



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA

Developing Good Governance Practices within the South African NPO Sector : Benchmark Study Report

CHAPTER TWO

LITERATURE REVIEW

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PREFACE

The Nonprofit Organisations Act, (Act No. 71 of 1997) (hereinafter referred to as NPO Act) was enacted as the government's endeavour to provide a regulatory dispensation in complementary with a self-regulation framework that posed tremendous challenges to all those interested in a vibrant civil society in South Africa. Accountability and good governance are indispensable in any regulatory system.

The Act mandates the Department of Social Development (DSD) to contribute towards an enabling environment within which nonprofit organisations (NPOs) can flourish. One of the objects of the NPO Act is to encourage NPOs to maintain adequate standards of governance, transparency and accountability as well as improving those standards.

In the year 2001, as part of its statutory mandate, the Directorate for NPOs within DSD issued the Codes of Good Practice (CGP) for NPOs to encourage self-regulation within the sector. All registered organisation are therefore encouraged to ensure that their own founding documents comply with the basic requirements of good governance in terms of the NPO Act.

However, over a period of time, it has become apparent that most NPOs do not comply with these basic standards of good governance. This is evident in the recent research conducted by the Department in 2005 on the Impact Assessment of the NPO Act. This study revealed a general lack of capacity within NPOs to manage their affairs including maintaining good governance for the organisation. This situation poses the greatest threat to efforts to maintain high standards across the sector, particularly among community based organisations (CBOs)¹.

Further to these challenges, about 20% of all organisations that apply for registration as NPOs do not meet the requirements of section 12 (2) on first attempt to get registered and more than 80% of registered NPOs do not submit their annual reports as required in terms of section 18 of the Act.

Pursuant to remedying the situation and as a further contribution to creating an enabling environment within NPOs to function efficiently, in 2008, the Department commissioned this study to benchmark good governance practices within NPOs in South Africa with an objective of improving the standards of governance and administration within non-profit organisations.

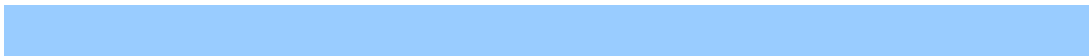
The exercise was aimed at assessing the practical implementation of the CGP in the sector comparing this with other South African and international best practice

¹ Department of Social Development, Assessment of the NPO Act - 2005

models. It further sought to design mechanism that will close the identified gaps including the development of responsive training programmes.

The research was conducted between March 2008 and July 2009. In carrying out the study, a Technical Reference Group (TRG) comprising members of the NPO sector, representatives from various provinces and relevant units within the Department of Social Development spearheaded by the NPO Directorate was formed to serve as a sounding board and provided strategic feedback on the findings of the study at the different phases.

This report therefore presents the findings in terms of all the gaps identified as well as recommendations in closing those gaps. The Department of Social Development foresees the outcomes of the study as essential for addressing the capacity needs of NPOs as well as entrenching and encouraging the sector to adopt good governance practices not only to enhance their ability to function but to meet the diverse service delivery needs of the broader South African communities. These outcomes are crucial more so considering an important role that the NPO sector plays as an important government partner in service delivery.



1. INTRODUCTION

The Department of Social Development as the custodian of the Nonprofit Organisations Act, 1997 (Act No 71 of 1997) is mandated to encourage non-profit organisations to maintain adequate standards of governance, transparency and accountability. The department issued the Codes of Good Practices in 2001 to assist non-profit organisations to maintain such standards.

In 2005 the department commissioned an independent study of the impact of the NPO Act. The study found, amongst other things, that donors, nonprofit organisations (NPOs) and government officials expressed misgivings about the level of compliance with the NPO Act and a general sense of limited practical implementation of the Codes of Good Practices.

In 2008 the Department commissioned this study to benchmark good governance practices within NPOs in South Africa with an objective of improving the standards of governance and administration within NPOs.

The specific objectives of the study were:

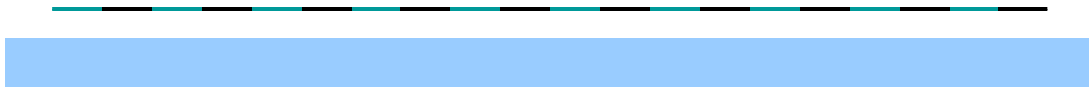
- To assess the practical implementation of the Codes of Good Practice by NPOs
- To identify good practice models of good governance, nationally and internationally, that could serve as benchmarks for good governance practices for organisations registered under the NPO Act.
- To assess the nonprofit sector's level of compliance with standards of governance, transparency and accountability as recommended by the Code of Good Practice and the NPO Act.
- To develop a training programme that can address the gaps in implementation of the Codes of Good Practice.
- To make recommendations to address the gaps and challenges identified in the implementation of the Codes of Good Practice. This includes making recommendations on the content of the code.

This research is reported in series of different volumes as:

- Chapter 1: Executive Summary and Comparative synopsis on Benchmarked Codes;
- Chapter 2: Comprehensive Literature Review;
- Chapter 3: Assessment on the practical implementation of the Codes of Good Practice and compliance with standards of governance, accountability and transparency;

This chapter on the Literature Review looks at the growth and development of the Civil Society Organisations (CSOs)/Non-profit organisations (NPOs), as well as the socio-economic and political circumstances under which they emerged and developed. Secondly, it looks at how these conditions have shaped and reshaped the terrains, roles and functions of NPOs. The chapter starts by providing a brief historical background of NPOs with a particular focus on South Africa. It then looks at the regulatory environment within which NPOs operate. It goes further to also look at how their changing roles and responsibilities have given rise to a particular type of regulatory environment.

The Literature Review Chapter is divided into four components. The first section focuses on the defining civil society and nonprofit organisations and other relating conceptual issues on the benchmarking of governance codes. The second section focuses on the case studies for deriving a benchmark for the South African NPO sector. This is done by looking at the case studies of several African countries, and other developing countries in South America and South/South East Asia, including India, the Philippines and Brazil. The last part of this section examines the structuring and activities of NPOs in developed countries. The last section provides an analysis of NPOs which is done by tabling the dichotomies and challenges faced by the different case study countries, including South Africa.



2. DEFINITION AND CONCEPTUAL ISSUES

2.1 Defining Civil Society and Nonprofit Organisations

It is important from the outset to stress that the task of defining the not-for-profit sector is both difficult and contested, given the constructed nature of the term and the unresolved and emotive debates that continue to revolve around the concept of 'civil society' itself. This is reflected in the different perspectives and definitions that attach to the concept of civil society, and the definitional inter-changeability of its key agencies – NPOs, NGOs and CBOs, along with the QUANGOs, GONGOs, BONGOs and other constructed terms that populate the literature on the sector. It is useful, however, to look at a few definitions of the NPO sector to get a sense of where some of the emphases are, and how these relate to the critical notion of 'good governance'.

In its review of the South African civil society terrain CIVICUS defined the NPO sector as:

"...The sphere of organisations and/or associations of organisations located between the family, the state, the government of the day, and the prevailing economic system, in which people with common interests associate voluntarily. Amongst these organisations, they may have common, competing, or conflicting values and interests (2002:3)².

Swilling and Russell quote the South Africa-based Development Resource Centre's definition of NPOs as follows:

"NGOs are private, self-governing, voluntary, non-profit distributing organisations operating, not for commercial purposes but in the public interest, for the promotion of social welfare and development, religion, charity, education and research (2002:7)"

Having examined the history of the concept of civil society Warren suggests that the current inherited conception of civil society is an amalgam of concepts. He then goes on to define civil society as follows:

"Civil society is the domain of social organisation within which voluntary associative relations are dominant (1999: 14)."

Given the contested nature of the central concepts associated with the term 'civil society' Salamon et al prefer to use three types of definitions, each one framed within a particular set of economic, legal and institutional terms (2003:6). From an economic perspective civil society can be defined as follows:

² CIVICUS is an international civil society alliance dedicated to strengthening citizen action and civil society throughout the world.

"A civil society organisation is one that receives the predominant portion of its revenue from private contributions, not from market transactions or government support".

From the legal perspective civil society organisation can be defined as follows:

"A civil society organisation is one that takes a particular legal form (for example, an "association" or a "foundation") or that is exempted from some or all of a country's taxes".

Finally, from the institutional perspective, a civil society organisation can be defined as follows:

"A civil society organisation is one that promotes the public good, encourages empowerment and participation, or seeks to address the structural roots of poverty and distress".

Taking these various definitions we can assert that Non-Governmental (NGO) and community based organisation (CBOs) or Non-profit Organisations can be described as voluntary, not-for-profit, non-partisan and independent Organisations or associations engaged in serving the public good. NPOs may be national as well as international; secular as well as 'faith-based'; and may fall into membership or non-membership categories. "Voluntary" denotes free will on the part of the NPO as well as community partners. "Not-for-profit" means that an NPO cannot distribute its assets, earnings or profits as such to any person. However, there may be paid employees or activities generating revenue which will be used solely for the stated purposes of the Organisation³.

There have been countless attempts to define the sector, all of which struggle conceptually with its diversity and complexity. A strong NPO sector has long been seen as integral to how a democracy operates. In most democratic models, the sector plays an important political role in shaping public advocacy. However, it also reflects a society back to itself through its social and sporting clubs, its cultural organisations, its social justice movements and its environmental organisations. The more open, free, diverse and vibrant a society is, the more the organisations of civil society will reflect that richness. These organisations are often the source of normative concepts about the ideal democratic society, and of the kinds of visions, aspirations and ideas that should be contested and debated so as to provide a rich discourse from which a vibrant society can develop. The sector is also reflexive, and therefore ever-changing and adapting to reflect changes in interests, values and priorities of particular societies.

While the conceptual challenges remain, there is little doubt that the last two decades have witnessed an upsurge in the number and spread of NPOs globally. As

³ <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EVIU-6D5EBR?OpenDocument>

Lloyd argues this is a phenomenon that has been characterised by policy makers moving away from an unquestioning belief in the market's ability to deliver development to a more multi-layered worldview in which the role of civil society is central (2005:2). Salamon *et al* describe the rise of civil society as a "*veritable global associational revolution*", a phenomenon which they compare to the rise of the nation-state in the nineteenth century (2003:2).

In this sense NPOs are seen as playing an important role in facilitating socio-economic growth and development, as well as strengthening political stability and accountability, within their respective countries. In many cases, NPO have played a prominent role by influencing local, national and regional policy formulation, development and implementation. However, this growth takes very different forms in different countries, depending very much on the prevailing socio-economic and political circumstances.

Chowdhury *et al* note that the situation of civil society in every country is unique, and stands in direct relation to the uniqueness of every country's culture, history, size, population, political systems, financial situation and infrastructure (2006:2). It should also be stressed that many states are going through periods of democratic transition, and that many of these states, while having the formal structures of democracy, still lack full realisation of citizenship rights and have poorly functioning formal institutions. According to the *Draft Code of Ethics and Conduct for African Civil Society* NPOs in many of these countries have moved in and taken over the roles and duties that traditionally belonged to governments (2003:4). Many have also demanded higher standards of transparency and accountability from governments, in this way serving a 'watchdog' or oversight role over the actions of states in order to ensure that states fulfil their constitutional commitments and rights-based obligations to their citizens.

The growing strength and prominence of civil society organisations in social and economic affairs has inevitably led to increased calls from governments, donors and other stakeholders for greater accountability and transparency in terms of their management and programmes. This move for greater NGO accountability is also emerging from within civil society itself. Adair argues that civil society organisations that position themselves as commentators on and critics of the failures of governments, business and other institutions need to be subjected to the same degree of scrutiny that these institutions are subject to (1999:11). This emergent focus on good governance has resulted in a closer examination of how NPO operate and how they are regulated, in this way reviving an old policy debate on regulation versus self-regulation (Morgan, 2005:67).

As the sector comes under increased pressure and scrutiny to demonstrate their own transparency and public accountability, many NPOs are taking steps to strengthen

their governance system to improve their legitimacy among policy makers and thus the effectiveness of their work (Lloyd, 2005: 2). This trend towards improved governance is, then, the focus of this literature review and the intention is to examine good governance developments in twenty countries around the world as a means of benchmarking best practice, as well as identifying some of the challenges and concerns around regulation of the NPO sector in a globalised, dynamic, post-9/11 environment.

2.2 Other Conceptual Issues

Non-Profit Organisations (NPOs), sometimes referred to as Non-Governmental Organisations (NGOs) and community based organisations (CBOs), play a major civic, developmental and rights-based role in both developed and developing countries. Such organisations are deemed to operate within what is variably termed the non-profit sector, the voluntary sector, or the third sector.

However, there different views on how terminology influence the sector and this section relations this discourse.

2.2.1 The Difference with Private Sector

Most analysts consider the legal and ethical restrictions on the distribution of profits to owners or shareholders as the issue that fundamentally distinguishes NPOs from commercial or corporate enterprises. The use of the term "not-for-profit" rather than "non-profit" has been debated within the field. While there are definitive preferences for one term or the other, there is generally no broad consensus on the terminology⁴.

In broad terms NPOs do not function or operate to generate profit, and this tends to be the defining characteristic of such Organisations. However, an NPO may accept, hold and disburse money and other resources of value. It may legally and ethically trade at a profit or hold investments, but this is usually restricted to the use of any such funds exclusively for attaining the aims and objectives of the Organisation. Depending on national or state legislation the extent to which NPOs can generate income may be constrained in amount, methods or both, and the use of such profits may be restricted not only in purpose but in proportions regarding self-maintenance and achievement of purpose. NPOs therefore are typically funded by donations from the private or public sector, or in some cases both, as well as from programme services or consultancy fees.

In most countries surveyed NPOs can attain tax exempt status but such status is not inherent to its formation and must be specifically requested from the tax supervising authority. Donations may sometimes be tax deductible.

⁴ http://en.wikipedia.org/wiki/non-profit_Organisation#cite_note

NPOs are operated in a variety of ways, depending on size, location, status, funding, resources and scope of operations. NPOs are therefore diverse in terms of their staffing profiles, being run either by volunteers, paid staff or a combination of both. Senior executive positions are generally held by salaried personnel while the entry-level programme and field positions are frequently held by volunteers.

Additionally, NPOs may have a range of other stakeholders that could include members, participants, beneficiaries, students and focus groups as opposed to customers and clients in for-profit Organisations. In many countries these distinctions are, however, blurring in cases where NGOs provide specific fee-based services to clients.

It is therefore difficult to generalize about the comparative cost of a "non-profit" versus "for profit" organisation as internalized profit may be generated within a non-profit organisation. In fact, most successful NPOs generate a surplus of funds (more income than expenses) that can be held to generate additional income and pay operating expenses when other income streams weaken. With a number of NPOs the only distinction between them and a for-profit company is that ownership lies in stakeholders, and not in investors. Any net income is used to further the Organisation's goal (whether that be paying for programmes or investing for security), rather than being distributed to shareholders, partners or owners.

NPOs can operate as charities or as service organisations, and they may be organized as not-for-profit corporations, associations, trust, or they may operate on a purely informal basis. Sometimes they are also called foundations, or endowments and these entities may sit on large stock funds. A very similar organisation, called the supporting or grant-making organisation, operates like a foundation, but they tend to be more complicated to administer, they are more tax-favoured, and the public charities that receive grants from them must have a specially determined relationship. Foundations channel grants to other NPOs, or fellowships and direct grants to participants.

However, the designation "foundation" may be used by any not-for-profit corporation, even volunteer organisations or grass roots groups. The nomenclature for this broad spectrum of organisations is often determined by national or regional context. For example, if Germanic or Nordic law (e.g. Germany, Sweden, Finland) is applied, NPOs are typically referred to as voluntary associations, although some organisations such as housing or work co-operatives may have a corporate structure. Again, in broad terms a voluntary association is founded upon the principle of one-person-one-vote.

There is a wide diversity of formations, structures and purposes within the NPO sector. This diversity makes it difficult to generalise, but for the purposes of legal

classification, registration, compliance and taxation it is possible to identify certain characteristic structural elements, including:

- Legal requirements followed for establishment;
- Purpose (which would normally include the constitution, mission, vision, objectives etc.);
- Economic activity;
- Supervision and management provisions;
- Representation;
- Accountability and auditing provisions;
- Provisions for the amendment of the constitution, statutes or articles of incorporation;
- Provisions for the dissolution of the entity;
- Tax status of corporate and private donors;
- Tax status of the foundation.

Some of the above must, in most jurisdictions, be expressed in the document of establishment. Others may be provided by the supervising authority at each particular jurisdiction. While affiliations will not affect a legal status, they may be taken into consideration in legal proceedings as an indication of purpose. Most countries have various kinds of legislation – some more specific, focused and targeted than others – which regulate the establishment and management of NPOs and which require compliance with regulatory provisions, codes of conduct and corporate governance regimes.

Many larger organisations are required to publish their financial reports detailing their income and expenditure for the purpose of transparency and public accountability. In many aspects they are similar to business entities though there are often significant differences. Both non-profit and for-profit entities must have board members, steering committee members, or trustees who owe the Organisation a fiduciary duty of loyalty and trust. A notable exception to this involves churches, which are often not required to disclose their finances or operational processes, in some cases not even to their own members.

2.2.2 Identity formation: - Civil society v/s Nonprofit

Given the diverse nature of the non-profit sector it is understandable that semantics play an important role in civil society “identity formation”. There is a growing trend within the “non”-profit and “non”-government sector to use more proactive wording with regard to defining the core elements that characterise its social nature. There is an understanding that the use of “non” terminology to describe the sector implies a *contestatory* relationship with the other sectors (whether public or corporate) and that it is more productive to use positive terminology that reflects the essence of partnership.

The term “civil society organisation” (CSO) has been used by a growing number of organisations, such as The Center for the Study of Global Governance, while organisations such as the Association of Chief Executives of Voluntary Organisations (ACEVO) see themselves as part of the “third sector”. The term “citizen sector Organisation” (CSO) has also been advocated by organisations such as Ashoka, which describes itself as an “innovator for the public”⁵. These perspectives from within the sector itself reflect the vibrancy, dynamism and diversity of the non-profit sector and indicate that there is a broad effort to define an identity distinct from but in harmony with the public and private sector.

The *problematique* that is faced in attempting this kind of identity exercise is that civil society is in essence a fluid, dynamic and often elusive concept, and state-civil society relations, and the scope for NPO activity, are highly contextualised within national and regional particularities. The diversity ranges from the national governance structures (federal or unitary state, degrees of democratic freedom etc.), to the political, social and cultural conditions prevailing at highly localised levels. As with any other set of social relations organisations within civil society are characterised both by the positive virtues of volunteerism, altruism and public good, as well as the more questionable forces of vested interests, elite capture and ideological persuasion. In recognising these complexities it is also important to highlight the fact that efforts at establishing workable statutory and self-regulatory frameworks for the NPO sector generally seek to impose more standardised guidelines on the sector as a means of ensuring that despite the diversity there are a common set of standards and rules by which the sector can be governed and held to account.

2.2.3 The Form of Government on the Nonprofit Statutes

Some countries within which these NPOs function are federated states, with individual states having varying degrees of autonomy from the federal government. Examples of federal states include the USA, Australia, Canada, Brazil and India. The regulatory and governance challenges facing both the state and the NPO sector in federated countries are often quite different to those faced in unitary states.

For example, Australia federal government system inevitable results in some overlap of law-making power between the National and State and other Territory governments because of the power sharing between the Commonwealth and State legislatures and executive governments. In some cases this overlap of law making power has been overcome by co-operation between the states (e.g. the national

⁵ Ashoka is the global association of the world's leading social entrepreneurs who have system changing solutions for the world's most urgent social problems. Since 1981 Ashoka have elected over 2,000 leading social entrepreneurs as Ashoka Fellows and provided them with living stipends, professional support, and access to a global network of peers in more than 60 countries. With its global community, Ashoka develop models for collaboration and design infrastructure needed to advance the field of social entrepreneurship and the citizen sector.

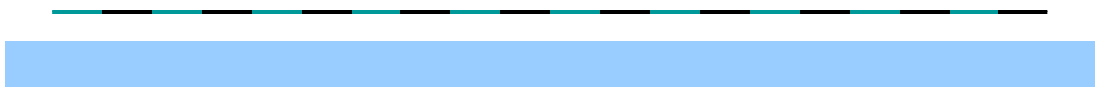
Corporations Law), or by the common law governing all Australian courts, for example with regard to laws relating to charities.

However, in other areas the overlap of law-making power does create difficulties for NPOs. For example, each state has enacted its own Act to govern NPOs with the result that there is a lack of consistency in registration and reporting requirements across Australia. Each State has also enacted its own Associations Incorporation Act (AIA) with the result that there is a lack of consistency in association incorporation and reporting requirements across Australia.

Unitary states generally have a much higher degree of centralised authority. Kenya, for example, is a unitary republic within the commonwealth and has therefore adopted the common law system of government. The Kenyan Constitution is supreme and is supplemented by other statutes and by the common law. One common feature of laws regulating non-governmental organisations in Botswana, Guatemala and Brazil is that there is no single consolidated law, and regulation of the sector is spread across various pieces of legislation and across different ministries.

In Botswana there are generally three basic types of laws that can be seen to be governing NPOs, and the laws themselves depend on the nature of the NPOs themselves. In the first place the Constitution stands as the fundamental law of the land; secondly there are general law on societies; and thirdly there are special laws dealing with certain professional or associational types of non-profit organisations such as legal, medical and dental associations.

As a result most of these organisations operate without being legally registered, and are seen to have legitimate status as long as they have internal rules regulating their procedures. It was only in 1972 that a law dealing with associations was enacted. As a result, quite a number of associations were deemed to have been registered. This was meant to formalise the existence of those which were already operating.



3. GLOBAL CONTEXT

3.1 *Civil Society within the International Socio-political Context*

The seminal occurrence of the 11 September 2001 terrorist attacks in the United States has led to the United Nations (UN) Security Council adopting Resolution 1373 (2001) that impose a series of obligations on UN Member States to combat terrorism and money laundering. The prevention of financing of terrorism was an important component of these obligations.

Against this background the global war on terror has contributed to increasing levels of surveillance by national governments and growing demands for transparency in the NPO sector.

3.1.1 Civil Society Post 911

Nonprofit Organisations have been perceived to be potential agents of harbouring financing of terrorist activities including money laundering. Therefore governments globally have been pressured to institutionalise greater control measures over civil society organisations. Thus restricting and stifling the space in which civil society organisations operate.

However, there has been a global terrorism discourse that has its capacity to open up both ethical and political grey areas that have challenged conventional thinking about democratic practices, human rights and other fundamental freedoms. This section relates this dilemma.

There is a well-documented and expanding literature focusing on the increasing extent to which governments are imposing controls on civil society under the pretexts of ensuring security, political stability, and non-interference in the country's internal affairs. These controls extend from manifestly restrictive laws and regulations to quietly burdensome registration and tax requirements. This has also come in conjunction with growing pressure to comply with regulations governing the sector and, in the post 9/11 period to increase good governance, transparency and accountability as a means of monitoring the activities of CSOs more stringently.

Since the 1990s civil society has expanded globally and the nature and extent of the activities of civil society organisations has proved a complex challenge for governments, donor agencies and multilateral organisations. Gugerty argues that a growing unease about the broad and unfettered work of CSOs led to an increasing questioning of the apparent efficiency, flexibility and probity of NGOs, and that the events of 9/11 served as a point of convergence and juncture where these growing threads of disquiet came together (2006: 11).

In the aftermath of 9/11 and the onset of the global war on terror governments of various political persuasions had a pretext for clamping down on the activities of the CSP sector by using the discourse of national security to justify their actions. There has been mounting pressure for NPOs to declare their incomes and sources, on the basis that some NPOs may have been used as fronts to channel funds that are eventually used for terrorist outcomes. As Jordan argues, the legitimacy of the entire NGO sector has been questioned by raising the possibility that there may be links to terrorists (2005:8).

3.1.2 Anti- Terrorism Measures

The Government of Australia has taken the view that there is evidence of non-profit organisations (NPOs) being used, either knowingly or unwittingly, to collect and distribute financial assistance to terrorists. The government's position, under the conservative Howard administration, has been that although most NPOs will consider that the likelihood of being used to assist terrorism is quite small all NPOs will be subject to criminal penalties if they do not take proper precautions to prevent their organisation being used in such a manner. The government has also made recent changes to the *Criminal Code* that has seen the introduction of tougher criminal penalties for individuals and organisations involved in the movement of funding for a terrorist organisation, individual, or act.

These penalties may apply even where an organisation is unaware that they were involved, but did not take reasonable precautions to prevent this movement of funds to occur. The changes have also brought in penalties for terrorism financing that reflects the severity of the terrorism offence, ranging from financial penalties to life imprisonment⁶.

In line with other countries the government of Australia has introduced legislation aligned to the document *Voluntary Best Practice Principles for Non-Profit Organisations – Counter-Terrorism Financing*⁷. The Financial Action Task Force (FATF), of which Australia is a founding member, has developed *Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing* which include implementing strategies to combat terrorism financing. Special Recommendation VIII (SR VIII) sets out measures FATF member countries should take to ensure that non-profit organisations (NPOs) cannot be misused for the purposes of terrorism financing.

The Australian Government has committed itself to implementing its international obligations to prevent the misuse of NPOs for the purpose of terrorism financing. While the Government recognises that the NPO sector is a vital component of the

⁶ http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering_Non-ProfitOrganisations

⁷ These Principles are based on the Financial Action Task Force (FATF) Combating the Abuse of Non-Profit Organisations: International Best Practices (11 October 2002) and the Interpretive Note to Special Recommendation VIII: Non-Profit Organisations (15 February 2006).

Australian economy, it points out that NPOs are vulnerable to misuse for the purpose of terrorism financing.

It has argued that there are a variety of reasons for these vulnerabilities, including the fact that NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. Its view, shared with other countries such as the USA and the UK, is that terrorist organisations can take advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations for terrorist activity. The principles were designed to assist NPOs to protect themselves from misuse for the purpose of terrorism financing.

In the view of the Australian government the misuse of NPOs for the purpose of terrorism financing not only facilitates terrorist activity but also undermines the good work of NPOs. In minimising the risk of such misuse, the Australian Government noted that the need to minimise the risk of such misuse had to be balanced with the need to not disrupt or discourage legitimate charitable activities.

According to the government the following principles were framed to enhance best practices and promote accountability and transparency, and were intended to engender greater public confidence in the NPO sector⁸. The principles were set out as follows:

- It is important that all NPOs make all reasonable efforts to ensure that aid funds and resources are not being misused to support terrorist activity;
- NPOs must comply with all applicable Australian laws⁹;
- Where possible, an NPO should be licensed or registered with relevant authorities;
- If an NPO conducts programs outside Australia, it must also comply with applicable foreign laws, regulations and conventions;
- NPOs should ensure that directly funded persons/organisations and local partners are aware of and obliged to comply with relevant laws, and that they in turn are obliged to make sure that their distribution of the funds or support is made on the same basis;
- NPOs should know who their beneficiaries are and ensure that all reasonable efforts are taken to prevent funds being misused to support terrorist activities;
- NPOs should keep records of funds they provide to beneficiaries and make all reasonable efforts to implement appropriate follow-up procedures to ensure they know where and how those funds were used;
- NPOs should ensure that funds, assets or assistance are not provided to people or organisations that are listed under the *Charter of the United Nations Act 1945* or which meet the definition of a terrorist organisation under the Commonwealth

⁸ The *Voluntary Best Practice Principles for Non-Profit Organisations – Counter-Terrorism Financing – Appendices* provide a more detailed explanation of these Principles to assist NPOs in their interpretation and implementation of these Principles.

⁹ Relevant Australian Laws include, but are not limited to, the Criminal Code and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. Refer to Appendix III for further information.

Criminal Code Act 1995, including those organisations which have been listed under the *Criminal Code Regulations 2002*.

- NPOs should report any suspicious activity to the Australian Federal Police, if in Australia, or to the appropriate local authorities, if overseas.

Since 11 September 2001, the fight against terrorism has become one of the key priorities of the European Union, and the later terrorist attacks in Madrid and London made it an ever more acute priority for European Union member states. Expressing concerns that the 'non-profit sector' has been exploited for the 'financing of terrorism and criminal abuse', the European Commission suggested that the sector should adhere to a code of conduct to combat this (2005: 4).

The European Commission consequently adopted *Guidelines for Member States* on national level coordination structures and vulnerabilities of the non-profit sector. According to these guidelines, the Commission set up an "informal contact group" with civil society and organised a conference with representatives of the non-profit sector and other relevant stakeholders. The document is marked by a specific willingness to avoid a "one-size-fits-all" approach, recognise the specificity of NGO activity on the field, but also stresses that there is empiric evidence of misuse of NGOs by terrorist organisations. On the basis of this understanding the Commission launched an open consultation on a Code of Conduct for non-profit organisations to Promote Transparency and Accountability in 2005.

This attempt to regulate Non-profit Organisations at European level (through a code of conduct that would be implemented by Member States) raised strong concerns within the European NGOs community. NGOs felt that even if the objectives were understandable and desirable the means for achieving them were questionable, and they expressed the concern that the surveillance of terrorist organisations is a matter for the police and should not to be left to voluntary codes of conduct. Secondly, while expressing a desire to have a broad consultation of non-profit sector actors, the Commission had only given 5 weeks for the consultation. In the view of most NGOs this was not sufficient time to have a broad consultative process around a deeply emotive and divisive issue.

The United Kingdom's National Council of Voluntary Organisations noted that this was the first time that the European Commission had sought to regulate NGOs at an EU level, and were concerned that the draft recommendations focused on the alleged potential for NGOs to be used for terrorist and criminal activity, rather than on the vital role that NGOs play in preserving and building the European Social Model¹⁰.

Quigley and Pratten (2007:11) note that the Commission's recommendations were essentially unworkable and reflected a lack of understanding of the sector and what it does. Ultimately NGO resistance to the proposal meant that the recommendations

¹⁰ <http://www.ncvo-vol.org.uk/policy/international/index.asp?id=1184>

were not implemented, but the process created a climate of suspicion on both sides and added to the perception that it was the NPO sector itself that was being targeted.

In the USA, institutions such as USAID have proposed Anti-Terror screening or vetting systems as a prerequisite for NGOs applying for grants. Current recipient organisations are required to screen their employees and provide USAID with certification that no employee is affiliated with any government listed terrorist group" (Eremus: 2007:10).

However, the NGOs have expressed concerns at the current status of the proposed system (PVS-partner vetting system), fearing that employees of the NGOs will be falsely identified as "associated with" terrorism because the government watch lists are "riddled with error". Eremus further notes that the information collected would be screened "to ensure that neither USAID funds nor USAID-funded activities inadvertently provide support to entities or individual associated terrorism". However Eremus argues that the "USAID has failed to explain the need for the PVS, because it has not conclusively demonstrated that the funds have been used for criminal activities associated with terrorism or would end up in the hands of individuals or organisations responsible for such criminal activities (2007:13).

3.2 Civil Society in Africa

In a speech to the Conference on Democracy, Civil Society and Governance in Africa (Addis Ababa, December 1997) the Executive Secretary of ECA K.Y. Amoako argued that for many countries in Africa narrow political considerations, personalised power and corruption have undermined the process of democracy and responsive governance and limited the space for NGOs to contribute to national and regional development agendas.

Gyimah-Boadi argues that Africa's nascent civil societies were in the forefront of the movement to dislodge entrenched authoritarianism in Africa and bring about the beginnings of formal democracy in the early 1990s (1996: 122). Although external influences such as the fall of communism and pressure from foreign donors were important, it was often the resourcefulness, dedication, and tenacity of domestic civil society that initiated and sustained the process of transition. In many instances civil society also drove the process of opening up debates on new political directions, pushing for the acceptance of pluralist politics, convening sovereign national conferences and constituent assemblies, and preparing for multi-party elections. With the first phase of democratization nearing completion, attention is shifting to the problem of consolidation and expectations regarding civil society's contribution are running high. Gyimah-Boadi argues, however, that these expectations are likely

to be disappointed as civil society generally remains too weak to be democracy's mainstay (1996: 128).

Civil Society Organisations have, in the last few decades, played an increasingly influential role in promoting social and economic change in their respective countries. In many cases, CSOs have played a prominent role in influencing local, national and regional policy-formulation. They have, in certain instances, taken over roles and duties that traditionally belong to the government and have demanded high standards of transparency and accountability from elected governments. They have influenced in no small measure, local, national as well as international laws and treaties. They have fought for and gained nomination into key international bodies and participated effectively in such positions. In addition, due to their watchdog status, CSOs have become key players in the democracy movement in several African countries. It is therefore not surprising that the increase in influence of CSOs in recent years has also raised the issue of transparency, legitimacy, accountability and general good management practices on the part of CSOs themselves. In short, many CSOs suffer from the problem of credibility. Within the context of the AU, Governments that constitute the members of the Union commonly raise the concerns about the proliferation of CSOs, the credibility and acceptability of some CSOs. It is therefore imperative for the CSOs wishing to engage with the AU to set clear standards of accountability, credibility and transparency.

3.3 Civil Society and the African Union

Important moves have, however, been made in strengthening the role of African civil society through the development of frameworks that promote good governance, ethics and accountability within the NPO sector, and that provide the motivation and direction for a more effective role for civil society. One of these positive steps has been the development of *Code of Conduct and Ethics for Civil Society Organisations*. From a historical perspective the Organisation of African Unity (OAU) worked in close collaboration with African Civil Society Organisations, although this was often in a fragmented and ad hoc manner.

In 1997, the Secretary General of the OAU, before the Council of Ministers and the Assembly of Heads of State and Government, recommended a formal and more effective collaboration between the OAU and Civil Society Organisations in Africa. The convening of the 1st OAU - Civil Society Conference held between the 11th and 15th of June 2001 in Addis Ababa, Ethiopia signalled strong approval of the Secretary General's recommendation. The theme of the Conference was "Building Partnerships for Promoting Peace and Development in Africa". The main objective of the Conference, apart from improving and consolidating the collaboration between the OAU and CSOs in Africa, was 'to assist in promoting a home-grown African Civil Society and enhance its contribution to the fulfilment of the Union's mission.' At the

end of that Conference, a framework for cooperation between the OAU and CSOs in Africa was adopted. This collaborative trend continued until the African Union was inaugurated on 11th July 2002 in Durban, South Africa.

The 2nd AU-Civil Society Conference was held in Addis Ababa, Ethiopia between the 11th and 14th of June 2002 with the theme of "Developing Partnerships between the OAU and African Civil Society Organisations". The Conference was convened to consolidate the progress made at the 1st Conference, to develop modalities and mechanisms of collaboration between the OAU and CSOs in Africa, and to assess actions undertaken so far to implement the framework drawn up at the 1st Conference. Amongst other recommendations, the Conference resolved that a Provisional Working Group (PWG) be established to facilitate the interaction between the Union and CSOs during a 2 year period. The terms of reference of the PWG include the development a Code of Conduct and Ethics for Civil Society Organisations.

The purpose of the *Code of Ethics and Conduct*, which is intended to apply mandatory to all CSOs seeking accreditation with the African Union, is to lay down a set of standard and core values which these CSOs must adhere to in order to set exemplary standards for CSOs in Africa. The Code was also recommended for wider usage as a voluntary standard of self-regulation and governance by CSOs in Africa as well as to provide a benchmark for CSOs to use for self-evaluation. The Code consists of a number of typical components:

- The aspirational section which outlines the principles and ideals that CSOs in Africa should espouse;
- The standards or rules of conduct or behaviour which CSOs will be expected to adhere to;
- Enforcement or Compliance mechanism designed to ensure adherence to the provisions of the Code;
- Provision for revision of its contents in order to ensure dynamism.

The Code will, amongst other things, improve partnership between Governments within the African Union and CSOs by defining accepted and acceptable behaviour, help to promote high standards of practice as well as provide a benchmark for CSOs to use for self-evaluation.

3.4 Civil Society and the Southern Africa Development Community (SADC)

Most countries in the SADC region have laws regulating the NPO sector. However there are differences in the application of laws that regulate the sector. In some countries there have been extensive consultation processes between the NPOs and governments. In Malawi for example the process took six years of extensive consultation before the Non-Governmental Organisation Act was introduced in 2001.

The act makes it mandatory for NPOs/NGOs to register and it also has exemptions such as including informal organisations that do not have constitution. It also makes provision for a ten member Board which will regulate and register the operation of the NPOs.

In other countries there is little evidence of strong consultative processes with civil society organisations. Namibia for example is yet to see the evolution of the partnership between government and civil society organisations. It is however, anticipated that the regulatory framework for civil society organisations will in time undergo a review which will ensure uniformity and harmonisation.

In broad terms there is no overarching framework within which NPOs in the SADC region operate as different countries are at different stages of development in terms of their relationship with the NPO sector. There are therefore no uniform and standard governance structures and institutions within the SADC region that regulate and set benchmarks for the NPO sector within SADC. However, there has been some level of regional co-operation between NPOs within the context of NEPAD on issues such as trade, infrastructure development and the environment. The extent of uniform governance standards in Africa are yet to be developed, although the *SADC Social Charter* adopted by the SADC Council of Ministers, commits member states to creating an 'an enabling environment' consistent with the ILO Conventions on freedom of association, the right to organise and collective bargaining.

The establishment of the SADC Council of NGOs in 1998 put in motion a process that sought to bring together national NGO umbrella Organisations into the mainstream regional development agenda. However, since 1998, the work of the Council has been erratic and it has not been able to provide the level of leadership and strategic focus that would have served the best interests of civil society in the region. This first Regional Assembly in 2007 represented an important step and progress in taking forward the vision of the Council and re-invigorating its activities.

The SADC Council of Non Governmental Organisations (SADC-CNGOs) convened its second Civil Society Forum meeting which coincided with SADC Heads of State & Governments Summit. The Forum meeting took place from the 14th – 16th August 2006 in Maseru, Lesotho.

Under the banner of SADC-CNGOs civil society organisations met to deliberate on issues related to the development and integration of the region based on the understanding that regional integration has the potential to create improved social and economic conditions for SADC member states. There was also a clear recognition that the development of countries in the SADC region and enhanced regional integration could not be achieved by governments alone.

SADC ministers expressed the view that there was a need to support a strengthened civil society which could engage constructively and effectively with governments in the region. SADC re-emphasized the fact that the region is faced with serious developmental challenges, including HIV and AIDS, gender equality, poverty eradication, protection of the environment and peace and stability among member states. The scale of these challenges prompted SADC to commit its resources and energies in a strong coalition and to select “Democratic Governance and Regional Economic Integration” as their annual thematic focus.

At this meeting NGOs set out the objectives for the SADC Council of NGOs, which were as follows:

- Contribute towards the creation and sustenance of enabling environment for NGOs at national and regional levels;
- Represent the interests of civil society in the institutions of SADC;
- Collect and disseminate information on the activities of NGOs throughout the region, in order to influence national and regional development policies, especially with regards to the redistribution of development resources;
- Create a forum aimed at sharing best experiences and skills on development issues affecting the region;
- Encourage its members to promote and adopt practices that ensure NGOs’ accountability and transparency;
- Keep a databank of development and related organisations at regional level;
- Encourage better NGO coordination and networking at national and regional level.



4. SOUTH AFRICAN CONTEXT

Good governance theories and practices are becoming increasingly necessary for the development, legitimacy and sustainability of NPOs in any country. This literature review seeks to compare different NPO governance practices in different countries, examine state responses to developments within the NPO sector, and seeks to highlight both good practices as well as governance-related challenges. To commence with this comparative analysis, it is important to first relate the size of civil society in South Africa and its legislative framework including codes of good practice that currently exist as a context.

4.1 *Synopsis on the Size of South African NPO Sector*

In terms of size and economic significance the NPO sector in South Africa was worth R13.2 billion in 1998, including cash and in kind payments. The volunteer labour contributed R5.1 billion, the private sector R3.5 billion and self-generated income contributed R4.6 billion to GDP. According to the Johns Hopkins survey (1999) the non-profit sector employed 645 316 full-time workers (of which about 50% are volunteers). This sector represents 7.6% of the total non-agricultural workforce in SA. This is a relatively larger sector than in most developed countries, which average 6.7% of the non agricultural workforce. Total employment in the non-profit sector in 1999 exceeded the number of employees in many major economic sectors (Swilling and Russell, 2002:16).

A report on the results of an Organisational Survey on the state of civil society in South Africa undertaken by Institute for Democracy in South Africa (IDASA) and Co-operative for Research and Education (CORE) on behalf of SANGOCO has shown that NPOs are spread fairly evenly across the nine provinces of South Africa. The study concluded that the NPO sectors' primary activity is on service delivery. However 78% of the respondents in the study felt that there is not enough co-operation and communication among NPOs. 75% of NPOs indicated that they were members of SANGOCO, while 36% found the registration process to be cumbersome and difficult. A significant number of NPOs indicated that they work with government. The programmes these organisations are involved in consisted mainly in fighting HIV/AIDS, and in the provision of education, welfare and health services.

In terms of financial accountability, 91% of the organisations said they controlled and monitored their expenses fairly well or very well. 43% said that they make their financial records and reports publicly available on request¹¹. With regard to overall perceptions of policy impact, respondents were quite negative. 60% indicated that

¹¹ ibid

NPOs do not have sufficient influence over government policy and decision-making, whilst 70% said NPOs also have insufficient influence over parliament.

However, due to advent of democracy, this picture has changed as most of the foreign donor funding have shifted their emphasis to dealing directly with the government through bilateral and multilateral agreements. This has meant that funding, which used to be channelled directly to NGO accounts, is has been steadily dwindling. It is clear though that the more professional NGOs that are formally structured are most likely to receive donor support (Kihato, 2001: pg. 36). Due to their more sophisticated nature it is these types of NPOs that interface most effectively with the donor community and enjoy the bulk of donor funding (Fazila, 2003:6).

Swilling and Russell argue that "the losers will be the many NPOs in poorer communities who simply lack the capacity and knowledge to access funding" (2002:4). In view of these developments government has sought means of defining the public space for managing state-civil society relations which has been created by the legal system. Although the seminal 1994 Development Resource Centre Report triggered the process, it was the Reconstruction and Development Programme (RDP) White Paper that articulated the cornerstone of current public policy debates on the role of NPOs:

"These social movements and CBOs are a major asset in the effort to democratise and develop our society. Attention must be given to enhancing the capacity of such formations to adapt to partially changed roles. Attention must also be given to extending social movement and CBO structure into areas and sectors where they are weak or non-existent... Numerous non-profit non-governmental organisations (NGOs) are also developing in South Africa and many of these NGOs play an important capacity-building role in regard to CBOs and the development process. NGOs are also engaged in service delivery, mobilisation, advocacy, planning, lobbying and financing. Thus NGOs have an important future role in the democratisation of our society. However, NGOs must also adopt transparent processes, and operate in a manner that responds, with accountability and democracy, to the communities they serve".¹²

4.2 Legislative Context

It is widely accepted that organised citizenry or civil society is an essential component of democracy and development. The common characteristic of the vast array of organisations which make up civil society is that they are private organisations, that is, they do not form part of government.

¹² Reconstruction and Development White Paper, 1994, pg.75.

In the context of South Africa civil society organisations can be categorised into:

- Organisations set up for the personal profit or gain of their members that is for commercial purposes. Sometimes these organisations are called for-profit organisations; and
- Organisations that are not set up primarily for the personal gain or profit of their members but rather to advance the public interest or some common interest of their members.

From a constitutional perspective, the new South African Constitution (1996) guarantees everyone the right to freedom of association. This right is essential for the formation of civil society organisations. From a legal perspective, South Africa, like other countries, has a legal framework which both enables civil society organisations to establish themselves as legal structures and then to regulate the way in which such legal structures operate.

In the period after 1994 the NPO sector in South Africa has enjoyed increasing levels of freedom and self-determination following the restrictive environment of the apartheid years. In the post-1994 period NPOs have been afforded the opportunity by government to engage with and influence national and provincial policies, and to shape the way service delivery has been implemented.

Swilling (2004:27) argues that *"there is no doubt that in the post-1994 period the government and leading advocacy NGOs managed to construct via a complex negotiation process an impressive regime for managing state-civil society relations"*. However, to do so NPOs are required to comply with various laws and regulations in order to conduct their work. As a result many South African NPOs have chosen to seek formal registration through the Department of Social Development's NPO Directorate in order to provide themselves with both credibility and accountability. At the same time many donors themselves require NPOs to be registered as a prerequisite for funding.

A number of different pieces of legislation govern civil society organisations – or the NPO sector – in South Africa. This legislative framework provides the state with the means to ensure that organisations that claim to be acting on behalf of citizens operate within the prevailing constitutional mandate and the laws of the country. Within the context of globalisation this oversight function has become increasingly important to governments around the world.

In the context of South Africa the *Non-profit Organisations Act (NPO Act)* of 1997 was introduced with the intention of creating an enabling environment that would allow NPOs and other civil society organisations to maintain adequate standards of governance, transparency and public accountability, while at the same time enjoying a wide degree of freedom and autonomy.

The *NPO Act* also made provision for the establishment of a Directorate for Non-profit Organisations within the Department of Social Development. Amongst other things the Directorate is responsible for facilitating processes for developing and implementing policy and determining and implementing programmes, including programmes to:-

- i. support non-profit organisations in their endeavour to register; and
- ii. ensure that the standard of governance within non-profit organisations is maintained and improved;
- iii. Liaising with other organs of state and interested parties; and
- iv. Facilitating the development and implementation of multi-sectoral and multi-disciplinary programmes¹³.

While the *NPO Act* is the principle legislation guiding the non-profit sector, there are other pieces of legislation that have a bearing on the activities of the NPO sector. The following table outlines the principle pieces of legislation that govern civil society organisations:

Legislation	Purpose
The Non-profit Organisations Act, 1997	The NPO Act provides a facility for the voluntary registration of non-profit organisations. The registration process is more streamlined, simpler and more cost-effective than the registration processes associated with a Section 21 company, a voluntary association or a trust.
Companies Act, 2008 (replacing the Companies Act 1973)	This Act makes provision for the registration of Section 21 Companies
Trust Property Control Act, 1998	The Act makes it possible for organisations to register a Trust with the Master of the Court office in their district, governed by the Department of Justice.
Common Law relating to Voluntary Associations	In terms of common law three or more unrelated or unconnected people can agree to establish a voluntary association either by written or verbal agreement.

4.2.1 Voluntary Associations

A voluntary association (VA) is created under common law by an agreement between three or more people to form an organisation to work together to achieve a common non-profit objective. This written agreement or founding document is called the constitution.

A VA is not required to register with any public office in order for it to obtain legal status. However, a VA has to obtain a legal personality to be classified as a corporate body or “universitas” as it is commonly known under the common law. Bramford notes that for the court to decide on the classification of the association or “universitas” it should consider the constitution of the entity, its nature, object and activities (1982: 128). Furthermore, three elements need to be present, namely:

- The association must continue as an entity notwithstanding any changes in membership;
- The association must be able to hold property distinct from its members;

¹³ *NPO Act*, Chapter 2, section 5, pg. 4

- It must be clear that no member has any rights by reason of his membership to the property of the association.

When all these requirements are met the “universitas” is then considered to have a legal personality.

4.2.2 Trusts

A trust is an arrangement, set out in a written document called the trust deed, in terms of which an owner (founder) hands over property and/or funds to a group of people called trustees who administer the assets for the benefit of other people (beneficiaries) for a stated objective. As the ICNL notes the property may be transferred by written agreement, testamentary writing or court order (2004:3).

The Legal Resource Centre notes that a trust must be registered with the office of the Master of the High Court. A court official or a Master has jurisdiction over a trust, if the majority of the trust property is situated in his jurisdiction. The Master is the custodian of the trust instruments and oversees the appointment of trustees and monitors the proper compliance and performance of the trustees. Trusts are governed by common law and the *Trust Property Control Act*.

Trusts may be established for private benefit or public purpose and the purpose of the trust is set out in the organisation’s trust deed. A Trust lacks legal personality, but it technically holds property in the name of its trustees. The rules over the trading and dissolution of the organisation are specified by the trust deed.

4.2.3 Not-for Profit Companies

The *Companies Act* (no. 61 of 1973) make provision for the formation of a “not-for-profit company” or “association incorporated not for gain” to register as a legal entity with the registrar of companies (2004:4)¹⁴. These companies do not have share capital and cannot distribute shares but instead are “limited by guarantee”, which means that should the company fail its members undertake to pay a stated amount. Section 21 Companies may be established for the promotion of religion, the arts, sciences, education, charity, recreation, any other cultural or social activity, or communal or group interests.

The *Companies Act* provides that Section 21 Companies can raise funds and invest funds with the recognised institution, but it should be clear that the organisation intends to apply its profits or any other income in promoting its main object and that it prohibits the payment of dividends to its members.

¹⁴ The 1973 *Companies Act* was replaced by a new *Companies Act* in 2008.

According to Molapo the *Companies Act* prevents the payment in good faith of a reasonable remuneration to any officer or servant of the association or any other member thereof in return for any service rendered to association¹⁵.

A Section 21 Company must be comprised of at least seven members and two directors. It is governed by the memorandum of association and the article of association and these documents contains all the rules pertaining to the operation of the organisation. Upon dissolution, any remaining funds or property of the section 21 company must be donated to another non-profit entity with similar objectives¹⁶.

4.3 The Non-Profit Organisations Act No. 71 of 1997

The *NPO Act* came into operation on 1 September 1998 as a result of a lengthy process of policy and legislative reform negotiated between the state and civil society organisations. Primarily, the aim of the *NPO Act* has been to create an enabling environment for NPOs, and to set and maintain adequate standards of governance, accountability and transparency by creating a voluntary registration facility for NPOs. Essentially, the Act provides a registration facility for the existing South African legal forms for NPOs, Section 21 Companies, Trusts and Voluntary and other non-profit Associations, providing that certain minimum establishment requirements and annual reporting requirements are complied with.

Consequently, a Trust which must be registered with the Master of the High Court and a Section 21 Company which must be registered with the Registrar of Companies, may also choose to register in terms of the Act with the NPO Directorate of the Department of Welfare. Notably, the Act enables a Trust, which also registers as an NPO, to be a body corporate with a legal personality. Trusts, although they are registered with the Master of the High Court, were not considered prior to the passing of the Act to be legal persons other than for certain specific purposes such as tax and insolvency.

The Act also provides a registration facility for a Voluntary Association which is a 'universitas' or incorporated Association under Common Law. Prior to the passing of the Act, Voluntary Associations could not register with a government registry. This created difficulties for Voluntary Associations as usually, donors and third parties with which organisations interact, require a greater measure of legal formality and public accountability. The Act's 'mandatory' requirements for the registration of an NPO include the essential requirements necessary for a Voluntary Association, which is a "universitas" or incorporated Association to exist in Common Law.

The Minister may prescribe benefits or allowances for registered NPOs. However, over a period of time, factors such as tax, skills levies and municipality rates from

¹⁵ David Molapo, A Note, Section 21 Company vs Non-profit organisation.

¹⁶ Impact assessment of the NPO Act, No 71 of 1997

which registered NPOs can be exempted do motivate NPOs to register. Furthermore, the NPO registration is required in terms of the Financial Intelligence Centre Act to open a banking account in the name of the organisations and it is also a requirement of government and other donor agencies to fund organisations. These requirements have inevitable translated into benefits for registrations.

The NPO Act sets out clear requirements for NPO registration. In the first instance the founding document or constitution of an NPO must comply with a number of requirements in order for it to be registered. These 'mandatory requirements' state that a non-profit organisation that intends to register must comply with the following¹⁷:

- State the organisation's name;
- State the organisation's main and ancillary objectives;
- State that the organisation's income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered;
- Make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers;
- Make provision for the organisation's continued existence notwithstanding changes in the composition of its membership or office-bearers;
- Ensure that the members or office-bearers have no rights in the property or other assets of the organisation solely by virtue of their being members or office-bearers;
- Specify the powers of the organisation;
- Specify the organisational structures and mechanisms for its governance;
- Set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings;
- Determine the manner in which decisions are to be made;
- Provide that the organisation's financial transactions must be conducted by means of a banking account;
- Determine a date for the end of the organisation's financial year;
- Set out a procedure for changing the constitution;
- Set out a procedure by which the organisation may be wound up or dissolved;
- Provide that, when the organisation is being wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another non-profit organisation having similar objectives.

Essentially, the Act's 'mandatory' registration requirements include clauses, which:

¹⁷ Section 12 of the NPO Act stipulate these requirements for registration

- Characterise non-profit organisations, (whether they be set up as a Voluntary Association, Trust or Section 21) and distinguish them from for-profit organisations, (Section 12 (2)(b, c, f & o));
- Clarify the legal status of NPOs and provide that the NPO is a body corporate, which means it has a legal personality distinct from its members, (Section 12 (2)(d, e));
- Always appear in the founding documents of NPOs because they are essential for the basic functioning of an organisation, notably, Section 12(2) (a), (g-n).

The founding document/constitution of an NPO may provide for other matters relevant to the conduct of its affairs, some of which are listed in Section 12(3). These optional clauses frequently occur in the founding documents of NPOs which have a membership.

The Directorate is only entitled to refuse to register an organisation if it is not satisfied that the organisation has complied with the mandatory requirements for registration. The Director must notify the organisation of its refusal and give reasons for the refusal. The Directorate must also inform the organisation that it has one month from the date of the notice to comply with the requirements for registration. Should the applicant not comply in time, the Directorate may refuse to register the NPO and will notify it of its reasons.

The certificate of registration provided by the Directorate is sufficient proof that the NPO is registered and that it is a body corporate. In all cases the NPO remains registered until it is deregistered. In cases where the Directorate refuses to register an NPO the applicant has one month to appeal against the refusal to register as an NPO. Within three months of receiving the required appeal documentation, the Appeal Tribunal set up in terms of the Act, must hear the appeal. Registered NPO's duty to keep accounting records, provide reports and information. Once it is registered an NPO is obliged to comply with various information and reporting provisions and formalities. The NPO must therefore:

- Reflect its registered status and registration number on all its documents;
- Keep and preserve accounting records and supporting documentation for the prescribed period;
- Within six months of the end of its financial year, draw up financial statements which include a statement of income and expenditure and a balance sheet;
- Arrange for an accounting officer to compile a written report within two months after drawing up its financial statements confirming that the financial statements are consistent with the accounting records; the accounting policies are appropriate and applied, and that the organisation has complied with the financial reporting requirements of the Act;

- Submit to the Directorate a narrative report in the prescribed form together with its financial statements and the accounting officer's report within nine months of the end of its financial year;
- Submit to the Directorate the contact details of its office bearers, the NPO's physical address for service of documents and notice of any change of address one month before it takes effect, and any other prescribed/information reasonably required by the Directorate for the purposes of ascertaining whether the NPO is complying with the material provisions of its constitution and the Act.

Non-compliance by a registered NPO with its constitution and its obligations in terms of the Act, after receipt of written notification requesting it to comply within a certain period, may result in cancellation of its registration. It may also be referred to the South African Police Services for criminal investigation, should such non-compliance constitute an offence. The Act also details procedures for appeals against de-registration. The Act also specifically makes it an offence for an NPO to falsely represent itself as being registered and to make material, false representations in any document submitted to the Directorate. These statutory offences reinforce the Common Law offence of fraud insofar as it may apply to NPOs.

4.4 Overview of Codes of Good Practice for South African NPOs

The Codes of Good Practice (CGP) were developed by the Department of Social Development to strengthen the provisions of the NPO Act. The codes were developed through an extensive consultative process with many national and provincial non-governmental organisations (NGOs) and community based organisations (CBOs). The codes were first published by the department in 2001 and have remained unaltered since then.

The codes are intended as a guideline to all NPOs. The purpose of the codes is to give effect to the mandate of the department to encourage and support NPOs by:

- Creating an environment in which NPOs can be productive.
- Enhancing the abilities of NPOs to be effective development partners with government and the private sector in the development of communities.
- Encouraging NPOs to be responsible for ensuring that they respond to and maintain high standards of practice in good governance; effective management; optimisation of resources; successful fundraising; productive relationships with stakeholders, donors and beneficiaries; sound administration; and ethical behaviour.

The CGP are divided into three distinct but related codes:

- Nonprofit Organisation Leadership and Management
- Nonprofit Fundraising and Resource Mobilisation
- Roles and responsibilities of Donor and Sponsors

It is important to note that the codes are voluntary. NPOs registered with the Department of Social Development are encouraged to subscribe to the codes. Subscribing to these codes is not a requirement for registration or for continued registration as an NPO with the department.

The implementation component of the code suggests that the relevant NPO office bearers, fundraisers and donors and sponsors sign up to the codes. This commits them to regular internal reviews to ensure adherence to the codes. These codes are thus regulated by NPOs themselves.

In the case of the NPO transgressing the codes, the governing body, management and affiliates undertake to deal with transgressions on a case-by-case basis in accordance with the NPOs constitution and requirements for registration. Transgressions of the fundraising code are to be dealt with in accordance with the organisation's internal policies and practices and relevant contractual requirements. Transgressions by grant makers and affiliates are to be dealt with in accordance with the organisation's internal policies and practices.

4.4.1 Values and Principles

The CGP stipulate that all NPOs are expected to agree to a set of common values irrespective of their diverse activities and interests and these values are influenced by the need for NPOs to assist in combating poverty and inequality, and improve the lives of all South Africans. It then goes on to outline a list of twenty principles that all NPOs should commit themselves to. These principles have their foundation in the Constitution of South Africa.

It is not clear from the CGP whether the twenty principles are overarching and a must for all NPOs, nor is it clear whether NPOs must adhere to all principles or whether they can select those that are most relevant or appealing to them. This aspect of the code does not encourage NPOs to articulate their own values and principles.

This section of the code assumes that all NPOs registering with the department have an interest in combating poverty. Although the majority of NPOs in the study sample provide social and welfare-related services, there are NPOs with a religious or education mission.

4.4.2 Leadership Roles and Responsibilities

The Code on Leadership and Management focuses primarily on the roles and responsibilities of the governing body and the senior staff of the organisation. The governing body bears ultimate responsibility and accountability for the organisation and the code suggests that the effectiveness of the governing body can be measured by the attention it gives to its:

- Duty of care
- Duty of loyalty
- Duty of obedience

The code goes further to explain the kinds of behaviours that would constitute care, loyalty and obedience.

The code identifies the following ten major roles and responsibilities of governing bodies:

- Determines the organisation's mission and purpose
- Selects and appoints the chief executive officer
- Supports the CEO and reviews his or her performance
- Ensures effective organisational planning
- Ensures the organisation has adequate resources
- Manages the organisation's resources effectively
- Determines and monitors the organisation's programmes and services
- Enhances the organisation's public image
- Serves as a court of appeal
- Measures its own performance

The code asserts that these responsibilities apply to all NPOs irrespective of their size and activities, but how they carry out these responsibilities will be influenced by a number of factors such as size and age of the organisation.

The code does not provide guidance on the size of the governing body and suggests that there is no ideal size. The code advocates for a regular refreshing of the governing body with new members, and suggests that terms are usually between two and four years.

The staff leadership as embodied in the CEO is responsible for leading the implementation of the NPOs programmes; and manages the financial and human resources. The code identifies 18 codes of behaviour or conduct expected of the staff leadership. They can be categorised into:

- Policy and advisory (reporting to governing body, advising governing body, developing internal policies)

- Programme development and implementation
- Financial management (including budgeting, fundraising, financial controls, procurement)
- Human resource management (recruitment, performance management, remuneration, skills development, volunteers)
- Communication and information (internal and external communication, records, reports, correspondence)
- Governance (accountable reporting, upholding good standards, adherence to constitution and policies)

4.4.3 Financial Management

The Code on Leadership and Management devotes a considerable amount of attention to financial management as NPOs are custodians of resources obtained from the public, from government and/or from private sponsors. The Code advises that all NPOs irrespective of size should put in place a financial management system, even if only a simple and basic one. It encourages NPOs to maintain good financial management standards through sixteen practices:

- Setting up financial systems and employing qualified persons to administer these.
- Developing financial policies and procedures manuals
- Complying with GAAP
- Conducting annual financial audits
- Preparing realistic annual budgets
- Monitoring income and expenditure
- Clear policies on loans and staff advances
- Policies on outside remuneration
- Effective controls for petty cash
- Cheque handling procedures
- Disciplinary procedures for misuse or misappropriation of assets
- Establishing acceptable ratios and standards for fundraising and administration costs
- Ensure designated funds are used for intended purposes
- Developing diversified funding base to avoid dependency on narrow sources of funding
- Effective purchasing system
- Effective contracting and tendering system

The extent to which NPOs can conduct their finances in accordance with these financial management practices will depend on the capacity of the organisation, both

in terms of its size, financial resources and the skills of the governing body, the staff and volunteers.

4.4.4 Accountability and Transparency

The CGP aim to encourage NPOs to maintain adequate standards of transparency and accountability through:

- Having a clear mission.
- Having in its governance, staff leadership and staffing structures, people who are trustworthy.
- Putting in place a strategic plan with controls to monitor and evaluate progress.
- Policies and systems that ensure optimum use of all resources.
- Accounting systems and controls for effective and transparent handling of money and resources.
- Timely, accessible and accurate information on the organisation, including annual general meetings with full and accurate disclosure of the state of the organisation.

4.4.5 Ethical and Responsible Behaviour

The CGP place emphasis on the notion of public trust and seek to impress upon NPOs the public's expectation that the NPO's behaviour must be beyond reproach. The CGP suggest the following list of standards and principles that have application to NPOs, though recognising that they may vary from one organisation to another.

- Honesty
- Integrity
- Promise keeping
- Fidelity/loyalty
- Fairness
- Caring for others
- Respect for others
- Transparency
- Responsible citizen
- Pursuit of excellence
- Accountability
- Safeguard public trust

Each principle or standard is accompanied by a brief explanation of the behaviour associated with it. There is however no guidance to NPOs on how they select some or all of these principles and implement them in their organisations.

4.4.6 Fundraising and Resource Mobilisation

The CGP identify fundraising and resource mobilisation as amongst the most important responsibilities of the NPO's leaders, as sustainable funding is key to sustaining the work of the organisation. The Code advises NPOs to pay close attention to clarity of their mission; sound plans; effective internal and external communication; investing in the growth of the organisation; building relationships with the community and supporters; and maintaining good relations with funders.

The Code discusses at length the context in which fundraising operates. The Code calls on those involved in fundraising to subscribe to the ethical principles and behaviours identified in the Code on NPO Leadership and Management.

The Code sets out in detail the responsibilities of fundraisers, be they the governing body, the CEO or individual professional fundraisers. On close examination, the responsibilities outlined in the CGP are a list of desired behaviours of fundraisers rather than an outline of the key responsibilities of fundraisers in NPOs. Examples of these desired behaviours include the requirement to contribute towards building a respected fundraising profession and being "By nature outgoing and visionary".

The Code cautions against the use of professional fundraisers and advises NPOs to have detailed contracts if they intend using professional fundraisers.

The Code also discusses the hiring of fundraising consultants for various kinds of engagements, for example, special campaigns or annual operating campaigns. It goes further and identifies a list of practical steps in hiring fundraising consultants, from determining the organisation's needs to finalising a contract with the selected consultant.

The Code discusses at length the behaviour of NPOs that undermine effective use of fundraising consultants. These include erroneous expectations about what consultants can deliver; failure to involve the governing body from the outset; failure to acknowledge receipt of proposals; failure to budget for fundraising activities; incorrect diagnosis of problems as funding problems rather than governance or management problems; and NPOs looking for quick fixes.

Finding sustained and varied sources of funding is a challenge for most NPOs, small, medium or large and is undoubtedly one of the most important tasks of the NPO if it is to sustain itself into the future. The content (and language) of the Code on NPO Fundraising and Resource Mobilisation address themselves primarily to medium and large NPOs and seem to have limited relevance to small community based organisations that rely on funding from special government projects or the goodwill and donations of individuals in the local community.

4.4.7 Roles and Responsibilities of Donors and Sponsors

The final section of the CGP deals with the roles and responsibilities of donors and sponsors. The intention of the Code is to serve as a guide to all donors and sponsors, including foreign, corporate, trust, foundations and individual donors. The Code acknowledges the rights of donors, and wants to ensure that giving is sensitive to the South African context and contributes to the greater good.

The introductory section of this Code provides an overview of the religious-cultural context of giving, focusing on the African context. Although interesting, the kind of information is not useful in a code as it represents a particular view of culture and religion that is open to contestation.

The overview of funding markets in the Code is instructive, but having been drafted in 1999-2000, a considerable amount of information is out of date. Significant changes in the donor environment in South Africa such as the decline of foreign donors and the expansion of corporate social investment need to be reflected.

The Code discusses at length what motivates people to give and is clearly intended for those who want to raise funds as opposed to those who wish to donate funds. This section is perhaps best placed with the Code dealing with fundraising.

The Code proposes a donor Bill of Rights that in effect places an obligation on the part of recipient NPOs to be transparent and accountable, as outlined in the Code on Leadership and Management. Importantly, the Donor Bill of Rights requires recipient NPOs to give assurance that the funding is used for the intended purposes and that information about donations are handled with respect and confidentiality (within the parameters of the law). International donors and large corporate donors are usually explicit about the conditions of their donations. The Donor Bill of Rights could be of value to smaller and inexperienced donors.

The Code gives guidelines for wise giving. These include being an informed donor; finding the right NPO to match the donor's interests; considering alternatives to cash donations; and encouraging recipient NPOs to match donations. These guidelines are potentially useful to individuals and new entries into the donor market.

The Code deals extensively with grant making as a more comprehensive and programmatic approach to giving and recognise the shift towards corporate social investment and corporate citizenship in South Africa. The guidelines for good grant making encourage donors to:

- Build a vision and a planned funded programme, with clear funding criteria.
- Encourage accountability and transparency between grant makers, stakeholders and partners, and full disclosure of grant details.

- Balancing grant makers interests with the development needs or national development interests.
- Practising fairness in processing of grant applications through upfront information, equal access and fast communication.
- Establishing a sound framework for decisions on grants including, available budget, reasons for declining application, decisions based on sound understanding of developmental issues, avoiding conflict of interests.
- Negotiating a funding agreement that includes defining the relationship, the end results to be achieved, the end beneficiaries, grant arrangements and payment schedules.
- Monitor progress.
- Evaluate programmes and grant making not only to determine effectiveness but also to learn and improve on the quality of grant making.

The guidelines also deal with the important issue of sustainability and advise grant makers to encourage recipients to develop capacity and strategies to sustain themselves beyond the period of the grant. The guidelines also emphasise the need for partnerships, especially with local communities who may be the end beneficiaries of the grant.

The Code also covers funding through sponsorship. It provides a brief overview of what constitutes successful sponsorship partnerships between corporate and NPOs, for example, alignment between the NPO and the corporate or product; sufficient resources allocated to the sponsorship programme; and clear identification of the programme's goals, the NPO's constituency and the corporate's market. The Code makes the very important point that a sponsorship is a business partnership between the NPO and the corporate with the objective of selling more products for the corporate and raising more revenue for the NPO. The guidelines advise both parties to enter into a formal written contract that specifies clearly the details of what each party brings to the partnership and what expected benefits they will derive from the partnerships.



5. GOOD GOVERNANCE CONCEPTUAL ISSUES

5.1 Definition

The principles and practices that make up good governance are key to the effectiveness, success and long-term sustainability of non-profit organisations. Good governance is an integral part of the overall management process of an organisation, covering finance, administration, programme implementation, monitoring and evaluation, human resources and communications, and is therefore high on the agenda in all sectors, public, private and non-profit. NGOs and CBOs that deliver services for public benefit or the common good are increasingly being held accountable for their stated objectives and outcomes and are expected to demonstrate their governance capacity in a transparent fashion.

Governance as a management practice is integral to most aspects of organisational business. Increasingly NPOs are realising the importance of good governance as an organisational and sector objective, and this is manifesting itself in the trend towards developing codes of conduct or ethics that command the support of NGOs either nationally, in a particular sector, or within a particular professional grouping, and that serve as benchmarks for assessing and evaluating the performance of NPO activities. More than forty countries now have some form of code of conduct or good practice that is subscribed to by the majority of NPOs within that specific country. Different countries have different names for these good governance codes, such as code of good practice, code of ethics or code of conduct.

The UK-based Governance Hub defines governance as *'the systems and processes concerned with ensuring the overall direction, effectiveness, supervision and accountability of an organisation'*¹⁸. The increasingly onerous levels of responsibility and accountability to stakeholders, funders and public entities that are required of NPOs means that they need to have in place the institutional arrangements necessary to enable them to implement good governance practices. Governance leadership in NPOs should ideally be provided by the board of trustees or governing body. This group of people oversees the organisation, making sure it fulfils its mission, lives up to its values and ultimately that it is able to sustain itself in the longer-term. To achieve these objectives boards generally set up a variety of systems to control and monitor the organisation's activities and provide the enabling environment for clear executive decision-making.

¹⁸ Governance hub, <http://www.governancehub.org.uk/>

5.1.1 Codes of Conduct

Codes of Conduct have been developed in many countries and reflect lengthy discussions and participatory processes between organisations within the NPO sector, often in association with governments and the private sector. These codes are very much the product of local circumstance and therefore vary in content, scope and strength, and have varying degrees of capacity for enforcement and the implementation of sanctions. Lloyd provides an important overview in *The Role of NGO Self-Regulation in Increasing Stakeholder Accountability* (One World Trust, 2005), examining the use of codes of conduct and certification schemes as a way of strengthening NGO accountability.

A well known membership example from the US that is emulated in several countries is the *Standards of Excellence*. Based on the core values of honesty, integrity, fairness, respect, trust, compassion, and responsibility, these codes serve as a model of how well-managed, responsibly-governed non-profit organisations can operate. Other well-regarded examples include the *Independent Sector's Statement of Values and Code of Ethics*, BBB Wise Giving Alliance standards for charity accountability, and the SANGOCO Code of Conduct in South Africa.

Some sectors have gone a step further by developing self-policed "hallmark" systems for public fund-raising, as has been done through the CBF in the Netherlands. Codes have also been created to deal with themes rather than geography, with an important example being the Australian Council for International Development's *Code for Development Agencies*. Humanitarian Accountability International has developed what may be the first global accountability charter (see Appendix 1).

Other examples include The Canadian Centre for Philanthropy's Code on Ethical Fundraising and Financial Accountability, and the People in Aid Code for managing staff. The Red Cross has created an internationally recognised operational code for use in disaster relief.

5.1.2 Organisational Structure

The structure of the non-profit sector, how it is regulated and how each organisation conducts its affairs, has tended to evolve in each country as a result of local political, historical, cultural and religious specificities. Globally the non-profit sector is a diverse and heterogeneous terrain where contending socio-political ideologies play themselves out in a myriad of ways. Despite this diversity, however, there are common threads that connect NPOs across the world. Key amongst these threads is the desire to ensure excellence in the sector, through improved governance processes that strengthen transparency and accountability.

The study of global civil society conducted by Salamon *et al* points to the fact that fees and charges for services, and public sector support, account for increasing share

of civil society revenue, and consequently the pressure for sound financial management in particular, and good governance in general, is that much greater (2003: 28)¹⁹.

5.2 The Board

A corporation, whether for-profit or non-profit, is required to have a governing Board. While a corporation can operate as a separate legal entity the laws governing corporations generally require that a corporation be accountable to its owners (shareholders in the case of for-profits and the public in the case of non-profits). This accountability is achieved by requiring that each corporation have a Board of Directors that represent the shareholders or the public. Members of a governing Board have certain legally required (fiduciary) duties, including duties of care, loyalty and obedience. Different countries and states use different terms and emphases for these duties, as for example in Canada where the duties of care and loyalty are of prime importance. For-profit Boards are often referred to as "corporate" Boards, which really is a misnomer because both non-profit and for-profit corporations are required to have Boards²⁰.

5.2.1 The Roles of the Board

Board operations are the activities conducted between Board members and can include development and enactment of Board by-laws and other Board policies, recruitment of Board members, training and orientation of Board members, organizing Board committees, conducting Board meetings, conducting Board evaluations and other key operational tasks. The Board's governance responsibilities include a range of activities, such as overseeing the purpose, plans and policies of the overall Organisation, establishing those overall plans and policies, supervision of the CEO, ensuring sufficient resources for the Organisation, ensuring compliance to rules and regulations, and representing the Organisation to external stakeholders.

The nature of Board operations and governance depends on a variety of factors, including explicit or implicit use of any particular Board model, the desired degree of formality among Board members and the life-stage of the Board and Organisation. Governing Boards can have a variety of models, for example Working Boards, Collectives, Policy Boards and Policy Governance Boards. All of these models reflect types of governing Boards.

¹⁹ The report notes that in the 32 countries for which revenue data was available fees, charges and government funds accounted for 88% of CSO income in 2003.

²⁰ See <http://www.managementhelp.org/boards/boards.htm> for a very detailed overview of non-profit boards

5.2.2 Private sector and Nonprofit Boards

Boards can have a broad range of profiles. Boards of large for-profit and non-profit corporations might be very formal in nature with strong attention to Parliamentary procedures and highly procedural Board operations, while Boards of small non-profit or for-profit corporations might be very informal in nature. In broad terms there are more similarities between for-profit and non-profit Boards than there are differences. Both types of organisations are required to have Boards because both types are corporations, thereby having similar fiduciary responsibilities among members. Members of both types of Boards must attend to the many activities involved in Board operations and governance. Both types of organisations must conform to rules and regulations for operations of corporations within their country or state context, including for employment laws and the filing of tax returns. Differences do exist however.

For example, for-profit Board members are often paid, whereas non-profit Board members usually are not, except where members are reimbursed for expenses. For-profit Board members uniquely attend to decisions about dispersing profits to owners (to shareholders), for example in the form of share equity and dividends, whereas non-profit Board members do not seek to maximize and disperse profits to the owners as the owners of non-profits are members of the public. Non-profit Board members often must participate in active fundraising activities by soliciting funds from individuals, foundations, corporations and government entities. Non-profits corporations often enjoy certain tax advantages, including tax-exemption (being able to avoid payment of certain taxes) and charitability (so donors can deduct donations from their taxes)²¹.

5.2.3 Fundraising

In an increasingly competitive programming and funding environment the corporatisation of the NPO sector, along with its attendant good governance requirements, has been an inevitable outcome. In the UK, for example, the Association of Chief Executives of Voluntary Organisations (ACEVO) was established specifically to address NPO leadership issues, with a focus on ensuring that non-profit organisations are effectively led and that professional development and professional leadership standards are in place²². The *ACEVO Code of Professional Conduct* stresses that priority will be given to the maintenance of the highest standards of governance by complying with relevant laws, regulations and codes of practice and set appropriate standards to deliver the organisation's purpose.

In the broadest terms effective governance begins at the Board level. This is an area that is often treated in a token way in many developing countries, with board

²¹ <http://www.managementhelp.org/boards/boards.htm>

²² ACEVO, Professionalising the Sector: The ACEVO guide to professional standards for ACEVO full members. www.acevo.org.uk

members playing a very minor role while the organisation is in essence run by a dynamic or charismatic CEO.

Naidoo suggests that the reason for this in the African context is because civil society does not have a tradition of effective governance born out of our concrete realities on the ground. Whereas NPOs in developed countries such as the UK, Australia and Canada actively recruit highly skilled older or retired persons onto their Boards, developing countries generally face a very different demographic context. This phenomenon is exacerbated by an army of unemployed people using their involvement in organisations as a means of job creation. Despite these constraints NPOs globally, but perhaps with more urgency in developing and transition countries, are being forced by funding circumstances to address pressing issues of good governance.

5.2.4 Emerging Challenges of Boards

Common board challenges faced by NPOs include poor attendance by Board members at meetings, poor understanding of the Board's mandate and responsibilities, lack of experience amongst Board members, poor understanding of staff line responsibilities, weak financial fund-raising capacity, and the tendency of Board members to use their position on the organisation's Board to further external interests. These are fundamental governance concerns that can weaken the effectiveness of an NPO, and there are, therefore, clear and obvious reasons why non-profit organisations require strong Boards. First and foremost Boards should have the capacity to hold the NPO management accountable for the resources (financial and material) entrusted to it both the private and public institutions.

At the same time Boards have the responsibility for holding the organisation accountable to its public image as set out in its vision, mission, objectives, values and core mandate, whilst ensuring that the organisation avoids financial, governance, fund-raising and delivery malpractices.

The challenge for NPOs, both at the organisational and network levels, is to recruit Board members who fit the profile and mandate of the organisation. Ideally Board members should be committed to the values of the organisation and actively involved in its affairs at both the management and programme levels. This requires that Board members attend meetings; sign up for sub-committees; visit the organisation regularly; read relevant documents and ensures that they are up-to-date on the key sectoral issues that impact on the work of the organisation.

In the recruitment process it is useful to identify a few Board members who can add strategic value to the organisation through their sectoral expertise and advisory capacity. From a figurehead perspective it may also be important to have as a Board member someone with a high level of integrity, who is well-known in the community

and who has credible influence and can associate the organisation with the civic ethos espoused by that person.

As part of good governance NPOs should have clear recruitment strategies in place that cover the entire organisation from the Board members down. This can be done through sub-committees appointed to coordinate the recruitment process based on objective criteria and procedures laid down for appointing new Board members. Following their appointment new Board members should be properly inducted into the organisation and should understand their role in relation to management in order to avoid role confusion and conflicts of interest. To strengthen transparency and accountability the Board member should receive the following:

- Clear tasks and an indication of what is expected from him/ her during his term of office on the Board;
- The organisation's constitution and any other founding documents;
- All relevant strategic planning reports, annual reports, financial reports and the latest audit report;
- A list of names of fellow Board members, staff members and volunteers;
- Staff contracts and performance reviews;
- Funding and contract agreements;
- Rental or lease agreements entered into by the organisation.

New Board members should be allowed time to meet with staff members and volunteers to find out what their roles and responsibilities are within in the organisation. Under the direction of the board chairperson the Board should also work towards supporting its chief executive officer in key decision-making areas. As Naidoo points out, CEOs who feels insecure and incompetent in their job will always try to play Board members off against each other or even play staff off against the Board. This is a tactic aimed at protecting his or her position and does not advance the interests of the organisation.

5.2.5 The Essential Responsibilities of Boards

The UK-based Governance Hub suggests that any NPO Board has a set of twelve essential responsibilities, and articulates these as follows:

1. Set and maintain vision, mission and values:

- The trustee board is responsible for establishing the essential purpose or mission of the organisation, as well as for guarding its vision and values.

2. Develop strategy:

- Together, the board and chief executive officer develop long-term strategy, and meeting agendas should reflect the key points of the strategy to keep the organisation on track.

3. Establish and monitor policies:

- The trustee board creates policies to govern organisational activity. These policies should cover guidance for staff, systems for reporting and monitoring, and an ethical framework or code of conduct for everyone connected with the organisation, and a good governance code to regulate the conduct of trustees and board business.

4. Set up employment procedures:

- The trustee board must create comprehensive, fair and legal personnel policies that protect the organisation and those who work for it, and such policies should cover recruitment, support, appraisal, remuneration and discipline.

5. Ensure compliance with governing document:

- The governing document is the rulebook for the organisation and as such the board must make sure that it is followed and that the organisation's activities comply with its charitable or developmental objectives.

6. Ensure accountability

- The board should ensure that the organisation is accountable as required by law to the regulation authority, the revenue authorities, registrar of companies and any other statutory body that has an oversight role with regard to the non-profit sector;
- The board needs to make certain that the organisation is accountable to donors, beneficiaries, staff, volunteer, and the general public, and this should be done through publishing annual reports and accounts and communicating effectively.

7. Ensure compliance with the law

- The board is responsible for making sure that all the organisation's activities are legal and that there is full compliance with NPO-related legislative and policy frameworks.

8. Maintain proper fiscal oversight

- The board is responsible for effectively managing the organisation's resources so it can meet its charitable objects. It should do this by securing sufficient resources to fulfil the mission, monitoring spending, approving the annual financial statement and budget, providing insurance to protect the organisation from liability, minimising risk, fundraising, and ensuring legal compliance.

9. Select, manage and support the chief executive

- The board should create policy covering the employment of the chief executive, select and support the chief executive and review his or her performance.

10. Respect the role of staff

- The board should recognise and respect the domain of staff responsibility, while at the same time create policy to guide staff activities and safeguard the interests of the organisation.

11. Maintain effective board performance

- The board ensures internal good governance practice by taking measures to establish productive meetings, high standards of trustee conduct, effective committees with adequate resources, development activities, recruitment and induction processes, regular performance reviews and partnerships with consultants where necessary.

12. Promote the organisation

- Through its own behaviour, governance oversight and activities on behalf of the organisation the governing Board should enhance and protect the reputation of its organisation and at all times board members should be good ambassadors for the organisation.

5.3 Accountability

Jordan notes that “NGO accountability is one of the hottest topics to accompany the rise of civil society” (2005: 5). As the NPO sector has grown, and NPOs in particular have become more visible and actively involved in development and service delivery there has been a concomitant increase in scrutiny, analysis and critique of the sector. Commentators have noted that NPOs have become de-facto partners in the establishment of global development norms and standards, negotiating, influencing and proposing policy solutions to key development issues such as poverty, gender discrimination, child and maternal health, the rights of children, communicable diseases and environmental degradation. They have also noted that at the national level NPOs, along with private sector agencies, have increasingly been engaged in the delivery of public services that have traditionally been within the ambit of the state (Jordan, 2005; Salamon *et al*, 2003).

This interaction and inter-dependency of the public, private and civil sectors has thrown up a range of new and challenging accountability issues that are embedded in these partnerships and new dynamics. Jordan argues that as governments have shrunk and responsibility for delivering public goods and services has gravitated to NPOs, the issue of accountability to the public naturally stems from the roles NPOs have undertaken on behalf of, or instead of, the state (2005: 6). Increasing scrutiny of NPOs, both from within and outside of the sector, has led to growing pressure on NPOs to be more accountable.

Accountability is a broad concept that can be approached from different perspectives. In the view of Jordan NPOs are asked to address three types of accountability questions by a wide variety of actors – effectiveness questions, questions of organisational reliability and legitimacy questions (2003: 7).

Effectiveness questions have to do with the capacity of NPOs to deliver services, both in terms of quality and quantity. Reliability questions have to do with the organisational structure and competency of NPOs, their governance capacity and their ability to attract skilled professional staff. Legitimacy questions have to do with the value systems espoused by NPOs, their transparency and adherence to organisational norms, their representative status and their value to society as a whole.

This increased level of scrutiny, and the complexity of questions being asked of the sector has resulted in the development of a range of different accountability mechanisms and tools designed to strengthen operational capacity, management structures, performance measurements, accounting practices and delivery systems.

One increasingly prominent means of strengthening accountability is self-regulation through codes of good governance, codes of ethics and self-regulatory mechanisms. A key issue in this regard, however, is the degree to which such accountability processes and efforts at self-regulation can be effective without state-led enforcement. Allied to this concern is the extent to which such self-regulatory initiatives, good governance codes and accountability procedures can shift ultimate responsibility away from governments, funders and donor agencies towards the NPO beneficiaries, in other words those people on whose behalf NPOs claim to be working for and who in the final analysis provide the rationale for their existence

The political environment in which NPOs operate has been changing over the past decade, and particularly so in the aftermath of 9/11 and the onset of the so-called "war on terror". Altruism, good intentions and rights-based values used to provide a sufficient basis for NPO legitimacy, but there is now increasing pressure on NPOs to provide evidence that their activities are having a positive impact and are effectively representing those they claim to support.

In recent years, NPOs have gained increasing influence over national and international policy and they are now more than ever engaged in service delivery as an adjunct to state provision where gaps and weaknesses in public services exist. The period of the new public management, which was associated with "lean" government and severe rationalisation within public sectors across the world, saw growing resources being channelled into the NPO sector on a contractual basis to ensure uninterrupted provision of services. This increased public service role strengthened the imperative for NPOs, regardless of the sector or country in which they work, to demonstrate delivery capacity and good governance practices both to

their funders and to their beneficiaries in an accountable and transparent manner. This has given rise to a growing interest in the effectiveness of self-regulation as one increasingly prominent mechanism used by NPOs to achieve greater accountability.

5.3.1 Self-regulation as an Accountability Mechanism

While some NPOs are addressing the issue of accountability individually, many are also tackling it collectively through networks and coalitions. Through self-regulation mechanisms such as codes of conduct, codes of good practice and certification schemes, a growing number are attempting to develop a set of common norms and standards to which they will hold themselves accountable. Although diverse in form and structure, self-regulation initiatives fall into one of three categories:

- Aspirational codes of principles/ethics that signatories strive to achieve;
- Codes of conduct in which more defined standards are set;
- Certification schemes where compliance with clear standards is verified by a third party and standards are enforced within the sector.

An inherent weakness of self-regulatory mechanisms is their voluntary nature, even though a number of incentives – some more persuasive than others – exist for NPOs to become involved in self-regulation initiatives. Reputation and credibility, for example, play an important role. An NPO could face awkward questions if it fails to sign up to a code that is widely accepted among its peers.

Furthermore, in an increasingly diversified NPO market where it is becoming difficult to identify quality and excellence, self-regulation is a way of standing out or demonstrating excellence. Perhaps most compellingly, some donors are using membership of a code or certification scheme as a criterion for disbursing funds. Only signatory Organisations of the Australian Council for International Development's *Code of Conduct*, for instance, can apply for Australian Government aid programme funds.

In similar cases, governments are also offering the incentive of tax deductions on donations as a way of getting Organisations to sign up. In the Philippines and Pakistan, certification by the Philippine Council for NGO Certification (PCNC) and the Pakistan Centre for Philanthropy's Non-profit Organisations (NPO), respectively, are criteria for NPOs being granted tax deductibility for their donations²³.

InterAction, a membership association of private voluntary organisations in the United States, exists to enhance the effectiveness and professional capacities of its members engaged in international humanitarian efforts. In the context of the rapid growth of US-based and funded NPOs abroad the organisation developed a set of

²³ The certification from PCNC serves as the basis for the Bureau of Internal Revenue (BIR) to grant donee institution status to NGOs which have been certified by the PCNC (www.pcnc.com.ph).

standards designed to ensure and strengthen public confidence in the integrity, quality, and effectiveness of member organisations and their programmes.

These PVO standards define the financial, operational, programmatic, and ethical code of conduct for InterAction and its member agencies²⁴. InterAction's Self-Certification Plus process of validating member organisation compliance with the Standards encourages organisational learning, advances best practices, and helps ensure that InterAction members meet the high standards set for the international non-profit community.

5.3.2 Lack of enforcement mechanisms

Another key weakness cited in relation to self-regulation initiatives is that they often lack enforcement mechanisms. Once becoming a member of a scheme, it is left to the goodwill and commitment of NPOs to comply. A problem with this approach is that too often organisations underestimate, or give too little thought to, what is needed to comply with the code. Although initiatives such as People in Aid's *Code of Good Practice in the Management and Support of Aid Personnel* try to get around this by requiring the appointment of an officer responsible for the implementation of the code, the fact remains that without an enforcement mechanism, compliance may occur only among those most committed to the code²⁵.

The American Red Cross *Code of Conduct*, for instance, has no mechanisms for verifying whether signatories comply with the code, and no means by which a breach of the code can be reported²⁶. This has led the International Federation of Red Cross and Red Crescent Societies (IFRC) itself to conclude that "*its contribution to accountability remains weak*".

Similar criticisms have also been made of the South African NGO Coalition's (SANGOCO) *Code of Ethics*, in that it gives no indication of what will happen if an NPO fails to comply, and that there is no evidence of any organisation being disciplined to date.

While many codes of conduct consist primarily of aspirational statements of principle and unenforceable standards, a growing number are starting to build enforcement mechanisms into their structure. These mechanisms take a number of forms, depending on the nature and extent of the organisation or sector concerned. In the case of self-certification, Organisations are required to assess their compliance and submit a report, often signed by the Chief Executive such as is done under the Canadian Council for International Co-operation's (CCIC) *Code of Ethics*.

²⁴ www.interaction.org/pvostandards

²⁵ <http://www.peopleinaid.org/code/index.htm>

²⁶ www.negaredcross.org/LinkClick.aspx?link=legal_conduct_Jan_2007.doc

In some initiatives Organisations are also required, if they are not currently meeting standards, to identify and submit work plans for how they will be achieved, such as those recommended under InterAction's PVO standards.

A relatively widespread mechanism is a complaints procedure that allows stakeholders to submit complaints against a signatory if they have evidence that they are not living up to the code's standards. The *NGO Code of Conduct for Ethiopia* empowers the national NGO committee to maintain code observance, consider and determine complaints related to non-observance, as well as hear and decide on all instances of breaches of the code. It also has the authority to advise or admonish noncompliant NPOs and, in case of serious violation, recommend to the general assembly that the NPO's membership be suspended or cancelled²⁷. The most comprehensive and effective mechanisms exist where schemes require third party certification where Organisations are assessed by an independent party, as is the case with the Philippines Council for NGO Certification.

Clearly the effectiveness of the enforcement mechanisms outlined above will vary greatly. The fact that a code of conduct has a complaints mechanism, for example, does not necessarily mean that stakeholders are aware of it or know how to use it. Furthermore, in all cases enforcement mechanisms can be effective only if backed up by sanctions, which in most cases means suspension or termination of membership. A commitment to this is crucial for any enforcement mechanism to have teeth. Caveats notwithstanding, there is an increasing acknowledgment from NPOs that merely developing a code of conduct is not sufficient to increase NPO accountability. A supporting institutional structure needs to be in place to ensure that the code is enforced. However, even with these structures in place, it is important to consider whether self-regulation increases accountability in line with the expectations of beneficiaries and other stakeholders.

The issue of accountability within the NPO sector is a complex and often contested issue, and is invariably linked to the underlying and sometimes divergent rationale for the existence of particular NPOs. As noted in a SANGONET editorial ("*NGO Accountability Stays on the Radar*", 2005) one of the biggest challenges stemming from this divergence of purpose is the lack of a common set of norms to inform standards that guide ethical practise, both internally and externally in relation to NPOs²⁸. Norms are generally understood as self-defined rules and conventions in which consensus has been reached in a community. However, the task of establishing consistent and coherent ethics is increasingly difficult in a dynamic, globalised environment where traditional national values and ethics are challenged by the multiple impacts of technology, migration patterns, multi-culturalism and

²⁷ www.gdrc.org/ngo/codesofconduct/africa-code.html - 8k

²⁸ SANGONeT is a South Africa-based NGOs involved in the field of information communication technologies (ICTs) and serves Southern Africa's civil society with a wide range of ICT products and services, at <http://www.sangonet.org.za>

realignment of old social cohesions. What is ethical for a social change activist may not necessarily be congruent with what is ethical for a politician, a civil servant or a corporate leader.

Current convention is that NPOs are or should be accountable to their beneficiaries or stakeholders. There is, however, another perspective that views NPOs as accountable only to their conscience and core mission. Ultimately the situation is more nuanced, as the increasing sophistication of the NPO sector means that in general terms organisations are required to be accountable to many different sets of stakeholders who, separately and collectively, play an integral part in their operations, for example:

- Institutional donors provide funding;
- Governments provide legal and regulatory frameworks;
- Supporters provide their money and time;
- Beneficiaries provide the basis for an Organisation's purpose and moral legitimacy.

A further complication is that each of these sets of stakeholders has a very different level of leverage and power over an NPO. As a result, the strength and clarity of their different accountability relationships vary greatly. The mechanisms for ensuring accountability between institutional donors and NPOs, for example, are generally strong because of contractual obligations and the dependence of NPOs on donor funds.

Similarly, governments create the legal and regulatory environment within which NPOs function, so they too have significant leverage to guarantee accountability. Beneficiaries, on the other hand, despite being the reason why most NPOs exist, generally lack the power to make demands of them. Few Organisations have institutionalized means for beneficiaries to make their opinions felt, and as a result the accountability relationship with them is often weak. Effectively balancing the needs of these different stakeholders is the crux of being accountable. The problem for most self-regulation initiatives is that the standards they set are not strengthening and clarifying the relationships with these different sets of stakeholders equally.

5.3.3 How self-regulation influences different accountability relationship

A cursory analysis of NPO codes of conduct and certification schemes reveals that one particular way of looking at accountability tends to dominate most NPO self-regulation systems. They tend to be defined primarily in terms of setting standards for internal governance, administration and financial management systems so as to ensure compliance with reporting requirements, laws and regulations. This bias is primarily a product of the forces driving the accountability debate within the sector.

The majority of NPOs are grappling with their accountability in reaction to external pressures, threats and bad publicity. Consequently, they are establishing codes of conduct largely out of fear that questions about their accountability will damage their image, damage their fundraising efforts, reduce levels of public trust and/or lead to more intrusive government regulation.

The majority of self-regulation initiatives are therefore centred on setting standards that address the needs of, and clarify and strengthen accountability to, those stakeholders that have the ability to affect them the most – governments, donors and the general public. In other words many of these self-regulatory mechanisms are focused on external compliance issues. Beneficiaries, as relatively powerless stakeholders, do not exert the same pressure and thus often fail to receive the same level of attention.

5.3.4 Strengthening downward accountability

While setting standards on good internal governance, financial management and reporting is important, it is crucial that the accountability promoted through self-regulation systems is not hijacked by a narrow technical understanding of the term. NPO accountability must also be about clarifying and strengthening downward accountability to the primary beneficiaries, who, after all, are the reason why most NPOs exist. Achieving accountability to beneficiaries is thus crucial both to fulfilling an Organisation's mission and to maintaining its legitimacy. For this reason the issue of beneficiary accountability needs to have a more central position in the standards set through self-regulation initiatives.

While in a number of codes beneficiary accountability is not even mentioned, in those where it is referenced, it is often expressed in rather vague or imprecise terms. For example, the Botswana code notes that NPOs need to "be accountable for their actions and decisions, not only to donors and governments but also to project beneficiaries..." while the Philippine CODE-NGO's code states that signatories need to be "accountable to [their] various publics and stakeholders". This vagueness makes implementation and enforcement difficult, and contrasts with the level of detail relating to financial management, reporting and public disclosure.

The Maryland certification scheme is a case in point where more specific details are provided around accountability to beneficiaries. With regard to standards of public access, it states that NPOs "should provide members of the public who express an interest in the affairs of the Organisation with a meaningful opportunity to communicate with an appropriate representative of the Organisation" while for financial accountability it states: "*Internal financial statements should be prepared at least quarterly, should be provided to the board of directors, and should identify and explain any material variation between actual and budgeted revenues and*

expenses.” In both cases a detailed description of the standards expected of NPOs is provided. It is clear what the Organisation needs to do and what stakeholders can expect and hold NPOs to account for.

The Sphere *Humanitarian Charter and Minimum Standards in Disaster Response* is an international initiative aimed at improving the effectiveness and accountability of disaster response, and sets out for the first time what people affected by disasters have a right to expect from humanitarian assistance²⁹. The aim of the Project is to improve the quality of assistance provided to people affected by disasters, and to enhance the accountability of the humanitarian system in disaster response.

The work of the Sphere Project is also closely linked to the *Humanitarian Charter and the Code of Conduct* for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief, through which humanitarian agencies undertake to make themselves accountable to those they seek to assist, and its set of common standards outline the responsibilities of organisations and individuals when providing protection and assistance³⁰.

Some self-regulation initiatives do address this concern, and provide a more detailed description of what increased downward accountability should mean in practice. For example, the *NGO Code of Conduct* for Ethiopia and the *NGO Code of Conduct for Afghanistan* all state that beneficiary accountability means beneficiary involvement at all stages of a decision-making process, from design to implementation to evaluation.

The *NGO Code of Conduct for Afghanistan*, for example, states that “we involve men, women, youth and children of our target communities to the greatest possible extent, engaging them in the conception, implementation and evaluation of projects and programs [and] strive to ensure the participation of marginalized groups in communities where we work”³¹.

Other codes such as the *Nigerian Code of Conduct and HAP-I* go even further, identifying the need for greater transparency to beneficiaries and the importance of having complaints mechanisms through which concerns can be raised and addressed. The Pakistan *NGO Forum Code of Conduct* even goes so far as to commit NPOs to communicating financial information in a way that is accessible and intelligible to beneficiaries by “making all possible efforts for effective information dissemination and service delivery and meaningful development interventions” (CIVICUS, 2005)³².

In all of these examples, NPOs are moving beyond notional reference for the need to be accountable to beneficiaries and starting to unpack what beneficiary accountability should look like.

²⁹ <http://www.sphereproject.org/content/view/27/84>

³⁰ <http://www.sphereproject.org/content/view/28/84/lang.English/>

³¹ <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EVIU-6D5EBR?OpenDocument>

³² <http://www.civicus.org/new/media/PNF%20Code%20of%20Conduct%20>

5.4 CSO Self-Regulation

The literature points to an increased interest globally in issues related to the accountability and oversight of the activities and practise of CSOs and other non-state actors in service delivery, advocacy and rights-based lobbying. Lloyd, for example, notes that self-regulation is an emerging trend in the governance of social and economic activity both at the national and international levels (2005: 5).

Much of the literature examines this trend within the context of the contestations and collaborations within the state-civil society nexus, and much of it is contextualised within the specific national and regional socio-political dynamics that prevail. The primary reason for this increasing focus on the governance-related dimension of civil society is that NPOs in developing countries, and particularly in those with state capacity, have become, and continue to be, major service delivery providers through a complex network of government contracts, donor funding and public-private partnerships.

Gugerty noted that at the same time that the NGO sector in general has strengthened its service delivery capacity; many governments have experienced a decline in regulatory capacity that has reduced their oversight capacity (2007: 2). At the same time, in the context of the war on terror (as discussed earlier), many governments have shifted their focus away from a broad an enabling oversight of governance practices to one that is more focused on issues of national security and over-regulation.

The past ten years has seen a steady growth and interest in the various legal, fiscal, administrative and other matters relating to the regulation and self-regulation of the NPO, non-profit or voluntary sectors in different parts of the world. This broad focus on governance-related issues has also been accompanied by an increasing interest in areas such as NPO-Government relations, NPO-Business relations, public-private partnerships, as well as internal NPO challenges ranging from the question of the financial and broader sustainability of the NPO sector, to questions about good governance and the professionalisation of NPO work. As Lloyd points out, NPO self-regulation can be understood at the structural level as emerging from the same structural shifts that gave rise to corporate self-regulation (2005: 5).

In the African context the move towards NPO self-regulation has emerged from the juxtaposition of two forces: on the one hand the rapid growth of NGOs has raised concerns at government level that funding for NPOs and their activities has the potential to 'crowd out' the scope and resources of public services, while on the other hand the increasing dependence of African governments on NPOs to implement public service delivery. Gugerty further noted that the outcome of this binary set of

forces has seen new NPO legislation proposed in at last 15 sub-Saharan African countries, which have been highly contested by NPOs and civil society activists in at least nine of these cases (2007: 4).

In the context of the prevailing good governance discourse it is important to have a sense of the factors and developments that are driving initiatives around self-regulation of the NPO sector. Without some form of regulation in the sector, confidence in the sector will diminish, particularly as a result of the abuse of funds and the emergence of fly-by-night NGOs and Briefcase NGOs (BRINGOs).

The emergence of fraudulent NPOs that have no legitimate purpose other than to take advantage of the foreign funds available for NPOs undertaking development work can be directly linked to lack of self-regulation in the sector. Regulation in the sector would ensure that there is accountability to donors and their beneficiaries who they provide services to or on whose behalf they speak.

Self-regulation enables NPOs to retain public trust and confidence, which is the cornerstone of an NPO's existence, its relationships and its image. NPOs are more trusted than any other actor in society because of the values they espouse. Any actions or criticisms that undermine this base can have a significant impact on the ability of NPOs to carry out their activities. Interestingly an examination of various codes of conduct has shown that where the codes of conduct are in place, there has been no marked improvement in accountability by NPOs. This is because most of the codes of conduct are aspirational in nature, and lack the attendant enforcement mechanisms that would ensure compliance and enforcement in the face of non-compliance or malpractice.

Another aspect that has tended to weaken the codes of conduct and render them ineffectual is that in an attempt to gain sector-wide acceptance and to address different sectoral and ideological needs the codes often tend to be too generic and lack focus and substance.

Experience has also shown that drafting a code of conduct and getting NPOs to sign up to it is not sufficient to increase and ensure NPO accountability. A supporting institutional structure needs to be in place that ensures that the code is enforced. Such an institution would be responsible for drafting a set of standards, codes and practices against which organisations would be formally held accountable.

5.4.1 Influence and responsibility

Over the last fifteen years or so, the world has witnessed what some have called a "global associational revolution" and a "power shift". This describes the large growth in the sheer number of citizen-driven Organisations that have largely emerged in response to the broad range of developmental challenges facing humanity. Sometimes these have occurred with the support of governments, sometimes this

has happened despite government, and in many instances even in the face of active opposition from some governments.

This represents more than simply a quantitative rise in the number of NPOs. In fact, much more importantly, is the reality that several citizen-inspired organisations have come to play key and in some cases indispensable roles in the governance of their societies at a local, regional, and increasingly at a national level. While this has often taken the form of providing critically needed basic services to vulnerable communities, increasingly NPOs have also asserted their right and ability to take part in the policy-making processes in their different locations. NPOs argue that this makes strategic sense given that they are often the only institutions that have a good sense of what people “on the ground” need and do not need.

This rise in NPO influence and presence has also been illustrated by the major growth around the discourse and practice about the role of civil society going forward. A wide range of stakeholders, from the Secretary Generals of the Commonwealth and the United Nations, to the President of the World Bank and a range of national political figures, have conceded, and indeed in some cases aggressively argued, that civil society is, or should be, a key player in deepening democracy and promoting social development.

While many definitional challenges exist around what exactly civil society is and what it represents, it is evident that citizen-inspired organisations exist between the family, market and government and broadly seek to work for the common good. It is within this context that many leaders within the NPO sector continue to argue that this increased influence and presence, particularly in terms of policy and service delivery, brings with it increased responsibilities and public accountabilities. Consequently, many have invested time and effort in promoting a range of experiments in terms of developing self-regulation frameworks and other normative and regulatory mechanisms for the NPO community.

5.4.2 Countering government discourses around representivity

Notwithstanding the much greater acceptance of the role of NPOs and other civil society groupings in the public life of their societies NPOs continue to come under attack from various quarters. Government and opposition political leaders, even in countries where there are democratic electoral processes, have on occasions questioned the legitimacy of the NPO role in public life generally and in social advocacy in particular. The role of NPOs, particularly when it comes to issues of human rights and the environment, can be both controversial and oppositional and can place governments in the position of having to respond to uncomfortable questions. The argument typically used is that unlike elected governments who derive their legitimacy from the electorate, and business leaders who are at least

accountable to their shareholders or the Board, NPOs are largely self-appointed activists who are not accountable to anyone other than themselves.

To combat this line of thought it has become necessary for NPOs to build public trust in their social value and develop new accountability mechanisms that strengthen both their internal practice as well as their external relations with a range of constituencies that they interface with on an ongoing basis. Critically NPOs need to build and maintain the trust of the beneficiary communities in whose name resources are leveraged to undertake certain pieces of work, as well as donors, partners and other stakeholders. While it may be obvious that civil society generally needs to develop new paradigms for improving its accountability, it still plays a uniquely independent and autonomous role in society and should not be domesticated to either government or private sector agendas.

In the context of representational democracy that has progressively become more removed from its electorates, and in the context of more autocratic states where citizenry voice is stifled, NPOs continually strive to ensure that governments remain responsive to the demands of its citizens. It has become a mantra of the NPO sector in many countries that elected governments should not interpret victory at the ballot box as a blank cheque to rule without ongoing reference to their citizenry in between election periods.

This is especially true in the growing number of countries where large numbers of citizens are turning away from the formal electoral processes and just not voting, and there is real evidence that there is a huge chasm between elected public officials and their citizens. For NPOs in general one of the major accountability controls is that if they do not deliver on their commitments they risk losing their donor revenue streams and also risk losing the support of their beneficiaries and stakeholders.

Of course, government is not subject to this discipline in the sense that even if government does a bad job they are guaranteed a steady stream of revenue from taxes and other sources of public funding. Needless to say, anti-civil society discourse is an important factor driving the thinking of several NPO leaders in different parts of the world. Global NPO leadership, through alliances such as WANGO and CIVICUS, continue to assert that they are seriously committed to strengthening accountability and that they are prepared to take the lead in developing mechanisms to do so effectively.

5.4.3 Public trust and credibility

The question about how NPOs develop and retain public trust and credibility has challenged many NPO activists over the last two decades. The challenge has been met in some instances by the formation of national coalitions or alliances of NPOs who develop their own code of ethical practice in an effort to improve transparency

and public accountability. In other cases there have been formal initiatives such as the Philippine model of certification driven from within the NPO sector, with the government providing recognition for the process. In other cases NPO watchdog bodies have been created to monitor and assess NPO performance.

In most countries the government imposes varying degrees of control over the registration, management and funding of NPOs. In one sense this can be viewed as public accountability, although the counter-argument is that such state controls through charity, non-profit, or NPO legislation is often more limiting than enabling. In thinking about new paradigms and how NPOs must foster greater social inclusion and legitimacy in their work, NPOs, acting independently and in alliance, need to consciously promote the presence of ordinary citizens in their actions and the public sphere.

NPO thinking has been shifting from the mindset of good-hearted volunteerism to the more business-oriented notion of governance, while at the same placing emphasis on forms of governance that fit appropriately with the value-systems that underpin NPO activity. As a starting point, NPO leadership has acknowledged that good governance is based upon inclusive and equitable governance systems. Civil society organisations strengthen their good governance case by linking it with a powerful emphasis on inclusivity and tolerance around issues such as gender, age, race, ethnicity, sexual orientation and religious belief.

Given this context, and given the fact that where governments have tried to set up regulatory bodies to control the NPO sector, in the main the specific role of policing practice is one that is extremely difficult even for a well functioning government department to carry out. This is not to suggest that governments do not have a right to monitor NPO activity, or that it is inappropriate for governments to have an internal capacity to conduct its relationships with the NPO community, and to work with the NGO community to set in place various enabling laws. This is largely unchallenged. What is at issue is whether governments have the capacity or ability or indeed whether it is desirable for the day-to-day practice of NPOs to be policed by a government department. In short, it is difficult to legislate and implement a culture of ethics and accountability and many NPO leaders have sought to develop codes of conduct to regulate the sector before governments move to set up regulatory regimes.

5.4.4 Fragility in current practice

A major factor driving the need for self-regulation has been the increase in cases of financial incompetence and fraudulent activity by certain NPOs in different parts of the world. While it is worth noting that the scale of these irregularities is small in comparison to governmental and business sector conduct in many parts of the world

– taking into account corporate examples such as ENRON and Arthur Anderson, and government examples such as the Members of Parliament claims scandals in South Africa and the UK. The public generally expects a much higher standard of conduct from NPOs, recognising that they rely in the main on voluntary contributions from donors.

The two areas that have been most problematic for NPOs have been in the areas of human resources and financial management. In both these areas, however, it should also be noted that several donors have been dilatory in helping to develop and strengthen the financial and managerial capacity of NPOs. Another internal weakness of many NPOs has been their poor communication and reporting systems. Increasingly this is linked to the lack of capacity within smaller NPOs, such as community-based organisations to access and utilise information and communication technologies, or to utilise available media strategies for their own benefit.

5.4.5 Intra-sectoral tensions

The heterogeneity of the NGO sector with a wide variety of types, sizes, themes, personalities and structures have often made it difficult to think about a single framework within which this mosaic of Organisations can be regulated and held accountable. It is often argued that one of the greatest strengths of the NPO sector is its range and diversity, and that to try and straitjacket all these Organisations within a single regulatory or good governance framework is both unrealistic and inappropriate.

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

5.4.6 The growth of diaspora and other cross-border philanthropy

The last three decades have seen a significant increase in the number of people who have their roots in the poorer regions of the world, but who have become highly successful in the industrialized world. Even though they have amassed significant wealth, there has not been a concerted effort towards setting up formal infrastructure for grant-making, such as the establishment of foundations or trusts. Given that they might sometimes be far away from their historical homeland, they may want to be able to rely on a set of public assessments and records that will distinguish bona fide NPOs from those that are not.

Some of the efforts in this area have also been inspired by this growth area and is likely to become more important in the years to come. The same also applies more generally to cross-border grant-making which is another funding practice that is gaining in importance.

5.4.7 Indigenous resource mobilisation

With foreign donor funding drying up or reducing significantly in many parts of the world, NPOs have been recognizing that for the purpose of greater sustainability for their work they need to focus more intensively on local resource mobilisation. This will often take and does already take the form of mobilising resources from individual citizens who are willing to support various good causes.

However, unlike the case of foreign donor agencies and philanthropies, local donors and funders appear to have higher expectations around issues of performance, transparency and accountability, and are generally more critical of NPOs that are ineffective or fail to deliver on programming commitments. The increased reliance on generating local fund-raising revenue streams has also provided an impetus to the thinking and efforts around self-regulation.

5.4.8 Taxation

Perhaps of all the drivers, or factors influencing work around self-regulation, the biggest incentive is that of taxation. In a growing number of countries there are tax concessions in place for NPOs. In many instances there are also concessions for donors, whether they are institutional donors such as aid agencies and philanthropic foundations, or individual citizens who make donations to NPOs.

Ministries of Finance generally set high thresholds of accountability and reporting for NPOs to be able to benefit from existing tax benefits. The ability of the NPO sector as a whole to demonstrate financial accountability and regulatory compliance are generally the necessary conditions for initiating a dialogue with the Ministry of Finance regarding the introduction of NPO-enabling tax regimes. According to Williams the Internal Revenue Service in the USA is making it its duty to ask charities questions about management and governance policies and practices (2007:44).

In South Africa the *Taxation Laws Amendment Act* of 2000 exempts under certain conditions organisations that are engaged in “public benefit activities” from paying taxes. In terms of the legislation, public benefit organisations (PBOs) may become exempt from income tax if they apply for the exemption, giving full details of their activities with supporting documentation, and if they meet certain criteria related to the way they generate and spend funds. The bulk of their services must be carried out for the benefit of persons in South Africa, in a non-profit manner and with altruistic or philanthropic intent. The main categories of such activities include welfare and humanitarian activities, health care, land and housing, education and development, religious belief or philosophy, cultural activities, conservation, environment and animal welfare, research and consumer rights, sport, and the provision of resources for approved PBOs.

5.4.9 Advocacy for benefits for NPOs

In several countries, particularly where national umbrella networks of NGOs exist, NPOs have been trying to negotiate with government and business for reduced rates for goods and services consumed by the NPO sector. In some countries these have included special rates for postal services, while in others it has been relief from municipal taxes where NGOs own property.

The South African NGO Coalition (SANGOCO), and its ally the Non-profit Partnership, have pursued the case for reduced rates for medical aid and pension funds for NGO staff, and preferential rates for a broad range of commercial goods and services consumed by the NGO sector. For progress to be made in this area it is important to have some form of a self-regulation framework to ensure that such schemes are not undermined by bogus institutions and corrupt individuals seeking to benefit from them. In this regard the NPO sector has taken the following issues into account:

- The NGO sector is a heterogeneous terrain and its diversity should be acknowledged;
- In attempting to benchmark good practice or draw on lessons from other countries, there is a need to recognize that there cannot be a "one size fits all approach". Local contexts and circumstances must be taken into account and existing models and methodologies need to be adapted and tailored for specific country circumstances;
- Processes of establishing good governance practices ultimately involve people who bring their own individual socialization, perspectives and ideological biases into such work. As a result there is greater need for high levels of integrity, transparency and openness, and these need to be built into any process that aims to develop a self-regulation framework;
- There is a need to ensure that it is not only service delivery Organisations that are brought into the self-regulation frame but also those organisations that are oriented towards advocacy and human rights work;
- There is a need to be alert to the fact that self-regulation frameworks can become gate-keeping instruments and given this reality they need to be open to reflection, evaluation and change over time.

There is no doubt that efforts to develop self-regulatory frameworks are complex and daunting. At the same time they present the NPO sector with a unique challenge in developing frameworks that are driven from the sector itself. It is critical therefore that whatever methodology a country or region chooses to pursue it is important that the process of developing self-regulatory processes is one built on solid good governance and capacity building principles.

People should be empowered as a result of the process and the public should be engaged as stakeholders wherever possible. To meet this challenge there is a need

for the NO sector to explore ways in which it can mainstream this process. For example, how can the NPO sector get the public broadcaster and the media at large involved in promoting public discussions on self-regulation and good governance issues. In the long term, having in place a self-regulation system that is respected by NPOs, that is trusted by the public at large, and one that works effectively for the particular social context in which it is applied, will ultimately lead to a more effective NPO community, with increased possibilities for new and sustainable indigenous resources and effective programme delivery.

5.5 Recruitment of Boards (Governing Bodies)

In the broadest sense Boards (or Governing Bodies) govern as the highest authority within an organisation. Acting as a group, the Board leads the organisation towards achieving its mission. Any corporation, whether it is for-profit (corporate sector) or non-profit (civil society), is required to have a governing Board of Directors. While a corporation can operate as a separate legal entity the laws governing corporations generally require that a corporation be accountable to its owners (shareholders in the case of for-profits and the public with nonprofits). That accountability is accomplished by requiring that each corporation has a Board of Directors that represents the shareholders or the public.

Members of a governing Board have certain legally required (fiduciary) duties, including duties of care, loyalty and obedience. Different countries and states use different terms and emphases for these duties, for example in Canada where the duties of care and loyalty are of prime importance. For-profit Boards often are referred to as "corporate" Boards, which really is a misnomer because both non-profit and for-profit corporations are required to have Boards.

Given the critical role that Boards play in the functioning of NPOs the issue of recruitment is important element of the good governance process. In general recruitment principles for Board members is fairly standard across the NPO sector. The members of the boards of NGOs may either be nominated or elected, according to the dictates of the legal entity adopted³³, as the board is an indispensable component of any NPO (2000: 2).

The members of the Boards take legal responsibility for the affairs of the NPO, thus it is imperative that skilled, efficient and effective individuals who can make valuable contribution to the NPO are recruited to serve on the Board³⁴. However the challenge is to recruit and retain skilled individuals who can make valuable contribution to the NPO. This group oversees the organisation, making sure it fulfils its mission, lives up to its values and remains viable for the future.

³³ Camay and Gordon, *A Composite Report on Civil Society Governing Boards in South Africa*

³⁴ Thamsanqa Mbatha, *Recruitment of Board NPO Members* (Legal Resource Centre, information), 2006 series no.9.

When selecting or recruiting potential Board members, there are various factors or views which have to be taken into account. It is important that the recruiting organisation indicates to the potential members what will be expected of them in terms of performing their required tasks and there will also be a need to assess if they have the skills to perform those tasks as required of them.

The recruiting organisation will also need to state clearly in the founding documents of the organisation whether the potential member will be required to become a member of the organisation, as is sometimes dictated by some organisations that are membership-based. However there is no law that prevents organisations from recruiting “outsiders” onto their Boards. Mbatha notes that it would be futile for an organisation to recruit onto their Board a member whose interests conflict with those of the organisation, as this will have a bearing on the extent to which a Board member performs his or her duties and obligations (2006:5). The UK-based Governance Hub suggests that any NPO Board has a set of twelve essential responsibilities, and argues that recruitment processes need to align its selection of Board members with competencies in each of these areas:

RESPONSIBILITY	DESCRIPTION
<i>Set and maintain vision, mission and values</i>	The trustee board is responsible for establishing the essential purpose or mission of the organisation, as well as for guarding its vision and values.
<i>Develop strategy</i>	Together, the board and chief executive officer develop long-term strategy, and meeting agendas should reflect the key points of the strategy to keep the organisation on track.
<i>Establish and monitor policies</i>	The trustee board creates policies to govern organisational activity. These policies should cover guidance for staff, systems for reporting and monitoring, and an ethical framework or code of conduct for everyone connected with the organisation, and a good governance code to regulate the conduct of trustees and board business.
<i>Set up employment procedures</i>	The trustee board must create comprehensive, fair and legal personnel policies that protect the organisation and those who work for it, and such policies should cover recruitment, support, appraisal, remuneration and discipline.
<i>Ensure compliance with governing document</i>	The governing document is the rulebook for the organisation and as such the board must make sure that it is followed and that the organisation's activities comply with its charitable or developmental objectives.
<i>Ensure accountability</i>	The board should ensure that the organisation is accountable as required by law to the regulation authority, the revenue authorities, registrar of companies and any other statutory body that has an oversight role with regard to the non-profit sector; The board needs to make certain that the organisation is accountable to donors, beneficiaries, staff, volunteer, and the general public, and this should be done through publishing annual reports and accounts and communicating effectively.
<i>Ensure compliance with the law</i>	The board is responsible for making sure that all the organisation's activities are legal and that there is full compliance with NPO-related legislative and policy frameworks.
<i>Maintain proper fiscal oversight</i>	The board is responsible for effectively managing the organisation's resources so it can meet its charitable objects. It should do this by securing sufficient resources to fulfil the mission, monitoring spending, approving the annual financial statement and budget, providing insurance to protect the organisation from liability, minimising risk, fundraising, and ensuring legal compliance.
<i>Select, manage and support the chief executive</i>	The board should create policy covering the employment of the chief executive, select and support the chief executive and review his or her performance.

RESPONSIBILITY	DESCRIPTION
<i>Respect the role of staff</i>	The board should recognise and respect the domain of staff responsibility, while at the same time create policy to guide staff activities and safeguard the interests of the organisation.
<i>Maintain effective board performance</i>	The board ensures internal good governance practice by taking measures to establish productive meetings, high standards of trustee conduct, effective committees with adequate resources, development activities, recruitment and induction processes, regular performance reviews and partnerships with consultants where necessary.
<i>Promote the organisation</i>	Through its own behaviour, governance oversight and activities on behalf of the organisation the governing Board should enhance and protect the reputation of its organisation, and at all times board members should be good ambassadors for the organisation.

However, there are many challenges which NPOs face when trying to recruit or attract individuals of high calibre to serve on their respective Boards. Typical challenges include:

- Often the NPO sector cannot compete with the remunerations or incentives that the private sector can offer;
- Some of the candidates recruited for Board positions expect some form of incentive when considering board membership, taking into account the time and responsibilities that are involved.
- For non-profit Organisations, provision of financial (and other) benefits to board members is a difficult challenge, and sometimes, an impossible task.³⁵

5.6 Internal Controls and Legal Compliance

NPOs must practice sound financial management and comply with legal and regulatory requirements. The financial system of the NPO should ensure that accurate financial records are kept and that the organisation's financial resources are used for the intended purpose of the organisation. An NPO should also create and maintain financial reports on a timely basis that accurately reflect the financial activity of the organisation, including annually audited financial statements. NPOs should have written financial policies adequate for the size and complexity of their operations.

A comparison of South Africa's *King Report* and the WANGO *Code of Ethics and Conduct* illustrate the generic approach that NPOs should take in ensuring accountable financial management procedures:

- Setting up appropriate financial systems and employ qualified persons to administer and manage these systems;
- Complying with accepted accounting and auditing practices;
- Conducting annual financial audits for income exceeding R50,000 (by an independent Certified Public Accountant);

³⁵ *ibid*

- Conducting external audits that provide an independent and objective check on the way in which the financial statements have been presented;³⁶
- Preparing realistic project or organisational budgets, as well as monitoring and adhering to them. In instances where it becomes necessary to make changes, the appropriate consultations should be undertaken and any amendments recorded;
- Having clear policies on loans and staff advances;
- Developing a policy regarding the receipt of outside honoraria and/or remuneration in order to avoid 'double' or inappropriate payment;
- Keeping fund-raising and administration costs to a minimum (65% of the total expenses should be spent on programme activities and services to reflect the organisations purposes);³⁷
- Ensuring that funds provided are used only for the intended purposes;
- Wherever possible, ensure that the funding base of the organisation is diversified;
- Setting up mechanisms for purchasing goods and services that are free from the vested interests of members of our organisation and that are cost effective;
- Establishing an effective contracting or tendering system that: complies with the requirements of procurement legislation; is open and fair; and meets all the requirements of each contract or tender. It should also ensure that tenders and contracts encourage the participation of small and that emerging businesses, particularly those owned by previously disadvantaged sectors of society;
- Training volunteers and staff involved in fundraising to ensure that they always maintain the highest ethical standards;³⁸
- Conducting periodic reviews to address regulatory and liability concerns;
- Preparing internal financial statements no less frequently than quarterly, providing them to the board of directors and identifying and explaining any material variations between actual and budgeted revenues and expenses;
- Providing employees with a confidential means to report suspected financial impropriety or misuse of Organisation resources;
- Preparing written financial policies governing: (a) investment of the assets of the Organisation, (b) internal control procedures, (c) purchasing practices and (d) reserve funds;
- Creating and maintaining financial reports on a timely basis that accurately reflect the financial activity of the Organisation.³⁹

³⁶ King Report on Corporate Governance for South Africa, 2002

³⁷ World Association of Non- Governmental Organisations: *Code of ethics & Conduct for NGOs*.

³⁸ Code of Good Practice for South African Non-profit Organisation(NPOs)

5.6.1 Fragility in current practice

It is imperative for every NPO to have its own disciplinary Code of Conduct. This code should provide for the basic norms and standards that its members and employees should adhere to. The code will also need to adhere to basic principles that provide for the protection of the fundamental rights of those involved. In the South African context the code should also set out procedures that comply with fair administrative action, as set out in the *Labour Relations Act No.66* of 1995. The code will need have some basic rules relating to the conduct, including the requirement that every member must:

- Respect the fundamental rights of others as contained in the Bill of Rights within the Constitution of the Republic of South Africa;
- Comply with the Founding Document of the NPO;
- Comply with the resolutions and policies of the NPO as issued from time to time;
- Comply with the relevant legislation that governs the NPOs.⁴⁰

5.6.2 Administration

A non-profit organisation should endeavour to follow the best management practices appropriate to its mission, operations, and governance structure, protecting the rights of its constituents and assuring fair treatment in all matters at all times. To follow the best management practices the office bearers should uphold broad-based principles such as:

- Periodically reassess the organisation's mission, objectives and operations, in the light of changing context and constituents' needs;
- Critically analyse internal practices and organisational culture, and implement those changes necessary to build a culture that encourages creativity, diversity, responsibility and respect that will recognise all cultural groups as equal partners in developing the organisation;
- Develop clear, well defined written policies and procedures to be followed, which relate to all employees, members and volunteers. Such policies must adhere to the *Labour Relations Act* and other relevant legislation and must protect the rights of employers, employees, members and volunteers;
- Establish and maintain disciplinary and grievance procedures with clear lines of authority and accountability;
- Have clear and transparent procedures for employing new staff, and disengaging existing staff;

³⁹ Maryland Standards for Excellence

⁴⁰ Thamsanqa Mbatha, *Recruitment of Board NPO Members* (Legal Resource Centre, information), 2006 series no.9.

- Have clear staff development policies that seek to empower all staff volunteers to increase their skills in order to enable them to move to greater levels of responsibility;
- Develop adequate and acceptable systems of assessing skills, experience and qualification, levels of responsibility and performance, and remunerate on this basis;
- Encourage management to adopt interactive leadership styles and an 'open door' policy to facilitate good communication between staff and themselves.

5.6.3 Legal Compliance

Across the world NPOs fall under various forms of legal strictures, although the degree and severity varies from country to country. In the South African context NPOs are obliged to be aware of and comply with all laws and regulations governing the NPO sector. This may include, but are not limited to, the following activities: complying with the NPO Act; laws and regulations related to fundraising; procurement and tendering; financial accountability; human resource management; and taxation.

Generally NPOs need to ensure that they have effective contracting or tendering systems in place, and that these comply with the requirements of procurement legislation. This includes ensuring that payment is open and fair and meets all requirements of each contract of the tender. The international literature reflects that NPO good practice would include periodic internal reviews of the organisation's compliance with known existing legal, regulatory and financial reporting requirements and that CEOs should provide a summary of the results of the review to members of the Board or governing body.⁴¹

It should also be noted that from a compliance perspective Board and staff members can be charged for fraud, theft or misappropriation (misuse or mismanagement) of NPO funds or if they conduct themselves in a manner inconsistent with the code of ethics of the NPO⁴².

5.6.4 Ethics

NPOs need to maintain adequate standards of transparency and accountability when dealing with resources entrusted to them in trust by donors to serve the public. At the same time NPOs need to demonstrate commitment to the organisation's mission and objectives by conducting their operations ethically and behaving in a responsible manner in their engagements with partners, stakeholders and beneficiaries.

Globally the NPO sector has recognised that there is a need to follow certain standards and principles, and these are embodied in civil society initiatives

⁴¹ Standard for Excellence: An Ethics and Accountability Code for the Nonprofit Sector

⁴² SANGOCO, Code of Ethics

undertaken by the United Nations, the Commonwealth Foundation, the African Union and alliances such as WANGO, CIVICUS and Transparency International.

These principles will vary across organisations, often determined by the political, cultural and religious values prevailing in particular countries. Broadly speaking, however, NPO staff and volunteers should practice honesty in their dealing with the donors, should respect the integrity of the mission established by their governing body, fulfil programme commitments, be loyal to the organisation, and pursue excellence in their service to the beneficiaries.

As institutions that do not place profit as their main priority, NPOs also tend to be among the most trusted institutions in society. In the Fourth Edelman Survey on Trust and Credibility (2003), both USA and European leaders indicated greater trust in NPOs to do what is right than they professed for business, government or media. In an earlier Edelman survey (June 2000) of 500 USA elites and 100 European/Asian elites, the respondents demonstrated that for environmental, human rights and health issues, their trust in NPOs was more than double the trust that they had in government, corporations, or media.

While most NGOs strive to promote the public good in an ethical and responsible manner, there are also many actors in the NPO community that do not follow acceptable standards of conduct, whether in fundraising, governance, or in use of public funds. There are also many NPOs that have been set up for unethical ends, such as "Briefcase NGOs" (BRINGOS) that function mainly to try to attract grants or donations as a means to enrich their owners.

Unethical NPOs such as these exploit people's charitable nature and can weaken the trust of the public and donors in the NPO sector, and ethical and responsible NGOs are tainted in the process. Increasingly, both the private sector and the civil society sector are developing codes of ethics, or codes of good practice, to guide the conduct and behaviour of organisations within their sector. There is also an increasing sharing of experience between the sectors in this regard.

The Nolan Principles were developed in the United Kingdom, specifically with regard to the seven principles of public life identified by the Nolan Committee in their First Report on Standards in Public Life in May 1995 and subsequently endorsed by the UK Government. These principles were developed specifically for public servants, but the intention was that these would have wider application:

Principle	Responsibility
Selflessness	Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends
Integrity	Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties
Objectivity	In carrying out public business, including making public appointments, awarding contracts, or

	recommending individuals for rewards and benefits, holders of public office should make choices on merit
Accountability	Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
Openness	Holders of public office should be as open as possible about all the decisions actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
Honesty	Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
Leadership	Holders of public office should promote and support these principles by leadership and example.

Managing ethical values in the NPO workplace tends to legitimize and promote the following practices:

- Gives weight and legitimacy to Board, executive and managerial actions;
- Strengthens the coherence, balance and diversity of the Organisation's culture;
- Improves trust in relationships between individuals and groups;
- Supports greater consistency in the standards and qualities of services; and
- Cultivates greater sensitivity to the impact of the NPO's values and messages.

The practice of ethics in the NPO workplace can, however, be difficult if there are no clear guidelines for both organisational and individual actions. NPOs need to be clear about what they stand for, and which actions constitute acceptable and/or unacceptable practice within the context of internal values and the external regulatory and legislative regime.

A general assessment of the NPO sector globally suggests that in most cases there is only minimal regulation of NPOs by state authorities. This oversight often consists only of sufficient regulation to see that the NPO has been legally formed or meets its requirements for tax exemption or other concessions. Funding Organisations and the public may have little understanding of which NPOs are reputable and which are fraudulent. Nor is it easy to ascertain which NPOs are utilizing public money responsibly and efficiently to carry out their activities, and which ones are spending most of their resources on their staff and Board.

Compounding the problem is that less than desirable Organisations may assume names that are quite similar to those of reputable Organisations, or may assume "*attractive sounding names*" while carrying out few or no activities for the purposes claimed. Foundation grants tend to go to organisations with which the foundation is familiar, rather than risk giving to an NPO that may prove not to use the funds responsibly.

Evaluation of NPOs has generally been seen as the role of NPO associations themselves and not a role to be played by governments. As Pablo Eisenberg (*The Chronicle of Philanthropy*, August 5, 2004) notes, "*It is time for non-profit groups to take responsibility for cleaning up their own shortcomings ... It is not [government's]*

job to set detailed standards for a large variety of non-profit Organisations, a role that has traditionally been a private endeavour."

A 1994 ESCAP article also notes that *"NGOs naturally oppose government oversight and monitoring. To reduce governments' perceptions of the need for such control, the NGOs could reach their own consensus on an NGO code of conduct and self-regulatory mechanism...To activate such collective self-accountability, it would be necessary for apex organisations to fulfil those functions and provide a forum for the NGOs themselves."*

At the international level the World Association of NGOs (WANGO) has as its mission the objective of serving its member organisations, strengthening and encouraging the non-governmental sector as a whole, increasing public understanding of the non-governmental community, and providing the mechanism and support needed for NGOs to connect, partner, and multiply their contributions to address global development challenges. WANGO has members in over 150 countries.

The *Code of Ethics* project was initiated by WANGO at their 2002 Annual Conference in Washington D.C. (Dombrowski, 2006: 4). An international committee of NPO leaders from 42 nations, representing the wide spectrum of the NPO community, was established to oversee the development of a set of fundamental principles, operational principles, and standards which could guide the actions and management of NPOs. The current Code was completed in March 2005, but it remains an evolving work which will be revised as is deemed necessary by the WANGO membership.



6 BENCHMARKING PRACTICES

6.1 Selection Criteria of Countries

The purpose of the benchmarking process is to scan the global NPO environment so as to deepen understanding of the processes within the sector that are focusing on good governance, NPO ethics and self-regulation. The methodology used reviews the NPO sector in twenty countries, with a strong emphasis on the developing world, and develops a comparative analysis that highlights global, regional and national initiatives within specific but inter-related contexts that include the global good governance trend, south-south cooperation, the post-9/11 environment, and local socio-political forces that impact on the NPO sector. The following countries were identified for the benchmarking process⁴³:

Analysis	Countries	UNDP Human Development Index Rankings 2007 ⁴⁴
Developing African Countries	• Kenya	• 148
	• Botswana	• 124
	• Uganda	• 154
	• Zimbabwe	• 151
	• Tanzania	• 159
	• Ghana	• 135
	• Malawi	• 164
	• Swaziland	• 141
	• Egypt	• 112
Other Developing Countries	• India	• 128
	• Brazil	• 70
	• Philippines	• 90
	• Guatemala	• 118
	• Argentina	• 38
	• Ukraine	• 76
Developed Countries	• United States of America	• 12
	• United Kingdom	• 16
	• Canada	• 4
	• Australia	• 3

The subsequent sections look at each of the above countries by comparing them with specific identifiable elements of the general activities around NPOs as an introduction to the country under discussion; the legislative framework and environment affecting the sector and its good governance practices including initiatives on self-regulation and the implementation mechanisms and existing codes of good practices.

⁴³ The countries reviewed in the benchmarking process were selected on the recommendation of the NPO project reference group in consultation with the Department of Social Development.

⁴⁴ The UNDP Human Development Index 2007/2008 – *Fighting Climate Change*.

6.2 A Summary of Benchmarked Practices in Selected Countries

Country	Civil Society Environment	Legislation Affecting the NPO sector	Self-Regulatory Mechanisms	Codes of Good Governance / Ethics
1. South Africa	Open and unrestricted civil society environment with full constitutional protection	Constitution of South Africa 1996 Non Profit Organisations Act No. 71 of 1997 Income Tax Act Register of Nonprofit Organisations	Code of Good Practices for South African Nonprofit Organisations issued in terms of the section 6 of the NPO Act, 1997 (No 71 of 1997)	SANGOCO Code of Ethics
2. Kenya	Fairly open civil society environment, particularly since the end of the Moi period, with active NPO sector	NGO Coordination Act 1990 NGO Coordination Regulations 1992 Sessional Paper on NGOs 2006	Internal self-regulation guided by principles set out in the Code of Conduct	Generic Code of Conduct for the NPO Sector (developed by the National Council of NGOs)
3. Uganda	A sizeable and active civil society, but there are concerns over increasing state control over NPO sector	Local Government Act 1997 NGO registration (Amendment) Act 2006	NGO Quality Assurance Mechanism (QUAM) together with certification process	Generic Code of Conduct for NPO Sector (developed by the Uganda NGO Forum)
4. Zimbabwe	Political crisis in Zimbabwe has had a severe impact on the capacity of Organisations within civil society to operate freely	Private Voluntary Organisations (PVO) Act 1966 Non-Governmental Organisations (NGO) Bill 2004 (not passed) Public Order and Security Act Access to Information and Protection of Privacy Act	There has been no concerted effort within the Zimbabwean NPO sector to implement self-regulatory mechanisms	NANGO has drafted a framework for a code of conduct, but as yet no agreed-upon Code of Conduct has been developed
5. Tanzania	Reasonably open civil society environment although there were concerns over restrictive provisions in the NGO Act	NGO Act 2002	NACONGO, with networks such as NGO Act Core Group and TACAIDS, are lobbying for amendments to the NGO Act that include provisions for self-regulation	Code of Ethics developed under the auspices of TANGO 2008
6. Ghana	An active and extensive civil society with a tradition dating back to colonial period, and more vibrant under the Kuffour government	Companies Code/Act 179 of 1963	Some initiatives in progress	Draft National Policy for Strategic Partnerships with NGOs has proposed that a Code of Good Practice should be developed
7. Malawi	An active civil society primarily supporting poverty alleviation, more vibrant after the restrictions of the Banda years but political instability remains a constraint for NGOs and	Non-Governmental Organisations Act 2001	No progress in this area	No Code has been developed, but CONGOMA active in creating an enabling environment for good governance

Country	Civil Society Environment	Legislation Affecting the NPO sector	Self-Regulatory Mechanisms	Codes of Good Governance / Ethics
	CBOs			
8. Swaziland	Civil society operates in a severely restricted space under conditions of absolute monarchy	Constitution of the Kingdom of Swaziland 2005	Little progress in this area	Little progress in this area
9. Egypt	Civil society based on Islamic principles, and subject to repressive state legislation	Constitution of Egypt NGO Law 84 of 2002 (governing voluntary civic associations)	Strict state-driven legal and regulatory system for NPOs mitigates against internal good governance and self-regulatory initiatives Self-regulation mechanisms found primarily in business associations and chambers of commerce	Union of Associations and Civic Foundations has some state-designed governance and regulatory oversight
10. India	Vibrant and open civil society in the world's largest democracy, subject to state laws	Societies Registration Act (federal) Indian Companies Act (federal) Public Trust Acts (states)	The GuideStar initiative makes publicly available information that is voluntarily provided by NPOs, including financial records, for posting on their website	NPOs such as CUS and the Credibility Alliance have taken the lead in developing norms and standards for good governance within the NPO sector
11. Brazil	A vibrant civil society, the largest in Latin America, is increasingly working in partnership with government and the private sector to deliver social services and strengthen economic growth	Federal Constitution of Brazil Civil Code of Brazil (Law 10.406) 2002		Code of Conduct 2007 (Brazilian Institute of Corporate Governance – IBGC)
12. Philippines	A vibrant civil society, the largest in Asia, often subject to the volatile nature of Philippine politics	Constitution of the Philippines 1987 Local Governance Code 1991 Corporation Code	Philippines Council for NGO Certification (PCNC)	Code of Conduct 1991 (CODE-NGO)
13. Guatemala	A fragmented and poorly regulated civil society still regrouping after lengthy civil war that ended in 1996	Civil Code 1963 Law of Non-Governmental Organisations for Development 2003 Income Tax Law	Self-regulation starting to appear on NPO agenda as a priority for the sector, driven by Coordination of NGOs and Cooperatives (CONGCOOP) and the Collective of Social Organisations (COS)	Umbrella bodies such as the Council of Private Foundations (CFP) and the Centre for Action on Corporate Social Responsibility (CentraRSE) are leading initiatives on good governance in collaboration with NPO sector
14. Argentina	Civil Society has strengthened after the return to democracy in 1983 and NPOs are active in supporting both government and private sector social sector initiatives	Constitution of Argentina Civil Code Income Tax Law Law No. 19,836 (governing associations and foundations) Law No. 20,321 (governing mutual entities)	Comision Nacional de Valores (CNV) 2007 – Corporate Governance Code and Voluntary Framework	Instituto para el Gobierno de las Organizaciones (IAGO) 2004 – Code of Best Practice for Corporate Governance.
15. Ukraine	The socio-political environment in the Ukraine remains quite unsupportive for civil society	NGO Registration Law (amended in 2006)	Little progress to date around self-regulation of CSOs	Code of Ethics adopted in 2003 at NGO Conference but not widely adhered to Issue-based umbrella. Organisations such as Civic Forum have worked on sectoral codes of conduct. Professional Associations Codes of Conduct
16. USA	Large and open civil society protected by constitutional	Constitution of the USA	No concerted moves towards broad self-	Codes are generally sector or state-based initiatives, such

Country	Civil Society Environment	Legislation Affecting the NPO sector	Self-Regulatory Mechanisms	Codes of Good Governance / Ethics
	provisions, but subject to different state laws	Federal legislation related to charities, foundations, voluntary associations	regulatory mechanisms	as: <ul style="list-style-type: none"> Association of Fundraising Professionals Code of Conduct. Maryland Association of Non-Profit Organisations Code of Ethics. BBB Wise Giving Alliance Code of Ethics
17. United Kingdom	Open, diverse and vibrant civil society with sophisticated and professionalised NPO sector tightly self-regulated by sector	The Charities Act 2006 and establishment of the Charities Commission	Various self-regulatory mechanisms, including: Public Fundraising Regulatory Association Institute of Fundraising Regulatory Framework	Various Good Governance Codes, the most notable of which is: <ul style="list-style-type: none"> ACEVO Code of Good Governance
18. Canada	Open civil society protected by constitutional provisions, but subject to different state laws	No direct legislation governing NPOs. Federal state regulation. Income Tax Act.	Code of Ethics developed by the Canadian Council for International Co-operation.	Accord between the Government of Canada and the Voluntary Sector 2001 resulted into two Codes i.e. <ul style="list-style-type: none"> Codes of Good Practice on Policy Dialogue Codes of Good Practice on Funding
19. Australia	Open civil society protected by constitutional provisions, but subject to different state laws	No direct legislation governing NPO sector. Corporations Law. Registration of all NPOs with Australian Securities Commission Range of federal legislation such as NSW Charitable Fundraising Act	No concerted moves towards broad self-regulatory mechanisms	ACFID Code of Conduct National Roundtable of Non-Profit Organisations Code of Conduct.
20. International		WANGO Constitution		WANGO – Code of Ethics
21. Continental		AU Constitution		AU - Code of Ethics and Conduct
22. Regional		SADC Constitution	SADC Council of Non-Governmental Organisations	SADC-Civil Society Communiqué 2007

7: BENCHMARKED COUNTRIES IN AFRICAN

7.1 KENYA

7.1.1 General NPO Activity

The nature and extent of civil society has changed significantly in post-colonial Kenya. During the colonial period the state played a central role in mapping the direction of the voluntary sector, and this has continued into the post-colonial era. In the early independence era during the 1960s and 1970s the role of civil society was geared to supporting government efforts to build a post-colonial state and to strengthen democratic institutions. In recognising these enormous development challenges in the context of resource constraints the Kenyatta government actively encouraged self-help activities (in Swahili referred to as *harambee*) that had strong roots in communal traditions. The death of Kenyatta in 1978 saw then vice-president Moi assume office as President of Kenya, and marked a drift towards one-party authoritarian rule that had a negative and constraining impact on the space available to civil society organisations. Increasing state regulation and harassment of CSOs resulted in most NPOs taking a low profile and avoiding rights-based activities that could draw the attention of antipathetic government agencies. The churches in Kenya, however, continued to speak out against human rights abuses.

The state showed its determination to silence civil society dissent with the passing of the *NGO Act* in 1990. The Act established an NGO Board, which in essence functioned as a state regulatory body for monitoring the registration and activities of NPOs in Kenya. The powers of the NGO Board were extensive, covering the registration, co-ordination and facilitation of all national and international NPOs operating in Kenya, analysis and evaluation of all NPO annual reports, provision of advice to the government on the activities and programmes of NPOs, conducting regular reviews of the NPO register, and determining NPO reporting consistency.

The NGO Board was also empowered to determine policy guidelines for the NPO sector so that all NPO activity could be aligned with Kenya's national development planning priorities, monitor the work of the umbrella Council of NGOs, and advise NPOs with regard to the planning, harmonisation and co-ordination of their activities with government's sector programmes. The NGO Board also has the responsibility of tracking, assessing and approving any codes of conduct or codes of ethics prepared by the Council of NGOs for the self-regulation of NPOs and their activities.

In the view of Gyimah-Boadi the NGO Act was a sophisticated and far-reaching strategy by the state to control civil society activity (2002: 12). This attempt by the state to limit the scope of activity by CSOs was a direct response to civil society's

wide-ranging opposition to the authoritarian nature of the Moi government and their call for political liberalisation. To date the *NGO Act* of 1990 and the *NGO Regulations* of 1992 continue to govern the NGO Sector. However neither the Act nor the Regulations are comprehensive and furthermore the procedures prescribed by the Regulations have developed on an *ad-hoc* basis over the years with NGO Board often exceeding its authority by requesting particulars from applicants and following procedures which are not laid down in the Act or the Regulations.

The elections of 2002 brought Mwai Kibaki to office on a platform that focused first and foremost on improving governance and combating the deeply entrenched problems of corruption. Together with the National Rainbow Coalition (NARC), a diverse alliance of opposition parties, Kibaki defeated the Kenya African National Union (KANU), which had ruled the country for nearly 40 years. Much of the early promise and progress of the Kibaki administration has given way to disillusionment, and the elections of 2007 created a crisis of government that only led to the establishment of a coalition government after months of factional wrangling and widespread violence. There has, however, been a move towards a more open and democratic dispensation in Kenya in the post-Moi period. In a promising early step, the government established the Kenya Anti-Corruption Commission (KACC) in 2003, but to date only one relatively senior official has been convicted by the Attorney General's Office.

Kenya's economy is strengthening and the diverse forces that helped to remove the Moi regime are still very much alive, in particular a vocal and increasingly competent media, a strong and vibrant civil society, an independent national legislature, and a more open and active political debate. It is hoped that these factors will build a national constituency for good governance, which in turn will sustain reform over time.

The Kenyan press, both print and electronic media, has been consistently outspoken and has refused to be intimidated by state efforts to contain its activities. The press is diverse, vibrant and competent and has increasingly engaged in a proactive, investigative journalism that has worked to focus public attention on critical governance issues. Civil society remains a formidable social and political force, and opportunities have expanded to build a much broader, national constituency for reform. A broad constituency representing diverse sectors has worked to build consensus around the costs of corruption and their support of systemic reforms has helped to "de-politicize" governance issues and strengthen the hand of reformers in government. The Kenya National Assembly has also evolved into one of the most independent legislatures in Africa and is becoming an effective check on the executive branch specialized committees, as well as becoming a valuable sounding board for civil society.

7.1.2 Legal Environment and Good Governance Practices

Kenya is a Commonwealth country with a common law system. There are four primary types of not-for-profit Organisations (NPOs):

- Companies;
- Societies;
- Trusts; and
- NGOs.

Other not-for-profit legal forms include churches, political parties, and trade unions (USIG; 2008: 1). The Kenyan *NGO Coordination Act* defines an NPO as “a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organised themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry and the supply of amenities and services” (1990: 6). Designation as an NPO confers certain tax benefits and imposes a series of regulations that are relevant to an equivalency determination.

The NGO Co-ordination Regulations of 1992 provide for the periodical publication of an NPO register. The register is intended to be maintained by the NGO Co-ordination Board and should contain information relating to the precise sectors, affiliations and locations of the activities of each registered NPO. To date, however, such a register has not been published although the Board has stated that it is in the process of compiling it. The NGO Coordination Board is the regulatory authority over all NGOs. Annual reports must be submitted to the Board before the 31st May of every year. The reports become part of the public record and can be inspected by any person upon payment of a fee.

The failure to tender annual reports is not categorized as an offence under the Act. However the submission of annual reports does serve as an indicator to the Board that the organisation continues to operate and exist. Consequently, if for any reason the Board is of the view that an Organisation has ceased to exist, then it has the power to strike it off the register after placing an advertisement in the *Kenya Government Gazette* calling on the Organisation to provide proof of its existence within 30 days.

NPOs tend to be viewed by the Kenyan authorities as potential vehicles for political subversion. In this regard the Kenyan government has repeatedly warned that NPOs interfering in matters of a political nature risk being struck off the NPO register, although it is difficult to determine whether such warnings have ever been implemented in practice. As noted earlier, the registration requirements for NPOs are stringent, and the process for the registration of an NPO currently involves a number

of key criteria. There are restrictions on the names given to particular NPOs, including the following:

- Before an application for registration is made, approval must be obtained from the Director of the NGO Board for the name of the NPO to be registered;
- Name approvals last for one month;
- Particulars of the founders of the proposed NPO, whether Kenyan or foreign, must be submitted to board.

With regard to the constitution of the NPO the following considerations apply:

- The proposed NPO must have a constitution specifying its objects;
- The constitution must be subscribed to by at least three members.

The NPO Regulations stipulate a broad set of additional requirements that include, amongst other, the following:

- If a sponsor is involved with any NPO, a letter from the sponsor confirming that it will provide financial and material support to the NPO must be submitted with the registration application;
- Names, signatures and passports of the NPO officers must be submitted with two passport-size photographs;
- A detailed estimated annual budget must be submitted with all sources of funding specified in the application, and any national and international affiliations must be disclosed;
- Details of a registered office and postal address in Kenya must be submitted;
- Minutes of the proposed NPO that authorize the filing of the application must also be submitted;
- NPOs that have foreign sponsors as international NPOs pay a higher registration fee than local NPOs.

The NGO Board has sweeping powers to refuse to register a proposed NPO if it is satisfied that the following issues have a bearing on the legitimacy and functioning of the NPO:

- The proposed activities or procedures of the NPO are not in the national interests;
- The applicant has given false information in the application;
- The recommendations of the National Council of NGOs, which acts as a collective forum for all NPOs registered under the Act, indicate that the applicant should not be registered.

According to USIG there is a high degree of state oversight through the NGO regulations with regard to governance issues. The regulatory scheme for NPOs in Kenya is complex, combining substantive and procedural statutes, common law rules embodied in case law, and administrative practices (2007:4) In addition, Kenyan legislation regulates an Organisation substantially through enforcement of the

Organisation's founding documents. The Second Schedule to the NGO Co-ordination Regulations 1992 prescribes matters to be provided in the constitution of every NPO.

These include financial year and periodicity of audit of accounts, the manner of dissolution and disposal of NPO's property and structure and management of the NPO. The Schedule also requires that the purpose for which an NPO's funds may be used must be specified. In particular, every constitution must prohibit the distribution of the NPO's funds and assets among its members. Clauses which may constitute loopholes for such distribution to members or officials are also prohibited unless they provide for the legitimate reimbursement of expenses incurred in carrying out the NPO's objects.

The NGO Board has also issues a prototype constitution that serves as a template for prospective applicants. While it is made clear that the prototype is for guidance only, NPOs that seek registration tend to err on the side of caution and utilise the template. Most constitutions provide for a governing council in the form of a board of management to manage the day to day activities of the NPO. The board of the NPO may appoint a chairman but not a president. The board's powers and rules for voting depend effectively on the constitution of the NPO in question, and they are not prescribed by law and generally, matters are decided by a majority of votes. Constitutions tend to require the disclosure by members of any interests in contracts, and members so involved are usually not permitted to vote on such matters. The constitution of an NPO may contain provisions indemnifying members of the board and of the NPO against all costs, losses and expenses they may incur by reason of any contract they may enter into or act or thing they do in good faith.

There continues to be a perception that the Kenyan government enforces the rules and regulations relating to the NPO sector in an arbitrary and inconsistent fashion. For example, following the 1998 US Embassy attack in Nairobi, the President of the Republic ordered the immediate shut down of several Islamic NPOs, and to date the NGO Board refuses to register NPOs that espouse religious objectives.

The environment has changed significantly, however, following the 2002 elections and in July 2006, the Ministry of National Heritage presented *Sessional Paper No. 1* of 2006 to the Kenyan Parliament, noting that *"NGOs are increasingly being recognised by governments everywhere as potent forces for social and economic development; important partners in nation building and national development; valuable forces in promoting the qualitative and quantitative development of democracy and not least, important contributors to GDP"* (2006:7). The *Sessional Paper*, which subsequently was passed by the Parliament, seeks to, inter alia: promote interaction between NPOs and the communities where they work in an effort to improve service delivery; integrate government and NPO policies to affect the

“social and economic transformation” of Kenya; and involve the individual in NPO and government affairs.

7.1.3 NPO Self-regulation and Administration

Some of the earliest efforts to address the issue of self-regulation occurred in Kenya. Gugerty argues that the first wave of NPO self-regulatory practices was largely initiated by events in Kenya, which can be traced back to the creation of the National Council of NGOs, formed by an act of parliament and given independent power to develop its own governance structures and codes of conduct (2007:11). Research by Adiin-Yaansah focused on some of the key foundational provisions of the self-regulatory framework (1997: 12). These include the ‘core values’ that are concerned with standards-setting for NPOs, and with ensuring that NPOs are transparent and accountable in their activities.

The framework also includes provisions dealing with the lodging and disposal of complaints to the Regulatory Committee, provisions dealing with sanctions against NPOs, and provisions that determine the governance structures of the NGO Council. These provisions need to be seen in the context of the inter-relationship between self-regulation and government regulation and appropriate procedural rules that would ensure the fair hearing of complaints.

As discussed in the introductory section the interlinked concepts of non-profit organisations (NPOs) and self-regulation vary in structure, strategy and in the way that they relate to government understanding and regulation. Gugerty argues that the self-regulatory framework in Kenya is based on the national guild system (2007: 11). Generally, as the Kenya model shows, self-regulation may consist of internal rules that govern the operations of NPOs, rules of conduct for their Boards, and their internal financial practices. The Kenya self-regulatory framework is regulated in part by law and by norms (code of conduct, and rules and regulations), which NPOs have adopted.

Two major factors have contributed to the development of self-regulation in Kenya. The first relate to improvements in government-NPO relationships which have resulted in changes in the government’s perception of NPOs as a threat to its sovereignty. This has enabled a more productive and meaningful dialogue (including discussions concerning the desire of NPOs to regulate themselves) to be developed (Adiin-Yaansah, 1997). The second relates to donor pressure, particularly from the IMF and the World Bank. These institutions are increasingly demanding, as conditionalities for the granting of aid, that laws governing civil society are reformed and regulatory frameworks are strengthened to improve the governance capacity of recipient countries. In the case of Kenya the IMF suspended aid to until the

government has been able to put in place satisfactory structures to deal with alleged corruption in the government.

The Kenya self-regulatory framework was a ground-breaking step as it represented the earliest attempt in Commonwealth Africa, outside of professional organisations such as Law Societies, the medical and accountant professions, that a government has expressly given power to non-profit organisations to regulate themselves in an accountable manner. Through the newly constituted Council of NGOs a *Code of Conduct* was established as *Legal Notice no. 306* in 1995. All NPOs in Kenya are required to be members of the Council of NGOs and to abide by the provisions of the Code of Conduct once they have registered with the government (Gugerty, 2007: 11). Adiin-Yaansah argues that such delegation by the government of its powers represented an attempt to strike a reasonable balance between the freedom of NPOs to regulate themselves without undue political interference and the government's duty to protect its citizens from the activities of unethical NPOs (1997: 38).

The Kenya legislation covers a broad range of issues including: provision for the creation of the right environment for NPO activities; the maintenance of integrity of NPOs; the upholding of 'core values'; provision for technical and financial management training for its members; strengthening communication channels between NPOs and government; ensuring that NPO activities are consistent with national policy objectives; setting guidelines for NPO fund-raising and other programmes; and improving NPOs' networking activities. All these provisions are simply a way of establishing openness, fairness and impartiality in NPO decision-making. Self-regulation by the NPO sector is important because of the role that it can play in enhancing democratic participation by NPOs in the management of their affairs. Among the claims made for it are the following:

- It allows for flexibility in rule-making and change - a quality which is said to be lacking in government legislation;
- It is a useful way of pre-empting the threat of legislation from government;
- It provides a way to involve both NPOs and government; and
- It supplemented regulations without determining an exclusive mode of compliance.

The inter-relationship between government regulation and voluntary regulation is complex. A fundamental requirement of this relationship is that there is meaningful dialogue between NPOs and government. Self-regulation is not simply a matter of applying codes of practices and rules and regulations to facts objectively given; fundamentally, it involves the problem of devising procedures that will work impartially.

Adiin-Yaansah suggests that this is a practical problem of administration, to be solved empirically, rather than by the analysis of theoretical issues (1997: 44). In

Gugerty's view the Kenyan self-regulatory system has both advantages and weaknesses (2007:12). The strengths of the system are that the Council of NGOs is a statutory body, participation is mandatory so the code is broad-based and governs all NPOs registered with the national NGO Board, and there are clear sanctions in place for non-compliance. On the negative side the registration process is obligatory rather than voluntary, there are no mandatory reporting requirements, and the system cannot provide strong signals of Organisational quality as it does not distinguish participants from non-participants.

The 'core values' are at the heart of the Kenyan self-regulatory framework. These principles are not intended simply as theoretical ideals, but as guidelines for giving practical content to the attempt by NPOs to carry out their activities in a transparent and accountable manner and with integrity. However, as Adiin-Yaansah points out, the model has two significant shortcomings (1997: 56). These are, firstly, its lack of an independent review body and, secondly, the fact that there are no clearly formulated procedural rules for dealing with complaints to the Council. Whether the provisions of the *Code of Practice*, and rules and regulations are best secured by the trial-type procedures which the model adopts, and by allowing NPOs themselves to adjudicate on complaints, or by setting up an independent body to deal with complaints (the technique widely used in many Commonwealth jurisdictions) are not clear.

While both Adiin-Yaansah and Gugerty find a range of positive elements in the self-regulatory system, they both agree that there is a need for amendments to the legislation in order to strengthen the system (1997, 2007). Recommendations are made for such amendments in the following areas:

- Address the weak regulatory power of the system resulting from lack of higher barriers to entry that are associated with professional training;
- Strengthen the Council of NGO's power to recommend NPO de-registration by narrowing down the broad aspirational code to enable the Council of NGOs to more easily identify appropriate reporting standards and violations of the code;
- Provide for an independent body (outside of the Council) to whom individuals or organisations that remain dissatisfied with the Council's decisions can appeal;
- Provide for a limited indemnity to the Regulatory Committee, that would allay the fears of the Council of NGOs in its adjudicative functions;
- Procedural rules that are formulated for dealing with complaints should meet minimum international standards of fairness, should seek to address power imbalances, be simple, non-bureaucratic and easy to understand and facilitate the expeditious hearing of complaints, and finally should spell out clearly, the rights, duties and obligations of the parties to the proceedings.

Kenyan legislation allows for NPOs to claim tax deductible or tax exemption status. For its income to be exempt from income tax, an NPO must have been established solely to relieve poverty or distress of the public, or to advance religion or education. In addition, the Commissioner of Income Tax must conclude that the income is expended either wholly within Kenya or in ways that benefit the residents of Kenya (Income Tax Act, 1st Schedule, Cap 470, s. 10 as amended by legal notice No. 6 of 2001). Income consisting of profits from a business is subject to an additional restriction. Such income is exempt from tax only if it meets the criteria in the previous paragraph *and* if one of the following is true:

- The business is carried on in the course of advancing the Organisation's stipulated purposes; or
- The business is conducted mainly by beneficiaries of those purposes; or
- The gains or profits consist of rents (including premiums or similar consideration in the nature of rent) received from leasing land and attendant chattels.

As of January 1, 2007, individuals and corporations generally can deduct any cash donations from their income tax to a charitable Organisation, provided the charitable Organisation:

- Is registered or exempt from registration under the Societies Act or the Non-Governmental Coordination Act, 1990:
- Its income is exempt from tax under the provisions above.

The same applies to any project approved by the Minister of Finance. Expenditures of a capital nature by a person on the construction of a public school, hospital, road, or any similar kind of social infrastructure can be deducted as well with prior approval of the Minister. Furthermore, deductibility is permitted for expenditures on scientific research to advance the donor's business, including sums paid to approved scientific research institutes or universities, provided certain conditions are satisfied.

Under Regulation 30 of the *NGO Co-ordination Regulations 1992*, if an NPO seeks exemption from VAT on goods and services required to meet its objectives and on income generating activities, an application must be made through the NGO's Board to the Minister for Finance. "Social welfare services" provided by a charitable Organisation are VAT exempted, provided the Organisation satisfies two criteria:

It must be registered under the *Societies Act* or *NGO Act*, or exempted from registration by the Registrar of Societies or the NGO Co-ordination Board; and its income must be exempt from tax under the Income Tax Act and approved by the Commissioner of Social Services. In terms of the *VAT Act, 3rd Schedule* such services are not treated as taxable supplies, and no VAT is charged on them. The *VAT Act* also exempts services to members performed by trade, professional, and

labour associations, as well as educational, political, religious, welfare, and other philanthropic associations. In addition, accommodation and restaurant services are exempt in establishments operated by charitable or religious Organisations, and certain foods are also VAT exempt. Zero-rated supplies include gifts to registered societies or NPOs (or societies or NPOs exempt from registration) whose income is exempt from income tax if they meet certain criteria.

7.1.4 Code of Good Governance

The National Council of NGOs has, with the approval of the NGO Co-ordination Body, developed an NGO Code of Conduct for Kenyan NGOs. The code is a guideline for all NGOs operating in the country and embraces the development ethos of all the registered NGOs in the country. If any person feels that an NGO has breached the code then such a complaint may be directed in writing to the NGO Council.

Kameri-Mbote has outlined the key aspects of the code of Conduct (2002: 10). The Code establishes a Regulatory Committee consisting of a chairperson, an advocate of at least ten years standing elected from amongst three nominees of the Law Society of Kenya, one person elected from amongst members of the Board of Trustees, four persons elected by the General Assembly and a chief executive officer (who is also an ex-officio member and secretary). The Regulatory Committee enforces the Code of Conduct and it is answerable to the General assembly. Its duties include:

- Promoting adherence to the Code;
- Regularly reviewing the Code;
- Reviewing applications by potential members for registration;
- Compiling reports by the General Assembly; and
- Recommending the cancellation or suspension of NPO certificates of registration.

The Code of Conduct sets out values such as probity, self-regulation, justice, service, cooperation, prudence and respect. According to Kameri-Mbote most NPOs in Kenya are members of NGO networks, and she argues that this is "true to the spirit of the Code". The purpose of these networks is to rationalise the activities of NPOs working in the same or similar fields, or geographical/administrative areas; by sharing experiences and cooperating to achieve their various goals.

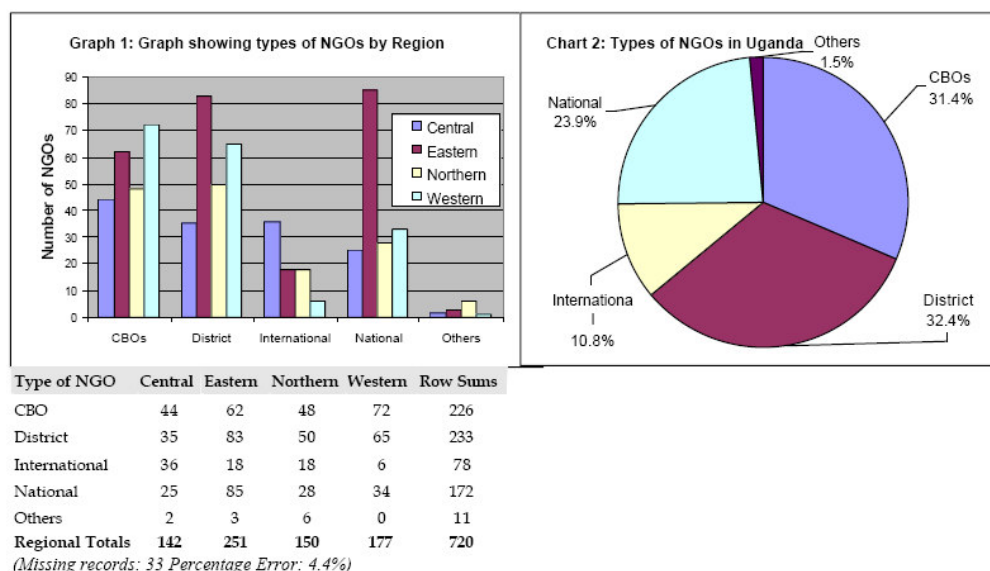
There are basically informal fora for the exchange of views and information. For example the Green Belt Movement (GBM) has maintained links with numerous environmental groups and organisation at the local, national, regional and international level. This networking has enabled the GBM to establish a strong African environmental movement based on sharing of experience of experiences and information. There are currently over 14,000 NPOs under the umbrella of at least 20 NPO networks and associations in 10 countries in the East and southern Africa sub-

region. All of these NPOs are required by the Regulatory Committee to abide by the principles and values set out in the Code.

7.2 UGANDA

7.2.1 General NPO Activity

Uganda has experienced a turbulent social, economic and political history in the post-colonial period. Civil war, the repressive Amin regime, the insurgency of the Lord's Resistance Army, conflict on its borders and the lengthy period of post-conflict reconstruction and stabilisation under Museveni's National Resistance Movement (NRM) have posed enormous challenges to the emergence of a dynamic civil society sector. The post-1986 period brought major inflows of donor funding and this saw the re-emergence of NGOs and CBOs, focusing strongly on service delivery. The NRM has followed a dirigist approach to national development, with CIVICUS finding that the state has succeeded in re-emerging as a centralising force in Ugandan society with the support of influential donors who fund close to half of the government's budget (2006: 24).



Source: NGO Forum Report 2003

The Civil Society Index Project has found that the majority of civil society organisations in Uganda are urban-based or urban-oriented, and that the sector is very diverse and dominated by socially inclusive small community groups. In the

view of the CSI report this reflects “broad, rather than ‘deep’ citizen participation, with a focus on social, rather than political activism” (2006: 37). There are also a number of different umbrella organisations within Uganda’s civil society. According to the CSI report these umbrella organisations include worker’s apex organisations, student bodies, peasant cooperative unions, faith-based (religious) apex organisations and business sector and manufacturers’ movements, and NGO/CBO umbrella organisations (2006: 31).

There is an overall sense that civil society in Uganda has limited autonomy, reflected in De Coninck’s analysis that civil society has been closely enmeshed with the state, and that the demarcation between civil society and the government remains blurred (2004: 7). Under Uganda’s Poverty Eradication Action Plan (PEAP) NPOs are increasingly moving towards sub-contracting arrangements for the delivery of services on behalf of government.

7.2.2 Legal Environment and Good Governance Practices

The *Local Government Act* (1997) provides space for NPOs to operate, but does not specify how their operations should be integrated and aligned with government’s broad national development priorities or with district development plans. The Act does, however, make the executive committee of the district local council responsible for monitoring and coordinating the activities of NPOs (CIVICUS, 2006: 46). The registration and oversight of NPOs was previously determined by the *Non-governmental Organisations Registration Act*, passed in 1989.

This Act provided for a Registration Board within the Ministry of Internal Affairs. Any application to register as an NPO was subject to a fairly stringent assessment process, registration certificates were only issued for a specified period of time and application for renewal of registration had to be obtained from the Registration Board in the capital. Registration requirements included having a bank account, a strategic plan and a constitution.

The functions of the Registration Board were determined in the Act as follows:

- To consider applications for registration by Organisations;
- To keep a register of registered Organisations;
- Guide and monitor Organisations in carrying out their services;
- To make recommendations to the relevant authorities in regard to employment of non-citizens by an Organisation or whether an Organisation may be exempted from taxes and duties or be accorded any other privileges or immunities;

- To advise the Minister on the general policy relating to the operations of Organisations.

In terms of the Act the Board has the power to approve or reject applications for registration, grant or revoke certificates of registration; and do all such things as are incidental or conducive to the proper carrying out of its functions. This Act was replaced by the NGO Registration (Amendment) Act in 2006. There has been some concern in the NPO sector that the NPO Registration (Amendment) Act is premised on very narrow objects which do not reflect a comprehensive understanding of the NPO sector as they are not based on or responsive to an NPO policy.

The specific concern that the NPO sector has with the law is that the Act is premised on very narrow objectives that are guided by a desire to control the operations of NPOs and other civil society organisations. Generally, the underlying objectives of the Act include:

- Modification of the functions of the NGO Board to include monitoring the operations of NPOs and developing policy guidelines for CBOs;
- Introduction of a periodic permit;
- Streamlining registration and clarifying corporate legal identity;
- Recomposing of the NGO Board to make it more representative and gender balanced; and
- Expanding the powers of the Minister to regulate winding up of NPOs.

The narrow scope of the objectives suggests a perception on the part of government that the operations and activities of NPOs should be rigorously monitored and controlled. Save for the objective regarding representation on the NGO Board, the rest of the objectives are about "control." Indeed, the amendments introduced by this Act achieves the rest of the objectives save for the one regarding representation where no provision is made to cover the representation of NPOs. The NGO Act further limits freedom of association and strengthens state control over Uganda's NPOs. The Act provides that NPOs will not only have to register with the NGO Board but also have to acquire a special permit from the Board before they can legally function. Neither the precise nature nor function of the permit is defined, but the Minister of Internal Affairs is empowered to make regulations "prescribing the duration and the form of a permit." In other words, the minister has effectively been given free rein to set conditions for the permits without having to submit these for prior parliamentary approval.

One positive aspect of the Act is that it has become more gender responsive, requiring that in future no less than one third of the members of the NGO Board are women. It also broadens the NGO Board's composition, although the new members would be drawn almost exclusively from several government ministries not

previously represented. The Act adds officials from the health, agriculture, tourism, gender and education/ sports ministries, reflecting the extent to which NPOs have become active in issues related to public health, protection of the environment, women's rights, and in other social and cultural areas. The Act makes no provision, though, for appointing NPO representatives to the NGO board, for transforming it into an independent registration and oversight body, or for subjecting its decision-making to judicial oversight and review. In fact the Act envisages that the NGO Board will remain firmly under the government's direct control.

The Act increases the NGO Board's power to reject or terminate NPO registrations by stipulating that the NGO board can reject any NPO whose objectives "as specified in its constitution are in contravention of any government policy or plan, or public interest". This enables the government, through its control of the NGO Board, virtually limitless powers to interfere with legitimate NPO activities and, effectively, to order the closure of any NPO deemed to have criticized the government or its policies. Under these conditions NPOs that declare a commitment to human rights in their constitution could be held to be in contravention of certain aspects of government policy, and barred from existence.

The Act makes individuals as well as their Organisations directly liable for any breaches of the law, such as operating without official registration, which constitutes a criminal offence leading to possible imprisonment. This is an important change from the previous Act, which provided for punishment of individuals only as default, in the case that an NPO failed to pay a fine levied against it. According to the *NGO Act*, an Organisation that continues to operate after its permit has expired or its registration has been withdrawn, or that contravenes the law in any other way, "is liable on conviction to a fine not exceeding twenty-five currency points". In addition, it states: "any director or officer whose act or omission gave rise also commits the offence" and is liable on conviction to a fine not exceeding fifty currency points or to a period of up to one year's imprisonment.

The Act lists terms of imprisonment and fines as equal alternatives, with the judge apparently having discretion to choose between them. Compared to the previous Act, this would increase the likelihood that individuals could be sent to prison solely on account of their legitimate exercise of their internationally recognized right to freedom of association. The Act also increases the level of financial penalties: currently, with the new limit increased to fifty currency points, i.e. 1,000,000 Ugandan Shillings (about U.S. \$600). In Uganda, this is the equivalent of about three months' salary for a full-time teacher, and some NPOs would face serious financial difficulties if they were required to pay such a sum.

Human Rights Watch has noted that the drafters of the proposed new law make no attempt to lay the ground for a constructive relationship between NPOs and the

government by, for example, institutionalizing channels of communication and cooperation or providing for NPOs representation on certain state bodies. The emphasis seems to be on narrowing the rights guaranteed to the individual, not strengthening, and potentially criminalizing legitimate NPO work. In their view the Act imposes limits on freedom of association that exceed those permitted under international law.

7.2.3 NPO Self-Regulation and Administration

Working through the coordination efforts of the Uganda National NGO Forum the country has launched a self-regulating instrument called the NGO Quality Assurance Mechanism (QuAM). The QuAM was specifically developed for NPOs, CBOs and NPO networks. The over-arching goal of the QuAM is to promote adherence to generally acceptable ethical standards and operational norms. The QuAM sets out the principles, norms and standards that NGOs are expected to adhere to, with the purpose of ensuring that the credibility and integrity of certified NPOs and NPO networks is ensured.

The QuAM is built around quality standards, which are defined as benchmarks or targets that an organisation commits itself to achieve. There are 59 standards in total under the QuAM, with 32 minimum standards and 27 standards for further improvement. The standards are categorised under three sections: (i) the NPO as an organisation, (ii) NPO programmes and activities and (iii) further improving performance. Under the QuAM there are three certification levels for NPOs: (i) provisional certification, (ii) certificate, and (iii) advanced certificate, and each certificate has its own set of minimum standards. The provisional certificate is awarded to NPOs that have recently been established and only meet selected minimum quality standards. A full certificate is awarded to NPOs when all the minimum quality standards have been achieved. The advanced certificate is awarded to any NPO that has met all the minimum standards, as well as all the standards for improvement.

The certificates issued under the QuAM are valid for an initial period of two years, renewable after a follow-up assessment for consecutive periods of three years. Obtaining an NPO Quality Assurance Certificate is not a legal requirement in terms of the *NGO Registration Act*, but once issued the provisions of the certificate are binding on the NPOs. In order to make the QuAM sustainable and to build ownership and commitment, a small charge is levied to cover operational and administrative costs at the district level. A certificate can then only be obtained if the candidate NPO

has paid the non-refundable fee. Certificates can be revoked if the agreed standards are contravened in a manner that impacts negatively on the credibility of an NPO or on the sector in general.

There is no overall policy framework for NGOs in Uganda (CIVICUS, 2006: 49). Tax exemption for CSOs was scrapped in 1995. Currently, while NPOs are not liable for paying corporation tax, they are expected to pay taxes on salaries, as well as on goods and services (VAT).

7.2.4 Code of Good Governance

The Uganda NGO Forum has developed a Generic Code of Conduct for the NPO sector. In the preamble of the code the NGO Forum emphasises the key development role that NPOs play in Uganda's development process, and stress the need for NPOs to regulate their internal behaviour. On the basis of this view the NPO sector in Uganda was encouraged to develop a concrete mechanism to protect their credibility and integrity and to offer them a framework for ethical behaviour. The resulting *NGO Generic Code of Conduct* provides for the self-discipline, regulation and mechanism of restraint for NPOs and CBOs operating in Uganda under the Uganda National NGO Forum as guided by the core values and principles of identity agreed on. The *Code of Conduct* is implemented by a National Code of Conduct Committee elected by the NGO Forum National Council and assigned tasks drawn up and approved by the General Assembly. The General Assembly has the power, after recommendations from the National Council, to decide the final course of action if an NPO is in contravention of the provisions of the Code.

A member NPO can become a subscriber to the Code once they have signed an Acceptance Form with the Uganda National NGO Forum Secretariat. From that point onwards a member NPO is bound by the provisions of the code under the registered relevant laws of Uganda, until such time as they are removed from membership by the General Assembly or voluntarily withdraw.

The Code of Conduct sets out the agreed upon values, culture and identity for NPOs subscribing to the Code. The Code stresses the values of voluntarism and service, and notes that this philanthropic spirit should at all times motivate members to assist in cases of emergency occasioned by natural and/or man-made causes. The Code emphasises consultation and participation, with a focus on the capacity to listen to and seek to understand the views of all stakeholders along the principles of participatory development.

The Code binds members to the principles of collective action and responsibility, accountability and transparency, as well as mutual respect and non-interference. The Code makes provision for fair and equitable engagement for the settlement of

conflict in matters regarded as internal to a particular NPO. The Code also calls for equity and gender parity, together with a respect for Human Rights.

In accordance with the constitution of the Uganda National NGO Forum a *Code of Conduct* for NPOs registered with the Forum must be established for the purpose of self-discipline and self-regulation and for arbitration in a situation of internal conflict under the general guidance of a Code Committee elected by National Council of The Uganda National NGO Forum. The Code Committee must be comprised of members from each of the thematic categories, representatives from international NPOs, and representative from the Umbrella organisations and Networks. The functions of the Code Committee are to examine concerns presented to it, under this code, examine whether or not a particular NPO has contravened the provisions of the Code or those of the Constitution of the National NGO Forum, inquire or cause an inquiry to be conducted on any complaint received for an alleged contravention of the provisions of the Code. The Code Committee is also tasked with recommending to the National Executive Committee and Council any action that it deems appropriate in the enforcement of the code, as well as arbitrate in the case of some industrial dispute as a mechanism for just action. The aims and objectives of the Code are as follows:

- To guide NGOs in adhering to the provisions of the constitution, as well as to the values, culture and identity under which such NPOs are registered;
- To answer calls of such marginalised members of society, through activities designed to address such marginalisation provided that such activities are backed by the support of the beneficiaries of such action;
- To maintain good working relationship with the various levels of a constitutionally constituted government and local authorities;
- To resolve through dialogue and co-operation any actions likely to result in abuse, duplication of efforts and wastage;
- To periodically recognise such NPO(s) that have had exemplary performance in order to encourage good practice.

All member NPOs are required to account for all funds received and must undertake an audit of all financial receipts and expenditures by a reputable and fully registered audit firm at the end of every financial year. It is expected that such audited accounts will be presented for review by beneficiary members who are the core stakeholders of the organisation. Failure to prepare and audit accounts for a consistent two year period will be construed as a lack of honesty and an undermining of public trust. The Code notes that any person holding NPO office positions cannot accept gains or gifts that amount to allowances that are not for the defined purpose of the NPO's delivery of service remit. Seeking to use the property of the organisation, award of contracts, and any other favours that are received outside of the organisation's remit is construed under the Code as a profit motive and therefore

contrary to the principles of the Code. NPOs are entitled to hold properties in trust of their Membership but such property cannot be converted into personal use by staff, Board or Committee members or volunteers. On dissolution of a particular NPO properties that have accrued must be used for beneficiaries that the NPO was supporting and as guided by the Constitution of the affected NPO.

The Code requires that member NPOs endeavour operate in a transparent and accountable manner with regard to all relevant stakeholders, and that information sharing and collective responsibility become a fundamental element in NPO self-regulation and development. The Code stresses the issue of accountability within the context that NPOs exist for the benefit of the poor and marginalised in the society. The Code also notes that it is incumbent upon every legally registered NPO that subscribes to the Code to demonstrate evidence that beneficiaries were fully engaged in the decision-making process of projects to ensure sustainability. NPO that do not show such evidence will be deemed to have contravened the principle of participatory governance.



7.5 ZIMBABWE

7.5.1 General NPO Activity

The NGO sector grew exponentially in Zimbabwe in response to a variety of social, economic and political challenges facing the country. This growth in the sector saw many prominent NGOs increase their influence and presence in the country as a result of Zimbabwe's complex socio-political terrain, and this in turn has brought increased responsibilities and public accountabilities. The NPO sector in Zimbabwe, in both the pre- and post-liberation period, has been characterised by its often outspoken and contestatory relationship with the state. Following the long period of colonial rule, the internationally-rejected UDI regime of Ian Smith and the long, bitter liberation struggle Zimbabwe finally achieved independence and experienced its first free democratic elections in 1980. In the pre-independence period many NPOs and CBOs had worked in the interests of human rights, democracy and racial equality, and as such had been subject to state repression, particularly during the long liberation struggle.

In the immediate post-liberation period the newly-elected prime-minister Robert Mugabe adopted a conciliatory stance, emphasizing national unity, reconciliation and the need to overcome the conflicts of the past in the interests of building a common future. The first government he formed included not only members of his victorious Zimbabwe African National Union - Patriotic Front (ZANU-PF), but also the leader and other members of its rival, the Patriotic Front - Zimbabwe African People's Union (ZAPU), as well as a number of white members. The government followed a largely pragmatic set of social and economic policies that respected the property protection clauses entrenched in the constitution and sought to establish a corporatist solution to resolving labour conflicts through joint state, capital and labour involvement, culminating in the *Labour Relations Act* of 1985 that formalized this strategy (EISA, 2008).

The economic boom that followed was tempered by recurring droughts, a world-wide recession, shortages of foreign exchange and the drain of skilled labour as white emigration increased. Measures to stabilise the economy managed to reduce inflation and the growing state and trade deficits, but at the expense of economic growth, which fell from 11% in 1980 and 10% in 1981 to an average of 1.9% between 1983 and 1985 before rising to an average of 4% between 1986 and 1990 (Kanyenze 2004, 112-114).

In the immediate post-independence period the state generally lacked the financial and human resources necessary to engage in meaningful land reform and promises of assistance from the United States and Britain were not realised. Moreover the urgent need to restore an economy ravaged by war and sanctions forced the

government to prioritise the needs of commercial farmers at the expense of peasant expectations and the huge inequities in land distribution remained. The land issue, so central to nationalist mobilisation of peasants during the war, remained an issue as illegal land occupations took place encouraged by sections of the ruling party. It was, however, a period of significant social development, with major strides taken in strengthening the health and education sectors, and NPOs played an important role in supporting government initiatives in these areas.

ZANU-PF won a comprehensive victory in the 1990 House of Assembly elections, as did Robert Mugabe in the concurrent presidential elections. Although the ZANU-PF politburo voted against the establishment of a one-party state in August 1990, the 1990s were marked not only by economic hardship but also by various initiatives by Mugabe to erode the space for political and civil society opposition to function and to consolidate the dominance of ZANU-PF. In 1990 the *University Amendment Act* was passed to tighten control over student activism; in 1991 amendments to the constitution restored corporal and capital punishment, and recourse to the courts in cases of compulsory land acquisition by the government was abridged. In 1992 the *Labour Relations Amendment Act* was aimed at bringing workers and the trade union movement under tighter control, while the provisions of the old *Private Voluntary Organisations Act* were used to reduce the autonomy of civil society bodies (EISA, 2008).

The opposition parties were increasingly fragmented, and the leadership of opposition forces increasingly fell on the Zimbabwe Congress of Trade Unions led by Morgan Tsvangirai, which organised demonstrations against the *Labour Amendment Act* and the World Bank-enforced Economic Structural Adjustment Programme. The growing government fiscal deficit and foreign debt resulted in the imposition in 1991 of a World Bank designed Economic Structural Adjustment Programme (ESAP) that included the floating of the exchange rate, elimination of most controls on prices and wages, the liberalization of regulations governing trade and investment and a reduction in the size of the state bureaucracy and state consumption spending. Severe drought in 1992 and a lesser one in 1995 exacerbated the situation created by exposing the Zimbabwean economy too quickly to foreign competition, accelerating inflation and lack of fiscal discipline on the part of the government.

In January 2000 President Robert Mugabe announced that a new draft constitution would be put to the electorate in a referendum in February. The December draft allowed President Mugabe to serve two more terms and to dissolve Parliament without cause and also granted government officials immunity from prosecution and sanctioned the seizure of white-owned commercial farms without compensation. In the referendum the proposal was rejected by 53% of the voters, but voter turnout was extremely low (26%). This defeat stunned the ruling party and revealed the

strength of the opposition MDC, and in the period after the referendum local and international monitors reported a marked increase in human rights abuses and harassment of NPOs.

Towards the end of February 2000 white-owned commercial farms were illegally and often violently invaded by land-starved rural poor people led by the war veterans and it quickly became apparent that the government condoned these actions and may have initiated them. In July 2000 the government launched an initiative that aimed at speeding up the identification and acquisition of 5 million hectares of land and its settlement, along with the provision of agricultural, economic and social infrastructure using national rather than donor resources. By mid-2001 the Commercial Farmers Union (CFU) reported that 95% of commercial farms (8.3 million hectares) had been listed for appropriation, and by the end of 2003 the CFU estimated that less than 900 of the original 4500 commercial farms in 2000 were still operating.

The immediate effect of the land invasions was to sharpen the simmering conflict between the judiciary and the executive as the government ignored repeated court rulings that the law be enforced and that the government remove the invaders. The land invasions further undermined the already fragile economic capacity of the country as commercial agriculture and related activities contracted. GDP fell by 30% and unemployment, already high, rose to about 70% and about 80% of the population were living below the poverty line by the end of 2001.

The state budget deficit before borrowing ballooned as did domestic debt and the arrears on foreign debt, while inflation soared from the high level of 198% in December 2002 to an unmanageable 623% in January 2004 (Kanyenze: 2004, 132). Robert Mugabe responded to the challenge presented by the new opposition by intensifying control of ZANU-PF through silencing political and civil society dissent, sidelining opponents within the party and filling key positions with loyalists. The MDC and NPOs, both national and international, were subject to attack and harassment in different ways and on various levels and most reports suggest that this had intensified in the period up to and following the 2008 House of Assembly and Presidential elections.

In summary, the government has introduced and selectively used legislation to restrict the rights of the majority of NPOs to freely associate, assemble and express themselves - rights that are internationally recognized. These rights are also guaranteed in Zimbabwe's Constitution and the *African Charter on Human and Peoples' Rights*. The most controversial pieces of legislation include: the *Broadcasting Services Act*, the *Public Order and Security Act*, the *Access to Information and Protection of Privacy Act*, the *Miscellaneous Offences Act*, the *Electoral Commission Act*, the *Private Voluntary Organisations Act* and the as yet

unsigned *Non-Governmental Organisations Act*. Specific provisions of these laws have been used by the government to narrow the space for open public debate, silence those perceived to be critical of its policies, and to shield itself from domestic and international scrutiny in ways that have been condemned by the African Commission on Human and People's Rights.

In 2008 the political situation in Zimbabwe deteriorated with disputes arising over the legitimacy of the March general elections and the run-off presidential election in June. This period has been characterised by reports of violence, intimidation and the harassment of both local and international NPOs seen to be sympathetic to the opposition Movement for Democratic Change (MDC). The National Association of Non Governmental Organisations (NANGO), which claims to represent over 1000 NPOs operating in Zimbabwe, issued a statement noting that the prevailing conditions were not conducive for a free and fair run-off election and the strengthening of democratic governance⁴⁵. In particular NANGO noted that the following conditions were impacting negatively on the operations of NPOs in Zimbabwe, and specifically in the areas of human rights, democratic governance and election monitoring:

- The escalation of politically motivated violence, harassment and intimidation of not only political activists but also of innocent civilians, particularly women, youth, children, election observers and polling agents. For example, ZESN's observers as well others from civil society Organisations for the 29 March harmonized elections have been subjected to severe attacks which have left some observers dead, 30 beaten and over 200 displaced and 14 with their homes and property destroyed;
- Increasing insecurity and fear amongst the general populace for retribution, making it difficult for people to freely participate in democratic and other development processes;
- The Ministry of Justice, Legal and Parliamentary Affairs reduced the capacity of civil society Organisations to observe elections in all the polling stations by reducing the number of observers from civil society to the extent that it is even difficult to deploy observers to even 20% of the polling stations. For instance ZESN observers were reduced from 8 667 observers that it fielded during the 29 March harmonized election to 500 for the run-off;
- In addition, NANGO members had earlier on raised concern over the re-issuing of new invitations for the run-off yet other procedures and laws for the two elections remained the same;
- The increase in the number of internally displaced people thereby disenfranchising many people of their right to shelter, food and to vote in their constituencies.
- Targeted attacks and harassment of civil society Organisations has made it virtually impossible for them to freely assemble and even continue with humanitarian operations.

⁴⁵ SANGONET brief on the situation in Zimbabwe at www.sangonet.org.za

NANGO has taken the position that these factors impact heavily on the fairness and legitimacy of the run-off election, that the election results would not be a reflection of the expectations of the people of Zimbabwe, and that the elections would not meet basic African Union and SADC protocols with regard to the conditions required for a free and fair election. NANGO called on the relevant authorities to open up broad based dialogue for the resolution of the political and electoral problems that are undermining democracy in the country and to create a framework that would pave the way for a new democratic dispensation acceptable to Zimbabweans, Africans and the World at large.

7.5.2 Legal Environment and Good Governance Practices

Regulation of the Non-profit sector is governed by the *Private Voluntary Organisations (PVO) Act* (No. 63 of 1966) and by the 2004 *Non-Governmental Organisations (NGO) Bill*. The *PVO Act* was introduced during the Smith regime as a means to clamp down on opposition within the context of military and police efforts to stem efforts by Zimbabwe's liberation movements to overthrow the Rhodesian government. The *Private Voluntary Organisations Act* definition of non-governmental Organisations included almost every association of civil society, including the media, trade unions and churches. Interestingly, the *PVO Act* remained on the statute books without amendment through the independence phase and the commencement of the Zimbabwean Constitution up to 2004, when new NPO legislation was proposed.

The proposed replacement *NGO Act* set out four clear objectives, based in principle on terms set out in the *SADC Social Charter* (2004: 4). The objectives of the Act, as stated, were:

- To establish an independent, responsible and self-monitoring system for civil society by providing for a framework for responsible and effective self-regulation and accountability of non-government organisations and thereby to increase public and donor confidence in the work of such organisations;
- To protect the rights of non-governmental organisations, work as an affirmation of the fundamental constitutional freedoms of peaceful assembly, expression and association;
- To promote the work of non-governmental organisations and to enhance their capacity to deliver public services by lobbying for such things as fiscal incentives and tax exemptions;
- To facilitate a constructive relationship between government and non-governmental organisations in order to advance the public good.

While the Act has yet to be passed by parliament the provisions of the original Bill remain in force. The stated objective of the *NGO Bill* was "to provide for an enabling environment for the operations, monitoring, and regulation of all non-governmental organisations". However, although Parliament passed the second reading of the

NGO Bill with only one substantial amendment the context of its passing was one characterised by heightened political tension. The tensions between civic Organisations, especially trade unions, NPOs, the independent media, and churches which occurred around 2000 following the general election, led to a clampdown by the government on NPOs perceived as launching opposition political activity and as not complying with the *Private Voluntary Organisations Act*. The genesis of the *NGO Bill* was an effort by the government to regulate the deteriorating relations between the state and civil society Organisations opposed to the increasing political repression and intolerance. The *NGO Bill* was also an attempt to strengthen regulation over external donors, based on the perception by government that donor funds were being used for opposition political party support and the need to curb this activity.

The 2004 Bill was perceived by NGOs as retrogressive and as violating the right to freedom of association, significantly extending government control over Organisations provided for in the *PVO Act*, which the *NGO Bill* was in effect repealing. The International Bar Association finds, however, that the *NGO Bill* is almost identical to the *PVO Act* and constitutes “a far-reaching and draconian law clearly designed to exert full and complete control over non-governmental organisations and other human rights and development organisations in Zimbabwe” (2004: 2).

Human Rights Watch noted that the main difference between the *NGO Bill* and the *PVO Act* is that the new Bill tightened the surveillance and control mechanisms of government on NPOs over the already substantial government powers of control in the *PVO Act* (2004: 1). The definition of NPOs is made wider than in the *PVO Act*, and the *NGO Bill* eliminates exemptions from registration in the *PVO Act*. The Bill also introduces new prohibitions against the registration of foreign NPOs and access to foreign funding of local NPOs engaged in issues of “governance”. The Bill also increases the imbalance in the composition of the NGO Council in favour of government, augments the Council’s and the Minister’s powers to regulate the internal affairs of associations, and imposes repressive new requirements on NPOs.

The Bill makes provision for an NGO Council, appointed by the Minister of Public Service, Labour and Social Welfare, which is mandated to govern the registration and deregistration of NPOs. NPOs have to register annually and pay annual registration fees. As part of registration NPOs are also required to have an annual budget, identifying inter alia, local and foreign funding sources. The *NGO Bill* provides for an appeal process in some areas, making this the singular improvement compared with the *PVO Act*. However, as in the *PVO Act*, there is no right of appeal, other than to the Minister, for challenging NGO Council decisions on registration and de-registration. In response to the Bill the LWRC noted that the Bill violated the international Convention on Civil and Political Rights (ICCPR) which Zimbabwe had

signed and ratified⁴⁶. In particular, Article 22 (regarding the right to association), Article 19 (Regarding the right to expression), and Article 22(2) which provides that *"no restrictions may be placed on the exercise of [the right to freedom of association] other than those [...] which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."*

In the view of the LWRC the Bill also violates the Declaration on Human Rights Defenders, adopted by consensus of the General Assembly of the United Nations on December 9, 1998. In particular, Article 1, Article 5(b), Article 6 (c), and Article 12(2). LRWC notes that Zimbabwe has acceded to the *African Charter on Human and Peoples Rights* and draws attention to Article 9 (right to receive and disseminate information) and Article 11 (right of association). In 2002 LRWC reviewed the report of the African Commission on Human and Peoples' Rights after its fact finding mission and noted strong concern about the situation of human rights in Zimbabwe. This Bill seems to be put forward in the context of other laws which have restricted freedom in Zimbabwe including the *Broadcast Services Act* in 2001, the *Access to Information and Protection of Privacy Act*, the *Public Order and Security Act* in 2001, and amendments to the *Private Voluntary Organisations Act* in 2002.

Since 2002, civic Organisations deemed to be engaged in opposition politics have been targets of government's laws, notably the *Public Order and Security Act* and the *Access to Information and Protection of Privacy Act*. Regulations prohibit foreign funding for all NPOs, foreign and local, working on "issues of governance." The establishment and operations of foreign NPOs are prohibited if their sole or principal purposes involves or includes "issues of governance" (clause 9), 9, broadly defined to include "the promotion and protection of human rights and political governance issues".

In the period after the introduction of the *NGO Bill*, domestic NPOs continued to work on human rights and democracy issues, including lobbying for revision of the *Public Order and Security Act* and the *Access to Information and Protection of Privacy Act*, increasing poor women's access to the courts, constitutional and electoral reform, raising awareness of the abuse of children, conducting voter education, preserving the independence of the judiciary, and eliminating torture, arbitrary detention, and restrictions on freedom of the press and assembly⁴⁷. However, several NPOs have reported difficulties in carrying out their programmes in rural areas as district councils require that NPOs working in their districts register with the council, seek a council resolution authorizing their operations, seek clearance from the provincial governor, and establish a memorandum of understanding with the relevant

⁴⁶ www.lwrc.org

⁴⁷ U.S. Department of State, "Zimbabwe" (www.state.gov)

ministry⁴⁸. Rural district councils have reportedly begun implementing the "NGO Policy," although the *NGO Bill* is still in draft form⁴⁹. During 2005, the Government's clamp-down resulted in the closure of various HIV/AIDS programmes run by NPOs and churches as these facilities relied heavily on frozen international donor funds.

On January 7 2005, Itai Dzamara of the *Zimbabwe Independent* reported that, "donors from Europe and the United States have frozen further assistance to local NGOs due to the uncertainty brought about by the Bill"⁵⁰. NPO members have reportedly been arrested or detained in connection with demonstrations or marches in protest of similar closures⁵¹. As the economic and political crisis in Zimbabwe has worsened there have been increasing reports of the Zimbabwean government engaging in the harassment of NPOs believed to be opposed to government policies, including raids on NPO offices, inquiries into their activities, and interference in the renewal of work permits for foreign employees⁵².

The Government has continued to obstruct the activities of Organisations involved in humanitarian activities. The Zimbabwe Human Rights NGO December 2005 *Political Violence Report* noted that, "there is evidence that the government has obstructed efforts by humanitarian NGOs to render assistance to those affected by Operation Murambatsvina⁵³, which is contrary to the government's responsibility to protect"⁵⁴. Furthermore, despite overwhelming evidence of humanitarian need the Zimbabwean government has, "denied that a humanitarian crisis exists, refused to release a UN appeal for aid and repeatedly obstructed the humanitarian efforts of the UN and civil society groups"⁵⁵.

The U.S. Department of State reports that in July 2005, the African Union (AU) suppressed a report by the African Commission on Human and People's Rights (ACHPR) which included information on Zimbabwe's current conditions. The report, which contained allegations of government complicity in, or consent to, a wide range of rights abuses, including torture and arbitrary arrest of NPO members, opposition MPs and human rights lawyers, was due to be presented to an Executive Council meeting in July, but the Executive Council chose not to release it when Foreign Minister Stan Mudenge objected that the government had not been given the opportunity to review the report⁵⁶. On March 7 2006, NGO Watch and ZimOnline reported that Zimbabwe Justice Minister Patrick Chinamasa had announced that the government was presently "polishing up" the *NGO Bill* before it was brought back to

⁴⁸ U.S. Department of State, "Zimbabwe" (www.state.gov)

⁴⁹ U.S. Department of State, "Zimbabwe" (www.state.gov)

⁵⁰ The NGO Network Alliance Project: Newspaper archives: Zimbabwe NGO Bill (www.kubutana.net)

⁵¹ Zimbabwe Human Rights NGO Forum: Political Violence Report 2005 (www.kabutana.net)

⁵² Zimbabwe Human Rights NGO Forum: Political Violence Report 2005 (www.kabutana.net)

⁵³ Also known as Operation Restore Order, this was a large scale Zimbabwean government campaign to forcibly clear slum areas across the country. The campaign started in 2005 and according to United Nations estimates has displaced upwards of 2.4 million people (en.wikipedia.org)

⁵⁴ Zimbabwe Human Rights NGO Forum: Political Violence Report 2005 (www.kabutana.net)

⁵⁵ Amnesty International Public Statement: African Commission on Human and Peoples' Rights: Oral statement on Item 9: Human rights situation in Africa - Human rights in Zimbabwe (www.amnesty.org/library)

⁵⁶ U.S. Department of State, "Zimbabwe" (www.state.gov)

Parliament for enactment⁵⁷. The ruling party and the government are now finalizing changes to the *NGO Bill* but would not comment on what these changes are⁵⁸. "NGO experts say if the law is eventually enacted, it could force at least 60 percent of civic and aid groups to [cease] operations, a development that would affect the monitoring of human rights violations in the country as well as humanitarian work such as HIV/AIDS prevention⁵⁹."

7.5.3 NPO Self-Regulation and Administration

The main concern of the state is that the NPO sector in Zimbabwe is largely unregulated despite the sector having a huge chunk of development funds channelled through it. There has been little effort to develop and apply self-regulation or other effective form of regulation in the NPO sector. There is recognition, particularly within the membership of NANGO, that regulation within the sector is important and necessary. This is based on an understanding that in the longer term, having self-regulation systems that are respected by NPOs and their beneficiary communities alike will lead to a more effective NPO community that enjoys the confidence, trust and support of all its stakeholders. The issue in Zimbabwe has long been whether the sector should wait for the government to put in place a regulatory system or whether the sector should introduce its own regulatory mechanism.

There is consensus that the following factors are critical for taking the self-regulation agenda forward:

- It is not desirable for the day-to-day practice of NPOs to be policed by a government department as this undermines their independence;
- The sector is developed enough in Zimbabwe that it can self regulate;
- The state lacks the necessary capacity to effectively monitor, regulate, detect, deter, and punish illegal actions those Organisations that may deviate from accepted practice;
- The involvement of the state in the regulation of the NPO sector does not encourage the growth of the sector and does not encourage donor confidence in the sector;
- The sector now appreciates that self regulation firstly send a powerful statement to donors, beneficiaries, and other interested parties about the integrity of the sector; secondly that because of the existing tensions between government and civil society, the state is more prepared to regulate the NGO sector as a means of curtailing its independence, and influence than it is willing to regulate the other sectors; and thirdly NPOs recognize the need to go beyond the law to promote higher standards for internal governance and external accountability.

⁵⁷ The Zimbabwean News Briefs: NGO Bill being 'polished' (www.thezimbabwean.co.uk)

⁵⁸ NGO Watch: ZimOnline: Harare 'Polishing Up' Controversial NGO Bill (www.ngowatch.org)

⁵⁹ NGO Watch: ZimOnline: Harare 'Polishing Up' Controversial NGO Bill (www.ngowatch.org)

From a review of self-regulatory processes in other countries – for example in the Philippines, Uganda and Brazil – it is evident that self-regulation can be an effective tool in reclaiming civil society space from government as it effectively removes the need for government to regulate the sector. In addition, self-regulation reflects the commitment of NPOs to effectiveness, accountability, high standards and ethics, participatory processes and good governance. While some attempts have been made to self regulate, for instance the Code of Conduct that applies to NANGO members, these have tended to be weak as they have no enforcement mechanisms and the use of the Code is voluntary.

Given the depth and diversity of the sector in Zimbabwe it would not only be desirable but strategically important that an independent, effective and professional regulatory authority be set up regulate the NPO sector in Zimbabwe as a self regulatory mechanism for the sector. What is equally clear, however, is that under the prevailing economic and political circumstances in the country, such a task is in all likelihood unachievable and that such an initiative will need to wait for an acceptable political settlement to be achieved.

Supported by NANGO proposals have been made for the establishment of a broad-based and broadly accepted self-regulation mechanism in Zimbabwe. In the context of existing legislation the Ministry of Public Service, Labour and Social Welfare would continue to register NPOs. However, the role of regulating the sector would lie with the regulatory authority, which would maintain a separate register of all NPOs. The body would be responsible for monitoring, advice and support to the sector, as well as coordination of information within the sector. The role would ensure the activities of NPOs conform to agreed upon NPO roles and that these activities are aligned with their stated objectives.

In addition, the body would be responsible for developing best practice in areas such as governance and accounting practices. The authority would be responsible for drafting and enforcing the codes of conduct, investigating abuses/complaints and providing continuing education on best practices for NPOs, and shaping policy for the sector.

More importantly, the authority would be responsible for providing certification for those NPOs that are complying with the internationally accepted standards of good governance. Since certification signifies to all stakeholders that the NPO in question has in place good structures, officers will have to physically conduct an onsite inspection of the NPO to satisfy themselves that the structures are in place. Some of the issues required can be proved to the authority by the NPO producing audited statements from chartered accountants and a host of other certifications that prove prima facie compliance, for example through ISO certification.

Certification from the regulatory authority would state that the NPO complies with the set standards and can therefore be trusted with funds. It would also serve to distinguish legitimate NPOs from those that were operating outside of the established parameters. It is important to note that whilst certification would streamline the NPO sector, all NPOs that have good practices and comply with the set standards would receive certification regardless of their size and capacity. This would necessitate some kind of grading so that the certification reflects the capacities of the various NPOs.

A very important factor in the successful function of the body would be the level of buy-in from the donor community, in that if the donor community agrees to fund only those NPOs that have submitted to the regulatory authority and follow the internationally recognized standards and practices that would be established, monitored and enforced by the regulator, and have received certification by the authority, this would force all NPOs to submit to the authority.

The second determining factor would be the availability of resources to establish a meaningful infrastructure, in particular a workable information and communication technology system. The availability of adequate resources would enable the body to hire and retain competent and professional staff, while at the same time not sacrificing its independence in search of resources. Clearly significant resources would initially be required for educating the sector and the public on the work and benefits of the NPO sector and the role of the regulatory body. The success of the body would hinge on it being viewed as having integrity, competence and independence.

Clearly, designing and establishing a competent concept for this body and the actual setting up of the body would require significant resources. A decision would need to be taken to make the resources available so that those who are tasked with refining the concept and implementing it are able to effectively research and travel to see how other similar bodies are constituted and how they function. Proper informed planning is imperative. Self-regulation is not simply a matter of applying codes of practices and rules and regulations, but also involves the development of procedures that will work impartially.

It is also in the interests of donors that there is a regulatory authority because it also gives them peace of mind in that they will know that the NPOs that they are funding follow good practices and that there is recourse if funding is mismanaged or abused. Further it gives the added security that the funds of registered charities are being used as required by the organisation's founding document. The authority should have the power to impose both monetary and non-monetary sanctions including de-certification in the event of non-compliance or other irregularities. It would be in the

power of the authority to act in order to maintain the integrity of the NPO sector, retain public confidence and increase funding opportunities.

The authority would have the role of publicising its membership (and its expulsions) as well as its standards. This would give added confidence to the public with regard to the integrity and operations of its member Organisations. The authority should also be able to identify possible conflicts of interest, possible corruption and possible illegal activity at an early stage and must identify and put in place mechanisms that allow it to do so including carrying out spot checks.

Certification by the regulatory body will become an important criterion in selecting an Organisation to receive funds. It is important that there be more benefits from certification than just receiving funds. It would be expected that NPOs that do not require public, state or donor funds also subscribe and thus enable total sector-wide compliance and monitoring to maintain the integrity of the sector. Decisions by the authority would be challenged through the regular judicial processes.

The role of the regulatory authority would not be to regulate the kind of activities NPOs engage in. Rather, it would be to ensure that NPOs are responsible to their constituencies, that they have transparent governance structures, and that they are financially responsible. Diversity in the sector is encouraged and the regulatory authority would need to proceed on that basis. The question is whether it would be possible to regulate a sector as diverse as this and whether attempts to so regulate it would not curtail diversity. The basic response is that good governance and financial responsibility remain the same regardless of what the NPO is engaged in. The basic assumption of course is that all NGOs are operating within the law.

The following issues would need to be taken into consideration in considering the structure of the regulatory authority:

- The authority is independent and yet a self-regulatory mechanism in that it is an independent secretariat headed by a chief executive office and that it is not a state initiative but rather an NPO initiative. As time goes on it may become a statutory body;
- Care would need to be taken that the regulatory authority does not become the purview of the elitist NPOs, so care needs to be taken at an early stage to make the process as inclusive as possible without hampering progress;
- The lack of a legal instrument which provides for a statutory body does not prevent the formation of such a body, and NANGO already has the mandate from its members to strengthen civil society in Zimbabwe;
- Even though the initiative for the regulatory authority is from NANGO, the authority must be independent of NANGO. As perception is important, it is necessary that independence exists at a substantive level;

- More consideration is required around the issue of the legal persona of the regulatory authority, for example whether it should be registered as a trust, private company limited by guarantee or as an NPO;
- The question of funding goes to the heart of the independence of any institution. It would be beneficial if a solid commitment could be obtained from independent donor agencies in Zimbabwe such as the UNDP, EU, USAID and DFID for firm commitments to fund the establishment and running of the body so that the body does not become beholden to individual NPOs. In the United States for example large donors such as The Ford, Mott, and Bill Gates and George Soros foundations fund the regulatory bodies because it is in their interest that the sector they fund and work through is well regulated.

For good governance purposes there should be an NPO Board comprised of representatives from key sectors, but with majority representation from the NPO sector itself:

- NGO sector representatives;
- Church representatives;
- Members from the business sector;
- Members from government;
- A retired judge who should chair the board.

The Board would have oversight over the secretariat. The secretariat would be headed by a chief executive officer, and below the chief executive would be managers responsible for critical functional areas such as communications, IT, training and development, certification, monitoring and evaluation, and governance.

Zimbabwe's National Association of NGOs (NANGO) is Zimbabwe's largest membership-based Organisation, with over 1500 affiliated member Organisations. NANGO is a non-party political, non-profit making and non-denominational coordinating body of NPOs in Zimbabwe. It was founded in 1962 as a welfare organisation under the name Southern Rhodesia Council of Social Services, predominantly for social welfare organisations. NANGO's ability to function effectively has, however, been on the decline since the 2004 legislation as a result of their unwillingness to comply⁶⁰.

NANGO has called on the International Criminal Court (ICC) to prosecute government officials responsible for Operation Murambatsvina. The ICC, unlike the International Court of Justice, can try individuals and investigate crimes, such as drug trafficking and genocide, referred to it by governments as well as the UN Security Council. NANGO reports that relations between the Zimbabwean government and their member NPOs have greatly deteriorated since the introduction of the *NGO Bill*. NANGO has ordered its members to ignore the *NGO Bill's* policies

⁶⁰ National Organisation of Non-government Organisations (www.nango.org.zw/)

until the controversial Bill is approved, which has resulted in numerous difficulties for NPO members⁶¹.

In Muzondo's view the lack of self-regulation or other effective forms of regulation in the NPO sector in Zimbabwe has led to poor sector coordination and lack of operational focus (2006: 3). Among other recommendations he argued for an NPO sector-run independent regulatory authority in the context of government department regulations that he believed were undermining NPO independence.

This was partly a result of state efforts to silence the voice of civil society but also as a result of the state's incapacity to effectively monitor and regulate NPO activity. Self-regulation is viewed as an effective tool in re-claiming civil society space from government as such regulation effectively removes the need for government to regulate the sector. In addition, self-regulation reflects the commitment of NPOs to effectiveness, accountability, high ethical standards, participatory decision-making processes and good governance.

In response to the recommendations for strengthened self-regulation NANGO was mandated by its members to develop a self-regulation process. In taking this agenda forward NANGO tabled two proposals for a process that would result in the achievement of a functional self-regulation authority:

Proposal One: A national self-regulation Commission whose primary mandate would be to ensure that NPO members would implement and comply with standards set out in the code of conduct. The Commission should be composed of members with integrity and high moral standing in society.

The functions of the commission would be to:

- Act as a keeper and protector of the Code of Conduct;
- Hear complaints involving violation of the Code of Conduct;
- Review violations of the Code, independent of whether or not any specific petition or complaint has been made to it;
- Create among the NGOs an awareness of the Code of Conduct;
- Review the Code of Conduct.

The Commission would be invested with certain powers so that it would be able to enforce all its findings on any offending NPO. It would be crucial, therefore, that the credibility of the commission be above reproach. Its powers would include, but not be limited to the following:

- Summon NPOs and involved parties to appear before it;
- Hear complaints;
- Dismiss complaints;
- Issue warning to the Organisation;

⁶¹ National Organisation of Non-government Organisations (www.nango.org.zw/)

- Recommend or order that appropriate action be taken against offending parties, and suspend or cancel the registration certificate of offending Organisations.

Proposal Two: A self-regulation Commission with structures that would operate from the grassroots level, with a secretariat at several grassroots levels which could be at district, provincial or regional as well as national level. The commission would then register and certify NPOs that comply with minimum standards as set out in the Code. The proposal maps clear actions to monitor compliance with the Code and proposes a scale of ratings that inform certification. The rating measurements would be on a scale of one to five, which would allow for an ongoing process through which NPOs would be continuously assessed and certified, either maintaining their existing rating or moving to a higher or lower level. Membership to this Commission would be open and equitable.

The NANGO self-regulation implementation process requires that NPOs who wish to be members of the self-regulation mechanism ought to apply for certification and rating in accordance with their level of compliance with the Code. Applications are usually made at local levels, either at the district or even at the provincial level. Prescribed fees are paid for the process and the local structure of the Commission assesses the merits of the application. The Commission may publicise or carry out *in situ* investigations at the premises of the applicant NPO in order to verify good governance compliance and other key requirements. After the on-site checks and meetings with the applicant NPOs, the local chapter of the commission then makes a recommendation to the National Executive chapter for registration or otherwise of the applicant. The national committee would sit to deliberate on all issues brought before it and could either approve or disapprove certification. Alternatively, certification/licensing may be awarded but on a lower rating so that the applicant has the opportunity to improve on identified issues before a better grade is approved.

In cases of non-compliance with the agreed code of conduct, the procedure becomes an executive one. A complaint can be made by any interested stakeholder who may have an issue with a particular NPO. These can be beneficiaries, employees, other NPOs or minority board members of the NPO concerned. The complaint is forwarded to the National Self-Regulation Commission which deals with the matter first. If there is a need for further enquiries then the local chapter of the commission will be mandated to look into these issues. The rest of the substantive components of the proposal on powers of the Commission and overall goal are the same as discussed under the first proposal.

The self-regulation framework developed by NANGO is weak as it does not contain clear enforcement mechanisms and application of the code is voluntary. A supporting institutional structure, professional and with the relevant authority is viewed as what is needed to ensure enforcement of the code, with such an

institution responsible for drafting a set of standards, codes, etc against which organisations would be formally held accountable to. The Institutional Structure should be responsible for drafting and enforcing the Codes of Conduct, investigating abuses and complaints, providing continuing education on best practices for NPOs, and shaping policy for the sector. Muzondo recommends the provision of certification for those NPOs that are complying with the internationally accepted standards of good governance, facilitated by an on-site inspection of the NPO to be satisfied that structures were in place and by a review of audited statements from chartered accountants and a host of other certifications that prove *prima facie* compliance e.g. ISO certification (2006: 7).

7.5.4 Code of Good Governance

Hundreds of NPOs operate across Zimbabwe, promoting health, legal aid, education, and food provision. As yet, however, Mugabe has not signed or implemented the draft *NGO Bill* since it was passed in 2004 but activists report that it has already crippled many NPOs⁶². The National Association of Non-Governmental Organisations (NANGO), alongside the Governance Board for Non-Governmental Organisations ('the Board'), was to have been mandated in term of section 7 of the proposed *NGO Act* to be responsible for the governance of non-governmental organisations in Zimbabwe (2004: 4). NANGO was therefore earmarked as the statutory national structure of NPOs tasked with overseeing the development and implementation of codes of self-regulation and good governance.

NANGO was also to be responsible for monitoring and evaluating the implementation of these codes through an external evaluation carried out once every year, using a rating system to measure compliance to the Code of Conduct. As the Act was never passed into law, the provisions of the *NGO Bill* remain. The status of NANGO has remained unresolved, but as the de facto umbrella body for NPOs in Zimbabwe it has increasingly been at loggerheads with the government over issues of regulation, self-regulation and related accountability procedures. NANGO has, however, attempted to develop a self-regulation code, although its efforts to secure sector-wide acceptance of the code have led to its vagueness and lack of definition.

In Zimbabwe a few NPOs have rules that serve as code of ethics but in most cases they do not have anything formalised. A study undertaken by NANGO found that most NPOs would be in favour of a national code of conduct but under the prevailing political circumstances it has been difficult to mobilise around this issue. NANGO has drafted a framework for a code of conduct to guide NGOs operating in Zimbabwe, based on the following principles:

- Transparency of actions;
- Quality of services;

⁶² www.un.org

- Accountability to the public;
- Recognition of the need for self-regulation.

The following values are prescribed in the code of conduct:

- To carry out NPO work for the public interest, remain responsive to the needs and aspirations of beneficiaries and ensure that NPO projects are not donor driven;
- To adhere to the principles of good governance;
- To maintain confidentiality in all work undertaken;
- To promote organisational integrity;
- To be accountable to the public, the government and donors in the use of resources;
- To be non-partisan and non-discriminatory.

NANGO considers the following criteria to be of importance for organisational effectiveness, and guidelines on strengthening these are specified:

- Governance and its structuring;
- Accountability to public, government and donors that ensures stakeholder participation and transparency;
- Organisational integrity that promotes full compliance with laws and regulations;
- Management of human resources that upholds diversity, strengthening of policies, staff development and staff retention;
- Capacity building for staff and beneficiaries;
- Networking;
- Financial management that ensures the appropriate use of funds and accountability to the donors, government and the public.

The code of conduct further guides NPOs in achieving transparency and maintaining integrity with regard to fundraising. It guides NPOs with regard to methodologies for informing communities about their fundraising efforts and the use of funds for the purposes for which they were initially raised. The Code also notes that this requires the development of control mechanisms to manage financial assets.



7.6 TANZANIA

7.6.1 General NPO Activity

The post-independence period saw a modest increase in NPO activity as the new Nyerere-led government set about the task of modernising the state. The Ujamaa period, with its focus on social reconstruction, saw a rapid increase in community-based rural development activity. The 1980s signalled the start of a period of economic decline for Tanzania, with a concomitant rise in indebtedness and governance decline, which led to the introduction of a World Bank imposed structural adjustment programme for the country.

During the 1980s the donor community increased its aid volumes to Tanzania, but also adopted the international trend of by-passing inefficient and corrupt state bureaucracies in order to channel their aid through international and locally based NPOs. NPOs were believed to be more efficient, less corrupt, and more closely engaged with issues that impacted on the poor. Lange *et al* argue that the Tanzanian government was quick to notice this trend and responded by setting up apparently independent NPOs that were staffed by civil servants (2000: 25).

The government also appointed regional officials charged with the responsibilities of encouraging the development of women's activities and helping them to acquire funds from donors. In this way the regional officials helped the government secure some control over their funds. As living conditions worsened, unemployment was on the rise, and as people in all walks of life realised the willingness of donors to give direct support to NPOs and CBOs, the number of organisations exploded. In 1993, there were 224 registered in Tanzania. Seven years later, in 2000, the number had risen to 8499.

The tensions that existed between the government and broad civil society resulted in a move, from 1996 onwards, to develop a new policy to guide the growth and operations of NPOs. As Lange *et al* note, in contrast to their earlier ambivalent relationship, the official stance was now that the government recognised the need to work together with NPOs as partners in development and that the NPOs should be provided with an enabling environment. Up to this point NPOs had been subjected to registration and de-registration provisions of undemocratic ordinances that dated back to the colonial period.

The policy process was an open one, with a National Steering Committee being established that consisted of representatives from the government, local and international NPOs, CBOs and faith-based organisations. The inputs and submissions to this policy process were incorporated into the formulation of the *NGO Act* of 2000, which represented a milestone in improved state-civil society relations in Tanzania. Many of the policy suggestions that were proposed were incorporated into the new

Act, including the establishment of an NGO Coordination directorate within the Vice-President's Office, the setting up of an Office of the Registrar, and the establishment of a national NGO umbrella body.

7.6.2 Legal Environment and Good Governance Practices

The 2002 *NGO Act*, which does not apply to Zanzibar, requires all NPOs to register with a government-appointed NGO Coordination Unit within the Vice President's office. Before the act was implemented there were fears amongst NPOs that this legislation would be used to limit their operations and activities, and that the government could use the denial of registration as a political tool. However, since implementation of the Act there has been a sense amongst the NPO community that the Act has helped to create a more conducive environment for the sector⁶³.

The registration of NPOs in Tanzania is divided into different levels to facilitate registration at District, Regional, National and International levels respectively. The Law provides for the appointment of Public Officers to facilitate registration at the District and Regional levels, where the District Administrative Secretaries (DAS) will be tasked with facilitating at the level of the District, and the Regional Planning Officers will facilitate registration at the Regional level. Sections 22(1) and 23 (1) (2) (3) of the Non-Governmental Organisations Act, No. 24 of 2002 outline procedures for registration as follows:

- The application for Registration of a Non Governmental Organisation shall be accompanied by the following; as per Section 12(2) of the Non Governmental Organisations Act:
 - Copy of Constitution of the Non Governmental Organisation;
 - Minutes containing full names and signatures of founder members;
 - Personal particulars of office bearers;
 - Address and Physical location of the head office of Non Governmental Organisations;
 - Application fee;
 - Any other particulars as may be required by the Registrar.
- The application for a Certificate of Compliance has to be accompanied by the following documentation:
 - Copy of the Constitution or founding documents of the Non Governmental Organisation;
 - Certificate of incorporation;
 - Minutes containing full names and signatures of founder members;
 - Personal particulars of office bearers;
 - Address and physical location of the head office of Non Governmental Organisations;

⁶³ US Department of State website at <http://www.state.gov/g/drl/rls/hrrpt/2005/61596.htm>

- Any other particulars as may be required by the Registrar.
- Application for registration as a Non-Governmental Organisation is made on the prescribed form NGO A form No. 1, and the application for a Certificate of Compliance is made on the prescribed form NGO A form No. 3.

7.6.3 NPO Self-Regulation and Administration

The National Council of NGOs (NACONGO) is the statutory body charged with the responsibility of ensuring the coordination and self-regulation of NPOs operating in Tanzania. It was set-up by an Act of Parliament and was officially launched in 2003. The Tanzanian *NGO Policy* of 2001 and the *NGO Act* of 2002 provide for the establishment of a National body for NPOs, whose main goal is to ensure NPOs accountability and self-regulation among the NPOs countrywide. According to Section 25(2) of the Act the National Council of NGOs is supposed to be a collective forum of NPOs, which facilitates networking and coordination through annual meetings of the Council. Drawing from the provisions of the *NGO Policy* and the *NGO Act* the main task of the Council are the following:

- **Self-regulation:** Under this provision the Council is required under section 27 to develop, adopt and implement an NPO code of Conduct for NGOs;
- **Facilitating networking among NGOs:** The Council is required to facilitate the sharing of experiences (knowledge and information) among NPOs;
- **Harmonizing and coordinating NGOs activities:** The Council is tasked with ensuring that the misuse of resources is avoided, thereby enhancing the effectiveness of NPOs in the national development process.

Although it oversees a sizeable NPO sector, both national and international, NACONGO has only met on a very irregular basis since its inception. This is partly as a result of funding shortfalls, as the *NGO Act* does not prescribe sources of funding for the council, but does so for the NGO Board which is a joint Government and NGO representative body⁶⁴. Despite these constraints the NACONGO leadership has worked with such networks as the NGO Act Core Group to come up with recommendations for amendments to the *NGO Act* so as to streamline the legislation, facilitate smoother implementation of the *NGO Act* and create a more enabling regulatory and operating environment for NPOs.

This lobbying and advocacy process has included organizing stakeholders' workshops to increase their understanding of the provisions of the *NGO Act*. Through this process of identifying the critical anomalies within the *NGO Act* the Council has also been able to meet with the Minister responsible for NPOs to discuss areas of convergence and the need to work together to push for amendments. NACONGO has further created space for more substantive NPO dialogue by seeking the broader

⁶⁴ <http://www.tacaids.go.tz/index.php/partners.html?start=5>

participation of civil society organisations at East African Community (EAC) level. NACONGO has also cooperated with the Tanzania Commission for AIDS (TACAIDS) to organize workshop for NPOs that provided space for the council members to reflect on the regulatory challenges and constraints facing the Council and NPOs at the district and the lower levels. Of concern was the absence of an agreed self-regulatory framework and code of ethics for ensuring that accountability issues are core to the work of all NPOs.

7.6.4 Code of Good Governance

A national *NGO Code of Ethics* for Tanzania was concluded in 2008, under the auspices of the National Council of Non-Governmental Organisations (NACONGO)⁶⁵. It is anticipated that the *Code of Ethics* will provide guidance to Tanzanian NPOs in terms of meeting the challenges of sustaining democratic and participatory institutions and strengthening the enabling environment for the NPO sector. The purpose of the *Code of Ethics* is to promote an open, transparent and accountable environment within which NPOs can operate, and to strengthen the accountability lines between indigenous NPOs and other development stakeholders, including foreign donors, international NPOs and the government. The *Code of Ethics* also seeks to promote an open environment for NPO activity that is characterised by diversity, freedom of expression and open debate.

The major focus of the *Code of Ethics* is on promoting ethical development activities and good governance practices. It is structured in such a way that it seeks to curb direct or indirect conflict of interest by members of NPO governance structures, as well as by members, employees and volunteers of the organisation. It also seeks to ensure that corruption and other forms of organisational misconduct are firmly dealt with. The *Code of Ethics* strengthens principles around transparency in financial and operational practices, and demands that NPOs develop and adhere to clear, well-defined and written financial regulations that reflect high ethical standards and are consistent with sound financial management principles and practices. As part of the enforcement mechanism the *Code of Ethics* prescribes the administration and information modalities that will be used to implement the code. The *Code of Ethics* supports NPOs in undertaking resource mobilisation strategies to ensure sustainability, but asserts that any interest or profits accruing from such strategies are re-invested in the core programmes of the organisation.

The *Code of Ethics* places a responsibility on NPOs to adhere to their constitutional role and the role apportioned to it by the national *NGO Act*. This clause was inserted in part to minimise the perception that international NPOs are supplanting the role of national NPOs and that national-level NPOs, networks and coalitions are interfering in the affairs of district and village level NPOs and CBOs. NACONGO has been given the

⁶⁵ Reference from the Tanzania NGO Coalition (TANGO) website at <http://www.tango.or.tz/index>

responsibility of establishing regional and district level committees to monitor compliance with the *Code of Ethics*, which will be done in association with existing NPO networks.



7.7 GHANA

7.7.1 General NPO Activity

The level and extent of NPO activity in Ghana has fluctuated with the shifting political context of the country. The CSI report points to the fact that Ghana has a long history of civil society activity dating back to the colonial period, which generally comprised organisations or groupings of chiefs, elders, the intelligentsia, professionals such as lawyers and teachers and the youth whose activities focused on defending the rights, integrity and property of the indigenous people of Ghana (2006: 20). Following independence in 1957 the Nkrumah government established centralised economic and social reconstruction and development plans, but also tasked local development committees and the emerging non-profit sector to provide a broad range of social services to Ghana's citizens. However, the increasing authoritarianism of the Nkrumah government saw effective state control extended to cover the activities of trade unions, farmers' associations, women's organisations, youth and student groups, as well as the appointment and dismissal of chiefs. As Ghana slipped into military dictatorship and a lengthy period of economic and social instability there were efforts by the state exert an even greater level of control over the NPO sector. The effect of these political developments was to significantly reduce the space for NPO activity. Prior to the restoration of the constitution in 1992 NPOs and broad-based social movements operated in a generally repressive climate with limited opportunities to function in an autonomous manner.

Years of military rule and economic mismanagement forced Ghana into a structural adjustment programme (Economic Recovery Programme) under the auspices of the World Bank and IMF. During this period of economic and social hardship the first Rawlings government encouraged NPOs to fill the service delivery gap (CSI report, 2006: 23). As Ghana moved towards a more democratic dispensation under the later Rawlings government, and as the levels of international donor funding increased, there was an exponential growth in the diversity and range of activities of non-profit sector organisations. Further NPO activity around the World Bank's Structural Adjustment Participatory Review Initiative (SAPRI) in 1997 and the formation of the Civil Society Coordinating Council (CivisoC) reflected a new level of cooperation amongst NPOs and provided the first broad structure for institutionalised policy dialogue with the government.

The democratic transfer of power in the 2000 elections brought renewed expectations of strengthened state-civil society collaboration in dealing with Ghana's development challenges. It appears, however, that this has not been the case and that the NPO sector and government have increasingly clashed over approaches to national development issues. On the basis of its research the CSI report argues that

the environment within which Ghanaian NPOs operate is not particularly enabling, owing to a combination of factors that include poverty and illiteracy, poor government service delivery, corruption in public institutions and an ineffective decentralised system of governance (2006: 9). Despite these constraints democratic and participatory decision-making processes have taken strong root within the NPO sector, and efforts within the sector to address poverty enjoy broad-based support. The CSI report notes that while Ghanaian NPOs have been particularly active in providing a range of services to marginalised groups, their capacity to lobby and their impact on national policy formulation has tended to be weak (2006: 11). A successful election took place in 2009, with a peaceful transfer of power from the Kuffour government to that of John Atta Mills, and there is broad acknowledgement that this bodes well for the strengthening of state-civil society relations.

7.7.2 Legal Environment and Good Governance Practices

In the period up to the end of the 1990s government policies and laws with regard to NPOs generally lacked a standard or coherent operational framework (NGO Handbook, 2008: 1). This period was also characterised by a clear lack of understanding and consultation on both sides. The government had broad concerns over the number of unregistered NPOs operating in the country, as well as concerns that there is a general lack of accountability and compliance with existing regulations. At the same time NPOs had concerns regarding the nature of the Ghanaian state, and feared that heavy-handed government oversight posed a threat to their status, autonomy and choice of activities. The *NGO Handbook* notes that it was in this atmosphere of distrust that the *NGO Draft Bill* of 1993 was rejected on the basis that it violated the constitutional rights of NPOs (2008: 2). The *CSI Report* notes that the withdrawal of the Bill by government reflected an increasing confidence on the part of many NPOs to assert their autonomy from government (2006: 24).

The government and the NGO sector entered into a lengthy period of engagement during the period 1999 – 2000 aimed at developing a comprehensive and mutually-acceptable policy framework to guide state / NPO relations. A National Consultative Group (NCG) was established to lead the process, and comprised key government agencies, national, regional, local and sector networks, and NPO umbrella organisations. This process resulted in the formulation of a *National Policy for Strategic Partnership with NGOs* in 2000, which was further revised in 2004. The stated policy strategies were:

- Clear definition of the framework of partnership including the domain, principles and rights of the strategic partners;
- Recognition of NPOs as legally registered entities that play legitimate roles in national development and democratisation and can sue and be sued;

- Creation of a coherent, legal, and institutional framework for effective operation of NPOs at national, regional, district and community levels;
- Formulation of standard and simplified rules, regulations and procedures for registration and joint regulation of operations of NPOs;
- Facilitation of the development of NPO networks to enhance co-ordination of their participation in the implementation of the policy and evaluation of its outcomes monitoring and co-ordination of their activities, and improve transparency and accountability practices.

The registration of NPOs in Ghana is governed by the *Companies Code/Act 179* of 1963, the *Trustees Incorporation/Amendment Law* (1962/1963), the *Constitution of the Republic of Ghana* (1992) and Cabinet directives. This legal framework allow NPOs to register voluntarily under the applicable law, which then qualifies them to gain official recognition and to access both donor and public development funds. The *Draft National Policy for Strategic Partnerships with NGOs* has proposed that a National Commission for Non-Governmental Organisations be established as an independent and autonomous body responsible for the registration of NPOs, but this has not as yet been formalised.

According to the *CSI Report* registration procedures are fairly straightforward, but despite the fact that there are legal provisions governing the process of registration, there was consensus that the procedures are not consistently applied (2006: 54). The Ministry of Manpower, Development and Employment is responsible for overseeing the activities of the NPO sector in Ghana. The *CSI Report* points out that the space for civil society activism was expanded with the repeal of the criminal libel and sedition laws in 2001, under which many journalists had previously been harassed or jailed (2006: 25). This has enabled NPOs to conduct advocacy and human rights work in a more unrestricted environment.

Tax exemptions do exist for NPOs, but accessing these benefits can be difficult and they are based on an assessment of individual NPO's human, institutional and operational capacity. Ghana's tax laws exempt organisations whose operations and activities are strictly not-for-profit. As NPOs are considered to be not-for-profit organisations they can apply for tax exemption, but first they have to register with the Department of Social Welfare.


There have been concerns about the lack of sound governance practices within the NPO sector. Government expressed concerns in 2003 that NPOs were directing 80% of donor aid towards administrative costs such as operational expenses and salaries, and only 20% towards programme activities. There was also concern that a high percentage of NPOs were failing to submit annual reports and statements of accounts as required by law (NGO Handbook, 2008: 5). Further concerns have been expressed that many NGOs are used as patronage networks and political vehicles.

7.7.3 NPO Self-Regulation and Administration

According to the CSI report there is at present no self-regulation mechanism within the NPO sector (2006: 37). There have been a number of initiatives, however, aimed at formulating a self-regulation mechanism for the sector and these are ongoing.

7.7.4 Code of Good Governance

There is at present no code of practice, ethics or good governance for the NPO sector in Ghana. The *Draft National Policy for Strategic Partnerships with NGOs* has proposed that the CSO sector should develop a code of good practice covering consultation, implementation and appraisal of policy. Discussions on this issue are ongoing.



7.8 MALAWI

7.8.1 General NPO Activity

Malawi is a least-developed, landlocked and highly-indebted country situated in southern-central Africa. It is flanked by Mozambique in the south-east, the United Republic of Tanzania in the north-east and Zambia in the west. Malawi covers an area of about 118,500 km² of which Lake Malawi, Africa's third largest lake, occupies an area of 24,240 km². About 80 per cent of Malawi's estimated 11 million people live in the rural areas, and over 60 per cent live below the poverty line. The HIV/AIDS pandemic is estimated to have infected 16 per cent of the adult population, and, apart from the scale of human suffering, it poses a considerable challenge to Malawi's development plans.

Thirty years of authoritarian rule under President Kamuzu Banda was brought to an end in the early 1990s as major political changes, in part driven by civil society activism, brought multiparty democracy to Malawi. Ten years later Malawi faced a new constitutional crisis as President Muluzi attempted to secure a parliamentary majority for a Bill that would lift the constitutional prohibition on occupying the office of the president for more than two consecutive five-year terms. This provided a focus for renewed civil society action, with NPOs issuing numerous petitions and lobbying intensely among parliamentarians to impeach the president. The government responded by suppressing the media, demonstrations were banned and the police were given powers to break up any opposition meetings. Finally, the vote for the constitutional amendment was cast in Parliament. The bill itself was narrowly defeated in parliament and President Muluzi was thereby forced to retreat from his third term proposals.

Malawi saw its first transition between democratically elected presidents in May 2004, when the UDF's presidential candidate Bingu wa Mutharika defeated MCP candidate John Tembo and Gwanda Chakuamba, who was backed by a grouping of opposition parties. The UDF, however, did not win a majority of seats in parliament, as it had done in 1994 and 1999 elections. Through the politicking of party chairperson and former President Bakili Muluzi, the party successfully secured a majority by forming a "government of national unity" with several opposition parties. President Bingu wa Mutharika left the UDF party on February 5, 2005, citing differences with the UDF, particularly over his anti-corruption campaign. He formed the Democratic Progressive Party (DPP) shortly thereafter, attracting a number of UDF and independent members of parliament (MPs) to his new party. The DPP, however, has also failed to acquire enough support for a majority in parliament, and continues to face stiff opposition from both the UDF and the MCP in parliament. Meanwhile, many politicians are already looking ahead to the next general elections

in 2009, with Muluzi, Tembo, and Mutharika all expected to campaign for president. On September 14, 2007, after passing the budget, the President dismissed the National Assembly before the speaker of parliament could act on Section 65 of the constitution. Section 65, a major point of contention between the DPP and opposition parties, allows the speaker to declare the seats of any MPs who change parties after being elected vacant. Vacated seats are filled through by-elections. The National Assembly was reconvened on April 28, 2008, but a majority of opposition MPs boycotted the session.

In the view of the Human Rights Consultative Committee (HRCC) Malawi's political elite has a hostile attitude towards civil society⁶⁶. They consider the NPO community to be deeply politicised and affiliated with opposition parties, and the intentions and activities of the growing number of human rights NPOs that provide checks and balances on governance in Malawi have been grossly misinterpreted by the government. The HRCC argues that since Malawian authorities regard NPO activism as a threat to their power the restrictive *NPO Act* was enacted in 2001. NPOs used to operate under the *Trustee Law*, but the new *NGO Act* stipulates that NPOs have to register in order to operate legally and obtain funds. The law allows for the government to de-register NPOs and, in the view of the HRCC, makes it possible for government to arbitrarily close NPOs. Key civil society networks in Malawi, in partnership with national, regional and international NPO alliances, continue to resist the restrictive environment that constrains NPO activity in the country.

The Council of NGOs in Malawi (CONGOMA) is the umbrella body for NPOs in Malawi and takes the lead in addressing the concerns of NPOs. It has as its main objective the facilitation of networking or interfacing among NPOs and other co-operating partners at national and regional level. CONGOMA produces newsletters, e-newsletters, NPO and Donor directories, and its advocacy activities include facilitating the process of engaging NPOs in some important issues such as the *NGO Act*, *TEVET Levy*, *Third Term/Open Term Bills* and the *Land Policy*. CONGOMA also works to strengthen sector networking, coordination of NPO activities and communication among NPOs, government and the private sector. CONGOMA has also identified what it believes to be the most significant weaknesses within Malawian civil society:

- In the view of CONGOMA civil society in Malawi remains ineffective. Several constraints have been identified, some of which are external and others that are internal to the sector itself:
- There is a general perception that some political leaders are wary of civil society activities and view certain NPO activities as unwarranted political interference. Given the country's repressive history and turbulent politics there is a reluctance

⁶⁶ Reference at www.hrcmalawi.org

amongst the general population to engage in social, political or economic issues that may be construed as controversial;

- Many civil society organisations lack a solid constituency as they are not rooted in Malawian society;
- Many NPOs have weak governance structures, have poor organisational skills, lack sustainable funding and are staffed with poorly-qualified staff members.

Balancing political, social and economic issues is a key challenge for civil society in Malawi. While progress has been made in strengthening civil liberties, major emphasis needs to be placed on economic issues, and in particular poverty reduction.

7.8.2 Legal Environment and Good Governance Practices

Legislation to guide and regulate NPO operations in Malawi took effect on the 16th March 2001. The *Non-Governmental Organisation Act* in Malawi was introduced in 2001 and was a result of six years of extensive consultations with civil society organisations. The *NGO Act* specifically addresses issues relating to the registration and requirements for all NPOs operating in Malawi, in order to ensure that:

- There is equitable sectoral and geographical distribution of NPO activity in Malawi;
- That accountability and transparency is reflected in the activities of NPOs;
- That there is co-ordination and consultation with Government in the implementation of NGO activities; and
- There is some degree of uniformity in the interpretation of policies relating to civil society.

Under the provisions of the *NGO Act* it is mandatory for NPOs to register with the statutory NGO Board. There are exemptions to this requirement, including for informal voluntary organisations that do not have a written constitution. The NGO Board consists of ten members: three ex-officio members who are the Secretaries of three Ministries, and seven members, at least three of whom must be women, who are appointed by the Minister in consultation with the designated NGO coordinating body, which in the case of Malawi is the Council for Non-Governmental Organisation in Malawi (CONGOMA). The Board registers and regulates NPO operations. The Board has a specific period of time in which it must decide on the application for registration. To be registered under the Act, an NPO must have at least two directors or trustees who are citizens of Malawi.

The *NGO Act* seeks to enhance NPOs contribution to the economy through the provision of social services and the creation of employment by ensuring that this is done efficiently and equitably, and in alignment with government development policies and strategies. Part 1 of the Act deals with preliminary issues such as interpretation of words used in the Act, objectives of the Act and exempt

organisations. Part 2 of the Act deals with the formal establishment of the NGO Board, including issues such as the composition of the Board, disqualification from appointment to the Board, removal of Board members, tenure of offices, and the allowances of Board members and the chairperson. Part 3 of the Act deals with issues relating to the authorities invested in the Board, including the power to establish such committees as it deems necessary. This section makes it mandatory for a Board member to disclose interest in any matter being considered by the Board.

Part 4 of the Act spells out the duties and functions of the Board and these include:

- To consider and adjudicate upon applications for registration by NPOs and ensure due compliance by the NPOs with the prescribed reporting requirements;
- To determine, for time to time, the incentives applicable to NPOs under this Act or any other written law and make the necessary recommendations to the Minister;
- To commission surveys, inquiries and research, with a view to advising the government with regard to any matter affecting NGOs; and
- To appoint a suitably qualified person as a Registrar and such other employees as it may deem necessary for the discharge of the duties and functions of the Board.

Part 5 of the Act deals with management of the Board, including the Registrar of NGOs and the staff subordinate to him or her. Part 6 of the Act deals specifically with the registration procedures for NPOs. The Act makes it mandatory for all NPOs operating in Malawi to register and lays down the conditions for registration. This section also makes provision for the issuing of certificates of registration and outlines the reporting requirements, and further specifies under what conditions the registration of NPOs can be cancelled or withdrawn. Part 7 deals with the designated functions of the NGO co-ordinating body. The designated NPO co-ordinating body is the Council for Non-Governmental Organisations in Malawi (CONGOMA) and this section also provides for the independence of the NGO coordinating body.

Part 8 of the Act deals with the General Assembly and specifies who can attend the General Assembly. Part 9 of the Act deals with financial provisions and specifies the sources of funding for the NGO Board, which includes any fees, fines and charges payable under the Act. Under this section it is stipulated that the Board is given powers to borrow money for meeting its obligations or for discharging its functions. Further the Board is given the mandate to invest any surplus money as it sees fit in any authorised fund. There are also provisions relating to the accounts, audits and annual reports of the activities of the Board. Part 10 of the Act deals with fundraising, and specifies which NPOs can fundraise from the public. Finally Part 11 of the Act deals with miscellaneous matters such as provisions relating to offences and penalties and regulations.

The Board registers and regulates NPO operations. The Board has a specific period of time in which it must decide on the application for registration. To be registered under the Act, an NPO must have at least two directors or trustees who are citizens of Malawi. An NPO's application for registration must include:

- Approval from the Ministry responsible for the activities to be undertaken by the NPO;
- Proof of membership in CONGOMA;
- A plan of the activities which the NPO intends to undertake;
- The source of the NPO's funding;
- A statement from the NPO that it will not engage in any form of partisan politics, including electioneering and politicking; and
- The personal details of members, including the nationalities of the trustees, directors and other executive board members.

Failure to comply with the provisions of the *NGO Act* and engagement in partisan politics are the main grounds for the Board to cancel or suspend registration. NPOs may appeal a Board decision to cancel or suspend registration to the High Court for judicial review. The Act allows registered NPOs to engage in public and other forms of fundraising, as long as they comply with the reporting requirements prescribed in the Act. An NPO that contravenes the provisions of the Act will be guilty of an offence and will be liable on conviction to a fine or prison sentence.

While NPOs generally agreed that there was need for such a law to regulate the activities of civil society, its introduction generated divergent reactions from the NPO community in Malawi. Some NPOs were in favour of the new legislation because it provides a legal framework for purposes of transparency, accountability and good governance. Other NPOs, however, took the view that that the law represented a restrictive tool, which the government could use to close NPOs that it perceived as a threat, and particularly those working in the area of human rights and democracy. Most concerns and comments highlight the need for the independence of the NPO Board, harmonization of the *NGO Act* and other laws, creation of policy framework for the implementation of the *NGO Act* and removal of political elements in the Act.

In general most NPOs felt that the Act gave the Minister of Gender, Youth and Community Services excessive powers to appoint and fire members of the NGO Board, and that this aspect consequently increases the chances of political meddling in the Board. In a similar vein, NPOs recommended that a quorum at Board meetings should not include ex-officio members because the inclusion of ex-officio members could provide opportunities for interference in decision-making processes. In order to ensure effective operations of the NGO Board, NPOs requested the government to assist with the funding of its operations through subvention. The rationale for this request was that relying on NPOs to finance the operation of the Board would put a

strain on smaller NPOs and CBOs, as well as weaken the operation of the Board. NPOs also recommended the removal of a clause which stipulated that any NPO involved in electioneering and politicking would be de-registered. NPOs pointed out that the phrases 'electioneering' and 'politicking' were vague, imprecise and impossible to clearly define. They also argued that the use by government officials of such loose definitions would leave NPOs vulnerable to arbitrary de-registration. NPOs also demanded the inclusion of an explicit provision to give an opportunity for redress to any NPO that had its application rejected. There has also been a degree of unease amongst NPOs that the government continues to consider NPO registration on a case-by-case basis, which they believe is subjective, frustrating and costly because of the extent of the bureaucracy involved.

NPOs noted that while the *NGO Act* established a framework for effective partnership and collaboration between the government and civil society, they took the view that for this to yield desirable results government had to ensure that it provided the necessary and unrestricted opportunities for NPOs to benefit from its provisions. NPOs saw the need for the application of the *NGO Act* to be systematic and transparent, and therefore proposed the introduction of an NGO Policy Framework to support the implementation of the *NGO Act*. At the same time NPOs demanded that a clear distinction needed to be made between the roles and duties of the umbrella body CONGOMA and the NGO Board. These comments and concerns were forwarded to the Ministry of Gender, Youth and Community Services for consideration. At the same time there was a general call for NPOs to ensure that they were well-organized and presented a united civil society front as a means to benefit from prospective partnerships with the government, donors and the private sector.

In the period following the introduction of the *NGO Act* CONGOMA has entered into negotiations with the government on the issue of exemption of duty and surtax for certain goods procured by NPOs in Malawi. CONGOMA has suggested that government propose a listing of items in a particular year that would be exempted. Anything in excess would attract a 35% duty. It was further proposed that NPOs involved with orphans, the aged and disabilities are exempted from service surtax e.g. surtax charged on audits and vehicle repairs cost.

7.8.3 NPO Self-Regulation and Administration

The available literature indicates that there is at present no self-regulation mechanism within the NPO sector (CONGOMA website). There are, however, ongoing discussions around the viability of a self-regulation mechanism for the sector in Malawi, based on evidence drawn from other countries in the region.

7.8.4 Code of Good Governance

CONGOMA is the designated membership umbrella Organisation for NPOs in Malawi. It currently has over 200 members comprising both indigenous and international NPOs (CONGOMA website). The *NGO Act*, which was enacted in the years under review, designates CONGOMA as the NPO co-coordinating body in Malawi⁶⁷. According to its mission statement CONGOMA exists to motivate, enhance and maximize the potential and actual impact of member NPOs in articulating and implementing sustainable socio-economic development to reduce poverty in Malawi through mutual support and networking with all interested stakeholders. As CONGOMA notes on its website it "is inspired by the vision of sustained strong and vibrant NPOs working in a conducive and collaborative environment in which a culture of accountability and good governance is entrenched and the rights of every citizen are respected and promoted to reduce poverty and enhance sustainable socio-economic development in Malawi".

The stated role of CONGOMA is to promote an enabling environment for NPO activities. The specific mandates of this coordinating body are to promote and facilitate co-ordination, collaboration and co-operation between members of the NPO community, government, donor community and the private sector in Malawi, to further the standing of NPOs as competent, professional and suitable agents of development, to support NPOs become institutionally strong, and to assist NPOs to carry out their functions effectively.


The Constitution of CONGOMA has clearly defined structural and governance arrangements, which were put in place to facilitate effective decision-making, transparency and accountability. The annual general meeting is the highest policy making structure of CONGOMA, and is held once every year, notwithstanding extraordinary meetings, and brings together the general membership of the organisation. The AGM is convened to transact crucial issues, such as to receive annual and financial reports, as well as to elect office bearers at the end of specific term of office. The Board of Trustees comprises the elected office bearers who are legally responsible for the effective functioning of CONGOMA and have general oversight over its activities. The Trustees, who serve on a voluntary basis, delegate responsibility to the Governing Council for overseeing the implementation of policies and strategies set by the Annual General Meeting and for the direction of day-to-day management of CONGOMA. The Governing Council is responsible to the membership of CONGOMA in respect of the good and efficient management of the Organisation. In order to strengthen a sense of ownership and transparency within the Organisation, the election of office bearers to sit on the Council is open to all

⁶⁷ Section 24 of the NGO Act No.3 of 2001.

members. To facilitate its work there are sub-committees in Finance and Administration and the Standards Committees.

The implementing arm of the Organisation is the management structure, which runs the Secretariat of CONGOMA. It is made up of professionals who are recruited by the Governing Council of CONGOMA, and is run under the leadership of the Executive Secretary. Members, both national and international, are obliged to pay membership affiliation fees, which then provide the resources necessary to run the operations of the Secretariat. The increase in CONGOMA membership is primarily amongst national NPOs, and reflects a commitment by these NPOs to strengthen NPO sector coordination in the country. The *NGO Act* provides for the appointment of seven members to the statutory NGO Board, at least three of whom should be women, appointed by the Minister in consultation with CONGOMA.

CONGOMA has been actively working to strengthen development partnerships between NPOs and the Government. This has been based on an increased recognition by the government of the role that NPOs can play in service delivery and the implementation of sectoral projects. As Malawi is one of the poorest countries in the world the government of Malawi is the recipient of significant volumes of donor resources, but weak delivery structures and bureaucracy often delays important projects. CONGOMA has taken the lead in coordinating the NPO sector to partner government in the implementation of essential services. Against this background, NPOs have been actively participating in the National Safety Nets Programme being implemented by the government, and the CONGOMA Secretariat has been representing all participating NPOs on the National Steering Committee of the Project. CONGOMA has also taken the lead in promoting private sector–civil society partnerships, particularly in the areas of people’s banking, SMMEs and micro-lending. CONGOMA also plays a regional coordinating role, and is a member of the SADC Civil Society Committee.



7.9 SWAZILAND

7.9.1 General NPO Activity

Civil society in Swaziland needs to be evaluated within the paradigm of the system of absolute monarchy that prevails in the country. King Mswati III is the latest monarch of the Dlamini dynasty, under which the Swazi kingdom expanded and contracted in conflicts with neighbouring groups. Britain declared the kingdom a protectorate to prevent Boer expansion in the 1880s and assumed administrative power in 1903. Swaziland regained its independence in 1968, and an elected parliament was added to the traditional kingship and chieftaincies. In 1973, Mswati's father, Sobhuza II, repealed the 1968 constitution, ended the multiparty system in favour of the tinkhundla (local council) system, and declared an absolute monarchy. Sobhuza's death in 1982 led to a protracted power struggle and Mswati's eventual accession to the throne in 1986⁶⁸.

Under the prevailing system of absolutism, civil and political space is constrained and repressive forces are regularly imposed to suppress resistance to the monarchy. Voting in the October 1998 legislative elections was marked by a very low turnout and was neither open nor fair. It was based on the Swazi tinkhundla system, in which nominations and voting for 55 elected seats in the lower House of Assembly are tightly controlled by local chiefs allied with the monarchy. Security forces arrested and briefly detained labour and other pro-democracy leaders before the elections. Parliamentary elections in October 2003 were preceded by calls from critics of royal rule to boycott the polls. While the People's United Democratic Movement (PUDEMO) did not participate, other banned opposition parties ran candidates. The elections were not deemed credible by international observers. However, three opposition party members were elected.

In May 2003, the Constitutional Drafting Committee, chaired by Mswati's brother Prince David Dlamini, unveiled a draft constitution after three years of deliberations. The committee complemented the Constitutional Review Commission (CRC), formed in 1995 after a period of civic unrest and chaired by another of Mswati's brothers, Prince Mangaliso Dlamini. While the document removed the king's ability to rule by decree, it reaffirmed the king's absolute control over the executive cabinet, both houses of parliament, and the judiciary. It also maintained the ban on political opposition parties and upheld the tinkhundla electoral system. Although the draft constitution includes a bill of rights that provides for limited freedom of speech, assembly, and association, as well as limited equality for women, the king may waive these rights at his discretion.

⁶⁸ Material sourced from the Freedom House website at http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail

A subsequent period of "public debate" allowed individuals to submit their views to the CRC, although civic groups were shut out of the consultation process. The draft constitution was met with bouts of civic protest led by trade unions, banned political parties, and church groups. However, the government's use of force to break up demonstrations and threats against union members participating in a January 2005 general strike weakened the opposition. Approved by the rubber-stamp parliament in June 2005, the new constitution was rejected by Mswati the following month because of disagreement over clauses on dissolving parliament, women's rights, religious freedom, and taxation. On July 26, Mswati signed a revised version of the constitution into law, which was scheduled to go into effect in early 2006.

Freedom of expression is severely restricted, especially regarding political issues or matters concerning the royal family. Legislation bans publication of any criticism of the monarchy, and self-censorship is widespread. Journalists are regularly subjected to threats and intimidation from government officials. However, broadcast and print media from South Africa are received in the country, and both the state-owned (Swazi Observer) and independent (Times of Swaziland) newspapers occasionally criticize the government. Freedom of religion is respected, although there are no formal constitutional provisions protecting the practice. Academic freedom is limited by self-censorship. While Swazis criticise the government in private discussions, they are less free to criticise the monarchy itself.

The government restricts freedom of assembly and association. Permission to hold political meetings, protests, or demonstrations is often denied by the government. Swaziland has active labour unions, and the Swaziland Federation of Trade Unions (SFTU), the country's largest labour Organisation, has been a leader in demands for democratization. However, government pressure has greatly limited union activities. The judiciary is based on the dual system of Roman-Dutch courts-including magistrate courts, a high court, and a court of appeal-and traditional courts presided over by chiefs employing customary, often unwritten law. The judiciary is generally independent in most civil cases, although the king has ultimate judicial powers; the royal family and the government often refuse to respect rulings with which they disagree. Swaziland's judicial system became mired in crisis in November 2002, when the six South African judges on the court of appeals resigned after the prime minister declared that the government would ignore court judgments that curbed the king's power. The appeals court was reconstituted in November 2004, following assurances that the government would adhere to its decisions.

Swaziland is classified as a lower income country, with pervasive poverty and wide disparities in the distribution of wealth, and prominent urban-rural disparities. It has a small export-oriented economy with a small domestic market and is open to regional and international markets. GDP per capita is modest at around 4.7% in

2007⁶⁹. Swaziland has close economic and financial links with South Africa. Approximately 30% of its exports are to South Africa, while 90% of its imports are from South Africa. The poor economic and developmental performance of the country has led to worsening unemployment: currently 40% of the workforce is unemployed; the annual employment growth rate is 1% while the growth in the labour force is 3%.

In response to the social and economic challenges faced by the country in the 1990s, the Government of Swaziland initiated a number of reforms, namely:

- The National Development Strategy: This was launched in 1997 and lays out the long-term framework (25 years) for development in the country and identifies improvement of living standards of the Swazi population as one of the main thrusts for the country's policy;
- The Economic and Social Reform Agenda I and II (ESRA): It offers the government the opportunity to review policies and ways of stimulating economic growth in the short and medium term. To date, ESRA focuses government effort on the revitalization of the main sectors of the economy with a view to reversing the existing trend towards a more favourable growth pattern;
- The Public Sector Management Programme (PSMP): It presents measures aimed at improving the efficiency of the public sector and management of public resources;
- The Poverty Reduction Strategy and Action Plan 2001: It was recently developed under the coordination of the Ministry of Economic Planning and Development. It presents strategies for addressing identified inequities and reducing the level of poverty (currently estimated at 66%) by half by the year 2015 and completely eliminating it by 2022. The threat to all these development efforts is HIV/AIDS which probably constitutes the single most important developmental challenge to the government. Action by government and development partners is centred on preventing its transmission and responding to the great disease burden and social problems it poses.

Civil society Organisations are gaining increasing recognition as development partners, especially by external development agencies, in the area of HIV/AIDS and poverty alleviation. An attempt to organize NPOs and provide an umbrella for capacity-building has led to the formation of the Coordinating Assembly of Non-governmental Organisations (CANGO). Currently, 16 local NGOs have come together to work on HIV/AIDS-related issues, and it is anticipated that this beginning will lead to more coordinated NPO activity and greater developmental impact. This engagement has facilitated NPO involvement in public policy advocacy, and led to joint implementation strategies together with government and joint monitoring of the impact of interventions on the vulnerable. A draft policy to streamline and clarify the

⁶⁹ UNDP Human Development Report 2007/8, pg. 231.

relationship between government and NPOs has been developed and is being finalized.

With regard to coordination of sectoral programmes, all the agencies and Organisations run separate projects and deal with government separately. It has been noted that all of these agencies have a focus on HIV/AIDS and poverty, and all have expressed a need for better coordination and complementarities in implementation. External partners have also initiated informal consultations to improve coordination in their activities. Monthly development/health partner meetings, chaired by the UN resident coordinator, were initiated in 2002 as a strategy to better coordinate the programmes of government, civil society and development partners.

7.9.2 Legal Environment and Good Governance Practices

The legal environment in Swaziland is not conducive to a free and active civil society, with the result that the NPO sector is generally weak and fragmented.⁷⁰ The country's weak civil society voice, coupled with citizen apathy, mean that the Swaziland government and the private sector lack an effective civil society partner for the country to effectively address its pressing development challenges, which in particular include poverty, HIV/AIDS, food security, governance, employment, corruption and gender-based violence. Two-thirds of the country's roughly 1 million people live on US\$2 or less day, and the prevalence rate of HIV/AIDS has reached 34.2 percent among people aged 15 to 49, the highest in the world. The eastern Lubombo region, hard hit by drought since 2001, and the under-developed Shiselweni region in the south of the country, have been experiencing chronic food shortages.

The Coordinating Assembly of Non-Governmental Organisations (CANGO) is the coordinating body for all Non-Governmental Organisations in Swaziland. CANGO is a non-profit making voluntary organisation, which was founded in 1983 initially as a Coordinating Secretariat for NGOs involved in the promotion of primary health care under the name The Coordinating Assembly for Non- Governmental Organisations in Primary Health Care. This was in response to an appeal from the Ministry of Health for better coordination of primary health care. This was also in response to an appeal from the Ministry of Health for better coordination of primary health care activities in pursuit of the universal goal of Health for all by the year 2000. CANGO, with a membership of around 70 associated NPOs, covers the gamut of social issues: child abuse, population control, women's empowerment and the elderly, groups devoted to the welfare of ex-prisoners, traditional healers, youth and orphans, and social service organisations like the Boy Scouts and the Salvation Army. Unlike Swaziland's trade unions and banned political organisations, the NPOs tend to seek dialogue and

⁷⁰ Information sourced from IRIN at <http://www.alertnet.org/thenews/newsdesk/IRIN/3f45c4e8a65942a47ddaebfad7b0b5d2.htm>

partnership rather than confrontation with the government. Part of the reason for the less-than-flourishing partnership between NPOs, the government and the private sector has been a sense of distrust between the parties, and a lack of capacity in most activist organisations. While grassroots groups have for years focused on particular social problems, and have garnered expertise and experience that would be valuable in national policy-making, and the execution of those policies, there is a strong feeling that the government does not view them as equal partners.

According to the current CANGO Executive Director a strong and sustained civil society voice is required to address national challenges. Through effective citizen participation in governance, monitoring of national strategies, policies and programmes, and engaging policy and legislation, NPOs and civil society could effectively lobby the government to address challenges⁷¹. The problem facing the sector is that the conservative royal government is suspicious of NPOs that are critical of national governance and have issues with the source of NPO funding. Yet, in its analysis of the national budget CANGO has found that spending priorities are not geared to improving the lives of the impoverished Swazi majority, but rather towards preserving the interests of the ruling elite. The budget process in Swaziland, for example, is shrouded in secrecy, non-participation and lack of information from civil society. CANGO has regularly called on the government to embrace a doctrine of fiscal transparency and accountability, and to institute performance audits to ensure ministries implement key policy decisions. CANGO has also criticised government for signing international agreements but failing to implement them, such as legislation to ban child labour, and mechanisms to allow a greater role for women in governance. The institutional framework and legal infrastructure required for good governance are weak, and a lack of democratic reforms, transparency and accountability have convinced many donors to look elsewhere.

7.9.3 NPO Self-Regulation and Administration


In 1987 the constitution of CANGO was amended to enable the Organisation to encompass all NPOs in development, thus becoming a genuine national umbrella body for all NPOs, and not only for those in the health sector. Since its formation CANGO has developed as a strong secretariat with an increased capacity to service the needs and interests of the NPO sector in Swaziland. The restrictive political environment within which the NPO sector operates has, however, militated against efforts to develop a self-regulatory mechanism for the sector even though it has been on the CANGO agenda for a number of years.

⁷¹ http://www.alertnet.org/thenews/newsdesk/IRIN/3f45c4e8a65942a47d_daebfad7b0b5d2.htm

7.9.4 Code of Good Governance

The weak and fragmented state of civil society in Swaziland, coupled with the nature of the political environment, has reduced the sector's capacity to focus on internal self-regulatory and good governance initiatives. The Coordinating Assembly of Non-Governmental Organisations (CANGO) of Swaziland has however undertaken a number of important capacity development initiatives aimed at strengthening the governance and overall effectiveness of the sector. In 2006 CANGO officially launched the Civil Society Capacity Building Project (CSCBP). The launching of the project followed the signing of the Grant Agreement between the African Capacity Building Foundation (ACBF) and CANGO in April 2005. The CANGO Project was approved by the ACBF Executive Board in December 2004 for a grant of US\$1.0 million. The project falls within Foundation's core competency area of Professionalization of the Voices of the Private Sector and Civil Society.

The Grant is a realization that civil society today has emerged as one of the key stakeholders in the development process in Africa and as a result, civil society is becoming an important, legitimate, influential and necessary partner in the poverty reduction process. The Grant aims to strengthen the interface between the Government of Swaziland and civil society for better policy formulation, implementation and evaluation. In line with CANGO's strategic plan, the Grant will facilitate a range of critical capacity building activities, which include the strengthening of the institutional capacity of CANGO, promotion of good governance in the NPO sector, promotion of the contribution of NPOs to Swaziland's development, enhancement of participation of non-state actors in the development policy-making process, as well as promotion of gender sensitivity in the NPO sector by encouraging and capacitating NPOs to mainstream gender concerns in development programs⁷².



⁷² Information sourced from the African Capacity Building Foundation's website at http://www.acbf-pact.org/newsletter/archives/2006/second_quarter/interventions3.asp

7.10 EGYPT

10.9.1 General NPO Activity

From the literature it appears that the NPO sector in the Arab region is generally weak and fragmented, stemming from the specific notion of citizenship in Arab societies. At the same time most Arab countries are characterised, in the political context, by the lack of sound public institutions, the absence of legislatures, recurring violations of constitutions where they exist, and judicial systems weakened by political interference (Samad, 2007: 7). Within the Arab region civil society is referred to as the “indigenous sector”, reflecting the intertwining of the NPO sector and societal relations which are dominated by tribal, clan, family and religious ties. The NPO sector is dominated by welfare and charitable goals, and is primarily involved in service provision, social assistance and welfare (Samad, 2007: 5). Egypt itself has a long history of non-governmental social activity, traditionally based on the Muslim charitable endowment system (or *waqf*)⁷³.

The Civicus CSI report finds that the history of civil society in 20th century Egypt can be divided into three distinct phases (2005: 17). The first phase runs up to the 1952 revolution, and was a period marked by the consolidation and proliferation of NPOs and social movements. Many of these organisations were active in a number of areas, advocating for national independence, as well as the rights of particular groups, while at the same time taking an active part in providing social services to the poor. The second phase runs from the 1952 revolution up to the mid-1970s, with the abandonment of the state-centred model of development. In the aftermath of the 1952 revolution that overthrew the monarchy Nasser’s new socialist government sharply restricted the rights relating to freedom of association, expression and political participation. A variety of laws severely limited the autonomy of the NPO sector and imposed onerous bureaucratic regulations on the sector, and laws such as *Law 91* of 1959 and *Law 62* of 1964 which brought the unions under government control. In the view of Human Rights Watch the legacy of state corporatism has profoundly affected the development of Egyptian civil society, with government-defined boundaries circumscribing the sphere of civil society action and expression (2006: 5). The CSI report finds that during this period the government achieved a high level of success in co-opting many NPOs and turning them into instruments for the implementation of national policies and programmes.

The third post-Nasser phase began with a move towards a free market system (*intifah*) and some degree of political liberalisation under President Anwar Sadat. The

⁷³ A culture of charity prevails in Arab societies, in part because charitable giving is one of the five pillars of Islam.

period did not, however, witness any relaxation of the laws regulating civil society. Despite the restrictions in place civil society activities expanded significantly in Egypt in the period 1985 to 1995, and in particular around the period of the United Nations International Conference on Population and Development held in Cairo in 1994 during which time there was a significant increase in donor funding for NPOs working in areas such as poverty eradication and sustainable human development, women's rights, children's rights, environmental protection, and advocacy. Intense local lobbying by civil society to ease restrictions on NPOs and community service organisations led the government to announce reforms to the *Law of Association Law 32/1964*. A new *Associations Law* was enacted in 1999 but was promptly declared unconstitutional. This was followed by the hasty passing of the current *Law of Association Law 84/2002* which was, as Agati notes, passed without press coverage and without consultation with civil associations and institutions (2007: 60). Human Rights Watch note that although the new law eased some of the worst restrictions of the 1964 law, it also eliminated some of the progressive improvements codified in the 1999 law (2006: 6).

Human Rights Watch argues that a powerful network of legal and practical restrictions limits freedom of association and expression in Egypt, and note that understanding this framework is vital to any assessment of civil society's operational environment and the NPO law. According to the CSI report there is no reliable data on the size of membership of Egypt's NPO sector and that the scope of collective community action is fairly limited (2005: 26). Participation in umbrella bodies such as NPO networks and forums, federations and unions is also weak, partly as a result of the deterrent effect of government hegemony over Egyptian society (2005: 31). In its concluding remarks on the strengths and weaknesses of NPOs in Egypt the CSI report finds that the long history of state centralisation of power and limited political freedom has meant that NPOs have functioned in a highly inhibitive environment that is not conducive to unrestricted civil action, and that this is reflected in the level of autonomy enjoyed by NPOs, in the possible roles they can play and the scope of influence that can hope to have on policy and decision-makers (2005: 79).

10.9.2 Legal Environment and Good Governance Practices

The Constitution of Egypt enshrines the principles of freedom of expression, freedom of association and freedom of assembly. The CSI report finds, however, that these freedoms are circumscribed and that the space for civil society is restricted (2005: 43). The *Emergency Law* restricts a number of basic rights, and its provisions allow for citizens to be arrested without charge and for the right of freedom of assembly to be restricted. Several legal codes, such as the press law, the publications law, the penal code and the libel law, serve to restrict press freedom and freedom of expression.

In Egypt NPOs are governed by different laws, depending on the category of NPO that they fit into. *Law 84 of 2002* governs voluntary civic associations irrespective of their focus activities (human rights, development, and charity) as well as foundations, business associations and self-interest groups. *Law 84* establishes two main forms of non-profit organisations: (i) associations (*jam 'iyyat*) and civic foundation (*mu'assassat ahliyya*). In terms of the Law all non-profit groups comprising ten members or more, and working in social development activities, must register with the Ministry of Insurance and Social Affairs or face criminal penalties. Associations may not accept foreign funding without explicit authorisation from the Ministry of Social Affairs. The Office of the State Security also maintains a presence within the Ministry of Social Affairs and plays a significant role in NPO oversight (Agati, 2007: 63). The result has been to severely limit the scope of permissible NPO activities, and Human Rights Watch note that Article 11 of *Law 84* gives the security forces and government officials unacceptably wide powers to harass activists, to dissolve civil society groups and seize their assets, to block NPO registrations, and to reject particular persons as founders or board candidates (2006: 9). In Agati's view government suppression of NPO activities, for example through exercising control over the affiliation and activities of associations, has undermined both government and NPO efforts to institute good governance practices among NPOs (2007: 64).

The new *Associations Law 84/2002* does have some positive aspects, including widening the scope of permissible NPO activities, including human rights activism. In theory the law also allows NPOs to work in more than one field of activity, although in practice they must seek the Ministry's permission before doing so. The Law also allows NPOs certain exemptions and benefits, including exemption from real estate taxes, registration fees and customs taxes for equipment and material imported as well as donations and grants from international donors. The law also limits the Ministry's previously absolute powers to reject, amalgamate and otherwise control organisations, although it still provides wide scope for government officials to intervene in the internal governance of NPOs (Human Rights Watch, 2006: 12). The CSI report finds that while the NGO law contains broad inhibitive articles, the level of government hegemony exercised through the repressive enforcement of the legal code varies significantly according to which type of NPO it is handling (2005: 50).

10.9.3 NPO Self-Regulation and Administration

In Egypt NPOs are subject to extensive regulation by the laws that govern the non-profit sector, leaving little opportunity for any significant form of self-regulation. There are a number of government agencies that are responsible for ensuring that NPOs are conforming to the laws and regulations in place to govern their activities. Article 69 of *Law 84 / 2002* establishes a General Union of Associations and Civic

Foundations with its headquarters in Cairo. According to Human Rights Watch the union is designed as a government-organised representative body for all NPOs that, while it may have the potential to play a positive role, in fact adds an unneeded layer of state-designed bureaucracy (2006: 12).

The CSI Report finds that with regard to self-regulatory mechanisms, the Egyptian experience points to the fact that, while some efforts have been made by activists in NOOs to publish such internal regulations, their application and impact is of minimal value, and difficult to identify or assess (2005: 32). The CSI stakeholder survey shows that business associations and chambers of commerce appear to have more detailed internal self-regulatory mechanisms, whereas cooperatives, youth organisations and education NPOs have not been particularly successful in formulating internal self-regulatory mechanisms. Overall, the CSI report finds that the main weaknesses within Egyptian civil society's structures include weak formal citizen participation in NPOs and access to resources. Although the existence of NPO umbrella bodies is limited, where umbrella bodies do exist they tend to function effectively, have relatively strong internal self-regulation mechanisms and some capacity to promote cooperation across NPOs (2005: 38). The CDS survey (Philanthropy in Egypt, 2004) suggests that there is substantial cooperation amongst NPOs and that there have been efforts to co-ordinate NPO activities.

10.9.4 Code of Good Governance

The Egyptian NGO *Law 84/2002* provides for strict regulation of the internal governance of civil society organisations, and Agati notes that the law mingles proper transparency and accountability measures with over-reaching controls and modes of interference (2007: 66). This state-driven legal and regulatory system has made it very difficult for NPOs in Egypt to come together to develop both generic self-regulation and good governance codes, or even to implement good governance practices whilst pursuing their objectives. At the same time, as Agati emphasises, elements of good governance have not been well integrated into the work of Arab NPOs

A number of provisions under *Law 84* do conform to international standards for regulating internal good governance practices. The Law stipulates that associations should have a general assembly and a board of directors (Articles 24 and 32), and that these bodies must have regular meetings and provide proper notice of meetings in advance (Articles 27 and 38). On the other hand there are a number of provisions that allow for stringent government controls and interference of the internal affairs of NPOs (Agati, 2007: 66). *Law 84* requires, for example, that associations submit agendas for meetings of their general assemblies to the Ministry of Social Affairs fifteen days in advance of the meeting, and provide minutes of the meeting to the

Ministry within thirty days after the meeting (Article 26). The Ministry must also be notified of candidates for an association's board of directors, and it can remove candidates from consideration as it deems fit (Article 34). Agati concludes that the deficiency in terms of good governance amongst NPOs is partly an outcome of the legal and regulatory environment in which they operate (2007: 70). The major challenge is the requirement that NPOs obtain permission from the Ministry of Social Affairs to do their work, rather than simply notifying the Ministry, working freely, and being held accountable by its members, the judiciary and public opinion.



8. BENCHMARKED COUNTRIES IN THE SOUTH

INDIA

General NPO Activity

In the context of its population size, religious, political, ethnic, social and cultural diversity, and its long history of civilisation the task of defining the non-profit sector in India is a difficult one. Sen argues that there is no single underlying theme or pattern that can characterise the development of the non-profit sector, but suggests that it is useful to divide the development of modern voluntarism and the non-profit sector into four distinct historical periods: the colonial period, the immediate post-independence period, the period 1960 to 1980, and the post-1980 period (1993: 2). The first two periods were characterised by religion-based charities whose activities were very much focused on social welfare and poverty alleviation⁷⁴. The latter two periods, and into the present time, have been characterised by the emergence of more formally constituted NPOs, and the resurgence of separatist and fundamentalist movements and organisations.

India has a long history of social work or voluntary work. Though this history can be traced back to the early socio-religious (reformist) movements, both in the medieval period and again in the 1800's, it was the Gandhian influence in encouraging voluntary work in constructive programmes as an integral part of the freedom struggle that laid the foundation for the modern day voluntary action. At the same time, the influence of the Christian missionaries in influencing the growth of voluntary action cannot be undermined.

The first ever sample survey of the size of the non-profit sector in India places the number of such Organisations at 1.2 million, more than half of which are rural-based. These groups involve as many as 19.2 million people, many of whom work on a voluntary basis. The non-profit sector has a total of 2.7 million paid employees and 3.4 million full-time volunteers, a total of 6.1 million, which is considerable given the fact that central government employees in 2000 numbered only 3.3 million. Contrary to popular perceptions, as much as 51% of the receipts are self-generated, and only 36% come from the government as grants and loans and a mere 7% from foreign sources.

⁷⁴ The work of Mother Theresa's Sisters of Mercy foundation in Kolkata is perhaps the most internationally known example of this kind of NPO activity.

Legal Environment and Good Governance Practices

India is a federal state with national all-India legislation governing the activities of NPOs, but each state has a wide degree of autonomy for passing state-specific legislation that, while adapted from national legislation, is directed at NPO activity in that specific state. At the same time Registrars and Charity Commissions are state entities, with the result that regulations governing NPOs varies from state to state.

Under Indian law there are three distinct forms of not-for-profit organisations: (i) trusts, (ii) societies, and (iii) Section 25 companies. Mutual benefit organisations such as cooperatives and trade unions are generally not included under these three categories. A broad range of government (national and state) agencies have regulatory authority over NPOs. For example, all NPOs are required to file annual tax returns and audited account statements with various agencies. At the state level these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (for societies) and the Registrar of Companies (for Section 25 companies). At the national or federal level, the regulatory bodies include the income tax department, while the Ministry of Home Affairs deals only with NPOs receiving foreign funds (USIG, 2008: 3).

There is no central law governing public charitable trusts, although most states do have *Public Trusts Acts* on their statute books. In most cases a public charitable trust is obliged to register with the office of the Charity Commissioner in order to be eligible to apply for tax exemption. Trusts may register for the purposes of poverty relief, education, health, social welfare and religious advancement. Trustees of religious or charitable trusts are bound to discharge their duties with a high degree of transparency and accountability. Public charitable trusts are highly regulated, and in many states the purchases or sales of immovable property by a trust, or the taking of a loan, must be approved in advance by the Charity Commissioner.

Societies are governed by the federal *Societies Registration Act*, and many states have their own variant of the national act. Societies must be registered with the relevant State Registrar of Societies in order to be eligible to apply for tax-exempt status. According to the Act the types of societies that may be registered are charitable societies, societies established for the promotion of the arts and sciences, and public arts and culture museums and galleries. In terms of governance, societies are usually managed by a governing council or managing committee, as opposed to trusts that are governed by their trustees. Societies, unlike trusts, must annually file a list of the names, addresses and occupations of their managing committee members with the Registrar of Societies.

In terms of the *Indian Companies Act*, certain companies can obtain permits to gain not-for-profit status as Section 25 companies (USIG, 2008: 6). These NPO “companies” can form for the purpose of promoting commerce, art, sciences,

religion, charity or any other socially beneficial purpose. A Section 25 company must apply any profits made or any other accrued income to the promotion of the organisation's core mission and should not pay any dividends to its members. The founders or promoters of a Section 25 company must submit application materials to the Regional Director of the Company Law Board, including copies of the memorandum and articles of association of the proposed company, as well as a statement of assets. The internal governance of a Section 25 company is similar to that of a society in that it generally has members and is governed by directors, a managing committee or governing council elected by its members.

Given its size and diversity the Indian NPO sector poses a legal, financial and regulatory challenge to federal and state governments, and as would be expected shifts and changes in the legislative environment engender robust and often fiercely contested debate. Proposed changes to the 2002 Union Budget, in terms of the Finance Bill, is an instance that initiated a national debate around the financial and tax status of NPOs. Traditionally well-resourced NPOs in India have made a practice of making grants to smaller NGOs and CBOs. In doing this these organisations have been entitled to deductions from their taxable income for the grants made. NPOs have also been allowed to accumulate up to 25% of their income for future use. In 2002 the annual Budget proposed that NPOs had to spend 100% of their income in the year of receipt. If this was not possible, then they could accumulate it for a specific project, but had to be spent within the following four year period.

In terms of the Budget the expenditure from accumulated funds had to be direct expenditure (spent by the NPO itself), which means that accumulated funds cannot be used to make grants to other organisations. While this did not affect most implementing NPOs, the position of grant-making agencies has been made more difficult as they are now forced to make their grants in the first year itself (Proposed amendments to Section 10(23C) and 11 of the Union Budget 2002-03). The Budget proposals severely restricted the rights of trustees in India to allocate funds to the objects of the trust.

NPOs argued that any restriction on the power of the trustees could only be justified if it resulted in enhanced achievement of the objects of the charity as a whole. The budget proposal did away with the free accumulation up to 25% of the income of the trust each year. In general this exempt amount was available to the trustees to create endowment funds, sinking funds for property, or made available as a financial buffer if donations/grants failed to come through on time. NPOs also argued that the four year window period proposed was an additional restriction. While in the earlier provisions, 25% was totally free of any encumbrance, in the budget proposal the accumulated income has to be spent on "specific purpose" and should not include donations to other charities. NPOs questioned what would be gained by these fine

distinctions between the plain object of a charity and a specific purpose of a charity, and the overall consensus was that the proposals had little or no merit except to imply that the ideal format would be for each charity to spend 100% of its income received on the objects in the same year and if not received, then only in the year of receipt or the year following it. They felt that tax donations from one charity to another made out of its accumulated income had little rationale.

NPOs in India are obliged to register either with federal or state authorities. Some of the laws which voluntary/non-profit Organisations use to register themselves include:

- As a society under the *Societies Registration Act 1960*.
- As a trust under the *Indian Trust Act 1882*, or *Charitable and Religious Trusts Act 1920*;
- As a union under the *Trade Union Act 1926*;
- As a co-operative under the *Co-operative Societies Act*.

The most common form of registration adopted by Organisations for acquiring a legal entity is to register themselves as a Society under the *Societies Registration Act* of 1860. Because most NPOs are registered societies, this act needs to be examined in some detail. Societies that are able to register under this Act include:

- Charitable societies;
- Military orphans funds;
- Societies established at the several presidencies of India;
- Societies established for the promotion of science, literature or the fine arts;
- Societies established for instruction or the diffusion of useful knowledge (the diffusion of political education), the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art collection or natural history, mechanical and philosophical inventions, instruments or designs.

Under this Act, any seven or more persons associated with the activities listed above and who subscribe to the memorandum of associations of the Organisation can register themselves into a society. The *Societies Registration Act* has gone through some revisions as several states have enacted their own Acts or rules or amended the central act in its applicability to the state. Thus, societies registered in Maharashtra and Gujarat also have to register themselves simultaneously as a Public Trust under the *Bombay Public Trust Act 1950*, which is applicable to these two states.

In some states the Organisation certificate has to be renewed periodically, for example in Uttar Pradesh the certificate of registration is valid for only five years and

has therefore to be renewed. This provision does not exist in the *Central Act*. It is felt that these amendments brought out by the *State Acts* have made the *Societies Registration Act* “move in the direction of other statutes like the *Cooperatives Act*, and its representatives are acquiring increasingly greater control over the manner and style of functioning of such Organisations” (PRIA (1) undated, pg. 7). In spite of the objectives of the Act as laid out in the preamble, in recent usage the Act has been utilized for a number of other purposes as well, including setting up of youth groups, legal literacy, women’s groups, research on environment and development, and implementing income-generating programmes. The Government of India has also used the Act to float its own Organisations. The Council for Advancement of People’s Action and Rural Technology (CAPART), the National Labour Institute, The National Dairy Development Board are some examples of quasi-state NGOs.

The original purpose of the Act was to set up a society to provide services to and assist groups of beneficiaries who it was assumed were not members. Many NPOs registered under the act are, however, presently operational entities and not membership associations. As a result, some of them have run into difficulties under the *Income Tax* of 1961 where it has been interpreted that such societies are not meant for charitable purposes. It is apparent that this Act, which was conceived almost a hundred and thirty years ago, was not structured to accommodate a number of perfectly legitimate “charitable activities” such as social forestry, income generating activities and that there is a need for a more appropriate legislative framework.

An Organisation can also decide to register itself as a Trust, of which there are two types, private and public. A private trust has to be registered under the *Indian Trust Act* 1882. There is no central law to govern the constitution of public trusts. However, a formal document of a public trust may be registered under the *Registration Act*. There are, however, some other pieces of legislation that affect public, religious and charitable trusts in certain parts of the country, such as the *Charitable Endowments Act* 1980, *Charitable and Religious Trusts Act* 1920, the *Official Trusts Act*, Section 92 of the *Code of Civil Procedure*, and the *Bombay Public Trust Act* 1950. However, it is the *Indian Trust Act* 1882 which is the central legislation and which governs the setting up, constitution and functioning of a private trust. According to this Act, a trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another and/or the owner. The person reposing or declaring the confidence is called the ‘author’ of the trust whilst the person accepting such confidence is called the ‘trustee’.

Registration of a trust has been effectively used by groups, especially those who are interested in creating a governing body or a board of trustees comprising only non-

staff members. Most big business houses and private persons interested in charitable or religious work use this mode of registration. In fact, many private institutions for education and health care, which are largely profit-making bodies, are run by trusts.

Even though it is seldom used, groups and Organisations involved in organising and building people's movement have the option of registering themselves as a Trade Union under the *Trade Union Act 1926*. Being registered as a trade union gives a legal status to the organisers to work with a very large number of people who can be members of the trade union. As a result, this gives them a certain advantage in terms of relating to issues of a large number of beneficiaries within one legal entity. A typical example of this arrangement is the Self-Employed Women's Association (SEWA).

Organisations or groups who are involved in organising people around income-generating activities generally find it useful to register themselves as a Co-operative. Examples of groups registered under this format include the Fishermen's Co-operative, Forest Grower's Co-operative, and co-operatives of women involved in social forestry. However, since 1904, the law has been changed and modified and there is now no central act with each state instead having its own specific act. Opting for co-operative as a form of registration means following the rules and procedures laid down by laws of different states.

In several states the law has been changed and modified in such a way that it has resulted in a high degree of control being vested the hands of the government and its nominees, thereby reducing the autonomy of the co-operatives. Another important reason for not registering as cooperative is that government regulations allow authorities to take control of co-operative societies and utilize them as vote banks as well as sources of funds for party workers. Although co-operatives serve as a useful form of registration, they have not been used consistently or widely used by groups or organisations.

There are certain pieces of legislation that serve to regulate the financial aspects of Indian NPOs. The two major pieces of legislation are the *Income Tax Act 1956* and the *Foreign Contribution (Regulation) Act 1976*. Both these Acts, while regulating the financial activities of the Organisation, are also contain very important mechanisms for government control of the sector. Under the *Income Tax Act*, income from property held for charitable and religious purposes and the income of charitable and religious trusts from voluntary contributions has been granted certain tax exemptions. In terms of the Act "charitable purposes" includes relief of the poor, education, medical relief and advancement of any other object of general public utility not involving the carrying on of an activity of profit. This definition is inclusive and not exhaustive. The Act (under Section 12) provides that only income derived from voluntary contribution received by a trust or an institution created wholly or

partly for charitable or religious purposes is granted certain exemptions. But when such contributions are made with a specific direction that they should form a part of the 'corpus fund' of such an Organisation, this exemption is not available. On the one hand, organisations are being repeatedly told how important it is for them to be self-reliant so that they do not have to depend on grants and donations for which it is essential to have a large enough 'corpus fund'. But, on the other hand, legal provisions of this nature only add to the insecurity of the NPOs and ensure that they hardly ever become self-reliant, which in turn affects the quality and efficiency of their work.

In broad terms the Act treats the work of voluntary Organisations on a par with those of business trusts, charitable hospitals, dispensaries, and educational institutions. Both large and small religious and secular Organisations fall into the same category for purposes of the Act. In fact, there are special concessions available to boarding schools, public schools, hospitals and dispensaries, many of which function purely for profit. But these concessions are not available to those voluntary Organisations which are engaged in non-formal or adult education or even primary health care or community health programmes.

The voluntary Organisations have to justify their non-profit status to the Income Tax Department every year. It is well-known that most voluntary Organisations, especially small grassroots groups which function on small budgets, survive from grant to grant. The *Income Tax Act* makes it very difficult for voluntary organisations to be self-sufficient, or to carry out activities to raise resources on their own because any surplus generated through these activities, for example from the sale of publications, is liable to be taxed. Some critics argue that making the income tax laws that are applicable to NPOs more stringent is seen by Organisations as a political move to limit the autonomy of NPOs (Shah, 1991: 31).

The *Foreign Contributions Regulation Act 1976* (FCRA) regulates the flow of foreign funding to the NPO sector. A large number of NPOs in India, as in most other developing countries, are dependent on foreign donors for funding. However, to enable NPOs in India to access funds from foreign donor agencies organisations must apply for what is popularly called an FCRA number. The FCRA of the *Foreign Contribution Regulation Act 1976* requires that a voluntary Organisation must be registered with the Ministry of Home Affairs and also needs to have the Ministry's permission to accept grants from foreign donors. The term 'foreign source' does not include funding received from the United Nations or any of its specialized agencies, the World Bank, the IMF or any other international agency as recognized by the Central Government. Initially responsibility for the implementation of the Act was vested with the Ministry of Home Affairs and the Ministry of Internal Security. The Act required that the NPO receiving the grant had to inform the Ministry whenever a

foreign contribution was received. This did not prove very effective because if an NPO did not inform the ministry, there was no way that the government would become aware of it. For this reason the Act was amended in 1984.

The Law was amended to make two options available:

- In order to accept foreign contributions, with effect from 1.1.1985, every Organisation having a definite cultural, economic, educational, religious or social programme would have to be registered under the FRCA 1976. Thereafter, it would have to report to the Ministry every 6 months, irrespective of whether or not it has received foreign funds. A scrutiny would be taken of organisations receiving Rs.5 lakhs or more;
- The introduction of the alternative provision of 'prior permission' to get foreign funds.

To begin with, Organisations were being registered and an FRCA number was being allotted to them. However, the Home Ministry found it very difficult to process so many papers and defaults, given that up to the end of 1986, 10,595 associations were registered and 2,705 associations had not submitted their returns within the prescribed time.

As a result, the practice became that no new registrations were granted by the Ministry of Internal Security. Instead, an Organisation had to receive prior permission for every new grant it received, making it face the very same problem that the amendment had set out to solve. Over the years, the FCRA has become one of the most important vehicles of governmental control over voluntary organisations. It can refuse to grant registration or withdraw registration. And since most Organisations depend heavily on foreign funding for their survival, this puts the Organisation in great difficulties. Some of the reasons for refusal/cancellation of registration are that the organisation in question is:

- Engaged in fundamentalist religious activities;
- Suspected of poor utilisation of foreign contributions;
- Suspected of being a front organisation of a political party;
- Suspected of engaging in anti-national activities etc;
- Having links with another Organisation prohibited/required to obtain prior permission or being investigated for any offence;
- Reported to be non-existent/paper Organisation;
- Conducting conversions through dubious means.

Many organisations have been prohibited from receiving foreign contributions on their own whilst other organisations have been instructed to ask to obtain prior permission (Estimates Committee 1986 -87). Some of the Organisations that have had their FCRA registrations cancelled or have received show-cause notice from the

ministry are CROSS, AWARE, AVARD and, more recently, the Indian Social Institute, DISHA, in Gujarat, and a whole range of Gandhian institutions.

NPO Self-Regulation and Administration

The non-profit sector in India is a huge and varied terrain, with over 2 million NPOs that in 2006 employed nearly 27,000,000 people directly. Added to this is the fact that while many organisations are basically small and work at the grass-roots level without much in terms of growth, there are twice the number of non-profit organisations that have increased both in terms of receipt of funds, geographical spread and service delivery. The number of resident foreign donors has also significantly increased in the last decade, with donors establishing offices in the main cities. While many of these donors are 'faith-based' others have specific objectives that enable many non-profit Organisations to apply for funding support. As a result the NPO sector is turning out to be a highly professional sector as more and more young professionals are being employed in the sector.

A number of tertiary institutions are offering post graduate degrees and diplomas, specifically designed for the NPO sector, in various fields including human resource development, management and project management. This represents a major departure from earlier practice where NPOs and their staff were looked upon as service deliverers and charitable philanthropists. At the same time India is a major emerging economy and the government, as well as many professionalised NPOs, want to move away from aid dependence with the result that more resources are being allocated to strengthen local resource mobilization, skills and knowledge. The NPO sector in India understands that effective and sustainable social investment, building human resources and educating professionals is critical. Increasingly the corporate sector in India is becoming more engaged with the non-profit sector, and many NPOs are benefiting from the business management and corporate social responsibility skills of private companies. These developments within the Indian NPO sector have understandably brought with them increased pressure for greater levels of good governance, accountability and self-regulation.

An example of a self-regulation process in India is the GuideStar initiative, which is operated jointly by GSI and Murray Culshaw Consulting (MCC), a private consulting group based in Bangalore, India. This initiative has been set up to develop a system that will:

- Establish a new formal institutional base and operation of GuideStar India; and
- Present NPO information on a free public website in a highly searchable form from a contracted valid government source with additional information provided by Organisations themselves.

The exploratory phase for a Civil Society Information System in India was conducted in 2005-2006. Substantial data was collected from different sources (e.g. umbrella Organisations, individual NPOs, different NPO databases) and records presented on a pilot basis. Currently, www.guidestarindia.org is an online pilot database of Indian voluntary Organisations with aggregated transparent, readily-searchable self-generated reports about the activities, finances, leadership, objectives and requirements of non-profit organisations regardless of their size or area of work. The recent development of the project will present comprehensible NPO information from a contracted valid government source with additional information provided by Organisations themselves by 2010 on a free public website in a highly searchable form. GuideStar is an innovative self-regulatory initiative, and as such faces a number of challenges, including the following:

- India has a very large and complex voluntary sector;
- There is no single source of data for the voluntary sector;
- There are multiple languages used across India;
- The uneven quality and reach of internet connectivity in rural and semi-urban centres⁷⁵.

Code of Good Governance

The influence of corporate good governance trends is driving the move towards greater accountability in the non-profit sector. Self-regulatory initiatives within the sector, by Organisations such as GuideStar, CUS and the Credibility Alliance, are strengthening the good governance discourse and NPOs rating agencies and other certification services are beginning to emerge. Added to this is the fact that governance is becoming an integral part of the shift towards good governance, with stronger demands for transparent accountability processes. Many NPOs have, to a lesser degree, accepted the fact that good governance within NPOs provides greater credibility to donors and the public in general. With greater professionalism characterising the non-profit sector, NPOs are coming to accept the fact that transparency coupled with good governance is the way forward for the non-profit sector. Increasingly the introduction of good governance practices is strengthening transparent decision-making processes and supporting the leadership of non-profit organisations to direct resources and exercises power on the basis of shared values in an effective and accountable way.

Corporate Social Responsibility is an emerging field in India and it is having a strong influence on good governance trends within the NPO sector, particularly in light of the fact that large volumes of corporate social responsibility funds are channelled through NPOs. Outsourcing Business Houses and Corporates, such as InfoSys, CII and the Bengal Chambers of Commerce and Industries, are taking the lead in

⁷⁵ Information sourced from <http://www.guidestarinternational.org/india>

supporting good governance initiatives within the NPO sector. Other large Corporates providing support and involvement in the non-profit sector are the ONGC, Hindustan Levers, Godrej, Reliance, ITC and the TATA Group, and Bankers such ICICI Bank amongst others, who provide regular funding to established NPOs.

Corporate Foundations have the advantage of being familiar with the language and culture of both NPOs and business, and have the capacity to broker joint programmes between the two. Calcutta Urban Service (CUS) is a professional NPO development Organisation with 30 years of experience working primarily in urban and peri-urban slum. CUS has developed a *Governance Policy and Operational Manual* that incorporates knowledge management, social marketing, creation of stakeholders in the corporate sector, the right to information aspects of all of CUS activities and experiences as a non-profit Organisation, and outlines new approaches, methodologies, Organisational policies, personnel requirements and required financial investments geared to strengthening NPO accountability and good governance practices⁷⁶. The Credibility Alliance is a consortium of voluntary organisations committed to enhancing accountability and transparency in the voluntary sector through good governance. It is an initiative that emerged from within the sector and was registered in May 2004 as an independent NPO after an extensive consultative process over a period of two years involving thousands of voluntary organisations all over India⁷⁷.

The exponential growth of the NPO sector has predictably resulted in question marks being raised over the credibility of the entire sector. The failure of present regulatory mechanisms and the absence of any comprehensive sectoral framework to ensure accountability have compounded the problem. Increasingly, however, NPOs themselves have been looking to address this weakness. Credibility Alliance, for example, believes that a credible good governance mechanism needs to emerge from within the sector and that this can only be through a self-regulatory mechanism that meets the requirements of accountability and transparency.

In consultation with its partner NPOs the Credibility Alliance is in the process of developing norms, standards and guidelines that could serve as a generic framework for the NPO sector in India.

The following draft guideline on Minimum Norms has so far been developed:

Minimum Norms

The Minimum Norms are the Norms that all voluntary organisations should follow. It is mandatory for all members of the Alliance to comply with the Minimum Norms or give an undertaking that they will do so within a year. They include the following elements:

⁷⁶ <http://cus-kolkata.org/73.htm>

⁷⁷ <http://www.credall.org.in/norms/norms.htm>

i) Identity

Principle: The organisation should exist and be registered.

- Existence
- The organisation has been functioning for a minimum of one year from the date of registration;
- The physical address given by the organisation is verifiable.

ii) Legal Status

- The organisation is registered as a Trust / Society or Section 25 Company;
- Registration documents of the organisation are available on request.

iii) Vision, Aims, Objective and Achievements

Principle: The organisation should be able to state what it is aiming to do and can also state achievements related to its aims.

- Vision / Purpose / Mandate / Mission - a vision/ purpose/ mandate/ mission, which drives the organisation, is articulated beyond the registration documents;
- Objectives - the organisation has a defined aim and a set of objectives;
- Impact / Achievement / Output / Performance - the organisation is able to show performance through defined indicators against stated objectives.
- Ethical practices are mandatory.

iv) Governance

Principle: The organisation is committed to and practices good governance, in order to enhance effectiveness and especially because voluntary organisations draw upon public funds and private donations.

- The organisation has a Governing Board, by whatever name called;
- Disclose details of Board members namely: name, age, gender, position and occupation;
- Not more than half the Board members have remunerated roles;
- The Board has at least two meetings a year suitably spaced with quorum stipulated in its own Articles of Association;
- Minutes of the Board meetings are documented and circulated;
- The Board approves programmes, budgets, annual activity reports and audited financial statements;
- The Board ensures the organisation's compliance with applicable laws and statutory regulations.

v) Operations

Principle: The organisation conducts its programmes and operations efficiently and effectively in the public interest.

- a. Programme
 - Activities are in line with the Vision, Aim and Objectives of the organisation.
- b. Management
 - The organisation periodically reviews progress of programmes;
 - The organisation follows consultative decision-making processes;
 - The organisation complies with applicable laws and regulations of the country;
 - The accounts of the organisation are regularly maintained and those with an annual income above Rs 50,000/- are audited by a chartered accountant.
- c. Human Resources
 - Roles and responsibilities are defined for Personnel: Staff and Volunteers;
 - All personnel are issued letters of contract / appointment;
 - An appropriate Personnel Policy is in place.

vi) Accountability and Transparency

Principle: Organisation is accountable and transparent to the community served, the state, the public, donors, staff, and volunteers and concerned others.

- a. Accountability
 - Signed audited statements are available: balance sheet, income and expenditure statement, receipts and payments account, schedules to these, notes on accounts and the statutory auditor's report;
 - Statement of accounts indicates whether constructed on a cash or accrual basis;
 - There are no serious adverse notes on any material point;
 - There are no material transactions involving conflict of interest between a Board or staff member and the organisation.
- b. Transparency
 - The organisation's Annual Report needs to be distributed and communicated to the stakeholders and others and is made available on request every year, within eight months of the end of the organisation's financial year;
 - The Annual Report contains a description of the main activities, a review of the progress and results achieved in the year; and

information on the Board members' names, position in the Board, remuneration or reimbursement and should contain brief financial details.

BRAZIL

General NPO Activity

Brazil is an industrial power with the largest population in Latin America and the Caribbean. It is a country that has experienced a difficult but successful transition from military rule to democracy. Brazil is an emerging economy that has made considerable strides in reducing social and economic inequality, which are both cause and consequence of the poverty that continues to afflict millions of Brazilian people. The country also rose to the challenge posed by the single biggest health threat in the modern world, pioneering an anti-HIV/AIDS strategy that became an international model by guaranteeing universal access to anti-retroviral medication⁷⁸.

The country's commitment to comprehensive anti-poverty measures has survived two bouts of international economic turbulence and domestic energy crisis over the past five years, thanks to a strategy of expanding exports while lowering barriers to foreign trade and investment, as well as to Brazil's private sector. Economic growth was maintained, with GDP increasing 1.5% in 2001, and again in 2002, though at a rate that shows a continuing vulnerability to external shocks. Economic successes have raised expectations among Brazilians for continued progress in providing more opportunities for the poor. The clearest expression of that determination was the 2002 election of Luiz Inácio Lula da Silva. A former factory worker who was born in the country's poorest region, the Northeast, da Silva is now in his second term as President, and under his government progress has been made in addressing the root causes of poverty.

Despite Brazil's impressive advances, the poorest one-fifth of Brazil's 173 million people account for only a 2.2 percent share of the national income. With a gini coefficient of 57.0 Brazil is second only to South Africa (57.6) in a world ranking of income inequality⁷⁹. More than one-quarter of the population live on less than \$2 a day and 13 percent live on less than \$1 a day. Brazil's Northeast contains the single largest concentration of rural poverty in Latin America. Past development programs have failed to make a major dent in a region in which 49% percent of the population is classified as poor. Environmental deficiencies continue to afflict the country, posing health risks to a major part of the population, and crime also plagues urban Brazil.

⁷⁸ Sourced from the World Bank Brazil at <http://wbi0018.worldbank.org/LAC/LAC.nsf/ECADocByUnid/A220784F5BC3A1FB85256DB40070253B?Opendocument>

⁷⁹ UNDP Human Development Report 2007/8, pg.282.

And on the structural level, Brazil's poor transportation networks and bureaucracy are notorious for raising costs for ordinary citizens as well as for businesses. In São Paulo, transportation costs a poor person one-fifth of his or her income, and more than 2.5 hours a day in commuting time.

The challenge for Brazil's growing NPO sector has been to find appropriate and non-confrontational ways of supporting the government's social agenda. The process of decentralization in the public administration in Brazil has provided more autonomy for local governments, which has facilitated the development of relationships with civil society Organisations. Mendonca notes, however, that when decentralization transfers only tasks and responsibilities and not power to local levels of government, it is more difficult to produce synergistic development relations (2004: 35). Attempts to build more productive relationships built on state-civil society partnerships has also been undermined by the risk of increasing the power of local elites, leaving civil society out of the process. Other problems related to decentralization at local level of government are the creation of regional inequalities and horizontal competition within government.

There are, however, some significant examples of collaboration and partnership between Government and civil society. Galvao *et al* demonstrate how, since 1992, the Brazilian National Aids Programme has taken the lead in an unprecedented large-scale partnership aimed at involving different sectors of Brazilian civil society to deal with the HIV/Aids epidemic (2000: 2). Created for this specific purpose, the NGO Liaison Unit aims through a range of strategies to promote, encourage and broaden the responses from the non-governmental sector to reflect their different initiatives concerning the epidemic.

The Unit's two main approaches are firstly to increase participation by representatives of civil society and of people with HIV/Aids on committees and commissions such as the National Aids Commission, the National Vaccines Commission and the Thematic Group of UNAIDS in Brazil and, secondly, to organise annual public competitions to which community groups, groups and networks of people living with HIV/Aids, NGOs and other civil society institutions can send projects to be assessed by external committee, with the possibility of obtaining financial and technical support for their proposed activities. Galvao *et al* argue that the results have been impressive, with a total of 900 projects involving 300 civil society institutions in Brazil being financed at a cost of about \$US 22 million in the period 1993-1999 (2000: 6).

The Brazilian experience has shown that without participation by civil society, initiatives to deal with the epidemic are unlikely to be very successful. It is therefore a challenge for Governments to encourage the participation of NPOs in the roll-out of key national and federal social programmes, and increasingly to build a three way

partnership that includes the private sector. In fact the corporate sector is increasingly taking the lead in developing self-regulatory and good governance frameworks to increase the accountability of corporate and to set an example in the practice of good governance for government and the NPO sector.

Legal Environment and Good Governance Practices

The *Civil Code of Brazil* (Law 10.406 of January 2002) provides for two traditional civil law forms of not-for-profit private legal entities. As defined under Brazilian law the following definitions apply:

- An association is an organisation created by a group of people seeking to achieve a particular goal. These are generally self-governed, voluntary organisation formed for the purpose set out in their founding documents and constitutions. Associations need to register their charters in a public register office in order to obtain legal status, but do not require any further government permit to register as an NPO private legal entity;
- A foundation is an organisation created and formed by an endowment, and can be of a private or public nature. Under Brazilian law a foundation is a collection of assets granted legal personality by operative laws and devoted to public interest purposes. Under the current Code (law) the activities of foundations are limited to the religious, moral, cultural or social assistance purposes. Under the *Civil Code* foundations can only be established by submitting a letter of establishment, constitutive acts, and charters to the Attorney-General's Office. Once approval to establish has been gained, the founders must register their constitutive documents with the proper public register office.

Whether they are classified as associations or foundations, NPOs in Brazil are able to qualify for one of five special designations (USIG,2008: 2):

- Civil Society Organisations for the Public Interest (OSCIPs);
- Social Organisations (OSs);
- Public Utility Status;
- Social Assistance Registry; and
- Social Assistance Beneficent Entity Certification.

In January 2007 the *National System of Entities Qualified by the Ministry of Justice* (CNEs/MJ) was created by government decree. Under the decree, all OSCIPs, entities holding Public Utility Status, and other foreign organisations authorised to conduct activities in Brazil are obliged to register with the Ministry of Justice (USIG, 2008: 7). The CNEs/MJ has been designed in part as a vehicle for registered entities to publicise, circulate and disseminate their financial accounts and reports on activities during the year, thereby strengthening transparency and accountability. Under the new system, OSCIPs that submit their accounts and annual reports by the set

deadlines will receive a “regularity certificate”, which will then allow them to tender for government contracts.

The Federal Constitution exempts educational and social assistance NPOs from taxes at all levels. Organisations that do not qualify for constitutional tax exemption may be eligible to receive some tax benefits at the federal, state and municipal level.

NPO Self-Regulation and Administration

At present there are no processes underway within the Brazilian NPO sector to establish a self-regulatory mechanism for NPOs.

Code of Good Governance

At present there is no specific Code of Conduct for the NPO sector. However, the Instituto Brasileiro de Governança Corporativa’s (IBGC) *Code of Best Practice of Corporate Governance* is currently widely used as a template by the NPO sector.⁸⁰ The main object of the Code is to provide guidelines to all kinds of companies – publically or privately held corporations, limited liability companies, service providers and non-governmental organisations – with the purpose of:

- Increasing company value;
- Improving corporate performance;
- Facilitating access to capital at lower costs;
- Contributing to the long term survival of the company.

The expectation is that the Code will play an important educational role and lay the foundations of an effective application of good corporate governance in Brazil, as well as provide the NPO sector with a set of guidelines for its own good governance practices.

⁸⁰ Source document is found at www.ibgc.org.br

PHILIPPINES

General NPO Activity

The civil society sector in the Philippines has been shaped by the history of colonialism, which date back to the era of the Spanish colonization. So-called “proto-NGOs” already existed in the form of cooperatives, which were local reactions to colonialism, and the trade union movement. The arrival of the Americans saw the introduction of a number of welfare agencies⁸¹. The Catholic Church has also played a prominent role in the shaping and development of civil society in the Philippine, primarily through the facilitation of the formation of civil society organisations to reinforce its social and political influence⁸². The ADB notes that the Catholic Church was responsible for establishing parochial schools, orphanages, asylums and hospitals but that these were generally reserved for the local elites (2007: 1). Ladvina however argues that a real NPO sector oriented to (and not against) the state emerged, and that the church influence was more muted.⁸³

Nevertheless the impetus that propelled the establishment of civil society organisation continued to surface and persisted until the mid 1960s with the emergence of Ferdinand Marcos. Marcos envisioned a “new society” in which there was little space for civil society and no tolerance for advocacy NPOs and this period became increasingly associated with the suppression of civil, human and political rights (ADB, 2007: 2). The period of the dictatorship saw the realignment and strengthening of the sector as self-proclaimed mechanisms for social development, either through armed struggle or through proxy organisations such as the church or universities. Many of these organisations were strong critics of the state, and many of them grew out of social action movements of the churches and were a far cry from the church-influenced organisations of the colonial periods. Since the ousting of Marcos and the return to democracy under Aquino all government restraints on NPO formation were removed and the numbers increased dramatically, although many became linked to political and business interests. In 1991 the largest NPO networks formed the Caucus of Development NGO Networks (CODE-NGO) to promote professionalism, expand reach, and increase the effectiveness of NGOs (ADB, 2007: 2). Wurfel notes that this proliferation argued for the logic of coalitions and federations, but as in other spheres of Philippine life, these coalitions have not been particularly stable, and have waxed and waned with the vagaries of leadership change (2003: 216). According to Ladvina the sector has in general terms attempted to continue its militancy even as it is now increasingly cooperates with the more openly CSO-friendly state and church (2001: 24).

⁸¹ Fely I. Soledad, Executive Director: Philippines Council for NGO Certification

⁸² Ladvina et al. 2001. Global Civil Society: Dimension of the Nonprofit Sector, Vol 2.

⁸³ Working papers of The Johns Hopkin Comparative Nonprofit Sector (2001)

At various points in Philippine history the state and the Church worked in tandem, as during the Spanish colonial era, to try and shape the direction and activities of civil society. At other times, such as during the Martial Law period of the 1970s-1980s, Ladivina notes that the church worked alongside civil society in opposition to the state (2001: 19). The forces that shaped civil society have created “a civil society in the Philippines that is relatively modest in size but with an unusually large expressive component and significant volunteer involvement.”

According to Wurfel, however, the Philippines has the largest number of non-governmental organisations (NGOs) per capita in Asia (2003: 215). The Philippine NPO sector has developed a strong reputation for the delivery of basic services to the urban and rural poor. This has been recognized by national and local government, by other NPOs in the region, and by the donor community. In fact, NPO participation in all aspects of governance is enshrined in the Philippine constitution. The past administrations of President Aquino and President Ramos have included NPOs in local and national consultations on important issues and have encouraged them to participate in the governance processes of the country (PCNC). The newfound recognition of the role and contributions of the NPO sector in Philippine development has led to the spectacular rise in the number of NPOs in the country. Some reports state that there are as many as 60,000 non-profit, non-governmental Organisations registered in the Philippines today.

Legislative Environment and Good Governance Practices

Three articles of the 1987 Constitution institutionalise the role of NPOs and People’s Organisations (Pos) in the Philippines development terrain (ADB, 2007:4):

- *Constitution Article II*, Section 23 notes that “the state shall encourage non-governmental, community-based, or sectoral organisations that promote the welfare of the nation”;
- *Constitution Article XIII*, Section 15 states that “the state shall respect the role of independent people’s organisations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests, and aspirations through peaceful and lawful means”;
- *Constitution Article XIII*, Section 16 states that “the right of the people and their organisations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The state shall, by law, facilitate the establishment of adequate consultation mechanisms”.

The *Local Governance Code* (LGC) of 1991 furthers the Constitution’s aims by establishing a role for “people power” at the local level. The LGC establishes:

- A process of accreditation of NPOs and POs at the local level;

- A local governance infrastructure composed of five special bodies, of which the local development council must be formed at the village level;
- A stipulation that at least one quarter of the membership of the local development council must come from civil society or the private sector. The civil society representatives must come from locally-accredited organisations;
- The right of the people to amend, revoke, and enact ordinances through referenda; and
- Provisions are made for the establishment of other local committees, such as cooperatives.

The LGC is a formalisation of the *barangay* (village) system of local governance, which existed in the Philippines before the arrival of the Spanish colonists. It mandates the transfer of power, resources (40% of internal revenue to local bodies), and responsibilities from national to local governments through a process of devolution.

NPOs are typically organized as "non-stock corporations" registered under the *Corporation Code*. Non-stock corporations can be formed for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, such as trade, industry, agricultural and like chambers, or any combination thereof (Section 88, *Corporation Code*)⁸⁴. Under section 88 of the *Corporation Code* of the Philippines, non-stock (not-for-profit) corporations may be formed for the purposes there stated. Although informal associations and charitable trusts exist, they do not have full legal personality. A not-for-profit corporation is the only type of legal entity permitted for an NPO in the Philippines. No permission prior to establishment is required, although licenses or certifications of competence are necessary to perform certain functions, whether an Organisation is an NGO or a for-profit entity. Because non-stock corporations are subject to the same rules as other corporations, such entities are subject to the oversight of the Securities and Exchange Commission, and annual reports are required although actual supervision is limited⁸⁵.

NPO Self-Regulation and Administration

The growing visibility of NPOs as key actors in the governance of social and economic affairs has led to more scrutiny of their operations and calls to greater transparency and accountability. As a response, NPO groupings have led initiatives to strengthen self-regulation by establishing certification mechanisms, which then allow Organisations to gain more leverage with other sectors for the support of their work. In April 2002, a conference was held at the Catholic University of America to discuss the legal enabling environment for NPOs in East and Southeast Asia. High on the

⁸⁴ <http://www.usiq.org/countryinfo/PDF/Philippines.pdf>

⁸⁵ <http://www.thailawforum.com/articles/ngo2.html#f14>

agenda was the issue of whether other countries in the region should adopt participation legislation, such as the PCNC in the Philippines. It was noted that this legislation mandates a role for civil society with respect to the adoption of various policies at the local, regional, and national levels of government, but raised the concern that other countries in the region did not have similar legislation and that their civil societies were not as strong as civil society in the Philippines. The conference explored the importance of one regulatory system for NPOs as opposed to several different regimes under which they can become registered and are then regulated, and looked at whether it was necessary or beneficial to have legislation for NPOs or whether a simple system of regulations as was the case in China would be sufficient⁸⁶.

As the Asian Development Bank points out registration is not mandatory for NPOs in the Philippines, but only registered organisations benefit from a legal identity that permits them to open a bank account, take on a legal status and be eligible for tax exemptions. Registration is also an official requirement in order for NPOs to accept donations or to participate in government projects through accessing contracts. This rapid expansion in the number of NPOs had also given rise to concerns about the government's ability to regulate all of these Organisations and to ensure that the resources that they received were actually being used for their declared goals and objectives. This concern led the Department of Finance (DOF) to initially recommend that only donations to the government's disaster relief program be tax-deductible when it first submitted its draft Comprehensive Tax Reform Package (CTRP).

Following representations by the non-profit sector at the very first consultative mechanism on the CTRP, the government did acknowledge that in general, the non-profit sector was an effective complementary sector to government. However, the government needed to be assured that donations to the NPOs were not being used as tax dodges by some donors. The Department of Finance (DOF) then challenged the NPO community to establish a self-regulatory mechanism and body which could certify to the legitimacy, accountability, and transparency of NPOs, especially those receiving donations from individuals or corporations in the Philippines. Only those NPOs so certified would receive the status of recipient institution, and donations to these certified recipient institutions could be deducted from the donor's income tax. In response the PCNC was established in 1998 by the country's six largest national NPO networks following consultation with the NPO sector and the government. The PCNC was effectively established to evaluate charitable Organisations in areas such as administration, governance, programmes and financial management.

⁸⁶ <http://www.members.tripod.com/asialaw/articles/ngo3.html> - 3

After many meetings and consultations among NPOs and between the PCNC and the government, a Memorandum of Agreement (MOA) was signed between the Department of Finance and the PCNC. The MOA authorized the PCNC to accredit NPOs applying for recipient institution status, as long as these NPOs meet the minimum standards for certification. The certification from PCNC would then serve as the basis for the Bureau of Internal Revenue (BIR) to grant recipient institution status to NPOs which have been certified by the PCNC. This arrangement serves as a new model of partnership between government and non-government sectors.

The PCNC is governed by an eleven-member Board of Directors composed of representatives of the various NPO networks, members elected from among the certified Organisations, and a Bureau of Internal Revenue (BIR) representative. The primary function of the Board, which meets once a month, is to examine the evaluators' findings and make the final decision on the certification of applicant NPOs (Soledad, 2002: 2). PCNC's operation is handled by a Secretariat headed by an Executive Director who is presently assisted by seven staff members.


The PCNC Secretariat serves as the operational hub and coordinates the activities involved in the whole evaluation/certification process. The PCNC certifies non-profit organisations that meet established criteria for financial management and accountability and it provides clear enforcement mechanism. However, criticism of the PCNC is that it has slowed down the process of registration, and that after eight years of existence the PCNC had only certified 1,000 NPOs which was nowhere near its potential market of 6,000 NPOs when it was established (Songco, 2007: 2). Soledad notes that the efforts of the six national networks was not only to pursue tax incentives for donors to NPOs but also, and even more importantly, to promote professionalism, accountability, and transparency among their members, and the Philippine non-profit sector in general. This was in part to address problems around the registration of NPOs established solely for the vested interests of individuals or groups under the alleged purpose of social development.

The six networks have made commitments to encourage their own members to apply for PCNC certification and to make recommendations to the Council for de-certification of any erring member. The PCNC certification would then become a "seal of good housekeeping", the intention of which is to assist the funding agencies and partners, both local and foreign, in their decisions on which NPOs have the governance capacity to manage donor funds.

Code of Good Governance

Philippine NPOs have been at the cutting edge of NPO self-regulation. The Caucus of Development NGO Networks (CODE-NGO), the biggest coalition of NGOs in the Philippines, established a *Code of Conduct for Development NGOs* in 1991. It was

the first network to establish a Code of Conduct among NPOs in Asia (Sidel, 2003) and probably one of the first in the global NPO community. CODE-NGO's *Code of Conduct* has since been signed by over a thousand NPOs and was recently updated to provide for clearer enforcement mechanisms⁸⁷. The initial task of CODE-NGO members was to encapsulate their standards into two documents: the Covenant on Philippine Development which articulates their vision of development and the Code of Ethics of Development NGOs (later Code of Conduct) that would establish the ethos of their work to set them apart from the fly-by-nights that were already proliferating. Formulating these documents was a painstaking exercise that took nearly a year of debate, consensus building and compromise to conjure the right language that would marry the sometimes opposing view of this very wide range of development actors (Songco, 1999). It was a necessary exercise to prove that NPOs could subsume their self-interests to the interest of the sector. This proved to be a strategic step and has since served as a model for the NPO sectors in many other countries around the world.



⁸⁷ Danilo Songco: *The Evolution of NGO Accountability Practices and their Implications on Philippine NGOs: A literature review and options paper for the Philippine Council for NGO Certification*.

GUATEMALA

General NPO Activity

Guatemala is a small central American country that experienced a long and particularly violent 36 year civil war from 1960 to 1996. With a partial cessation of conflict national elections for president, Congress, and municipal offices were held in November 1995. With almost 20 parties competing in the first round, the presidential election came down to a January 7, 1996 runoff in which PAN candidate Álvaro Arzú Irigoyen defeated Alfonso Portillo Cabrera of the FRG by just over 2% of the vote. Arzú won because of his strength in the capital Guatemala City, where he had previously served as mayor, and in the surrounding urban area. Portillo won all of the rural departments except Petén.

Under the Arzú administration, peace negotiations were concluded, and the government and the guerrilla umbrella Organisation URNG, which became a legal party, signed peace accords ending the 36-year internal conflict in December 1996. The General Secretary of the URNG, Comandante Rolando Morán and President Álvaro Arzú jointly received the UNESCO Peace Prize for their efforts to end the civil war and attaining the peace agreement⁸⁸. The civilian population of Guatemala was deeply traumatised by the conflict, and two decades of Human Rights Watch reports have reported on atrocities perpetrated against ordinary Guatemalan people and over 400 massacres were documented by the truth commission - some of which, according to the commission, constituted acts of genocide. As a result of the conflict the NPO sector in Guatemala was divided, fragmented and highly politicised, and it is only in the past few years that efforts to normalise and regulate the sector have begun to emerge.

There are three different kinds of NPOs as sanctioned by the government of Guatemala. These are (i) civil associations, (ii) foundations and (iii) NGOs for development. Foundations and associations have traditionally been the main NPOs in the country, as determined by the 1963 Civil Code. Following the introduction of the *Law of Non-Governmental Organisations for Development* (Ley de Organizaciones no Gubernamentales para el Desarrollo), passed in 2003, NGOs were given formal status as the third category of NPOs. Despite Guatemala's fractious political history the *Civil Code* allows civil associations and foundations to engage in political activities, although it is silent on advocacy, lobbying, media and human-rights related activities. The recent *Development NGO Law* is also silent on these issues.

⁸⁸ http://en.wikipedia.org/wiki/Guatemalan_Civil_War

Legal Environment and Good Governance Practices

Historically associations and foundations have been the primary not-for-profit organisations in Guatemala. In terms of the *Civil Code* a civil association is defined as an NPO that promotes, exercises or protects trade union, political, economic, religious, social, cultural, professional, or other interests. In order to operate it is required to register its notarised governing documents in the Legal Entities Registry of the Ministry of Government, as per the provisions of the *Law of National Registry of Persons*. In terms of the *Civil Code* a foundation is defined as a legal entity formed by public instrument or will with a minimum capital requirement, and its articles of incorporation must describe the foundation's assets and the purpose for which the assets will be used and administered. As is the case with associations, a foundation is required to register its notarised governing documents in the Legal Entities Registry of the Ministry of Government (USIG, 2007: 4).

The passing of the *Law of Non-Governmental Organisations for Development* (in 2003) signalled a major shift in the NPO terrain. In terms of the provisions of the *NGO Law* an organisation can apply from the outset for registration as an NPO, while associations and foundations can apply to change their status and be registered as an NPO. The *NGO Law* also enables organisations registered in terms of its provisions to access government funds created under Article 242 of the *Political Constitution of the Republic of Guatemala*. In terms of the provisions of the *NGO Law* an NPO is defined as a not-for-profit entity with cultural, educational or sports objectives, and that provides social services, social assistance or charity within the economic and social development sectors. As with associations and foundations an NPO must register its notarised governing documents in the Legal Entities Registry of the Ministry of Government (USIG, 2007: 7).

In terms of the *Income Tax Law* NPOs in Guatemala are eligible for an income tax exemption, but are required to meet certain criteria that include:

- The activities of the organisation are related to charity, assistance, aid or social service, culture, scientific research, education, arts and literature, sports, politics, religion, or activities typical of trade unions or professional associations;
- The organisation is registered as exempt with the tax authority;
- The earned income and assets of the organisation are derived from donations or from fees, and they are utilised exclusively for the organisations principal objectives; and
- The organisation does not distribute profits or assets among its members, either directly or indirectly.

Services provided by associations, foundations and NPOs are exempt from VAT (at 12%), provided these organisations are registered and pursue not-for-profit activities. Contributions and donations to NPOs are also tax exempt, as long as the

beneficiary organisation serves educational, cultural, social assistance or religious objectives.

NPO Self-Regulation and Administration

For much of the 36-year-long civil war that plagued the country at the end of the last century, Guatemala was the recipient of significant volumes of international aid, much of it directed towards humanitarian assistance. Since the ending of the war in 1996 volumes of donor funding have decreased, laying a greater burden on the NPO sector to provide social assistance and key social services. Eighty per cent of Guatemala's population still lives in poverty, and trans-national street gangs and drug-trafficking have led to a homicide rate of more than 100 per 100,000 residents in the capital city. A number of indigenous foundations have stepped into the breach left by international donors, but Guatemala's emerging non-profit sector is under pressure to initiate legal and regulatory reform to ensure its own long-term success. As a result the sector is increasingly lobbying for relevant reforms to enhance the sector's reputation and effectiveness.

The *Law for Development NGOs* is only the beginning of an answer to the question of NPO regulation. The confusing language of the legislation and its lack of specificity have resulted in the law becoming an optional regime for NPOs rather than a source of legal certainty. Key stakeholders in Guatemala's NPO sector have expressed a desire to see the law amended to better categorize the types of NPOs and to clarify the process of founding an NPO. Combined with more transparency from the national tax agency, this would allow donors to access key information about potential grantees.

Despite the disarray of the country's non-profit legal framework, there are some outstanding examples of civil society Organisations doing socially transformative work in Guatemala within the context of a focus on self-regulation and sound governance, accountability and ethical principles. The Collective of Social Organisations (COS), for example, has created a political alliance of progressive NPOs representing the interests of the poor, farmers, indigenous people, women, and labour unions. In affiliation with other NPOs, including the International Centre for Human Rights Research (CIIDH), COS attempts to promote human rights legislation, and to bring to trial human rights cases in Guatemalan and international courts, primarily on matters of socio-economic equality. Fundación del Centavo, or the Penny Foundation serves 3,000 people per year – primarily through microcredit programmes in Guatemala's rural areas aimed at lifting indigenous people out of the informal economy, generating income and employment for the community through enterprises like animal husbandry, telephone card marketing and or agricultural development. The Institute for Overcoming Urban Poverty (ISMU) is another exemplary Guatemalan Organisation with ties to US and European foundations, such

as the International Development Exchange (IDEX) in San Francisco. ISMU's mission is to repair the social infrastructure and to promote values of solidarity and collective care. ISMU does this by working on a long-term basis with carefully chosen community-based NPOs. It provides capacity-building programmes to help them become more sustainable, and supports direct services like preventive health care, housing and primary education.

Guatemala is at a crossroads in regard to increased oversight of the sector, with new laws entering into force and many new proposals on the table. Currently, there is no one government agency in charge of overseeing the growing third sector, and virtually no comprehensive regulation. The tax authority oversees the formalities of non-profit exemption and charitable deductions, but no agency ensures that private donations are put to the use intended and or that they reach their intended beneficiaries. Some of the most reputable NPOs and foundations in Guatemala, including COS and CIIDH, are pushing for more state and self-regulation of their sector, realizing that they are tainted when unregulated NPOs are the subject of scandal or used as fronts for corruption. Concern has been expressed that a lack of transparency arises when NPOs assume traditional state functions.

Until recently the law has prescribed accountability and reporting to the state only in relation to the public or government funds involved. In fact, the 2007 budget includes a new law requiring more self-reporting by NPOs receiving government contracts. Private donations, in contrast – from within Guatemala and from abroad – are not subject to any oversight, or 'fiscalización' and mechanisms for reporting on funds are left entirely up to the donors.

The Coordination of NGOs and Cooperatives (CONGCOOP) is also an advocate for such oversight. This group has worked with other NPOs and umbrella Organisations, including CFP, to pass legislation for the NPO sector. CONGCOOP is working to lobby Congress to amend the *Law for Development NGOs* so that it covers the many different types of non-profit association. It also recommends creating an inter-agency oversight commission with members from the government and the non-profit sector, based on the legal regime for business cooperatives. The non-profit sector in Guatemala has made great progress in the decade since the war ended, but there is a need for more research on philanthropy in Guatemala, as well as for more regulation, both self- and state-imposed.

Code of Good Governance

As is the case across Latin America, philanthropy in Guatemala is largely driven by corporations, which have established many private foundations to address the country's needs using the business principles and strategies of corporate social responsibility. The NPO sector in Guatemala is, however, much more than

philanthropy or in-kind contributions, and its activities extend to areas such as labour practices, the environment, and community relations. Guatemalan foundations tend to operate their own programmes, dedicating larger portions of their budgets to direct operations rather than to grant-making. The lack of regulation of the NPO sector has also been the cause of a number of corruption scandals, and as a result many foundations prefer to use internal talent to ensure the success of their programmes.

Fundación Pantaleón, for example, founded by the Guatemalan corporation Pantaleón in 1992, manages its own programmes in education, health and the environment. Only 8 per cent of the foundation's budget goes towards discretionary grants. It provides technical and vocational training in poor communities, and primary education for people of all ages. It also operates a primary care clinic for children at Guatemala City's largest public hospital, serving approximately 88,000 children per year. All of the foundation's programmes share a focus on local community development – involving families, municipalities and local NPOs with matching grants and in goal-setting and execution of its projects. Fundación Pantaleón has used its experience to become a founding member of two umbrella Organisations that are of growing influence in Guatemala: the Council of Private Foundations (CFP) and the Centre for Action on Corporate Social Responsibility (CentraRSE). These collectives bring together Guatemalan foundations and corporations so that they can lobby the government, exchange knowledge, and avoid duplication.

CentraRSE was founded in 2003 to create systemic change in Guatemala's corporate culture. It educates corporations on how to use the resources of corporate foundations to maximize impact. CentraRSE's mission is 'to foster win-win situations for corporations and communities', using impact measurement and an investment model of philanthropy alongside the broader principles of corporate social responsibility. CFP was founded in 1998 to involve Guatemalan private and corporate foundations in the implementation of the 1996 Peace Accords. Almost all of CFP's members are corporate foundations, including the charitable vehicles of some of Guatemala's biggest businesses, such as G&T Continental and Paiz. Its mission is to have a political and national impact through lobbying, to form alliances among foundations, and to find resources in common across Guatemala. One of CFP's recent policy achievements, in concert with other NPO collectives, was the passage of the *Law for Development NGOs*.



ARGENTINA

General NPO Activity

In Argentina the state has traditionally taken responsibility for a broad range of public sector needs and provided the necessary services to satisfy them. Education, health and social security have been run by the government through different administrative offices such as departments and secretariats. Hospitals were primarily public and state funded. Education, from the school level to universities, was also state funded and free to users. The NPO sector did contribute to the maintenance of public provision, but this was more related to advocacy, cultural development and the formulation of public policy.

With the return to democracy in 1983 many NPOs were revived or created, including those in the areas of consumer rights, minorities, civil rights and environmentalism. Until 1989 these associations grew under the umbrella of a protective welfare state. However, the lack of fiscal equilibrium, speculative behaviour by the private sector, public deficits throughout Latin America and the external debt crisis generated the economic crash of 1989, when Argentine hyperinflation approached the world's highest records. Until the 1990s, the sector had never enjoyed true independence, but had rather functioned as an appendage of other political actors that provided both identity and agenda. The profound economic shocks created the environment for a new independence of NPOs, and a new relationship with the state. Since 1983, the consolidation of democracy arrived at the same time as a crisis in state support to social services, which most authors largely attribute to the strength of liberal economic policies (Campetella & Gonzalez, 2000). As a consequence the state withdrew its responsibility from the public realm, leaving grassroots organisations and NPOs in charge of meeting social needs. In many instances the private sector stepped in to take care of social programmes under their social responsibility and social investment initiatives. Salamon *et al* note that it is only in the last twenty years that the emergence of something that could be called a "third", "voluntary" or "non-profit sector" has come to be publicly recognised in Argentina and become a subject of serious academic research (1999: 373).

The history of what could be termed non-profit organisations can be traced back to the social welfare work of the Catholic Church during the colonial period. As Salamon *et al* point out, these traditional voluntary organisations evolved, in response to political, economic, cultural and social changes, into new forms of organisations dedicated to the public good (1999: 373). The NPO sector in Argentina also has a long history that relates to the strengthening of civil society and efforts to embed human rights and democratic values into the socio-political terrain. As Smulovitz points out, this trajectory has taken shape in a region where corruption, authoritarianism and militarism disrupted the democratic process on numerous

occasions (1996: 24). Within this context many Latin American NPOs have concentrated on the creation of social trust and on the improvement of accountability and representation mechanisms. Even when the adoption of neo-liberalism as the state economic policy gave a more prominent role to NPOs in terms of providing social services, the genesis of these organisations in Latin America (and therefore in Argentina) has often been more related to political activism rather to meeting basic social needs. During the dictatorship of 1976 to 1983 and before, civil society organisations in Argentina were primarily engaged in the struggle for democracy, human rights and the rights of workers.

In 1999 Argentina was plunged into a financial and political crisis which prompted widespread mass protest. In the years that followed the government of Argentina struggled to respond in a coherent fashion to the persistent economic crisis. In contrast to the hopes that had been raised for economic stability and democratic accountability that had accompanied the return of democracy, there was widespread and growing dissatisfaction with the state's inability to involve society in meaningful decision-making, particularly with regard to economic policy. Crushing debt, growing poverty and limited economic options constrained both the government and civil society's capacity to respond

Although in the past Argentina was at the forefront of trans-national citizen activism in areas such as human rights, the prevailing political and economic climate did not provide fertile opportunities for regional collaboration among Mercosur member countries and may, in fact, have inhibited opportunities for civil society action within Argentina itself. Several trends limited not only the potential for Organisations to flourish across the region, but also within the domestic arena. These included changes in the structure and policy direction of the Argentine state, a lack of opportunity structures within the context of Mercosur, and a sustained economic crisis that sharply limited the resources and scope of action available to organised civil society.

The forces of democratic transition and consolidation in Argentina, including the constitutional reform of 1994, provided an opportunity for individuals and civil society organisations to strengthen citizenship rights and express demands for government accountability. As in other countries that made the transition from authoritarianism in recent decades, much hope was placed on the expected role of public participation and civil society Organisations in the consolidation of democracy. At the same time, however, Argentina and its neighbours were buffeted by forces that counteracted the ability of democratic participation to influence the state, translating into a decreased ability for those voices to be heard and to generate responses from government. As Argentina entered Mercosur and embraced the Washington Consensus, privatisation and the reduction of the state's role in social

welfare and other areas had dramatic consequences for citizens. Civil society Organisations assumed a greater role in the provision of services formerly supplied by the state, yet attempted at the same time to maintain their role in providing a collective voice for the population.

The 1990s brought deep changes to Argentine politics, revolutionizing the public sphere via economic liberalization, external alignment with the UN and NATO, and regional integration through Mercosur. While the openness of opportunity structures is a well-documented constraint on the issues and strategies available to actors within civil society, the particular history of the third sector in Argentina has meant that civic organisations are especially responsive to contemporary transformations of the state. The general pattern was one of decentralization of formerly national infrastructure to the state and local level and widespread privatisation. During the 1990s the federal state dismantled the social security system and drastically reduced social expenditures as education, health and other aspects of social welfare, while privatizing public services such as telecommunications, airlines, electricity, water and gas supplies.

Organised civil society also changed dramatically during the decade, perhaps more radically than any other sector. Organised civil society in Argentina today is fundamentally different from historic modes of civic association. It has abandoned the charity format and became more concerned with professionalisation, quality service and management as its professional managers and actions competed in the market of the provision of services. These constituted adaptations to the market-oriented environment, where economic rationality is a key condition for survival, as institutional and financial assistance frequently requires project plans, feasibility analysis, return rates and plans for evaluation. One significant difference in the role of NPOs is that organised civil society is now more likely to be included as a stakeholder in the policy process, consulted because of its technical qualification and taking part in the decision-making stage of policies.

Legal Environment and Good Governance Practices

Argentina is a federal country composed of 24 provinces and a federal district. It is a civil law country, and its laws provide for three principal forms of not-for profit private Organisations (NPOs):

- Civil associations,
- Foundation; and
- Mutual entities.

Civil associations and foundations are public benefit Organisations; mutual entities are not. Civil associations and foundations pursue public benefit objectives while mutual entities do not. Contrary to the practice in many other countries, Organisations created for mutual benefit are not a type of civil association in

Argentina; rather, they are governed by separate legislation. Three other NPO types exist in the form of simple associations, referenced in article 46 of the *Civil Code*, which generally lack legal personality; civil entities, mentioned in section 20(f) of the Argentine *Income Tax Law* (ITL) and further described in *General Resolution DGI 1432/71*; and religious Organisations, which are commonly tax-exempt.

Civil Associations, based on provisions of the *Civil Code*, are membership Organisations that satisfy the following criteria:

- Their main purpose is to advance the common good by providing benefits to the society or to a given group;
- They do not seek profit;
- They own property;
- They are capable of acquiring goods, according to their by-laws;
- They are not maintained exclusively from subsidies or donations from the state;
- They are authorized to carry out their activities by the relevant authority: the Inspector General of Justice for the City of Buenos Aires, or the Legal Entities Directorate in the provinces; and
- A civil association can modify its objectives by changing its bylaws.

Foundations, governed by *Law No. 19,836*, as amended, are non-membership Organisations that satisfy the following criteria:

- Their main purpose is to provide benefits to the society or to a given group;
- They do not seek profit;
- They directly address a social need, such as medical assistance or aid to disabled people;
- They own property;
- They are capable of acquiring goods, according to their bylaws;
- They are not maintained exclusively from subsidies or donations from the state;
- They are authorized to carry out their activities by the relevant authority: the Inspector General of Justice for the City of Buenos Aires or the Legal Entities Directorate in the provinces;
- A foundation cannot change its objectives unless they become impossible to achieve.

Mutual entities, governed by *Law No. 20,321*, as amended, are membership Organisations that satisfy the following criteria:

- Their main purpose is to benefit their members (and the members' immediate families) by providing medical aid, subsidies, loans, insurance, cultural events, education, sporting events, travel, or other activities intended to promote members' material or spiritual well-being;
- They do not seek profit;
- Members pay a periodic membership fee or contribution;

- Eligibility for membership is based on profession, age, gender, or like circumstances, but not on creed, race, or ideology;
- Argentineans are eligible to join;
- Members cannot be expelled or excluded except for particular reasons;
- The Organisations are authorized to carry out their activities by the National Institute of Mutual Action and are listed in the national registry of mutual entities;
- They hold annual meetings of members; and
- They pay the National Institute of Mutual Action either 1% of their membership fees or 20 cents per member, whichever is larger.

Civil associations and foundations complying with articles 33 and 45 of the *Civil Code* are, as a rule, legal persons, with the attendant rights and obligations. Tax-exempt status imposes additional limitations on the activities. Mutual entities complying with articles 33 and 45 of the *Civil Code* are, as a rule, legal persons, with the attendant rights and obligations. Mutual entities, unlike civil associations and foundations, are not subject to additional constraints when they receive tax-exempt status. With regard to economic activities the essential aim of a civil association or a foundation should be to benefit the public without a profit-seeking purpose. However, such an organisation may engage in commercial, economic, or business activities as a means of supporting its public benefit activities. The profits or assets cannot be distributed to members. The relevant laws do not distinguish between “related” and “unrelated” commercial/economic activities.

Tax-exempt status imposes only minor additional restrictions on the economic activities of civil associations and foundations. The ITL regulates such matters as gambling games, public shows, horse races and similar activities carried out by civil associations and foundations. In addition, foundations and union associations cannot achieve tax-free status if they carry out commercial or industry activities; this restriction does not apply to other types of associations. Tax authorities have supported this requirement through rulings that stress the importance of the public benefit as the Organisation's main purpose.

A *mutual entity* is free to undertake economic activities. Tax-exempt status requires only that the Organisation devote its income and property to advance the social interests named in the statutes [Law 20,321, Article 29]. Local experts are not aware of any challenge to an NPO's economic activities on the grounds that its tax exemption confers an unfair advantage over for-profit companies (e.g., a foundation dedicated to feeding children runs a bakery). For a civil association or foundation, however, the public benefit purpose must remain the focus of its principal activities. If tax authorities conclude that the Organisation concentrates principally on commercial activities, the Organisation may lose its tax-exempt status.

In terms of political activities there are, in general, no restrictions on the ability of civil associations, foundations, or mutual entities to engage in legislative or political activities. In fact, foundations that analyze the political and economic situation are often closely linked to political parties. Likewise, there are no restrictions on lobbying activities by NPOs.

The Constitution of Argentina, enacted in 1853, has been amended several times, most recently in 1994. In this document, we find the “right to associate for beneficial goals” (section 14). The constitution permits associative and foundational activities in accordance with regulatory rules based on the principle set forth in section 19: “No inhabitant of the nation shall be forced to do what the law does not order, or inhibited from doing what it does not prohibit.” Within the Argentine *Civil Code* there are specific references to associations and foundations. Both these types of NPO are treated as legal persons in private law. As such they have to fulfill the following requirements:

- They must have as their main goal the common good;
- They must have their own property;
- They must be able, according to their by-laws, to acquire assets;
- They must not depend exclusively on public funds; and
- They must obtain authorisation to operate. *Decree 422/99* states that those NPOs that want to receive subsidies from the state to do their work have to be registered in a special register of NPOs.

Due to its recent enactment, the decree is still being evaluated and discussed by civil society, and there are no cases yet of institutions that have obtained public funds by these means.

Civil society in Argentinian has become more proactive, and NPOs have put forward a range of issues for discussion with government and the private sector, including:

- Updating the legal framework to facilitate the development of organisations and the achievement of their missions, while allowing them to retain their autonomy;
- The establishment of a single register of NPOs at the national or provincial level to avoid multiple registration with several bureaucratic agencies;
- Working for the regulation of the new rights as set out in the 1994 Constitutional Reform;
- Seeking a fiscal policy that, on the one hand, encourages the donation of resources and, on the other, reduces taxes imposed on non-profit entities;
- Promoting and protecting voluntary work;
- Establishing and maintaining a dialogue between the state and the NPO sector with the goal of formulating and implementing strategically designed and integrated public policies;

- Setting out a clear mechanism for the allocation of public funds (subsidies, programmes, etc.).

Civil association, foundation and mutual entity NPOs are eligible for tax benefits in some circumstances. Certain civil associations, foundations, and mutual entities in Argentina are also eligible for exemption from income tax, but they must apply for this benefit. Exempt status is not automatic for any type of Organisation. If granted, exempt status covers all types of income. Argentina imposes a Value Added Tax (VAT) with a standard rate of 21%. NPOs exempt from income tax are generally exempt from VAT as well, with certain exclusions. Certain foreign grants are subject to VAT, although Argentina provides limited tax incentives for philanthropy. An Argentine taxpayer can deduct qualifying donations up to 5% of the taxable base. Not all tax-exempt NPOs are eligible to receive tax-deductible donations. To qualify, a donation must be made to a tax-exempt civil association or tax-exempt foundation that engages in particular activities. Donations to mutual entities are not deductible.

The only income tax law in Argentina is at the federal level, as set out in *Law 20,628* as amended, with regulations set forth in *Decree 1,344/98*, as amended. As a general rule, an NPO formed in Argentina is deemed to be an income taxpayer on the same basis as a corporation, unless the Organisation applies for and is granted status as an exempt entity by the AFIP. An NPO without tax-exempt status is liable for tax on grants it receives, regardless of whether the donors are foreign or domestic. To seek tax-exempt status, an NPO must file an application with the AFIP, attaching the relevant articles of association and other required documents and forms. After analyzing the petition, the tax authorities will grant or deny the exemption. If the exemption is denied, the NPO may appeal.

Currently, the procedures for requesting tax-exempt status are laid down in *Tax Director General Resolution AFIP 1815*, published on January 14, 2005. Qualifying Organisations appear on a Registry of Exempt Entities. If granted, the tax exemption encompasses all income and capital gains (including grants), whether from Argentina or from foreign sources. Investment and commercial income is generally excluded from the exemption. For civil associations and foundations, however, the Organisation's charitable purpose must remain paramount. If the tax authorities conclude that the Organisation concentrates principally on economic activities, the civil association or foundation may lose its tax-exempt status. The only restriction governing mutual entities is that they devote their income and property to pursuing the social aims listed in their statutes [Law 20, 321, Articles 2, 4, 6 and 15].

To be eligible for tax exemption, a civil association or a foundation must satisfy the following conditions:

- The civil association or foundation must have a public purpose. Current law provides a partial list of qualifying purposes: "welfare, public health, charity, beneficence, education and instruction, science, literature, arts, trade union and those of physical or intellectual culture" [ITL, article 20(f)];
- Organisations pursuing other public purposes can also qualify [General Resolution DGI 1432, issued on 12 November 1971]. An otherwise-eligible Organisation can still qualify for tax-exempt status if it undertakes some activities that do not directly pursue a public purpose, so long as those activities are related to and compatible with its public purposes [General Resolution DGI 1432];
- The civil association or foundation must devote its income and its property to pursuing the purposes of its formation, and in no case can income or property be distributed directly or indirectly to its members, founders, directors, or other affiliates [ITL, article 20(f)];
- The civil association or foundation must not raise funds from gambling games, horse-races, or similar activities [ITL, article 20(f)]. The Organisation can raise funds from public shows so long as doing so is not inconsistent with its public purposes [(DAL) 74/96, 9 December 1996.]

Under a 1995 amendment, a civil association or foundation is disqualified from tax-exempt status if, during a given tax period, it provided any form of compensation (including lodging, food, and similar expenses) to any members of its surveillance board that exceeded 50% of the annual average of the three highest salaries of administrative staff [ITL, article 20, last paragraph]. (For foundations, this provision covers only members of the auditing board, inasmuch as members of the board of directors cannot be paid.) As applied, the provision limits only the remuneration paid to a board member for board-related activities, and not for other activities, such as serving as general manager of the Organisation [Ruling (DAT) 89/96, 16 August 1996]. Foundations and union associations are prohibited from carrying out commercial or industry activities if they have tax-free status; the restriction does not apply to other types of associations.

Under the Income Tax Law, a mutual entity is eligible for tax exemption if it meets two criteria:

- It must comply with all laws and regulations governing its formation and operation;
- Like civil associations and foundations, it must not provide any form of compensation (including lodging, food, and similar expenses) to any members of its governing or auditing board that represents more than 50% of the annual average of the three highest salaries of administrative staff [ITL, article 20, last paragraph]. This limitation does not apply to a board member who also performs additional functions for the Organisation, such as serving as general manager [Decree 1,344/98, article 44];

- This tax exemption covers the mutual entity's income as well as the benefits it provides its members [ITL, article 20(g)].

In addition to the above provisions, the Income Tax Law sets forth conditions for other types of entities to qualify for tax-exempt status, including religious institutions [article 20(e)]; sporting associations [article 20(m)]; and international NPOs based in Argentina, as well as certain foreign NPOs with special recognition from the Argentine government [article 2]. The ultimate supervisory tool against NPOs is suspension and/or termination, which is often based on vague or arbitrary legal grounds. In Argentina, the law permits the termination of an NPO when it is "necessary" or "in the best interests of the public."

Civil associations as such are not subject to any limits on compensation. The rights of the members of a civil association are ruled by its founding document, governing document, or a separate agreement. Under the ITL, however, a civil association established for public purposes is ineligible for obtain tax-exempt status if it distributes, directly or indirectly, its earnings or patrimony among the members at any time [ITL, article 20(f)]. Further, tax-exempt status is not available to a civil association that compensates members of its management board or surveillance (auditing) committee at a rate of more than 50% of the annual average of the three highest salaries of administrative staff [ITL, article 20]. "Compensation" here includes lodging, meals, and other benefits in addition to salaries. This limitation does not cover payments to members of the management or surveillance committee who also perform activities for the association beyond their committee functions [ITIR 1.344/98, article 44].

Foundations must devote the majority of their proceeds to fulfilling their purposes [Law 19,836, article 22]. Board members cannot be compensated for their services [Law 19,836, article 20]. Furthermore, any contract between the foundation and its founders or their heirs (except contracts covering their donations to the foundation), as well as any resolution of the foundation board that directly or indirectly benefits the founders or their heirs in a manner not foreseen in the bylaws, is invalid unless approved by the administrative controlling entity (i.e., the Inspector General for Buenos Aires or the Legal Entities Directorate in the provinces) [Law 19,836, article 21]. In order to obtain tax-exempt status, a foundation established for public purposes may not distribute, directly or indirectly, its earnings or patrimony among its founders, directors, or other affiliates at any time [ITL, article 20(f)].

The foundation also cannot compensate its board members. And it cannot compensate the members of its surveillance committee (if it has one) at a rate exceeding 50% of the annual average of the three highest salaries of administrative staff [ITL, article 20]. As with associations, "compensation" includes lodging, meals,

and other benefits in addition to salaries. This limitation does not cover payments to members of the surveillance committee who also perform additional tasks for the foundation [Decree 1.344/98, article 44]. Mutual entities must devote all funds to the objectives listed in their statutes [Law 20,321, article 29]. In order to obtain tax-exempt status, a mutual entity may not compensate the members of its governing body or auditing committee more than 50% of the annual average of the three highest salaries of administrative staff [ITL, article 20, last paragraph]. This limitation does not cover payments to members of either group who also perform additional duties for the mutual entities [Decree 1.344/98, article 44].

In general, a donation cannot be revoked unless the recipient NPO fails to fulfil the donor's conditions on using the donation. A donor, however, may lawfully contribute only the use or usufruct of a given property to the NPO, retaining the property itself. For a civil association, founders, members and donors generally cannot retain proprietary rights over contributions once the assets have been registered in the civil association's name [Civil Code, article 39]. If, however, the association fails to use the donation, or fails to heed the donor's conditions on its use, the donor may be able to recover the property [Civil Code, articles 1848-1850, 1858]. With regard to foundations, promises of donations made by founders in a constitutive act are irrevocable once the foundation is declared a juridical person by the competent authority. If the founder dies after signing the constitutive act, a promised donation cannot be nullified by the founder's heirs if the entity has sought authorization to function as a juridical person [Law 19,836, article 5].

A donor can recover his donation to a foundation merely because the foundation's main purpose becomes impossible [Law 19,836, article 31]. For a donor to recover his donation, each of the following three circumstances must exist:

- The foundation's main purpose becomes impossible;
- The terms of the donation expressly establish specific means or methods to be used to fulfil the stated purpose; and
- Those means or methods also become impossible [Law 19,836, article 31].

For a mutual entity, the pertinent rules come from the Civil Code, Articles 1777 to 1788. These rules allow a member who retires from the organisation, or his heirs if he dies while a member, to receive a proportion of the Organisation's assets, based on the member's contributions and the value of the assets [Civil Code, article 1788].

In the event that a civil association is dissolved, its remaining assets (after payment of debts) must be transferred to an NPO recognized as a legal entity by the Inspector General for Buenos Aires or the Legal Entities Directorate in the provinces. If the bylaws do not specify the destination of the assets, the State will acquire them and the National Congress will decide the purpose to which they will be dedicated [Civil Code, article 50]. Except in the case of a foreign foundation, the remaining assets of

a dissolved foundation must be transferred to a public entity or to an Argentine not-for-profit private entity pursuing the public benefit [Law 19,836, article 30]. The controlling administrative authority (the Inspector General for Buenos Aires or the Legal Entities Directorate in the provinces) must approve the transfer of assets [Law 19,836, article 31]. The AFIP must recognize an entity as eligible for tax-exempt status before the tax authorities will grant such status. The National Institute of Mutual Action oversees the involuntary dissolution of a mutual entity and the distribution of remaining assets [Law 20,321, Article 36]. Argentine law does not address the distribution of remaining assets when a mutual entity dissolves voluntarily.

In general, no restriction exists on the control of not-for-profit Organisations by other Organisations or persons. Therefore, it is possible that a charity may be controlled, perhaps indirectly, by a for-profit entity (which will lead to additional IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

A donation to a tax-exempt civil association or foundation qualifies for deductibility only if the Organisation's principal purpose is one of the following [ITL, article 81(c)]:

- Not-for-profit charitable medical assistance, including the care of and protection of children, the aged, the handicapped, and the disabled;
- Scientific and technology research certified by the Technology and Science
- Secretary from the Education and Culture Ministry;
- Scientific research on economic, political, and social matters related to the
- development of political parties' plans; or
- For educational institutions, (1) systematic schooling leading toward a degree at a school certified by the Education and Culture Ministry, or (2) courses offered without charge that seek to promote cultural values.

NPO Self-Regulation and Administration

The literature suggests that there is at present no significant initiative within Argentine civil society to develop or implement a self-regulatory mechanism for NPOs.

Code of Good Governance

As is the case in Brazil, the private sector has taken the lead in developing codes of good governance, and this has provided the model for developments within the NPO sector. The *Code of Best Practices for Corporate Governance* is promoted by IAGO (Argentine Institute for the Corporate Governance), which affects both public and non-listed companies. The *Code of Best Practices for Corporate Governance for the Argentine Republic* is an initiative of IAGO, an entity created by two local business-linked non-profit Organisations, FUNDECE and IDEA. The Code includes guidelines

and recommendations for good corporate governance according to the new international practices, adapted to the Argentine environment and the practice of Argentine companies.

The Code is primarily addressed to private sector companies, although the intention is that it should serve as a model for both the public service and the NPO sector. The Code guidelines are in line with the *Companies Law, Decree 677/01* and the CNV's regulations, and are based on principles suggested by the Organisation for Economic Co-operation and Development (OECD) in the Latin American Roundtable's *White Paper for Corporate Governance in Latin America*. The code calls for:

- An audit committee;
- A compensation committee, where each member should be well versed in human resources, compensation policies and risk management;
- A nominating/corporate governance committee, responsible for establishing the rules and process for selecting the directors and key executives of the company, determining the company's corporate governance rules and supervising its compliance;
- A finance committee responsible for supervising the company's financial transactions.

The code also calls for independent directors within the above mentioned committees.

UKRAINE

General NPO Activity

Ukraine is an ex-Soviet republic that secured independence in 1991 following the collapse of the Soviet Union. This began a transition period to a market economy, in which Ukraine experienced eight straight years of economic decline. Since the turn of the century, the economy has been experiencing a stable increase, with real GDP growth averaging around seven percent annually. Ukraine is a unitary state composed of 24 oblasts (provinces), one autonomous republic (Crimea), and two cities with special status: Kiev, its capital, and Sevastopol, which houses the Russian Black Sea Fleet under a leasing agreement. Ukraine is a republic under a semi-presidential system with separate legislative, executive, and judicial branches.

At the end of 2004, the country underwent an extensive constitutional reform following the so-called "Orange revolution" that has changed the balance of power between the parliament, the prime minister, and the cabinet, as well as their relationship with the president. It is classified as a medium-income country (UNDP 2007 HDI ranking of 76), as well as one that is in transition to democracy.

The *CSI Report* suggests that there is no clear concept or definition of civil society in Ukrainian academic discourse (2006: 19). Rubtsov notes that Ukrainian researchers do not necessarily concur with the purely institutional approach to civil society analysis, but see it rather through the functional, institutional and socio-cultural lenses (2005:27). For many in the Ukraine civil society is seen as a social capacity building phenomenon, and viewed through the lens of networks of civic engagement. Given the difficulty in defining Ukrainian civil society CIVICUS used a constructed and contextualised definition of civil society for its civil society index project (2006:20). The definition was characterised by a very broad scope, encompassing both 'positive' and 'negative' organisations as well as informal forms of citizen participation. The definition excluded non-profit media organisations, burial societies and cooperatives, but did include political parties and the 'territorial community'⁸⁹.

During the Soviet era under communist rule public participation and social service provision was strictly controlled by the state. During the period of perestroika and glasnost in the 1980s the loosening of political constraints encouraged the emergence of new NPOs and social movements, many of whose personnel moved into new political parties and government on independence. The *CSI Report* notes that this weakened the emergent civil society to the extent that many were unable to transform their missions to the key requirements posed by the new regime, including service provision and the protection of citizens' individual interests (2006: 18). At

⁸⁹ The territorial community is regulated for under special legislation in the Ukraine, which allows citizens to create territorial self-governance bodies as well as property holders' associations, which bring together unions of people owning flats in one building to regulate the maintenance of the building.

the same time the inflow of foreign donor funding to the NPO sector post-1991 led to the Kuchma-led government publicly discrediting the activities of civil society as being driven by an imperialist agenda. In the period between the 2002 parliamentary elections and the Orange Revolution in 2004 there was a surge in civil society activism and efforts to create broad coalitions among NPOs and the wider public, which led to the mass movement that ushered in the new political dispensation and a return to the democratic trajectory. The *CSI Report* argues that this provided a clear example of the latent strength of civil society in the Ukraine and its impact on public policy (2006: 19).

Despite positive signs the socio-political environment in the Ukraine remains quite unsupportive for civil society. The *CSI Report* finds that NPOs operate in a society with a high level of corruption, disrespect for the rule of law, clientelism, and a government that has an indifferent attitude to civil society, distrust and intolerance (2006: 7). NPOs have limited ability to pursue practices of democratic governance, tolerance and gender balance inside organisations as effectively as they advocate for such practices in society in general. There is a clear need for NPOs to develop their organisational capacity not only by using the facilities provided by international technical assistance, but also by creating a domestic base of NPO professionals with the support of government and the mobilisation of local resources (2006: 8). The *CSI Report* found high levels of apathy amongst Ukrainians in terms of civic engagement, a tendency towards non-participation in civil society activities and volatile and unstable membership of many NPOs (2006: 26). At the same time, however, the report also found that there was a positive perception of volunteerism and a tradition of helping other people in need, and that most NPO activity had a strong voluntary component.



Source: NGO Sustainability Index 2006

Legal Environment and Good Governance Practices

Given its history as one of the more powerful ex-Soviet republics the state remains a powerful structure that dominates the military, police, security services, local government and the judiciary. The state also exercises a high degree of authority

over small and medium businesses, corporate and private philanthropy, education, cultural activities and other areas of civic life by regulating and determining their activities through administrative, regulatory and tax regimes. At the same time the dependence of NPOs on donor funding has created intense competition for resources, which has resulted in an often divided civil society environment that has impeded joint action and coalition-building.

Coalition building is becoming increasingly important for achieving an improved legislative environment for the NPO sector. The *CSI Report* found that the legal environment for NPOs in the Ukraine, as determined by the *NGO Registration Law*, has provided for a fairly complicated system of registration. Depending on the category and nature of work of NPOs they could register as one of the following:

- Citizens' association;
- Youth organisation;
- Charitable organisation;
- Creative and professional union;
- Trade union;
- Religious organisation;
- Credit union;
- Community organisation;
- Organisation of property holders living in apartment blocks.

In order to register the Ministry of Justice provides a pack of documents which need to be completed, and from the time of submission registration usually takes around two months. It is easier for NPOs to register at the regional (oblast) level, where registration procedures are fairly straightforward, than it is to register for national or international status with its far more onerous registration procedures. Registration is dependent on official sanction, which may be denied if advocacy activities are deemed to be of an unacceptable political nature. Inconsistencies occur, with some NPOs allowed to register free of charge and others being charged a registration fee. Official sanction is also required to re-register an NPO or to change its status.

In late 2006 the government amended the *NGO Registration Law*, and in terms of the changed legislation new NPOs only have to register with the Ministry of Justice, rather than with two different ministries as was the case in the past (NGO Sustainability Index, 2006: 229). The government has also amended the regulations governing procurement so as to enable NPOs to more easily access government funds and contracts. Reforms at the local level have also resulted in an increase in government contracts for NPOs. The absence of a centralised NPO registry and the restricted public access to registry contents are weaknesses in the current law and place constraints on the growth and effectiveness of the NPO sector (CSI report, 2006: 49).

NPOs in the Ukraine do benefit from a favourable NPO tax regime. Every NPO is exempted from all taxes once they have registered and statutory documents, including a constitution, mission statement and stated activities, have been submitted. The income of NPOs is tax exempt when received as charitable donations and voluntary contributions, passive income, government funding, international technical assistance and humanitarian aid. However, there is some lack of legal clarity around what constitutes “non-profit” status, which is a prerequisite for tax exemption, as well as what are considered statutory activities leading to tax exemption.

The *CSI Report* takes the view that state-civil society relations in the Ukraine are characterised by regulation and control rather than cooperation (2006: 55). To date the government appears reluctant to enter into dialogue with civil society or to engage in a cooperative manner to develop mutual responsiveness to socio-economic issues. The government shows little support for advocacy activities, particularly those in the human and political rights arena, and has shown a tendency towards state control over foreign technical assistance procured by NPOs.

NPO Self-Regulation and Administration

In general there has been little movement around self-regulation of NPOs in the Ukraine, although some NPOs have recognised the need for transparency, a code of ethics, annual reports with audited financial statements, and other tools to strengthen compliance, capacity and credibility. The NPO Sustainability Index finds that many NPOs do not publish annual reports and as a result their financial management systems lack transparency. The Index reports that according to NPOs surveyed government corruption and the lack of transparency in NPO-business partnerships are cited as reasons for not publishing annual reports (2007: 231). This lack of transparency makes it difficult to gauge accurately the financial health of many NPOs, based on membership fees and other fundraising mechanisms.

Code of Good Governance

The NPO sector in the Ukraine does not have a single body that represents the interests of NPOs, and as a result there has not been a major initiative to develop a national code of good conduct for the sector. However, issue-based umbrella organisations such as the Civic Forum, the Doctrine for Civil Society in the Ukraine, and the Network of People Living with HIV/AIDS are increasingly effective and NPOs have over the past few years formed a greater number of coalitions based on both short-term and longer-term initiatives (NGO Sustainability Index, 2007: 234). Domestic grant-making foundations are also expanding rapidly, and focus on promoting good practices and transparency amongst grant-makers.

While there are codes of conduct amongst professional associations and business NPOs, there is still a need to develop a stronger and broader-based code of conduct for the entire NPO sector. A common *Code of Ethics* was adopted by an NPO Conference in 2003, but to date has been signed by fewer than 50 organisations⁹⁰. Nevertheless, the NGO Sustainability Index finds that the gradual increase in signatories indicates a gradual interest in self-regulation within the NPO sector (2007: 235).

The *CSI Report* finds that democratic practices within the NPO sector are fairly robust. Most CSOs appear to have leadership structures that are democratically elected, as well as properly constituted governing bodies, executive committees or boards (2006: 57). The NGO Sustainability Index confirms this view, noting that NPOs continue to improve their organisational development and are capable of governing themselves and organising their own activities (2007: 230). However, the report concludes that the majority of NPOs observe democratic governance principles at the formal or procedural level, but that unclear lines of accountability, corruption, financial mismanagement and lack of transparency remain a key problem. This has led to a lack of public trust in civil society, linked also to a general lack of public understanding of the role that NPOs play in society or how they could participate in NPO activities.



⁹⁰ According to the NGO Sustainability Index 2006 the total number of both registered and unregistered NGOs exceeds 47,000, although only 4,000 to 5,000 are considered to be active (2007: 228).

9. BENCHMARKED COUNTRIES OF THE NORTH

9.1. UNITED STATES OF AMERICA

9.1.2 General NPO Activity

The non-profit sector in the United States is exceptional in terms of its size and scope. There are approximately 1.6 million NPOs in the country, and in terms of the amount of funding within the sector these flows dwarf the amounts of funding available to NPOs in most other countries. The largest NPO in the United States, and globally, is the Bill and Melinda Gates Foundation, which has an endowment of approximately \$60 billion. The second largest is the Howard Hughes Medical Institute, which has an endowment of approximately \$14.8 billion.

The United States has a federal system of government with states having a high degree of legislative autonomy. In this context states therefore have the authority to legislate on issues to do with the non-profit sector. In the United States generally, non-profit Organisations are normally formed by incorporating in the state in which they expect to operate or to do business. The act of incorporating creates a legal entity enabling the Organisation to be treated as a corporation under law and to enter into business dealings, form contracts, and own and acquire property just as any other individual or for-profit corporation may do.

Nonprofits generally have members but many do not. The non-profit may also be a trust or association of members. The Organisation may be controlled by its members who elect the Board of Directors, Board of Governors or Board of Trustees. NPOs may have a delegate structure to allow for the representation of groups or corporations as members. Alternately, it may be a non-membership Organisation and the board of directors may elect its own successors. A primary difference between a non-profit and a for-profit corporation is that a non-profit does not issue stock (shares) or pay dividends, (for example, The *Code of the Commonwealth of Virginia* includes the *Non-Stock Corporation Act* that is used to incorporate non-profit entities) and may not lead to profit-taking by its directors. However, like for-profit corporations, non-profits may still have employees and can compensate their directors within reasonable bounds.

The two major types of non-profit Organisational structures in the United States are membership and board-only entities. A membership Organisation elects the board and has regular meetings, and also has the power to amend the by-laws. A board-only Organisation typically has a self-selected board, and a membership whose powers are limited to those delegated to it by the board. The by-laws of a board-only Organisation's may even state that the Organisation has no membership, although

the Organisation's constitution may refer to its donors as "members". Examples of such structures include Fairvote and the National Organisation for the Reform of Marijuana Laws. The *Model Non-profit Corporation Act* imposes many complexities and requirements on membership decision-making.

Accordingly, many Organisations, such as the American Society of Association Executives, have formed board-only structures. The National Association of Parliamentarians has raised concerns about the implications of this trend for the future of openness, accountability, and understanding of grassroots concerns in non-profit Organisations, noting that non-profit Organisations, unlike business corporations, are not subject to market discipline for products and shareholder discipline over their capital. It is felt, therefore, that without membership control of major decisions such as election of the board, there are few inherent safeguards against abuse. A counter-argument to this position is that as NPOs expand and seek more funding and larger donations, the level of public scrutiny rises and the pressure to demonstrate good governance and financial practices increases.

In many countries, NPOs may apply for tax exempt status, so that the Organisation itself may be exempt from income tax and other taxes. In some cases financial donors may claim back any income tax paid on donations, or deduct the amount of the donation from their own tax liability. In the United States context NPOs offer to donors the advantage of deductions for the amount donated. After a recognized type of legal entity has been formed at the state level, it is normal practice for the non-profit Organisation to seek tax exempt status with respect to its income tax obligations. That is typically done by applying to the Internal Revenue Service (IRS), although statutory exemptions exist for limited types of non-profit Organisations. The IRS, after reviewing the application to ensure the Organisation meets the conditions to be recognized as a tax exempt Organisation (such as the purpose of the organisation, limitations on spending, and internal safeguards for a charity), may issue an authorisation letter to the non-profit organisation granting it tax exempt status for income tax payment, filing, and deductibility purposes. The exemption does not apply to other federal taxes such as employment taxes.

Additionally, a tax-exempt Organisation must pay federal tax on income that is unrelated to their exempt purpose. Failure to maintain operations in conformity to the laws may result in an Organisation losing its tax exempt status. Individual states and localities offer NPOs exemptions from other taxes such as sales tax or property tax. Federal tax-exempt status does not guarantee exemption from state and local taxes. These exemptions generally have separate application processes and their requirements may differ from the IRS requirements. Furthermore, even a tax exempt Organisation may be required to file annual financial reports (IRS Form 990) at the state and federal level.

In the United States NPOs are defined in a number of ways. They may be viewed as groups, institutions, or corporations formed for the purpose of providing goods and services under a policy where no individual (e.g., stockholder, trustee) will share in any profits or losses of the Organisation. In this sense profit is clearly not the primary goal of non-profit entities. Profit may develop, however, under a different name (e.g., surplus, increase in fund balance). Assets are typically provided by sources that do not expect repayment or economic return. Usually, there are restrictions on resources obtained. In this broad definition examples of NPOs include governments, charities, universities, religious institutions, and some hospitals. The inclusion of government as a non-profit organisation is not a generally accepted definition, however, with most commentators understanding the non-profit sector within the paradigm of civil society, and outside of the state. A characteristic feature of NPOs in the United States is that they have been granted exemption from federal taxes by the Internal Revenue Service. Many of these Organisations refer to themselves according to the IRS Code section under which they receive exempt status (i.e., 502(c)(3) Organisation). This identification lets donors know that their contributions to this Organisation may be deductible for income tax purposes.

An alternative, and more altruistic, definition views NPOs as institutions that conduct their affairs for the purpose of assisting other individuals, groups, or causes rather than earning profits for themselves. Non-profit groups have no shareholders, do not distribute profits in a way that benefits members, directors, or other individuals in their private capacity, and often receive exemption from various taxes in recognition of their contributions to bettering the general social fabric of the community.

In the United States the non-profit sector covers an extremely broad field of interests — charity, religion, health, science, literature, wildlife protection, the arts, and sports. Non-profit organisations are therefore as diverse as the National Football League, Harvard University, and Fannie Mae. NPOs are far more important to the overall U.S. economy than is generally recognized. Indeed, sources indicate that the sum total of non-profit groups comprise a third sector of the American economy, along with the private (business) and public (government) sectors. In terms of government regulation a number of different types of organisations are classified as NPOs under the *Internal Revenue Code*. Many of these qualify under the definition provided in Section 501(c)(3) of the Code, which stipulates that all of the following qualify for tax-exempt status: "Corporations, and any community chest, fund or foundation, organised and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, to foster certain national or international amateur sports competition, or for the prevention of cruelty to children or animals," provided that the institutions adhere to basic standards of behaviour and requirements of net earnings allocation.

- Charitable institutions comprise the bulk of America's non-profit Organisations. These include a wide variety of institutions involved in the realms of poverty assistance (soup kitchens, counselling centres, homeless shelters, etc.); religion (churches and their ancillary possessions, such as cemeteries, radio stations, etc.); science (independent research institutions, universities); health (hospitals, clinics, nursing homes, treatment centres); education (libraries, museums, schools, universities, and other institutions); promotion of social welfare; preservation of natural resources; and promotion of theatre, music, and other fine arts;
- Advocacy organisations are groups that attempt to influence the legislative process and/or the political process, or otherwise champion particular positions. These groups may call themselves 'social welfare organisations' or alternatively 'political action committees';
- Membership groups are non-profit Organisations that include business associations, veterans' groups, and fraternal Organisations;
- Social and recreational groups include such organisations as country clubs, hobby and garden clubs, college and university fraternity and sorority organisations, and sports tournament organisations can all qualify as non-profit Organisations, provided that they adhere to basic guidelines of net earnings distribution. Unlike other tax-exempt organisations, however, their investment income is taxable;
- Some non-profit organisations are deliberately organised as auxiliaries or subsidiaries of other organisations, and are therefore termed "satellite" organisations. Such Organisations include cooperatives, retirement and other employee benefit funds, and title-holding companies;
- Some profit-sharing and retirement programs, generally termed Employee Benefit Funds can qualify for tax-exempt status.

In the context of the United States all NPOs are faced with the decision of whether or not to incorporate. As Nicholas notes there are many benefits associated with incorporating, some of which are the same as those commonly enjoyed by for-profit business corporations and others that are unique to the non-profit corporation (1993: 134). The main advantage granted exclusively to all organisations with bona fide non-profit status is that they qualify for exemption from taxes at federal, state, and local levels. In addition to tax exemption, Nicholas points to the following as principle advantages of forming a non-profit corporation:

- Many NPOs depend on their ability to solicit funds (in the form of gifts, donations, bequests, etc.) for their existence. Whereas some states bestow a fund-raising privilege on non-profit corporations as soon as their articles of incorporation are filed, other states require groups to fulfil additional obligations before granting permission to solicit funds;

- Many non-profit corporations are able to use the U.S. mail system at considerably lower rates than private individuals or for-profit businesses. To secure these lower rates, NPOs must apply to the Postal Service for a permit, but this is generally not a major hurdle, provided that the non-profit group is soundly managed and in good financial standing;
- NPOs enjoy exemption from the various rules and guidelines of union collective bargaining, even if their work force is represented by a union;
- Immunity from tort liability is available in some states and where it exists, the immunity protects only the non-profit corporation—not the agent or employee where negligence injures someone⁹¹;
- Non-profit corporations enjoy certain advantages that are also bestowed on for-profit corporations, including legal life, limited personal liability, continued existence beyond the involvement of original founders, increased public recognition, readily available information on operations, ability to establish employee benefits programs, and flexibility in financial recordkeeping.

At the same time there are also certain disadvantages associated with incorporating, including the following drawbacks:

- The costs associated with incorporation, which while generally not too excessive, still involve some extra costs which may be an obstacle for smaller or more poorly-funded organisations;
- Non-profit corporations, as legal entities are subject to specific recordkeeping obligations set down by the state in which it is incorporated. In addition, there are certain activity guidelines to which incorporated organisations must adhere. These place a heavy bureaucratic burden on NPOs;
- Depending on where incorporation takes place, the organisation may have to appoint a board of directors to oversee operations. Founders and directors of unincorporated groups are, however, not required to meet such obligations.

In Hopkins' view the advantages far outweigh the disadvantages. He notes that the disadvantages stem from the fact that incorporation entails an affirmative act of the state government, which in effect 'charters' the entity. In exchange for the grant of corporate status, the state usually expects certain forms of compliance by the organisation, such as adherence to rules of operation, an initial filing fee, annual reports, and annual fees. However, these costs are frequently nominal and the reporting requirements are usually not extensive.

Given the highly capitalist nature of its social formation the NPO sector in the United States is more significantly influenced by corporate trends than broad civil society in most developing countries. These range from changes in fund-raising targets to

⁹¹ The term *tort* refers to immunity from legal liability.

expanded competition between non-profit organisations to regulatory developments. Some of the issues that NPOs are tracking include:

- Increased emphasis on retaining existing donor bases in a tight funding market, and consequently a focus on more effective marketing strategies;
- Corporate giving to philanthropic causes has emerged as a major marketing tool for corporations in recent years, and this source of funds is expected to assume even greater importance as federal and state governments reduce spending on social programmes;
- Reduced government expenditures on social programmes will encourage increased demand for volunteers who can meet the expected growth in organisational activity particularly for NPOs involved in charitable activities;
- Competition with for-profit enterprises could have tremendous implications for non-profit Organisations in the future as regulatory agencies undertake more extensive reviews of the ways in which some activities of tax-exempt groupings impacts on for-profit businesses;
- Given the increasing success of planned giving, many institutions are increasing their dependence on this funding methodology;
- The continued dominance of women in the non-profit community is expected to increase;
- In the light of the perceived security threat, within the context of the war on terror, government oversight of fund-raising activities is expected to increase at both the state and federal levels. The general trend is for states to tighten fund-raising regulation laws and for state regulators to apply these regulations more stringently;
- Self-regulation within various sectors of non-profit operation experienced a noticeable increase in the late 1980s and 1990s, and this trend is expected to continue with the introduction of new certification systems, codes of ethics, and watchdog groups;
- Major donors will increasingly incorporate aspects of planned giving into their philanthropic efforts in order to maximize their tax deductions.

The NPO sector in the United States faces a number of challenges. Capacity building remains an ongoing problem for NPOs as most rely on external funding to maintain their operations and changes in these sources of revenue may influence the reliability or predictability with which the organisation can hire and retain staff, sustain facilities, or create programmes. In addition, unreliable funding, long hours and low pay can lead to employee burnout and high rates of turnover. Founder's syndrome is an issue Organisations face as they grow. Dynamic founders with a strong vision of how to operate the project try to retain control over the organisation, even as new employees or volunteers want to expand the project's scope and try new things.

9.1.2 Legal Environment and Good Governance Practices

According to legislation in the United States an NPO is a corporation or an association that conducts business for the benefit of the general public without shareholders and without a profit motive. NPOs are also called not-for-profit corporations, and these entities are created according to state law. Like for-profit corporations, non-profit corporations must file a statement of corporate purpose with the secretary of state and pay a fee, create articles of incorporation, conduct regular meetings, and fulfil other obligations to achieve and maintain corporate status. Non-profit organisations are normally formed by incorporating in the state in which they expect to do business. The act of incorporating creates a legal entity enabling the organisation to be treated as a corporation under law and to enter into business dealings, form contracts, and property as any other individual or for-profit corporation may do.

Due to differing requirements by the states and the federal government, it is possible to be recognized as an NPO by the state, but not by the federal government. Such an organisation would be exempt from state taxes, but not from federal taxes. This may actually be desirable in certain limited circumstances. For example, federally tax-exempt organisations are generally prohibited from influencing elections and legislation, whereas the state may or may not prohibit non-profits from that activity. If an organisation wants to receive grants and donations, it is generally necessary to be a federally recognised non-profit organisation, and contributions made to the organisation would typically be tax deductible for the person or entity giving the donation.

Non-profit corporations differ from profit-driven corporations in several respects. The most basic difference is that according to law non-profit corporations cannot operate for profit and cannot distribute corporate income to shareholders. The funds acquired by non-profit corporations have to stay within the corporate accounts to pay for reasonable salaries, expenses, and the activities of the corporation. If the income of a corporation inures to the personal benefit of any individual, the corporation is considered to be profit driven. Salaries are not considered personal benefits because they are necessary for the operation of the corporation. However, if it is deemed that the NPO is paying excessive salaries it could lead to the corporation losing its non-profit status.

In the United States, after a recognised type of legal entity has been formed at the state level, it is customary for the non-profit organisation to seek tax exempt status with respect to its income tax obligations. That is typically done by applying to the Internal Revenue Service (IRS), although statutory exemptions exist for limited types of non-profit organisations. The IRS, after reviewing the application to ensure the Organisation meets the conditions to be recognised as a tax exempt organisation (such as the purpose, limitations on spending, and internal safeguards for a charity),

may issue an authorisation letter to the non-profit granting it tax exempt status for income tax payment, filing, and deductibility purposes. The exemption does not apply to other Federal taxes such as employment taxes. Additionally, a tax-exempt organisation must pay federal tax on income that is unrelated to their exempt purpose. Failure to maintain operations in conformity to the laws may result in an organisation losing its tax exempt status. Non-profit corporations are, therefore, exempt from the income taxes that affect other corporations but only if they conduct business exclusively for the benefit of the general public.

State laws on corporations vary from state to state, but generally states give tax breaks and exemptions to non-profit corporations that are organised and operated exclusively for either a religious, charitable, scientific, public safety, literary, or educational purpose, or for the purpose of fostering international sports or preventing cruelty to children or animals. Non-profit organisations may charge money for their services, and contributions to tax-exempt non-profit Organisations are tax deductible. The Internal Revenue Service must approve the tax-exempt status of all NPOs, with the exception of churches.

A large number of organisations qualify for non-profit status under the various legal definitions. NPOs include churches, soup kitchens, charities, political associations, business leagues, fraternities, sororities, sports leagues, colleges and universities, hospitals, museums, television stations, symphonies, and public interest law firms. A non-profit corporation with a public purpose is just one organisation that qualifies for tax-exempt status. In terms of Section 501 of the *Internal Revenue Code*, over twenty different categories of income-producing, but not-for-profit organisations, are considered to be exempt from federal income taxes. These other tax-exempt organisations include credit unions, civic leagues, recreational clubs, fraternal orders and societies, labour, agricultural, and horticultural organisations, small insurance companies, and organisations of past or present members of the armed forces of the United States.

Although non-profit corporations cannot produce dividends for investors, they provide income for the employees, and they foster work that benefits the public. The organisation itself will be exempt from taxation as long as it does not engage in unrelated business activities. The IRS has also enacted intermediate sanctions should the members of the Organisation engage in practices that may excessively benefit any of the organisation's members (or officers, directors, etc.). Rather than revoking the organisation's exempt status (which was the only option available before the adoption of intermediate sanctions) the I.R.S. may now levy a penalty on the organisation for engaging in a transaction that resulted in a private inurement or private benefit.

The activities of non-profit corporations are regulated more strictly than the activities of other corporations, for example non-profit corporations cannot contribute to political campaigns, in most circumstances cannot engage in legislative lobbying, and may not receive funding from proscribed sources. Individual states and localities offer NPOs exemptions from other taxes such as sales tax or property tax. Federal tax-exempt status does not guarantee exemption from state and local taxes. These exemptions generally have separate application processes and their requirements may differ from the IRS requirements. Furthermore, even a tax exempt organisation may be required to file annual financial report at the state and federal level.

In the United States, the First Amendment guarantees freedom of religion, so religious non-profit entities like churches are subject to less rigorous federal filing and reporting requirements than many other tax-exempt organisations. Depending on the state in which they are located, they may also be exempt from some of the inspections or regulations governing non-religious groups performing the same services. Religious organisations usually take the form of a religious corporation. Churches and religious NPOs therefore constitute a special case, in the sense that the First Amendment to the *U.S. Constitution* forbids the government making a law "respecting an establishment of religion" and also forbids "prohibiting the free exercise thereof [that is, of religion]." The First Amendment by its terms binds only the U.S. Federal Government, but its effect was extended to state and local governments in the U.S. by passage of the 14th Amendment at the close of the Civil War. Under the *Religious Freedom Restoration Act* many generally applicable state laws regarding employment, zoning and the like are relaxed for churches.

In the United States, prevention of charitable fraud is mostly a function of state governments, and is typically the responsibility of state attorneys general. Charitable solicitation laws vary widely from state to state. The United States has a very strong tradition of government non-interference in religion, expressed in the "free exercise" clause of the First Amendment. Thus, regulation of religious fraud (nominally religious organisations being run purely for the private benefit of the "minister") is very weak.

9.1.3 NPO Self-Regulation and Administration

Initiatives around self-regulation of NPOs in the USA tend to be state-based rather than federal (national). State-based NPO networks, associations and alliances have clearly recognised the need for transparency, codes of ethics, codes of good practice and other governance-related matters, and there are codes in place that seek to strengthen compliance, capacity and credibility. These codes, such as the Maryland Code of Ethics is self-regulatory in the sense that non-compliant NPOs will either not be allowed to join, or as existing members will lose their membership.

9.1.4 Code of Good Governance

There is an increasing interest in developing codes of conduct within the non-profit sector in the United States. Numerous foundations, associations and umbrella networks across the various states have developed codes that focus on good governance, ethical principles and financial rectitude.

One example is the code of conduct developed by the Association of Fundraising Professionals, which represents 26,000 members in 171 chapters in the United States, Canada, Mexico, and China working to advance philanthropy through advocacy, research, education, and certification programs. In its code the AFP states its belief that to guarantee human freedom and social creativity, people must have the right to freely and voluntarily form Organisations to meet perceived needs, advocate causes, and seek funds to support these activities. As a means to guaranteeing these rights the AFP's stated purpose is to:

- Foster development and growth of fundraising professionals committed to the preserving and enhancing philanthropy;
- Establish a code of ethics and professional practices;
- Require member adherence to a professional code of ethical standards and practices;
- Provide training opportunities for fundraising professionals;
- Implement programmes that ensure cultural and social diversity in its membership and leadership;
- Collect, research, publish, and disseminate historical, managerial, and technical information on philanthropy and philanthropic fundraising;
- Promote public understanding of philanthropy and philanthropic fundraising;
- Conduct activities that maintain and develop legislation favourable to philanthropy;
- Enlist, organize, and support members to achieve AFP's purposes;
- Foster international cooperation, knowledge exchange, and education among fundraising professionals worldwide;
- Use all necessary and proper means to accomplish AFP's purposes;
- Provide a valid and reliable certification programme for fundraising professionals.
- Adhere to the *Donor Bill of Rights*⁹².

The Foundation Center is another network body that has focused on developing a code of good practice for its members. The Foundation Center's mission is to support and improve philanthropy by promoting public understanding of the field and helping grant-seekers succeed. To enhance their effectiveness they have worked to collect, organise, and communicate information on U.S. philanthropy, conduct and facilitate research on trends in the field, provide education and training on the grant-seeking

⁹² Further information on the AFP and its code of conduct can be sourced at: http://www.afpnet.org/tier3_cd.cfm?folder_id=898&content_item_id=9988

process, and ensure public access to information and services through their website, print and electronic publications, five library/learning centres, and a national network of Cooperating Collections. Founded in 1956, the Centre is the leading authority in the United States on philanthropy and is dedicated to serving grant-seekers, grant-makers, researchers, policymakers, the media, and the general public. Their code of good conduct focuses primarily on the strengthening of fundraising ethics amongst its members⁹³.

The Foundation Center's stated vision is a just and inclusive society of active citizens, vibrant communities, effective institutions, and a healthy democracy. Their mission is to promote, strengthen, and advance the non-profit and philanthropic community to foster private initiative for the public good. The code of conduct is prefaced by a statement of values that include the following:

- Commitment beyond self;
- Commitment beyond the law to the public good;
- Respect for the value, dignity, and beliefs of individuals;
- Responsible citizenship;
- Openness, honesty, and accountability;
- Prudent stewardship of resources;
- Obedience to the rule of laws;
- Embracing a wholeness that incorporates diversity;
- Open, constructive response to change;
- Appropriate risk-taking;
- Honouring the roots of philanthropy and voluntary action while building for the future;
- Excellence;
- Collaboration and inclusiveness; and
- Commitment to social justice and to improving the quality of life in communities.

Another example of a code of ethics is the one developed by the Maryland Association of Non-profit Organisations⁹⁴. The Maryland Association of Non-profit Organisations was established in 1992 as a result of a comprehensive state-wide organizing effort in the non-profit and philanthropic community. The decision to establish a new organisation was made, and Maryland Non-profits became incorporated in the summer of 1991. Its first board of Directors was established in the same year. In the following years the Maryland Non-profits has grown to be a substantial state-wide association of non-profit organisations, and one of the largest and most successful non-profit associations in the United States. Its current membership includes more than 1200 NPOs, representing all regions of the state and all sectors of the non-profit community including human services, health,

⁹³ Further information on the Foundation Center and its code of conduct can be sourced at <http://fdncenter.org/getstarted/topical/ethics.html>

⁹⁴ Further information on the Maryland Association and its code of conduct can be sourced at <http://www.mdnonprofit.org/ethicbook.htm>

educational, cultural, environmental, religious, and other charitable organisations and foundations. The size of these organisations is also diverse, ranging from all volunteer organisations to major institutions.

Maryland Non-profits' mission is to strengthen and improve individual non-profit organisations and the non-profit sector as a whole, while also working to bolster public confidence in and support for NPOs. To achieve this goal, Maryland Nonprofits works through a five part programme of:

- Training and technical assistance on the entire spectrum of non-profit management issues;
- Co-operative buying programs for the purchase of employee benefits, office equipment and supplies, and other necessary goods and services;
- Information sharing and networking through informal roundtable discussion groups and monthly member mailings;
- Public policy advocacy on issues affecting the health and vitality of the non-profit sector, and
- Research, public education and public relations aimed at promoting increased support for the non-profit sector.

In addition to its core programme activities, Maryland Non-profits has been involved in several special projects. One of these was the *Initiative on Ethics & Accountability in the Non-profit Sector*, the goal of which was to develop a code of conduct and a meaningful system of self-regulation for non-profits in Maryland. Other initiatives undertaken by the Maryland Non-profits was a research study entitled *Private Action/Public Good: Maryland's Nonprofit Sector in a Time of Change*, which examined the role of the non-profit sector in Maryland, and the *Management Innovation Initiative* which was introduced to assist NPOs to explore prospects for mergers, or other methods of corporate reorganisation and collaboration.

Work on developing codes of conduct has also taken place at the interface between business and philanthropy. The BBB Wise Giving Alliance was formed in 2001 with the merger of the National Charities Information Bureau and the Council of Better Business Bureaus Foundation and its Philanthropic Advisory Service. The BBB Wise Giving Alliance is a 501(c)(3) charitable Organisation, affiliated with the Council of Better Business Bureaus. The BBB Wise Giving Alliance collects and distributes information on hundreds of non-profit organisations that solicit nationally or have national or international programme services. It routinely asks such organisations for information about their programmes, governance, fund raising practices, and finances when the charities have been the subject of inquiries.

The BBB Wise Giving Alliance never recommends one charity over another, and selects charities for evaluation based on the volume of donor inquiries about individual Organisations. These policies allow the Alliance to serve donors'

information needs and also help donors to make their own decisions regarding charitable giving. All 129 local Better Business Bureaus in the United States disseminate Alliance educational materials, and local BBB's also report on organisations whose fund raising efforts are local in scope.

The Alliance has developed standards of practice and a code of ethics for its members. Member firms are bound at all times to provide candid and rigorous counsel and the highest quality of services to every client, and in the process adhering to a set of clear ethical standards:

- Member firms pledge to honour the confidentiality of client prospect and donor lists, their business affairs, and the right to privacy enjoyed by every institution, volunteer and donor;
- Members firms charge clients based upon the professional services provided. Their fees are never based upon charitable gifts raised or a percentage of contributions;
- Member firms disclose to clients and prospective clients any professional, personal, or client relationships that might be construed as conflicts of interest;
- Member firms seek at all times to ensure that their clients will deploy gifts for the purposes for which they were given;
- Member firms do not guarantee fundraising results, promise access to the donors of current or previous client institutions, or otherwise engage in marketing methods that are misleading to prospective clients, to the public or to individual donors;
- Member firms do not accept or maintain custody of gifts, or of gift funds that have been contributed to client institutions;
- Member firms do not make undisclosed payments or provide special consideration to volunteers, officers, directors, trustees, employees, beneficiaries or advisors to a not-for-profit Organisation as compensation for influencing the selection of the firm or its services;
- Member firms do not make exaggerated or erroneous claims relative to the past achievements of their firms, of their staff professionals, or of their client institutions.

9.2 UNITED KINGDOM

9.2.1 General NPO Activity

The role of the Charity Commission is to ensure that all charities operate for the public benefit and independently of government or commercial interests⁹⁵. The Charity Commission for England and Wales is established by law as the regulator and registrar of charities in England and Wales.

The principle functions of the Charity Commission are as follows:

- Most charities in England and Wales have to register with the Charity Commission;
- The Charity Commission is responsible for maintaining the Register of Charities;
- The Charity Commission must ensure that charities are held accountable;
- The Charity Commission must ensure that charities with yearly incomes over £10,000 must by law send their accounts and report to the Commission every year within 10 months of the end of their year-end;
- The Commission makes all documents publicly available and also names charities that have seriously defaulted on their legal obligations on their Defaulting Charities finder facility;
- The Commission equips charities to work better by providing advice and guidance to 24,000 charities each year, in addition to the 250,000 calls that are received at the Commission's Contact Centre and the 12 million hits on their website where the Commission publishes all of its publications, other useful guidance and operational guidance;
- The Commission visits several hundred larger charities every year, as part of their Review Visits programme, and "modernise charities by making" schemes;
- The Commission's programme of Regulatory Reports highlights good practice to help charities improve their own performances and learn lessons from others;
- The Commission aims to identify and resolve problems with individual charities at an early stage.

While the amount of deliberate fraud or dishonesty within charities in the UK tends to be low, the Commission has strong legal powers to investigate and deal with such cases when they occur. The main priority of the Commission, however, is to ensure that the charity gets back on track so that the charity can continue to carry out its work in the future.

The Commission has a complaints procedure for dealing with issues related to standards of service received, and if complainants are dissatisfied with a decision made they can in certain cases ask the Commission to review it or appeal to the High Court. In 2002 the Cabinet Office published *Private Action, Public Benefit* - a review of the legal and regulatory framework in which charities, and the wider not-for-profit

⁹⁵ This information was sourced from the Charity Commission website at <http://www.charity-commission.gov.uk>

sector, operate. Under this framework the Commission's approach is to regulate the voluntary sector so as to promote compliance with charity law and to equip charities to work better. Their work is aimed at enabling charities to maximise their potential and to enhance their accountability to donors and those who benefit from charities, with the end result being an increased public trust and confidence in charities.

The legislative and regulatory framework was established in recognition of the fact that there is a need for a charity regulator which regulates on behalf of those who give to and benefit from charities, and on behalf of wider society, based on the following objectives:

- To ensure that charities meet the legal requirements for being a charity, and are equipped to operate properly and within the law;
- To check that charities are run for public benefit, and not for private advantage;
- To ensure that charities are independent and that their trustees take their decisions free of control or undue influence from outside; and
- To detect and remedy serious mismanagement or deliberate abuse by or within charities.

The overarching vision of the voluntary sector in the United Kingdom is that the work of the Commission, its partnerships with other regulators, and the capacity of individual charities to manage their affairs in line with good governance principles, should result in public confidence in the sector overall, as well as in individual charities and the work that they do. As the regulator and registrar for charities in England and Wales, the Commission fulfils this role by:

- Securing compliance with charity law, and dealing with abuse and poor practice;
- Enabling charities to work better within an effective legal, accounting and governance framework, keeping pace with developments in society, the economy and the law; and
- Promoting sound governance and accountability.

The Commission's aim is to provide the best possible regulation of charities in England and Wales, in order to increase the efficiency and effectiveness of charities and to strengthen public confidence and trust. The Commission approaches its work in a number of different ways:

- It provides information and advice on what the law requires and on good practice, as well as making a clear distinction between the two;
- It gather information on charities individually and collectively;
- It makes information about charities available to the public, through the register of charities that is available online, and by supplying copies of charity constitutions, annual reports and accounts to anyone who asks;
- It equips charities to work better;
- It promotes legal compliance through publications and casework;

- It intervenes and enforces by evaluating complaints or other evidence of possible causes for concern and by opening formal investigations where necessary.

The Commission works closely with other national regulators. Whilst the Commission is not a prosecuting authority, they are authorised to work with the police, the Crown Prosecution Service, and other authorities such as the Inland Revenue.

With regard to the work that it is mandated to do the Charity Commission observe seven principles:

i) Accountability

- The Commission reports to the Home Secretary and Parliament each year on the Commission's work during the previous financial year;
- The Commission is audited annually by the National Audit Office (NAO) and examined periodically by Parliament's Committee on Public Accounts (the PAC);
- The Commission publishes regular reports on their website, along with the reasons for important decisions; and
- Publishes their Service Delivery Agreement with the Treasury showing how the Commission will meet its targets and improve their performance.

ii) Independence

- The Commission acts in the public interest in carrying out their independent role;
- The Commission works in partnership with charities, umbrella bodies, local and central Government bodies, and to others to whom they are accountable.

iii) Proportionality

- The Commission focuses its priorities and resources where they believe that their interventions as a regulator can make most difference to charities and the people who benefit from them;
- This approach means that they are usually less likely to take up issues in relation to very small charities than to larger ones;
- All charities, whatever their size, have access to the Commission's Contact Centre and publications, and these services are almost all free of charge.

iv) Fairness

- In exercising their legal powers, the Commission seeks to act with impartiality, fairness, independence and honesty;
- The Commission follows the principles of natural justice, and acts proportionately and reasonably.

v) Consistency

- The Commission ensures that the decisions or actions that they take in any particular case are accurate and consistent with the law, with the Commission's published policies, and with other decisions; and

- The Commission works with other regulators so that, as far as possible, they do not duplicate or conflict with their actions.

vi) Diversity and Equality

- The Commission values diversity and complies with all diversity and equalities legislation, and they work to promote diversity and equality in all their dealings, both with charities and within the Commission itself;
- The Commission publishes, and updates annually, a Race Equality Scheme showing how they work to eliminate discrimination and promote equality of opportunity and good race relations in all their activities, both with charities and within the Commission itself.

vii) Transparency

- The Commission looks to explain all legal requirements in plain terms publications, statements and in dealings with individual charities by openly setting out the criteria by which they make decisions;
- The Commission explains what they expect from charities by way of good practice over and above legal obligations; and
- They draw attention to rights of appeal and other ways in which people can challenge the Commission's decisions that affect them.

The aim of the Charities Commission is to make their services accessible to the general public and to regularly survey customer satisfaction with the various aspects of their services. The Independent Complaints Reviewer (ICR) – who is similar to an ombudsman – can assess complaints about the Commission's services if they cannot be resolved by the Commission's internal complaints procedures.

The Commission seeks to provide a high standard of service, not only to charities and those who run them, but also to others who have an interest in what the Commission does. These include those who benefit from the activities of charities, donors and the taxpayer, the Government, those who commission and fund work by charities, and those organisations which provide services in competition with charities. Where stakeholder interests conflict, the Commission will always give priority to the interests of charities' clients. The Commission attempts to decide as early as possible whether they will pursue a complaint and always seek to explain the position to complainants in a clear and comprehensive manner. The Commission also ensures that anyone with a complaint about a charity knows which is the right body to receive and act on the complaint, whether that is the Commission or another body.

9.2.2 Legal Environment and Good Governance Practices

The *Charities Act* was passed into law in 2006 with the aim of supporting a dynamic and vibrant voluntary sector, and of ensuring that it enjoys high levels of public confidence.

In essence the Act reformed existing charity laws and regulations in order to:

- Enable charities to administer themselves more efficiently and be more effective;
- Improve the regulation of charity fundraising, and reduce regulation on the sector, especially for smaller charities;
- Provide a clear definition of charity with an emphasis on public benefit;
- Modernise the Charity Commission's functions and powers as regulator, increase its accountability, and preserve its independence from ministers.

The new law did not come into effect immediately after Royal Assent in November 2006. Instead various parts were brought into force in sequence, starting from early 2007. An implementation plan sets out this process and indicates when the various provisions of the Act were scheduled to come into force. The implementation plan was updated in November 2007 to reflect the latest position.

The Charity Commission is the non-ministerial government department that regulates registered charities (and hence to some extent most churches) in England and Wales. The Charity Commission answers directly to the UK Parliament and not to Government ministers, and as a result it is often described as a QUANGO. The head is the Chief Charity Commissioner, who is assisted by the Chief Executive. It has four sites in England and Wales, in London, Taunton, Liverpool and Newport. There are public terminals at each site except Newport for accessing the Commission's web site. Charities in Scotland are regulated by the Office of the Scottish Charity Regulator and in Northern Ireland are regulated by the Voluntary Activity Unit of the Department of Health and Social Services at Stormont Castle.

9.2.3 NPO Self-Regulation and Administration

The voluntary or NPO sector in the United Kingdom is both extensive and diverse and work in the area of self-regulation and good governance is generally conducted within specific areas of the voluntary sector itself. Cognisance is always taken, however, of the overarching principles as set out by the *Charity Act* and the Charities Commission. The following examples indicate the kind of self-regulatory activities that are carried out within different sections of the sector.

Public Fundraising by Personal Solicitation of Committed Gifts, often known as face-to-face fundraising, generates pledges of over £200 million (ZAR2,8 billion) per year in the United Kingdom for good causes by giving people the opportunity to give a small, regular donation, which over a long period of time adds up to a considerable amount. This method of fundraising is convenient, tax efficient and cost effective for both the donor and the charity and helps charities to reach out to donors who might otherwise be unaware of their work.

The Public Fundraising Regulatory Association (PFRA) is a regulatory body that is dedicated to high standards of quality, transparency and integrity in the voluntary

sector. The PFRA regulates the use of face-to-face fundraising by charities and professional fundraising organisations and works with local authorities to ensure that fundraising sites are used appropriately. It enforces a code of practice, which aims to make certain that people's experience of face-to-face fundraising is positive, and uses an accreditation scheme, mystery shopping and feedback from stakeholders and members of the public to monitor their members' compliance⁹⁶.

The Institute of Fundraising is the professional body that represents fundraisers in the United Kingdom. The organisation was started in 1983 by a group of fundraisers who identified certain challenges in their field and recognised the value of working collaboratively to address them. The Institute was originally founded as The Institute of Charity Fundraising Managers, but changed its name in 2002 to reflect the growing profession⁹⁷. The mission of the Institute is to support fundraisers, through leadership, representation, standard-setting and education, and to ensure excellence in fundraising. The Institute is a membership organisation, and it currently has 4500 Individual members and 250 member organisations.

The Institute's strategic objectives are to:

- Develop and increase membership;
- Champion and promote fundraising;
- Set standards and promote best practice;
- Support, develop and nurture the effectiveness of all fundraisers;
- Initiate, resource, develop and promote new fundraising products and techniques.

9.2.4 Code of Good Governance

The voluntary sector in the UK has taken a proactive stance with regard to the development of codes of good practice for the voluntary sector. The approach has tended to be sector-specific, with individual organisations working through their umbrella bodies to develop appropriate codes of conduct. The Commission on the Future of the Voluntary Sector was initiated in 1994 by the National Council for Voluntary Organisations with the objective of identifying the distinctive nature of voluntary organisations and determining the range of work which they might be expected to achieve, and thus allowing the Commission to influence public policy. A Commission of 12 individuals with experience in the voluntary sector was appointed, and it collected written and oral evidence and also arranged local meetings and visits. Their report, *Meeting the challenge of change: voluntary action into the 21st century*, was published in July 1996.

The Joseph Rowntree Foundation, with members drawn from the Commission's performance and governance Sub-Group, responded with a report which provided

⁹⁶ <http://www.pfra.org.uk>

⁹⁷ <http://www.institute-of-fundraising.org.uk>

guidance to voluntary organisations for drawing up codes of practice⁹⁸. The report suggested that openness and clarity should be the key qualities underpinning accountability and effectiveness. Interestingly, however, the report argued that it was unlikely that any single code of practice could do justice to the different needs and situations that reflect the diversity of the voluntary sector in the UK. It suggested that individual voluntary organisations should take work to develop codes of conduct in conjunction with the intermediaries or umbrella organisations that support them. The report took the step of developing a suggested *Code of Practice* that was intended for voluntary bodies that deliver services with the benefit of public funding. This model code of conduct focused on the need for voluntary organisations to be effective and accountable, and to be clear and open about their work and conscious of their social responsibilities. The code of conduct detailed an approach that focused on the critical areas of effectiveness, accountability, standards, governance, voluntary action, equality and fairness, and staff management.

It was suggested that different voluntary organisations implement a code of conduct in ways that reflected their size and available resources, as well as the particular characteristics of their area of work. It was noted that in developing codes of conduct organisations should also take into account the relevant statutory requirements and professional practice guidelines. At the same time the report proposed a good practice checklist for voluntary Organisations to follow in developing codes of conduct, and to utilize as a way of introducing the subject of a code of practice and provide a framework for debate among staff and board or committee members about the main subjects of the report. The report argued that codes of conduct or practice are a means to an end and do not solve problems on their own, but the process of devising a code indicates that organisations are taking the issue of good governance seriously. The report noted that it was essential for the code to be owned by the entire organisation and for this purpose it was important for stakeholders, including staff and volunteers, to have an opportunity to contribute to the process of devising the code in the first instance and of reviewing it once it was formally adopted. The view taken was that every voluntary organisation - whatever its size, nature or purpose - would benefit from the process of considering every question on the checklist. The checklist proposed consisted of critical questions relating to the full range of governance issues relevant to voluntary Organisations (see appendix 3 for the full checklist).

Perhaps the most comprehensive effort to produce a code of good governance is the one that was undertaken by the Association of Chief Executives of Voluntary Organisations (ACEVO) in 2005. ACEVO is the professional body of voluntary sector leaders, and currently has over 2000 members⁹⁹. The Association is dedicated to

⁹⁸ The report can be accessed at <http://www.jrf.org.uk>

⁹⁹ Information regarding ACEVO's activities was sourced from their website at <http://www.acevo.org.uk>

strengthening responsible and effective leadership, and has recognized that the development of professional standards is critical to this initiative. ACEVO's code of conduct, entitled *Good Governance: A Code for the Voluntary and Community Sector*, outlines the professional standards that the leaders of voluntary and community Organisations need to adopt in order to become effective voluntary sector chief executives¹⁰⁰. The Code notes in its introduction that good governance is high on the agenda in the public, private and voluntary sectors, and is a vital part of how voluntary and community Organisations operate and are held accountable (2005: 4). Endorsed by the Charity Commission and the National Council for Voluntary Organisations the Code, as developed, is applicable to all Organisations except where there exists an approved code by an existing regulator or representative body.

The *Code of Good Governance* is based on a set of key principles that have been identified as means to ensure equity, diversity and equality of treatment for all sections of the community (2005: 7):

- **Board Leadership:** Every Organisation should be led and controlled by an effective Board of Trustees which collectively ensures delivery of its objects, sets its strategic direction and upholds its values;
- **The Board in Control:** The trustees as a Board should collectively be responsible and accountable for ensuring and monitoring that the Organisation is performing well, is solvent, and complies with all its obligations;
- **The High Performance Board:** The Board should have clear responsibilities and functions, and should compose and organise itself to discharge them effectively;
- **Board Review and Renewal:** The Board should periodically review its own and the organisation's effectiveness, and take any necessary steps to ensure that both continue to work well;
- **Board Delegation:** The Board should set out the functions of sub-committees, officers, the chief executive, other staff and agents in clear delegated authorities, and should monitor their performance;
- **Board and Trustee Integrity:** The Board and individual trustees should act according to high ethical standards, and ensure that conflicts of interests are properly dealt with;
- **The Open Board:** The Board should be open, responsive and accountable to its users, beneficiaries, members, partners and others with an interest in its work.

The Code is organized according to the seven key principles of governance, and each principle is covered under sub-sections that set out clear and implementable governance practices that are aimed at achieving the applicable good governance principle. The Code is not mandatory, but is rather a broad framework that attempts

¹⁰⁰ The full Code of Conduct can be found on the website of the National Hub of Expertise in Governance at www.governancehub.org.uk

to provide guidance for the good governance of voluntary and community Organisations. The code is also aware of the fact that because voluntary and community Organisations vary in terms of size, scope and activity, not all of the Code will apply to all of the Organisations.



9.3 CANADA

9.3.1 General NPO Activity

The NPO sector in Canada consists primarily of organisations that exist to serve a public benefit, are self-governing, do not distribute any profits to members, and depend to a meaningful degree on volunteers. Membership or involvement in these organisations is not compulsory, and they are independent of, and institutionally distinct from the formal structures of government and the private sector. Although many voluntary sector organisations rely on paid staff to carry out their work, all depend on volunteers, at least on their boards of directors.

The voluntary sector in Canada is large, consisting of an estimated 180,000 non-profit organisations (of which 80,000 are registered as charities) and hundreds of thousands more volunteer groups that are not incorporated. In 2000, 6.5 million people volunteered their time to a voluntary sector organisation and the sector employed a further 1.3 million people. This diverse multitude of organisations ranges from small community-based groups to large, national umbrella organisations and includes such organisations as neighbourhood associations, service clubs, advocacy coalitions, food banks, shelters, transition houses, symphonies and local sports clubs.

Canada has a strong civic tradition, and voluntary sector organisations do important work in a wide variety of areas, including sports and recreation, arts and culture, health, religion and environmental protection. Through their staff and volunteers, these organisations work in communities across Canada every day, identifying needs and providing effective service and support to improve people's lives. Instrumental in developing and supporting social, cultural, economic and political values in Canadian communities, voluntary sector organisations make a valuable contribution by:

- Delivering services;
- Advocating on behalf of community-based issues;
- Encouraging self-help;
- Facilitating community and economic development in Canada and developing countries;
- Promoting human rights issues globally;
- Promoting awareness and action on environmental issues;
- Advancing religious faith and practice; and
- Raising funds and providing financial support to other Organisations.

The voluntary sector's breadth and diversity are among its principal strengths. Voluntary sector organisations provide channels through which Canadians can make themselves heard on important issues. Many organisations work with the most marginalized members of society, advocating for the needs of those whose voices are too seldom heard. A fundamental part of a democratic, pluralistic and inclusive

society, voluntary sector activities reinforce citizenship by encouraging Canadians to participate in and express their views on a diverse range of individual and civic concerns and interests within their communities, whether defined geographically or as communities of common interest.

Through its ability to galvanize Canadians on important issues and act as an early warning system on a broad range of issues (for example, human rights violations, land mines, racism, family violence, climate change, media concentration, heritage preservation and HIV/AIDS), the voluntary sector informs and enriches policy debates, identifying emerging priorities and offering innovative proposals for change. The voluntary sector's ability to build bridges between communities and cultures helps to promote understanding, awareness, diversity, inclusion and social justice – connecting people locally, regionally, nationally and around the world.

Almost every aspect of Canadian life is in some way affected by the Government of Canada. Every day, millions of Canadians rely on essential services provided by the federal government. The Government of Canada also plays an important role in the development of Canadian and global economies, and sustains relations with other countries and multilateral Organisations. The federal government has also had a long tradition of actively supporting the NPO sector, and enacting laws and regulations that strengthen the sector in a mutually beneficial manner. On an annual basis the federal government budget process makes direct payments to support programmes and services delivered by voluntary sector organisations.

The federal government recognizes its role to encourage and stimulate increased giving by Canadian individuals, corporations and foundations (both public and private) through tax relief, and provides billions of Canadian dollars in indirect support to the voluntary sector through personal and corporate tax credits for charitable donations. In addition, tax assistance is provided through the sales tax rebates to charities and the benefits associated with their tax-exempt status.

Government funding is provided to service delivery organisations that contribute directly to federal departmental and agency objectives. This funding is made available through project and organisational funding. Longer-term funding is provided to help strengthen the capacity of voluntary sector organisations to collaborate more effectively with federal departments and agencies on key policy goals. Departments and agencies also recognise the need to develop capacity over a longer period of time and may provide longer-term funding (i.e., three to five years) if organisations demonstrate specific performance outcomes. In addition to ensuring capacity is available to the federal government, this type of funding:

- Enables funded organisations to develop and maintain a body of expertise;
- Allows for longer-term planning and increases stability within the voluntary sector;

- Takes account of an organisation's objectives as well as its need to operate efficiently and effectively; and
- Covers a wide range of infrastructure costs such as leadership, financial management, marketing management, organisational and human resource development, information technology and management information systems, research and development, and client and funder accountability systems required for quality service delivery.

The federal government has encouraged Strategic Investment is an innovative approach that uses existing funding mechanisms to strengthen the capacity of organisations in order to enhance their ability to work collaboratively with federal government departments and agencies on agreed-upon goals over a specified period of time. This approach was developed under the leadership of the Treasury Board Secretariat in consultation with the voluntary sector. As a key element in its Funding Strategy, the Government of Canada is looking to strengthen capacity in the voluntary sector in order to support the sector's ability to collaborate with the federal government over the longer term on key policy and program goals of mutual interest.

The Strategic Investment Approach (SIA) aims to strengthen the capacity of voluntary sector organisations working with departments and agencies on key policy goals to collaborate more effectively, by contributing to building their organisational capacity in selected areas of need. The SIA addresses gaps in specific areas of capacity. Purposes could relate to capacity gaps in governance, community outreach, policy and programme development, technical capacity or financial and programme management capability. Capacity gaps, timeframes and resources required must be agreed upon between departments/agencies and collaborating voluntary sector organisations.

The investment must be supported by a strong business case demonstrating why strategic investment is needed, and how it will improve collaboration with government on a major policy or programme goal which is key to both the sector and the government. Consequently, the SIA would not be suitable for all funding relationships between the Government of Canada and the voluntary sector. The SIA is results-oriented and time specific, i.e., delivering on specific goals in a limited number of areas over a finite time period. Strategic investment in the capacity of key voluntary sector partners is intended to improve their ability to provide expert advice and deliver programmes over the longer term related to government priorities. The anticipated outcome is that this will lead to policies and programmes and enhanced delivery of services better aligned with the needs and expectations of Canadians. SIA aims to enhance the ability of sector organisations to function effectively and efficiently by:

- Strengthening the structural capacity essential for long-term planning;
- Supporting the ability to expand and consolidate networks across a wide range of sectors;
- Stimulating the creation of a stronger, deeper knowledge base on issues; and
- Promoting opportunities for collaboration and engagement with the government which build on existing strengths.

Departments and agencies and voluntary sector organisations working on common issues assess the extent to which the capacity of collaborating organisations can be strengthened through investment. Departments and agencies working with their sector partners then develop a business case that establishes:

- *The purpose for which funding is required:* Specific purposes could be related to governance, community outreach, policy and programme development, technical capacity or financial and programme management capability;
- *The duration of funding:* SIA may be multi-year, depending on the capacity gap identified and the investment needed to address it. The business case should clearly identify the funding timeframe required;
- *The expected result and its evaluation process:* Progress towards achieving expected results must be identified, and an evaluation plan developed to assess actual results against expected outcomes. This reflects the fact that SIA is meant to achieve tangible results within specific timeframes and is not an open-ended commitment to ongoing funding.

In terms of funding the NPO sector the federal government has established a number of clearly-defined funding categories:

- **Alliances and Partnerships:** These can receive funding for:
 - Networking;
 - Capacity-building at the multi-Organisation level;
 - Coalitions;
 - Associations with other organisations; and
 - Joint action.
- **Policy Dialogue:** These can receive funding for:
 - Identifying emerging policy issues;
 - Supporting dialogue, discussion, debate and input on policy issues;
 - Supporting research, consultation and input into policy development and implementation;
 - Providing resources and support to the wider voluntary sector; and
 - Contributing to specific policy objectives.
- **Advocacy:** Funding may be provided to promote representative voices on emerging issues that are important to the delivery of departmental and agency

mandates, and for advocating for changes in public policy. Advocacy is defined as “the act of speaking or of disseminating information intended to influence individual behaviour or opinion, corporate conduct, or public policy and law.”

- **Research:** Funding may be provided for research and development.
- **Innovation:** Funding may be provided for innovative or pilot projects whose outcomes may benefit the sector as a whole or be transferable to other voluntary sector organisations.
- **Capital Expenditures:** Funding may be provided to purchase tangible assets such as equipment. In some exceptional cases, funding may also be provided to purchase land or buildings. Such assets help voluntary sector organisations provide continuous service and have a lifetime beyond the reporting period in which they are acquired.

The federal government utilises four types of direct funding mechanisms to transfer state funds to NPO organisations: The four types of direct funding mechanisms are:

- **Contributions:** Conditional transfer payments to an individual or organisation for a specified purpose as set out in a contribution agreement. These funds must be accounted for and are audited;
- **Grants:** Transfer payments made to an individual or Organisation that do not need to be accounted for and are not subject to auditing, but for which eligibility and entitlement can be verified or for which the recipient may need to meet pre-conditions;
- **Contracts:** Agreements between contracting authorities and suppliers to provide goods, perform services and/or carry out work for the federal government for appropriate financial and/or non-financial consideration. Payments go to individuals, firms or Organisations that fulfil the terms of the contract;
- **Other Transfer Payments:** Payments based on legislation or an arrangement that normally includes a formula or schedule as one element used to determine the expenditure amount. Once payments are made, however, the recipient may redistribute the funds among the several approved categories of expenditure in the arrangement. Examples are transfers to other levels of government such as equalization payments, and health and social transfer payments.

9.3.2 Legal Environment and Good Governance Practices

Canada is a federal jurisdiction with ten provinces and three territories. There are no statutory requirements, under either federal or provincial law, governing the legal form under which a not-for-profit entity must be organised. The most common legal forms are:

- **"Non-share" (membership) corporations,** incorporated under either federal or provincial law. Federal corporate legislation is most commonly used where the

organisation is operating in more than one province or internationally. Provincial legislation is used most often when the organisation is operating within a single province or territory;

- **Trusts**, which are recognised in common law provinces. Quebec, which is a civil law jurisdiction, also recognizes forms similar to trusts; and
- **Unincorporated organisations or associations.**

The primary definition of an NPO is: *"a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) of the Income Tax Act and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof...."*. The term "club, society or association" includes corporations and trusts. The key test is that the pursuit of profit cannot be a purpose. But this does not mean that activities generating a profit are forbidden, so long as the motive for the activity is not the generation of profit. NPOs are also self-regulating in that the Income Tax Act does not require registration of NPOs.

The Canada Revenue Agency distinguishes between "charitable Organisations," "public foundations," and "private foundations" based on the entity's structure, source of funding, and mode of operation. As a practical matter, charitable Organisations are operational charities, while foundations are almost always grant-makers. Legislation is pending that would use a single test to distinguish between public and private foundations. A private foundation is one where more than 50% of the board is not-at-arm's length with each other. Grants to private foundations may raise "out of corpus" and other issues for U.S. donors.

A distinction is also made between self-help groups and members' groups. The courts have recognized self-help groups as charitable organisations that provide education, therapy or rehabilitation to eligible clients. The Directorate recognises that these purposes can be achieved through peer support, and refers to such organisations as "self-help" groups. However, organisations that focus on advancing the interests of their members and not on the community at large, are considered non-charitable "members' groups".

Self-help groups routinely make their membership available to anyone in the community meeting the criteria of charitable need. For example, groups of persons with addiction problems, prisoners, single parents, persons with disabilities, or victims of crime. In some cases, membership will be broad enough to also include interested members of the public. If a fee is associated with the group, it is nominal. Members' groups, on the other hand, are usually formed exclusively to further their own interests, and therefore lack the necessary element of altruism required to be

charitable at law. Their direct benefits are tied primarily to membership and are available only to members. Some examples include professional associations, unions, hobby groups, co-operatives, tenants' or property-owners' associations, and in some cases, advocacy groups. Members' groups also frequently require a professional or similar qualification, and may charge a substantial membership fee.

NPOs do not need to serve the public benefit. Indeed, most of the major NPOs in Canada are organized for the benefit of their members. Such Organisations include professional bodies such as the Canadian Bar Association, sporting and social clubs, labour unions, and political parties. However, since NPOs may be organized for social welfare purposes, it is possible that an NPO may seek funds. In contrast, charities must satisfy the common law test of "charity." There is no federal or provincial statutory definition of this term, and the concept of what constitutes charitable activities draws heavily on traditional English common law dating back several centuries. Over the years, the courts have generally based their interpretation of "charity" on four categories described in English common law:

- The relief of financial hardship;
- The advancement of education;
- The advancement of religion; and
- Certain other purposes for the benefit of the community.

For the most part, the Canadian provinces and territories have not defined "charity" or "charitable purposes" in legislation but - similar to the federal approach - have left it to the courts to apply common law. However, in some jurisdictions there are statutory definitions, which, to varying degrees, expand or modify the common law definition. Finally, it should be noted that, in the case of other organisations that comprise the grouping "qualified donees" (apart from registered charities), public benefit is not a requirement.

The NPO sector is made up of a varied assortment of agencies, educational bodies, campaigns, foundations, self-help federations, and socially oriented businesses that compose the non-profit sector. This sector has grown rapidly in size, significance, and sophistication, and many NPOs operate as service provider under contract, expressing new social concerns, creating new forms and new roles, and leveraging the communications revolution to maximize their reach and impact. All the major social changes and challenges of the globalised world, for example medical research, the environment, ageing populations, urbanisation, crime and new information technologies, have stimulated growth in some part or other of the NPO sector. Less obviously, non-profit globalization has also proceeded apace in that trans-national challenges in the environment and in development have demanded trans-national responses, and increasingly, NPOs have developed an impressive mix of expertise and public credibility.

An NPO can be set up for any purpose other than profit. In practice, this means that almost any sort of activity can be a legitimate purpose. The *Income Tax Act* does not require registration of these Organisations, and they self-assess their own status. In the case of registered charities, they are limited to activities which are charitable in common law, namely the relief of poverty, the advancement of education, the advancement of religion, or "such other purposes which are beneficial to the community" as recognized by case law. NPOs, by definition, cannot carry out any activity for profit. However, it is quite clear that they can engage in a range of activities that generate revenue and, indeed, may generate a profit if it is clear that this is not a purpose of the organisation. NPOs have no limits on political activities and indeed, political parties are a sub-category of the NPO category of organisations (as they are in the US). Charities pose a more complex case.

The *Income Tax Act* seeks to limit political activity, requiring that those activities are "ancillary and incidental" to the organisation's charitable activities, and "do not include the direct or indirect support of, or opposition to, any political party or candidate for public office". While this latter limitation would seem to meet the U.S. ban on "electioneering" activities by qualified donees, the lack of guidance with respect to what is "political" under Canadian law may pose some issues for U.S. donors. In addition, the courts in Canada have consistently expanded the notion of what is meant by the term "political activities," and it is difficult to distinguish between education, advocacy, and political statements. The issue is now under study and a government discussion paper has been issued. The problems in this area are not likely to be resolved in the foreseeable future.

With the exception of federal incorporation, the creation of any organisation is a function of the applicable provincial law, which varies somewhat, but seldom substantially, from province to province. The federal tax legislation in Canada makes distinctions among not-for-profit organisations that may be relevant for U.S. donors. Canadian federal income tax law distinguishes between "non-profit organisations" and "registered charities". To qualify as an NPO, an entity must meet three tests. First, it cannot be a charity or an organisation that could be registered as a charity. Second, it must be organised and operated exclusively for a purpose other than profit. Third, no part of its income may be paid or made available for the personal benefit of any proprietor, member, or shareholder (with an exception for amateur athletic organisations).

The category of "charities" is divided into charitable organisations and charitable foundations (consisting of private foundations and public foundations). A charitable organisation, whether or not incorporated, must devote its resources to charitable activities carried out directly by the organisation. A charitable foundation must provide funding to other charitable organisations, although it can also directly

engage in charitable activities. Charities, like NPOs, are subject to the non-distribution constraint.

Neither NPOs nor registered charities are subject to any taxes on income. Nor are there taxes on any activities falling outside of an organisation's statutory powers. That is to say, if an NPO actually turns out to have a profit motive, then it loses its NPO status and is treated as an ordinary taxable entity. Similarly, a registered charity is not subject to income tax. Any breach of the statutory rules might lead to a revocation of its registration, but there are no "intermediate" sanctions, which would involve retention of status and the payment of a penalty tax. The main and vital distinction for practical purposes between NPOs and charities (and other qualified donees) is that gifts to the former cannot qualify for tax relief for donations, while gifts to the latter may. The Canadian system relies on a tax credit (as opposed to deduction) system to give tax relief to individuals, while corporate donors receive tax benefits through the conventional deduction system.

There are potentially fourteen different jurisdictions with laws applicable to NPOs and charities, but clearly the most important is the federal government. Key federal legislation consists of:

- *The Income Tax Act*;
- *The Canada Corporations Act*; and
- *The Charities Registration (Security Information) Act*.

While the provinces have jurisdiction over charities, there is a paucity of legislation in this area. Instead, most provinces rely primarily on the common law jurisdiction of the Attorney General to act when there has been a breach of fiduciary duty. However, Ontario and Alberta have enacted legislation which is of some consequence, namely:

- *The Charities Accounting Act* (Ontario);
- *The Charitable Gifts Act* (Ontario);
- *The Religious Organisations Land Act* (Ontario); and
- *The Charitable Fund-Raising Act* (Alberta).
- Also relevant are the *Trustee Acts* of all the provinces.

The Charities Directorate is responsible for all programme activities related to the provisions of the *Income Tax Act* regarding registered charities, Registered Canadian Amateur Athletic Associations (RCAAs), Registered National Arts Service Organisations (RNASOs) and federal political parties (contributions to registered political parties or to a candidate at a federal election). In particular, the Directorate is responsible for:

- Reviewing applications for registration as a charity, RCAA or RNASO;
- Providing information, guidance and advice on maintaining registered status;

- Ensuring that registered organisations comply with registration requirements through a balanced programme of education, service, and responsible enforcement;
- Developing policy and providing information, communication, and education programmes for the charitable sector and for donors;
- Engaging with the charitable sector, other government departments, and other levels of government; and
- Supporting the Canada Revenue Agency's role in combating the financing of terrorism in support of the *Charities Registration (Security Information) Act*.

The Charities Directorate of the Canada Revenue Agency (CRA) plays a vital role in ensuring the integrity of the charitable sector in Canada. This is achieved by promoting compliance with the income tax legislation and regulations relating to charities through:

- Consistency;
- Education;
- Quality service; and
- Responsible enforcement.

9.3.3 NPO Self-Regulation and Administration

As the growth of the non-profit sector has proceeded and the challenges have become more complex, so the governance function has become a major focus for attention, especially for government agencies that sub-contract NPOs and funders and donors that support the activities of NPOs. There are numerous examples of governance codes in Canada, and a good example of the focus on self-regulatory good governance practices is the *Code of Ethics* that has been developed by the Canadian Council for International Co-operation, an umbrella NPO whose members carry out activities in the international development arena. The *Code of Ethics* sets out the minimum ethical governance, finance, administration and staffing standards that Council members must meet in conducting their affairs.

The Council originally developed the Code in the early 1990s in response to changes in the nature of development work, in the structure of civil society Organisations and in the relationships between northern (developed country) and southern (developing country) non-profit organisations. These globalising changes transformed development into a complex enterprise, and NPOs were increasingly faced with new management, administrative and communications challenges. The original sections of the Code outlined the principles of development, standards for governance, organisational integrity, financial management, fundraising communications and management practice and human resources. The post 9/11 climate of stricter state security, including tough anti-terrorism legislation in Canada, as well as increased demands for more control on and by northern civil society organisations, required a

review of the *Code of Ethics*. Ratified in May 2004, the revised *Code of Ethics* captured the changed operational environment and provided the CCIC with a set of standards for assessing and building more equitable North/South partnerships over the longer term.

The *Code of Conduct* stressed that partnerships with civil society organisations should be established based on the CCIC “Principles of Development” and “Principles of Partnership” and should be enriched by additional development principles proposed and agreed upon by common accord. The following points relate to the initiation of partnerships:

- Partnerships should be based on a sense of common cause built on an understanding of each organisation’s values, beliefs, goals, objectives and constraints;
- Partnerships should be backed by mutually acceptable signed agreements, demonstrating that all parties have negotiated objectives, expectations, roles, responsibilities, and contributions to the partnership;
- Agreements between partners should ensure shared responsibility for attaining the negotiated goals, objectives and stated outcomes;
- Strong partnerships should include action to address inequalities due to power imbalances. Partners should identify and attempt to adopt concrete measures to enhance equitable relations;
- Partners should strive to deepen their understanding of one another through transparent sharing of information. The activities relating to the partnership shall be open and accessible to the other parties, while respecting the right of individuals to privacy;
- Respect for differences - including cultural, religious, socio-economic and political differences - should be the hallmark of every partnership;
- Partners should engage in regular and open communications for the general health of the partnership and to ensure that all partners are properly represented and that no organisation unilaterally speaks on another’s behalf;
- Organisations should give credit to their partners’ contributions, respect intellectual property rights and acknowledge appropriate ownership of products and results arising from partnership initiatives.

The Code requires that in terms of governance organisations should be governed fairly, impartially, and responsibly by their respective Board of Directors. Each NPO should have an independent, active, and informed Board of Directors, serving without compensation as directors. The Board should have policies which specify the frequency of Board meetings (at least two per year) and adequate attendance by directors (at least a majority on average). The Board may designate an Executive Committee, will define its role and will review its reports. The Board should have

policies restricting the number of employees who are voting members of the Board; providing limits for directors being related to one another, the Founder, or the Executive Director; and establishing limited terms of service for directors and officers.

An NPO's Board of Directors should adopt a policy which prohibits direct and indirect conflicts of interest by Directors of the Board of Directors, and/or employees and volunteers of the organisation. Such a policy should address issues such as: the receiving of gifts from or an affiliation with an actual or potential supplier of goods and services, recipient of grant funds, or organisation with competing or conflicting interests; and the degree and nature of disclosure required by the person in the potential conflict of interest situation. The NPO's Board of Directors should approve policy statements and annual programmes.

The NPO should adopt a policy requiring that no person be refused membership or excluded from participation in the NPO, denied the benefits of membership in the organisation, or be otherwise subjected to discrimination by the organisation, on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability. The NPO's Board of Directors should also have policies which work towards gender equity and participation of minorities. In all of its respective activities, the Organisation should respect the dignity, values, history, religion, and culture of all people, irrespective of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability.

With regard to organisational integrity the affairs of the NPO should be conducted with integrity and transparency. The activities of the organisation should, upon request, be open and accessible to scrutiny by its respective donors, except for personnel matters, legal matters and proprietary information, including anything specified by provincial or federal laws. The Organisation should ensure that allegations made by a member, employee, volunteer or director of that organisation of misconduct or other irregularities on the part of anyone associated with the NPO are dealt with impartially, respecting the rights of the involved parties for confidentiality and disclosure. Members should not be a participant to any wrongdoing or financial impropriety in any of its activities. It must take prompt and firm corrective action whenever and wherever wrongdoing of any kind has been committed by any one of the Directors of its Board of Directors, or by anyone of its employees or volunteers. The NPO should recognize that all of its activities impact on the public perception of the international co-operation community, and that it shares a significant responsibility to enhance the public trust, and act accordingly.

With regard to finances the NPO should conduct its finances in such a way as to assure appropriate use of funds and accountability to donors. It should have an annual audited financial statement, conducted by a qualified, independent

accountant. The audited financial statement should comply with Generally Accepted Accounting Principles and Requirements according to the Canadian Institute of Chartered Accountants. The audited financial statement, full or summary, should be provided to any inquirer upon written request within a reasonable time. Each member organisation should submit an audited financial statement to CCIC, within ninety (90) days after the NPO's annual general meeting or the meeting at which the audited financial statement is approved. Upon written or verbal request from CCIC, each member Organisation should, within ten days of the request, submit to CCIC an Annual Report including a statement of the NPO's purpose, full or summary financial statement, description of the goals, summary of overall programme activities, results of the work of the member organisation, and a list of the current Directors of the NPO's Board of Directors.

The NPO's combined fund-raising and administration costs should be kept to the minimum necessary to meet its needs. Allocations of expenditures to administration, fundraising, and programme services should reflect the organisation's purposes and actual activities, and shall conform to generally accepted accounting principles. The NPO should operate a budget approved by the Board. It should account for funds from the moment they are received or committed until they are used in the project or services. It should exercise adequate internal controls over disbursements to avoid unauthorised payments. The NPO should not have any funds that are not accounted for and it should prohibit any un-audited transactions or loans to Board members and to staff. Contributions should be used as promised or implied in the fundraising appeal or as requested by the donor.

In terms of management practice and human resources the NPO should endeavour to follow sound management and business practices appropriate to its mission, operations, and governance structure. The NPO should have clear, well-defined, written policies and procedures relating to its employees and volunteers, including host country nationals and expatriates. Such policies should clearly define and protect the rights of employees, assuring fair treatment in all matters. Employee benefits should be clearly described and communicated and the organisation should make financial arrangements to protect its ability to honour its obligations to employees. The NPO's expectations of its employees and of its volunteers should be clearly defined and communicated. The NPO should promote gender and minority equity, in recruitment, hiring, training, and professional development and advancement. The organisation should endeavour to recruit and retain staff that combines professional competence with a commitment to the mission of the organisation.

9.3.4 Code of Good Governance

The *Accord between the Government of Canada and the Voluntary Sector* was signed in 2001 and constitutes a framework document that sets out the values, principles, and commitments guiding state-civil society relations. The Accord represents a public commitment to more open, transparent, consistent, and collaborative ways for the voluntary sector and the Government of Canada to work together. After the Accord was signed, two Codes of Good Practice were developed as tangible, concrete tools for both the government and the voluntary sector. A *Code of Good Practice on Policy Dialogue* (see appendix 2) encourages voluntary sector participation in the public policy process. A *Code of Good Practice on Funding* (see appendix 1) guides the funding aspect of the relationship between the voluntary sector and the Government of Canada and reinforces their respective accountabilities.

The Charities Directorate committed itself to respecting the Accord and its related Codes of Good Practice. It was felt at the time that these tools would help strengthen the ability of the charitable sector, the Charities Directorate, and the CRA to better serve the over-arching interests of the state-civil society terrain and that it would ensure a more effective regulator-client relationship. The Accord has been seen as one of the most in-depth examples of higher-level policy statements, together with its two associated codes on funding and policy dialogue. These documents outline respective roles and responsibilities, and shared values guiding the collaboration between the federal government and the non-profit sector. The fullest statement of the varied purposes for which the federal government provides funding to the voluntary sector is presented in appendix four of the Code. This lists the objectives of: programme and service delivery; strengthened sustainable capacity; strategic investment approach; alliances and partnerships; policy dialogue; advocacy; research; innovation; and capital expenditure. Under “alliances and partnerships” the code suggests that funding may be provided for “networking; capacity-building at the multi-organisation level; coalitions; associations with other organisations; and joint action.” It is important to note that this is a descriptive statement identifying the range of purposes to which federal funding may be directed, and not the active promotion of increased alliances and partnerships.

The Accord and codes reflect the fact that governments are also responding to mounting evidence that successful approaches to addressing complex social challenges can no longer be achieved by single organisations, levels of government or sectors acting in isolation. Collaboration across all of these domains, referred to as “joined-up” services in Britain and “horizontality” in Canada, is being promoted as an essential feature of successful practice. As noted in the 2006 report by Human Resources Development Canada’s Task Force on Community Investments, most governments of countries that are members of the Organisation for Economic

Cooperation and Development (OECD) are either actively exploring or developing the public service and policy architecture to undertake a more integrated, collaborative approach to complex policy issues.

The federal government has generated a range of policy positions and analysis regarding horizontal initiatives. The Treasury Board of Canada's 2005 report *Management in the Government of Canada: A Commitment to Continuous Improvement* defines horizontality as "a 'whole-of-government' approach to programmes and services, both internal and external that aligns departments and agencies and promotes co-ordination with other levels of government and the private and not-for-profit sectors". For the most part these policy directives focus on intra-governmental collaboration, and only marginally refer to the specific role played by non-profit Organisations in horizontal initiatives. The integration of federal services into Service Canada, and the City's Neighbourhood Action Teams, are two examples of government inter-departmental collaborations and linkages, promoted as innovative and essential mechanisms for improving programme impact and coordination. Although not formalised as government policy, reports from Human Resources and Social Development Canada's Task Force on Community Investments more clearly identify the specific roles played by non-profit sector organisations in horizontal collaborations.

These contributions are presented in terms of the capacity of the sector to generate social capital. As a partner to government in horizontal initiatives, the community non-profit sector contributes both bridging and linking social capital between governments and communities. In horizontal initiatives community organisations provide both the "on the ground resources" to "bridge" individuals across community problems through various forms of social service such as employment services and transitional education. At the same time, they are intrinsically a producer of social capital through public participation in organisational activities. These organisations also provide the linking capacity to connect government to knowledge and resources of communities and sub-sectors, as a producer of the relationships that governments need to foster horizontal initiatives. Connections between other-serving organisations, horizontally across communities produce the professional networks that enable governments to "reach into" communities. Examples of recent horizontal initiatives involving both non-profit and government partners include the Vancouver Agreement (a tri-partite urban development agreement among three orders of government and local community Organisations), Action for Neighbourhood Change (a national three-year multi-departmental initiative in partnership with community organisations to support resident convening and planning), and the National Homelessness Initiative.

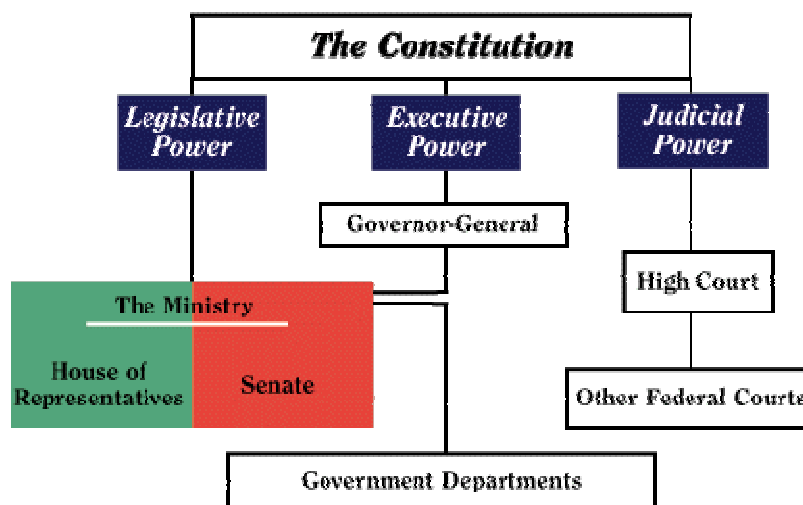
The 2006 strategic plan for the Ministry of Community and Social Services identifies “collaborating with partners for social change” as one of their five “priorities for transformation,” noting that the Ministry will “continue to work with community partners to deliver locally sensitive and accessible services.” In this regard the Ministry commits to adopting a “systems approach to service delivery” and to “promote greater service delivery integration, provide a unified provincial presence in the community and work towards a broad human services approach to meeting the special needs of Ontarians”. There is little detail in the MCSS strategic plan concerning expectations of collaboration or consolidation within the non-profit sector itself. But in sketching out the current service system context, their plan notes vaguely that “new models of service delivery” will be required to assure sustainability.



9.4 AUSTRALIA

9.4.1 General NPO Activity

The Australian Constitution of 1901 established a federal system of government. Under this system, powers are distributed between a national government (the Commonwealth) and the six States (three Territories - the Australian Capital Territory, the Northern Territory, and Norfolk Island have self-government arrangements). The Constitution defines the boundaries of law-making powers between the Commonwealth and the States/Territories.



The Commonwealth Parliament is the core of the Australian national government. The Parliament consists of the Queen (represented by the Governor-General) and two Houses (the Senate and the House of Representatives). These three elements make Australia a constitutional monarchy and parliamentary democracy. These governance arrangements have a direct bearing on the nature, scope and activities of the NPO sector in Australia. Essentially Australians elect two governments and obey two sets of laws. Similarly, there are two systems of courts and two constitutions. In addition to the federal government, most Australians also live under a state government that has political and legal autonomy and sovereignty apart from the Commonwealth.

The key features of the Australian federal system are:

- A federal constitution, which brought the federation into existence and provides the basic rules under which the federation continues to operate, including the distribution of powers and authority between the two levels of government;
- A central federal government, located in Canberra, which governs the nation (also known as the Commonwealth government);

- Six state governments, located in the capital cities of each of the states - Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart - which govern their respective state;
- The High Court of Australia, which acts as an umpire, interpreting the constitution and resolving disputes between Commonwealth and the states; and
- The Senate, a legislative house in the Commonwealth parliament, originally designed to protect the interests of the states.

The state parliaments can legislate in respect of almost anything, including those matters where the Commonwealth parliament has the authority to legislate. However, if a state law is inconsistent with a Commonwealth law, the Commonwealth law prevails. The only matters on which a state cannot legislate are those few matters reserved exclusively for the Commonwealth. The history of Australian federalism has therefore been one of power slowly shifting from the states to the Commonwealth. There are a number of reasons for this:

- A number of Constitutional amendments have increased the number of areas where the Commonwealth can validly exercise legislative power;
- The states have voluntarily handed a number of matters to the Commonwealth;
- Today, the Commonwealth raises most of the nation's revenue while the state governments spend more than they collect through taxation. The state's loss of financial autonomy has shifted power to the centre and made fiscal issues the central feature of intergovernmental relations;
- Because of strong party discipline, the Senate has never functioned as a "States House". The political divisions between the major parties, which are a feature of the House of Representatives, are reflected in the Senate, and they dominate any state divisions that might occur.

As a result of this central tendency, the Australian federation is unbalanced. In practice, the states are no longer equal partners with the Commonwealth in the administration of the nation. Many of the functions of state government are now mirrored in at the Commonwealth level¹⁰¹.

Since 1910, the essential characteristic of Australian politics has been the contest between Labour and non-Labour parties:

- The Australian Labor Party has represented (broad) Labour interests for the entire period;
- The non-Labour interests were first represented by the Liberal Party (1909-17) and urban/business interests since 1944 have been represented by the modern Liberal Party. Rural interests are represented by the National Party, previously known as the National Country Party and the Country Party. These two key non-

¹⁰¹ <http://www.ozpolitics.info/guide/parties/system/>

Labour parties maintain a tight coalition in government and opposition, and in that sense can be considered as one party for analytical purposes.

Although major political parties are often depicted as unified and coherent bodies of thought, in practice this tends to be unusual. Electorally successful political parties are broad churches of conflicting, sometimes contradictory, interests and ideologies. They are divided internally with contending factions of competing interests, political theories, and worldviews and behind apparent shows of unity there can be significant differences of opinion within all of the major political parties in Australia. This diversity of outlook and ideological perspective is reflected in the composition of Australian civil society.

There are as many as 700,000 non-profit organisations in Australia, most of which are small and entirely dependent on the voluntary commitment of members¹⁰². Approximately 380,000 non-profit organisations are incorporated in some form or another (meaning that they have a legal identity independent from their members). About 35,000 non-profit organisations employ staff. There are approximately 20,000 organisations with Deductible Gift Recipient status in Australia and most of these are non-profit organisations. In terms of its contribution to employment, Australia's non-profit sector is per capita of a similar size to that of the United States and larger than that in the United Kingdom and most other European countries.

In terms of their economic contribution non-profit organisations that employed staff in 2000 employed 604,000 people, which is 6.8% of Australians in employment, had an income of \$33.5 billion and contributed \$21 billion, or 3.3%, to GDP. Estimations point to the fact that the non-profit sector made an economic contribution larger than the communications industry and about equal to that of the agriculture industry. This is a contribution almost twice as large as the entire economic contribution of the state of Tasmania. The non-profit sector's main sources of income were from the sale of goods and services (58%), government grants and contracts (30%) and household transfers (9%).

John Howard was Australia's prime-minister for twelve years from 1995 until his election defeat to the Australian Labour Party's Kevin Rudd in the 2007 elections. According to Darwall Howard used his mandate and his control of the Senate during this period to constantly push policy in a conservative direction while returning to complete unfinished business from each of his previous terms (2005: 3). The 2004 election result in part reflected satisfaction with John Howard's premiership and reflected the fact that Australian's were broadly satisfied with the policy directions being taken, despite deep unhappiness in more progressive circles over Australia's involvement in the US-led war in Iraq and its counter-terrorism initiatives. John Pilger takes the view that during Howard's decade of power "he has eroded the very

¹⁰² <http://www.nonprofitroundtable.org.au/AM/>

basis of Australia's social democratic institutions and cast his country as the model of a Washington-style democracy, where the only popular participation is that of voting every few years for two "opposing" parties which share almost identical economic, foreign and "cultural" policies"¹⁰³.

According to Staples the last decade since the Howard government came to power has seen a dramatic change in the democratic model underlying the relationship between NPOs and the government (2006: 2). Maddison, Denniss and Hamilton demonstrated that advocacy NPOs believed that they were being pressured into silence by policies and practices of government, particularly of the Federal Government (2004: 5)¹⁰⁴. Lack of a sector awareness of the theory behind these often antagonistic policies and practices, may be due to many factors, including the following:

- The disparate nature of the sector, its volunteer structure and frequent change of personnel;
- Its lack of resources; and
- The lack of an 'NPO sector consciousness' experienced by many stakeholders, across a wide range of interest groups.

In 1996 John Howard delivered the Menzies Lecture, entitled 'The Liberal Tradition: The Beliefs and Values Which Guide the Federal Government'. In it, Howard referred to the NPO sector as 'single-issue groups', 'special interests' and 'elites' and he promised that his government would be 'owned by no special interests, defending no special privileges and accountable only to the Australian people' (Staples, 2006:16). Both Staples and Maddison *et al* have argued that this discursive shift represented a move to a model of democracy based on public choice theory, which is the neo-liberal theory that has developed the most detailed analysis of the role of NPOs. Public choice theory claims that interest groups are predatory and will try to obtain benefits for their members that stifle economic growth, while at the same time denying the existence of altruism in the activities of NPOs.

This perspective tends to reject the pluralist concept of many voices in society debating public policy to develop a consensus and rejects any advocacy role for NPOs because they are seen to interfere with the marketplace. Pluralism is viewed as unaccountable, and this perceived lack of accountability of NPOs has been a consistent theme of many developed country governments and neo-liberal think tanks. It is significant, as Staples notes, that restructuring, self-regulation and internal governance reforms by NPOs cannot change this paradigm (2006: 24). At the same time, in the post-9/11 period, these shifts have been intensified by the Howard government's unstinting support for the United States in its war on terror.

¹⁰³ <http://www.johnpilger.com/page.asp?partid=429>

¹⁰⁴ Results from the survey conducted as part of this study indicated the concern that the prevailing climate was undermining the hitherto productive and respectful relationship between governments and NGOs that should be part of a robust democracy in which a range of voices are heard and considered.

A range of mechanisms which undermine the legitimacy of NPOs have been apparent under the Howard Government. With the assumption of power by the Howard Government, the NPO sector experienced an intense period of de-funding that saw funding to environment Organisations cut and exclusion from major advisory bodies, with 1999 the year when many of the larger organisations were completely de-funded because of their opposition to the weakening of the its major environmental legislation. That process continued in 2005 with funding withdrawn from many of the State Conservation Councils, which support hundreds of smaller groups.

Instead, the money has been given to groups which do good works, but which do not engage in public advocacy. Secondly, and at the same time as the de-funding of critical organisations, forced amalgamations have silenced alternative views, purchaser-provider contracts have brought NPOs closer to being an arm of government and confidentiality clauses are explicit restraints upon freedom of expression. Thirdly, confidentiality clauses appeared at the same time that purchaser-provider contracts became the norm. They now appear in some form in most contracts that NPOs have with the Federal Government. These clauses have requirements that the organisation does not speak to the media without first obtaining the approval of the appropriate department or minister.

In the view of Staples, Maddison and others the outsourcing of welfare, as part of a philosophy of 'smaller government', has enabled the government to extend its reach to silence the churches as well. One of the effects of this has been that churches have found it harder to criticise government policy. Once an organisation, such as a church, has invested time, energy and money in setting up as a provider, issues such as dependency on government contracts and responsibility for their employees' future welfare come into play. The conditions of these contracts increasingly entrap such agencies in the government's systems, weakening their ability to offer independent critique and advice about the services concerned. Increasingly, churches have also found that their employment service contracts include specific confidentiality clauses requiring them to refrain from criticism.

In November 2003 Prime Minister Howard announced the creation of a peak NGO body with \$50000 from his Community Business partnership and called it the Not for Profit Council of Australia¹⁰⁵. The original hand-picked members included an art gallery, some service-provider organisations, and the Salvation Army and the Smith Family. The last two charities are primarily concerned with on-the-ground welfare and seem to have avoided political advocacy. It is possible the formation of the Government organisation was in response to the formation of the National Roundtable of Non-profit Organisations, which is a genuine representative

¹⁰⁵ In the context of the Australian NPO sector a peak is a non-government organisation whose membership consists of smaller organisations of allied interests. The peak body thus offers a strong voice for the specific community sector in the areas of lobbying and government, community education and information sharing between member groups and interested parties.

organisation formed the previous year by the key peak Australian NPOs. Its 17 members include the ACF, ACROSS, AFCID, ACA, and the National Council of Churches. This genuine roundtable has been concerned that creating a 'puppet' organisation with no representation from the major national NPO peaks might be used to legitimise the Howard government activities. There is clearly a need for the diverse parties of the NPO sector to come together for various reasons, and they have voluntarily done so in the National Roundtable of Non-profit Organisations.

In October, 2004 the government announced that it would use the Electoral Act to attempt to monitor NPO's advocacy on a continuous basis. In December 2005, the Government introduced the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*. As Staples notes the Bill contained a number of provisions inimical to democratic involvement, including provisions relevant to NPOs which would result in most NPOs being continually monitored by Government (2006: 27). The crux of its proposals centred on a very broad definition of what constituted 'electoral matter'. As drafted, it cast a wide net, so that even those NPOs which do not engage in any overt public advocacy would have been deemed to be producing 'electoral matter' requiring them to track their expenditure and file an annual return on their activities.

The import of the Bill raised freedom of speech issues, with the likelihood of increased administrative costs for NPOs in its implementation, more reluctance of NPOs to speak out, and decreased donations. Moreover, it was not good law because it was likely to result in uneven compliance by NPOs, which can raise the problem of arbitrary enforcement by government. The government agreed to introduce some minor amendments in early 2006 to de-couple the disclosure requirements of third parties such as NPOs, from the definition of 'electoral matter'. As it stands the intent is still to monitor and license advocacy NGOs on an annual basis. It still requires disclosure of material that has no relationship to politics or to elections, and would seem to have some of the intent of calls by the IPA to 'license' NPOs.

9.4.2 Legal Environment and Good Governance Practices

Registration requirements differ according to the type of NPO being registered. There is no register in Australia which relates specifically to NPOs. However, various types of NPOs are required to register in certain circumstances and for further purposes, as follows. If an NPO is incorporated under the *Corporations Law*, information relating to it will be contained on the data base of the Australian Securities Commission, which is the national authority responsible for administering the *Corporations Law*. This information includes the name of the company, its directors, its principal executive officer, its secretary and its registered address. The public can access this register at the offices of the ASC in each capital city for a small fee.

Similarly, under each of the state AIAs a register of incorporated associations is kept in such form. For a fee, a person may inspect the register and obtain a certified copy of a document on the register. The *Religious Successory and Charitable Trusts Act 1958* of Victoria enables public, religious, educational and charitable trusts to seek registration. Registration provides a mechanism for facilitating the transfer of property on the death of registered trustees. It also enables registered bodies to adopt a model constitution and the court may empower charity trustees to apply funds for purposes further to the carrying out of the trust. Similar legislation has been enacted in Tasmania (*Public Trusts Act 1882*). A number of Australian states have enacted legislation regulating the collection of funds for charitable purposes. In general, these acts require every "charity" to be registered before they can collect money from the public. In New South Wales, for example, the *Charitable Collections Act* exempts churches which collect money for the advancement of religion. The acts contain provisions regulating the manner in which charities may apply for registration and the powers of the Minister to require information to be furnished.

The manner in which NPOs are governed varies considerably depending on the circumstances under which such organisations are established. For any organisations created by an Act of Parliament (federal or state) the way in which it is governed will be determined by that Act. NPOs incorporated under the *Corporations Law* and limited by guarantee must have at least three directors and at least two of these must reside in Australia. A company is also required to have a secretary and a public officer. For NPOs incorporated under the State AIAs, most statutes recognise that the association will be managed by a committee of management, or similar body however it is denominated in the constitution. The management of charitable trusts is vested in the trustees, and un-incorporated associations are also normally managed by a committee. With regard to the dissolution, winding up and liquidation of NPO assets certain legal criteria apply.

For NPOs incorporated under the *Corporations Law*, and as a company limited by guarantee, those persons who are members at the commencement of the winding up are primarily liable to honour their guarantees. If it appears to the court that the present members are unable to meet the company's liabilities, the people who have been members within a year before the commencement of winding up are also liable to honour their guarantees, unless the liability relates to a debt incurred after they ceased to be members (*Corporations Law* section 520). Many of the larger and longer established NPOs in Australia are incorporated under their own Act of Parliament. The extent to which these organisations provide information on their finances and operations depends on the requirements of their particular Act.

The ASC is the principal national body responsible for the regulation of companies in Australia. It has responsibility for maintaining a public record of the formation, life,

winding-up and dissolution of registered companies. It also has power to investigate possible breaches of the *Corporations Law* by any company. Every company is required to keep such accounting records as are necessary to record and explain correctly its transaction and final financial position. They are to be kept in such a manner as will enable true and fair accounts to be prepared from time to time and so that they can be conveniently and properly audited in accordance with the *Corporations Law*. A director who fails to take all reasonable steps to secure compliance with section 289 can be liable to a penalty.

The *Corporations Law* makes directors responsible for providing two basic financial statements:

- A balance sheet as at the end of the company's financial year; and
- A profit and loss account for the last financial year of the company.

A copy of the profit and loss account and balance sheet together with copies of the verifying statement of the directors about the accounts, the directors' report and the auditors' report must be sent in not less than 14 days to all persons entitled to receive notice of general meetings. A company must also lodge an annual return with the ASC. One of the functions of the annual return is to inform the ASC that the company is still in operation. In addition, a company is required to notify the ASC of:

- Any resolution passed at an annual general meeting;
- Any change to the details of office holders; and
- The resignation or removal of auditors.

A company must also keep a number of registers including a register of members and a register of charges. All State AIAs require associations to register with the body responsible for incorporated associations in that state. They must provide the registrar with their name, purpose, rules and the addresses of the persons upon whom or the places at which legal notices can be served. Some states require accounting records to be maintained to record transactions and the financial position of the association and allow the preparation of accounts.

Other state's AIAs also require an association to lodge an annual return containing its financial reports and other statements or resolutions. The state supreme courts will in some cases have jurisdiction to review actions of unincorporated associations. In addition, if the purposes of the association are what the law classifies as charitable, property devoted to those purposes will come under the jurisdiction of the States Supreme Court's to supervise the administration of dispositions for charitable purposes. Public supervision of the conduct of charitable trusts is a function of the Attorney General and the state supreme courts.

Australia has a common law system. There are three levels of government: federal, state (including several territories) and local authority. The federal government,

states, and territories all have legislation enabling the creation of non-governmental, not-for-profit Organisations (USIG: 2007). The most common NPO Organisational forms are:

- Incorporated Associations;
- Charitable Trusts; and
- Companies Limited by Guarantee.

Other not-for-profit legal forms include religious Organisations, political parties, political movements, and trade unions.

The federal government has responsibility for the income tax, capital gains tax, fringe benefits tax, customs duties, and Goods and Services Tax (GST). State and territory governments are responsible for taxes such as land, payroll, and stamp duties. Local authorities levy rates and charges. At each level of government, NPOs are, to varying degrees, exempt from taxation. In general, a natural or legal person, including a company, is entitled to a deduction from assessable income for cash donations to certain NPOs, public funds, public authorities, and specified persons. To be deductible, gifts of property must have a value exceeding AUD \$5,000 as valued by the Commissioner of Taxation. The Australian Taxation Office (ATO) has in recent years vastly increased the amount of information readily accessible on the taxation of NPOs and incentives for philanthropy. It maintains a comprehensive website containing legislation, cases, policy statements, and plain English fact sheets and guides.

Australia is a federal system with applicable laws at the federal, state/territorial, and local level enabling the creation of NPOs. In addition, a majority of states and territories have legislation regulating fundraising, and each attorney general has inherent responsibility to supervise charitable trusts. Key legislation includes key *Commonwealth Acts* such as the New Tax System (Goods and Services Tax) Act 1999 and the *Corporations Act* 2001. Examples of *State and Territory Acts* such as the *Australian Capital Territory's Associations Incorporation Act* 1991, New South Wales's *Charitable Fundraising Act Regulation* 1998, Queensland's *Associations Incorporation Act* 1981, South Australia's *Associations Incorporation Act* 1985, Tasmania's *Collections for Charities Bill* 2000, Western Australia's *Associations Incorporation Act* 1987, and Victoria's *Associations Incorporation Act* 1981.

Australia has a number of different categories of NPOs. Incorporated Associations are membership-based NPOs created under the legislation of a particular state/territory. An incorporated association can take the form of a society, club, or institution. They cannot be formed for pecuniary gain or trade and can only carry out lawful objects as determined in legislation such as the various state *Associations Incorporation Acts*. There are approximately 140,000 such Organisations. This type of legal structure is mainly used by small sporting clubs and community Organisations.

The common law of each state and territory allows for the creation of charitable trusts with some modification provided by the trust legislation of each state. A charitable trust, by definition, is not charitable unless its assets and property are used for the advancement of religion, relief of poverty, advancement of education or other purposes beneficial to the community but always in the public benefit. These legislative provisions are captured in the various state *Charitable Trusts Acts*. Often a company limited by guarantee acts as a trustee of a charitable trust. The federal government's *Corporations Act 2001* permits the incorporation of companies limited by guarantee, most of which are not-for-profit. A company limited by guarantee is modeled on the English company limited by guarantee. It has no shareholders, only members who guarantee to pay a certain sum to creditors if, upon dissolution, the company is unable to pay its debts. The guarantee sum is found in the constitution of the company and is usually quite nominal. It is treated as a public company with a higher standard of regulation compared to proprietary/private companies. This was a popular corporate non-profit structure before the introduction of the incorporated association form in the 1980s. There are currently about 11,000 of these companies in Australia, and they can be formed for any lawful purpose.

In Australia charities must satisfy the common law test of "charity." There is no federal definitional code for this term and the concept of what constitutes charitable activities draws heavily on traditional English common law dating back several centuries. Over the years, the courts have generally based their interpretation of "charity" on four categories described in English common law:

- The relief of poverty;
- The advancement of education;
- The advancement of religion; and
- Certain other purposes for the benefit of the community.

For the most part, the Australian states and territories have not defined "charity" or "charitable purposes" in legislation but - similar to the federal approach - have left it to the courts to apply common law. However, in some jurisdictions there are statutory definitions, which, to varying degrees, expand or modify the common law definition. The Federal Government from July 2004 has for the purposes of its law (including income tax) extended the common law definition to include self-help groups and contemplative religious orders that are for the public benefit and child care services delivered on a nonprofit basis.

The general activities of Australian NPOs are limited in terms of legislated provisions. With regard to Incorporated Associations the purposes of the association must be lawful. Some jurisdictions require associations to be formed for certain purposes relating to community and sporting objectives. Other jurisdictions focus on whether the association is "not for pecuniary gain of its members" as the distinguishing

feature. There is broad discretion for a company limited by guarantee to pursue any lawful purpose. A charitable trust must be formed for the purposes regarded as charitable in the narrow English tradition of advancement of religion, relief of poverty, advancement of education or other purposes beneficial to the community but always for the public benefit. Only charitable trusts are subject to a strict public benefit test discussed in the previous section. That being said, all organisational forms are permitted to engage in public benefit activities.

The economic activities of Australian NPOs are limited in terms of legislated provisions. For Incorporated Associations state jurisdictions differ on the amount of commercial and/or unrelated business an incorporated association may conduct. In practice, however, governing legislation is construed to mean that associations are prohibited from having economic activities as their primary purpose. There are no specific restrictions on a company limited by guarantee's business or economic activities. The trustees of a charity trust must only conduct commercial transactions that are within the scope of the charitable purposes of the particular trust. For example, a charitable school or hospital could charge tuition fees or surgery fees.

Under state and federal legislation, bodies that seek to be political parties are required to register under special legislation. The expression of views by not-for-profit organisations on what are considered to be political or electoral matters may trigger legal obligations under the *Commonwealth Electoral Act* 1918. From the 2006-07 financial year on, third parties, such as non-profit organisations, that engage in political expression have three basic compliance obligations under the Act, as amended:

- Inclusion of authorisation statements on certain publications that contain "electoral matter" (sections 328 & 328A);
- Annual disclosure of "political expenditure," if such expenditure exceeds AUD \$10,000 (section 314AEB); and
- Annual disclosure of gifts of AUD \$10,000 or more that are used to enable such "political expenditure" (section 314AEC).

However, the laws do not address the extent to which NPOs may engage in political or lobbying activities. While the Australian Tax Office maintains that political, lobbying, and promotional activities are not charitable, they are allowed - even encouraged in some jurisdictions - when they are "merely incidental" to a purpose that is otherwise charitable. ATO Tax Ruling 2005/21 states that political and lobbying purposes are not charitable. While such purposes may use educational means, this is not sufficient to show a charitable purpose. However, political or lobbying purposes and activities that are merely incidental to a purpose that is otherwise charitable do not by themselves prevent that purpose being charitable.

Although there is no federal law prohibiting racial and ethnic discrimination in private schools, schools are clearly and expressly covered by the applicable state anti-discrimination legislation. For example, in Queensland, the *Anti-Discrimination Act*, provides that educational authorities must not discriminate in respect of admission of students or terms of ongoing enrollment or exclusion of students, though private discrimination is allowable for religious schools solely on the basis of religion. Generally non-state schools (i.e., independent schools that are accredited or provisionally accredited under the *Education Accreditation of Non-State Schools Act*, 2001 may discriminate on any grounds other than race or disability. Put more succinctly, private schools cannot discriminate in accepting students or the terms on which they provide education to them, on the grounds of race or disability. Australian charities may be established by natural or legal persons, both domestic and foreign. Therefore, it is possible that an Australian NPO may be controlled by a for-profit entity or an American grant or charity.

In terms of tax exemptions Division 50 of *The Income Tax Assessment Act 1997* (ITAA) exempts certain classes of NPOs from income tax. It is administered by the Australian Taxation Office which is the responsibility of the Federal Treasurer. The ATO has moved to a self-assessment regime and NPOs are required annually to self-assess whether they fall within the exempt categories. The categories of exemptions are fairly broad and the exemption covers all income however derived. Exemption should not be confused with gift deductibility, as quite different tests and categories apply. The categories of exempt Organisations include:

- Religious, scientific, charitable or public educational institutions;
- Public and non-profit hospitals;
- Hospital and medical benefits Organisations;
- The thalidomide foundation;
- Trade unions and associations of employers;
- Friendly societies;
- Association for musical purposes, art, science or literature;
- Encouragement and promotion of games or sport and animal races;
- Community service associations;
- Associations for the development of aviation, agriculture, pastoral, horticultural, viticultural, manufacturing or industrial resources of Australia; and
- A fund established by a will or trust for public charitable purposes or scientific research through a public university or hospital.

There are some special exemption conditions for charitable institutions. A charitable institution can be entitled to exempt status if it meets at least one of three tests:

- It has a physical presence in Australia and, to the extent it has a physical presence in Australia, it pursues its objectives and incurs its expenditures principally in Australia; and it is a deductible gift recipient; or
- It is prescribed by law in the income tax regulations, and it is located outside Australia and is exempt from income tax in its country of residence; or
- It has a physical presence in Australia but incurs its expenditures and pursues its objectives principally outside Australia.

There are some special exemption conditions for charitable funds. To be entitled to endorsement, all charitable funds must be applied for the purposes for which they were established. Some funds will also need to meet further tests. This depends on whether the charitable fund was:

- Established by will before 1 July 1997, and if so what assets it has received since that date; or
- Established in Australia after 1 July 1997.

Classes of Organisations and specifically named Organisations described in Division 30 of the *Income Tax Assessment Act* 1997 can be the recipients of tax deductible gifts, some subject to further conditions. Sub-Division 30-A of the Act specifies:

- Who the recipient of the gift or contribution can be;
- The type of gift or contribution that a donor can make;
- How much the donor can deduct for the gift or contribution; and
- Special conditions that apply.

Sub-Division 30B of the *Income Tax Assessment Act* 1997 is organized around thirteen general categories of deductible gift recipients under the Act. These include:

- Health;
- Education;
- Research;
- Welfare and rights;
- Defense;
- Environment;
- Industry, trade and design;
- The family;
- International affairs;
- Sports and recreation;
- Philanthropic trusts;
- Cultural Organisations; and
- Other recipients.

Under each general category the tax statute lists specific Organisations or specific classes of Organisations that are eligible to receive tax deductible donations. The classes of Organisations eligible to be deductible gift recipients are either:

- Institutions;
- Public funds; or
- Public authorities.

These terms are not defined in the legislation and have been interpreted by the courts. An institution has been defined as "an establishment, organisation, or association, instituted for the promotion of some object, especially one of public utility, religious, charitable, educational etc." Funds are solely grant-making bodies and authorities are usually controlled by government. Until July 1, 1999, generally only certain types of gifts were tax-deductible under Division 30. These included:

- Gifts of AUD \$2 or more (money);
- Property which has been purchased by the donor less than 12 months before the gift was made; and
- Trading stock disposed of outside the ordinary course of business.

After July 1, 1999, some provisions were relaxed to permit an income tax deduction of property worth more than AUD \$5,000, regardless of when or how the property was acquired. For a gift to be a tax-deductible donation and claimed as an income tax deduction in individual income tax returns, the gift must usually have the following characteristics:

- Is made voluntarily;
- Does not provide a material benefit to the donor, and
- Essentially arises from benefaction, and proceeds from detached and disinterested generosity.

Generally, for a payment to be considered a gift it must be unfettered, that is, there must be no obligation to do anything in recognition of the gift and no expectation on the part of the donor to receive anything in return for the donation. Gifts with conditions may be disallowed as deductions where there is an arrangement whereby:

- Its value to the donee institution is less than the value of the property at the time the gift is made;
- The donor (or an associate) obtains a collateral benefit in connection with the gift; or
- The donee institution undertakes to acquire property from the donor or an associate of the donor.

Recent amendments have made limited provisions for “contributions” where some minor value is received by the contributor such as for political memberships to a capped limit and minor benefits involving fundraising dinners and auctions. Generally every person, whether an individual, the trustee of a trust estate or superannuation fund, a partnership or a company, and whether a resident or non-resident of Australia, is entitled to a deduction from assessable income for individual gifts of AUD \$2 or more made during the financial year to nominated funds, authorities, institutions, or bodies or classes of them, or specified persons. Gifts of property, as discussed in the previous section, are required to have a value over AUD \$5,000 as valued by the Commissioner of Taxation. There is generally no cap for the gift deduction, with the exception that the deduction must not cause an overall tax loss. The exceptions to this statement are discussed below under special gift situations. Where there is a gift of joint property, the taxpayer can deduct so much of the gift as is reasonable having regard to the taxpayer's interest in the property. As a further incentive to encourage philanthropy, beginning on July 1, 1999, donors have been permitted to spread their deductions over a five-year period for cultural, environmental and heritage gifts. All deductions can be spread over a five-year period from July 1, 2002.

Most categories of deductible gift recipients have conditions that the fund, authority, institution, or organisation be endorsed as a gift-deductible recipient by the Commissioner of Taxation, issue appropriate receipts for donations, conduct self-reviews of its status and be 'in Australia.' Some less frequent special conditions are that donations will only be deductible if made between certain dates or for particular purposes of the organisation. Finally, most companies claim "gifts" or "sponsorships" as a cost of doing business which is tax deductible, rather than claiming it as a gift and thus deductible. The reason is that it is significantly easier under the Australian system to claim these transfers as business expenses.

A Goods and Services Tax (GST) was introduced into Australia for the first time on July 1, 2000. Key features affecting NPOs are as follows:

- GST is a broad-based tax of 10% on the supply of most goods and services consumed in Australia;
- Non-commercial supplies by charities such as charitable activities are GST-free;
- Charities must register for GST if their annual turnover is AUD \$100,000 or more and they may choose to register if their annual turnover is lower;
- Registered charities can claim credits for the GST included in the price of goods and services they buy during the process of providing their GST-free supplies;
- Foreign grants to an Australian organisation may be subject to GST, depending on the nature of the grant or gift and where any services are to be performed as a result of the grant or gift.

Imported goods are subject to duty and/or GST. In general, goods donated or bequeathed by a person, company, or organisation domiciled or established outside of Australia to an organisation established in Australia for the purpose of performing "work of a philanthropic nature" are exempt from customs duties [Customs Tariff Schedule 4 - Items 23A and 23B]. In addition, goods, as prescribed by law, that have been "donated or bequeathed to the public" or to a public institution, are exempt from customs duties. There is some ambiguity about the scope of these exemptions, however, because the terms "work of a philanthropic nature" and "donated or bequeathed to the public" are not well-defined. Customs duty rates vary and depend on a number of factors such as type of goods and country of origin. There are no customs concerns on monetary transfers via the banking system. However, persons carrying cash amounts of AUD \$10,000 or more (or in the foreign equivalent) must be declared to customs. Foreign incorporated organisations that carry on business in Australia may be required to register with the Australian Securities and Investment Commission¹⁰⁶. This process involves a simple identification form, the payment of a fee and filing of a constitution and foreign incorporation papers. Foreign bodies that earn income in Australia may be required to register under taxation regulations. The flow of funds from overseas is generally free from regulation apart from required reporting for large foreign currency transactions.

A development NPO will generally be incorporated as an association or a company limited by guarantee. Incorporation creates a legal entity separate from the membership of the organisation. An incorporated association is registered under state legislation and has a lower level of regulatory obligation than a company limited by guarantee, which operates under Commonwealth corporations law. An incorporated association is a suitable framework for a small organisation that will operate primarily in a single state or territory. For most development NPOs, it is preferable to be incorporated as a company limited by guarantee, as this automatically allows national operation and provides a higher level of assurance to donors and other stakeholders. An incorporated association can also operate nationally by applying to the Australian Securities and Investments Commission (ASIC) for an Australian Registered Body Number. This, however, imposes an additional set of fees and reporting requirements on the organisation. Incorporation requires the adoption of a constitution setting out the purposes of the organisation, the governance structure, wind up arrangements and other matters. In some cases, a 'model' constitution can be provided by the relevant authority.

Organisations operated for charitable purposes (including international development) may be eligible for a range of concessions from the Australian Taxation Office (ATO). These include income tax exemption, the ability to provide tax-free fringe benefits,

¹⁰⁶ <http://www.asic.gov.au>

and concessional arrangements for goods and services tax. Development NGOs that also wish to provide tax deductible receipts to their donors must apply to become Deductible Gift Recipients (DGRs) under the Overseas Aid Gift Deductibility Scheme (OAGDS).

94.3 NPO Self-Regulation and Administration

There have been a number of attempts to establish self-regulatory mechanisms for the NPO sector, although as yet none of these have been comprehensively sector-wide. The ACFID *Code of Conduct* represents the most sophisticated self-regulatory initiative, but it remains limited to the network of Australian international aid and development Organisations. Organisations may choose to become solely a signatory to the ACFID *Code of Conduct* or in addition an ACFID member or consulting affiliate. The Code represents the active commitment of overseas aid agencies or Non-Government Development Organisations (NGDOs) to conduct their activities with integrity and accountability.

10.19.4 Code of Good Governance

As has been happening in the USA, UK and Canada the non-profit sector in Australia has been actively involved in developing codes of good practice. The ACFID *Code of Conduct*, for example, is a voluntary, self-regulatory industry Code.

The Code of Conduct Committee monitors compliance with the Code in three ways:

- *Monitoring of annual reports of signatory agencies:* Code signatories are required to submit their annual report to the Committee each year for scrutiny and assessment against the minimum reporting standards.
- *Investigation of complaints received:* Complaints against a signatory agency may be initiated by any member of the public. The Code sets out a clear process through which complaints are investigated and findings determined.

Where a breach of the Code is identified, actions could include but are not limited to:

- Resolution sought through a conciliation process;
- Information to donors;
- Action targeted at addressing the particular complaint issue;
- Withdrawal of signatory status with the Code.
- *Investigation of inquiries:* The Code of Conduct Inquiry Protocol allows for the Code of Conduct Committee to:
 - Initiate inquiries into areas of signatories practices which may have an impact on the wider aid and development sector but which do not currently fall within the scope of the *Code of Conduct*;
 - Initiate inquiries into potential breaches of the Code in the absence of a formal external complaint.

Inquiries may lead to:

- The referral of sector wide issues to the ACFID Executive Committee for consideration
- The generation of a complaint via the *Code of Conduct* Complaints Handling Procedure.

In Australia there is no register which relates specifically to NPOs. However, various types of NPOs are required to register in certain circumstances and for further purposes.

- *NPOs incorporated under the Corporations Law*: If an NPO is incorporated under the *Corporations Law*, information relating to it will be contained on the Australian Securities Commission data base (the Australian Securities Commission or “ASC” is the national authority responsible for administering the Corporations Law). This information includes the name of the company, its directors, its principal executive officer, its secretary and its registered address. The public can access this register at the offices of the ASC in each capital city for a small fee;
- *NPOs incorporated under the state AIAs*: Similarly, under each of the state AIAs a register of incorporated associations is kept in such form. For a fee, a person may inspect the register and obtain a certified copy of a document on the register;
- *Registers pertaining to charitable trusts*: The *Religious Successory and Charitable Trusts Act 1958* of Victoria enables public, religious, educational and charitable trusts to seek registration. Registration provides a mechanism for the facilitating the transfer of property on the death of registered trustees. It also enables registered bodies to adopt a model constitution and the court may empower charity trustees to apply funds for purposes further to the carrying out of the trust. Similar legislation has been enacted in Tasmania (*Public Trusts Act 1882*). A number of Australian states have enacted legislation regulating the collection of funds for charitable purposes. In general, these acts require every “charity” to be registered before they can collect money from the public (in NSW, churches which collect money for the advancement of religion are exempt: *Charitable Collections Act*). The acts contain provisions regulating the manner in which charities may apply for registration and the powers of the Minister to require information to be furnished.

Being a signatory to the ACFID *Code of Conduct* is voluntary and entitles member Organisations to become part of a network of Australian international aid and development organisations which are committed to conducting their work with transparency, accountability and integrity. Being a signatory to ACFID allows members to display the *Code of Conduct* logo on their organisational documents. The purpose of this is to signal that member organisations are committed to issues of NPO accountability and to achieving best practice within the international aid and development community. Organisations may choose to become solely a signatory to


the ACFID *Code of Conduct* or in addition an ACFID member or consulting affiliate. The Code represents the active commitment of overseas aid agencies or Non-Government Development Organisations (NGDOs) to conduct their activities with integrity and accountability.

The Code aims to enhance standards throughout the NGDO community to ensure that public confidence is maintained in the way that community contributions (tax payer revenue) to overseas aid are used to reduce poverty through effective and sustainable development. NPOs wishing to attain Australian Agency for International Development (AusAID) accreditation are required to formally adopt and become a signatory to, and demonstrate compliance with, the ACFID *Code of Conduct*. The ACFID Code of Conduct is coordinated by a Code of Conduct Committee that is responsible for monitoring adherence to the minimum reporting standards necessary for a signatory organisation to maintain its compliance with the *Code of Conduct*, and report to ACFID and AusAID the failure of any signatory to adhere to these requirements¹⁰⁷. 2008 marked the 10th anniversary of the *Code of Conduct* and significant work has been carried out in the areas of strategic planning, reviewing the Code's effectiveness and restructuring the Code of Conduct Secretariat. As part of the strategic planning process for the *Code of Conduct*, a formal and independent review of the Code has been undertaken. The Review, which commenced early in 2007, is currently analysing information from records and stakeholders involved in the past ten years of *Code of Conduct* activity. It will provide analysis on its operation to date and recommendations on the future direction of the *Code of Conduct* in terms of its aims and objectives, governance and operational activities. While formal responsibility for the *Code of Conduct* is held by the ACFID Executive Committee and ACFID's annual Council of financial members, the aim in conducting the review is to ensure as much independence and objectivity as possible in the composition and conduct of the Steering Committee.

The National Roundtable of Non-profit Organisations is an independent, non-political organisation dedicated to enhancing the work and activities undertaken by non-profit organisations in Australia. The Roundtable was conceived in 2004 and formally constituted in 2006. This represented the first attempt in Australia by the diverse non-profit sector to come together as one body. The National Roundtable of Non-profit Organisations was established for the following purposes beneficial to the community:

- To enhance the recognition of, and promote support for, the work of nonprofit organisations and the Sector by the Australian community and its governments;

¹⁰⁷ AusAid is the government-linked development agency that delivers Australia's official development aid.

- To encourage charitable, voluntary, philanthropic, and community endeavours through non-profit organisations and to promote the public benefit and contribution of these endeavours;
 - To provide a national forum for the exchange of information, research and knowledge in relation to issues affecting non-profit organisations and undertake collaborative work on issues of common interest;
 - To initiate, undertake or co-ordinate research which contributes to the improved management, accountability and effectiveness of nonprofit organisations, and improve public policies and legislation which affect such organisations and the NPO sector;
 - To develop policies, advice and information to help inform decision makers in respect of issues affecting non-profit organisations and the NPO sector;
 - To develop policies and initiate programs to identify and meet the infrastructure and other needs of nonprofit organisations and the NPO sector;
 - To enhance co-operation and engagement between business, government and other sectors of society with nonprofit organisations and the NPO sector.
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11. CONCLUSION:

The rationale for undertaking the literature review was to scan the civil society terrain, nationally and regionally, as well as globally, as a means to identifying key elements of the global civil discourse, and to extract some of the pertinent trends emerging from good governance discourse and practice. These trends are broad, and engage with governance issues such as ethical practice, public trust, accountability, transparency, self-regulation, management and service delivery. The debates that have emerged around these governance-related factors have highlighted many of the issues that can provide the NPO Directorate within the Department of Social Development with additional knowledge capital that it can utilise in strengthening the management of the NPO sector in South Africa, and specifically in the area of good governance.

This review of global civil society and the NPO sector in particular, reflect the complexity, diversity and dynamism of this segment of social action. In scanning the NPO terrain across nineteen countries it becomes evident that while it is possible to generalise trends and currents of thought within civil society discourse, it is also necessary to take account of the specificities of regional and individual country experiences and contexts. These specificities are themselves multi-dimensional and linked to variations in political, social, cultural and religious realities. This is critical given the fact that prevailing socio-economic and politic factors are key determinants of the shape, nature and direction that NPOs take in a particular country. In federal states such as the USA, Australia and India the internal dynamics can be equally complex.

What is notable from the research is the extraordinary levels of innovation and experimentation within the sector. The nature of this innovation is also quite diverse, with different countries adopting specific focus areas for strengthening the capacity of civil society to govern itself in a more accountable, transparent and ethical manner. Innovative approaches span a spectrum of approaches, including some of the following:

- In India the information technology methodology of GuideStar has been utilised for NPOs to register themselves on a national and state level database;
- In Brazil the NPO sector works closely with the private sector in developing good governance codes of practices;
- In the UK chief executives of NPOs have, through their association, developed a code of good governance specifically for CEOs;

- In the Philippines and Uganda local NPO coalitions have taken the lead in establishing sophisticated and comprehensive self-regulatory mechanisms.

What is evident from this literature review is the fact that the across the world the NPO sector is a dynamic and ever-changing area of social activity. While contexts differ, there is a clearly emerging global discourse on good governance, and how best the principles of good governance can be integrated in a comprehensive manner into a sector that is huge, diverse and fluid. The central focus of the review has, in effect, been to highlight some of the governance issues, concerns and lessons learned that could inform a set of recommendations for NPO Directorate to take forward. These recommendations are detailed in section 12.



12. RECOMMENDATIONS

1. Given the wealth of information that has been accumulated during the course of the NPO study, the NPO Directorate will need to ensure that it synthesises the key findings and recommendations, and that it shares these with sector as a whole. This could include a focused advocacy campaign to promote good governance in the NPO sector, as well as a national dialogue between Government, the corporate sector, donors and funders, and civil society on issues related to good governance. This would help the NPO Directorate to achieve a broad consensus on integrating perspectives on good governance.
2. Civil society appears strongest where it has, over a long period of time, become an entrenched, organic and indispensable dimension of democratic societies. This requires the evolution of an enabling political environment in which civil society organisations are able to flourish and pursue their missions in an environment that guarantees basic freedoms, and without fear of political interference, control and suppression. The NPO Directorate will need to ensure that any actions they may take to promote good governance in the NPO sector are seen by the sector as collaborative, transparent and taken in good faith.
3. Open societies that are premised on core democratic principles and that have legislative frameworks that encourage citizen's engagement generally provide the most fertile context for civil society to operate. Similarly, repressive polities that have restrictive legislative environments that deny their citizenry the right to open democratic engagement generally have weak and ineffective civil societies. The NPO Directorate should therefore ensure that there is ongoing engagement and dialogue with civil society in South Africa. A key element of this engagement should be to subject existing NPO legislation to ongoing review, with the purpose of ensuring that such legislation continues to promote and enable an active and engaged civil society.
4. Governments in different countries establish specific regulatory environments in order to track and monitor the sector. This may take the form of control over the sector, as is the case in more repressive states; alternatively it may exist as a means of establishing an enabling governance system for the sector. In countries such as South Africa, where the regulatory regime has been set up as an enabling system, there is a need to ensure that adequate information sharing and capacity development takes place to empower CSOs to meet the regulatory requirements in a way that is constructive for both parties.

5. Codes of good practice are increasingly becoming standard tools for strengthening the good governance agenda. Civil society organisations and coalitions, the private sector and Governments have developed codes of conduct that focus on key governance issues that include accountability, transparency and ethical practices. These codes, however, vary in their quality and usefulness in terms of practical implementation. The Department of Social Development has developed its own Codes of Good practice to support the NPO sector in strengthening its governance capacity. It is important that these Codes are reviewed, in consultation with both civil society and the private sector, in order to focus and streamline the Codes so that they address the key governance needs within South African civil society.
6. Civil society has increasingly recognised that by setting up effective self-regulatory mechanisms they will obviate the need for stronger, and possibly more restrictive, state regulation. Outside of established democracies such as the USA, the UK, Australia and Canada effective self-regulatory mechanisms are fairly thin on the ground. The Philippines and Uganda, however, have made significant progress in developing national self-regulatory mechanisms for their NPO sectors and these could offer interesting pointers for South Africa. The NPO Directorate could take these particular examples, and any others that can be identified, and open them to a process of dialogue through a participatory engagement with the NPO sector. It is out of this kind of process that the conceptual basis for a concrete self-regulatory mechanism could be developed.
7. Much of the cutting-edge work that is being done in the field of good governance is being carried out by the corporate sector, with major developments taking place in the development of corporate governance codes. It should be recognised that while there are major differences, some of the guiding principles of the corporate and NPO sectors are similar, particularly in areas of sound financial management, administration, accountability mechanisms and ethical practices. The NPO Directorate should look to act as intermediary in bringing the corporate and NPO sectors together with the purpose of building stronger relationships. At the same time the NPO Directorate could facilitate a common understanding that transcends the stereotypical assumptions around the "capitalist agenda" and suspicions around what agendas inform the thrust of Corporate Social Investment (CSI)/Corporate Social Responsibility (CSR).
8. Organisations within civil society generally serve the interests of poor, marginalised and displaced people, and much of this work is informed by a broad human rights agenda. Internationally the experience is that Codes of Good

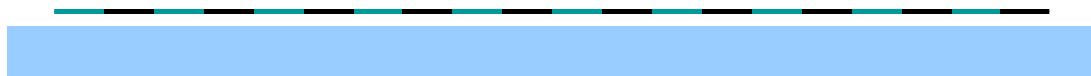
Practice attempt to incorporate a strong rights-based element, in the understanding that the delivery of services need to be informed, within NPO governance, by a respect for rights both within the organisation and in terms of interface with stakeholders and beneficiaries. The NPO Directorate should ensure that its own Codes of Good Practice mainstream rights as a key component of good governance, and that it encourages civil society as a whole to integrate a rights-based approach into the development of codes of ethics, self-regulatory mechanisms and other good governance processes.

9. There is a global move towards professionalising the NPO sector, reflected in documents such as the WANGO Code. The dynamics underpinning this include the need to professionalise the processes involved in fundraising, financial management and service delivery. The rationale for this is the need that many organisations within the NPO sector have to get away from the traditional image of NPOs as well-intentioned but poorly managed charity organisations. The NPO Directorate will need to consider reinforcing this movement towards the professionalisation of the sector by aligning its regulatory requirements in such a way that they promote professional good governance practices across NPO operations, administration and implementation, rather than merely seeking compliance.
10. In a number of countries there has been a concerted move towards strengthening the capacity of leaders of civil society organisations as a way of building a stronger civil society leadership cadre. A good example of this is the work that ACEVO in the UK has been doing, particularly through the development of a code of conduct for chief executives within the NPO sector. In the South African context the NPO Directorate should take the lead in addressing the leadership issue, specifically by conducting a needs assessment and skills audit, and subsequently identifying training and development needs at the leadership levels of NPOs.
11. The funding environment for NPOs is becoming increasingly restrictive, and donors and funders require greater levels of accountability in terms of both financial inputs and programme / project outcomes. There is also a greater emphasis on good fund raising practices, accountability to both funders and beneficiaries, and the building of longer-term sustainability. The NPO Directorate should look at working with the NPO sector to build a more enabling environment for resource mobilisation, through for example the building more formalised service provider relationships with both Government and the private sector. The lessons from the Brazilian experience would be instructive in this instance.

12. Many of the codes of good practice and self-regulatory initiatives that are currently in operation have been the result of strong networks and communities of practice within the NPO sector. In these instances consensus on processes has been highly consultative and information has been broadly disseminated through active and progressive civil society networks. The NPO Directorate should ensure that it works cooperatively with the NPO sector with the object of strengthening existing coalitions and networks, and that these strengthened coalitions become the foundation for a more engaged dialogue on the way forward for issues of good governance within the sector.
13. Organisations that make up the NPO sector in developed countries, whether they are large or small, tend to be professionalised, networked and integrated within strong associations or coalitions. The NPO sector in developing countries is generally comprised of a small pool of professionalised NGOs, and a large pool of smaller NGOs and CBOs that are often poorly resourced and lacking in basic governance capacity. The NPO Directorate has the challenge, through both its regulatory role and its capacity development mandate to work closely with the sector to map out innovative, cost-effective, sustainable and broad-based capacity development programmes geared towards strengthening the governance and management capacity of smaller NGOs and CBOs, with a particular focus on those operating in the peri-urban and rural areas.
14. The NPO sector in federal states, such as India, Brazil and the USA, is often differentiated in terms of local contexts and governed by local political, economic and cultural dynamics. Although South Africa is technically a unitary state, it has strong local dynamics at the provincial level. The NPO Directorate will need to ensure that its counterparts in provincial Departments of Social Development are sufficiently skilled and capacitated so that they can take forward the good governance agenda. This could require a customised training package for provincial offices that enables them to work closely with local NGOs and CBOs in building, strengthening and sustaining good governance practices.
15. It is clear from this research, as well as the wealth of other studies of the NPO sector around the world, that like any other social formation the NPO sector is very often the terrain of political engagement. The levels and extent of such political engagement can determine relations between the state and the NPO sector, as well as between the NPO sector and the private sector. In many countries these relations become antagonistic as a result of political conflicts of interest. The NPO Directorate may want to commission a study on the interface

between the NPO sector and the political dynamics at play in South Africa, and how this engagement impacts on the capacity of both the state and the NPO sector to sustain sound good governance practices.

16. In stable democracies civil society is characterised by its capacity to engage in collegial, associative and participatory processes, and to work towards common purposes that benefit the sector as a whole. This is clearly evident in countries such as the UK and Canada where significant sections of the NPO sector work collectively towards the development of detailed and practical codes of conduct and ethics that establish operating governance frameworks for the entire sector. The NPO Directorate should engage in analysis of associational strength and levels of participatory engagement in South Africa's NPO sector, and establish recommendations for strengthening coherence both within the sector itself, and for promoting engagement between the NPO sector and its main stakeholders.



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14. APPENDICES

InterAction (USA) PVO Standards

1. Preamble

- 1.1 InterAction, a membership association of US private voluntary Organisations, exists to enhance the effectiveness and professional capacities of its members engaged in international humanitarian efforts.
- 1.2 InterAction follows the highest ethical standards in carrying out its mission. We are committed to encouraging professional competence, ethical practices, and quality services.
- 1.3 Each member Organisation shall adhere to those unique principles of governance, volunteer involvement, support from the private sector, fund raising, service, and programs which enable it to be accurately described as a private and voluntary Organisation.

2. Governance

- 2.1 A member Organisation shall be governed fairly, impartially, and responsibly by an independent Board of Directors and its duly constituted Executive Committee.
- 2.2 Each Organisation shall have an independent, active, and informed Board of Directors, serving without compensation as directors. The Board shall have policies which specify the frequency of Board meetings (at least two per year) and adequate attendance by directors (at least a majority on average). The Board may designate an Executive Committee to act in its place as long as the Executive Committee has policy-making authority. The Board shall have policies restricting the number of employees who are voting members of the Board; providing limits for directors being related to one another, the Founder, or the Executive Director; and establishing limited terms of service for directors and officers.
- 2.3 The Board shall adopt a policy which prohibits direct and indirect conflicts of interest by members of the Board, employees, and volunteers. Board members, employees and volunteers shall make known to the Board any affiliation they might have with an actual or potential supplier of goods and services, recipient of grant funds, or Organisation with competing or conflicting objectives. Board members and employees shall absent themselves from discussion and abstain from voting or otherwise participating in the decision on any issue in which there is a conflict of interest. Large or otherwise inappropriate gifts to Board members or staff for personal use shall be forbidden.
- 2.4 Though the Board may delegate to staff, it must accept ultimate responsibility for governance over all aspects of the Organisation.
- 2.5 The Board shall approve the annual budget, appoint an independent auditor, receive the annual, audited financial statements, and appoint an Audit Committee to review the financial statements and activities of the Organisation.
- 2.6 The Board shall adopt a policy requiring that no person shall be excluded from participation in the Organisation, be denied the benefits of the Organisation, or be otherwise subjected to discrimination by the Organisation, on the basis of race, color, national origin, age, religion, handicap, or sex. (The preceding sentence notwithstanding, pursuant to Section 702 of the Civil Rights Act of 1984, religious Organisations may discriminate in their employment practices with regard to religion only.)

- 2.7 All activities shall be conducted within applicable laws.

3. Organisational Integrity

- 3.1 The affairs of the member Organisation shall be conducted with integrity and truthfulness. The Organisation's activities shall be open and accessible to scrutiny by its donors, except for personnel matters and proprietary information.
- 3.2 Each Organisation shall have a written standard of conduct for its directors, employees and volunteers, which they shall commit to follow.
- 3.3 The Organisation shall endeavor to assure confidentiality to employees desiring it who present evidence of misconduct or other irregularities on the part of anyone associated with the Organisation.
- 3.4 The Organisation shall oppose and shall not be a willing party to wrongdoing, corruption, bribery, other financial impropriety, or illegal acts in any of its activities. It shall take prompt and firm corrective action whenever and wherever wrongdoing of any kind is found among its Board, employees, contractors, and volunteers. Ethics standards shall be maintained despite possible prevailing contrary practices elsewhere.
- 3.5 In all of its activities, a member shall respect the dignity, values, history, religion, and culture of all of its constituents.
- 3.6 A member shall recognize that all of its activities impact on the public perception of the PVC community, and that it shares a significant responsibility to enhance the public trust.

4. Finances

- 4.1 The finances of a member Organisation shall be conducted in such away as to assure appropriate use of funds and accountability to donors.
- 4.2 The Organisation shall have an annual audited financial statement, conducted by an independent Certified Public Accountant. The audited financial statement shall comply with Generally Accepted Accounting Standards and Requirements according to the AICPA and the FASB. The auditors shall present a "management letter" to the Board of Directors. (Organisations with less than \$100,000 annual income need not have an independent auditor.)
- 4.3 The Organisation shall complete and file Form 990 annually to the US Government. (Religious Organisations are exempt by law from this provision).
- 4.4 The audited financial statement (and the Form 990, if applicable) shall be provided to any inquirer upon reasonable written request.
- 4.5 An Annual Report including a statement of the Organisation's purpose, full or summary financial statement, description of the goals, summary of overall program activities, results of the work of the Organisation, and information about current Board members shall be provided upon written or verbal request.
- 4.6 The Organisation's combined fund raising and administration costs shall be kept to the minimum necessary to meet the agency's needs. Allocations of expenditures to administration, fund raising, and program services shall reflect the Organisation's purposes, actual activities, and generally accepted accounting principles.
- 4.7 The Organisation shall operate a budget approved by the Board. It shall account for funds from the moment they are received until they are used in the project or services. It shall exercise adequate internal controls over disbursements to avoid unauthorized payments. The Organisation shall not have secret funds and it shall prohibit and unaudited transactions or loans to Board members and to staff.

- 4.8 Contributions shall be used as promised or implied in the fund raising appeal or as requested by the donor. If funds cannot be spent this way, they shall be returned to the donor, or the donor shall be advised of the planned alternative use and given the opportunity to request a return of the contribution. Organisations shall substantiate, upon request, that their application of funds is in accordance with donor intent or request. Resources shall not be used as instruments of partisan influence or personal gain.
- 4.9 International currency exchange shall comply with applicable laws, have appropriate Government approvals, and be clearly recorded.

5. Communications to the Public

- 5.1 The member Organisation shall be committed to full, honest, and accurate disclosure of relevant information concerning its goals, programs, finances, and governance.
- 5.2 Fund raising solicitations shall be truthful, shall accurately describe the Organisation's identity, purpose, programs, and need, shall only make claims which the Organisation can fulfill, and shall avoid placing excessive pressure on donors. There shall be no material omissions or exaggerations of fact, no use of misleading photographs, nor any other communication which would tend to create a false impression or misunderstanding. Information in the Organisation's appeals should give accurate balance to the actual programs for which the funds solicited will be used. The Organisation shall not undertake negative advertising or criticize other member Organisations to benefit themselves.
- 5.3 An Organisation's communications shall respect the dignity, values, history, religion, and culture of the people served by the programs. They shall neither minimize nor overstate the human and material needs of those whom it assists.
- 5.4 If an Organisation sells, rents, or exchanges the names of its donors, it shall notify the donors of its intention to do so, giving them the option to be eliminated from the list for sale, rent or exchange.
- 5.5 If the Organisation engages in fund raising events or cause- related marketing, the amount of funds going to the charity shall be clearly described prior to, or in conjunction with, the effort.
- 5.6 Organisations shall control all fund raising activities conducted on their behalf. All fund raising contracts and agreements shall be reduced to writing.
- 5.7 Staff engaged in fund raising and public relations should meet the standards of the National Society of Fund Raising Executives and Public Relations Society of America respectively.

6. Management Practice and Human Resources

- 6.1 A member Organisation shall endeavor to follow best management practices appropriate to its mission, operations, and governance structure.
- 6.2 A member Organisation shall periodically reassess its mission and operations in light of the changing world environment through an on-going strategic planning process.
- 6.3 A member Organisation shall have clear, well-defined, written policies and procedures relating to all employees and volunteers, including host country nationals and expatriates.
 - 6.3.1 Such policies shall clearly define and protect the rights of employees, assuring fair treatment in all matters.
 - 6.3.2 Employee benefits shall be clearly described and communicated, and the Organisation shall make financial arrangements to protect its ability to honor its obligations to employees.

- 6.3.3 The Organisation's expectations of employees shall be clearly defined and communicated.
- 6.4 A member Organisation shall have policies and procedures to promote gender and minority equity, pluralism, diversity, and affirmative action in recruitment, hiring, training, and professional development and advancement.
- 6.5 A member shall endeavor to recruit and retain staff that combine professional competence with a commitment to service.

7. Program

7.1 General Program Standards

- 7.1.1 A member's program shall facilitate self-reliance, self-help, popular participation and sustainable development, so as to avoid dependency.
- 7.1.2 Participants from all groups affected should, to the maximum extent possible, be responsible for the design, implementation, and evaluation of projects and programs.
- 7.1.3 A member shall give priority to working with or through local and national institutions and groups, encouraging their creation where they do not already exist, or strengthening them where they do.
- 7.1.4 In its program activities, members shall respect and foster human rights, both socio-economic and civil-political.
- 7.1.5 A member's programs shall respect the dignity, values, history, religion, and culture of the people served.
- 7.1.6 A member's fundamental concern shall be the well-being of those affected; its programs shall assist those who are at risk without political, religious, gender, or other discrimination; and a high priority shall be given to strengthening the capacities of the most vulnerable groups, typically women, children, minorities, the dialed, and the very poor.
- 7.1.7 Where possible, programs shall promote the advancement of the status of women and their empowerment.
- 7.1.8 In the planning of programs and projects, a member shall consider the full range of potential impacts upon the host country including: the potential to strengthen the capacity of local structures and institutions to absorb constructively financial and other inputs, and where resources exceed capacity, to create new auxiliary structures such as locally controlled foundations or funds; the potential for sustaining the program in the future; the effect upon the demand and markets for locally produced goods and services; the potential for individual and community empowerment; and the effects upon the natural environment and ecosystems.
- 7.1.9 A member shall have defined procedures for evaluating, both qualitatively and quantitatively, its programs and projects. These procedures shall address both the efficiency of the use of inputs, and the effectiveness of the outputs, i.e. the impacts on the program participants, and the relationship of these impacts to the cost of achieving them.
- 7.1.10 A member shall be willing to share program knowledge and experience with program participants, other agencies, donors, and other constituencies.
- 7.1.11 Members shall adhere to the professional standards in their field of activity.

7.2 Emergency Civil Conflict, and Disaster Response

- 7.2.1 A member shall use its best efforts to ensure that assistance is provided on a non-discriminatory basis. To the maximum extent possible, disaster response should be treated as a humanitarian and non-political matter.
- 7.2.2 A member shall affirm that, in responding to disasters for the benefit of civilian populations, its response will be coordinated with other local and international humanitarian Organisations in order to ensure prompt action and effective allocation of resources, and to avoid duplication of effort.
- 7.2.3 A member providing humanitarian assistance and protection in settings of armed conflict shall be guided and informed by the "Providence Principles of Humanitarian Action in Armed Conflicts", and by "Humanitarian Principles and Policy Guidelines: A Handbook for Practitioners", developed by the Humanitarianism and War Project.

7.3 Material Assistance

- 7.3.1 Programs involving the provision of emergency and material assistance shall be carried out, to the maximum extent feasible, in a manner intended to undergird and enhance local know-how and productive capacity, to avoid the creation of dependencies, to reduce vulnerability to future disasters, and to lay the basis for longer term development.
- 7.3.2 Materials provided shall be appropriate, based on an assessment of local needs, and sensitive to the local culture and situation.
- 7.3.3 Members involved in the provision of food aid shall be guided and informed by the "Representative Food Aid Standards" promulgated by Food Aid Management. A member utilizing gifts-in-kind shall be guided and informed by the "Interagency Gifts-In-Kind Standards Project" of the Association of Evangelical Relief and Development Organisations (AERDO).
- 7.3.4 A member receiving and distributing medical supplies shall be guided and informed by "The Use of Essential Drugs" containing the sixth model list of essential drugs promulgated by the World Health Organisation.
- 7.3.5 A member utilizing gifts-in-kind shall have policies that clearly describe the valuation and auditing methods used, including diminution of value based on dating and shelf life; establish limits to the number of times that goods will be passed to other PVOs before being passed on to an end user; assure that only gifts-in-kind that are related to the basic mission and purposes of the Organisation, and that are appropriate to the local situation, will be received and disbursed; that processing fees will be assessed in relation to the cost incurred, not to the value of the goods involved; that gifts-in-kind will be used for the purpose intended by the donor and will not be diverted for financial gain unrelated to the purpose for which the gift was made; and that proper documentation will be maintained on all gift-in-kind transactions.

7.4 Migration and Refugee Assistance

- 7.4.1 A member involved in migration and refugee affairs shall be guided and informed by the 1951 UN Convention and 1967 Protocol Relating to the Status of Refugees.
- 7.4.2 Those agencies active in the U.S. Reception and Placement Program of Refugee Resettlement shall adhere to the mutually agreed upon Bureau for Refugee Program Guidelines for Participants.

7.5 Development

- 7.5.1 Members involved in development assistance shall be guided by the professional standards developed by recognized authorities related to their sectoral areas of discipline. Examples could include, but are not limited to the following: the "Guidelines for Drinking Water Quality" promulgated by the World Health Organisation; "Housing and Health: An Agenda for Action" promulgated by the World Health Organisation; the "World Declaration on the Survival, Protection and Development of Children" promulgated by UNICEF; and "Learning for All: Bridging Domestic and International Education; Conference Report, US Coalition for Education for All".

7.6 Child Sponsorship

- 7.6.1 A member involved in child sponsorship shall have a policy affirming that each sponsored child and his or her family will be primary beneficiaries of the program; and that a member will not knowingly enroll a child or family already enrolled by another sponsorship agency.
- 7.6.2 A member involved in child sponsorship will be informed and guided by the Code of Ethics for Sponsorship Agencies dated October 4, 1990.

7.7 Development Education

- 7.7.1 The focus of development education efforts should be to engage the US public in the recognition of global interdependence and its long term impact upon the well-being of all societies, and to develop a constituency in support of a constructive US role in the world.
- 7.7.2 A member involved in development education shall be informed and guided by the "Guidelines for PVOs: An Aid to the Development of Education, Public Information and Fundraising Materials About Africa" from "Toward Partnership in Africa", pp. 146-160, with suitable adaptation to other areas of the world.
- 7.7.3 A member shall make a clear distinction between its fundraising and development education efforts, especially in its financial reporting, adhering to the relevant positions of the American Institute of Certified Public Accountants (AICPA) regarding the appropriate allocation of the expenses related to these activities.

8. Public Policy

- 8.1 A member Organisation shall have a clear policy describing the circumstances in which it will involve itself in advocacy, public policy and/or lobbying activities.
- 8.2 Members adopting advocacy and public policy positions shall have an Organisationally-approved policy that defines the process for adopting and implementing such positions.
- 8.3 Advocacy, public policy, and lobbying activities by members shall be non-partisan (i.e. not associated with a specific political party) in nature, and shall conform with applicable U.S. non-profit law.
- 8.4. Activities intended to influence public policy in the U.S. or other countries shall be undertaken in accordance with the individual member Organisation's established policies, and within applicable laws.
- 8.5 In taking public policy positions, member Organisations shall be informed and guided by public policy positions unanimously adopted by InterAction.

9. Implementation

- 9.1 Self-certification that an agency meets the high ethical Standards is required for membership in InterAction. Each applicant Organisation accepts responsibility for following these Standards. An Organisation which meets the InterAction Standards may refer in its promotional materials to this fact. InterAction will maintain and make available a current list of qualifying Organisations.
- 9.2 Annual filing of the latest annual report, an audited financial statement, and a statement and checklist, by the Chair of the Board of Directors and/or the Chief Executive Officer of the Organisation, attesting that it meets the high ethical Standards of InterAction will be required and due December 31 of each year.
- 9.3 A Standards Committee shall be elected by the Board and shall consist of members of the InterAction Board and recognized outside experts. The Standards Committee will review and recommend to the Board revisions in the Standards periodically.
- 9.4 The Standards Committee will receive and act on complaints about possible non-compliance. A complaint must be in writing and present the facts as known by the complainant. The Organisation concerned will have an opportunity to respond, and it is assumed the Organisation will cooperate. If an Organisation is not in compliance, it shall be given reasonable time to make a serious effort to be in compliance. The complaint and complaint process will be kept confidential. In an extreme case of non-compliance, an agency will be ineligible for membership. The Standards Committee will issue a report annually to the members.
- 9.5 The Standards covered in the Sections 1,2,3,4, and 5 became effective for membership starting January 1, 1994. Delay in the effective date of any specific Standard, or its application to a specific agency, may be made by vote of the Board of Directors.
- 9.6 The Board of Directors of InterAction may, from time to time, add to or change this set of Standards, subject to 2/3 approval by the members in attendance at a regular meeting of the Board of Directors and with appropriate notice.
- 9.7 InterAction maintains a Resource Center in its main office which contains a copy of all of the codes and standards developed by other Organisations or coalitions, which are referred to in the InterAction Standards.

10. Guidelines

- 10.1 Guidelines represent Standards which the Board of Directors may, from time to time, promulgate as recommended, but not required Standards.

Canada Code Of Good Practice On Funding

1. WHY A CODE?

Signed in December 2001, An Accord Between the Government of Canada and the Voluntary Sector describes the key elements of a strengthened relationship between the two sectors. It sets out common values, principles and commitments that will shape the sectors' future practices as they work together for the benefit of all Canadians.

This Code of Good Practice on Funding fulfils the Accord's commitment to take measures to put its provisions into action. As such, the Code is a tool for identifying practices related to the funding aspect of the sectors' relationship. By using these good practices, both sectors are committed to building that relationship, thereby strengthening their ability to better serve Canadians.

1.1 Link to the Accord

This Code of Good Practice on Funding has been developed in accordance with the provision in the Accord stipulating that the Government of Canada and the voluntary sector will develop, in a timely fashion: codes or standards of good practice to help guide interactions between government departments and voluntary sector Organisations on aspects of the relationship such as policy dialogue, funding, and other issues as identified.

As summarized below, the Accord also contains specific references to the issue of funding:

- Recognize and consider the implications of its legislation, regulations, policies and programs on voluntary sector Organisations including the importance of funding policies and practices for the further development of the relationship and the strengthening of the voluntary sector's capacity; (Government of Canada Commitments);
- Advocacy is inherent to debate and change in a democratic society and should not affect any funding relationship that might exist;
- In addition, the Code builds on the values of democracy, active citizenship, equality, diversity, inclusion and social justice, and the principles of independence, interdependence, dialogue, co-operation and collaboration, and accounting to Canadians, which are the basis for the Accord.

1.2 Purpose of the Code

The purpose of this Code is to guide interactions between the Government of Canada and the voluntary sector on funding policies and practices. The Code is grounded in each sector's recognition of its responsibility to be accountable to Canadians and the importance of sustainable capacity to enable voluntary Organisations to serve Canadians.

Voluntary sector Organisations have a mandate to identify and respond to community needs by providing programs, services and support to improve people's lives. They provide collective voices and involvement in issues of common concern. As diverse as the Canadian population itself, the voluntary sector includes an estimated 180,000 incorporated non-profit Organisations, of which 80,000 are registered charities. These Organisations differ enormously in their causes and constituencies, in size and resources, and in the extent to which they are run by volunteers and paid professional staff. They range from small community-based groups to large national and international Organisations. Working independently, voluntary sector Organisations determine their own priorities and manage their own affairs.

Voluntary sector Organisations carry out important work in many areas, including sports and recreation, arts and culture, health, religion and environmental protection. Through their staff and volunteers, these Organisations work daily in communities across Canada, identifying needs and providing effective services to improve people's lives and support the well-being of communities. In addition to its support role, the voluntary sector contributes significantly to the Canadian economy.

The Government of Canada has a mandate to use public funds for programs and services that improve the quality of life of all Canadians. Almost every aspect of Canadian life is affected in some way by the Government of Canada and, each day, millions of Canadians rely on the essential services it provides. The federal government also plays an important role in developing Canadian and global economies, and in sustaining relations with other countries and multilateral Organisations. Moreover, the federal government makes laws and regulations that affect many aspects of Canadians' daily lives.

This Code examines the current funding policies and practices between the Government of Canada and the voluntary sector, and identifies ways to strengthen these arrangements over time. Expanding on prior work by the Treasury Board Secretariat to identify how the Government of Canada's funding policies and practices could be improved to strengthen its relationship with the voluntary sector¹, the Code is also informed by the input of the voluntary sector's Working Group on Financing. The contributions of these bodies provide a strong foundation for the Code.

As part of the Voluntary Sector Initiative, the Voluntary Sector Project Office (VSPO) in the Treasury Board Secretariat was mandated to identify and propose solutions to impediments in federal funding practices and policies in relation to the voluntary sector, to provide greater consistency across departments and to improve the government's ability to strengthen sector capacity. This work involved extensive consultations with the voluntary sector and across government, and resulted in the Federal Strategy on Funding Practices and Policies, a federal funding framework to improve administrative practices and help federal departments build the capacity of sector partners. A key element of the Strategy is a *Guide to Improving Funding Practices Between the Federal Government and the Voluntary Sector*, which has now been fully integrated into this jointly developed Code and is superseded by it.

The Code is a guide to good practice and a practical tool for implementing the principles set out in the Accord. It takes into account the environment in which both the voluntary sector and the Government of Canada work, as well as the values and other important considerations that affect the funding aspect of their relationship. In the longer term, improved funding policies and practices should achieve the following positive outcomes:

- Enhanced ability for each sector to carry out its mandate;
- Greater transparency, consistency and understanding between both sectors;
- Clear and balanced accountability in the funding process;
- Good funding policies and practices that are applied widely; and
- Strengthened sustainable capacity of voluntary sector Organisations.

Ultimately, the Code's power to influence and change behaviour will come from its endorsement by both sectors, as well as through continuing discussion between the federal government and the voluntary sector.

1.3 Scope and Application of the Code

This Code, which builds on current funding policies and practices, includes specific recommendations to improve direct funding practices. Consistent with the financial management framework of the Government of Canada, it applies to existing and future funding arrangements between federal government departments and agencies (including their regional Organisations) and the voluntary sector Organisations they work with at both the national and local levels. This includes the Financial Administration Act, and policies on transfer payments, contracting, procurement,

evaluation, expenditure management and risk management as well as international trade agreements.

Both sectors are committed to the full application of the Code over time, recognizing that there will be variations in the pace at which this is achieved. Many departments, agencies and voluntary sector Organisations are already using many of the practices specified in the Code. Others are at different stages. All share a commitment to be guided by these good practices. The Code is expected to evolve based on experience with its use. Moreover, it will be subject to regular review at meetings between Ministers and sector representatives, as set out in the Accord.

In addition to direct funding, the federal government also supports the voluntary sector indirectly by providing tax relief to individual Canadians and corporations for donations made to registered charities. However, tax treatment of donations as well as levels of funding, and partnership with other sectors and other levels of government fall outside the scope of this Code.

2. PRINCIPLES UNDERPINNING THE CODE

Building on the Accord, this Code is based on the following shared principles:

The Voluntary Sector's Value: A healthy and active voluntary sector plays an important role in helping the federal government achieve its public policy objectives. By its very nature and particularly because of its connection to communities, the voluntary sector brings a special perspective and considerable value to its activities, including those it undertakes with the Government of Canada.

Strengthened Sustainable Capacity: Sustainable capacity consists of resources, expertise and infrastructure that allow Organisations to manage themselves and carry out their mandate over time. Maintaining this capacity is critical for Organisations to continue serving their clients, including undertaking work in partnership with federal government departments and agencies. The Government of Canada and the voluntary sector recognize the importance of sustainable capacity for Organisations and how funding policies and practices can affect that capacity. This capacity requires resources and support from a variety of sources, including the federal government.

Co-operation and Collaboration: A close working relationship between the voluntary sector and the Government of Canada will foster the co-operation and collaboration needed to maximize their complementary skills, expertise and experience.

Innovation: The voluntary sector and the Government of Canada encourage and support innovation in communities across the country. The sectors will collaborate to leverage their strengths and expertise, enabling them to explore new and creative ways of responding to community needs. Through its strong connection to community, the voluntary sector is well placed to identify emerging priorities and offer innovative proposals for change. For its part, the federal government can play a role by developing funding practices that encourage innovative policies and programs.

Diversity and Equitable Access: The voluntary sector derives much of its strength from the diversity of its people, Organisations and sources of support. Reflecting the face of Canada, the people who work and volunteer in the sector are drawn from a range of backgrounds and offer a wealth of unique abilities and experiences. The Government of Canada and the voluntary sector will work together to ensure that funding policies and practices take account of the specific needs, interests and diversity of the sector, including, for example, groups representing women, visible minorities, persons with disabilities, Aboriginal people, linguistic minorities, sexual orientation, remote, rural and northern communities, and other sectors, so that such groups do not face even greater challenges in accessing federal government funding and/or programs and services. As well, policies and practices must respect the provisions of existing legislation, including the Canadian Charter of Rights and

Freedoms, the Canadian Human Rights Act, the Employment Equity Act, the Official Languages Act, the Multiculturalism Act, the United Nations Universal Declaration of Human Rights and other international conventions to which Canada is a signatory. Policies must also respect all amendments, extensions or replacements to these laws and policies.

Accountability: Accountability is the requirement to explain and accept responsibility for carrying out an assigned mandate in light of agreed-upon expectations. The two sectors will fulfil their respective accountabilities as described below:

- Voluntary sector Organisations, through their boards of directors, are accountable to multiple constituencies, including funders, donors, clients, members, volunteers, staff, government and the general public. When they accept public funds, as with any other funds, they are accountable for how these funds are used. Accountability requirements differ depending on the type, purpose, duration and amount of funding and should be linked to realistic and measurable outcomes.
- The Government of Canada is accountable to Parliament and the Canadian people for the use of public funds. It is guided by Results for Canadians (a management framework for the federal government) and the financial management framework of the Government of Canada. The Office of the Auditor General of Canada also plays an important role in monitoring accountability for the expenditure of public funds.

Transparency and Consistency: More consistent application of funding policies and practices across the Government of Canada and the voluntary sector as a whole will lead, over time, to more harmonized and streamlined processes that will benefit both sectors. Both sectors require clear and timely information on all aspects of funding processes in an open and transparent manner.

Efficiency and Effectiveness: The Government of Canada and the voluntary sector recognize the importance of efficient and effective allocation of funds. Application, reporting and monitoring requirements must also be manageable and realistic.

3. VOLUNTARY SECTOR FINANCING

The voluntary sector is a significant economic force in Canada:

- The sector employs 1.3 million people, about 9 percent of the workforce;
- The contribution of this workforce is increased by the 6.5 million volunteers who dedicate more than one billion hours each year through the voluntary sector Organisations in their communities - the equivalent of 580,000 full-time jobs;
- The voluntary sector generates about \$90 billion in annual revenues and has \$109 billion in assets.

A strong, resilient voluntary sector draws its support from a variety of sources, including:

- 22 million Canadians who make financial and/or in-kind donations totalling almost \$5 billion to help Organisations achieve their missions;
- Millions of individuals who volunteer their expertise and labour;
- Governments, foundations, charitable funding Organisations (e.g., United Ways-Centraides) and corporations that provide financial and in-kind resources; and
- Funds raised by voluntary sector Organisations through service fees, product sales, investment income and other charitable fund-raising activities.

In response to changing government priorities and available funding over the past decade or so, voluntary sector organisations have explored opportunities to further diversify their funding sources.

- **The Private Sector:** With regard to the private sector corporations were encouraged to increase their donations and they did so. Although the private

sector plays an important role in voluntary sector funding, it has not been able to offset reduced government funding, which remains the sector's largest source of revenue. Moreover, the private sector provides primarily one-time or short-term funding; this is problematic as voluntary sector organisations requires ongoing funding.

- **Individual donors:** Individual donations can be a consistent and significant source of revenue, but smaller voluntary sector organisations do not have the broad public profile needed to raise significant funds from individuals. In recent years, the government has increased tax assistance for charitable donations (mainly in 1996, 1997 and 2001) resulting in an increase in average donations reported by individuals on tax returns.
- **Foundations, community funds and charitable funding Organisations:** Voluntary sector Organisations regards these flexible and innovative funding sources as essential elements of their long-term sustainability.
- **Governments:** Federal, provincial, territorial and local governments together provide more than half of the voluntary sector's total annual revenues, with the large majority of funding (more than 85 percent) coming from the provincial and territorial levels of government.

4. GOVERNMENT OF CANADA SUPPORT OF THE VOLUNTARY SECTOR

Although direct federal funding is not the largest source of public funds to the voluntary sector (provincial, territorial and local government funding are considerably larger), it is nonetheless significant. As discussed in Section 1.3, the Government of Canada's provision of tax relief also has a significant impact on the voluntary sector.

The Government of Canada has a clear interest in ensuring a healthy and active voluntary sector in communities across the country so that they can work together for the well-being of Canadians. Funding policies and practices must encourage this by removing any barriers to an effective working relationship.

4.1 Purposes/Activities for Which Direct Funding is Provided

Federal government departments and agencies make different types of direct funding available to voluntary sector Organisations for a range of purposes and activities to ensure that government policy objectives are met in a flexible and appropriate manner. However, not all types of funding are provided by every department and agency. Each federal department and agency determines the types of funding best suited to fulfil its mandate and objectives.

Departments and agencies are guided by their individual policy and program priorities as well as by the terms and conditions of the specific funding programs they provide. Although most federal government funding is allocated for a one-year period, some departments and agencies also provide funding on a multi-year basis. All funding agreements are subject to the annual appropriation of funds by Parliament.

In considering their mandate, federal departments and agencies may make funding available for various purposes and activities, including:

- program and service delivery;
- strengthened sustainable capacity;
- strategic investment;
- alliances and partnerships;
- policy dialogue;
- advocacy;
- research;
- innovation; and
- capital expenditures.

4.2 Direct Funding Mechanisms

The federal government provides the vast majority of its direct funding to the voluntary sector through four main types of funding mechanisms, in accordance with the Treasury Board of Canada's Policy on Transfer Payments and Contracting Policy:

- contributions;
- grants;
- contracts; and
- other transfer payments.

Of these, most funding is provided through the first two mechanisms (i.e., contributions and grants). Some funding is also provided through contracts for specific professional services. The last mechanism is restricted to special and specifically defined arrangements, for example, transfer payments to other levels of government.

Funding arrangements, including their duration, should reflect the nature and scale of the issue to be addressed. For example, chronic or systemic social issues are not likely to be solved through short-term project funding. Project funding has a place in the overall funding mix for problems that are expected to be solved in the short-term or for time-limited activities. However, many issues (e.g., racism, climate change, HIV/AIDS) are longer term in nature and may require long-term funding commitments, as well as collaboration and partnership activities, to make real progress.

4.3 Other Government of Canada Support of the Voluntary Sector

In addition to providing voluntary sector Organisations with direct funding as mentioned above, federal departments and agencies can provide access to other support and resources. Such non-monetary contributions are made at the discretion of individual departments and agencies and may need to be charged against a department's appropriations.

Although awareness of them varies, the types of non-monetary contributions listed below can be found in some federal departments and agencies. As specific circumstances will determine the details of any funding arrangement, departments and agencies may adapt and/or build on these examples. Key determining factors are the availability of resources, and congruence with federal government priorities and the department's or agency's specific strategic aims and policy priorities. Departments and agencies whose current terms and conditions do not permit them to provide these types of support should be aware that they can seek approval to amend those terms and conditions to permit the following activities:

In-kind contributions, such as:

- Access to/use of hard and soft assets (e.g., libraries, meeting space, video teleconferencing equipment and facilities);
- Recyclable equipment (e.g., office furniture, computer hardware);
- Access to training opportunities (e.g., professional development);
- Training for voluntary sector Organisations on Government of Canada funding practices, mechanisms, processes and outcomes; and
- Federal government/voluntary sector personnel interchanges.

Differential pricing:

- Consideration/recognition of many voluntary sector Organisations' reduced capacity to pay for participation in conferences or training programs (note: support of this kind can also be provided through direct funding in the budget of an eligible initiative); and

- Access to Government of Canada bulk pricing rates, in the case where a supplier has agreed to extend preferential rates to a voluntary sector Organisation.

5. GOOD FUNDING PRACTICES: THE CODE IN ACTION

Building on the principles presented in Section 2 of this Code, the funding practices outlined below identify specific measures to improve the flexibility, responsiveness and consistency of funding arrangements, taking into account the realities of the two sectors. Many of these practices are already in place in some federal departments and agencies and in the voluntary sector. Where appropriate, these practices could be applied more broadly in both sectors. A living document, the Code will evolve as new practices are identified and improved upon. Progress will be achieved when this process of continuous improvement, based on shared principles and supported by ongoing dialogue, becomes common practice.

5.1 Voluntary Sector Responsibilities for Funding Practice

Building on the Code's shared principles, the following good practices by the voluntary sector will help guide interactions between the voluntary sector and the federal government. The voluntary sector commits to:

5.1.1 The Voluntary Sector's Value

- demonstrate and communicate value in the delivery of programs and services;
- inform federal government departments and agencies of areas in which the voluntary sector possesses particular expertise and knowledge; and
- stay informed about federal government policy and program areas that are relevant to their areas of operation.

5.1.2 Strengthened Sustainable Capacity

- invest in Organisational and human resource development management;
- develop its funding sources and diversify them to the extent possible;
- demonstrate through the application of equitable and efficient operating policies and practices its readiness to work with government;
- explore with government funders the possibility of using multi-year funding agreements and identify the potential impact of such agreements on Organisations' stability and long-term planning processes; and
- identify and include infrastructure-type costs, such as information management and information technology, memberships, facilities, human resources and financial management obligations (e.g., audits), when developing budget estimates.

5.1.3 Co-operation and Collaboration

- acknowledge funding sources, including the Government of Canada, in promotional material;
- use its extensive networks to communicate information and co-ordinate among Organisations as appropriate to avoid duplication;
- take steps to stay current with existing government planning tools such as program expenditure priorities and plans, contribute to these as required, and work to improve the effectiveness of the sector's related planning tools and practices; and
- work with government funders to identify ways to make programs more responsive to local needs.

5.1.4 Innovation

- identify innovative funding practices to improve existing program delivery;
- engage with federal departments and agencies in dialogue about innovative funding approaches to address emerging community issues and needs; and
- where appropriate, examine opportunities to share innovative approaches with other voluntary sector Organisations and government funders.

5.1.5 Diversity and Equitable Access

- implement policies to ensure equality of opportunity, both in employment practices and service provision; and
- publicize government or other funding policies broadly and share that information across the diverse sector.

5.1.6 Accountability

- ensure sound financial management, including accounting procedures that are in accordance with generally accepted accounting principles;
- provide effective board governance;
- adhere to ethical fund-raising practices;
- ensure that sufficient monitoring, internal management and client and funder accountability systems are in place; and
- ensure that Organisations have the level of financial expertise needed to fulfil all their financial management, recording and reporting obligations.

5.1.7 Transparency and Consistency

- ensure openness and transparency of activities and financial records, including management and overhead costs, and volunteer involvement;
- provide essential financial information and notify the federal government of any changes, delays or irregularities related to funding, in a timely manner; and
- co-operate with any external reviews of funding that may be required, including monitoring, evaluation and/or audit.

5.1.8 Efficiency and Effectiveness

- ensure that systems are in place to monitor and evaluate activities against agreed-upon objectives;
- ensure the timeliness of its responses to accountability requirements;
- plan program investments strategically;
- periodically evaluate (in consultation with users) its use of public funds to ensure it meets “value for money” criteria; and
- work with government funders, where appropriate, to develop user-friendly forms and reporting requirements.

5.2 Government of Canada Responsibilities for Funding Practices

Building on the Code’s shared principles, these good practices by the Government of Canada will help guide interactions between government departments and agencies and voluntary sector Organisations. The Government of Canada commits to:

5.2.1 The Voluntary Sector’s Value

- communicate with voluntary sector Organisations that may be well qualified to compete for research funding alongside the private sector and universities;
- include as one criterion the “particular value” that voluntary sector Organisations bring to specific activities they undertake with the Government of Canada (e.g., access to networks, knowledge of specific issues, expertise in service delivery, ability to promote equality and social inclusion) when considering a funding proposal;

- include a legitimate proportion of the cost of providing this particular value as part of the budget for a funded activity when it is integral to the project's successful implementation; and
- establish opportunities for voluntary sector Organisations to access federal contracts through means such as:
 - the creation of standing offer lists of voluntary sector Organisations that have been "pre-qualified"; and
 - the development of service registries (i.e., listings of voluntary sector Organisations with a particular expertise).

5.2.2 Strengthened Sustainable Capacity

- use multi-year funding agreements and develop and implement mechanisms to facilitate their use, in appropriate circumstances, in order to enhance Organisations' stability and capacity for longer-term planning;
- allow a reasonable and flexible transition period when major changes are made to a funded activity already underway;
- use flexible arrangements available to departments and agencies in accordance with the Treasury Board of Canada's Policy on Transfer Payments (e.g., making advance or installment payments to meet program objectives, including the carry-forward of nominal unused advances over year-end, not exceeding expected expenditures for the month of April);
- make payments according to an agreed-upon timetable and consider both the size and nature of the proposed funding and the applicant Organisation;
- in proposed budgets for programs or projects to be delivered by voluntary sector Organisations, include among allowable expenditures infrastructure-type costs (e.g., information management and information technology, memberships, facilities, human resources and financial management obligations (e.g., audits)) that are integral to successfully implementing eligible initiatives;
- manage funds effectively to eliminate problems caused by the distribution of a concentrated amount of funding to Organisations at the end of the fiscal year; and
- use the Strategic Investment Approach to strengthen the capacity of voluntary sector Organisations to collaborate over the longer term with government on key policy and program goals of mutual interest.

5.2.3 Co-operation and Collaboration

- solicit and consider voluntary sector views on better ways to meet new or existing needs through funding programs;
- provide voluntary sector Organisations with access to useful planning tools and routinely share information on departmental, agency and government-wide priorities and plans (for policies, programs and research), to facilitate long-term planning in voluntary sector Organisations; and
- be flexible in implementing new programs that address broad federal priorities and, where appropriate, tailor these programs to meet local needs.

5.2.4 Innovation

- identify and bring forward emerging issues with respect to funding policies and practices, and use new funding approaches to address community needs;
- recognize the potential of voluntary sector Organisations as a source for innovations that could be used to advance departmental or agency or program priorities; and

- recognize the benefit of targeting a portion of new program funding for innovation at the design stage, incorporating appropriate risk assessment, risk management and accountability measures.

5.2.5 Diversity and Equitable Access

- recognize the potential of diverse community Organisations (e.g., faith, cultural) to contribute to program development and delivery of services, and demonstrate sensitivity to cultural differences; and
- make an effort to provide equitable access to funded programs for Organisations that may face greater challenges in accessing federal funding (e.g., groups representing women, visible minorities, persons with disabilities, Aboriginal people, linguistic minorities, sexual orientation, and remote, rural and northern communities) by:
- making information available on existing and new funding programs, including application procedures, in a variety of easily accessible formats (e.g., through outreach activities, the press, umbrella and intermediary Organisations, voluntary sector networks, directories, newsletters and the Internet, and in formats accessible to persons with disabilities);
- writing application forms in plain language to increase clarity and reduce complexity; and
- ensuring that eligibility criteria and funding practices do not create unintended barriers for smaller Organisations with limited resources or without a federal “track record”.

5.2.6 Accountability

- make application and accountability standards and procedures flexible enough to accommodate a variety of approaches and the limited capacity of smaller Organisations, while still ensuring effective protection of, and proper accountability for, public money;
- take into account monitoring procedures already agreed to by a voluntary sector Organisation’s other funders, as well as any quality assurance system introduced by the Organisation, when discussing the content, quality and format of federal information needs;
- agree on well-defined, measurable results and clear roles and responsibilities; and
- ensure mutual respect for diversity and recognize that different community groups can manage their resources in different ways and still meet the federal government’s accountability requirements.

5.2.7 Transparency and Consistency

- develop a harmonized process across the Government of Canada to facilitate the joint funding of projects when several departments or agencies are working collaboratively on the same or several initiatives with a common client;
- ensure a clear understanding and consistent application of the Treasury Board of Canada’s funding policies across the federal government (e.g., transfer payments, contracting, risk management) and make them known to the voluntary sector Organisations they work with;
- clearly state the objectives of funding programs and their eligibility criteria, and ensure that application forms are understandable and concise;
- use common elements in application and reporting forms across the federal government;
- ensure that all applicants receive precise information concerning the application process and the stages and timing of decision-making;

- establish realistic planning timeframes, service standards for funding, and performance commitments of departments and agencies for providing full information in a timely manner; and
- identify a point of contact for each funding program and include it in the application guide.

5.2.8 Efficiency and Effectiveness

- ensure minimum duplication and maximum ease in application and reporting requirements by requiring only essential information and encouraging the development and use across the Government of Canada of generic, user-friendly forms and software, electronic application and reporting procedures, and one-time-only basic “boiler plate” data, to be updated as required;
- develop less complex and shorter agreements for lower-cost, lower-risk projects that will facilitate the application process;
- use a “risk-based” approach – based on modern financial management principles – to assess and monitor initiatives, ensuring that it is appropriate to the Organisation’s level of funding, size and nature; and
- recognize the cost to voluntary sector Organisations of monitoring and evaluation by including support towards such costs when they are identified in the budget submitted for an eligible initiative.

5.3 Joint Responsibilities for Funding Practices

Together, the two sectors can give effect to the Code’s shared principles by adopting good practices that will improve their funding relationship. Specifically, they commit to:

- ensure that impact assessments of funding policies and practices on projects and programs take into account the varying circumstances in different regions of the country;
- ensure that accurate and sufficient information is uniformly available to support quality decision-making and reporting on results;
- develop evaluation tools (including third-party evaluations) for measuring longer-term outcomes of funding at the departmental and agency program level (as opposed to the project level);
- establish collaborative processes with clearly delineated roles and responsibilities, and reach decisions about the funding process through collaborative processes;
- exchange information and build awareness to improve mutual understanding;
- outline agreed-upon results/outcomes for financial programs/activities; and
- communicate shared results and successes jointly, wherever possible.

6. MOVING THE CODE FORWARD

The Government of Canada and the voluntary sector are committed to implementing the Code through a two-phase plan. The first phase will involve broad dissemination and communication of the Code as a guide for both sectors on ways to improve the application of direct funding policies and practices. This includes strengthening the sustainable capacity of voluntary sector Organisations to better serve Canadians.

In the second phase of the implementation plan, the sectors will work together to apply the Code, for example, through briefings, workshops, seminars, pilot projects and case studies. This phase will also focus on initiatives to monitor and assess the impact of the Code and to increase understanding of how it can be used to improve the funding relationship between the sectors.

The Government of Canada and the voluntary sector are committed to using the Code, to learning and improving the way they work together, and to making positive and lasting behavioural changes. As the Code's guidelines are incorporated into daily use across government departments and agencies, and throughout the voluntary sector, representatives of both sectors will:

- discuss the Code and learn from one another;
- work to adapt their funding policies and practices; and
- propose reforms to make the Code more effective.

Results will flow from the increased use of the array of good practices already in place, including those proposed in this Code, as well as from those that will evolve with time and experience. Understanding in both the Government of Canada and the voluntary sector of their mutual commitment to achieve progress together is key.

In An Accord between the Government of Canada and the Voluntary Sector, both sectors agreed on the need to report to Canadians on the status of their relationship and the results that have been achieved under the Accord. Assessing the Code's use and effectiveness as a tool in meeting the Accord's goals will require periodic review, discussion, analysis, evaluation and reporting. This may result in modifications to the Code and the establishment of new priorities.

Canada Code of Good Practice on Policy Dialogue

1. Why a Code?

Signed in December 2001, *An Accord Between the Government of Canada and the Voluntary Sector* describes the key elements of a strengthened relationship between the two sectors. It sets out common values, principles and commitments that will shape the sectors' future practices as they work together for the benefit of all Canadians.

This Code of Good Practice on Policy Dialogue fulfils the Accord's commitment to take measures to put its provisions into action. As such, the Code is a tool for deepening the dialogue between the Government of Canada and the voluntary sector at the various stages of the public policy process in order to achieve better policies for Canadians.

1.1 Link to the Accord and Purpose of the Code

Specifically, this Code has been developed in accordance with the provision in the Accord calling for "*codes or standards of good practice to help guide interactions between government departments and voluntary sector Organisations on aspects of the relationship such as policy dialogue, funding, and other issues as identified.*"

As summarized below, the Accord also contains a number of commitments by the Government of Canada and the voluntary sector related to policy dialogue:

- The Government of Canada recognizes the need to engage the voluntary sector in open, informed and sustained dialogue in order that the sector may contribute its experience, expertise, knowledge, and ideas in developing better public policies and in the design and delivery of programs. It also recognizes and will consider the implications of its legislation, regulations, policies and programs on voluntary sector Organisations including the importance of funding policies and practices for the further development of the relationship and the strengthening of the voluntary sector's capacity.
- The voluntary sector is committed to serving as a means for the voices and views of all parts of the voluntary sector to be represented to and heard by the Government of Canada, ensuring that the full depth and diversity of the sector is reached and engaged.
- Both the voluntary sector and the Government of Canada recognize that sharing ideas, perspectives, and experiences contributes to better understanding, improved identification of priorities, and sound public policy, and agree that dialogue should be open, respectful, informed, sustained, and should welcome a range of viewpoints.

In addition, the Code builds on the values of democracy, active citizenship, equality, diversity, inclusion and social justice, and the principles of independence, interdependence, dialogue, co-operation and collaboration and accounting to Canadians, which are the basis for the Accord.

As set out in the Accord, this Code is designed to strengthen and improve the relationship between the voluntary sector and the Government of Canada. It confirms that the two sectors are committed to deepening their dialogue in order to create better public policies for the benefit of Canadians. The Code also affirms the importance of a respectful, transparent and inclusive policy dialogue that acknowledges the independence and interdependence of both sectors.

While the voluntary sector and the Government of Canada share a long tradition of joining forces to achieve common goals, formalizing their relationship will help promote mutual understanding and more co-operative ways of working together. This Code is about building that relationship, seeking common ground and accepting one another's differences. It is about cultivating a strong civil society and a federal

government connected to citizens by encouraging broad engagement and inclusiveness to ensure that the voluntary sector – including marginalized groups – knows its views are both heard and considered.

In adopting the best practices outlined in this Code, both sectors will be seeking to improve public policies by achieving the following positive outcomes:

- increased co-operation between the Government of Canada and the voluntary sector;
- increased opportunity for dialogue throughout the public policy process;
- systematic review by the federal government of major policy and program proposals using a voluntary sector “lens” or analytical framework designed to ensure appropriate and adequate consideration of the impacts and implications for the voluntary sector;
- development and use of mechanisms to engage in dialogue about the issues and concerns of the diverse voluntary sector, including harder-to-reach groups;
- information that is more readily available and accessible; and
- better understanding of one another’s broad policy objectives and the role that each can play in furthering these objectives.

1.2 Definitions

The Code uses the following working definitions:

- **Public Policy:** a set of inter-related decisions, taken by public authorities, concerning the selection of goals and the means of achieving them.
- **Public Policy Dialogue:** interaction between governments and non-governmental Organisations (in this Code, the voluntary sector) at the various stages of the policy development process to encourage the exchange of knowledge and experience in order to have the best possible public policies.
- **Public Policy Development:** the complex and comprehensive process by which policy issues are identified, the public policy agenda is shaped, issues are researched, analyzed and assessed, policies are drafted and approved and, once implemented, their impact is assessed.

1.3 The Importance of Policy Dialogue Between the Two Sectors

Policy dialogue between the Government of Canada and the voluntary sector is essential to ensure that policies benefit from the sector’s experience, expertise, knowledge and ideas. The voluntary sector plays a crucial role in representing the views of its stakeholders to the Government of Canada, in particular, those of unheard and minority voices. In fact, much of the voluntary sector’s strength derives from the diversity of its membership and sources of support. Reflecting the many faces of Canada, the people who work and volunteer in the sector are drawn from a range of backgrounds and bring with them a wealth of unique abilities and experiences. To be effective, the public policy process must recognize and value this diversity.

The strength of voluntary sector organisations is that they are close to the experience, interests and concerns of their constituents, a connection that gives them an important perspective on policy issues affecting the lives of Canadians. They also play an important role in raising awareness, building common ground and achieving consensus. This process of dialogue and deliberation is one in which participants can feel confident that their views have been heard and taken into account.

Informal dialogue on a day-to-day basis is a vital dimension of the public policy process at all stages, especially before policy options are identified and developed. One of the aims of this Code is to encourage interaction between the voluntary sector and the Government of Canada, especially at the earliest stages, before options have been determined.

1.4 Scope and Application of the Code

This Code applies to existing and future policy dialogue between federal government departments and agencies (including their regional Organisations) and the voluntary sector Organisations that they work with, at both the national and local levels. As a tool to be used by those who are involved in policy, this Code is expected to evolve over time. Moreover, it will be subject to regular review within the context of the Accord, which calls for regular meetings between Ministers and sector representatives to discuss the results that have been achieved.

The focus of this Code is on the relationship between the Government of Canada and the voluntary sector, and how the principles of their joint Accord apply to policy dialogue. That being said, both sectors recognize that their relationship is only one part of the broad public policy process. For its part, the federal government has a responsibility to consider many sources of input when developing policy, including the voluntary sector, other levels of government (provincial, territorial, local), private sector entities and labour unions. For example, the realities of constitutionally-based federal-provincial and territorial relationships are imbedded in many of the Government of Canada's policy initiatives. Furthermore, the Code recognizes the particular role played by the Parliament of Canada in representing the views of Canadians, debating the policy and legislative agenda of the government, and ultimately determining the laws and fiscal parameters that give effect to that agenda.

At the same time, the voluntary sector has a number of ways that it can influence and comment on policy, one of which is through dialogue with the Government of Canada. The voluntary sector contributes to public policy-making in many areas of responsibility, including with governments at all levels and with other sectors of society.

Both the Government of Canada and the voluntary sector are committed to the full application of the Code, over time, to those policy issues on which they choose to work together. Both sectors recognize that there will be variations in the pace and manner in which the Code is applied. Furthermore, both acknowledge that the nature of the issues under consideration will influence the extent of the interaction. They recognize that there are circumstances where the Government of Canada and voluntary sector Organisations may advocate different courses of policy action or choose to tackle issues of common interest separately. The Code does not compel them to work together; rather it outlines what will govern the relationship when they choose to work together.

Many departments and agencies and voluntary sector Organisations are already using many of the practices outlined in the Code. Others are at different stages. All share a commitment to be guided by these good practices.

2. PRINCIPLES UNDERPINNING THE CODE

Building on the Accord, this Code is based on the following shared principles:

- ***The Voluntary Sector's Value:*** A healthy and active voluntary sector plays an important role in helping the federal government identify issues and achieve its public policy objectives. By its very nature and particularly because of its connection to communities, the voluntary sector brings a special perspective and considerable value to its activities, including those it undertakes with the Government of Canada.
- ***Mutual Respect:*** Both sectors will listen to and consider the views of all participants and respect their legitimacy and input.
- ***Inclusiveness:*** Both sectors will involve the broadest possible range of groups or individuals who may be affected by a policy or who can make a meaningful contribution to the debate. Increasingly, policy development must take account of the specific needs, interests and experiences of the diversity of the voluntary sector including, for example, groups representing women, visible minorities,

persons with disabilities, Aboriginal people, linguistic minorities, sexual orientation, remote, rural and northern communities and other hard-to-reach subsectors. Policies must also respect the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Employment Equity Act*, the *Official Languages Act*, the *Multiculturalism Act* and the *United Nations Universal Declaration of Human Rights*, as well as Canada's obligations as a signatory of relevant international treaties and conventions, for example, on the rights of children, women and indigenous peoples. Policies must also respect all amendments, extensions or replacements to these laws and policies.

- **Accessibility:** Both sectors will take the appropriate measures to ensure that all those invited to participate in a dialogue have access to the process. This will take account of factors such as language, region, distance, ethno-culture, religion, socio-economic background, age, knowledge or capabilities.
- **Clarity:** Recognizing that a clear mutual understanding of the objectives, purpose and process of participation and feedback is vital, both sectors will establish the terms of the policy dialogue in advance and communicate them to participants.
- **Transparency:** To build trust, both sectors will establish open lines of communication, provide information readily and invest in working relationships. Participants must clearly understand the context within which each decision will be made, including the scope of and limitations on dialogue.
- **Responsibility:** Both sectors will participate in good faith and recognize that adequate resources and time are required for an effective process.
- **Accountability:** Both sectors will provide feedback to their respective constituencies on the full range of views expressed, and clearly communicate how this input has been considered in the public policy process.

3. CONTEXT: THE STAGES OF THE PUBLIC POLICY PROCESS

Dialogue between the Government of Canada and the voluntary sector will take place at the various stages of the public policy process. These stages are described briefly below.

Some activities, such as consultation and engagement, cut across the policy development process and can be used in a variety of ways at each stage. Similarly, advocacy can be used at the various stages of the public policy process as a strategy to effect change. Advocacy is defined as "the act of speaking or of disseminating information intended to influence individual behaviour or opinion, corporate conduct, or public policy and law."

Issue Identification: Voluntary sector Organisations can play a particularly valuable role in the identification of emerging policy concerns. The federal government respects the voluntary sector's advice, which is based on direct experience and relationships and involvement with members of Organisations and communities. Because of their grassroots involvement, particularly in service delivery, voluntary sector Organisations may become aware of trends or emerging issues before the federal government. Strengthening the sector's participation in governmental or departmental policy development processes and mechanisms – such as policy scanning and planning exercises, advisory mechanisms and international delegations – can help in the process of issue identification. Through advocacy initiatives, voluntary sector Organisations can also play a key role in drawing public attention to emerging issues.

Agenda-Setting: Issues come onto the public policy agenda from various sources, including: political platforms, research and analysis, academe, the private sector and voluntary sector Organisations. Based on its in-depth knowledge and understanding of emerging and important issues, the voluntary sector can bring key information to the development of public policy priorities. Dialogue between the Government of Canada and the voluntary sector during the agenda-setting stage serves to inform the sector of how it can participate most effectively in the public policy process.

Policy Design: The voluntary sector can contribute its ideas, knowledge, expertise and experience to the various steps in public policy design, including research, analysis, drafting and testing models, and developing design options.

Implementation: The voluntary sector can play a role in proposing appropriate policy implementation approaches and mechanisms that reflect and enhance policy goals. The voluntary sector's experience in the delivery of various programs and services, as well as its long-standing connections to communities, are vital to the success of this work.

Monitoring: The voluntary sector can play an important role in the ongoing monitoring of policy delivery and operation initiatives and in identifying the need for changes in policy direction.

Impact Assessment: Based on its experience, expertise and knowledge in the delivery of programs and services, the voluntary sector can play a valuable role in assessing the impact of policy at both the national and local levels, and in making recommendations for change.

4. GOOD PRACTICES: THE CODE IN ACTION

This Code is intended to encourage good practices at the various stages of the public policy process, throughout the Government of Canada and the voluntary sector at both the national and local levels. These good practices are founded on shared principles and are aimed at effecting changes in behaviour that will result in better policy. The following list is not exhaustive nor is it ranked in order of importance. Both sectors will be expected to look for new ways to continuously enrich the dialogue and the Code will evolve to reflect these new good practices.

4.1 Good Practices for Both Sectors

The Government of Canada and the voluntary sector commit to:

- engage in an open, inclusive and ongoing dialogue through the various stages of the public policy process, including issue identification, agenda-setting, policy design, implementation, monitoring and impact assessment;
- identify and allocate resources and time to policy activities;
- ensure appropriate and significant representation from across the voluntary sector;
- develop and strengthen knowledge and policy capacity to promote more effective dialogue during the policy process and deepen understanding of their respective issues and processes;
- be aware of the policy implications of their experiences and activities, and inform one another of important conclusions; and
- ensure that assessment takes into account the differing regional impacts of policies.

4.2 Good Practices for the Government of Canada

The Government of Canada commits to:

- develop ways (e.g., a voluntary sector lens) to ensure that all departments and agencies recognize and consider the impacts and implications for the voluntary sector and voluntary sector Organisations of new or modified legislation, regulations, policies and programs;
- develop ways to engage in regular dialogue to listen to concerns and issues identified by voluntary sector Organisations, and to make these methods of dialogue known; more specifically, find mechanisms to encourage dialogue with the voluntary sector in all its diversity, including those at the grassroots level and those representing women, visible minorities, persons with disabilities, Aboriginal people, linguistic minorities, remote, rural and northern communities and other hard-to-reach subsectors;
- draw on the full range of methods to engage in a dialogue with the voluntary sector at the various stages of the public policy process, including methods such

as written consultations, opinion surveys, focus groups, user panels, meetings and various Internet-based approaches;

- to the fullest extent possible, make appropriate statistical and analytical information – such as survey data, research studies and policy papers – readily available in accessible and useable formats to enhance the voluntary sector's capacity for analyzing and developing informed policy positions;
- respect and seek out the expertise and input of the voluntary sector and include it in the analysis and design of policy initiatives;
- make every effort to plan and co-ordinate policy dialogue with the voluntary sector on related topics, avoiding overlapping requests for participation in the same time period;
- ensure that policy initiatives capture the fullest spectrum of views and give due consideration to all input received, paying particular attention to those likely to be most affected by policy proposals;
- include opportunities for the voluntary sector to discuss the rationale for and implications of decisions, thereby building understanding and trust; and
- use appropriate means to ensure that information about the results of dialogue and consultations (e.g., final reports, approved policies) is made available to those engaged in the policy process, so they know how their input was used, including its impact on federal government proposals or decisions.

4.3 Good Practices for the Voluntary Sector

The voluntary sector and its Organisations commit to:

- develop and strengthen knowledge and policy capacity in their areas of expertise;
- develop a better understanding of the Government of Canada's formal and informal policy development process;
- take specific steps to ensure that diverse groups within the sector are given an opportunity to consider issues and provide input;
- represent the views of their constituents and articulate their position clearly on particular issues that they consider important;
- identify whose views are represented when intermediary bodies express opinions on behalf of parts of the sector regarding issues of major importance to its members, supporters and users;
- where appropriate and where possible, build consensus by improving co-ordination within the sector;
- perform an intermediary role on behalf of sector Organisations by: using a range of methods to extend the dialogue's reach; canvassing an Organisation's members/users/volunteers before presenting views on its behalf; and including a summary of the views of the groups consulted and the methods of consultation used;
- identify and maintain contact with policy-makers and actively seek opportunities to share policy ideas with them; and
- pursue opportunities to identify and raise emerging issues to the attention of the Government of Canada, including issues of local concern.

5. MOVING THE CODE FORWARD

The Government of Canada and the voluntary sector are committed to broad outreach and communication of the Code of Good Practice on Policy Dialogue. The Code is intended to help representatives of both sectors improve their approach to dialogue at the various stages of the public policy process. The policies and practices in this Code are designed to help strengthen the policy dialogue between the Government of Canada and the voluntary sector.

To achieve these results, both the Government of Canada and the voluntary sector must commit to using the Code on an ongoing basis. As the guidelines established in the Code are incorporated into daily and weekly practice, voluntary sector and federal government representatives will, over time:

- discuss the Code and learn from one another;

- work to adapt their policy practices and approaches; and
- propose reforms to make the Code more effective.

This Code describes an environment characterized by continuous learning and improvement in which both sectors work together to enhance their relationship with respect to policy dialogue.

Results will flow from the increased use of the array of good practices already in place, including those proposed in this Code and those that will evolve with time and experience. Understanding in both the Government of Canada and the voluntary sector of their mutual commitment to achieve progress together is key.

In *An Accord Between the Government of Canada and the Voluntary Sector*, both sectors agreed on the need to report to Canadians on the status of the relationship and the results that have been achieved under the Accord. Assessing the Code's use and effectiveness as a tool in meeting the Accord's goals will require periodic review, discussion, analysis, evaluation and reporting. This may result in modifications to the Code and the establishment of new priorities.

6. VALUES

The Accord identifies six values that are most relevant to the relationship between the Government of Canada and the voluntary sector:

- **Democracy** – upholding the right to associate freely, to express views freely and to engage in advocacy.
- **Active Citizenship** – welcoming the active involvement or engagement of individuals and communities in shaping society whether through political or voluntary activity or both.
- **Equality** – respecting the rights of Canadians under the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act, and the rights of individuals worldwide as defined by the United Nations Universal Declaration of Human Rights.
- **Diversity** – respecting the rich variety of cultures, languages, identities, interests, views, abilities, and communities in Canada.
- **Inclusion** – welcoming the expression and representation of diversity and upholding the right of each to speak and be heard.
- **Social Justice** – ensuring the full participation in the social, economic and political life of communities.

7. PRINCIPLES

The Accord highlights the principles of independence, interdependence and dialogue, which are relevant to this Code:

7.1 Independence:

- The Government of Canada is accountable to all Canadians for its actions and has a responsibility to identify issues of national concern and mobilize resources to address them, establish policies and make decisions in the best interest of all Canadians;
- Voluntary sector Organisations are accountable to their supporters and to those they serve in providing services, organizing activities and giving collective voice at the local, national and international level;
- The independence of voluntary sector Organisations includes their right within the law to challenge public policies, programs and legislation and to advocate for change; and
- Advocacy is inherent to debate and change in a democratic society and, subject to the above principles, it should not affect any funding relationship that might exist.

7.2 Interdependence:

The voluntary sector and the Government of Canada recognize that:

- The actions of one can directly or indirectly affect the other, since both often share the same objective of common good, operate in the same areas of Canadian life, and serve the same clients; and
- Each has complex and important relationships with others (business, labour, provincial, territorial and local governments, etc.) and the Accord is not meant to affect these other relationships.

7.3 Dialogue:

The voluntary sector and the Government of Canada, recognizing that sharing of ideas, perspectives, and experiences contributes to better understanding, improved identification of priorities, and sound public policy, agree that dialogue should be open, respectful, informed, sustained, and welcome a range of viewpoints.

8. COMMITMENTS TO ACTION

The Accord includes the following commitments:

8.1 Government of Canada Commitments:

- Recognize and consider the implications of its legislation, regulations, policies and programs on voluntary sector Organisations including the importance of funding policies and practices for the further development of the relationship and the strengthening of the voluntary sector's capacity; and
- Recognize its need to engage the voluntary sector in open, informed and sustained dialogue in order that the sector may contribute its experience, expertise, knowledge, and ideas in developing better public policies and in the design and delivery of programs.

8.2 Voluntary Sector Commitments:

- Continue to identify important or emerging issues and trends in communities, and act on them or bring them to the attention of the Government of Canada; and
- Serve as a means for the voices and views of all parts of the voluntary sector to be represented to and heard by the Government of Canada, ensuring that the full depth and diversity of the sector is reached and engaged.

8.3 Commitments by Both Sectors:

- The voluntary sector and the Government of Canada agree to develop in a timely fashion; and
- Refine codes or standards of good practice to help guide interactions between government departments and voluntary sector Organisations on aspects of the relationship such as policy dialogue, funding, and other issues as identified.

United Kingdom Good Governance Checklist (Joseph Rowntree Foundation)

1. Effectiveness

- Does your organisation publish a clear statement of its values and objectives?
- How is this distributed and to whom?
- Is this reinterpreted as circumstances change?
- Do all activities remain consistent with these values and objectives?
- Is the statement of objectives developed into a plan that shows what your organisation intends to achieve over a specified period and how it intends to achieve it? (This may be a simple annual work plan in a small organisation or a fully fledged operational plan in a larger one.)
- Is your organisation explicit about the needs that it intends to meet?
- If you are funded to provide key services, do you have mechanisms to ensure that you are targeting those who most need them in a way that is consistent with your resources?
- Does your organisation have effective mechanisms for consulting users on what they think of current services and about future services?
- Do you listen and respond accordingly?
- Does your organisation have a clear framework of internal regulations? (In small organisations, it may be sufficient if this clarifies who is entitled to incur expenditure and sign cheques.)
- Does your organisation have standing orders, financial regulations, policies and procedures covering all main areas of work to ensure that resources are raised and spent effectively and that activities are carried out so as to meet objectives?
- Does your organisation take particular care with tendering and expenditure authorisation?
- Does your organisation monitor and evaluate its performance and achievements on a regular basis so as to learn from successes and mistakes and become more effective? (For a small organisation this might take place through an annual review. For a larger one there are likely to be a range of mechanisms from performance monitoring to user surveys.)
- Does your organisation tackle poor performance whenever it arises?
- Does your organisation take advantage of the training and support that it can receive from intermediary bodies and other mutual support networks?

2. Accountability

- Does your organisation publish a clear statement that describes the range of organisations and individuals to whom it is accountable and how it seeks to fulfil these responsibilities?
- How is this distributed and to whom?
- If you are a service-providing organisation, or in receipt of public funding, do you maintain constructive relationships with statutory enablers (often local authorities or Training and Enterprise Councils)?
- Does your organisation assess and take account of the impact of your work on local communities?
- Does your organisation publish systematic arrangements for involving users? (This is particularly important for those providing services to vulnerable people or those who have little effective choice about where they can obtain the services they need.)
- Is your organisation open about its work and does it publish information for its stakeholders and the public?
- How is this distributed and to whom?
- Does your organisation have a code of conduct for trustee board/committee members and staff which includes such issues as conflicts of interest?

3. Standards

- Is your organisation explicit about the standards to which it is working?
- Does your organisation consult users about the standards of service that they need and then plan services accordingly?
- Do you develop standards in a way which encourages ownership and commitment?
- Does your organisation seek regular feedback from users about its performance?
- Does your organisation have a systematic approach to quality?
- *User involvement*
- Does your organisation publish a clear statement of its values, policies and arrangements for involving users in the way that the organisation affects their lives?
- Does your board/committee have an effective mechanism for ensuring that it understands the impact of its decisions on users? (For caring service organisations, direct user representation is likely to be best.)
- Does your organisation publish the standards of service that it intends to provide so that users and other stakeholders can judge whether they are being met?
- How is this distributed and to whom?
- Does your organisation monitor service provision in order to ensure that users are being treated consistently and that no group is experiencing unfair exclusion?
- Does your organisation encourage and work with user-led organisations to plan and improve services?
- Does your organisation have a clear complaints procedure that is available to all your users and that sets out the way in which complaints can be raised, investigated and resolved?
- Does your complaints procedure ensure, as far as possible, that the complaints are not dealt with by those against whom they are being made?
- Does the procedure contain an independent, external element for complaints which cannot be resolved by the internal process?

4. Governance

- Does your organisation publish a clear statement of how the board is elected/appointed?
- How is this distributed and to whom?
- Does your organisation have a written statement of the key responsibilities of the board which includes:
 - sharing responsibility for the organisation's objectives and setting plans to achieve them,
 - approving the budget and accounts and ensuring the organisation remains solvent,
 - establishing the framework of delegation to staff (if any),
 - monitoring the organisation's performance,
 - taking key decisions,
 - ensuring, with staff advice where appropriate, that the organisation's affairs are conducted lawfully and in accordance with accepted standards of best practice and probity?
- Do representatives of other groups or organisations on your board accept that their first responsibility is to the board and that they share responsibility for all its decisions?
- Does your organisation set out a clear statement of the personal role of each board member, with acceptance confirmed in writing, that includes:
 - supporting the values and objectives of the organisation,
 - contributing to board decisions, drawing on personal skills and experience and sharing responsibility for all decisions reached,
 - working constructively with colleagues, staff and other volunteers,
 - attending board meetings having read the papers prepared for them,
 - respecting the confidentiality of information,
 - following the organisation's code of conduct and declaring any interests,

- procedures for registering interests and handling conflicts of interests?
- Does your board organise its business on a systematic basis including:
 - a regular cycle of meetings at times chosen to secure maximum attendance,
 - a clear agenda and relevant papers circulated well in advance,
 - separating items for decision from items for information,
 - recording decisions clearly in the minutes,
 - having clear arrangements for urgent decisions that involve appropriate consultation with available board members?
- Does your organisation have a clear statement of the role of the chair that includes:
 - ensuring the efficient conduct of board meetings and general meetings,
 - ensuring that board members have the opportunity to express their views before important decisions are taken,
 - establishing a constructive relationship with and supporting the senior staff member,
 - ensuring that the framework of delegation is working effectively and bringing problems to the board's attention,
 - ensuring that the board receives the advice it needs, including professional advice when appropriate.
 - representing the organisation when appropriate,
 - in conjunction with other board members: appraising the senior staff member or team, determining senior staff pay, reviewing the composition of the board, ensuring that the senior staff member is replaced in a timely and orderly way?
- Does your board carry out a periodic review of its effectiveness and assess the strengths and weaknesses of its current composition?
- Is your board systematic in the way it recruits board members and achieves steady renewal, including:
 - assessing the range of skills, experience and other characteristics that their board requires and seeking board members that meet this profile,
 - identifying board members who may have no connection with existing board members,
 - giving new members effective induction into their responsibilities,
 - providing continuing training and support?
- Does your organisation maintain a code of conduct for staff and committee members that ensures high standards of probity and makes it clear how any conflicts of interest are to be handled?
- Do committees of the board have clear terms of reference and clear accountability to the board?
- If your organisation has members, is there a clear statement of the membership policy and of the link between the membership and the board?

5. Voluntary action

- Does your organisation value both the specific and wider community benefits that voluntary action can bring?
- Does your organisation give volunteers a clear statement of the task(s)/role that it wants them to carry out? Are the expectations and obligations in both directions explicit as well as the basis for claiming expenses?
- If your organisation relies on volunteers to provide key services to others, does it ensure that there is an adequate assessment and management framework to ensure that users get the service that they require while avoiding unnecessary bureaucracy?

6. Equality and fairness

- Does your organisation develop, maintain and publish its policies for ensuring equal opportunities and fair treatment?

- Does your organisation monitor its services so that it can identify and resolve any gender, race or other unfair discrimination?
- Does your organisation monitor its employment practices so that it can identify and resolve gender, race or other unfair discrimination? Are employment practices regularly reviewed and kept up to date?
- Does your organisation consult with relevant minority groups so as to ensure that its services are appropriate and that access to them is open?
- Does your organisation endeavour to reflect the composition of the communities that it seeks to serve in the staff it employs and its board?

7. Staff management

- Does your organisation comply with employment legislation, provide safe places of work and review its employment arrangements periodically to make sure that they comply with good practice?
- Does your organisation provide all staff with clear job descriptions, and appropriate induction, training, management, support and appraisal for them to carry out their roles?
- Does your organisation recruit staff openly, fairly and systematically? Is there a clear salary structure designed to attract and retain competent staff within the resources available to the organisation?
- Does your organisation periodically review its staff structure to ensure that it is still relevant to its circumstances and objectives?
- Does your board periodically review the effectiveness of its working relationship with its staff members?

American Red Cross Code of Business Ethics and Conduct

The American Red Cross is a not-for-profit charitable Organisation dedicated to providing services to those in need. The Red Cross has traditionally demanded and received the highest ethical performance from its employees and volunteers. In an effort to maintain the high standard of conduct expected and deserved by the American public and to enable the Organisation to continue to offer its services, the American Red Cross operates under the Code of Business Ethics and Conduct outlined below. All employees and volunteers are required to sign the Code of Business Ethics and Conduct form certifying that, in delivering Red Cross services and in all other Red Cross activities, they shall meet the following standards of conduct:

Compliance Requirements. All employees and volunteers are required to comply with applicable federal, state and local laws and regulations and with American Red Cross corporate policies and regulations.

Actions Prohibited by the Code of Business Ethics and Conduct. No employee or volunteer shall engage in the following actions:

- 9.5.2.1.1 **Personal Use.** Authorize the use of or use for the benefit or advantage of any person, the name, emblem, endorsement, services or property of the American Red Cross, except in conformance with American Red Cross policy.
- 9.5.2.1.2 **Financial Advantage.** Accept or seek on behalf of or any other person, any financial advantage or gain of other than nominal value offered as a result of the employee's or volunteer's affiliation with the American Red Cross.
- 9.5.2.1.3 **Red Cross Affiliation.** Publicly use any American Red Cross affiliation in connection with the promotion of partisan politics, religious matters or positions on any issue not in conformity with the official position of the American Red Cross.
- 9.5.2.1.4 **Confidentiality.** Disclose any confidential American Red Cross information that is available solely as a result of the employee's or volunteer's affiliation with the American Red Cross to any person not authorized to receive such information, or use to the disadvantage of the American Red Cross any such confidential information, without the express authorization of the American Red Cross.
- 9.5.2.1.5 **Improper Influence.** Knowingly take any action or make any statement intended to influence the conduct of the American Red Cross in such a way as to confer any financial benefit on any person, corporation or entity in which the individual has a significant interest or affiliation.
- f. **Conflict of Interest.** Operate or act in a manner that creates a conflict or appears to create a conflict with the interests of the American Red Cross and any Organisation in which the individual has a personal, business or financial interest. In the event there is a conflict, the American Red Cross has a structured conflict of interest process. First, the individual shall disclose such conflict of interest to the chairman of the board or the chief executive officer of the individual's Red Cross unit or the general counsel of the American Red Cross, as applicable. Next, a decision will be made about the conflict of interest, and, where required, the individual may be required to recuse or absent himself or herself during deliberations, decisions and/or voting in connection with the matter.
- g. **Retaliation.** Retaliate against any employee or volunteer who seeks advice from, raises a concern with or makes a complaint to a supervisor or other member of management, the ombudsman, the Concern Connection Line, the Biomedical Regulatory Hotline or any other whistleblower program, about fraud, waste, abuse, policy violations, discrimination, illegal conduct,

unethical conduct, unsafe conduct or any other misconduct by the Organisation, its employees or volunteers.

- h. Contrary to the Best Interest of the Red Cross. Operate or act in any manner that is contrary to the best interest of the American Red Cross.

Ombudsman Program – Informal Dispute Resolution. The American Red Cross has an Organisational ombudsman designated as the neutral or impartial dispute resolution practitioner whose major function is to provide confidential and informal assistance to the many constituents with concerns or complaints about the Red Cross. The constituents who seek the ombudsman’s services are internal stakeholders, such as employees and volunteers, and external stakeholders, such as Red Cross clients, donors, suppliers, vendors and the public at large. The ombudsman provides a voluntary, confidential and informal process to facilitate fair and equitable resolutions and explore a range of alternatives or options to resolve the problems. If a formal investigation is what the individual seeks, referrals to the whistleblower hotlines may be appropriate.

Investigations, Compliance and Ethics – Formal Dispute Resolution. Distinguishing from the actions of the ombudsman, the Office of the General Counsel and the Office of Investigations, Compliance and Ethics (IC&E) conduct formal investigations into allegations of fraud, waste, abuse, Red Cross policy violations, illegal or unethical conduct or other improprieties regarding the Red Cross. Usually, the allegations arise from whistleblower complaints of Red Cross employees and volunteers seeking formal review or investigations of their allegations of wrongdoing.

Whistleblower Hotline Programs. The American Red Cross encourages open communications. All employees and volunteers are encouraged to bring any concerns they have regarding the Organisation or its employees and volunteers to their direct supervisor. If individuals seek an informal and confidential resolution, the ombudsman may be the appropriate choice. If a formal IC&E investigation is sought, the hotlines described below are the appropriate choice.

If an employee or volunteer suspects or knows about misappropriation, fraud, waste, abuse, Red Cross policy violations, illegal or unethical conduct, unsafe conduct or any other misconduct by the Organisation or its employees or volunteers, that individual should alert his or her supervisor or other member of local management. In those cases where an employee or volunteer is not comfortable telling his or her supervisor or local management, the employee or volunteer may contact the Concern Connection Line at 1-888-309-9679. For concerns about the collection, manufacturing, processing, distribution or utilization of blood or blood components (e.g., violations of FDA or OSHA regulations, falsification, quality failures, training, Biomedical Services computer and equipment issues), an employee or volunteer who is not comfortable with contacting his or her supervisor or local management may contact the Biomedical Regulatory Hotline at 1-800-741-4738.

CERTIFICATION OF COMMITMENT TO THE CODE OF BUSINESS ETHICS AND CONDUCT

I, _____, certify that I have read and understand the Code of Business Ethics and Conduct of the American Red Cross and agree to comply with it, as well as applicable laws that impact the Organisation, at all times. I affirm that, except as listed below, I have no personal, business or financial interest that conflicts, or appears to conflict, with the best interests of the American Red Cross. I agree to discuss any conflicts listed below with the chairman of the board or the chief executive officer of my unit or the general counsel of the American Red Cross and to refrain from participating in any

discussions, deliberations, decisions and/or voting related to the matter presenting the conflict until such time as it is determined by the Red Cross that the conflict is mitigated or otherwise resolved.

Describe any potential conflicts:

At any time during the term of my affiliation with the American Red Cross, should an actual or potential conflict of interest arise between my personal, business or financial interests and the interests of the Red Cross, I agree to: (1) disclose promptly the actual or potential conflict to the chairman of the board or the chief executive officer of my Red Cross unit or the general counsel of the American Red Cross; and (2) until the Red Cross approves actions to mitigate or otherwise resolve the conflict, refrain from participating in any discussions, deliberations, decisions and/or voting related to the conflict of interest.

Pakistan NGO Forum Code of Conduct for NGOs and CBOs

Preamble

Mandated to serve in the public interest, citizen Organisations (NGOs) have been active in a broad assortment of fields across the country, operating for the welfare and uplift of the marginalised groups and the attainment of civil rights.

Spurred on by voluntary initiatives, these groups function regardless of personal or parochial interests and seek to organise themselves on the basis of a code of conduct, regulating their relationships with each other, with the government, international development agencies as well as their own staff (volunteers and paid professionals).

It is within such a mechanism of self-regulation that NGOs intend to pursue their objectives.

- a) With the aim of establishing a just, responsible and emancipated society, we seek to strengthen an enabling environment for civil society institutions, public welfare and citizen rights groups.
- b) It is our concerted view that achieving a responsible, just and dynamic society calls for a state system that is responsible, democratic and sensitive to citizens' welfare and development. To make such a system a reality, we earnestly wish to engage in a meaningful and positive dialogue with the government at all levels. We are eager to pave the way for a genuine partnership between NGOs and state institutions based on mutual trust and respect and geared towards the common goal of eradicating poverty and deprivations.
- c) In line with our belief that voluntary citizen groups have vital roles to play in the development process, we would like to see greater collaboration, information and resource sharing and unity amongst these organisations. We seek to promote transparency and accountability within the NGO sector, encouraging mutual respect and understanding to put an end to narrow differences and unhealthy competition.
- d) Our relationship with donor organisations should be built around our own priorities and objectives. It should be based on the principles of equality, mutual respect, transparency and accountability.

Pakistan NGO Forum

Introduction

Notwithstanding structural differences and divergence in activities, NGOs operating in Pakistan espouse common values. Quest for poverty alleviation, equity and a positive change in public life is a unifying strand that runs through their actions. We believe that an organisation has to have an effective governing structure if it is to produce good results. It is all too important for NGOs to set up governing structures that are essentially based on accountability and foster democratic values. To us, transparency is the essence of our work.

Additionally, it is indispensable for NGOs to frame a policy of financial administration. Financial resources should be organised in a way that facilitates justifiable utilisation of funds. Apart from establishing accountability at all levels, we need a system whereby we can organise our resources in an effective and sustainable manner.

Guided by the above mission, Pakistan NGOs Forum believes in the following values:

Community Level

- Setting priorities in accordance with citizens' development and welfare needs.
- Promoting participatory democracy
- Ensuring citizens' primacy in the development process at all levels.
- Promoting respect for citizen rights, particularly the rights of women and children as enshrined in the country's constitution.
- Making all possible efforts for effective information dissemination and service delivery and meaningful development interventions.
- Fostering greater collaboration and networking among organisations working towards common goals.
- Promoting the spirit of initiative
- Adopting methods that allow for complete participation of relevant people in all programmes undertaken
- Reviewing community-based development interventions and honing them in line with the needs of the participating communities.
- Rethinking organisational mission and objectives on the basis of citizens' needs and the demands thrown up by the changing times

Organisational Level:

- Ensuring accountability and transparency
- Having clearly defined mission and objectives and living by them
- Implementing the governing system vis-à-vis holding of meetings and discharging of responsibilities.
- Framing policies that prevent direct or indirect conflict of interest between the staff and the governing body members.
- Keeping the governing body, office bearers and staff from taking decisions that serve or might be perceived to serve their personal interests.
- Having the governing body structure in written.
- Providing for smooth lines of communication between the governing body and the staff
- Disallowing board members to seek employment and facilities in the Organisation; making mandatory for them to resign from the board should they be interested in the aforementioned things.
- Making it obligatory on the governing structure to pass annual budgets, appointing an independent auditor and maintaining regular audit reports.
- Ensuring that the governing structure has a good grasp of organisational matters, that it puts together policies for the organisation at all levels and accepts its governance responsibilities.
- Making sure that the Organisation members are acquainted with the programmes being undertaken as well as accounting and governing methods.
- Critically reviewing organisational culture and operational methods to promote a greater sense of responsibility, innovativeness and respect for diversity.
- Putting in black and white all policies related to the organisational staff and volunteers and bring them in conformity with relevant national legislation, Labor Act etc to protect the rights of all those associated with the organisation.
- Taking on appropriate procedures to ensure organisational discipline and effective settlement of differences that may arise among those working for the organisation.
- Providing for transparent hiring and firing rules and putting them in writing
- Formulating policies for professional enhancement of volunteers and staff.
- Devising equitable and impartial methods to assess staff capabilities experience education and sense of responsibility.
- Adopting policies that facilitate higher levels of communication and sharing of ideas among those working for the organisation at different levels.

Organisational and Financial Resources

- Adopting accredited accounting and auditing procedures including vouchers and verification system.
- Organising financial matters on proper lines

- Appointing trained people to look after financial matters
- Getting amounts exceeding 100,000 audited annually by a chartered accountant
- Having an authorized officer and the executive body verify amounts less than 100,000 and 10,000 respectively.
- Adopting a precise policy guideline for the employee loans and benefits; putting the policy in written
- Formulating policies concerning external remuneration and benefits to prevent dual receipt of salaries etc.
- Adopting cost-effective ways of purchasing goods and hiring services and preventing such decisions to be influenced by personal interest.
- Taking firm and open action against the Organisation members found guilty of theft or misappropriation.
- Seeking to harness diverse sources of funding rather than relying on a single source.
- Cutting organisational costs down to the minimum possible level
- Utilising funds for the purposes they have been obtained for.
- Drafting accounts in such a way that they are accessible and intelligible to the members of the organisation as well as communities.
- Framing such principles at the organisational level that allow for appropriate utilization of Organisational assets.
- Ensuring proper supervision of staff functioning and timing.
- Reviewing programme costs from time to time and allocating resources accordingly.

Tanzania NGO Code of Ethics

The purpose of this voluntary Code of Ethics is to promote high standards, quality, effectiveness, transparency and accountability among NGOs in Tanzania. We, Tanzanian NGOs and International NGOs active in Tanzania, agree to work towards ensuring that our policies and practices are progressively consistent with this Code of Ethics.

Core Values

- We are independent, autonomous and non-partisan Organisations. We will design and conduct our work independent of any political party, for-profit business or donor.
- We are non-governmental Organisations. We are answerable to our own mission, values and governing bodies rather than the instructions of any local, national or foreign government.
- We believe all people are equal. We will not discriminate on the basis of race, ethnicity, national origin, sex, sexual orientation, disability, HIV/AIDS status or any other characteristic. Instead, we will actively promote human rights, dignity, equity and inclusion of all, and particularly those who have been historically marginalized.
- We believe in participatory democracy and will work to promote democratic space for citizen voice and action.
- We value diversity of opinion, freedom of expression and open debate, and will promote these values at all levels.
- We will strive for quality and excellence, and a culture of learning and reflection, in all that we do
- We will promote transparency and accountability in our Organisations, partnerships and in society.
- We will avoid subversive activities that undermine the state through violent or unconstitutional means.

Governance

- We will have or develop a constitution, clear vision/mission statement and objectives; and we will work towards ensuring our work is consistent with these.
- We will have a governing body which understands and accepts ultimate responsibility for governance and all aspects of the Organisation. It will set policies; approve major strategies/plans, budgets and reports; and supervise the chief executive consistent with the constitution and mandate of the Organisation.
- We will hold Annual General Meetings with full, open and accurate disclosure of relevant information concerning goals, achievements/challenges, finances and governance.
- We will have written procedures regarding the appointments, responsibilities and terms of members of the governing body and specify the frequency of meetings, quorum, reporting and the roles and powers of the governance structure.
- We will develop and adhere to a policy that prohibits direct or indirect conflict of interest by members of the governance structure, as well as members, employees and volunteers of the Organisation. Members of the governing body and staff will not participate in decisions where they have, or are perceived to have, a personal interest.
- Assets and resources of the Organisation will not be used or disposed for private or personal gain other than as stipulated in the constitution or written policies of the Organisation.
- We will develop, promote and enforce a policy of Zero Tolerance on Corruption and any other serious misconduct in all that we do.

Accountability

We recognize and appreciate multiple levels of accountability as follows:

- **Downward accountability:** to the people 'we serve' ('beneficiaries').
- **Internal accountability:** to the Board or equivalent governing structure of the Organisation, and to the staff of our Organisation, consistent with our policies

- **External accountability:** to the provisions of Constitution of Tanzania and reasonable laws and regulations, and to the donors consistent with our contracts and good donor practice.
- **Horizontal accountability:** to the partner Organisations with whom we work.

We will work to promote appropriate accountability in all four dimensions, with a particular emphasis on downward accountability. We will avoid making commitments to any one dimension that may compromise our accountability to another dimension. To this end:

- We will regularly communicate, in a clear and accessible manner, about our values, governance structure, mission, objectives, approaches and progress made.
- We will develop programs and plans whose intended change (results?) is clearly stipulated.
- We will develop reasonable budgets that clearly correspond with our programs and plans.
- We will systematically monitor, document and report on the progress of our work against agreed plans and budgets.
- We will promote practical ways in which people involved in or affected by our work can provide inputs and feedback, and we will consider these seriously.
- We will promote policies and practices that foster sustainability of natural resources and the environment, and that seek to avoid or minimize damage to the earth.
- We will conduct periodic independent evaluations that will examine, among other aspects, the quality of results and effectiveness of our work.
- We will compile and make available to the public an annual report that will state the members of the Board; the main achievements, challenges and lessons learned in the course of implementation; as well as the annual incomes, expenditures and balances.
- We will actively promote and practice a culture of ongoing critical assessment, reflection and learning, and to demonstrate how we are using lessons learned to make our work more effective.

Human Resources

The staff and volunteers are the heart of any Organisation. To this end:

- We will develop and adhere to clear, well defined, written human resource and administrative policies and procedures, consistent with the laws of Tanzania.
- We will promote and practice fairness and non-discrimination in recruitment and to the maximum extent possible promote diversity and gender balance in staff composition.
- We will strive to create a healthy work environment, where mutual respect is fostered and where there is zero tolerance for sexual harassment and other actions that violate the basic safety or dignity of staff.
- We will establish clear disciplinary and grievance procedures.
- We will actively promote Organisational and staff learning and development, and foster a culture of learning from mistakes, openness, creativity and innovation.
- We will promote and enforce clear policies to avoid conflict of interest, nepotism, favouritism and corruption, as well as protection for whistle-blowers.

Financial Transparency and Accountability

- We will develop and adhere to clear, well defined and written financial regulations that reflect high ethical standards and are consistent with sound financial management principles and practice.
- We will seek to limit resources used towards fundraising and administration /overheads to a reasonable level, so that maximum amount can be spent towards our programs.
- We will manage resources in a manner that is prudent and provides value for money, including wherever possible by employing or involving competent personnel to manage these resources.

- We will ensure all financial transactions are transparently and fully documented, and that these documents are preserved for a defined number of years, consistent with sound accounting practice.
- We will ensure all substantive expenditures are authorized in a process that involves scrutiny by more than one officer, and where the chief executive or any other officer does not have unlimited authority.
- We will ensure procurement is undertaken in a manner that provides quality at least cost, avoids favouritism and corruption, is transparent, documented and otherwise conforms to sound procurement principles.
- We will maintain a regularly updated assets register in accordance with sound accounting practice.
- We will maintain and manage bank account(s) with a licensed financial institution, into which all incomes will be deposited.
- We will develop and adhere to clear policies regarding allowances, honoraria, gifts and other such payments to avoid conflict of interest and incentives to distort Organisational priorities, and in the interest of transparency and fairness.
- We will prepare comprehensive financial statements that accurately disclose all incomes (from all sources), expenditures and balances, as well a comparison of actual performance against budgets, in accordance with sound accounting practice.
- Where our total annual revenue exceeds Tshs 50 million we will ensure that our financial statements are independently audited by a registered/competent auditor, and that we will act on the recommendations of the auditor.
- We will exercise zero tolerance for corruption and other form of substantive misuse of funds, and take effective actions to hold persons responsible accountable.

Progressive Implementation of the Code of Conduct

We will continually work to strengthen and improve our adherence to the high standards set out in this code of conduct. In this regard, we will:

- Explicitly and consciously put measures in place to progressively attain the standards articulated herein.
- We will promote and sustain an enabling environment that fosters a culture of individual, group and Organisational learning at all times both within our Organisations and through our interaction with other Organisations.
- We will seek to engage in continuous self, peer and or external assessment and evaluation to monitor the progress of our respective Organisations.
- We will periodically report on the progress made towards and compliance with the standards in this code of conduct.

Codes and Other Governance Tools Applicable to the NPO Sector

Code	Purpose of Code	Self Regulation, Accountability, Mission/Programme	Board / Governing Body	Ethics / NGO Integrity / Public Trust	Financial Management / Legal	Fund Raising / Resource Mobilisation	Personnel Recruitment / Remuneration
National							
South Africa							
Codes of Good Practice for South African Non-profit Organisations: Department of Social Development	The Codes were developed by the Department of Social Development to strengthen the provisions of the <i>Nonprofit Organisations Act</i> (1997). The codes seek to promote good practice in leading and managing non-profit organisations of all sizes across all interest sectors, with a particular focus on governance, administration, fundraising and the donor community.	NGOs should have a clear mission to drive the organisation and its programme; NGOs must carefully select governance, staff leadership, competent staff and volunteers in the office; The NGO should have an effective strategic plan of action, with controls in place to monitor and evaluate progress; Beneficiary stakeholders and communities should be given the opportunity to be involved in the planning process, regular evaluations and updating of programmes and projects; The NGO should have policies and systems	The governing body has a duty of care, of loyalty and of obedience; The Governing body determines the organisation's mission and purpose; The governing body selects and appoints the chief executive officer; The governing body supports the CEO and reviews his or her performance; The governing body ensures effective organisational planning; The governing body ensures that the organisation has adequate resources; The governing body manages the organisation's resources effectively; The governing body	Standards and principles of ethical and responsible behaviour: <ul style="list-style-type: none"> • Honesty; • Integrity; • Promise keeping; • Fidelity/loyalty; • Fairness; • Caring for others; • Respect for others; • Transparency; • Responsible citizenship; • Pursuit of excellence; • Accountability; • Safeguarding public trust 	Set up appropriate financial systems; Develop financial policies and procedures manuals; Comply with South Africa's accepted accounting and auditing practices, as regards procedures, banking, reporting and record keeping; Conduct annual financial audits; Prepare realistic annual organisational income and expenditure budgets; Monitor the actual income and expenditure performance against the budgets and adhere to them where possible; Set up clear policies on loans and staff advances; Establish effective	Effective fundraising efforts must pay attention to: <ul style="list-style-type: none"> • The mission; • A plan for the organisation's future; • Effective internal and external communication; • Investing in the organisation's growth; • Building relationships with the organisation's community and supporters; • Servicing the funders and sustaining their support. The fundraiser, either internal or external, should understand the organisation's mission; The fundraiser should	Not covered.

Code	Purpose of Code	Self Regulation, Accountability, Mission/Programme	Board / Governing Body	Ethics / Integrity / NGO / Public Trust	Financial Management / Legal	Fund Raising / Resource Mobilisation	Personnel Recruitment / Remuneration
		in place that ensure that the optimum use is being made of all available resources; The NGO should have accounting systems and controls in place that ensure the transparent and effective handling of money and resources; The NGO should be open to public enquiry and questioning; Annual general meetings should be held with full, open and accurate disclosure of relevant information concerning goals, programmes, finances and governance.	determines and monitors the organisation's programmes and services; The governing body enhances the organisation's public image; The governing body serves as a court of appeal; The governing body measures its own performance.		controls for the handling of petty cash; Introduce clear procedures for the authorisation, preparation, signing and issuing of cheques; Have disciplinary procedures in place to deal with any misuse or misappropriation of resources or assets; Establish acceptable ratios and standards to keep control of fundraising and administration costs; Ensure that designated funds are used only for the purpose for which they were given; Reduce the risk of financial dependency on narrow funding sources by developing a diversified funding base; Establish an effective purchasing system; Establish and effective contracting or tendering system.	develop an understanding of the organisation's values, programmes and projects, and a knowledge of beneficiary communities; The fundraising plan should demonstrate the urgency, uniqueness and relevancy of NPO's programmes and projects; The fundraiser should obtain support for the organisation in an open, honest and trustworthy manner; The fundraiser should be able to identify potential contributors through linkages, interests and financial ability; The fundraiser should make a contribution towards building a respected fundraising profession; The fundraiser should provide education and training to those responsible for fundraising activities;	

Code	Purpose of Code	Self Regulation, Accountability, Mission/Programme	Board / Governing Body	Ethics / NGO Integrity / Public Trust	Financial Management / Legal	Fund Raising / Resource Mobilisation	Personnel Recruitment / Remuneration
						Co-operate with fellow practitioners in curbing mal-practice and eliminating unethical and undesirable conduct.	
SANGOCO Code of Ethics www.sangoco.org.za	The Code of Ethics was developed to support NGOs in strengthening the sector, improving the quality and impact of their services and delivery, and contributing to a vibrant and dynamic society.	<p>Self-regulation: The Code of Ethics is not mandatory, but members of SANGOCO are expected to adhere to its principles of good practice.</p> <p>Mission: Ensure that the organisation has a clear vision, mission, objectives and policies, and adheres to them. Periodically reassess the organisation's mission, objectives and operations, in the light of changing context and constituents.</p> <p>Accountability: Develop mechanisms to enable stakeholders to be involved in planning programmes that directly affect them;</p>	Specify the frequency of governance structure meetings, quorums, and the role and powers of the governance structure; Ensure the governance structure understands and is responsible for overall policy-making and accepts ultimate responsibility for governance of all aspects of the organisation; Where there is a Board or Trust, adopt a policy that discourages members from submitting tenders to the organisation or applying for staff positions within the organisation; Ensure that the governance structure understands and is	Develop a policy that prohibits direct or indirect conflict of interest by members of the governance structure, members, employees and volunteers; Ensure that members of the governance structure and staff excuse themselves from decisions where they have, or are perceived to have, a vested interest.	Comply with accepted business accounting and auditing practices, including voucher and authorisation processes; Set up appropriate financial systems and employ qualified persons to administer and manage these systems; Conduct annual audits for incomes exceeding R50,000; Have clear policies on loans and staff advances; Develop a policy regarding the receipt of outside honoraria and/or remuneration in order to avoid double or inappropriate payment; Set up mechanisms for purchasing goods and services that are free from vested		Develop clear, well-defined written policies and procedures to be followed, which relate to all employees, members and volunteers; Staff policies must adhere to the Labour Relations Act and other relevant legislation and must protect the rights of employers, employees, members and volunteers; Establish and maintain disciplinary and grievance procedures with clear lines of authority and accountability; Have clear and transparent procedures for employing new staff, and disengaging existing staff; Have clear staff

Code	Purpose of Code	Self Regulation, Accountability, Mission/Programme	Board / Governing Body	Ethics / Integrity / Trust / NGO / Public	Financial Management / Legal	Fund Raising / Resource Mobilisation	Personnel Recruitment / Remuneration
		Provide opportunities for regular evaluations and updating of programmes that include stakeholder and community input; Hold an Annual General Meeting with full, open and accurate disclosure of relevant information concerning goals, programmes, finances and governance; Hold regular strategic planning sessions to which relevant stakeholders are invited to contribute; Critically analyse organisational practices and culture and implement those changes necessary to build a culture that encourages creativity, diversity, responsibility and respect; Encourage management to adopt interactive leadership styles and an open door policy to facilitate good communication between staff and themselves.	responsible for overall policy-making and accepts ultimate responsibility for governance of all aspects of the organisation; Ensure the governance structure approves the annual budget, appoints independent auditors and receives audited statements; Within financial constraints ensure the governance structure reflects the race and gender composition of South African society and the various target constituencies that the NGO works with;		interests of individuals in the organisation and that are cost effective; Prepare realistic project or organisational budgets, then monitor and adhere to them; Formally and publicly charge members for any attempt at fraud, theft or misappropriation; Wherever possible, ensure that the funding base of the organisation is diversified; Keep fundraising and administration costs to a minimum; Ensure that funds provided are only used for the intended purpose; Ensure that tenders and contracts called for encourage the participation of small and emerging business; Provide clear and transparent accounting to the broader membership and/or constituency of the organisation.		development policies that seek to empower all staff volunteers to increase their skills in order to enable them to move to greater levels of responsibility; Develop adequate and acceptable systems of assessing skills, experience and qualification, levels of responsibility and performance, and remunerate on this basis; Develop and implement mechanisms to monitor the use of staff time.

Code	Purpose of Code	Self Regulation, Accountability, Mission/Programme	Board / Governing Body	Ethics / NGO Integrity / Public Trust	Financial Management / Legal	Fund Raising / Resource Mobilisation	Personnel Recruitment / Remuneration
Uganda							
Code of Honour: The NGO Quality Assurance Certification Mechanism (QuAM) www.deniva.or.ug	<p>The QuAM was developed to promote adherence by Civil Society Organisations to generally acceptable ethical standards and norms. It sets principles and standards of behaviour for responsible practice, to protect the credibility and integrity of certified NGOs and their networks in Uganda.</p>	<p>Self Regulation: The NGO Quality Assurance Mechanism (QuAM) has been developed for and by non-governmental organisations working in Uganda; Obtaining an NGO Quality Assurance Certificate is not a legal requirement but, once issued, the provisions of a certificate are binding on the certified NGO The QuAM goes beyond any single existing code of conduct in Uganda, and is based on clearly defined Quality Standards and sets out implementation modalities, including sanctions in the case of any breach; The QuAM comprises 59 standards: 32 minimum standards and 27 standards for further improvement. Mission: The NGO must have a written and shared</p>	<p>The NGO must have laid-down governance and reporting structures, with a governing body whose members meet regularly; The NGO must develop and use management tools/practices, as per its stage of development and requirements; The NGO must have a governing body whose members are regularly appointed or elected, in accordance with its constitution and generally accepted practices</p>	<p>The NGO has a development-oriented, non-partisan agenda, fostering citizen's rights; The NGO must not engage in any subversive activity; The NGO must actively avoid any conflict of interest among members, staff and board members; The NGO does not condone any misconduct by its members, staff, and/or board members; The NGO must produce an annual report that is publicly accessible and can fulfil the information requirements of its stakeholders;</p>	<p>The NGO must be legally registered with the appropriate authorities; The NGO must have an office and an address; The NGO must document its financial transactions; The NGO must prevent any abuse of its property, whether by board members, staff or its membership; The MGO must comply with reporting and other requirements, as per Uganda's laws and statutes; The NGO has a mechanism to authenticate its documents and safeguard its organisational identity; The NGO must have a properly managed bank account; The NGO must keep a regularly updated register of fixed assets;</p>	<p>The NGO must have mechanisms to measure the cost benefit of fundraising and running the organisation;</p>	<p>The NGO must recruit personnel in a transparent manner; The NGO must have a human resources policy in place; The NGO must adhere to gender and minority equity standards in recruitment; The NGO should have learning practices that involve its board, members, and/or staff; The NGO should have in place a staff development system, which is in use; The NGO should develop and use its own learning system.</p>

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		<p>vision, mission/goal, objectives and values; The NGO should only receive funds that are consistent with its mission or goal; The NGO should use any surplus funds only to further its mission.</p> <p>Programmes: The NGO must have written programme/activity plans that aim at achieving its objectives, mission and/or goal; The NGO must understand and be able to identify its current/actual programme outputs and/or outcomes; The NGO must document its programme work; The NGO must make efforts to monitor and evaluate its programme activities; The NGO must share its objectives with its members/intended beneficiaries; The NGO must keep appropriate</p>			<p>The NGO must maintain sound systems to ensure its resources are effectively, efficiently and transparently managed, including procedures for the acquisition, management and disposal of assets; The NGO must adhere to Generally Accepted Accounting Principles and Standards; The NGO must have independently audited and publicly accessible annual accounts and acts upon and audit report recommendation;</p>		

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		government authorities informed of its plans, activities and programmes; The NGO must make efforts to relate with other actors (beyond its membership) working in its operating environment;					
Australia							
Australian Council for International Development (ACFID): Code of Conduct for Non Government Development Organisations www.acfif.asn.au	This Code defines standards of governance, management, financial control and reporting with which non-governmental development organisations should comply; The Code identifies mechanisms to ensure accountability in NGDO use of public monies; The Code aims to maintain and enhance standards throughout the NGDO community, ensuring public confidence in the integrity of individuals and organisations comprising the NGDO	Self-Regulation: Signatories to the Code are bound to its standards and requirements, against which complaints and compliance is assessed; NGOs are required to meet a range of state and federal legal obligations which are presumed in the Code of Conduct. Accountability: The governing body will commit the organisation to open and accurate disclosure of information concerning its goals, programmes, finances and governance;	Each organisation will have a governing body elected/ appointed by members from within the membership / supporters; The governing body will approve the annual budget and may delegate authority to staff or others but must accept ultimate responsibility for governance over all aspects of the organisation; The organisation will have policies restricting the number of paid staff who are voting members of the governing body; Members of the governing body, paid	Ethics: In all of its activities and particularly its communications to the public, the organisation will accord due respect to the dignity, history, religion, and culture of the peoples with whom it works consistent with principles of basic human rights; The organisation will be formed voluntarily and be not-for-profit; The organisation will oppose and not be a willing party to wrongdoing, corruption, bribery, or other financial impropriety in any of its activities;	There should be clearly defined lines of authority between the governing body and management; The organisation will have internal control procedures which minimise the risk of misuse of funds; The organisation will have adequate procedures for the reviewing and monitoring of income and expenditure; Loans to and transactions with governing body members shall be publicly disclosed, and loans to staff shall be disclosed to the governing body;	Fundraising solicitations will be truthful, will accurately describe the organisation's identity, purpose, programmes, and needs, and will only make claims that the organisation can fulfil; In all fundraising activities initiated or authorised by it, the organisation will have policies set up to protect donor's rights to: <ul style="list-style-type: none"> Have their names deleted from mailing lists; Be informed whether those seeking donations 	The organisation will seek to achieve best practice in its personnel policies in response to initiatives in the aid sector and to changes in working and legal environments; The organisation will have well defined policies and procedures relating to paid staff including expatriate and local staff employed overseas and volunteers working in Australia or overseas; These policies and procedures will clearly define and protect the rights and safety of personnel assuring fair

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	community and the quality and effectiveness of their programmes; Organisations which are signatories to the Code of Conduct are expected to build creative and trusting relationships with people of developing countries and to meet programme standards which include beneficiary involvement, human rights, cultural diversity, gender equity and self-reliance.	Due regard will be given to the human rights and personal safety of staff, partners and aid recipients, legal requirements regarding privacy and confidentiality, proprietary information and personnel matters; The organisation will hold an annual general meeting of its members as defined in its governing instrument and which meets the requirements of the legislation under which the organisation is incorporated; The AGM will receive the annual audited financial statements and appoint an independent auditor for the subsequent year(s); Reporting mechanisms which facilitate accountability to members, donors and the general public will be used. Mission:	staff, and volunteers will make known to the governing body any conflict of interest or any affiliation they might have with an actual or potential supplier of goods and services, recipient of grant funds or organisation with competing or conflicting objectives; Members of the governing body and paid staff will absent themselves from discussion and abstain from voting or otherwise participating in the decision on any issues in which there is a conflict of interests; Large or otherwise inappropriate gifts to members of the governing body or staff for personal use shall be forbidden.	The organisation will have a policy to enable staff confidently to bring to the attention of the Governing Body evidence of misconduct on the part of anyone associated with the organisation; The organisation will conduct itself in ways that do not denigrate other agencies, or make misleading or false public statements regarding other agencies; The organisation will have policies and procedures to promote the safety and wellbeing of all children accessing their services and programmes, particularly to minimise the risk of abuse of children; Funds and other resources designated for the purposes of aid and development will be used only for those purposes and will not be used to promote a	The organisation must publish in their Annual Report, financial statements prepared in accordance with the Code of Conduct Summary Financial Report Format found in the Guidance Document to the ACFID Code of Conduct; Codes of Conduct Summary Financial Reports and Full Financial Reports must be audited by at least a qualified accountant who is a member of an appropriate professional institute; The Auditor's statement must accompany the financial report in the Annual Report; Donations shall be used as promised or implied in fundraising appeals or as requested by the donor; When funding is invited from the general public for a	are volunteers, paid staff or agents of the organisation; <ul style="list-style-type: none"> • Be informed about the causes for which funds are being raised; • Get information on the application of their donations; • Be able to identify collectors and have documentation confirming the bona fides of the organisation. Donations must be used as promised or implied in fundraising appeals or as requested by the donor; Organisations must substantiate, upon request, that their application of funds is in accordance with donor intent or request; The organisation will be responsible for all fundraising activities outsourced to a third party and will put all	treatment in all matters; The organisation's expectations of its employees' and volunteers' professional conduct shall be clearly communicated and consistent with the requirements of the ACFID Code of Conduct; The organisation will be committed to continuous improvement in its management practice including the provision of regular opportunity to employees for training and professional development; The organisation will have policies and strategies to promote gender equity especially in senior positions in the management and governance of the organisation.

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		An organisation's governing instrument (constitution, articles of association, rules, by-laws or similar documents) will be consistent with legislative requirements; These documents will set forth the organisation's basic goals and purposes, define membership, governance structure of the organisation including the frequency of meetings and the size of a quorum.		particular religious adherence or to support a political party, or to promote a candidate or organisation affiliated to a political party. Public Trust: An Annual Report is to be produced and made available to the organisation's own members, supporters and members of the public upon request.	specific purpose, the organisation shall have a plan for handling any excess and shall make this known as part of the appeal; Organisations shall substantiate, upon request, that their application of funds is in accordance with donor intent or request.	such contracts and agreements in writing.	
Tanzania							
The Tanzanian Code of Conduct of the NGOs (made pursuant to section 27 of the NGOs Act number 24 of 2002)	The Code of Conduct is intended to: Ensure transparency and accountability in the operation of NGOs by voluntary self-regulation; Improve the quality of services provided by NGOs by adopting high standards of conduct and efficient decision-making processes; Improve and promote	Self-regulation: The National NGOs Council was mandated by its members to be their machinery for self-regulation. The Code of Conduct is therefore binding on all signatories / members. Accountability: A non-profit organisation is accountable for its activities and is responsible to the	A non-profit organisation as a voluntary association of the members of the society values its members, ensures democratic governance of the organisation, holds the governing bodies and employees of the organisation responsible and reacts to their misconduct;	A non-profit organisation demonstrates civic courage in fighting against social injustice; When discovering incompetence and disregard for the principles of social justice in legislation, a non-profit organisation works to amend such legislation; A non-profit	In seeking to achieve its goals a non-profit organisation uses natural, human and intellectual resources, as well as material and financial assets with sustainability and prudence, considering the needs of both present and future generations; A non-profit organisation complies with generally	Getting funds for its activities mainly from supporters and donors, a non-profit organisation uses the funds efficiently and in accordance with designated purposes; A non-profit organisation communicates in an open and direct manner with all parties concerned and does not act anonymously;	Not covered.

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	<p>communication between the NGO community and its stakeholders; Improve accountability and transparency; Establish a set of agreed principles and ethics; Strengthen the unity of Tanzanian NGOs; Improve the performance of the NGO community by encouraging exchange of experiences and best practice.</p>	<p>founders, members, stakeholders, supporters, donors and the general public; A non-profit organisation considers important readiness to account for its activities, achieved through professional management, internal accountability and pursuing generally accepted accounting principles; A non-profit organisation discloses a report of its activities and finances at least once a year. Mission: A non-profit organisation has a clear and understandable mission; In carrying out its mission a non-profit organisation is guided by its statutes, internal documents and operating standards; Information regarding the mission, membership, activities and funding of a non-</p>		<p>organisation does not use or advocate the use of violence to express its opinions, achieve its goals or gain the attention of the public; A non-profit organisation considers involvement of people and voluntary work as a foundation for civil society, values citizens and their voluntary work; A non-profit organisation is independent in setting its goals, decisions and activities; A non-profit organisation refrains from being controlled by political parties, public institutions or companies, resulting in losing its independence, autonomy and ability to act for the public benefit; A non-profit organisation and persons involved therein avoid entering into conflicts of</p>	<p>accepted funding principles, uses only justified and transparent budgets and avoids duplication in funding; A non-profit organisation honours all lawful written contracts and oral agreements;</p>		

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		<p>profit organisation are public and understandable, and its activities transparent;</p> <p>A non-profit organisation recognises the diversity of ways of thought, organisations and their goals.</p> <p>Programmes:</p> <p>A non-profit organisation consistently pursues skilled actions, professionalism and perfection in order to achieve better results in its work.</p>		<p>interest;</p> <p>In the event of conflicts of interest the necessary measures to eliminate such conflicts of interest must be applied;</p> <p>A non-profit organisation honours the authorship and ownership of ideas and projects of other organisations.</p>			
United States of America							
<p>Maryland Association of Nonprofit Organisations – Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector</p> <p>www.marylandnonprofits.org</p>	<p>The Standards of Excellence were developed to promote ethical practices and accountability in non-profit organisations. They are intended to describe how the most well managed and responsibly governed organisations should, and do operate. They provide benchmarks to determine how well and organisation is</p>	<p>Self-regulation:</p> <p>Maryland non-profits' members are required to pledge their commitment to the Standards of Excellence and their guiding principles.</p> <p>Mission:</p> <p>The organisation's purpose, as defined and approved by the board of directors, should be formally and specifically stated, and</p>	<p>Board Responsibilities:</p> <p>The board should engage in long-term and short-term planning activities; The board should establish policies for effective management of the organisation; The board should annually approve organisation's budget and periodically assess financial</p>	<p>Conflict of Interest:</p> <p>Non-profits should have a written conflict of interest policy; Non-profits should provide board members, staff, and volunteers with a conflict of interest statement that summarises the key elements of the organisation's conflict of interest policy</p>	<p>Financial Accountability:</p> <p>A non-profit should operate in accordance with an annual budget approved by board of directors;</p> <p>A non-profit should create and maintain financial reports on a timely basis that accurately reflect the financial activity of the organisation;</p> <p>For non-profits with an</p>	<p>Fundraising Activities:</p> <p>A non-profit's fundraising costs should be reasonable over time on a 3:1 basis;</p> <p>Solicitation and promotional materials should be accurate and truthful about the organisation's mission and intended use of solicited funds;</p> <p>All statements made</p>	<p>Personnel Policies:</p> <p>A non-profit should have written personnel policies and procedures, approved by the board of directors, governing the work and actions of all employees and volunteers of the organisation;</p> <p>The organisation's policies and procedures should also address initial</p>

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	fulfilling its obligations to those who benefit from its programmes, to contributors, and to the public.	<p>its activities should be consistent with its stated purpose; The non-profit should periodically revisit its mission (e.g. every 3 to 5 years) to determine if the need for its programmes continues to exist; A non-profit should have defined, cost-effective procedures for evaluating, both qualitatively and quantitatively, its programmes and projects in relation to its mission.</p> <p>Programme Service: In rendering its programmes or services, a non-profit should act with the utmost professionalism and treat persons served with respect; Non-profits should regularly monitor the satisfaction of programme participants.</p>	<p>performance in relation to the budget; The full board should hire the executive director, set the executive's compensation, and evaluate the director's performance annually; Board Composition: The board should be composed of individuals who are personally committed to the mission of the organisation and possess the specific skills needed to accomplish the mission; The board should have no fewer than 5 unrelated directors, but 7 or more directors are preferable; An organisation should limit number of consecutive terms that board members may serve; Board members should reflect the diversity of the communities served by the organisation; Board members</p>		<p>annual revenue in excess of \$300,000 the financial reports should be subject to audit by a certified public accountant; Organisations should provide employees, board members and volunteers a confidential means to report suspected financial impropriety or misuse of organisation resources; Organisations should have written financial policies adequate for the size and complexity of their organisation, governing investment of assets, internal control procedures, purchasing practices and unrestricted current net assets.</p> <p>Legal Compliance: Non-profits must be aware of and comply with all applicable federal, state, and local laws; Organisations should periodically assess the need for insurance</p>	<p>by the non-profit in its fundraising appeals about the use of a contribution should be honoured. Donor Relationships and Privacy: Non-profits should respect the privacy of donors and safeguard confidentiality of information; Non-profits should provide donors an opportunity to state that they prefer to remain anonymous; Solicitations should be free from undue influence or excessive pressure. Acceptance of Gifts: An organisation should have policies in place to govern the acceptance and disposition of charitable gifts. Fundraisers: Fundraising personnel, including both employees and consultants, should not be compensated based on a % of the amount raised or other</p>	<p>assessment or screening, assignment to and training for appropriate work responsibilities, ongoing supervision and evaluation, and opportunities for advancement. Employee Performance Evaluation: Organisations should have a system in place for regular written evaluation of employees by their respective supervisors, preferably annually. Employee Orientation: New employees of the organisation should receive an orientation, which includes review of the organisation's personnel policies and procedures, position description and introduction to the Code of Conduct.</p>

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			<p>should serve without compensation for their services as board members.</p> <p>Conduct of Board: The board is responsible for its own operations; The board should establish stated expectations for board members; The board should meet as frequently as is needed to fully and adequately conduct the business of the organisation; The organisation should have written policies that address attendance, participation, non-compliance and minutes.</p>		<p>coverage in light of the nature and extent of the organisation's activities and its financial capacity; Non-profits should periodically conduct an internal review of the organisation's compliance with known existing legal, regulatory and financial reporting requirements.</p>	<p>commission formula; Organisations should only use services of professional solicitors and fundraising counsel who are properly registered; Organisations should exercise control over any staff, volunteers, consultants, contractors, other organisations, or businesses that are known to be soliciting contributions on behalf of the organisation.</p>	
United Kingdom							
Association of Chief Executives of Voluntary Organisations (ACEVO): Code for the Voluntary and Community Sector www.governancehub.org.uk	This Code is primarily aimed at the trustees of voluntary organisations who have ultimate governance responsibilities, and aims to help enhance the effectiveness of voluntary and	Self-regulation: Code is not mandatory but organisations are invited to report compliance or non-compliance in annual reports. The Code is applicable except where there exists an approved	Every organisation should be led and controlled by an effective Board of Trustees which collectively ensures delivery of its objects, sets its strategic direction and upholds its values;	The Board and individual trustees should act according to high ethical standards, and ensure that conflicts of interest are properly dealt with; Trustees must not benefit from their	The Board acts prudently to protect the assets and property of the organisations; The Board ensures that funds and assets of the organisation are used to deliver the organisation's	The Board must ensure compliance with legislation relating to fund raising;	Regular review & assessment of board's performance & assessment of its own performance, that of individual trustees, & of sub-committees, standing groups & other bodies; Recruitment of new

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	<p>community organisations. The Code aims to help enhance the effectiveness of voluntary and community organisations by:</p> <ul style="list-style-type: none"> • Clarifying what effective governance looks like and how governing bodies can govern effectively; • Reassuring an organisation's stakeholders about the way organisations are governed; and • Maintaining and enhancing public confidence in organisations and in the voluntary and community sector. 	<p>code by an existing regulator or representative body. The Code is based on the principle of "comply or explain". This means that it is not a legal regulatory requirement, but organisations using it should be able either to 'comply' with the main principles of the Code, or 'explain' why they don't apply in particular circumstances.</p> <p>Accountability: Each organisation should identify those with a legitimate interest in its work (stakeholders), and ensure that there is a strategy for regular and effective communication with them about the organisation's achievement and work; The Board should be open and accountable to stakeholders about its own work, and the governance of the</p>	<p>The Board should have a statement of its strategic and leadership roles, and of key functions which cannot be delegate; Trustees should focus on the strategic direction of their organisation and avoid becoming involved in day to day operational decisions and matters; The Board must ensure that the organisation complies with its own governing document, relevant laws, and the requirements of any regulatory bodies; The Board should maintain and regularly review the organisation's system of internal controls, performance reporting, policies and procedures;</p>	<p>position beyond what is allowed by the law and in the interests of the organisation; Trustees should identify and promptly declare any actual or potential conflicts of interest affecting them. There should be clear guidelines for the receipt of gifts or hospitality by trustees;</p>	<p>objectives; The Board should define the roles and responsibilities of the chair and other honorary officers, in writing; The Board should ensure that staff, volunteers and agents have sufficient delegated authority to discharge their duties; All delegated authorities must have clear limits relating to budgetary and other matters; The Board should set clear terms of reference for sub-committees, standing groups, advisory panels, etc.; All delegated authorities must be subject to regular monitoring by the Board.</p>		<p>trustees is open, & focused on creating a diverse & effective board; The Board should have a strategy for its own renewal; Recruitment of new trustees should be open, and focused on creating a diverse and effective board; Trustees must be recruited and appointed in accordance with the organisation's governing document, and with relevant legislation; The Board should ensure that the recruitment process is open to all sections of the community, and should consider open advertising and a range of other recruitment methods to attract a wide range of candidates; Candidates should, where the organisation's governing document permits, be</p>

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		organisation; The Board should encourage and enable the engagement of key stakeholders, such as users and beneficiaries, in the organisation's planning and decision-making; The Board should periodically carry out strategic reviews of all aspects of the organisation's work, and use the results to inform positive change and innovation.					interviewed formally, and appointed on merit; The Board should ensure that the procedures for joining and leaving the Board are clearly understood by all trustees and others involved.
Continental / Regional							
African Union							
Draft Code of Ethics and Conduct for African Civil Society Organisations June, 2003	The purpose of the Code of Ethics and Conduct is to lay down a set of standard and core values which these CSOs must adhere to in order to set high standards for CSOs in Africa. The Code is expected to improve partnership between Governments within the African Union and CSOs by defining accepted and acceptable behaviour,	Self-regulation: The Code will apply in a mandatory way to all CSOs seeking accreditation with the African Union; The Code is also recommended for wider usage as a voluntary standard of self-regulation and governance by CSOs in Africa; The Code will provide a benchmark for CSOs to use for self-	The members of the apex governing body must set high personal standards for themselves and others within the organisation; The governing bodies shall govern the organisations in a fair, impartial and responsible manner; The apex governing body shall be the final approving authority for all policy statements	Ethics: CSOs should not tolerate any improper influence, bribery or other unethical behaviour by their staff, volunteers, suppliers or other stakeholders; CSOs shall not discriminate against any person in terms of race, sex, religion, or ethnicity. NGO Integrity: The principles of	It is the responsibility of the apex governing body or its designated authority to approve and monitor the annual budget of the organisation and to ensure that acceptable and sound financial accounting practices are employed; The apex governing body should ensure that the account of the organisation is audited annually by	In their fundraising efforts, CSOs shall exercise caution, recognising the need to maintain their independence and credibility; There should be openness, honesty and transparency exhibited in the fundraising process, expenditure and accounting for the funds.	CSOs should develop and maintain well-articulated, fair and just policies and guidelines to deal with human resources (including volunteers) of the organisation; CSOs should endeavour to establish training and educational programmes in support of the AU Code in order to ensure that its

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	help to promote high standards of practice as well as provide a benchmark for CSOs to use for self-evaluation.	<p>evaluation. The Steering Committee set up under the provisions of the Statutes of ECOSOC of the African Union shall be responsible for the enforcement of the provisions of the Code.</p> <p>Accountability: CSOs shall be legally constituted in their country of operation;</p> <p>Mission: CSOs shall operate under the terms set out in a written constitution or any other such instrument which will articulate the organisation's vision, objectives and organisational structure;</p>	<p>and annual programme of the organisation;</p> <p>The apex governing body shall, amongst other things, put in place policies that determine the membership of the organisation, and promote gender and minority equity, and social inclusion; The constitution of any such document under which the CSO is operating should stipulate the tenure of members of the governing bodies with provisions for democratic processes for change in tenureship;</p> <p>The apex governing body should establish clear and unambiguous guidelines, which should serve the purpose of ensuring that the personal interests of the members and volunteers do not conflict with those of</p>	<p>transparency and accountability should be applied to all the affairs and activities of the organisations, whether with the government, the target population, donors and/or other stakeholders;</p> <p>The activities of the organisation should, upon request, be open and accessible to scrutiny by its respective donors, except for personal matters, legal matters and proprietary information, as provided by law.</p> <p>Public Trust: CSOs should provide members of the public, the target population, donors and governments with accurate and adequate information about their activities, finances and other important information that can be disclosed within the limits of the law;</p> <p>CSOs should nurture</p>	<p>independent professional auditors and that the results are widely circulated and made accessible to all stakeholders;</p> <p>CSOs should adopt sound management practices, which take into account and consideration the vision, objectives and organisational structure of the CSOs.</p>		<p>underlying values and expectations become fully integrated into the organisation.</p>

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			the organisation or influence, or affect the performance of their duties	the practice of sharing information, such as research outcomes, not only within their organisations, but also with other CSOs.			
Global							
WANGO							
World Association of NGOs: Code of Ethics and Conduct for NGOs www.wango.org	The Code of Ethics and Conduct for NGOs was designed to be broadly applicable to the worldwide NGO community. The Code's standards are applicable regardless of an NGO's size, scope or focus.	The organisation shall formally state its mission and this should be approved by the governing body; Activities shall be consistent with the organisation's mission; The organisation shall regularly seek feedback on its activities from project beneficiaries, as well as other stakeholders; The activities of the organisation shall be critically examined periodically to determine their relevancy; The organisation shall spend at least 65% of its total expenditures on programme activities, and ideally more than 80%.	The NGO shall establish a plan of governance that best allows it to fulfil its mission; The structure of the governing body shall consist of individuals who are dedicated to the mission of the organisation; The structure of the governing body should encompass issues related to director resources, unrelated directors, policies on paid staff, term limits, nominating committees, diversity, bylaws and compensation; The responsibilities of the governing body encompass issues related to the mission statement, programmes and	The NGO is to be organised and operated as a not-for-profit organisation; The organisation is not to be part of, or controlled by, government or an inter-governmental agency; The organisation shall maintain independence and not be rigidly aligned or affiliated with any political party, for-profit corporation, donor or government; The organisation shall not act as an instrument of government foreign policy; The NGO shall have an organising document, an executive board, officers, and regular	Members of the governing body hold ultimate fiscal responsibility for their organisation; The organisation's annual budget is to be approved by the governing body, and is to outline projected expenses for programme activities, fundraising and administration; Internal financial statements shall be prepared regularly and provided to the governing body; The NGO shall have established financial policies regarding the receiving and disbursement of financial resources, investment of assets, purchasing practices, and internal control	The governing body should be very active in the fundraising effort; The organisation shall only accept funding that is consistent with its mission; The organisation shall be careful to ensure that all solicitation and promotional materials are accurate, and that they clearly and truthfully present the NGO, its mission and its programmes; Fundraising shall be for the purpose of the NGO's mission, and free of coercion, improper motive, inappropriate conduct, unreasonable reward, or personal inurement; There should be a plan for handling excess funds;	The organisation shall seek capable and responsible employees and volunteers who are committed to the mission of the organisation; The organisation shall provide proper training and orientation for new staff, and provide them with suitable working conditions; If the organisation has ten or more staff it should have written human resource policies; The organisation shall provide opportunities for individual growth and staff development; All staff shall be treated with fairness and equity; Each staff member shall be provided with

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			compliance, resources, annual budget and fundraising, resource management, CEO hiring and evaluation, strategic planning, as well as the development of a code of ethics and conduct; The conduct of the governing body encompasses meetings, minutes and responsibility for conduct; Governing shall explicitly address issues related to conflicts of interest.	meetings and activities; Information provided about the organisation to donors, members, clients, staff and the general public shall be accurate and timely; At least annually, the organisation shall prepare and make available to the public information on its programmes and services, and provide public access to appropriate records of these programmes and services; The NGO annually shall prepare and make available to the public basic financial information on the organisation, including the source of its funding, and the use of those funds; The organisation shall make available information on any partnerships or other joint ventures into which it has entered; Information that the organisation chooses	procedures; The organisation shall have internal control procedures, particularly regarding signing of cheques; Depending on the size of the organisation financial reports shall be subject to audit by an independent, qualifies accountant The organisation shall adhere to professional standards of accountancy and audit procedures as stipulated by the law in its nation; The organisation's activities, governance, and other matters shall conform to the laws and regulations of its nation and locality; Other legal obligations may include attorney review, liability insurance and internal review procedures.	The costs involved in fundraising shall be reasonable relative to the revenue generated; The organisation shall ensure that contributions are used as promised or implied in fundraising appeals or for the purposes intended by the donors; The organisation has an ethical and legal responsibility to honour its grant commitments; The organisation shall set up an organised system to track grant expenditures, produce timely reports and provide financial statements on request; Relationships with donors should encompass confidentiality, and respect for donor privacy; The organisation shall have a clear and easily accessible privacy policy that informs the public	the NGO's code of ethics and/or conduct.

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				to disseminate to the media, policy makers or the public must be accurate and presented with proper context.		what information is being collected on individuals and donors.	
Red Cross/Red Crescent Movement							
Code of Conduct for the International Red Cross/Red Crescent Movement and NGOs in Disaster Relief http://icrc.org	The Code of Conduct sets out to guard the Red Cross's standards of behaviour; The Code seeks to maintain the high standards of independence, effectiveness and impact to which disaster response NGOs and the organisation aspires to; In the event of armed conflict the Code will be interpreted and applied in conformity with international humanitarian law.	Self-Regulation: The Code is a voluntary Code of Conduct; The Code should be enforced by the will of each organisation accepting it as a means to maintain the standards laid down in the Code; The working environment guidelines are presented for guidance and are not legally binding. Mission: The mission of the organisation is to provide humanitarian assistance wherever it is needed, but it recognises that this is done within the fundamental humanitarian principle that every person has the right to receive	The Code does not address organisational governance issues.	Integrity: The organisation will strive to implement relief programmes which actively reduce the beneficiaries' vulnerability to future disasters and help create sustainable lifestyles; The organisation will pay particular attention to environmental concerns in the design and management of relief programmes; The organisation will endeavour to minimise the negative impact of humanitarian assistance, seeking to avoid long-term beneficiary dependence on external aid. Public Trust: Through public information the organisation will	Management: With regard to disaster management the Code recommends that host governments facilitate the following: <ul style="list-style-type: none"> • Rapid access to disaster victims for Non-Governmental Humanitarian Organisations (NGHAs); • The timely flow of relief goods and information during disasters; • Provision of a co-ordinated disaster information and planning service; • Disaster relief in the event of armed conflict. With regard to disaster management the Code recommends that intergovernmental	All dealings with donors will reflect an attitude of openness and transparency;	

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		<p>humanitarian assistance.</p> <p>Accountability: As an institutional link in the partnership between those who wish to assist and those who need assistance during disasters the organisation holds itself accountable to both parties; The organisation will report on its activities, both from a financial perspective and the perspective of effectiveness; The organisation will ensure appropriate monitoring of aid distributions and carry out regular assessments of the impact disaster assistance; The organisation will also report, in an open fashion, on the impact of their work and the factors limiting or enhancing that impact; The organisation's programmes will be based upon high</p>		<p>portray an objective image of the disaster situation where the capacities and aspirations of disaster victims are highlighted, and not just their vulnerabilities and fears; The organisation will not allow external or internal demands for publicity to take precedence over the principle of maximising overall relief assistance; The organisation will avoid competing with other disaster response agencies for media coverage in situations where such coverage may be to the detriment of the service provided to the beneficiaries or to the security of staff or beneficiaries.</p>	<p>organisations (IGOs) should undertake the following:</p> <ul style="list-style-type: none"> • Recognise NGHAs, local and foreign, as valuable partners; • Assist host governments in providing and overall coordinating framework for international and local disaster relief; • Extend security protection provided for UN organisations to NGHAs; • Provide NGHAs with the same access to relevant information as is granted to UN organisations. 		

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		standards of professionalism and expertise in order to minimise the wasting of valuable resources.					
Health Alliance International							
NGO Code of Conduct for Health Systems Strengthening Error! Hyperlink reference not valid.	The purpose of the Code of Conduct for Health Systems Strengthening is to offer guidance on how international non-governmental organisations can work in host countries in a way that respects and supports the primacy of the government's responsibility for organising health system delivery	Accountability: NGOs commit to meaningful joint planning within the ministries' own planning cycle; NGOs pledge to respect government and health ministry priorities, as well as labour and personnel policies; NGOs commit to strengthening governments' ability to operate effectively and efficiently. Programmes: NGOs will support efforts to involve indigenous civil society voices in the policy arena by encouraging their participation in developing policy and setting funding priorities; NGOs pledge to		Civic Engagement: NGOs will strengthen the capacity of communities to take responsibility for and ownership of their health development; NGOs will hold governments accountable for their human rights obligations; NGOs will document and share their work in and with communities to inform host government planning and priority setting; NGOs will guard the privacy of individuals with whom they work, including staff and patients; In places where NGOs are working with communities that are being oppressed, NGOs will work to	Not covered.	Not covered.	Hiring Practices: In areas where trained personnel are scarce, NGOs will make every effort to refrain from hiring health or managerial professional staff away from the public sector; When hiring staff, NGOs will preferentially employ available national expertise outside public sector employment; When NGOs hire health staff already working in the public sector, they pledge to do so with the consent of local health authorities; NGOs commit to avoid creating incentives for health workers to leave their developing countries for work in

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		advocate for removal of political, ideological and financial barriers to the expansion and improvement of public health systems; NGOs commit to designing their activities and programmes so that they reinforce primary health care, foster equity and community involvement, and are generally replicable and financially sustainable over time; NGOs will advocate with donors to support general health systems strengthening in the service of comprehensive national priorities.		protect populations.			international organisations or locations and training, irrespective of the employee's nationality. Remuneration: NGOs pledge that they will attempt to create pay structures that acknowledge differences in expertise; NGOs will offer "locally competitive" salaries, and strive for salaries that are not substantially more generous than the public sector. Capacity Development: NGOs will embrace the goal of strengthening educational institutions that train health workers, while also providing on-the-job continuous education
Commonwealth Foundation							
NGO Guidelines for Good Policy and Practice http://nzdl.sadl.uleth.ca/cgi-bin/library	NGOs have grown as an important sector of civil society, but relatively little has been done to define them and the scope of	Self-regulation: The Commonwealth Foundation NGO Guidelines are not intended to be prescriptive, but stand	Members of the Boards of NGOs may be either nominated or elected, according to the dictates of the legal entity adopted;	The values which underpin the objectives of NGOs should be based on the desire to advance and improve the	Financial Management: The financial management practices of NGOs should be of a high standard and	When negotiating with funders on grants and/or contracts NGOs should ensure that the terms and conditions of funding	Management practices in NGOs should include established procedures for the maximum utilisation and development of

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	<p>their work. Additionally it has been recognised that the practices of NGOs vary widely. This has sometimes led to confusion about their role and function as well as suspicion on the part of some governments, who have sometimes seen them as a threat. The Commonwealth Foundation's NGO Guideline has emerged as a model of good policy and practice which provides useful indicators and standards for the sector. In addition, the guidelines focus on developing stronger relations between governments, NGOs and funders and identifying productive ways of working together.</p>	<p>as a set of principles and goals to which those involved in or with NGOs can aspire, and which can represent a common foundation on which individual organisations and countries can build their own unique policies and practices.</p> <p>Accountability: The NGO is accountable to the public, both in the manner defined in the relevant company, charitable, trust or other law; The NGO is accountable to members and/or beneficiaries of the organisation; The NGO is accountable to funders, and those organisations with which contracts are entered into; The NGO management practices should include established procedures for</p>	<p>Boards may delegate responsibility to others, including the paid staff, but must accept ultimate responsibility for governance over all aspects of the NGO; Boards must take responsibility for:</p> <ul style="list-style-type: none"> •Safeguarding the vision, integrity, objectives and policies of the organisation; •Ensuring that statutory obligations are met; •Ensuring that adequate resources are available to the organisation for all aspects of its work and administration; •Ensuring that resources provided to the organisation for all aspects of its work and administration. <p>Members of Boards should work in a voluntary and unpaid capacity but may nonetheless receive</p>	<p>human condition; NGOs should promote respect for the rights, culture and dignity of men and women served or affected by the organisation's work, taking into consideration their special needs and abilities; NGOs should devote the maximum possible proportion of resources available to the task at hand; NGOs should ensure that the organisation remains true to its mission and objectives and that its identity, integrity, methods and activities are not distorted, subverted, taken over or corrupted by external or internal personal or organisational self-interests; NGOs should involve, whenever possible, beneficiaries as partners; NGOs should be willing to collaborate and network with other</p>	<p>aim to strengthen institutional capacity and sustainability; NGOs should only pursue or accept grants or contracts that are fully consistent with their mission and objectives; NGOs should only pursue or accept grants that do not cause their identity, integrity, methods and activities to be distorted, subverted, or corrupted, or compromise their independence; NGOs should only pursue or accept grants that do not place more responsibility on their organisation than they can manage; NGOs should avoid dependence on single, narrow or insecure sources of funding or contracts; In preparing budgets and costing NGOs should ensure that the full organisational and</p>	<p>agreements and the procedures and timetable for reporting are mutually acceptable; NGOs should ensure that their own fund-raising efforts do not undermine the viability and sustainability of other NGOs; The NGO should publish and disseminate annual narrative and financial reports, as well as reports on particular activities.</p>	<p>the human resource skills and capacities possessed by the organisation, whether by Board members, paid staff, volunteers or beneficiaries; Human resource policies and procedures should be based on the principle of equal opportunities and gender equity; NGOs and their funders should make time and resources available for training, both in-house and externally; In order to retain staff of the right calibre NGOs should strive to provide salaries and conditions of service that are as adequate and secure as possible.</p>

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		<p>accountability and transparency.</p> <p>Mission: Information made available by NGOs should include statements of the organisation's mission, objectives and policies</p> <p>Programmes: Information made available by NGOs should include statements of the organisation's methods, activities and achievements, evaluations, organisational structure and sources and use s of funds; The NGO should undertake continuous monitoring and review of activities, projects and programmes; The NGO should conduct regular and rigorous evaluations of activities, projects and programmes; Evaluations should be carried out with the participation of beneficiaries wherever possible</p>	<p>reimbursement of expenses incurred.</p>	<p>agencies around issues of mutual concern and interest rather than compete with them; NGOs should maintain high ethical standards at both an organisational and personal level.</p>	<p>administrative costs are recognised and included and adequate resources obtained to meet them; NGOs should have adequate and appropriate procedures for financial review and monitoring; NGOs should ensure that funds provided are always used for their intended purpose.</p> <p>Legal Structure: In order to give NGOs proper legal protection, including defining powers and/or liability of Board members, they should adopt appropriate legal structures; The legal entity chosen should be that which is most appropriate to the objectives of the organisation and its control and management arrangements;</p>		

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Corporate Governance							
South Africa							
King Committee on Corporate Governance Report 2002: Code of Corporate Practices and Conduct	<p>The purpose of the Code is to promote the highest standards of corporate governance in South Africa;</p> <p>The Code goes beyond the financial and regulatory aspects of corporate governance in advocating and integrated approach to good governance in the interests of a wide range of stakeholders having regard to the fundamental principles of good financial, social, ethical and environmental practice;</p> <p>The Code is based on the following characteristics of good governance:</p> <ul style="list-style-type: none"> • Discipline; • Transparency; • Independence; 	<p>Self-Regulation:</p> <p>The Code is a set of principles and does not purport to determine the detailed course of conduct of directors on any particular matter;</p> <p>Stakeholders interacting with such companies are encouraged to monitor the application by these companies of the principles set out in the Code;</p> <p>Companies and their boards will be required to measure the principles set out in the Code against all other statutes, regulations and authoritative directives regulating their conduct and operation with a view to applying not only the most applicable</p>	<p>The Board must give strategic direction to the company, appoint the chief executive officer and ensure that succession is planned;</p> <p>The Board must retain full and effective control over the company, and monitor management in implementing board plans and strategies;</p> <p>The Board should ensure that the company complies with all relevant laws, regulations and codes of business practice;</p> <p>The Board should communicate with its shareowners and relevant stakeholders (internal and external) openly and promptly and with substance prevailing over form;</p> <p>The Board should define levels of</p>	<p>Ethics:</p> <p>The Board should consider developing a corporate code of conduct that addresses conflict of interest, particularly relating to directors and management, which should be regularly reviewed and updated as necessary;</p> <p>Every company should engage its stakeholders in determining the company's standards of ethical behaviour;</p> <p>Each company should demonstrate its commitment to its code of ethics by:</p> <ul style="list-style-type: none"> • Creating systems and procedures to introduce, monitor and enforce its ethical code; • Assigning high level 	<p>Financial:</p> <p>Companies should have an effective internal audit function that has the respect and co-operation of both the Board and management;</p> <p>Internal audit should report at a level within the company that allows it to fully accomplish its responsibilities;</p> <p>The audit committee should draw up a recommendation to the Board for consideration, and acceptance by the shareowners for the appointment of the external auditors;</p> <p>The auditors should observe the highest levels of business and professional ethics and in particular, their independence must</p>	Not covered.	<p>Appointments:</p> <p>Procedures for appointments to the Board should be formal and transparent, and a matter for the Board as a whole, assisted where appropriate by a nomination committee;</p> <p>A consideration for South African companies would be to consider the demographics in relation to the composition of the Board;</p> <p>The Board should establish a formal orientation programme to familiarise incoming directors with the company's operations, senior management and its business environment, and to induct them in their</p>

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	<ul style="list-style-type: none"> Accountability; Responsibility; Fairness; Social responsibility. 	<p>requirements but also to seek to adhere to the best available practice that may be relevant to the company in its particular circumstances;</p> <p>The Code is seen as a “living document” that may require to be updated from time to time by the King Committee to ensure the currency of its recommended principles of corporate practices and conduct.</p> <p>Accountability: The Board is the focal point of the corporate governance system, and as such is ultimately accountable and responsible for the performance and affairs of the company ;</p> <p>It is the Board’s duty to present a balanced and understandable assessment of the company’s position in reporting to stakeholders;</p> <p>The quality of the</p>	<p>materiality, reserving specific power to itself and delegating other matters with the necessary written authority to management;</p> <p>The Board should have unrestricted access to all company information, records, documents and property;</p> <p>The Board should consider whether or not its size, diversity and demographics makes it effective;</p> <p>Every Board should have a charter setting out its responsibilities, which should be disclosed in its annual report;</p> <p>The Board must find the correct balance between conforming with governance constraints and performing in an entrepreneurial way;</p> <p>The Board should meet regularly, at least once a quarter if not more regularly as circumstances require.</p>	<p>individuals to oversee compliance to the ethical code;</p> <ul style="list-style-type: none"> Assessing the integrity of new appointees in the selection and promotion procedures; Exercising due care in delegating discretionary authority; Communicating with, and training, all employees regarding enterprise values, standards and compliance procedures; Providing, monitoring and auditing safe systems for reporting unethical or risky behaviour; Enforcing appropriate discipline with consistency; Responding to offences and preventing re-occurrence. <p>Public Trust: Every company should report at least annually</p>	<p>not be impaired in any way;</p> <p>Companies should aim for efficient audit processes using external auditors in combination with the internal audit function;</p> <p>The audit committee should consider whether or not an interim report should be subject to an independent review by the external auditor;</p> <p>In the case of an independent review, the audit committee’s report commenting on an interim report and the auditor’s review report, should be tabled at the Board meeting held to adopt the interim report;</p> <p>Companies should make every effort to ensure that information is distributed via a broad range of communication channels, including the internet, having regard for its security and integrity while bearing</p>		<p>fiduciary duties and responsibilities;</p> <p>New directors with no or limited Board experience should receive development and education to inform them of their duties, responsibilities, powers and potential liabilities.</p> <p>Remuneration: Levels of remuneration should be sufficient to attract, retain and motivate executives of the quality required by the Board;</p> <p>Companies should appoint a remuneration committee, or such other appropriate board committee, to make recommendations to the Board within agreed terms of reference on the company’s framework of executive remuneration and to determine specific remuneration packages for each of the executive</p>

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		information must be based on the principles of openness and substance over form; Reporting should address material matters of significant interest and concern to all stakeholders; Reports and communications must be made in the context that society now demands greater transparency and accountability from companies regarding their non-financial matters.		on the nature and extent of its social, transformation, ethical, safety, health and environmental management policies and practices	in mind the need that critical financial information reaches all shareowners simultaneously.		directors. Companies should provide full disclosure of director remuneration on an individual basis, giving details of earnings, share options, restraint payments and all other benefits; Performance-related elements of remuneration should constitute a substantial portion of the total remuneration package of executives; Companies should establish a formal and transparent procedure for developing a policy on executive and director remuneration.
Brazil							
Instituto Brasileiro de Governança Corporativa (IBGC): Code of Best Practice of Corporate Governance, 2004 www.ibgc.org.br	The main object of the Code is to provide guidelines to all kinds of companies – publicly or privately held corporations, limited liability companies, service providers and non-governmental organisations – with the purpose of: • Increasing	Self-Regulation: The Board is in charge of approving the company's Code of Conduct and its internal regulations; The activities of the Board should be laid down in its own internal regulations, so as to clarify its responsibilities and functions and prevent	Every organisation, whether publicly or privately owned, regardless of its type, should have a Board of Directors, elected by its owners; The Board of Directors should take into account other stakeholders, its corporate objectives and the company	Public Trust: The CEO and officers are accountable for a transparent relationship with stakeholders; The CEO should make pertinent information accessible to all parties concerned, as soon as available, in addition to information that is mandatory by	Every company Board should encourage the implementation of an Audit Committee to analyse the financial statements in detail, and support financial supervision and accountability; The Audit Committee should ensure that management adequately develops	Not covered.	The CEO is evaluated by the Board on an annual basis, and is in charge of evaluating officers and submitting results to the Board; Compensation should be established to create the appropriate incentives and to promote the long-term creation of values, not just with regard to

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	<p>company value;</p> <ul style="list-style-type: none"> Improving corporate performance; Facilitating access to capital at lower costs; Contributing to the long term survival of the company. <p>The expectation is that the Code will play an important educational role and lay the foundations of an effective application of good corporate governance in Brazil.</p>	<p>conflict of interest situations with the CEO and/or officers; The rules and regulations could include the following areas:</p> <ul style="list-style-type: none"> Scope of activities and objectives; Work rules; Rules for managing conflicts of interest Composition; Terms of office; Appointment of the chairperson; Voting system, including the role of the chairperson; The secretary to the Board; Meetings, notices, agendas, minutes and documentation. <p><i>Accountability:</i> The Annual Report is the most important and comprehensive source of company information and therefore should not be limited to legally-required data; The Annual Report should include all</p>	<p>sustainability;</p> <p>The Directors should always decide in the best interests of the organisation, regardless of the parties who elected them;</p> <p>The mission of the Board is to protect and add value to the company and maximise the return on investment;</p> <p>The Board should prevent conflict of interest situations and administer dissenting opinions, making sure that the company's interests always prevail;</p> <p>The main responsibilities of the Board include the determination of strategies, election and removal of the CEO, approval of the selection or removal of Officers proposed by the CEO, oversight of management, monitor company risks, and appointment and replacement of</p>	<p>law or regulation, with substance prevailing over form.</p> <p>Ethics: Every organisation should have its Code of Conduct to be followed by its entire administration and employees; The Code of Conduct should be prepared by management, in accordance with the principles and policies set forth and approved by the Board; The Code of Conduct should also establish the social and environmental duties of the organisation.</p>	<p>and adheres to sound internal controls;</p> <p>The Audit Committee should ensure that the Internal Audit Department satisfactorily fulfils its role and that the Independent auditors assess and review management and Internal Audit Department practices;</p> <p>The Annual Report should include the entire set of financial statements, along with the Independent Auditors' and Fiscal Council's opinions;</p> <p>Each of the Officers is personally answerable for his/her responsibilities within management and should account for them to the CEO, and, whenever required, to the Board, the owners, and other stakeholders, in the presence of the CEO;</p> <p>The CEO should make pertinent information accessible to all the parties concerned, as</p>		<p>management, but also other employees on all company levels;</p> <p>Organisations should have a formal and transparent procedure in place, in order to develop their compensation policy and establish the compensation package of their management</p>

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		aspects of business activities in a full year compared with previous years, except for those items that are justifiably confidential; The Annual Report should mention the corporate governance practices that are being adhered to or will shortly be implemented by the company	Independent Auditors; The composition of the Board should seek diversified board member experience, background and profiles.		soon as available, in addition to information that is mandatory by law or regulation, with substance prevailing over form		
United Kingdom							
The Combined Code on Corporate Governance	The Combined Code on Corporate Governance sets out standards of good practice in relation to issues such as board composition and development, remuneration, accountability and audit and relations with shareholders. All companies incorporated in the UK and listed on the Main Market of the London Stock Exchange are required under the Listing Rules to report on how they have	Self-regulation: The Code contains main and supporting principles and provisions; The Listing Rules (of the Financial Services Authority) require companies to make a disclosure statement in two parts in relation to the Code; In the first part of the statement, the company has to report on how it applies the principles in the Code; The form and content of this part of the statement are not	The Board should meet sufficiently regularly to discharge its duties effectively; There should be a formal schedule of matters specifically reserved for the Board's decision; The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the Board and which are to be delegated to management;		Management: The roles of chairman and chief executive should not be exercised by the same individual; The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the Board; The CEO is accountable to the Board and is in charge of implementing its directives;		

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	<p>applied the Combined Code in their annual report and accounts. Overseas companies listed on the Main Market are required to disclose the significant ways in which their corporate governance practices differ from those set out in the Code.</p> <p>The Combined Code contains broad principles and more specific provisions. Listed companies are required to report on how they have applied the main principles of the Code, and either to confirm that they have complied with the Code's provisions or - where they have not - to provide an explanation.</p>	<p>prescribed, the intention being that companies should have a free hand to explain their governance policies in the light of the Code principles;</p> <p>In the second part of the statement the company has either to confirm that it complies with the Code's provisions or – where it does not – to provide an explanation;</p> <p>This “comply or explain” has been in operation for fifteen years and provides flexibility in compliance for companies</p>	<p>The annual report should identify the chairman, the chief executive, the senior independent director and the chairmen and members of the nomination, audit and remuneration committees;</p> <p>The company should arrange appropriate insurance cover in respect of legal action against its directors.</p>				