

Transparency standards

Standardised, regular and adequate reporting, in compliance with relevant governance, financial accounting and reporting requirements (based on national laws and global good practice) represent an important aspect of NGO transparency, with the view to making basic data available to the public or oversight bodies on NGO operations. In some countries, such disclosure statements and reports are required by the state, such as for example, in the United States, where NGOs applying for a tax exempt status are required to provide detailed information on finances, organisational

structure and programme through an annual information return. Some donors can also impose similar conditions as part of their reporting requirements (Ebrahim 2003). However, such requirements tend to emphasise an upward reporting of financial data, with limited information on the quality of the work and downward accountability to stakeholders.

As private entities, NGOs are not submitted to the same information disclosure laws that apply to donors and governments. NGOs should therefore voluntarily commit to high standards of transparency and making information publicly available. With regard to transparency, the INGO accountability charter states “we are committed to openness, transparency and honesty about our structures, our mission, policies and activities. We will communicate actively to stakeholders about ourselves and make information public available”. NGOs that have adopted this charter have committed to report accurately on the organisation’s mission and values, objectives and outcomes, environmental impact, governance structures and processes, main sources of funding, financial performance, contact detail and compliance with the charter.

The organisation’s commitment to transparency can also be articulated in an information disclosure policy. Information sharing should be considered good practice. At a minimum, NGOs should publish annual reports that include financial statements, as well as a publication of the list of donors (Trivunovic 2011).

Human resources (HR) management policies

HR policies set a high bar on ethics and anti-corruption: remuneration and benefits should be aligned with the public mandate of the organisation while set at levels that can attract and retain the employment of qualified staff. Policies should fully comply with relevant national and international labour regulations as well as pay particular attention to specific corruption related risks:

- merit-based recruitment and promotion practices and processes
- transparent salary and benefit structures, including per diem policies
- transparent performance appraisal systems
- transparent disciplinary measures and procedures
- regulations/prohibitions of employment of relatives, family members,

etc.

In terms of official travel, there are a few safeguards that can limit the potential for abuse. The purpose and benefit of the travel for the organisation should be clear and pre-approved by the manager, along with an outline of the expected costs involved for the organisation and a budget line covering these costs. There should be clear reimbursement guidelines as well as rules governing class of travel and class of hotels.

Financial management standards

Many donors have developed their own financial management standards for their NGO partners. Well established NGOs have typically developed robust financial management processes, but the challenges for donors is often to enforce minimum standards when engaging with lower capacity partners. The minimum requirements could include:

- existence of basic accounting tools (book of account, general ledger, general journal, cash receipt book, cash disbursement book, bank account records)
- separation of key functions (approving officer, bookkeeper, cash custodian) and “four-eye” principles for expenses, requiring two signatures by relevant staff
- annual financial statement of income and expenditures
- annual financial reports that conform to relevant laws and practices and which are audited by a qualified independent public accountant(s)

As procurement is typically an activity highly vulnerable to abuse, especially in countries with endemic corruption, it is essential to set minimum standards to mitigate those corruption risks. This could include:

- open competitive procedures for purchases above a certain threshold
- proof of submission of several offers above a certain threshold and the justification of the decision
- pro-active communication of anti-bribery policy to all agents, intermediaries, contractors and suppliers

Ethical fundraising policies

There should also be clear fundraising policies, with fundraising activities conducted ethically and accurately, and funding reported transparently. In particular, the INGO accountability charter identifies some standards of ethical fundraising, such as respect for the rights of donors to be informed about how their donation will/has been used, accurate description of needs and activities, clear guideline when dealings with gifts in kind as well as to ensure that donation sought through third parties are solicited and received in conformity with the organisation's own practices.

Downwards accountability standards

As already mentioned, the issue of downward accountability of NGOs towards their beneficiaries is typically neglected. However, NGOs dealing with service delivery have developed some experience with such accountability by promoting greater participation of the beneficiaries and the target group in the programme implementation. However, this could include:

- open-house policies
- community meetings
- participatory evaluation of programmes with participation of beneficiaries/feedback
- complaints/feedback mechanisms

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