



**ICHRP ONLINE DISCUSSION FORUM ON  
HUMAN RIGHTS PRINCIPLES AND NGO ACCOUNTABILITY  
AN APPROACH PAPER**

1. This Approach Paper is intended to inaugurate the ICHRP Online Discussion Forum on Human Rights Principles and NGO Accountability. In the most general terms, it flags some of the key questions and issues that need consideration in the ICHRP Forum. Rather than present a comprehensive assessment, or the ICHRP's analysis, or attempt to reconcile different points of view, the Approach Paper seeks to stimulate discussion. Its gaps and generalisations are an invitation to intervene and contribute.

**INTRODUCTION**

2. Over the last decade, the accountability of non-governmental non-profit voluntary organisations (hereafter NGOs) has frequently been discussed. Arguably, this reflects the increasing prominence and significance of domestic and international NGOs that engage in campaigning, advocacy and mass mobilisation; provide welfare and other services; deliver humanitarian relief; or promote social development or human rights protection, among other mandates. As NGOs have expanded their sphere of influence, acquired greater expertise and competency, and mobilised more resources, they have come to be recognised as key 'stakeholders' in governance. This recognition has been accompanied by higher expectations and sharper public scrutiny – including new critics. At the centre of this attention lie demands for accountability.
3. If the emergence of a vibrant civil society, including the growth of NGOs and their domestic and international networks, has been a key feature of the past two decades, a closely related trend has been the widespread diffusion of the human rights vocabulary, building on the development of national and international human rights standards and mechanisms. Two important threads therefore connect here: first, the spread of human rights vocabulary and mechanisms, associated with growth of the NGO sector; and second, the emergence of the idea of accountability (ranging from specifying duty-bearers to elaborating procedural benchmarks), which is central to human rights and is widely promoted by NGOs.
4. Some caveats and clarifications are in order. To begin with, there is a great deal of debate as to what the terms *NGO* and *accountability* mean. The term "non-governmental organisation" could be applied in principle to any association that is not a governmental entity, and could include a vast range of social actors (including faith groups, trade unions, private companies, etc.). In practice, it is not often applied so broadly and usually refers to organised voluntary associations that form for a specific (social) purpose. Rather than impose a precise definition, this report adopts a principle of self-definition, and invites Forum readers and participants to decide how far the institutions in which they have an interest fit the very general description of NGOs above.
5. With respect to "accountability", this paper is not about the accountability of NGOs in general. Like the ICHRP's project, it asks a more specific question: how do human rights values, principles and standards change or influence discussion and understanding of NGO accountability? Much of what has been written and said about NGO accountability is relevant to the present discussion, but the focus here is on the *relationship* between human rights principles on one hand, and the various ways in which NGOs think and speak about, and operationalise, accountability on the other.

6. Third, notwithstanding the abstraction that is inevitable in a paper that speaks globally, it is vital to stress the importance of context and circumstance. NGOs vary widely in their organisation, their practices and the contexts in which they work. The governments, donors and other public actors with whom NGOs have accountability relationships differ considerably too. Indeed, it is precisely to reflect this diversity that the ICHRP decided to reshape its research project around a web-based public dialogue.
7. Fourth, accountability is not just a complex idea. Owing largely (but not only) to their function as public watchdogs, NGOs are subject to a range of administrative and political controls, and in many parts of the world face repression, criminalisation and violence by state or non-state actors. Governments frequently use the idea of accountability to justify excessive regulation, disruption or outright prohibition of legitimate and important civil society activities. At the same time, it has become evident (not least in the wake of the recent financial crisis), that principles of institutional accountability are relevant to the conduct of many actors: governments, but also public agencies, banking and insurance institutions, other business corporations, religious bodies, and armed political groups. Against such a background, NGOs cannot claim a 'special entitlement', dispensing them from duties of accountability, even though in specific respects the character of their work may influence what they are accountable for and to whom. For this reason, rather than define accountability in a particular way, the paper adopts an approach that focuses on the key functional relationships that most NGOs have: to governments, donors, their core constituencies, other NGOs, the wider public, etc.
8. This long and extended conversation is one of many. The terrain is likely to remain contested and we do not expect to settle any issues conclusively – or to be overly prescriptive. We hope that bringing a human rights perspective to this discussion may provide a frame of reference that will further illuminate and clarify the idea of accountability as reflected in the work of NGOs in different contexts.

#### **ACCOUNTABILITY: SOME PRELIMINARY REMARKS**

9. The sheer number of NGOs – thousands of international NGOs and perhaps several million domestic NGOs around the world – indicates the growing prominence of the sector. Their total financial worth is significant, probably in the billions of dollars. As organisations acquire influence, or become more professional and expert, more is expected of them, and there is a growing belief that the sector ought to be subject to scrutiny. The demand for accountability has only been intensified by the exposure of large scale fraud in businesses and growing mistrust in government.<sup>1</sup> Accountability has become a buzzword and, because they are visible, NGOs are increasingly questioned about their motives and practices.
10. In a comprehensive survey of literature on this subject, AccountAbility notes that NGO accountability has been highlighted in two distinct contexts.<sup>2</sup> One focus has been on NGO effectiveness in the delivery of development projects, public services and humanitarian assistance. This concern arose in the context of state decentralisation and the growing contribution of NGOs to social and economic development and humanitarian work. The second focus, according to AccountAbility, has been on national and transnational advocacy networks, and their use of regional and global media and highly visible campaigns to challenge (and increasingly name, shame and expose) governments, businesses and other actors. Here, the emphasis has been on legitimacy – for whom NGOs speak and on what basis. In short, NGOs have been asked to justify both “the *veracity* of what they said and the *authority* with which

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<sup>1</sup> Julian Lee, *NGO Accountability: Rights and Responsibilities* (CASIN: 2004).

<sup>2</sup> Annex 2, Citizen Sector Accountability, A Review of the Literature, An Overview by AccountAbility for the Novartis Foundation, August 2006 (updated by Keystone in April 2007).

they spoke”.<sup>3</sup> Some of the polarisation of opinion regarding NGO accountability occurs here: whereas few deny that NGOs should be accountable for delivering services efficiently or being truthful, it is less clear what constitutes their “authority” and how and by whom it should be assessed.

11. Despite its increased prominence, in the sector the term “accountability” continues to be problematic. First, it does not translate obviously into some languages, including Arabic, French and Spanish. It is also too easily identified with a contractual or business-like relationship, whereas the relationships that NGOs have with other actors are frequently not formalised in such terms. Recognising that the content of accountability is influenced by constituency, activity and context, this paper avoids a rigid formulation and concentrates on the types of relationships that NGOs have, and the role and content of accountability that these relationships generate. The relationships in question include those NGOs have with their core constituency (the people for or on whose behalf they work); their donors; their members (if any); their Board, staff and volunteers; other NGOs; the media; the government and other authorities; the general public; etc.
12. Moreover, narrow conceptions of accountability do not necessarily reflect the most important accountability relationships an NGO has. Reporting expenditure accurately may be necessary, for example, but may not reveal whether an NGO is assisting its core constituency effectively. In such cases, should not an NGO’s governance bodies and funders emphasise financial reporting less, and wider or different forms of accounting more? A new framework need not neglect traditional conceptions of accountability; but should take account of the quality of less formalised relationships, and put relationships that lie at the heart of an NGO’s mission at the centre of its accountability processes.
13. Although argument continues about accountability, its meaning in various contexts, and how it ought to be measured and monitored, several efforts have been made to establish systems that define and monitor accountability, through NGO codes of conduct, independent ‘scorecard’ auditing, or other methods of monitoring and evaluation.
14. In 2000, several leading humanitarian NGOs came together to adopt the Humanitarian Charter and Minimum Standards in Disaster Response, which sets out universal minimum standards for core areas of humanitarian work.<sup>4</sup> The Humanitarian Accountability Partnership (HAP) was subsequently established to act as a focal point for information on good accountability practice. In addition, many humanitarian NGOs devised accountability principles for their own use.<sup>5</sup> It is unsurprising that such an initiative came initially from humanitarian NGOs, since they often rely to a large extent on government monies, and they have to secure and maintain widespread public support for their efforts. However, this pioneering work provided a catalyst for accountability initiatives in other NGO sectors, including conflict resolution and development.<sup>6</sup> In parallel, through the UN coordination mechanism for humanitarian response, discussions took place to strengthen the accountability of inter-governmental organisations.<sup>7</sup>
15. In 2004, the Conference of NGOs in Consultative Relationship with the UN (CONGO) published a voluntary code of conduct that stressed the responsibilities attached to representation. In 2006, eleven

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<sup>3</sup> Hugo Slim, “By What Authority? The Legitimacy and Accountability of Non-Governmental Organisations”, ICHRP Working Paper (2002).

<sup>4</sup> Sphere Humanitarian Charter and Minimum Standards in Disaster Response: [www.sphereproject.org](http://www.sphereproject.org).

<sup>5</sup> Humanitarian Accountability Partnership: [www.hapinternational.org](http://www.hapinternational.org).

<sup>6</sup> For a survey of the evolution of the debate on non-governmental accountability see: L. Jordan, and P. van Tuijl, eds., *NGO Accountability: Politics, Principles and Innovations* (Earthscan Publications Ltd.: 2006, pp. 9–13 and 22–30); also L. Conradi, “Accounting for Success? Improving Performance Evaluation and Accountability of Non-governmental Organizations engaged in Conflict Resolution”, International Studies Association, working paper (1998): [www.ciaonet.org/conf/co101/co101.html](http://www.ciaonet.org/conf/co101/co101.html).

<sup>7</sup> See Inter-Agency Standing Committee (IASC) Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises: [www.unicef.org/emerg/files/IASCTFReport.pdf](http://www.unicef.org/emerg/files/IASCTFReport.pdf).

leading international NGOs adopted the International NGOs Accountability Charter, which affirms a list of core values and operating principles for international NGOs.<sup>8</sup> They cover good governance and management, fundraising, and multi-stakeholder engagement; and refer specifically to respect for universal principles (such as the Universal Declaration of Human Rights), independence, responsible advocacy, effective programmes, non-discrimination, transparency and ethical fundraising. Elsewhere, attempts have been made to outline what good regulatory practices might look like in the voluntary sector.<sup>9</sup> In 2008, the University of Nottingham (UK) published a “Statement of Ethical Commitments of Human Rights Professionals”.<sup>10</sup> Though these commitments were drafted for human rights professionals working with intergovernmental organisations, they contain useful principles for human rights NGOs, especially those seeking to draft internal codes of conduct or sector-wide codes within their country or region.

16. National and regional NGOs have also attempted to develop accountability frameworks, ethical standards and codes of conduct as a means of promoting self-regulation. As of 2009, the One World Trust project on accountability identified 309 national, regional and international self-regulation initiatives by NGOs.<sup>11</sup> In general, NGOs were responding to increased scrutiny of their advocacy and service delivery work, unjustified restraints on their activities, the need to enhance public trust, and gaps in government regulation (or risks of excessive regulation).<sup>12</sup>
17. The number and variety of these initiatives indicate that NGOs around the world are taking the question of accountability and self-regulation seriously. They underscore their commitment to good practice and belie the generalised criticism, usually without basis, that NGOs are opposed to regulation. On the contrary, the evidence confirms the complexity of this issue, and the inevitability of diverse approaches.

#### THE ‘CONTEXTUAL SPACE’ OF RIGHTS AND RESPONSIBILITIES

18. The Special Representative of the UN Secretary General (SRSG) on human rights defenders has highlighted that it is important to provide and protect a “contextual space” within which NGOs are able to carry out their activities. A network of interlocking rights and responsibilities shapes this space. The rights include freedom of association in conjunction with the right to peaceful assembly, freedom of speech and expression, the rights to information and to participate in the affairs of the state, and the rights to an effective remedy and to fair trial, among others.<sup>13</sup> There is a strong presumption against governmental interference with these rights. The only permissible restrictions are those “prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.<sup>14</sup>

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<sup>8</sup> INGO Accountability Charter: [www.ingoaccountabilitycharter.org/about-the-charter.php](http://www.ingoaccountabilitycharter.org/about-the-charter.php).

<sup>9</sup> See for example: International Centre for Non-Profit, Checklist for Civil Society Organisation Laws: [www.icnl.org/knowledge/pubs/NPOChecklist.pdf](http://www.icnl.org/knowledge/pubs/NPOChecklist.pdf); The Open Society Institute, Guidelines for Laws Affecting Civic Society Organisations: [www.soros.org/resources/articles\\_publications/publications/lawguide\\_20040215](http://www.soros.org/resources/articles_publications/publications/lawguide_20040215). See also the work of the NGO Regulation Network, which has created a resource website that shares good ideas for NGO regulation and contains many useful resources: [www.ngoregnet.org](http://www.ngoregnet.org).

<sup>10</sup> O’Flaherty, *et al.*, *Guiding Principles for Human Rights Field Officers working in Conflict and Post-Conflict Situations*, Human Rights Law Centre, University of Nottingham: [www.reliefweb.int/rw/lib.nsf/db900sid/OCHA-7H2QBE/\\$file/Guiding%20Principles.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/OCHA-7H2QBE/$file/Guiding%20Principles.pdf?openelement).

<sup>11</sup> Shana Warren, and Robert Lloyd, “Civil Society Self-Regulation: The Global Picture”, Briefing paper number 119, June 2009.

<sup>12</sup> *Ibid.*, Briefing paper number 16.

<sup>13</sup> Report of the SRSG on human rights defenders, UN.Doc.A/61/312 (2006), paras 92–96.

<sup>14</sup> Article 22(2), ICCPR (freedom of association). The restrictions on freedom of association in regional treaties are almost identical to Article 22(2) of the ICCPR: see Article 11, African Charter; Article 16(2), American Convention; Article 28, Arab Charter. Permissible restrictions of freedom of speech and expression are almost identical and are set out in Article 19,

19. In addition, restrictions must be necessary; clearly articulated; prescribed by laws that are formulated with sufficient precision including clarity on the consequences of certain actions; justified in unambiguous terms; proportionate to the aims they seek to achieve; applied in a non-discriminatory manner; and accompanied by appropriate procedural guarantees that ensure due process and judicial review.<sup>15</sup> As the European Court on Human Rights has observed: “the State’s power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a “pressing social need”; thus, the notion “necessary” does not have the flexibility of such expressions as “useful” or “desirable.”<sup>16</sup>
20. Similarly, the Inter-American Commission has ruled that the legality of restrictions on freedom of expression will depend on whether they serve a demonstrated and compelling public interest. Any restriction must be proportionate and closely tied to the accomplishment of the legitimate objective that made it necessary.<sup>17</sup>
21. Notwithstanding these standards and benchmarks, which are complemented by the judgements of several domestic courts, the SRSG on human rights defenders has highlighted that these rights are often observed in the breach, with consequences that range from arbitrary restrictions to suppression and outright criminalisation of NGOs. This may occur as a result of “NGO laws” that violate free association; criminalisation of non-registered groups; burdensome registration (and re-registration) procedures; interference in the management and activities of NGOs; and administrative and judicial harassment.<sup>18</sup> In addition, NGOs may suffer from restrictions on access to funding; restraints on domestic and international cooperation and network building; and use of violence, threats of violence, harassment, intimidation and arbitrary arrest and detention.<sup>19</sup>
22. The other dimension of the ‘contextual space’ is responsibility. Echoing Article 29 of the Universal Declaration of Human Rights, which states that “[e]veryone has duties to the community in which alone the free and full development of his personality is possible”, the Declaration on Human Rights Defenders affirms that “everyone has duties towards and within the community” and that: “individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes. [They] also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized”.<sup>20</sup>

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ICCPR; Article 9, African Charter; Article 13, American Convention; Article 32, Arab Charter. Regarding freedom of information see: Article 9, African Charter; Article 13, American Convention; Article 10, European Convention; Article 32, Arab Charter. Regarding freedom of assembly see: Article 21, ICCPR; Article 11, African Charter; Article 15, American Convention; Article 11, European Convention; Article 28, Arab Charter.

<sup>15</sup> These criteria have been set out by various international and regional human rights bodies that have examined restrictions on fundamental freedoms. See, for example: *Church of Scientology Moscow v. Russia*, ECHR, App. No. 18147/02 (5 April 2007), para. 87; *Mukong v. Cameroon*, HRC Comm. No. 458/1991 (views of 21 July 1994); *Kivenmaa v. Finland*, HRC Comm. No. 412/1990 (views of 31 March 1994).

<sup>16</sup> *Gorzelik and Others v. Poland*, ECHR, App. No. 44158/98 (17 February 2004), paras 94–95.

<sup>17</sup> *Compulsory Membership in an Association Prescribed by Law for Journalists*, IACHR, Consultative Opinion OC–5/85 (13 November 1985). Series A No. 5, para. 46. Quoted in IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 55.

<sup>18</sup> Note by the UN Secretary-General, UN Doc A/59/401 (1 October 2004).

<sup>19</sup> *Ibid.*

<sup>20</sup> Article 18, UN Declaration on Human Rights Defenders. Article 11 of the UN Declaration also states that “everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others

23. At the same time, international human rights law recognises that states are the primary duty-bearers with regard to protection of human rights. It is therefore important to stress that the responsibilities or obligations of non-state actors, especially when they do not exercise significant control over territory and populations, are qualitatively different: NGOs cannot be accountable in the same way as states. Indeed, for this reason it is more appropriate to speak of NGO 'responsibility' rather than 'accountability'. While NGOs evidently have certain responsibilities, it is therefore important to make clear what those responsibilities are and entail, and to whom NGOs should render account for their actions or inaction.
24. Though NGOs are not legally bound by international law in the same way as states, for example, they are subject to domestic laws. International human rights standards do not set specific criteria for deciding whether regulatory measures in domestic law are or are not permissible. However, they do affirm the principles and criteria outlined above (in paragraphs 18–19). In other words, domestic laws that regulate NGO activity or status are subject to international standards.

#### MAPPING ACCOUNTABILITY RELATIONSHIPS

25. Accountability is arguably best understood in relational terms:<sup>21</sup> it takes form in the context of relations between individual, collective or institutional actors. The latter include an NGO's core constituency, its donors, its staff and volunteers, the state and public authorities, and other actors in the public sphere such as other NGOs, the media, etc. In addition, NGOs have "accountability to themselves",<sup>22</sup> in other words to their goals, values and mission. All these relationships taken together, related to performance or mission, provide a map of an NGO's accountability.
26. It is important to stress here that the relationships NGOs have are not exclusive. The different actors with whom an NGO has relations often relate also to each other. It is vital to understand that the various actors on the map do not occupy fixed positions and that accountability relationships are consequently dynamic. Models of accountability that treat accountability in static terms will fail to capture the operational experience of NGOs.
27. Secondly, the exercise of accountability does not occur within a normative vacuum. Goals, values, standards, ideals, rules and contractual obligations all combine to govern this web of relationships. Discussion of an NGO's accountability must therefore take account of the variety of actors and agents with whom it has an accountability relationship of some form; the work it does, since its accountability will be influenced by its primary mission and field of action; and the NGO's values, norms and rules – including those that underpin its relationships.
28. We have noted already that attempts have been made to define these values and set standards of conduct. The debate about NGO accountability is largely about the values that underlie NGO work and the extent to which NGOs stay true to them, in *what* they do (programmes and activities: mission), *how* they do it (organisation and operation: performance), and the congruence between their external aims and internal functioning. At the same time, it is crucial to consider how human rights values and standards impact on each of an NGO's different accountability relationships.
29. **The core constituency of NGOs.** This is commonly characterised as the people *for, with, or on whose behalf* NGOs work. In the case of human rights NGOs the core constituency would normally be the

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should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics".

<sup>21</sup> See L. Jordan, and P. van Tuijl, eds., *NGO Accountability: Politics, Principles and Innovations* (Earthscan Publications Ltd.: 2006, pp. 9–13 and 22–30).

<sup>22</sup> A. Najam, "NGO Accountability: A Conceptual Framework", *Development Policy Review* 14, no. 4 (1996), pp. 339–353.

victims and survivors of human rights violations; for other NGOs it would be the beneficiaries of their work, or members, etc. Ensuring the participation of such beneficiaries and giving them a central role in the work of the NGO might seem only proper and normal. However, it is important to acknowledge that reality is often far more complicated. For instance, access to this core constituency may be restricted or limited, as it is for NGOs that work on behalf of people who are dead or disappeared; or prisoners; or detainees held in secret. An NGO that works to better the situation of a group may also explicitly claim not to 'represent' them or their cause. In other instances, some causes advanced by NGOs may involve a very broad or diffuse constituency (for example, advocacy to protect the environment or promote general rights awareness).

30. Obligations concerning the participation of core constituencies, while important, pose other challenges, many of which flow from the variety of forums that NGOs engage with: local, national, regional and international; judicial, legislative and executive; popular and professional spaces. To work at so many levels, with such different audiences, NGOs need to find many ways to articulate the issues they address. In many areas, for example, the professionalisation of modern advocacy almost necessarily imposes limits on the participation of those on whose behalf NGOs speak.
31. Global human rights advocacy provides a good example of this. In every area – from investigation and documentation of abuse to international standard-setting processes – this work demands complex and often different skill sets. In general, as the work of NGOs has become more central, specialisation and professionalisation have increased, with consequent impacts on the role of volunteers and (the participation of) core constituencies.
32. Human rights values and standards require NGOs to consider several issues: the dignity and personhood of the core constituency; its participation; informed consent; and non-discrimination. Here too, however, challenges present themselves. When NGOs are engaged in advocacy around a broad set of rights, strategy often involves complex negotiation of priorities and agendas. NGOs may have to take account of a range of views and balance different external and internal interests. How do such considerations shape the obligations of an NGO to its core constituency?
33. **Donors.** NGOs generally make great efforts to explain to their donors what they do and what they achieve and why the costs of their activity are justified, while donors normally attach conditions to their grants, related to financial reporting, impact assessment and evaluation. The clearly contractual nature of the relationship means that it receives the lion's share of attention in debates on accountability. Yet the view that NGOs are primarily accountable to donors is sustainable only on a narrow interpretation that reduces accountability to little more than financial probity. In reality, NGOs have competing accountabilities which are at least as significant, while the donor-NGO relationship raises many additional normative issues, including the question of donor accountability.
34. As actors whose mandate includes a commitment to encourage NGOs and the growth of civil society, donors should give continued attention to their own responsibilities in this area. At present, it is fair to say that donors have generally increased the accountability requirements that grantees must meet, and have begun to acknowledge calls on them to be more transparent and accountable, but that most of the attention given to the donor-grantee relationship still focuses – often too much – on grantees.
35. Donors can play a supportive and positive governance role if they recognise the competing accountabilities that grantees must manage, respect the decisions of organisations that have sound and effective decision-making systems, and support efforts that organisations make to improve their accountability. On the other hand, bureaucratic and inflexible reporting requirements soak up NGO resources and time, and when donors impose their own priorities they can undermine effectiveness. As Leat notes, the NGO sector is "valued for its independence and flexibility; because it is valued it

becomes more central; because it is more central it must be made more accountable; but how is greater accountability to be achieved without damaging independence and flexibility?"<sup>23</sup>

36. Calls for donor accountability have been most visible with regard to international financial and development agencies and conditionality regimes. The Paris Principles on Aid Effectiveness identify 'mutual accountability' as a key element of aid partnerships. It is also important to recognise that in many cases donors are not states or bilateral agencies but large NGOs. The INGO charter (referred to earlier) counts amongst its signatories several large international organisations that fund and support NGOs across the world. Notwithstanding some of these developments, there are continued concerns that donors are increasingly focused on the "processes of managing aid rather than on the impact of aid".<sup>24</sup> It is fairly too common to find increased donor accountability translating into even more onerous and complicated reporting requirements on grantees.
37. In what ways could human rights principles and values contribute to the development of positive accountability relationships between donors and grantees, ones that are not unequal? Beyond the immediate relationship with grantees, how might human rights considerations influence donor perceptions of their own responsibilities? For example, would they clarify whether donors are entitled to decide how their money should be spent, or are subject to some wider notion of accountability when decisions are taken?
38. **Internal constituency (staff, volunteers and members).** Talking about an NGO amounts to talking about those who are responsible for and involved in its governance, management and operations: the Board, the staff, volunteers, members, etc. Like all organisations, NGOs have a duty of care to their staff, members and volunteers. However, the nature of the sector is such that sometimes these needs may be neglected even though their importance is well recognised.<sup>25</sup> NGOs have a range of responsibilities and obligations towards this constituency just as Board members, staff, members and volunteers have specific contractual and wider professional rights and duties with respect to their own roles. This is apparent in the design of several voluntary NGO codes of conduct, which specifically reference human rights principles such as equality and non-discrimination when they indicate how organisations should treat staff and volunteers.
39. When assessed in terms of an organisation's mission, its resources, and the social and political context, these rights and responsibilities can generate complex dilemmas with regard to standards of conduct, participation in decision-making, pay and benefits, equality and non-discrimination, security, etc. Ensuring personal growth and development, fair pay and benefits, and adequate security, may demand resources that NGOs do not have; or inflate costs and overheads to unsustainable levels that are unattractive to funders. From another perspective, to what degree should staff pay and benefits reflect the wider social context and differences in standards of living?
40. **The state.** The state, in all the various guises that political authority takes, is another critical actor on the accountability map of NGOs. NGOs are subject to the rule of law, and the norms and rules that states lay down to regulate corporate institutions. In most contexts, in principle, such obligations reflect the state's responsibility to defend the public interest, and especially to preserve probity in financial matters and governance. Here too a raft of difficult issues arise, including the reasonableness, legitimacy and legality of regulatory regimes, the inherent political biases and interests involved, and the accountability of various public authorities themselves.

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<sup>23</sup> D. Leat, *Voluntary Organisations and Accountability*, Worcester, UK, Policy Analysis Unit, National Council for Voluntary Organisations (1988).

<sup>24</sup> See [www.irinnews.org/Report.aspx?ReportId=84307](http://www.irinnews.org/Report.aspx?ReportId=84307), for example.

<sup>25</sup> See also, for example: Stephen Hopgood "Keepers of the Flame: Understanding Amnesty International" (2006) especially Chapters 2, 6 and 7.

41. As previously noted, some governments impose unreasonable or illegitimate restrictions or take illegal measures to restrict or obstruct the work of NGOs. In such situations NGOs face risks but also dilemmas. Breaking bad laws and respecting bad laws both involve costs and risk, which may be dangerous to the organisation or its staff. In some circumstances, organisations are required to comply with laws that they believe violate human rights norms; laws may be 'illegal' under international law. Should they comply nevertheless? If they do not, what consideration must be given to the interests and safety of staff and the organisation's core constituency.
42. Where a government uses violence and intimidates human rights defenders, the members and supporters of NGOs may face very difficult choices. How can they interview victims and witnesses of human rights violations, if doing so constitutes an illegal act under domestic law? If meetings with certain political movements, or armed groups, in a country are banned, should an NGO breach domestic law in pursuance of its mission? If NGOs are forbidden to meet in private to discuss the internal management of their organisations, or required to publish the details of their financial accounts, membership lists, or times and dates of meetings, should they comply? These may appear extreme examples, but NGOs are often pushed towards the edge of the law or forced to take very invidious decisions. Even in societies where the rule of law is widely upheld and NGOs are given extensive room for manoeuvre, they must determine whether to use direct action methods, like sit-ins or strikes, given the legal consequences that may flow from such decisions.
43. Accountability in relation to the law is therefore a complicated matter, in large measure because governments use the law to act improperly, but also because it is in the nature of much NGO work that it tests the limits of legitimacy, and sometimes legality.
44. **Other actors and the wider public sphere.** NGOs also relate to other actors in the wider public sphere: other NGOs, political parties, the media, religious organisations, intergovernmental bodies, foreign governments, businesses, etc. The nature of their relationships with these different actors is highly context-dependent and it can be argued that the accountability relationship is weaker. They are on the accountability map, nevertheless, because NGOs and these actors often seek to influence the behaviour of one another, through collaboration, complementary action, or conflict. Underlying the relationship between NGOs and public actors, and their engagement with the wider public sphere, are two complex values: transparency and legitimacy.
45. Transparency is a value that, all else being equal, one would expect NGOs to uphold very strongly. However, it illustrates the dilemmas NGOs face *vis-à-vis* public actors. NGOs can find themselves "locked in a dilemma of knowing that a lack of transparency is both damaging the sector, and contradictory to its values. At the same time they fear that a greater openness about performance by the sector will lead to a negative reaction by the media, donors, and the general public".<sup>26</sup> Performance and impact, for example, are often extremely hard to measure, and sometimes even harder to communicate effectively or simply; yet an apparent failure to keep others fully abreast of results may de-legitimise the work. Full transparency may be particularly problematic for organisations working in difficult political environments because disclosure of information may put people in danger. To illustrate, during the ICHRP's research it came to light that one NGO provided donors with a list of workers that it had trained in workers' rights. The donor, presumably as a result of its own policy of transparency, made the list publicly available; the companies concerned fired all the workers involved. The NGO provided the information to demonstrate that it had fulfilled its performance-related responsibilities; in so doing, it failed in its mission, and individuals lost their livelihoods.<sup>27</sup>

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<sup>26</sup> A BOND Approach to Quality in Non-Governmental Organisations: Putting Beneficiaries First, A report by Keystone and AccountAbility for the British Overseas NGOs for Development (BOND), August 2006, p. 8: [www.bond.org.uk/data/files/a\\_bond\\_approach\\_to\\_quality.pdf](http://www.bond.org.uk/data/files/a_bond_approach_to_quality.pdf).

<sup>27</sup> Event notes, "Making Accountability Count: Citizens, NGOs and the State" (21 March 2007).

46. Legitimacy is another contested question. Some of the most important debates around accountability centre on questions such as: From where do NGOs draw their legitimacy? Do NGOs 'represent' anyone and, if so, whom and on what basis? These questions are critical because in many cases NGOs have value precisely because they advocate causes that run against the tide of dominant popular and political opinion. In many cases, their legitimacy derives from the fact that they represent the interests of individuals or communities who are widely discriminated against in society and whose interests find no voice.
47. Questions of legitimacy are often about credibility. From a human rights perspective, individuals or groups of people in association have a right to express views on policies, or to conduct activities, irrespective of whether they 'represent' anyone. In such cases the legitimacy of what they say or do may be linked to the credibility of their information or analysis. Edwards asks whether representation is the only route to NGO legitimacy, arguing that "it is perfectly possible for NGOs to be legitimate but not representative".<sup>28</sup> Under what circumstances is this the case?
48. These questions raise others, first about the obligations of national and inter-governmental bodies to create space for NGO participation; and second about the limits of NGO participation in national and global decision-making. The role (and accountability) of international NGOs (INGOs) is especially critical. The expansion of global media and communications networks has created new opportunities for INGOs and enhanced their power to mobilise public opinion internationally. The more visible they become, the more questions will be raised about their accountability, their claim to be representative of wider opinion, and the accuracy in their judgements. Regardless of visibility (one might argue that behind-the-doors influence is even more important), these are important questions for NGOs to consider.
49. Such debates are of special relevance at international level, where Edwards argues that it is important to "[level] the playing field for civic involvement, so as to encourage participation by the broadest possible range of organizations, especially from the South".<sup>29</sup> This implies adding support and resources to Southern groups, possibly restricting the participation of Northern groups, and re-locating some global civil society activities to the South.<sup>30</sup> These questions are relevant to the human rights community, whose activity is concentrated in Geneva and New York.

## HUMAN RIGHTS AND NGO ACCOUNTABILITY: BROADER CONSIDERATIONS

### Conflicting obligations and duties

50. One concern regarding NGO accountability is that NGOs have more dispersed duties. It is clear from the preceding discussion that many actors make claims on NGOs. These claims are not "coherently aligned with one another"<sup>31</sup> and NGOs therefore have to prioritise their accountabilities. For instance, donor expectations may not align with those of an NGO's core constituency; or decent staff pay and conditions may be incompatible with financing work in support of an NGO's core mission.
51. As a result, NGOs face conflicting stakeholder demands "more acutely and regularly than do private firms".<sup>32</sup> Can human rights help NGOs to align or prioritise their duties of accountability? The debates about evaluation, impact assessment and indicators have established that NGOs have no universal

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<sup>28</sup> M. Edwards, "Civil Society and Global Governance", Paper delivered to the Millennium Conference, 19-21 January 2000: [www.unu.edu/millennium/edwards.pdf](http://www.unu.edu/millennium/edwards.pdf).

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> D. L. Brown, and M. H. Moore, "Accountability, Strategy, and International Nongovernmental Organizations", *Nonprofit and Voluntary Sector Quarterly* 30, no. 3 (2001): pp. 569-587.

<sup>32</sup> A. Ebrahim, "Accountability in Practice: Mechanisms for NGOs", *World Development* 31, no. 5 (2003): pp. 813-829.

benchmark of organisational effectiveness, comparable to profits or shareholder value for businesses. This is an obstacle, without straightforward solutions, for NGOs that wish to assess their performance and efficiency.<sup>33</sup>

### The 'contested' nature of human rights

52. The former SRSG on human rights defenders noted that: "[I]ndependence, credibility and transparency are cornerstones of the efforts to promote and protect human rights. Objectivity, non-partisanship and accuracy in the communication of information are therefore essential elements of all activities in which human rights defenders engage. It is only through these qualities that defenders are able to maintain respect for their work despite attempts to discredit them."<sup>34</sup> She affirms that adherence to these qualities is an essential element of being a human rights defender.
53. However, "independence", "objectivity" and "non-partisanship" are complex ideas, whose normative foundations are not above question and which embody a particular form of reasoning. Human rights are after all not the only vocabulary which provides ideas of duties, obligations and accountability: from the point of view of human rights, how does an NGO's alignment with a political or religious ideology, for example, influence its independence, and how in turn does this alter its accountability?
54. The values underlying dominant models of human rights practice (for example, independence, objectivity and non-partisanship) need to be critically examined. It is also important to clarify the relationship between being non-partisan and non-political, because some use the terms interchangeably while others sharply distinguish them, for example on the grounds that NGOs should be non-partisan but more rather than less political in their drive for social justice.<sup>35</sup> Yet others would see this as a contradiction in terms because human rights practice "frames struggle and resistance in the terms of legal and individual remedies, which, if successful, lead to small individual improvements and a marginal rearrangement of the social edifice"<sup>36</sup> but conceals deeper roots of conflict and domination.<sup>37</sup> In this respect it has been argued that the liberal individualism "prominent in rights talk" is "at odds with" the concept of 'the social',<sup>38</sup> and promotes and privileges an understanding of accountability that is less social and more individualised and legalistic. Is this true? If so, what does it mean for NGO accountability?
55. In conclusion, it is evident that even the relatively brief survey of NGO accountability from a human rights perspective that this paper has attempted, throws up many issues for debate. Not surprisingly, many of these issues are deeply controversial and none have easy answers. This is a debate calling for frank and self-reflexive engagement on the part of all those involved. It is precisely such a discussion that the ICHRP wishes to initiate in the next months.

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<sup>33</sup> A. F. Fowler, "Assessing NGO Performance, Difficulties, Dilemmas, and a Way Ahead", in M. Edwards, and D. Hulme, eds., *Beyond the Magic Bullet. NGO Performance and Accountability in the Post-Cold War World* (Connecticut, Kumarian Press: 1996).

<sup>34</sup> Report of the Special Representative of the Secretary General on human rights defenders. Note by the [UN] Secretary General [to the 57th session of the General Assembly]. UN Doc. A/57/182 (2002), para. 98.

<sup>35</sup> Gearty Conor, *Doing Human Rights: Social Justice in a Post-Socialist Age*, Las Casas Centre on Social Justice, 25 November 2008: [www.conorgearty.co.uk/pdfs/Doing\\_Social\\_Justice.pdf](http://www.conorgearty.co.uk/pdfs/Doing_Social_Justice.pdf).

<sup>36</sup> Costas Douzinas, *Human Rights and Empire* (Routledge: 2007).

<sup>37</sup> Ibid.

<sup>38</sup> R. W. Connell, "Sociology and human rights" in Bryan S., et al. "Symposium: Human rights and the sociological project", *Journal of Sociology* 31, no. 1 (1995): pp. 1-44.