

Ethical dilemmas in the governance of nonprofit humanitarian organisations.

Professor Anona Armstrong

School of Law, Victoria University, Melbourne, Australia

Email: anona.armstrong@vu.edu.au

Professor Ronald Francis

School of Law, Victoria University, Melbourne, Australia

Email: ronald.francis@vu.edu.au

Ethical Dilemmas in the Sustainability of Nonprofit Humanitarian Organisations.

ABSTRACT: *Nonprofit organisations are generally perceived by the community as ‘doing good’. However, their growth in size and numbers, their ability to attract large donations from the community, and their expansion into the service sector in Australia raises issues about their governance and ethics. These question their governance, their accountability, their potential for crime and corruption including the extent to which such organisations experience conflicts of interest between their roles as charities and enterprises. This paper argues that because of these issues nonprofit boards face particular ethical dilemmas that impact on their potential sustainability.*

Key words: ethics, accountability, governance, nonprofit organisations

THE NONPROFIT SECTOR

The nonprofit sector was recently reviewed in an issues paper published by the Australian Productivity Commission (2009). It encompasses a broad range of organisations formed by people to provide services for themselves or for others, to advance a cause, to share an enthusiasm, to preserve a tradition, to worship a god or gods. Different groups of these organisations are known by different names: non-government organisations (NGOs), charities, unions, cooperatives, clubs, associations, peoples’ organisations, churches, temples, mosques and so on.

International Humanitarian Organisations are one type of nonprofit organisation which operate across international borders. There are, it will be appreciated, many international humanitarian nonprofits – many with differing briefs. Thus, for example, one might be concerned with physical and medical aid (such as Red Cross, the Salvation Army and Oxfam); others with an environmental brief (Greenpeace, for example); some with human rights (as with Amnesty International); and yet others with medical matters (as is the case with Medecin Sans Frontiere). Most international organisations have local branches in Australia and other countries.

The defining characteristic of a nonprofit organisation is that it does not distribute profit to members. (This does not mean that it does not make a profit.) Other features are a formal governance structure, independence from government, autonomy in decision making and voluntary participation by members.

The absence of a profit motive enables the pursuit of many activities which although making a valuable contribution to a community, could not be pursued in a business context. Similarly, the sector differs from government in not being constrained by bureaucracy and lines of authority but able to address an immediate need or disaster. In times of crisis, such as the tsunami or the recent bush fires in Victoria, the nonprofit organisations were able to respond immediately to put people and resources on the ground.

The size of the sector in Australia is difficult to estimate. The Productivity Commission reported a study by Lyons and Hocking (2000) which concluded that there could be up to 700 000 organisations within the sector. The Australian Treasury, estimated that 40 976 registered Not for profit organisations employ close to 885,000 people and some 2.4 million volunteers.

Their major roles are:

(a) Service delivery: which might be provided to people outside the organisation (such as social support or emergency services) or services provided to members (either social services or social capital accruing from membership of a club). According to ACOSS (2008) the sector provided services to 2 million Australians in 2006-7. The sector has responded to the government's move to competitive tendering, and contracting out services traditionally provided by government, by entering into partnerships with government often in competition with public agencies and other nonprofits.

(b) Advocacy on a range of economic, social and civic issues. For welfare focussed groups this may be on behalf of clients (for example, people with disabilities), while for professional associations and unions this is a service provided for members.

(c) Promoting community capacity building (Vernis et al 2006) economic development and social cohesion. Connections through worship, social and sporting clubs and others, such as universities, promoting community engagement or philanthropic supporting cultural pursuits, add value and social capital to the community.

The purpose of this paper

This paper critically analyses the ethical issues in governance which emerge in nonprofit organisations providing humanitarian aid. The perception that humanitarian organisations 'do good' and the additional value that comes from the generation of trust, altruistic motives of volunteers and the focus on meeting community needs, gives these a special status in the world community. They also depend on their reputations for ethical behaviour to continue to attract funding and volunteers to support their activities. For these reasons any suggestion of corruption can spell the death knell of a nonprofit organisation.

Although there is a wealth of information about corruption in the corporate sector, there are few reports of corruption in the nonprofit sector. Indeed, Stockton, (2005) concluded after a visit to Aceh that the agencies seem to be in a state denial about corruption. Perhaps one reason was that an admission of financial mismanagement would result in loss of donors, and in political confidence. Governance, the control of organisations by Directors or Trustees, sets the scene for ethical behaviour by both an organisation and its members.

GOVERNANCE

Governance is essentially concerned with the structures and processes for decision-making, accountability, control and behaviour at the top of organisations (Standards Australia 2003a). Various definitions relate not only to these structures and processes but also to an organisation's purpose, values, culture, stakeholders (including employees) and mode of operation. Others consider governance to mean the ways in which stakeholders interact with each other in order to influence the outcomes of public policies.

The legal status of nonprofits varies depending on their activities. The Productivity Commission (2009) reported at least 20 different ways to incorporate a nonprofit organisation. Some such as the Victorian Cancer Council, are established by State legislation and others, such as indigenous organisations are separately incorporated under Commonwealth legislation. In Australia, many are registered as companies limited by guarantee or bodies incorporated under the Incorporated Associations Act. These give the directors or trustees of the organisations legal protection but also impose the duties and responsibilities of company directors. The boards of such nonprofit organisations must comply with corporate governance regulations.

What constitutes best practice on boards is captured in codes of practice and guidelines for good governance (see for example Standards Australia 2003a; Armstrong and Francis 2004a Armstrong and Francis 2004b). All the guidelines emphasise the need for honesty and ethics supported by accountability through disclosure and transparency on all matters relating to an entity.

Accountability

Accountability is defined as the 'duty to provide an account (not necessarily only financial) or reckoning of those actions for which one is held responsible. Transparency is the open disclosure of the findings of its social accounts so that stakeholders have a good understanding of the organisation behaviour and performance (Doherty, Foster et al. 2009).

Funding of nonprofits varies greatly. Reflecting their service role, many nonprofit organisations receive funds from government. In 2006-7 around a third of the sector's income was received from government (Australian Productivity Commission 2009). There are also a great number of tax concessions by different levels of government that are reportedly "confusing, contradictory and often unfair" p.27. Status as a Deductible Gift Recipient makes gifting to organisations attractive and is a precondition for funding by most philanthropic bodies. Responses to an ACOSS survey (2000) indicated that half of the respondents were an Income Tax Exempt Charity, 13 percent had Public Benevolent Institution (which includes exemption from FBT). Only 10% had no tax exemptions. The move towards more competitive funding has seen government demand greater accountability for the use of funds and service delivery.

Performance management

Among the issues concerning those of efficient and effective management are pressures to achieve performance targets. Stockton (2005) believed that non- profits are under- managed. For example, due to an attempt to achieve low 'overheads' ratios, a typical manager may work many hours per week over what should normally be expected. Because managerial resources are so stretched due diligence resources are often over-extended, and financial control relatively ineffective.

To add to this there is a culture of urgency in many humanitarian enterprises, resulting in a wish to be effective, so that managerial oversight is ranked lowly. Further, the discovery of any cases of fraud might impair local relations as well as the fear of being involved in an exercise that is seen as time-wasting, and could be 'tainted' by such discovery.

In addition, many nonprofits, particularly humanitarian organisations operate in countries which Transparency International rate as among the most corrupt (See Bais and Hijser 2005 for further details). In these countries there is an increasing incidence of fraud and corruption in organisations.

CORRUPTION IN NONPROFIT ORGANISATIONS

Fraud is defined as dishonest behaviour by one or more individuals involving misuse of information or breach of public trust, which could lead to a crime or disciplinary offence. Fraud costs the Australian economy at least \$3 billion per year (Standards Australia International 2003b)

Corruption is defined in the Standards as dishonest activity in which a director, executive, manager, employee or contractor of an entity acts contrary to the interests of the entity and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity

Examples of corruption range across a variety of behaviours that include bribery, fraud, kickbacks or commissions, collusive tendering, and flagrant breaches of the Corporation's law such as insider trading, conflicts of interest, false accounting practices, deception, theft and unethical business practices. To these can be added tax evasion, money laundering, and financing of terrorist organisations.

What evidence is there of fraud or corruption in nonprofit organisations?

Stockton (2005)'s perusal of the annual reports of six major NGOs failed to report a single case of fraud. As Stockton said, that is a highly improbable outcome. In contrast, on a visit to Aceh he reported that much of the money for tsunami relief in that country had not found their intended target. Transparency International rates Aceh as the 8th most corrupt political economy on earth. None of the relief agencies where he enquired admitted that there had been a single case of fraud – although believing that other agencies had so encountered. A similar kind of visit to Kosovo had the Foreign Ministry that it had not had one case of financial misappropriation. After discussion Stockton concluded that the absence of reported fraud cases is not so much an indication of perfect management but, rather, of chronically weak financial management and audit controls. He also

concluded that the agencies seem to be in a state denial about corruption. Perhaps one reason is that an admission of financial mismanagement would result in loss of donors, and in political confidence.

Zack (2003) reports cases of fraud in the US involving such respected organisations as the American Cancer Society, United Way and the Episcopal Church. He estimates that in the US alone fraud in nonprofit organisations in the US may be as much as \$50 billion a year. He concludes (p. xvii) that “nonprofit organisations are every bit as embroiled in this unsavoury trend in fraud and abuse as any other sector of the economy”.

But, as he goes on to point out:

..it's different when nonprofit organizations are involved. It strikes us as an even more despicable act when a nonprofit organization is victimized than when someone embezzles from a multibillion dollar public company. The same feeling hits us when someone carries out a fraud against others through a non-profit organization, abusing the trust that many people place in nonprofit organizations.

The effects of lack of trust and loss of reputation can mean the loss of income, community involvement and opportunities to recruit volunteers as well as staff.

Individuals suffer from cognitive dissonance when their values are in conflict with those of their organisation. In the case of nonprofits this could be more extreme as many of the staff and volunteers join such organisations because of their commitment to the ideals of the organisation. Such conflicts can provide motives for deviance related to competition, rivalry, power, status, profits, and other justifications such as denial of harm and rational arguments for law breaking such as ‘everyone does it’.

Opportunities for corruption

Crime is possible because the organisation setting provides the MOM – the Motive, Opportunity and Means (Punch 2008). Hence, understanding corruption requires some analysis of an organisation, its culture and climate, and processes by which decisions are made. It includes actions contrary to the law but also the underlying conceptions of an appropriate corporate culture matched to values and strategies (Standards Australia 2003a, p.14). Research shows that an organisation has the potential to make an ethical person act unethically or an unethical person behave ethically. As Punch (2008, p.105) says:

People who are highly moral in their private lives ‘leave their consciences at home’ when they enter the portals of the firm and do what the organization asks of them.

Deviant behaviour can be done collectively on behalf of or against an organization or done individually for or against an organisation. While what is acceptable behaviour is clearly related to perceptions of trust and accountability, it also raises questions about the legitimacy of demands made by an organisation on individual members and also about the extent to which an individual can be held to have given consent to its behaviour. (Minkes and Minkes 2008).

The most common form of corruption in many developing countries is the payment of bribes. Linder and Linder (2009) reported the results of a study of corruption in India which found that as high as 62% of citizens have had first hand experience of paying a bribe to obtain a public service. Apart from lack of transparency and accountability in the system and lack of honesty by the officials, it seems that a major problem was “acceptance of giving bribes as a way of life, custom and culture”.

Other forms of corruption include diverting funds from their intended purpose, fraud, kickbacks or commissions, collusive tendering, overcharging, etc. Several studies have

shown that corruption is pervasive in the public procurement of infrastructure in many developing countries where numerous reviews have shown that value for money was not being achieved in both government and donor-effected projects because of corruption (See Mawenya 2007).

There are many other difficult issues involving ethical dilemmas that must be addressed by their boards if organisations are to be sustainable. Some of these are discussed below.

ETHICAL DILEMMAS

Nonprofit boards and executive directors “continually live on the edge of financial crisis and programmatic compromise” (p.149). Organisations seek sustainability and therefore tend to seek out opportunities for growth and budgetary stability. In Australia these are often government contracts, Government contracts represent government priorities. Nonprofits can therefore be caught between meeting the objectives and purpose for their existence and the opportunity to accept a new contract which provides some immediate certainty but not in an area allied with their strategic direction. Trustees may also believe that they can continue to raise funds from their traditional sources, but this may not be the case.

Sustainability also means harnessing resources to retain management, central office staff, key personnel, continuity of employment for management and employees and support for volunteers. It also includes a level of skills and competencies not required in other ages. A dilemma arises in the use of volunteers who have local knowledge and are cost effective versus providing a level of expertise in care expected in the 21st century. Another issue is the ethnic background of ‘who’ is appointed, can be a major issue with some ethnic minorities.

A second instance of a moral dilemma is that of high executive salaries for those in humanitarian organisations. The CEO of American Red Cross was listed as receiving \$651,957 per annum in 2004. The concern being that such high salaries are devoted needlessly to personal emoluments, and the excess not directed to organisational purposes. Against this is the argument that a highly competent CEO can raise substantial capital for the benefit of organisational purposes, and that the absolute sums then available are higher than would be the case were someone of lesser competence employed – as Gibleman (2000) has argued. There are myths and realities about ‘reasonable’ CEO pay. She challenged the notion that not for profit is the same as behaving unreasonably about executive salaries, but does acknowledge that public attitudes are an important issue that needs addressing.

One of the activities of nonprofits is advocacy. Conflict of interests easily emerge especially in countries such as Iran, Africa and Iraq which experience internal conflicts. Western nonprofit organisations usually hold dear the value of democracy especially in relation to liberty, fairness and freedom of opinion. In many countries, multinational organisations are major sponsors and cash cows for the nonprofit organisations (Bais and Huijser 2005). They can also be working with local governments to develop mining or other ventures which may involve bribery and corruption with government and the suppression of local people.

The long term sustainability of a nonprofit, that will require a board’s management of the various stakeholders and their interests, is not possible without a good deal of trust and ethical integrity.

Promoting sustainability

A number of measures can be taken to avoid corruption and promote sustainability. Prevention of fraud and corruption in nonprofit organisations include internal controls (See for example Adams KR 2004; Grose et al 2004; McMillan 2006; Zack 2003) and risk management.

Risk management is usually directed towards management of the risks associated with financial management (for example, investment, diversification, production of new products, relationships with

the market forces affecting the business), administrative systems (debt management) or human resources (e.g. loss of skilled personnel, occupational health and safety issues).

In the context of governance, other risks related to business sustainability are associated with decisions about stakeholder relations, and the interests and well being of people (such as shareholders, governments, clients/customers, suppliers, employees, communities and others who have an interest in the performance of the entity). These may be addressed by stakeholder analyses, identification of values and management of conflicting interests, promotion within the nonprofit of ethical values and climates within the organisation and clear guidelines on what are acceptable policies and conduct.

CONCLUSION

This paper has reviewed a wide range of issues and ethical dilemmas that effect nonprofit organisations. The Australian Productivity Commission reports that the nonprofit sector in Australia consists of a wide and growing range of organisations that meet a variety of community needs. Among these are their contributions to building community capacity, their growing role in the provision of services which, particularly in international contexts, has provided essential help in times of crisis such as war, tsunamis, bushfires and earthquakes, and their advocacy role influencing such issues as the reduction in the use of forced and child labour and the growth of concern for the environment.

The above evidence suggests that the third sector is a major contributor to GDP and employment in both developed and developing countries. The sector is also the recipient of increasing amounts of public money either from government or by public donations and privileges, such as tax exemption, that are not enjoyed by private sector organisations who are often in direct competition in the provision of many services.

However, questions are increasingly being asked about the accountability of the sector. Fraud and corruption reports are increasing and at a recent conference on crime, experts were concerned about the roles of nonprofit organisations in funding terrorism, either directly or through releasing local funds for such purposes.

The sustainability of the nonprofit sector depends on continuity of community support. Community support depends on trust and this is fed by perceptions of the sectors' ethical and moral standing.

Among the responses of the sector to the questions being raised could be to introduce higher standards of governance, including greater transparency and accountability, more professional leadership and management, and more transparent reporting. Alternatively, in Australia at least, does the Productivity Commission report signal that the Government is considering greater regulation and perhaps some limits on the privileges traditionally enjoyed by the sector? What is clear is that to ensure its sustainability public perception is an important issue that must be addressed.

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