

# NGO Law and Governance

A Resource Book

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## Preface

This book is primarily for the members, managers and volunteers of big and small NGOs who seek an understanding of the basic content of international and domestic laws and generally accepted governance principles affecting their civil society sector. Development practitioners and students of philanthropy and social change may also find it a useful introduction to the subject.

The breadth and detail of NGO laws and codes of conduct for good governance have been expanding around the world in recent years. Many scholars are now cataloguing these new national laws and others are engaged in regional comparative analyses. Similarly, international law and institutions are beginning to recognize the unique role that NGOs can play, particularly on development, inclusion and social responsibility issues.

This short volume tries to identify the core principles common to a majority of the legal and governance systems throughout the world and distill from them some practical guidance and tips for everyday experiences. These principles may help civil society and governments benchmark where they currently stand and point to what reforms or new laws could be put in place to improve their accountability, governance and transparency. Such improvements could possibly lead to greater efficiencies and trust.

The legal and governance principles described in this book should not be thought of as developed country precepts that all developing countries need to adopt to attain a harmonized standard. Rather they are more like converging ideas that seem to be working in other situations and could be worth considering if your NGO has the ability to implement them. Of course, implementation usually hinges on the level of resources available and the environment in which each NGO finds itself.

Chapters are also included on the increasingly important topics of public-private partnerships, media outreach and responsible advocacy, and business relations with international organizations. Because many NGOs lack access to expensive textbooks I have instead cited references for further reading to open access resources and samples freely available off the Internet.

Tokyo, October 2006

Grant B. Stillman

## Author's Note

This book offers general guidance on a *principled* and proactive (but never prescriptive) approach to the topics, and does not attempt to be a précis of the entire law affecting NGOs or their members in any particular country or region. The contents are not intended as a substitute for local legal advice, which should always be sought before taking any action based on the information provided.

While web resources from other countries have been sought to diversify the worldwide coverage, the selection is necessarily limited by the need for these materials to be in English, reasonably reliable and of interest to as wide a group of NGOs in different countries as possible. Relevant web resources are located at the end of each chapter. Citations of samples, model forms or precedents are for indicative purposes only and should not be considered as any endorsement of their contents.

At the back of the book, the web resources are indexed for easy reference. The practice tips are also gathered from throughout the book and reproduced in one convenient place as 100 Collected Practice Tips. Words found in *bold italics* throughout the book are defined in the Glossary.

# *1 The Basics for Getting Started*

## **A. Four main groups of NGOs**

1. Unincorporated associations
2. Trusts, charities and foundations
3. Companies not for profit
4. Entities formed under special NGO or NPO laws

## **B. Role of law in NGOs and why it matters**

## **C. Practical definitions for basic principles**

1. Governance
2. Transparency
3. Accountability

## **D. Main guaranteed rights under international law**

1. Freedom to associate
2. Right to establish a legally recognized association
3. Right to express unpopular opinions and challenge status quo
4. Rights to assemble and organize for purpose of promoting human rights and other fundamental freedoms
5. Right to participate collectively in public debate
6. Valid government restrictions over these freedoms

## **E. Types of enabling legal frameworks**

1. Making do with existing laws
2. Long-term nature of change of legal frameworks
3. Reasonable registration, over-regulation and under-reporting
4. Political and public policy activities and litigation
5. Insurance against NGOs injuring the general public

When starting up a non-government or non-profit organization, most everyone asks the same basic question: What is the best legal form for setting up our NGO? In some countries many options are available, while in others only one is really suitable.

The legal form of NGOs is diverse; it depends upon homegrown variations in each country's laws and practices. However, four main family groups of NGOs can be found worldwide:

1. *Unincorporated associations*
2. *Trusts, charities and foundations*
3. Companies not for profit
4. Entities formed or registered under special NGO or NPO laws

Usually a decision to create a legally formal entity—as opposed to an unincorporated group of individuals—indicates a greater sense of purpose to the NGO’s activities. This can be useful to convince governments, potential donors, international organizations and the general public of the seriousness of the NGO and its *mission*.

## A. Four main groups of NGOs

### 1. Unincorporated associations

This is the simplest and nonlegal form, where two or more individuals associate to pursue their non-commercial objectives. There are usually no legal formalities to complete, but sometimes the group may want to draw up an unofficial agreement to regulate their relations nevertheless.

Often there are good reasons why an NGO may not want to move beyond this informal stage. For instance, the members are concerned that they may come to the notice of an unsympathetic government, they are unsure about the staying power of their cause or membership, or a key individual wants to retain personal control.

#### Tips:

- Although this type of grouping is simple to get started, in practice it becomes complicated for a nonlegal association to enter into contracts of employment with its staff, open bank accounts, qualify for state grants, or lease premises. In such cases, it would have to rely upon its founding members to enter into contracts in their own name on behalf of the NGO. However, there are obviously legal and financial risks for *founders* to make such commitments and that is usually the reason another form becomes inevitable when the NGO reaches a certain size.
- With the ease of setting up worldwide web sites with sophisticated features, establishing a believable “cyber presence” online has become increasingly simple even though an NGO may actually lack a substantial membership or legal substance in reality.

### 2. Trusts, charities and foundations

The key principle here is that a *benefactor* using its money sets up a trust or foundation either during the benefactor’s lifetime or through a will for the benefit of either a charitable or nonprofit purpose or for specified *beneficiaries*.

However, a trust does not really have a separate *legal identity* as a company, nor does it have contractual relations among all the persons within it like a *partnership* would. This means that the rights of the beneficiaries are not strictly guaranteed under contract law, but usually arise through more general rules of equity and fairness.



The trust or foundation is managed by *trustees* (often professional managers) for the purposes specified by the settling benefactor. There are usually extensive *case* and *statutory* laws and practice covering the operations of such entities, whether they can campaign, and how they may invest their funds. The roles and duties of trustees are normally clear and responsible. Frequently jurisdictions may provide for a further subclassification between private foundations and those charities or societies supported by the public or for a public purpose.

### ☑ Tips:

- As registered charities, societies and foundations usually enjoy tax exemption privileges, they must abide by the form restrictions, charitable purposes definitions and reporting requirements. For instance, grant-making foundations may be required by law to give away a certain percentage of their assets each year to stay qualified for tax privileges. While it is sometimes possible to have a charitable, non-business trust for the dissemination of ideas (e.g., changing a law), NGOs and NPOs with advocacy and activist missions might find the trust form ultimately too restricting for them.
- For the sake of *transparency* the source of the original benefactor's funds could be mentioned in the public literature, web site or annual report, even if this disclosure is not required by law.

### 3. Companies not for profit

This common form derives from the classic formal, separate *legal personality* for an association usually engaged in a commercial venture. In this case, however, they are incorporated under a special chapter or section of the company statute that was set up to handle companies and corporations created for reasons other than making a profit. This is usually done by one or more adult persons holding an organizational meeting and filing a standard form *certificate of incorporation* with an appropriate government agency or publishing the charter in an official journal. Frequently the incorporators or a majority of the board directors have to be nationals or residents of the jurisdiction where the nonprofit is being set up.

Most countries' companies and corporate laws have provisions for this special form of company, although the name and characteristics differ in each main jurisdiction and legal tradition. (In Japan alone there are nearly 200 types of separate companies set up under specialized laws, e.g., social welfare corporation, specified nonprofit corporation, and public interest corporation.)

Of course, the essence of being nonprofit means that any surplus income received by a nonprofit corporation should not be distributed to its members, board or owners, but would usually be put back into the funding of the NPO's mission and programs.

With a separate legal personality from the persons who manage them, NPOs can easily sign contracts, hire staff, sue and be sued, own things, open bank accounts, get insurance, qualify to receive government grants, and face criminal prosecution in their own names. In this form they are more easily recognizable to other companies, legal entities and the government, especially for contractual and funding purposes.

**☑ Tips:**

- There is a wide body of legal knowledge and tradition to draw upon for the key principles governing *not-for-profit company* NGOs. Many of the principles come from the operations of small to medium-sized enterprises.
- The key benefit for founders and members is that they are not ordinarily personally exposed to the debts and other liabilities incurred by the NGO, which now has a separate legal personality of its own. Responsibility for the NGO's debts and liabilities stops with the cash, property and other assets held by that NGO.

**4. Entities formed under special NGO or NPO laws**

Instead of relying upon other legal vehicles that may not be wholly suitable, this family of NGOs can take the benefit of a specific set of laws and regulations created for the sole purpose of establishing or registering NGOs under domestic law.

More countries in both the developing and developed world have been passing special NGO or NPO laws over the last two decades. They usually also set up a one-stop registration authority that covers the field of applicants in a consistent and predictable fashion without the need for discretionary permission from a separate supervisory ministry or regulator. Sometimes, however, the constitutional structure of a country necessitates a continuing role for subdivisions, such as provinces or prefectural and local governments.

There is disagreement as to whether compulsory registration regimes have a chilling effect on the wider development of civil society. While it is certainly advantageous that NGOs try to become formally established under law, this probably should not be done at the expense of allowing more organic and looser groupings, which are particularly useful in the case of organizing local communities or indigenous or other marginalized people.

**☑ Tips:**

- It should be an easy matter to get quickly registered or incorporated under a special NGO law at a centralized, one-stop agency—provided the domestic country is hospitable to NGOs in principle and acting in good faith.
- NGOs set up under specially crafted laws do not have to force their activities and reporting to fit into the provisions of other vehicles such as trusts and commercial companies.

## **B. Role of law in NGOs and why it matters**

Laws mandated by parliaments, courts or self-regulation, which encourages a voluntary *code of conduct*, guarantee minimum levels of responsible behavior, transparency and *accountability* by NGOs in consideration of being recognized, accepted and protected by society, the state and law. By agreeing to abide by these standards and practices, the NGOs and their members would not have to exist underground or act outside the law.

Yet even if an NGO is validly set up and is recognized within one country's jurisdiction, once it tries to move transnationally into other countries its existence may no longer be accepted unless it completes further registration or local formalities. Just like transnational corporations, there is still no universal requirement for each country to recognize the existence of another's NGO entities. Some moves have been made in this direction particularly in the case of Europe, but much more needs to be done to make it easier for validly established NGOs to extend their activities internationally.

Laws also aid in efficiency, reliability and predictability and generally make it easier for knowledgeable outsiders to understand how the group works, join it or participate in the *governance* of NGOs. Opaque, ad hoc or unpredictable procedures keep things difficult for outsiders to understand or influence. Finally, a legally constituted or registered NGO will sometimes more easily qualify to receive larger amounts of official financial support.

## **C. Practical definitions for basic principles**

Probably too many pages have already been written about ways to define these key terms. For our purposes, we will seek to understand them mainly in operation as we keep coming back to discuss these principles throughout the book.

### **1. Governance**

Simply put, governance can be thought of as the manner in which power is exercised by someone, some group or some entity in the management of things. We will be concerned mainly with how the chief executive or operating officers, boards and members exercise their respective powers within an NGO setting.

### **2. Transparency**

In the exercise of any management power, many experts believe it is advisable to be as candid as possible so as to let others outside see through the normal corporate layers and personal desires to keep secrets. Such an openness and willingness to share information flows about the workings and decision-making processes of an NGO with others, primarily outside agencies, media and general public, may aid in increasing confidence in its operations. Transparency also shows a willingness to let others test your ideas and question your assumptions and could inspire confidence

that there is nothing to hide in either the operations or financials. (Quite frankly in today's world it is hard to keep secrets. And when they do come into the open most people are not that interested in them after all!)

### 3. Accountability

The third side of this virtuous triangle of principles—accountability—expresses the idea of holding someone, some group or some entity responsible for the good and bad of its actions, outputs and results. This concept can be neutral in principle and need not be simplistically equated always with blame.

The key idea is to be answerable to a broad community of “*stakeholders*”—especially those most affected by an activity—and to be held responsible for actions and failures to live up to commitments on oneself that affect others. Of course, it is not always necessary to enforce this responsibility through formal legal liability and public notoriety can often be enough. But ultimately legal recourse puts the power of enforcement behind this principle, which is best entered into voluntarily.

### D. Main guaranteed rights under international law

In theory, most countries will say they try to respect those principles that are guaranteed under international law and will aim to honor some of them within their domestic jurisdictions. For our purposes, it is possible to describe a number of central guaranteed rights and freedoms important worldwide for the successful foundation and operation of most NGOs. These rights might be guaranteed through a combination of various international *conventions* (or *treaties*), countries' national *constitutions*, special laws and influential cases.

To be sure, it is always more realistic to have these freedoms recognized and implemented on the ground by each of the home countries in which NGOs operate, but the power of international law to influence domestic developments remains useful (e.g., as the US Supreme Court reminded us when it invalidated the *Guantanamo detainee tribunals*).

Not all of these rights can be said to have risen yet to the level of a fundamental freedom either in international law or within all or even a majority of various domestic legal systems. Usually a fundamental freedom is thought to be one that is deeply rooted in a country's history and traditions. Given the relatively brief history of NGOs, it is to be expected that considerable resistance will often be found to according them similar rights and recognition that more traditional actors in society already enjoy.

#### 1. Freedom to associate

The genesis for this fundamental freedom was the formulation in the *Universal Declaration of Human Rights* (1948):

“Everyone has the right to freedom of peaceful assembly and association.”

Since then, it has been copied by a number of other international conventions and constitutional bills of rights. Especially notable was the close tracking of the language in the *European Convention on Human Rights*, which has been consistently upheld by a number of groundbreaking cases on NGOs in the active European Court of Human Rights.

## **2. Right to establish a legally recognized association**

Most constitutions of nation states allow their citizens broad freedom to establish associations or groups that may be recognized under law. A few prescribe that only “public” associations or political parties may be set up to enjoy this freedom of association.

The real problem, however, occurs when qualifiers such as “according to law” or “for legitimate purposes” are further imposed by governments or courts on the broad constitutional freedoms. These requirements in effect allow governments to determine through their registration screening and regulation processes just what associations are for a legitimate public purpose and therefore legal under their own system. And some conservative jurisdictions still provide that only those associations that have been first approved by government may be legitimately established.

Nevertheless, the European human rights *case law* seems to be building a consensus that one of the most important parts of the *freedom to associate* is the right to be able to form a legal entity (i.e., an NGO) within a nation state legal system in order to act collectively on a matter of mutual interest.

## **3. Right to express unpopular opinions and challenge status quo**

There is a constant struggle between those who want to try to control or censor legitimate purposes of their citizens’ associations (often critical to the elite in power) and those advocating reasonable amounts of the right types of regulation, which should be acceptable for the good of all.

Some governments might regulate with broad discretions that often allow too much unfettered power to their executive branches to decide what are fair purposes or legitimate entities. Then it usually falls to domestic courts to rectify such an administrative imbalance in *executive fiat*.

Although there is some support in Europe for the principle of NGOs being able to express unpopular opinions or ideas that may challenge the status quo existing in a nation state, it seems clear that for a majority of countries, particularly in the developing world, this right has not yet been fully recognized. The more unpopular or controversial your cause and the more illiberal your government, the greater the chance your NGO could be harassed by authorities seeking to exercise social control.

#### **4. Rights to assemble and organize for purpose of promoting human rights and other fundamental freedoms**

In 1998, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provided:

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in NGOs, associations or groups;
- (c) To communicate with NGO or intergovernmental organizations” (Art. 5)

This language is more specific in its references to the recognized roles of NGOs, social organs and associations in promoting respect for human rights. It also refers to civil society organizing itself at both the national and international levels. The references to everyone having a right to participate in NGOs and to communicate with them are also noteworthy.

#### **5. Right to participate collectively in public debate**

The UN’s International Convention on Civil and Political Rights (1976) has been signed by at least 140 countries. It provides for:

“Right to take part in the conduct of public affairs, *directly* or through elected representatives” (emphasis added).

Notwithstanding what limits a domestic state might try to invoke, this language supports the international right of citizens to participate in civil society not only through the traditional means of electing politicians, but also by taking direct action themselves in NGOs. This right is also commonly known as freedom of speech.

#### **☑ Tips:**

- The right to organize to give voice to issues collectively is a core principle of NGOs. Many social commentators feel that the quality of public debate can only gain from every stakeholder having an opportunity to participate. Pluralism mitigates the dangers from only one power center dominating.
- Individuals acting alone often face disillusionment, and occasionally intimidation and danger in their efforts to effect real change. By having the international right to act collectively with others in a larger group or NGO they gain a degree of protection and have a greater chance of succeeding in their attempts to change things.
- Human rights NGOs or local community activists interested in indigenous people should realize the surprisingly effective public relations potential of filing

complaints or critical reports before various United Nations commissions. For instance, many sectors in Australia appear embarrassed about UN Human Rights Commission (now Council) reports on its treatment of aborigines (e.g., disproportionate deaths in custody problem) or trafficked persons, when this gets on to the international stage. The hope is that this continued embarrassment will eventually lead to sustained reforms being undertaken by the government and police.

## 6. Valid government restrictions over these freedoms

Based on a survey of international practice and comparative law, we can surmise that most courts will allow governments to interfere in NGOs' establishment and registration in the following limited circumstances, which are specifically prescribed by law in advance and should be proportionate in a democratic setting:

1. Protecting national security and territorial integrity (now probably extended to anti-terrorism);
2. Stopping NGOs or their leaders who preach violence;
3. Prevention of harm to morals and health; and
4. Prevention of general harm to the rights of others (including the use of some incendiary and offensive names, which are prohibited in certain countries with historical experience or politically correct traditions, usually related to anti-fascism).

### Tip:

- However, a thoughtful government should try to resist its instincts to stop the establishment of an NGO that might be promoting greater minority rights or a different form of government.

## E. Types of enabling legal frameworks

Legal frameworks work best if they protect, encourage and fairly regulate the NGO sector. If they do not, they probably need to be considered for reform.

Whatever legal regime is in place in the country hosting the NGO, it is preferable that it not be one that unreasonably restrains members' basic rights to associate and to establish themselves formally. If the regime is unreasonable it might be challengeable under international law principles we have seen. However, it may be difficult in practice to find any venue or court that will review a country's laws in such situations.

More problematic is where the legal or regulatory framework is not overtly unreasonable, but is subtly unfriendly to the interests or activities of NGOs. In fact even a number of developed and liberal countries fall into this category. In such cases, the best course of action could be lobbying for a friendlier environment or new specialized NGO laws designed to remedy this prejudice.

## 1. Making do with existing laws

NGOs and their members would do well to accept the reality of living within the existing systems and making do with laws originally designed for unincorporated associations, voluntary organizations, charities, foundations and trusts, churches, and nonprofit corporations. The benefit of making do is that founding members will readily find lawyers specializing in the vehicle they wish to use to obtain a formal legal personality; many of these lawyers will be willing to donate their services. In countries with a certain legal tradition, religious charities might even be able to set themselves up under a completely separate body of recognized church law (for instance, Catholic canon law).

Many specialized laws also exist for entities that do not lend themselves to NGO adaptation: e.g., trade unions, mutual or friendly societies, agricultural co-ops, sports, hobby and social clubs or traditional political parties. NGOs offering services in fields that are traditionally regulated by the state, such as health, education and other public services, will also have to abide by the usual licensing requirements and professional standards applicable to private sector operators.

### Tip:

- The hope for getting specialized NGO laws enacted is often slim as there is not a large constituency for NGOs unless Greens or other environmental parties are powerful in the legislature. The key point for such a law is that it allows for a simplified separate NGO or NPO status to be gained by easy unified filings or registration without too much discretion being vested in the reviewing officer. It would be preferable if there could be two varieties of registration: one for those with members and another for non-member entities.

## 2. Long-term nature of change of legal frameworks

Regardless of what laws are on the books or being contemplated, the most important factor for the day-to-day operations of NGOs is always how the host government implements those laws.

It is also important for members to appreciate the lag that often occurs between the start of their grass-roots activities and legislative catch-up and interest in their causes or those of NGOs in general.

Another complication can be the concerns of professional associations, e.g., doctors or lawyers, worried about the standard of competitive services being offered in their field by various NGOs and their volunteer members. Nevertheless, after the professional associations become more familiar with the activities of NGOs they frequently come to accept them and may even become allies in lobbying for legislative change.



### 3. Reasonable registration, over-regulation and under-reporting

By far the most difficult area in an NGO's bureaucratic relationship with its host government is the vexed question of what constitutes reasonable registration procedures. For instance, the perpetual existence of many large foundations without the need to revalidate their status is giving rise to proposals in the United States and United Kingdom for *limited term charitable licensing* that would have to be renewed following a review.

In many developing countries or those making the transition to a market economy there is a healthy and vibrant NGO community. However, often there are no mechanisms, or at best imperfect ones, for those NGOs to formally register their existence with the government.

Simple notification of the identity and existence of an NGO can serve many useful purposes. Most notable of these is that the government can create a database of registered NGOs, as was done in Bangladesh, that may become useful for outside sponsors wanting to know which NGOs they can associate with, or provide funding support to, for programs of mutual interest.

Often governments complain that too many NGOs fail to register their existence or once registered forget to delist themselves when they disband or cease operations.

More difficult is where the ostensible purpose of providing a portal, catalogue or database is used by the government to deny the establishment of those submitting registrations or to control them once they are made known to it. Unfortunately, we are starting to see more of these tensions in the registration processes run by some governments.

Another problem is where the government says it wants to clean up a messy and confusing situation in the civil society sector by announcing that all NGOs are automatically invalid unless and until they re-register with the government according to new criteria. Recent examples of extreme red tape have required re-registering NGOs to officially prove the deaths of their original founders or to supply detailed full-year programming in advance. Frequently this new criteria will effectively eliminate many of the first generation NGOs.

#### Tips:

- On balance a registration procedure hosted by a government is useful if it is mainly for recordkeeping or facilitating funding connections. When the government wants to try to use the registration process as a way of screening or vetting the NGO and its aims and programs, tensions invariably arise.
- If your NGO has been registered with the government, do try to remember to file a delisting notice when the NGO is wrapping up its existence.

#### 4. Political and public policy activities and litigation

In many countries, including developed ones, it is not at all uncommon for the government to not allow NGOs to engage in political party-type activities unless they have been properly registered as a formal political party. Sometimes this can cause difficulties, especially for environmental NGOs, which may harbor ambitions of eventually turning themselves into a green party or political movement.

It is also useful for NGOs that intend to regularly approach legislators to influence them to try to abide by any lobbying registration laws, which may be in force, although these can often be quite complicated.

The demarcation line between permitted activities that benefit the public and those of a regulated political nature will often be hard to draw in practice. Certainly, it will be much easier if the main purpose of an NGO is purely charitable or for unambiguous activities supporting the traditional fabric of a society (e.g., artistic and cultural). These decisions are usually better settled by impartial courts or administrative tribunals rather than the registering bureaucrats themselves, who frequently are more politically motivated than judges.

In many legal systems around the world it is very hard for NGOs to launch legal actions for public policy purposes in their own name. They often lack what is called “standing,” which is a formal, direct, legal interest in the case, that will need to be recognized by a court in any matter of general interest. Often representative plaintiffs, who may or may not be members of the NGO, will have to be found to launch a case individually or as part of a *class action* (group case where all the parties share roughly the same interests or one or two named persons act as representatives for the others).

#### Tip:

- NGOs involved in the legal defense of public rights need not spend too much of their own funds on legal representation in court cases. Many lawyers or university-supported institutes that are interested in these fields, particularly environmental protection and human rights, will be prepared to donate their services pro bono or on a fee declined basis.

#### 5. Insurance against NGOs injuring the general public

When an NGO conducts an activity or makes ancillary goods and sells them to the general public there is always the potential that members of the public can be harmed and will want to seek compensation from the NGO. If the NGO is incorporated, usually the liability for that harm will stop with the corporate entity and not flow on to the personal assets of the management or members. If the NGO is an unincorporated association and some of its members have substantial personal assets there is a risk that needs to be covered, which is usually done by taking out so-called *public liability insurance* if it is available. (Many jurisdictions have

eliminated an old rule that charities were granted immunity from liability for their negligence and wrongdoings.)

Public liability coverage is insurance to indemnify the NGO against any legal liability for personal injuries or damage to the property of third parties (that is, members of the general public who are not members of your NGO) as a result usually of some type of negligence occurring in connection with the NGO's activities or making or selling of any of their products and goods.

Sometimes an NGO may be able to find insurance products offered by the commercial sector that meet its needs and limited budget for the premiums. Other times no such policies may be offered commercially.

Generally charities and NGOs are exempt from being held liable for the intentional acts of their employees. This was based on the prevailing rule that a criminal act was exceptionally outside the normal realm of the employment relationship and the employer could not be expected to anticipate and guard against it. But in some jurisdictions this is starting to change and charitable NGOs, including schools and church groups, may face civil claims made by the victims of the criminal or negligent acts of their employees or volunteer staff. Most notably this has occurred in abuse cases of children in the care of schools, clubs and church groups. Insurance for such risks may also be worth considering if it is available on the market and at a reasonable cost.

**☑ Tip:**

- Here could be an opportunity for the government sector to supply a missing niche element not offered by the market. Governmental authorities might be able to offer a suitable scheme to their NGOs and citizens at an affordable cost. It is usual, however, for high-risk or sporting activities to be excluded from such schemes. Political demonstrations and rallies are also usually excluded from such government-run insurance policies.

## ✓ Open Access Resources

### **World Legal Information Institute**

Free, independent and non-profit access to worldwide laws, including full texts of human rights treaties and conventions

<http://www.worldlii.org/catalog/2670.html>

### **Human Rights Treaties at the University of Minnesota**

Full-text library of over 200 international human rights treaties and conventions

<http://www1.umn.edu/humanrts/>

### **Council of Europe's Official Treaty Web Site**

Texts of European treaties in html and Word formats, including explanatory reports

<http://conventions.coe.int/Default.asp>

### **Federation of European Employers' Int'l Treaty Extracts**

Relevant sections from key UN and Council of Europe treaties and conventions

<http://www.fedee.com/treatcon2.html>

### **The International Center for Not-for-Profit Law's Online Library and Knowledge Center**

Searchable directory of research, including country laws, major cases, general legal documents, reports and legal opinions

<http://www.icnl.org/knowledge/index.htm>

### **Pakistan Center for Philanthropy Download Library**

Extensive full-text laws and rules, sample policies, studies and a directory of certified NGOs from a developing country perspective

<http://www.pcp.org.pk/download.html#directory>

### **One World Trust Global Accountability Index**

Independent assessment of the transparency, participation, evaluation, complaint and response mechanisms of 30 of the world's most powerful organizations, including big NGOs

[http://www.oneworldtrust.org/?display=index\\_2006](http://www.oneworldtrust.org/?display=index_2006)

**Center for Development of Non-Profit Sector (Serbia)**

Forum of Yugoslav NGOs' model law on NGOs (in English)

[http://www.crnps.org.yu/xdoc/pr\\_regulativa\\_en.html](http://www.crnps.org.yu/xdoc/pr_regulativa_en.html)

**European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (No. 124 of 1986)**

Full text of first treaty to facilitate the mutual recognition of the legal status of NGOs operating transnationally

[http://www.coe.int/t/e/ngo/public/convention\\_124/text\\_of\\_convention\\_124/text\\_of\\_Convention\\_124.asp#TopOfPage](http://www.coe.int/t/e/ngo/public/convention_124/text_of_convention_124/text_of_Convention_124.asp#TopOfPage)

**Community Insurance FAQ Website (Australia)**

Insuring not-for-profit community organizations, developed by the Municipal Association of Victoria

<http://www.communityinsurance.com.au/questions/>



## 2 *Achieving Good Governance and Sound Operations*

- A. Establishment and registration of an NGO**
  - 1. Locale of operations
  - 2. Basic framework decisions
  - 3. Minimum requirements in governing and constitutive documents
- B. Management and operations**
  - 1. Fiduciary duties and internal reporting, controlling and approving procedures
  - 2. General note on bookkeeping, record-keeping, reporting, accounting and auditing
  - 3. Recognizing when confidentiality and secrecy are appropriate
- C. Dissolution of an NGO and winding-up operations**
- D. Special US laws prohibiting retaliation against whistleblowers and the destruction of records**

### **A. Establishment and registration of an NGO**

#### **1. Locale of operations**

In this day of global consciousness it is increasingly easy to find groups with shared interests spanning many geographical locations and crossing international boundaries. Obviously an important issue will be where the NGO sets up its home operations and legal base.

Generally this is resolved by determining the locus of main operations and other housekeeping or historical considerations (such as residence of founders or country where most activities take place). Nevertheless, it is not unknown for an NGO with far-flung operations to legally establish itself in one jurisdiction that is traditionally hospitable, such as Belgium, but have a separate secretariat in another country closer to its operations or funding sources.

#### **Tip:**

- However, it is also possible to have a more inclusive networking arrangement bonded together by an umbrella association with local chapters set up in diverse jurisdictions and even as different legal types. Plan International with its national chapters is a prime example of such a structure.

#### **2. Basic framework decisions**

Generalizing, the most common framework for an NGO would be as a not-for-profit and a *public benefit* type.

Most medium to large NGOs eventually legally register or incorporate as a legal person (compared with staying as an unincorporated association, e.g., like a sports

club). Occasionally big NGOs might try to configure themselves as various units, each with a different purpose and legal status either within the same country or in different jurisdictions (for instance, as a nonprofit organization affiliated to a profit-making entity).

Practice is mixed on whether an NGO's board or staff should be compensated, reimbursed for expenses, or be prohibited from competing for contracts and benefits with NGOs. It is thought by some that such prohibitions probably enhance the independence and reputation of an NGO.

**Tip:**

- Whatever is decided on the question of compensation or benefits, the key will always be moderation and balance between public expectations of what is appropriate for a primarily voluntary sector and the practical concerns of being able to obtain qualified staff to execute competently the NGO's mission and work program.

### 3. Minimum requirements in governing and constitutive documents

*Constitutive documents*, which are sometimes known as charters or memoranda of association, are the legally operative documents that when accepted by an appropriate agency, court, or ministry, will establish the NGO and define its rights, duties and powers, and set out how it governs itself, among other things. Sometimes the government might fix a deadline within which these documents should be filed with the appropriate agency or published in a journal with broad circulation.

Whether the legal form be an association, foundation or specially registered NGO, usually the governing or constitutive documents will formally provide that all the members meeting in a general assembly have the ultimate authority to manage. This is similar to the supreme power of shareholders at an annual meeting to vote out the managing board or wind up a company's operation.

In a number of jurisdictions, it can be optional whether or not you establish a *governing body* or a *board of directors or trustees* to handle day-to-day operations and finances. However, frequently they are present and can often play an important oversight function over the *chief operating or managing officers* in between general meetings of members.

If a board is set up, it is advisable to have a minimum of 5 voting members who are able to act independently of the managers and are not seen as formally associated with them. This number is usually considered the minimum to encourage adequate *internal governance* and *outside oversight*.

Once the board is established, the constitutive documents should probably specify what decisions lie with them or must be taken to the full membership for consideration. Major decisions relating to changes to the NGO's core mission or strategic



directions are usually reserved for general meetings of members. Adoption of specific policy positions and collaboration with partner organizations might be safely left to the board, but reviewable at the next general meeting.

Basic and simplified principles of the *fiduciary duty* of officers owed to NGOs could also be written into these documents if they are not so well developed in local laws. Essentially these ethical principles of trust are borrowed mainly from corporate fiduciary duties, such as those regulating no *self-dealing*, *conflicts of interest*, and always acting in the best interests of the NGO and not yourself. In many jurisdictions there is a particular sensitivity that the assets or earnings of an NGO should not be diverted to benefit personally the members, officers, staff or their families in any way.

Just what constitutes a conflict of interest for a board member or officer is often difficult to decide even for the experts. The safest rule is always to disclose whatever personal or family interest you may have in a transaction and then excuse yourself from the board consideration of that matter. If the board ultimately decides to approve the transaction because it is in the best interests of the NGO, your involvement could not be seen as a decisive factor as you did not speak in support or vote for it during the agenda item.

Board member misconduct could also include *improper personal profit* from the position, *venality*, *breach of trust* and even serious *moral turpitude* in certain situations.

Misbehaving or unqualified directors should be easily removable by the vote of the full membership. Some jurisdictions also have legislation on the books to disqualify incompetent (usually corporate-for-profit) directors.

#### **Tips:**

- Decision-making should almost always be subjected to a crosscheck by others (n.b. this is not second-guessing though, which is usually counterproductive). *Crosschecking* is often achieved by a group vetting in committees or through regular reporting and disclosure of matters arising and the way they were (or are proposed to be) solved. In this way we can make it more likely that the best decision is taken—that is, what is done is in the best interests of the NGO and all its members, and not one individual member or decision maker.
- Generally, when something does not seem quite right, avoid the temptation to give the benefit of the doubt to your colleagues. Maintain a healthy skepticism and question things. Always look beyond the form and surface (which often exploit loopholes to seem compliant) and try to find out the substance of the matter and determine whether it has a valid business purpose for the benefit of the NGO. At worst you could clarify something that is not thought through sufficiently and avoid a costly mistake or mess. At best you could uncover or head

off a serious ethical lapse that might affect the reputation and future prospects of the NGO.

## **B. Management and operations**

### **1. Fiduciary duties and internal reporting, controlling and approving procedures**

Apart from the main board, depending on the complexity of operations, it is often worthwhile to have a *management or advisory board*, with terms, which should be obliged to attend meetings (i.e., face to face at least twice a year).

The chief executive functions may be exercised through a traditional president or managing director post or sometimes with a more inclusive and cooperatively styled “coordinator.” The name of the job is less important than the functions to be performed.

In order to maintain a minimum office presence, and if the salaries can be afforded, a minimum of two paid staff would usually suffice. It is assumed that they would often be supported by part-time and volunteer members.

As the operations of NGOs are key to their existence and success, it is helpful to have written guidelines on the cycle and steps for conceiving and approving of new activities. This can be debated at general meetings to determine how inclusive and consultative they need to be.

Worth mentioning at this juncture is the merit of having clearly written statements of policies, practices and procedures. Generally, written statements get everyone on notice and help to organize ideas logically and efficiently. As they are developed and then issued they can be conveniently collected in a manual of office guidelines and procedures for that NGO. Many well-written and free policies and guidelines are also available on the Internet and are mentioned in the Open Access Resources to this chapter.

Policy and practice statements generally govern the roles and respective responsibilities of the board and the CEO, including prohibiting conflicts of interest, *commingling of funds*, *special-favor deals* and rules on the process of decision-making and delegations of authority, including signing and commitment powers, and the running of meetings. An excellent source in the public domain for both general principles and details of the running of meetings can be found in *Robert’s Rules of Order*.

The board needs to ensure that it enforces its right to timely and full access of all relevant information in order to help its decision-making and oversight functions. To encourage frank and diligent review of all matters, board directors could also consider meeting privately with each other without the presence of the NGO’s management or senior officers.

Traditionally a board or a subcommittee searches and selects the CEO and reviews her performance and salary regularly. Although it is often a sensitive topic, the board ought to raise the question of formulating a workable succession strategy for a long-serving founder or CEO to avoid disruptions in case of the sudden loss of such a key management figure.

Constitutive documents usually need to specify a transparent process to nominate and elect the board and officials. Board members, if possible, should be representative of the membership, diverse and bring a mix of personal skills, including diligence and integrity. At least a couple need to be financially literate, although prior management or board experience is often hard to find in NGOs.

The board can delegate certain functions to its own subcommittees, unless they are prohibited from doing so in the constitutive documents. Minutes of any subcommittee meetings could be circulated to the full board.

The CEO or coordinator takes responsibility for putting in place sound management practices, many of which can be simply borrowed from corporate or charitable precedents.

Very large NGOs handling significant sums of money (revenues in excess of US\$2 million for instance) might benefit from copying some of the more sophisticated control, oversight, disclosure and auditing procedures suggested by the US federal *Sarbanes-Oxley (SOX) Act* of 2002, or similar principles found in other jurisdictions. For instance, large US foundations are moving to embrace the same SOX suggestions for independent directors on their boards and specially qualified audit subcommittees.

Similarly, mechanisms for encouraging *whistleblowers* and protecting them after they come forward with allegations of waste, fraud or mismanagement might help in NGOs that find themselves dominated by entrenched founding members. The United States embraces SOX mechanisms that guarantee the anonymity of whistleblowers (e.g., untraced hotlines and blind web pages), but other jurisdictions, particularly the European Union or civil law countries, are wary of unsourced denunciations and suggest complainers should identify themselves.

#### **Tips:**

The key elements of a sound *control system* over legal and financial commitments are:

- Serious control environment, as set from the top down
- Appropriate procedures for your size (i.e., segregating duties so one person cannot easily abscond with the money, proper written authorizations in advance of being incurred, physical controls or who keeps the keys to the safe, independent check by another or “*four-eyes*” principle)

- Setting up good information, communication and monitoring systems to share information with a wider group (e.g., summaries of board decisions could even be posted on the web site)
- Firm written policies against tolerating bribery, inappropriate gifts or other forms of corruption by staff or other persons representing the NGO or its partners
- Documenting as much as the NGO can within the limits of its human and financial resources, at least trying to keep hard copy records and retain receipts
- It is a very good idea for the board (trustees too) to regularly review and approve the compensation of the CEO or other senior financial officers. The litmus test is usually whether the proposed salary is just and reasonable in light of market conditions, expectations and her performance record. But determining just what the right market is for civil society executives can often be difficult.

## **2. General note on bookkeeping, record-keeping, reporting, accounting and auditing**

All new undertakings, including NGOs, will benefit from establishing an operations record for a sustained time period, say two or three years, to demonstrate their track record in seriously implementing project activities.

It is prudent practice to retain accounting and auditing records for at least 7 years or the rule applicable in your jurisdiction.

The board and CEO must be committed to maintaining proper accounting and financial control systems for the size of the NGO and its scale of operations. At a minimum any system must be able to record expenditures and liquidate funds and be able to report this to its membership and potential donors with the requisite levels of detail. This is most commonly done using basic financial books or computer programs for a ledger, and a cash receipts and disbursements record.

Equally important is the tracking of expenditures or contributions from the NGO and its staff to its projects. This includes using its own financial resources or in-kind, such as staff or volunteer time.

There is merit in also being able to track the amount of *overhead* or *administrative expenses* incurred because traditionally there has been some reluctance to fund these components by governments, international organizations and some other donors. Also, do not mix up construction costs, office renovations or other capital purchase expenses because they are often not allowed to be funded by donors.

Each project or program should routinely have an implementation plan, timetable, expected outputs and a detailed project budget. It is important to ensure that financial and implementation assumptions are realistic and that future sources of funds for a project are accurately anticipated or planned for.

The free availability of accounts to the public, even though it may not be legally

required (and in most countries it is not), is still worth considering. For instance if it is not too much of an administrative burden, perhaps posting it on the web or providing copies to members of the public (including interested media) on a request basis could be tried. All of this goes a long way to inspiring confidence from potential donors and sources of support.

If required by your jurisdiction and depending on the form and size of the NGO a separate **audit committee** may have to be set up. The specific requirements of the jurisdiction as to the qualifications and eligibility of members on this committee need to be strictly adhered to. It is usually not a good idea to allow staff members, especially the CEO or treasurer, to sit on this committee, which is charged with reviewing and deciding whether to accept the reports of independent qualified auditors.

Auditing accounting firms, frequently certified as qualified auditors, will usually have their own professional standards and generally accepted industry practices to follow when they are reviewing the financial records of an NGO. In many developing countries, though, certified auditors are few and generally expensive. The removal of an auditor is a sensitive matter and it should be handled prudently and certainly not in a way to give rise to speculation that the board was irritated by the auditor's diligence in prying into their affairs.

#### **Tips:**

- For very small NGOs with little money flows, simple accounting on a receipts and payments basis alone may suffice (i.e., no need to adopt the more sophisticated accrual basis).
- Even a small NGO will benefit from having an extra pair of eyes check over some accounting transactions or payments. Be warned, the filing of false or multiple expense claims is rampant in the corporate world and unfortunately is becoming equally common in NGOs. So instituting two-person checks and balances is always prudent, even from the earliest days of operation. Although it frequently happens, it is not a wise idea to have the same person occupy the jobs of making disbursements, keeping the books and holding the cash or bank accounts. If one unscrupulous member is able to abuse a position of trust to embezzle funds, that can have a particularly devastating effect upon small NGOs, which are cash-short to start with.
- Commingling of funds belonging to an NGO and its founders are commonplace and dangerous when sloppy bookkeeping is practiced. It is usually a very bad idea for an NGO to consider making personal loans, advances or so-called "success payments" to any of its members or executives. If senior management of an NGO starts talking about such matters, the other members need to be extremely wary and should seek outside advice.

- Avoid the temptation to compromise on what seem like minor or unimportant decisions at the time. The road to serious governance meltdowns and major fraud often starts with condoning minor indiscretions on the basis they are small-scale and in themselves would not harm the NGO or can be rationalized on their particular facts. In fact, each time they are tolerated they accumulate and foster a more accommodating culture that invariably leads you to more serious risk.

### 3. Recognizing when confidentiality and secrecy are appropriate

Notwithstanding all these appeals to openness, there can sometimes be very important occasions when confidentiality and secrecy are needed. NGO boards, management and senior officers should recognize the situations in which confidentiality is preferred. Some of the most common situations are listed in the box below.

#### **Some Situations Require Confidentiality**

- Personnel matters in general, particularly medical and disciplinary reports or people's fees or salary
- When preparing sealed bids for a competition of the award of a contract
- Internal investigations, unless some parts of it are discussed in the media
- Background checks on the employment history or character of job candidates, including volunteers, especially when they might be working with children, the elderly or other vulnerable groups
- Communications with the NGO's legal advisers or any kind of settlement talks or negotiations with parties in a dispute

#### **Tip:**

- On the other hand, sometimes there could be very good reasons to disclose the salaries and short bios of the top 5 paid officers to convince outsiders that an NGO or NPO's money is being well spent. Occasionally a jurisdiction's law might require such disclosure especially for not-for-profit companies or very large foundations.

### C. Dissolution of an NGO and winding-up operations

Depending upon the legal form of the entity various levels of formality pertain upon the *dissolution of an NGO*. For unincorporated associations, it may be as simple as deciding who gets to keep whatever assets are left over after final settlement of accounts or whether those remaining assets should be donated to another similar purpose. Non-profit corporations or foundations are much more complex and numerous formal filings are usually required at the appropriate government registry or courts.

Often developing or transition countries forget about this area of the law and allow too much administrative discretion to fill the gap. A lack of laws or accepted practices regulating what happens to the assets of dissolved NGOs may allow unscrupulous bureaucrats or founders to profit personally.

Dissolution or winding-up may be instigated voluntarily by the members voting according to their charter or involuntarily by the unpaid creditors or the government. Government-ordered wind-ups are usually justifiable in situations where the NGO seriously violates the terms of its registration, improperly uses its funds, or is unable to pay its debts or tax obligations.

#### **Tips:**

- Be careful not to give any preferential treatment or priority payments to certain favored suppliers, creditors, related parties or insiders if the NGO is starting to experience difficulties in meeting its debts as they become due. Such favored parties would get an unfair preferential payment at the expense of the general creditors, who would have to wait in line and share what is left (if anything).
- If there is sufficient warning and funds left over, the winding-up of an NGO can be properly managed by the existing members in a way so as to ease down ongoing projects and activities without an abrupt halt to the detriment of the beneficiaries who may be relying upon those programs. However, avoid incurring any new expenditures to third parties that the NGO may be unable to pay. Arrangements to transfer successful program responsibilities to other NGOs or government agencies could also be investigated.

#### **D. Special US laws prohibiting retaliation against whistleblowers and the destruction of records**

All NGOs in the United States need to be aware that two special provisions of the Sarbanes-Oxley Act of 2002 relating to whistleblower protection and destruction or tampering with documents have been made applicable to nonprofit companies as well.

It is a crime punishable by imprisonment to retaliate against a volunteer or employee who reports in good faith a suspected fraud or illegal activity. Retaliation would include situations of firing, demotion and suspension, and it might even be said to occur if you moved the person to a less desirable job. Usually that person would also be able to bring their own *civil action* for damages against the NGO if it had assets.

Similarly, NGOs and their staff should not try to obstruct or influence any investigation by knowingly altering, covering up, destroying or falsifying records that might be used in the investigation. Documents and records are interpreted broadly here to include electronic files, e-mails and voicemail. Criminal penalties for US NGOs could be substantial fines or imprisonment for as much as 20 years.

## ✓ Open Access Resources

### **Idealist.org's The Nonprofit FAQs Page**

Encyclopedic collection of articles with further links covering all major fields of information for and about NGOs

<http://www.idealist.org/if/idealist/en/FAQ/Nonprofit/Home/default?sid=78287715-190-IEO>

### **Constitutions of the World Online**

Constitution Finder and Database for Nations of the World

<http://confinder.richmond.edu/>

### **Nonprofit Integrity Act of 2004 (California)**

Summary of Key Provisions prepared by California Registry of Charitable Trusts

[http://www.ag.ca.gov/charities/publications/nonprofit\\_integrity\\_act\\_summary\\_oct04.pdf](http://www.ag.ca.gov/charities/publications/nonprofit_integrity_act_summary_oct04.pdf)

### **Survey of NGO Legislation in Countries of the Baltic Sea (Also covers Germany, Poland, Russia and Nordic Countries)**

[http://www.nisc.lt/doc/Report\\_NGO\\_legislation\\_in\\_the\\_Baltic\\_Sea\\_Region.pdf](http://www.nisc.lt/doc/Report_NGO_legislation_in_the_Baltic_Sea_Region.pdf)

### **BRAC (Bangladesh)**

Memorandum of Association for a charitable and welfare society under the Societies Registration Act (Bangladesh)

[http://www.brac.net/about\\_files/BRAC\\_memorandum.doc](http://www.brac.net/about_files/BRAC_memorandum.doc)

### **National Federation of the Disabled—Nepal**

Constitution, as amended, of a nonprofit federation under the Organization Registration Act (Nepal)

[http://www.nfdn.org.np/constitution\\_of\\_nfdn.htm](http://www.nfdn.org.np/constitution_of_nfdn.htm)

### **Northern Ireland Council for Voluntary Action**

Model memorandum and articles for a charitable company (UK)

[http://www.nicva.org/uploads/docs/r\\_RP\\_Appendix.pdf](http://www.nicva.org/uploads/docs/r_RP_Appendix.pdf)



### **Oneworld International Foundation (UK)**

Memorandum and Articles of Association of a Company Limited by Guarantee (Html)

<http://www.oneworld.net/article/view/57707/1/>

### **Robert's Rules of Order (Procedure) Revised (public domain original version)**

Copyright on the original version has expired and so this online version is now in public domain; however, the enhancements to this work are only available through purchase

<http://www.constitution.org/rror/rror--00.htm>

### **Australian Stock Exchange**

Principles of Good Corporate Governance and Best Practice Recommendations

<http://www.shareholder.com/visitors/dynamicdoc/document.cfm?documentid=364&companyid=ASX>

### **Ernst & Young's Governance Toolkits for Directors**

Portal to free tools and publications for directors (primarily corporate) on their obligations, and frameworks for effective corporate governance

[http://www.ey.com/global/content.nsf/Australia/AABS\\_-\\_Corporate\\_Governance\\_-\\_Toolkits\\_Surveys\\_and\\_Resources](http://www.ey.com/global/content.nsf/Australia/AABS_-_Corporate_Governance_-_Toolkits_Surveys_and_Resources)

### **Personal Liabilities of a Company Director**

UK law firm's overview description of duties and liabilities

[http://www.elbornes.com/articles/commercial/com\\_0004.htm](http://www.elbornes.com/articles/commercial/com_0004.htm)

### **Thomson/CCBN's White Paper on Best Practices in Online Corporate Governance Disclosure**

[http://www.ccbn.com/\\_pdfs/whitepapers/corp\\_gov.pdf](http://www.ccbn.com/_pdfs/whitepapers/corp_gov.pdf)

### **Good Bookkeeping and Simple Accounting Rules**

[http://www.startups.co.uk/Goodandnbsp\\_bookkeeping.YWMcmN1oh1OB9g.html](http://www.startups.co.uk/Goodandnbsp_bookkeeping.YWMcmN1oh1OB9g.html)

### **Carter McNamara's Basic Guide to Non-Profit Financial Management**

[http://www.managementhelp.org/finance/np\\_fnce/np\\_fnce.htm](http://www.managementhelp.org/finance/np_fnce/np_fnce.htm)

### **United Way of Minneapolis Checklist of NPO Organizational Indicators**

Detailed internal evaluation tools for governance, planning and compliance

[http://www.managementhelp.org/org\\_eval/uw\\_list.htm](http://www.managementhelp.org/org_eval/uw_list.htm)

### **The American Institute of Certified Public Accountants**

Summary text version of main sections of Sarbanes-Oxley Act of 2002 (more formally the *Public Company Accounting Reform and Investor Protection Act of 2002*)

<http://cpcf.aicpa.org/Resources/Sarbanes+Oxley/Summary+of+the+Provisions+of+the+Sarbanes-Oxley+Act+of+2002.htm>

### **Orrick, Herrington & Sutcliffe LLP (corporate law update)**

Executive summary and analysis of Sarbanes-Oxley, including sections on disclosure, governance, accountability & independence, whistleblower protection and document preservation

<http://www.orrick.com/fileupload/144.pdf>

### **BRAC (Bangladesh)**

Sample independent auditor's report for 2005

[http://www.brac.net/downloads\\_files/Audit\\_Report\\_2005.pdf](http://www.brac.net/downloads_files/Audit_Report_2005.pdf)

### **Open Society Institute/ ICNL's Guidelines for Laws Affecting Civic Organizations**

Revised & enlarged 2004 edition prepared by L. Irish, K. Simon and R. Kushen

<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016333.pdf>

### 3 *Best of the Codes of Conduct*

- A. **Purpose behind codes of NGO conduct and guidelines of good policy, practices and standards**
- B. **Voluntary and self-regulation**
- C. **Appeals to the public for funds**
  - 1. Technicalities and strategies
  - 2. Basic principles of regulation, monitoring and reporting of fundraising
- D. **Unethical or exploitative advertising**
- E. **Aiming for higher standards in internal governance, openness and inclusiveness**

#### **A. Purpose behind codes of NGO conduct and guidelines of good policy, practices and standards**

An NGO will be judged on its public and internal conduct and activities. How others perceive it will impact on the public's attitude to and support of the sector and level of trust and acceptance in general.

Sloppy, casual or overly aggressive practices will frequently backfire on an NGO's success. Bad ethics and corrupt practices will set back the progress of an NGO just as much as they would a company or a country. The unethical operator usually finds itself in the position of trying to catch up to its peers.

Codes are embodiments of better practices that promise more than the minimum standards set by law. They have the added benefit of creating a voluntary air to bind yourself rather having to do something by the threat of law. Self-written codes are often introduced by groups of NGOs as a way of preempting possible heavy-handed regulation by the government.

They can also operate as a kind of "seal of good housekeeping" or a self-certification to show you are abiding by higher than usual standards of practice. Such a certification by a third party can be particularly useful because it is often recognized by tax authorities as one of the requirements for obtaining *tax exemptions and privileges* for a well-run NGO.

Codes have been established for many specializations, e.g., from fundraising executives and public affairs professionals to humanitarian accountability standards, and most are freely available on the Worldwide Web. Many examples are given in the Open Access Resources for this chapter.

Once the appropriate codes are adopted and publicized on the NGO's web site, management needs to implement effective ways to ensure they are followed, which

is not easy with many part-time and volunteer staff. Such systems and measures may include induction and periodic training of staff, office handbooks, prominent posting in common rooms and on the intranet, circulating the codes and, if felt necessary, even getting the staff to sign that they have read, understood and will abide by them.

Those NGOs that have promised to follow such codes but fall short often face opprobrium or penalties from their peers and, in severe or persistent instances, perhaps even the withdrawal of their permission to practice. Codes and guidelines are usually cheaper to enforce than more formal legal rules, which require traditional enforcement and judgment machinery to back them up.

If an industry or sector does not adequately handle these types of issues itself, eventually the government will step in and cover the field, often without seeking the views and preferences of those being regulated. This is what happened in the case of US public companies after the large-scale financial scandals of the early 2000s. For instance, the Sarbanes-Oxley Act of 2002 requires every US publicly traded company (this is not yet expanded to NGOs) to establish its own code of conduct for officers and directors. And the accounting profession's role in self-regulating its members has been taken away by the government and handed over to a new accounting oversight board. Similar reforms are being enacted in Europe, Asia and elsewhere.

#### **Tips:**

- It is in everyone's interest to try to prevent abuses, waste and fraud in the NGO sector.
- Codes of conduct (and writing down best practices, lessons learned or core office procedures) are also an excellent way of retaining the *institutional memory* in an NGO where there are many volunteers who roll over or move on.

### **B. Voluntary and self-regulation**

In the developed world, the trend today is strongly in favor of *self-regulation* in sophisticated markets, with some limited government back up and oversight. (The private sector is even experimenting with "self-policing," where it hires outside lawyers and auditors to come in and investigate its wrongdoing and then voluntarily reports its own breaches to government authorities in the hope of receiving leniency for being forthright and cooperative.)

The principle of self-regulation in fact is very good for NGOs as it minimizes opportunities for government to interfere or supervise, except in criminal or scandal situations. But voluntary must obviously mean no forced membership in a code by either the government regulators or laws.

Voluntary and self-regulation can operate at various levels, including within the

NGO, across the same business or types of NGOs or throughout a state or country (e.g., codes of Maryland and InterAction are very good examples).

An important distinction is between self-judging and self-certification versus outside vetting, auditing and even the hearing of complaints (e.g., official or self-appointed *watchdogs* or even on occasions the press—e.g., Better Business Bureau for Charitable Solicitation).

A notable example is InterAction—a US-based coalition of more than 160 private relief, international development and refugee assistance NGOs and agencies. The individual members of this network have voluntarily agreed to abide by a common set of standards to ensure accountability to donors, as well as their professional competence and the quality of service they deliver.

Also worth remembering can be the usefulness of oversight or service guarantees by professional standard bodies and licensing authorities.

It is in the interests of others in an industry to regulate, as it makes their work easier if sloppy or untrustworthy operators are removed from the public market in which they compete (e.g., maybe to the extent of even publicizing expulsions?).

#### **Tips:**

- As there are more than enough free accreditation organizations and umbrella NGOs, be wary of agencies that offer their certification services for commercial fees.
- Simple and easy to implement examples of self-restrictions that are often good for public reputation relate to setting modest standards of travel (certainly no chauffeur-driven cars or meetings in resorts) and limitations on accepting excessive gifts or hospitality that may look like they could sway judgment. This usefully avoids charges of hypocrisy and is convenient for outsiders to see; internal discussions about them help focus everyone on the need.
- Of course, occasionally accepting someone's courtesy of a free lunch is acceptable in situations where you are not in a position to reward them with a favorable decision (especially if money is not changing hands). The rest of the time even NGOs, particularly big ones from the developed world, need to be aware of this trap.
- Whatever you do, make sure unethical behavior of members or executive officers is never rewarded or encouraged by the management structures you have in place. Frequent reminders of what is considered your code of conduct, which labels inappropriate practices, will help all members come to appreciate what is acceptable behavior and what is not.

### C. Appeals to the public for funds

NGOs should have their own written fundraising policy to assure their institutional advancement and financial sustainability, but in a way that treats donors and funds received ethically.

Raising funds from among the target beneficiaries is also a potent way of proving to the wider community that the NGO can validly lay claim to represent the interests of those for which it purports to act.

#### 1. Technicalities and strategies

It would be particularly useful for NGOs to have an annual plan of action for raising funds. The box below provides some ideas of what such a plan could include.

#### Annual Fundraising Action Plan: Possible Items

1. Solicitation process, including analyzing why people would want to give to you, your NGO or your cause
2. Identification of, and prospecting for, possible sources of income
3. Diversity of respectable fundraising methods, including frequency and contents
4. Master list of donors and prospective donors (ongoing, cumulative and confidential) and evaluation of their interest
5. Placing value on cultivating personal networks and friendships, particularly of the board or most high-profile volunteers
6. Plan for training staff and volunteers to solicit properly, including how best to go door knocking, write *direct mailings*, make fundraising calls and respond to objections or questions
7. Credible explanation of how the money will be used

As recommended by most codes, NGOs should communicate with donors and prospective donors in a manner and by methods that are fair, truthful, voluntary, and do not involve undue pressure, misrepresentation or exploitation. Donors should always be thanked for their contributions and many might appreciate a recognition program that publicized their support, unless they indicate otherwise. Do recognize that donors sometimes give for reasons of long-term self-interest.

If a past donor asks to be taken off your mailing list for solicitations, you would do well to do so quickly and courteously. You may inform them that their name has been deleted from the list and politely ask the reasons to see if you might be able to remedy the problem or avoid it happening to other donors.

A variety of techniques could be considered, such as fundraising online, with the right approach being selected for each individual prospect. For example, a ***matching gift program*** for charitable giving might be worthwhile if a wealthy corporate sponsor is prepared to add its own funds to those raised by its employees or general fund drives.

The mechanics of how the money is collected, acknowledged and handled (e.g., credit cards over the Internet, post office “giro” payments) could be clearly explained and comfort given to the public that the procedures are as safe as they can be made within the market they operate and with resources available. If certification from money collection authorities can be obtained cheaply, then these seals of good practice can also give added comfort to potential donors.

Obviously a modest budget and allocation of some resources also needs to be established to run successfully any fundraising campaign. Even with the use of mainly volunteers, it is next to impossible to solicit money without spending in the process. Indeed, some of the largest NGOs can spend up to 30% of their budgets on fundraising.

**☑ Tip:**

- It is prudent to set up a deadline (usually no more than five working days) within which collected contributions should be properly deposited in the bank account for a solicitation campaign or passed over to the appropriate NGO receiving officer. This avoids unnecessary mistakes of donations getting lost or misappropriated by collectors or volunteers.

## **2. Basic principles of regulation, monitoring and reporting of fundraising**

Some countries require notifications, permissions or registrations in advance of soliciting funds from the general public, which is a valid public interest to regulate so long as it is not too intrusive or arbitrary. However, as fundraising is the lifeblood of most NGOs, it is probably best, in the absence of past major frauds, if public solicitation is lightly regulated. (In cases of expedited fundraising for the victims of disasters or emergencies any notice could just be given on the day the solicitation commences.)

Generally, criminal or fraud laws can adequately handle most cases of abuse of fundraising, at least in developed countries with sufficient law enforcement capabilities. Certainly unfair acts, deception, coercion or demanding money under false pretenses are already prohibited in most jurisdictions.

Where a jurisdiction has suffered from too many unregulated solicitations, special integrity and registration laws are often passed. You would need to check if your jurisdiction does this and get advice on how your NGO should comply before beginning a campaign or holding any fundraising event.

Nuisance (i.e., overeager in-person solicitations, junk letter writing or e-mailing, or persistent phone calling) is understandably harder to deal with, but regulation, registering, guidelines and codes, and proper training can help mitigate some of these problems.

Be careful of aggressively targeting sympathetic and well-meaning donors (often students) who may not have the financial means to contribute as they would wish. If they cannot afford to donate money, perhaps they could be encouraged to donate their time.

Always paramount should be accurate reporting or transparency of results, including the amount of funds raised, how much has been paid to fundraising staff or commercial collecting intermediaries (which sometimes include profit-making concerns) and how the funds have been used. Various philanthropy institutions make helpful recommendations on guidelines as to reasonable costs per dollar raised by using different fundraising techniques.

Fundraisers should be able to disclose any financial or descriptive materials that may be reasonably requested by a donor. Disclosable information on a fundraising campaign could include campaign timeframe, amount or percentage to be received by the NGO, whether the contributor list is made available to others or profit-making companies (which it usually shouldn't be), and campaign expenses directly incurred by organizers.

Keeping confidential records of the giving history of individual donors might be all right so long as the information is only disclosed to the NGO's management or chief fundraising organizers who need to know. Certainly it would be inappropriate to release it to third parties or the media.

However, it is usually best to accede to any requests from the police and tax authorities to inspect such records, unless the NGO gets legal advice that the request may be illegal or overreaching by the authorities and it is prepared to defend the matter even through legal proceedings. Refusing to cooperate with bona fide police or government investigations is usually a risky gamble for an NGO and its management.

Very occasionally an NGO may find itself in the difficult position of having to decline a donation if it comes from a source, or is of a size, that conflicts with the basic principles of the NGO or civil society norms. For instance, a corporate donation from one of the targets of an NGO's campaign could prove extremely embarrassing to both sides. In these situations preapproved written guidelines may make the process easier to manage without too many missteps.

While cash is most common, it is also acceptable for NGOs to receive donations in the form of goods or services. Records should be kept of the *gifts-in-kind*, including where they were utilized and what estimate was put on them for valuation pur-



poses. However, donated services, including the salary of sponsored staff, should not come with too many conditions, which might distort the programs and mission of the receiving NGO.

#### ☑ **Tips:**

- If you solicit for one reason, make sure you do not swap those funds to another worthy purpose, or at least have fine print (not too small) that allows this (e.g., remember the US Red Cross September 11 funds scandal where most thought the money they gave would be going directly to affected families, and not ancillary services). Even though you may have a legal right to make such a swap, be careful to listen to the media and public opinion and realize when it is wiser to back down to the giving public's view of the fairness of the situation.
- If there is a specific campaign for an appeal that requires a certain amount of donations, have a publicly announced contingency plan in place to deal with either a shortfall or excess in the collections.
- Limit tightly the costs run up in raising your funds and regularly test to see if the solicitation methods being used are really cost effective for the results achieved (i.e., the *fundraising ratio*). If they are not, it's time to think of a new, less expensive fundraising strategy. (Lavish dinner events are usually a bad idea as the media often criticizes the costs of the food or the speaker's fee as too extravagant for a charity.)
- If your NGO decides to use a commercial fundraiser make sure they are registered, abide by an ethical code of conduct and are prepared to sign a customary written contract with the NGO, dealing with the campaign's purpose, parties' obligations and fee structure, etc.
- Don't forget to apply for third party insurance to cover any liability that might befall members of the general public at your fundraiser event. Sometimes big events in public spaces will need advance clearance by the police and local authorities.
- Be guided by the 80-20 principle, which holds that 80 percent of an NGO's support usually comes from just 20 percent of its donor base.

#### **D. Unethical or exploitative advertising**

Related to fundraising approaches to the public is the general issue of how an NGO presents its public face. The key consideration should be to always use descriptive and accurate information, with enough detail to fairly convey the primary message.

This means there should be no material omissions, exaggerations of fact, misleading photographs, or any other practice that would tend to create a false impression or misunderstanding to outsiders and the general public. Avoid misrepresenting to others that your NGO has any endorsements, approvals or sponsorships it does not.

Areas of past concern have related to using famine photos from an earlier period or images of the wrong foster children.

Another related issue is that of *sharp practice*, such as the example of one charity buying ad time in another's telethon to mislead the pledging public. While cross-publicity between similarly-minded NGOs might be a good thing if agreed in advance, free-riding on another's hard-earned reputation and goodwill definitely is not. What is more, the general public may feel cheated if they cannot easily differentiate between the charity they thought they were originally supporting and the one engaging in sharp practice.

Advertising campaigns that focus too much on sensationalism and generating pity are tempting for their short-term gains but eventually backfire when the targeted public sees through the manipulation. A fine line lies between what is appropriate to engender compassion (or self-interested giving) versus what is merely exploitative.

Generally, recourse may also be had to advertising industry codes of conduct or complaints bodies (e.g., unfair advertising laws) in those jurisdictions where they exist.

### **E. Aiming for higher standards in internal governance, openness and inclusiveness**

Try to live pluralism, diversity and inclusiveness in your internal governance (and not just talk about it in your outside programs). Ways this might be done by your NGO include making public commitments to general principles of environmental friendliness, fair labor practices, inter-generational concerns, and gender and minority equality in terms of its own staffing and volunteers. Another way is by adopting formal office guidelines on such practical things as a diversity program, an anti-discrimination/harassment policy or an environmental management and waste recycling system.

Worldwide NGOs are already making steady progress in involving women and minorities in their decision-making roles. Similarly, many successful NGOs have made a point of targeting women and minorities as their prime beneficiaries (e.g., most notably Grameen Bank's focused lending to village women rather than their husbands).

More NGOs are also starting to include their donors and prospective beneficiaries as partners in the internal processes, such as strategic direction setting and project planning procedures. And stable NGOs are always accepting of new volunteers and open to those joining who can bring fresh ideas and expertise to the original team, even at the risk of upsetting comfortable past practices.

NGOs need to ensure that they do not become involved with partners or supporters who engage in unethical or illegal conduct. Given the frequent turnover in volunteers and difficulties in retaining an *institutional memory*, they might want to

consider keeping an internal list of those people with whom they have had trouble or concerns in the past to ensure that they are not representing or working for the NGO at a later date.

Generally, NGOs might want to strive for more democratic (rather than authoritarian) decision-making processes, which are oriented to ensuring the motivation and commitment of all staff, volunteers, partners and stakeholders.

**Tip:**

- A simple step to demonstrate inclusiveness could be to welcome general comments and criticisms from the public on an NGO's policies and programs through an open feedback page on its web site. Within staff resource limitations, appropriate enquiries could receive a reasonably prompt reply.

## ✓ Open Access Resources

### **Independent Sector Compendium of Standards, Codes & Principles**

<http://www.independentsector.org/issues/accountability/standards.html>

### **Philippine Council for NGO Certification's Primer & Steps**

<http://www.pcnc.com.ph/>

### **International Non Governmental Organisations' Accountability Charter**

First voluntary charter of international, cross-sector standards of accountability for the nonprofit sector

[http://www.amnesty.org/resources/downloads/INGO\\_Accountability\\_Charter.pdf](http://www.amnesty.org/resources/downloads/INGO_Accountability_Charter.pdf)

### **Maquila Solidarity Network (MSN—labor and women's advocacy organization supporting grassroots groups in Mexico and Asia)**

Implementation Guide to Ethical Licensing and Purchasing Policies

[http://www.maquilasolidarity.org/nosweat/pdf/Implementation\\_Guide.pdf](http://www.maquilasolidarity.org/nosweat/pdf/Implementation_Guide.pdf)

### **Maryland Association of Nonprofit Organizations**

Model code of ethical behavior entitled “Standards for Excellence: An Ethics and Accountability Code for the Not-for-Profit Sector” as well as practical recommendations under the heading of *55 standards*

[http://www.mdnonprofit.org/ethics\\_initiative.htm](http://www.mdnonprofit.org/ethics_initiative.htm)

### **NGO Federation of Nepal (NFN)**

Developing country Code of Conduct in English translation from Nepali, with sections on professional conduct, impartiality and financial discipline

<http://www.ngofederation.org/html/codeofconduct-eng.htm>

### **Minnesota Council for Nonprofits' Principles and Practices for Nonprofit Excellence**

[http://www.mncn.org/info\\_principles.htm](http://www.mncn.org/info_principles.htm)

### **People in Aid Code of Good Practice**

<http://www.peopleinaid.org/code/>

### **Code of Conduct for NGOs in Ethiopia**

<http://www.crdaethiopia.org/Code%20of%20Conduct/CoC.htm>

**InterAction (coalition of private relief and assistance NGOs)**

Private Voluntary Organization Standards

<http://www.interaction.org/pvostandards>

**InterAction's Guide to Appropriate Giving in Disaster Response**

[http://www.interaction.org/disaster/guide\\_giving.html](http://www.interaction.org/disaster/guide_giving.html)

**International Committee on Fundraising Organizations  
(Association of national monitoring agencies)**

International Standards and Survey of Monitoring Practices

<http://www.icfo.de/standards.htm>

**Coyote Communications Free Resources for Mission-based Organizations**

Tip Sheet to Using the Internet to Advertise Successfully & Ethically

<http://www.coyotecomunications.com/outreach/promote.html>

**SpamCon Foundation**

Best practice links for diverse audiences and marketing, includes netiquette guidelines

<http://spamcon.org/directories/best-practices.shtml>

**Justgiving—Fundraising made easy**

How to fundraise online, including a sample online fundraising page

<http://www.justgiving.com/process/raisemoney/>



# 4 *Improving Monitoring and Evaluation*

- A. Reasons for accountability to members and society**
- B. Proper and prudent use of membership fees and donations**
- C. Making reports available to general public, government or donors**
- D. Arriving at the real costs of NGO activities**
  - 1. Rating on low overheads and administrative and indirect costs
  - 2. “How much of your donation gets to the intended recipient?”
  - 3. Abusing program costs
- E. Establishing fairer criteria to measure impact**
- F. Setting up proper planning, monitoring and evaluation procedures**
- G. Multiple accountabilities and its influence over behavior**

## **A. Reasons for accountability to members and society**

NGOs and their members need to be convinced that they have to strive for better monitoring and evaluation of their activities, which will usually lead to stronger accountability. UN Secretary-General Kofi Annan once said that a key ingredient of any successful organization is an ethical and accountable culture pervading its staff from top to bottom.

Gaining and keeping the public trust by openness and obedience to laws and prudent financial practices is in the best interests of the continued success of an NGO. Confidence in the individual NGO and the civil society sector in general will ensure greater acceptance of their activities and roles, including soliciting funding. It is also a good way to keep government from having to get involved in regulation following scandals and mismanagement by NGOs.

Although it may be an old-fashioned concept, particularly in the West, there is still virtue in being concerned about accounting to your donors, be they private, public or members on where their donated funds are going. Remember, unhappy donors mean less opportunity to raise money in the future and can even mean complaints that may result in harsher regulation. This point is becoming more important than ever in light of claims that funds from charitable relief are now being diverted to illegal purposes or for the support of terrorism.

Moreover, the general trend in the business world in rich countries today is for greater levels of control, auditing, and certification with accuracy being personally guaranteed by the board and executives in charge. This is gradually extending from those big-listed corporations, subject to the federal Sarbanes-Oxley require-

ments, to smaller-capitalized companies, city governments and even foundations and charities. Some US states led by California are starting to pass special ethics and integrity legislation just for NPOs and the commercial fundraising industry. It is believed that good ethics encourages efficiency, while bad ethics just increases transaction costs, including the cost of raising funds through philanthropic giving.

**☑ Tips:**

- It is usually good practice to account to the members of an NGO as if they were similar to shareholders in a public company. And today many online members can be kept informed very cheaply by electronic communications or bulletin boards.
- Complex transactions or those involving many related parties are often suggestive of the possible presence of sham or fraudulent deals. If management cannot explain clearly to members the purpose and justification for any transactions involving the NGO, a review by outside experts may be warranted.

**B. Proper and prudent use of membership fees and donations**

Because NGOs hold funds given by donors for the benefit of others, they need to try to conduct all financial activities in an open, honest and accurate manner, and in accord with the highest possible standards, respecting any donor request for privacy.

NGOs should try to purchase goods and services at the lowest reasonable prices and make their programs as inexpensive and efficient as possible. A very good way to achieve this is by maximizing the use of volunteers, a particular strength of NGOs. Labor and overhead costs are thereby minimized and support for the program is increased, as volunteers become advocates for the organization.

As resources are usually limited, NGOs should strive to manage their property and funds carefully and creatively. Expenditures on office rental should be bargain priced and not exceed the usual market rates paid by the majority of nonprofit lessees. Although management expenses are best kept to a reasonable minimum, nevertheless NGOs still need to retain well-qualified financial professionals as employees, consultants or volunteers.

Key sources of dependable funding can include indirect, such as regular campaign support, *bequests* (usually averaged over a five-year period) and government grants.

Although it is not as common for the grass-roots and civil society organizations, some of the more wealthy NGOs may even have their own private trust funds or endowments given by supportive benefactors, which are conservatively invested so they can maintain their operations mainly from the interest generated.



**☑ Tips:**

- As a useful rule of thumb, NGOs and NPOs could aim to spend at least 60% of their annual expenses directly on program activities. Otherwise they may find themselves facing criticisms for being too profligate on overheads with grant monies intended to be spent on beneficiaries.
- Also over time they should watch that fundraising expenses are reasonable compared to the actual fundraising results achieved.
- It is prudent to aim to have net assets available for use in the following fiscal year not usually more than twice the current year's expenses or twice the next year's budget, whichever is higher.
- Do not run a persistent deficit in the NGO's net current assets, as this suggests demonstrable financial danger and may even be fiscally irresponsible.

**C. Making reports available to general public, government or donors**

In order to increase the credibility of the NGO with its stakeholders, it could provide them with timely, accurate and detailed information. But take care not to spend too many resources unnecessarily for redundant or inessential retention, preparation or provision of financial data.

The key here is finding the right level and style for the size and complexity of the NGO's operations.

Annual reports (or a similar document package) could be available on request or online on demand. They generally include the contents listed in the box below.

**Common Annual Report Contents**

- Explicit narrative of NGO's main activities and impacts (e.g., environmental, social) presented in same categories and periods as the audited financial statements
- List of board members and senior management with some identifying and contact information about them; occasionally reports of their main meetings
- Inventory of assets
- Audited financial statements, including source of funds, revenues and expenditures, balance sheet and sometimes change of net worth
- Annual (re)publication of any code of conduct, as this shows the public how committed the NGO is to being ethical, and whether most of the activities were in compliance with that code
- Disclosure and adequate description of any contracts or arrangements of the NGO with related parties (i.e., with its board, founders, management, etc.)

Occasionally, if reports are required to be filed with supervisory government agencies they might also become subject to any *freedom of information laws* that apply to records held by the state.

#### **Tips:**

- Obviously the central purpose behind any report to the public or other stakeholders is to communicate relevant information clearly and in an accessible manner. Although it is often difficult for volunteers to find the time, some care and thought needs to be put into the quality of information and style of language used.
- If information, particularly of a financial nature, is being presented over time or across different areas, it is a great courtesy to the reader if it can be done in a way to make it easier for comparisons to be made. Constantly changing presentation formats from year to year is unhelpful and reduces transparency.
- Consider if your NGO is brave enough to frankly write up its failed projects in its public reports. Others may learn valuable lessons from where your project went wrong. As NGOs do not have to worry about shareholders or the value of their stock, there might be little downside to such transparency.

#### **D. Arriving at the real costs of NGO activities**

Sound standards for control over financial expenditures should be a major goal of improved monitoring and evaluation efforts. A good start, but harder done than said, is to strive to cost everything more closely.

The simple, guiding principle is to try to capture all real inputs and costs and reflect them in final reports on activities. The more ambitious NGOs with resources have been able to embrace more sophisticated social and ethical accounting, auditing and reporting practices.

Overheads and general back office costs (e.g., overall ad campaign for fundraising) could be apportioned to each project's budget, instead of being lumped together in one large administrative budget line item.

Eventually, attempts might even be made to try to apportion the time and costs of staff and volunteers working on each project, although this is still hard to do even for larger international organizations.

Another component not to be forgotten could be the counterpart inputs and expenditures from local co-organizers. However, unless joint budgets are prepared or shared, it is often difficult to gain access to this financial information from third party organizations.

Other costs of foregone activities or opportunity costs of one activity over another are again hard to show and estimate.

### ☑ Tips:

- The hard reality for capturing full costs is that it is very often difficult to do in practice even for sophisticated offices with the control know-how, much less volunteer NGOs. The best that might be achieved here is a sincere commitment from management to try to introduce measures or reforms in this direction in a phased and modest manner. Often that will suffice to impress outside donors or monitoring governments.
- If only one NGO does this form of full cost accounting, such an effort may be pointless and possibly even harmful to that pioneer, as it would tend to exaggerate its costs in comparison with the understatements from the competitors. How to extend this approach across sector, state or country? One way could be through self-regulatory organizations on whatever level trying to agree eventually on common accounting standards and practices.

### 1. Rating on low overheads and administrative and indirect costs

Some countries will not allow public financing or fundraising if an NGO's overheads are more than 20% of its budget. Other donors are even lower: the UK Department for International Development, for instance, only allows NGOs that receive funding from it to spend 8% of their total budgets on administration. This sounds reasonable, but be aware that high overheads are sometimes common and even unavoidable for research and advocacy NGOs. Moreover, there are often problems over defining what constitutes administration or overhead expenses.

If this practice becomes widespread in a country, it then becomes possible for either a self-regulatory organization or the government to prepare league tables where each NGO is rated against the other in terms of how low their overheads or fundraising ratios are. This comes to be seen as a proxy for measuring efficiency of each NGO. And other NGOs, notably New Philanthropy Capital, are starting to specialize in reporting on the results of various social sector and charitable undertakings to help the donor community make more informed selections.

### 2. "How much of your donation gets to the intended recipient?"

With ratings and comparisons, the next obvious question that gets asked is: How much of my dollar (or yen) gets through to the intended beneficiary and how much is eaten up in unnecessary administrative overheads to back-office bureaucrats not in the field?

Unless specifically told otherwise, most contributors believe that their contributions are being applied directly to current program needs identified by the NGO. However, nearly all NGOs accumulate funds for administration in the interests of prudent management. Even accumulation of such funds in excess of a standard may be justified in special circumstances, but it is safer to give adequate notice of what is being done. And sometimes NGOs may find it hard to actually get money spent and

into the hands of the beneficiaries (e.g., a high percentage of the tsunami aid funds have not reached the intended recipients at the time of this writing).

### **3. Abusing program costs**

The other extreme of not taking enough care to capture the full costs of activities is found when the NGO or NPO includes too many program costs and expenses or administrative fees at the expense of the operations.

Often this is done for an inappropriate reason of trying to “fee out” an activity or extract as much administrative rent as possible out of a well-funded program, possibly to cross-subsidize or transfer to another lacking sufficient funds.

Of course, it is fraudulent to deliberately understate the costs and expenses of an operation to make your program seem more efficient than it is. Nevertheless, this is often done.

### **E. Establishing fairer criteria to measure impact**

It is a helpful practice and discipline to periodically assess results of activities by setting measurements and comparing with set standards, if they are available either from self-regulatory organizations or from inside the NGO itself. Following assessment of effectiveness and results, and taking into account given factors or extraordinary events, NGOs should continue or make corrections to the ongoing activity or future ones that are similar.

#### **Questions for Assessing Activities**

1. What should be the frequency and scope of ratings (e.g., project, overall, formal)?
2. Who should be the raters? Can self-evaluation and joint evaluations work?
3. How much public disclosure of ratings and sharing good lessons and bad experiences is useful?
4. What are the pros and cons, costs and benefits of improving monitoring and evaluation?
5. How do we encourage a tolerance for admissions of failures in projects, where evaluation of failures can be just as useful a tool of learning as celebrating successes?

A look at the questions in the box above makes it apparent how many difficulties lie in fairly evaluating NGOs and their work.

### **F. Setting up proper planning, monitoring and evaluation procedures**

Often the overall success of an NGO may depend upon how well some of its bigg-

est projects are being run. Many things can now be done to improve the chances that the projects implemented by NGOs turn out to be successful and achieve their desired impact. These techniques and planning tools can often help the project planners achieve a sensible structure and make it easier to communicate key information to their members, project stakeholders and the wider community.

An NGO and its membership could try to evaluate periodically how important, innovative or strategic are their objectives and proposed activities. Depending on the size and resources of the NGO and its scale of operations it may be possible through this exercise to map out a multiyear rolling work plan of programming or actions.

Obviously, the initial conceptualizing and design of each project must be competently and rigorously thought through and, if possible, involve the proposed beneficiaries in its planning. Depending on resources and commitment to the process, these steps frequently include the ones listed in the box below.

#### **Project Planning Steps**

- Problem or issue analysis, preferably over a long-range and sustainable timeframe
- Analysis of and by the stakeholders or intended beneficiaries
- Setting the achievable objectives
- Resource requirements and availability (human and money)
- Analyzing the alternative approaches
- Drafting detailed and feasible business plans and project descriptions
- Planning for an exit strategy, and
- Formal feasibility study and recommendation to proceed

Next the right tools and milestone events to monitor and manage the implementation of a project should be put in place. The key consideration here is to make sure the project manager can find out what is going wrong quickly enough to step in and make the corrections to save the project. Obviously, this becomes much more complicated when the project is being implemented overseas or by subcontracting partners.

A word here about controlling excessive costs and expenses. The expense of a project needs to be assessed in light of the size, scale and difficulty of the operation and the capacity of the executing NGO. It makes no sense for a small-scale NGO to become engaged in difficult, expensive, or sophisticated projects that are beyond its capabilities, even though they might be germane to its mission.

The final phase is to set appropriate performance targets and indicators of the degree of success or impact the program has had and then to review them to see whether they were achieved and how sustainable those achievements will be.

Importantly, ask whether the expected outputs and results are measurable in some way you can think of.

This measurement and evaluation can be done by the implementing NGO, but it is even more impressive if an outside body or third party (e.g., independent academic adviser, donor or journalist) undertakes such an independent evaluation of your work and impact.

If an NGO is able to measure the success or failure of its projects, the final hard question to face must be what to do when you have a failing project, even though it might be dear to the heart of the NGO's mission. Blithely continuing to put more money into a failing project is not sensible, but it is equally hard to cut off the funding if doing so will have an impact on some beneficiaries.

#### **Tips:**

- Projects often run afoul of unanticipated risks or faulty or changed assumptions. Constantly test and question your assumptions and ask “what if” questions. For example, if the beneficiaries lose their jobs will they still be able to avail of the project benefits through other means?
- Usually having more people involved will help ensure that most of the risks and assumptions are properly addressed, as often we don't fully appreciate what we are assuming ourselves until another person points it out to us. (But consulting many people also runs up transaction costs and can lead to delay.)
- Ask early and ask often the key question: How feasible are our planned activities given the scale of our resources and reasonably anticipated funding? If you don't have enough, the prudent course is to scale back or start the project on a pilot basis. It is not fair to the beneficiaries and your fellow NGO members and volunteers to begin a project knowing you don't have enough money, but hoping more will come along.

### **G. Multiple accountabilities and its influence over behavior**

Here it is worth pausing to remember that accountability is fine as a guiding principle, but in practice it adds costs and very often makes it hard to take decisions and actions and carry them through quickly and efficiently. This is because the implementers are always worrying about what overseers might think of them and even second guess their work, often in retrospect with the benefit of perfect hindsight (which is, of course, unfair). Devotion to broad accountability must be tempered by real world compromises.

☑ **Tips:**

- Serving multiple stakeholders (sometimes too many) can become daunting and have a chilling effect on the confidence of an NGO. (To a certain extent, this can be said to have started to hamstring the operations of some international organizations, which used to be fairly confident in the past, but now are distracted by trying to be everything to everybody.)
- So it is probably best to be clear about who the NGO's main clients and paymasters are and then aim to satisfy them first and always—with the others (including the government and media) in line or in turn whenever possible without expending too many resources.

## ✓ Open Access Resources

### **Free Management Library**

Highly integrated, large online library for nonprofits and for-profits, includes links to online tutorial and training programs

<http://www.managementhelp.org/>

### **Humanitarian Accountability Partnership International**

Sample monitoring, quality management standards, advocacy and complaints handling from an independent self-regulatory body

<http://www.hapinternational.org/en/page.php?IDpage=73&IDcat=10>

### **Mango's Guide to Financial Management for NGOs**

Accountability checklist and online guide, including training manual and sample financial system, spreadsheets and user booklet

<http://www.mango.org.uk/guide/section.aspx?ID=5>

### **Charity Navigator Guide to Intelligent Giving**

Well-indexed tips and resources on business of charitable donations and solicitation, includes a CEO compensation survey

<http://www.charitynavigator.org/index.cfm/bay/content.view/catid/68/cpid/224.htm>

### **Idealist.org's Tools for Nonprofits**

Includes management, recruitment, fundraising and technology use

<http://www.idealist.org/tools/index.html>

### **Indonesian Peacebuilding Directory (CERIC FISIP UI direktori-perdamaian) (in English)**

Online guide to Indonesian organizations for social change, includes an automated registration and update template for donors and international organizations, training providers and over 500 civil society organizations

[http://www.direktori-perdamaian.org/english/main\\_id.php](http://www.direktori-perdamaian.org/english/main_id.php)

### **American Institute of Philanthropy's Free List of Charities**

Useful free listing of most US charities, but their Rating Guide is through paid subscription only

<http://www.charitywatch.org/azlist.html>



### **New Philanthropy Capital**

Sector reports on charitable activities and research for informed giving

<http://www.philanthropycapital.org>

### **Geneva Global Inc.**

Performance-based philanthropy based on benchmarking and evaluation metrics, includes a sample post-grant report

<http://www.genevaglobal.com/>

### **Guidestar.org Database**

Tax returns and other publicly filed documents by NGOs in US and other jurisdictions

<http://www.guidestar.org/>

### **United Way of Greater High Point's FAQ List of Questions**

Includes sample answer to "How much of every dollar I give is really spent on...?"

<http://www.unitedwayhp.org/faq.cfm>

### **Pakistan Center for Philanthropy**

NGO Certification Model, includes detailed criteria for evaluation and process flow charts for Pakistan nonprofit and tax-exempt organizations

<http://www.pcp.org.pk/pdf/Certification%20Model.doc>

### **MS (Mellempfolkeligt Samvirke) Danish Association for International Co-Operation**

Archived documents, including statute for an open members' organization and 3-year rolling plan of action with virtual (cyber) membership feature

<http://www.ms.dk/sw26452.asp>

### **The Australian Collaboration (of National Community Organisations)**

Portal for social, environmental and cultural constituencies and interests

<http://www.australiancollaboration.com.au/>

### **OECD's Development Assistance Committee**

Guidance booklet for evaluating humanitarian assistance in complex emergencies

[http://www.reliefweb.int/library/documents/human\\_en.pdf](http://www.reliefweb.int/library/documents/human_en.pdf)

### **Inter-American Development Bank Free Online Learning**

4 separate interactive courses are being freely offered electronically to the general Internet public on project planning and implementing (so-called logical framework approach), monitoring and evaluation, environmental impact assessment, and institutional and organizational analysis

<http://www.iadb.org/int/rtc/ecourses/index.htm>

# 5 *Civil Disobedience and Criminal Constraints*

- A. General criminal and civil liability in operating NGOs**
- B. Schema of levels of activities and possible criminal consequences**
  - 1. Threshold level—usually permitted legal activities in most societies
  - 2. Borderline—direct actions, including demonstrations, trespass, squatting and nuisance
  - 3. Indirect actions of boycotts and shame and name
- C. Survey and short treatments of major criminal laws often involved**
  - 1. Assault
  - 2. Battery
  - 3. Resisting arrest
  - 4. Failure to obey a lawful command
  - 5. Trespass
  - 6. False imprisonment and kidnapping
  - 7. Destruction of property/malicious damage/arson
  - 8. Breaking and entering
  - 9. Cruelty to animals
  - 10. Civil disobedience
- D. Cyber activities: permissible, borderline and illegal in certain jurisdictions**
- E. Individual's criminal responsibility as against NGO's principles and tactics**

## **A. General criminal and civil liability in operating NGOs**

Apart from the legal requirements stemming from registration or incorporation, NGOs must always operate within societies bounded by the full gamut of criminal and civil laws.

Sometimes, especially in emotional or bitter campaigns, pressures develop to stretch the boundaries of the law. This might happen in either of two ways. First, individual members of NGOs or the NGOs themselves may consciously decide to disregard laws, such as those relating to public marches and lawful assemblies, to dramatize their activities and position to the general public, media or authorities.

Second, the campaign may actually be trying to change or revise valid laws that the NGO sincerely considers are bad or could be disobeyed. In doing this, they may consciously decide to flout those laws rather than to obey them until they can be validly changed by an amendment in parliament.

Usually, these laws are criminally enforceable—meaning that if someone or an entity breaks them they may be prosecuted by the state, and if found guilty face either fines or jail terms or some combination of both.

Most *criminal laws* are passed by the local state or provincial legislatures and cover the same subject matters. They are usually broadly categorized as offences:

- against public order (e.g., unlawful assembly),
- against public authority or administration of justice (e.g., corruption, destroying evidence),
- against persons (e.g., assault, kidnapping), or
- relating to property (e.g., burglary, fraud).

There are also so-called civil laws, which if disobeyed may not result in criminal prosecution by the police or state authorities but only private legal actions brought by aggrieved individuals to enforce their rights (e.g., a case for simple trespass onto private property or nuisance brought by the landowner).

## **B. Schema of levels of activities and possible criminal consequences**

### **1. Threshold level—usually permitted legal activities in most societies**

Campaigns or struggles on the part of NGOs to introduce change can safely be as innocuous as an international letter writing mobilization (e.g., as Amnesty International does, frequently electronically) or asking for clemency (such as the Pope's interventions on capital punishment).

#### **Tip:**

- When advising its members on what actions they can take to advance a cause, an NGO's management needs to be especially cautious about possible incitement to commit criminal acts. As often seen in the vexed hunting debate in the United Kingdom, protagonists on either side do not actually advise their members to break laws or destroy property, but only express an understanding if individuals feel so strongly that they personally choose to do so, they will not blame them (although the state frequently will). In practice, they may then offer to give them legal support and resources to defend themselves. The risk in advising others to directly break a law (whether it is bad or not) is that such advice will frequently constitute a crime in and of itself, e.g., suborning (or inducing) others to commit crimes.

### **2. Borderline—direct actions, including demonstrations, trespass, squatting and nuisance**

*Direct action* means going into the streets or a public (occasionally private) place to take actions to effect change. This is often legally risky to those who take part, but history has shown (in civil rights marches and demonstrations, for example) that it works in moderation and when well disciplined.

The purpose is generally twofold: dramatic scenes make for good TV, which pub-

licizes the cause, and the participants need an outlet to express their views in front of their fellow citizens. If the authorities behave harshly in response either through ill discipline or malice, this may generate a sympathetic backlash in the general population against the authorities and the challenged laws they represent (viz. 1968 Chicago Democratic convention overreaction up to the Miami WTO mass arrests).

But we do not have to go as far back as the 1960s civil rights or Viet Nam moratorium movements to know how effective these actions can be. Even in Hong Kong, China, after handover, the power of mass demonstrations (often illegal) forced the withdrawal by authorities of the unpopular, proposed anti-subversion law.

Squatting on land to stop bulldozers or sitting in protected trees are also very practical ways to temporarily restrain the actions of government or corporations intent on destroying the environment. Sometimes these events can buy enough time for a popular backlash to develop or other legal challenges to be mounted through the court system to permanently enjoin the protested activities (e.g., the successful *Franklin dam campaign* in Tasmania).

Another tactic being seen more frequently is personally targeting the executives of companies (or directors of research laboratories) through demonstration campaigns, which may include picketing outside their private residences or using sound trucks to broadcast protest messages that their neighbors will hear. Some countries, notably Japan, have sophisticated laws as to permissible levels of sound demonstrations.

Of course, entering a wealthy company executive's estate grounds without their invitation will constitute trespass in most jurisdictions (see further below). Protests and sit-ins around parliamentary buildings and embassy premises are often strictly regulated by perimeter distance laws as well (for instance, stay 60 meters away). In these situations, courts often have to balance the rights of property owners not to be made captive audiences to unwanted messages against the rights of the picketing NGOs to free speech in a public place.

Depending on the jurisdiction, nuisance can be either a public (criminal) offence or a private wrong against a property owner or office occupier. The essential element is some serious, and usually continuing, disturbance or interference with another's enjoyment of their land or property. For instance, this might be caused by demonstrators intentionally letting off smoke, water, noise, smells or even animals.

### **3. Indirect actions of boycotts and shame and name**

The two most commonly employed *indirect actions* are varieties of boycotts or publicizing names for the purposes of embarrassment so as to get the targets to withdraw their support.

- **Boycotts** are organized campaigns to refrain from buying or using services or goods usually of a company that is doing business in a rogue state or conducting

itself badly (n.b. can be broad to include products or ingredients such as organic cotton, and sports boycott). The most famous were the consumer boycotts of the products of companies doing business in apartheid South Africa or those dumping inappropriate baby milk substitutes in poor countries. Usually these will not involve serious legal implications; however, there is the possibility that picketing a store about another company or product might adversely affect the business of the store, which may be a relatively innocent bystander in the issues. In some countries trade practices laws prohibit this type of “secondary” boycott if it seriously damages the business of the innocent party. And other countries may even make it a criminal offence for campaigners to try to mount consumer boycotts against companies.

- **Shame and name** is a relatively new tactic where the shareholders of companies engaging in targeted activities are told that if they continue to invest in that company their names will be made public in an attempt to shame them into withdrawing financial support. This is now being used controversially in the campaign against animal testing. A variant of this was seen when students demanded that their universities check their portfolios of investment and cease holding the shares of companies doing business in “disreputable” countries. The biggest danger here is that the communications to those to be named may possibly border on the threatening or menacing or that people exposed by name may then become the targets of much more serious harassment by other extremists. Certainly linking demands for money would be criminal in most jurisdictions.

### C. Survey and short treatments of major criminal laws often involved

1. **Assault** is putting someone in fear of being hurt. The person does not necessarily have to be hit or suffer bodily injury, so long as they reasonably anticipated they might. This means that threatening behavior designed to intimidate someone might in certain situations constitute the much more serious crime of assault on a person. Stalking or following around company executives in a worrying manner might constitute a separate crime as well.
2. **Battery** is actually hurting or touching someone. As we have seen before, the intention is often irrelevant, so if the crime is committed for a political purpose or to make for some thrilling street theater, the liability remains the same.
3. **Resisting arrest** is struggling or not cooperating when police want to take you into their custody. In many countries this is a serious offence and may have long-term consequences to your reputation and good name.
4. **Failing to obey a lawful command** is not doing what the police ask you or a group of you to do, usually when there is a demonstration or sit-in. Often the instruction could be a command to move back from a property line or disperse the assembly, otherwise it will then be considered to have turned into an illegal gathering, which the police might want to break up by arrests or with force. Very

difficult issues can arise in balancing the right of demonstrators to peacefully assemble, which we have seen is guaranteed more often in international and national laws, with an overzealous desire of the police to clear roads or save their political masters from embarrassment on the streets.

5. **Trespass** is entering into another's property without their permission or knowledge. It is often compounded when failing to leave after being asked to do so either by the owner or police. This also applies on government land and closed park areas. You run a much greater risk if you enter onto properties that have posted a "no trespassing" signboard.
6. **False imprisonment and kidnapping** is unlawfully taking a person and confining them without their valid consent. Aggravated kidnapping usually involves asking for a ransom or making some other demands or moving a person and secretly concealing them for the purpose of committing other crimes. Generally, there would not be an unlawful confinement if you prevented a person from going where she wanted to (say by blocking a street or an entrance to a clinic), provided there are other access routes available to her.
7. **Destruction of property/malicious damage/arson** is the breaking of others' property. It can also comprehend permanently depriving the owner of the use of such property, as when animal rights activists let loose captive laboratory animals during a raid. Intentionally burning a building or other property is often the more serious offence of arson. In some jurisdictions if a person dies during an arson attack, that might become a first-degree murder or manslaughter charge.
8. **Breaking and entering** is the use of tools to open locks or windows and then going into another person's house or office, usually with the intention to do further illegal acts. Sometimes this is even more serious if committed during the night.
9. **Cruelty to animals** is the harming or hunting of animals, including even wild ones, when there may be a ban (e.g., fox hunting with hounds). Animals are rarely hurt intentionally by progressive activists, but sometimes stunts or street theater can go wrong.
10. **Civil disobedience** is a broader term for all activities that result in people knowingly and deliberately breaking laws or not following orders validly issued by the government or authorities. Usually this aims to be nonviolent and not destructive (e.g., most famously, sit downs, protest marches or walks across country).

#### **D. Cyber activities: permissible, borderline and illegal in certain jurisdictions**

There is still great uncertainty about the limits of reasonable regulation on the Worldwide Web or Internet. Many activists and commentators believe that the whole *raison d'être* of the Internet is to promote the free expression and flow of

information, knowledge and ideas. (Remember: ideas themselves cannot be copyrighted, although the form of their expression usually is.)

The Universal Declaration of Human Rights guarantees in Article 19 the freedom “to receive and impart information and ideas through any media regardless of frontiers.” There are also various legislative attempts to introduce specific national laws to foster global online freedom and this may eventually develop into an international initiative. Only very recently has the United Nations entered the field with a global forum on Internet governance.

NGOs and their members have been early and active users of the cheap potential of the Worldwide Web to publicize their cause and bring together disparate groups scattered across cyberspace. Many nascent NGOs are able to leverage their footprint and support with a more powerful web site than their numbers or influence might suggest.

But a number of countries are now trying to extend their vision of what constitutes legitimate speech and permissible activities to people who are operating outside of their normal criminal or civil jurisdiction. National concepts of libel, censorship, communications decency, pornography and criminal effects are being used, particularly by Western states, to regulate that freedom. Other states are engaged in extensive monitoring of communications and blocking some sites or search engines from their populace.

Certain jurisdictions may have also passed specialized laws that target particular activities considered against public policy and try to prevent the Internet from being used to publicize or facilitate it, such as raising money for terrorism, stirring up racial hatred or selling of fascist memorabilia. Another example, the Suicide-Related Material Offences Act (2005) makes it a federal offence in Australia to use the Internet to counsel or incite euthanasia.

While generalizations are not easy in this fast-changing area, we can make the following at least based on current trends:

- **Parody or hate sites** are where you run your own web site to make fun of your target (usually a company or government) or to collect critical comments about them. If the comments are untrue they may constitute libel (or an interference with another’s business) in certain jurisdictions or situations. Be particularly aware of sensitive areas such as criminal *libel* that might involve critical comments about religions. Generally, however, these types of sites seem to be acceptable as free and fair speech and are tolerated in most liberal democracies. Remember, in most jurisdictions truth and reasonable expressions of opinion will be sufficient to protect your statements.
- **Cybersquatting** occurs when you take over another’s web site or domain name and try to use that advantage to discredit or disrupt your target. This is frequent-



ly becoming borderline and may be equated in some jurisdictions as akin to the physical tort (or wrong) of trespass.

- **Cyberharassment** occurs when you (usually anonymously) use a telecommunications device (phone, computer, web site) to harass or stalk someone. In some jurisdictions, notably the United States, this can also be a crime. The point at which valid online activism turns into cyberharassment or bullying is not clear.
- **Cyberattacks** are any forms of invasive techniques designed to disrupt, slow down or damage your target's web site. Most of these types of activities are now being criminalized around the world.

#### ☑ **Tips:**

- Although companies frequently take legal action to try to stop cyber campaigns directed against them, the real risk often comes from aggrieved individuals who feel personally slighted or lose face. A good rule of thumb is to be very careful when you plan to criticize or attack the reputation of an individual person even if they are the CEO and are powerful and famous.
- Personal slander web sites are usually frowned upon by most courts and legal systems. Certainly, repeatedly targeting someone in a concerted "*character assassination*" might be risky, even if they are a public figure.
- Generally be cautious about creating and posting material that could be considered excessively violent, obscene, harassing, against public morals or otherwise objectionable, even though you may think it might be free speech that could be protected under your constitution or general principles. Even humor is often misunderstood.

#### **E. Individual's criminal responsibility as against NGO's principles and tactics**

The most important thing for individual members to keep in mind is even if they are committing acts for an NGO (or management of an NGO that authorizes or plans such acts), the criminal legal responsibility in the first instance will attach directly to the individual actually doing the act, and often that person alone.

Acts of civil disobedience where you disobey good laws for a just cause or disobey immoral and unjust laws will still result in criminal peril for the individual actors.

Sometimes extremely bad laws are passed and are on the books: slavery; segregation; internment of Japanese in wartime US and displacement of native people. If the laws are in effect at the time they are broken, the act will still constitute a crime, even if future history and your descendants would excuse you because of mitigating circumstances.

For instance, leading proponents of civil disobedience have explained in the context of their resistance to slavery or unjust wars that it was not always necessary to

physically fight against a government with which you disagreed, but certainly you must not support it or have it support you. They firmly believe that a good conscience should not be suppressed in favor of unthinkingly obeying the law.

Sometimes it may even be possible to indict the NGO and its leadership for conspiracy or accessory before or after the fact type crimes of its individual members. This will depend on the fact situations and the laws, practices and policies of the jurisdiction in question.

Unfortunately, recent history is replete with many examples where fringe groups became too extreme and even went underground and adopted completely illegal or terrorist methods to publicize their philosophy (e.g., the “Weathermen” and their US bombing campaign of the late 60s and 70s, or the terrorism and kidnapping of Germany’s Baader Meinhof gang, Japan’s Red Army and Italy’s Red Brigades).

### **Tips:**

- To make sure that your actions can withstand society’s judgment of their moral legality, you should always consider whether the breaching individual or NGO is breaking laws for a higher purpose or just choosing to violate laws of a country in pursuit of personal interest and hoping not to get caught. The latter case would run close to simple or common criminality without any redeeming elements.
- Even if you have a “good or political explanation,” will the courts consider it? Can you flaunt the law if you get no financial gain and it was done on principle? The answer to these questions is usually “No.”
- There are also certain groups that must hold themselves to even higher standards of lawful conduct. Lawyers, politicians, clergy and other role models cannot choose to violate laws because of political beliefs. Generally, they are expected by society to uphold even bad laws until they can be changed through a lawful process.
- Remember: no matter how amusing or dramatic a direct act may seem when it is conceived, you must always consider whether it entails any criminal risks. Even throwing a pie in someone’s face for a striking picture to dramatize a cause is strictly an assault in most countries. The advice of volunteer lawyers before you begin your campaign can be invaluable as in most jurisdictions lawyers are ethically bound not to advise clients to commit criminal acts.

## ✓ Open Access Resources

### **Fitzroy Legal Service (Victoria, Australia community legal aid)**

Legal Fact Sheet on Dealing with the Police, includes sections on “Am I hindering the police?” and “What to do if arrested” [Note: spelling transposition intentional]

[http://www.communitylaw.org.au/fitzroy/files/links/Dealing\\_with\\_the\\_Ploice.htm](http://www.communitylaw.org.au/fitzroy/files/links/Dealing_with_the_Ploice.htm)

### **For mother Earth (Belgian member of Friends of the Earth International)**

Includes campaign guide and handbook on using nonviolent direct action

<http://www.motherearth.org/inspection/inspection4.php>

### **The Aid Workers’ Network**

Online discussion board for aid workers and their issues worldwide

<http://forum.aidworkers.org.uk/cgi-bin/discus/discus.pl>

### **JISC Legal Information Service on Cyber-crime Overview (UK)**

<http://www.jisclegal.ac.uk/cybercrime/cybercrime.htm>

### **Reporters Without Borders**

Handbook for Bloggers and Cyberdissidents, including chapters on ethics, maintaining anonymity and avoiding censorship

[http://www.rsf.org/rubrique.php3?id\\_rubrique=542](http://www.rsf.org/rubrique.php3?id_rubrique=542)

### **Open Society Institute/ICNL’s Guidelines for Laws Affecting Civic Organizations**

Revised & enlarged 2004 edition prepared by L. Irish, K. Simon and R. Kushen

<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016333.pdf>

### **Idealist.org’s The Nonprofit FAQs Page**

Encyclopedic collection of articles with further links covering all major fields of information for and about NGOs

<http://www.idealist.org/if/idealist/en/FAQ/Nonprofit/Home/default?sid=78287715-190-IEO>



# 6 *Public-Private Partnerships*

- A. Theory of public-private partnerships and the reality**
  - 1. Civil society defined
  - 2. Why transfer activities from the government to civil society?
  - 3. Time for a reality check
- B. Models of partnerships that have worked: microfinance, compacts etc.**
- C. Participation in policymaking, procurement, privatization and partnerships**
- D. Consultation as equal partners? Potential pitfalls for NGOs of close involvement with government**

## **A. Theory of public-private partnerships and the reality**

### **1. Civil society defined**

First it will be helpful to clarify what we are interested in looking at in this chapter. Sometimes you will find a more all-encompassing definition of civil society (or occasionally the citizen sector), which might even be used to include the government sector as well. This broader definition is considered useful in that it avoids portraying the government as a competitor or even antagonist to the NGO sector and general populace.

However, here we are going to use the narrower definition to include most actors in society, except for the government and its agencies, which are going to be the partners of the public and NGO sector in our analysis.

Thus, for our purposes, civil society can be said to be made up of individuals, community, business, and volunteer or NGO sector, which are so-called private as in not being of government (e.g., CARE International styles itself as a “private” international humanitarian organization to set itself apart from, for instance, UNICEF, a public specialized agency in the UN system).

### **2. Why transfer activities from the government to civil society?**

Historically, this process fits in with minimizing the government’s role and decentralizing activities, which was originally a common corporate tactic considered to be more efficient. In the European Union, there is a very important principle known as the concept of “*subsidiarity*,” which simply means trying to do things, such as delivering social services and taking decisions that affect people, at the lowest level possible (i.e., closest to the people affected so they can more easily influence these acts and decisions). In poor countries, though, the government is often already too small and is barely able to handle its core functions.

Low-level activities also encourage more grass-roots involvement, which is thought to be more efficient and democratic. However, this virtue needs to be weighed against the proven benefits of economy of scale issues for delivering social services. Of course, some social services may be best delivered in bulk, while others may be delivered in a more individual and idiosyncratic manner.

Federal systems believe that most health and education services are best done at the local state level, but sometimes a big new threat requires higher-level involvement (e.g., HIV/AIDS and bird flu responses).

Importantly, the new “*philanthrocapitalism*” movement led by the Bill and Melinda Gates Foundation (including the billion dollar Buffett bequest) will be particularly targeting the health and education sectors in partnerships with developing countries and big business.

### 3. Time for a reality check

It is frequently difficult for poorer and less sophisticated economies to use decentralization to local government, let alone outsourcing to NGOs.

Complaints from NGOs that have tried to make these service delivery programs work—to no avail—are fairly common across developing countries.

Often the motivation for a government to try to involve new civil society actors is the realization that they have not been able to meet their objectives in a difficult service area. Many international NGOs already have their own field operations and existing staff set up in developing or crisis-affected countries. And sometimes these teams are more easily able to operate on both sides of a civil war zone, when the government is obviously restricted to its own area of influence.

It is also hard to obtain reliable reports or fair assessments of the types of problems that arise from the government side.

#### Tip:

- During some of the recent massive disaster relief operations, friction has developed between experienced expatriate humanitarian NGO operators and the local government relief coordinators, who feel they have not been consulted enough. International NGOs and their staff would do well to remind themselves that they are guests in the host country and should try to show the appropriate level of respect to the local authorities even if they are critical of their performance. In the worst case the local government, backed up by their civil and military authorities, would be able to order the NGOs out of the area if they failed to comply with directions.

## **B. Models of partnerships that have worked: microfinance, compacts etc.**

Given the very real problems in execution of these partnerships, let us look at a few models that have met with varying degrees of success.

The classic example given is the provision of microfinance, which consists of small loans to households and small business entrepreneurs, frequently led by women. For various reasons, however, microlending to the poor or isolated is an expensive and labor-intensive undertaking. In the original Grameen Bank (version 1) story, the success elements were considered to be due to local level collectors, *group guarantees* of each borrower, and demand-driven, pro-poor financial products. But in this model there was still a significant amount of government support, including state-subsidized low interest rates. The key elements of this model have been widely replicated in developing countries, and even in the some of the poorer regions of rich countries.

Grameen Bank version 2 is moving closer to a formal bank with new financial products for savings; it is trying to become self-sufficient. By the end of 2004, for the first time, this Nobel prize-winning bank had more savings deposited than it had outstanding loans. Nevertheless, it will still take them some time to be completely free of government support, in the sense that banks can ever be said to operate without the implicit support of their host governments, especially if they should run into troubles. The profitable Association for Social Advancement (ASA) of Bangladesh is again cited as providing a classic and robust “Model T” of microfinance, worthy of emulation.

More well-run NGO microfinance programs around the world are becoming able to transform themselves into successful microfinance commercial banks, which can continue to combine their original social mission with a more sustainable business proposition. For instance in the late 1990s the NGO Accion Comunitaria del Peru became Mibanco, a microfinance commercial bank. With more success stories, governments are starting to realize that they do not always have to maintain an equity share or intervene in the management of a microfinance bank in order to ensure that it will continue to lend to the poor.

*Compacts* (also known as *social contracts*) are more legalistic and contractual arrangements between governments and a group of civil society providers in a field of service, frequently health, education, credit intermediation, care and environment. The hallmarks are promises to provide and mutual commitments if certain benchmarks are achieved. Experience has shown that it is usually best to try to keep these arrangements flexible enough to adapt to changes and not to rely on an overly legalistic or adversarial approach in times of difficulties (i.e., strive to stay partners rather than blaming each other when things go wrong).

### **Notable Partnerships**

- In Hong Kong social services are run by NGOs that are well funded by government, some up to 70–80% of their operating budgets
- In India there was a major government-NGO compact for poverty alleviation mainly to help organize those who could benefit
- In the Philippines an NGO umbrella group can register other NGOs to certify them as being able to get funds from the government
- In Sri Lanka a government and private trust fund pooled their resources to allocate to small projects and grass-roots organizations
- In Gujarat, India, the state's food and supplies department sponsors a phone helpline so hungry people can be directed to the nearest of over 30 participating civil society food charities
- In Singapore, the government helps NGOs with their office logistics and operating costs for social welfare work, which allows them to spend more of their own money directly on the beneficiaries
- In the PRC, the China Health Alliance brings NGOs, companies and UN agencies together with the government for a more effective, united fight against the spread of tuberculosis and AIDS

#### **Tips:**

- Governments in many of the least developed countries may come to see themselves as competitors with NGOs for receiving overseas development assistance from donor countries. And to some extent this is true and needs to be faced squarely and recognized as a potential friction point.
- In the PRC, there has developed an interesting model that is worth watching for other countries and NGOs. As the state wants to attract private donations for public purposes, it will set up a foundation and pay all of the salaries and overheads, leaving 100% of the public donations to be directly spent on the programs and projects, such as helping indigenous peoples.

### **C. Participation in policymaking, procurement, privatization and partnerships**

NGOs are often eligible for equal bidding for funds, including technical assistance grants, and for competing for work with government departments.

There are three classic ways of becoming involved with governments and their projects:



1. **Commercial level procurement and tendering** for provision of goods and services. Here, be aware of too onerous tender requirements by way of capital and past experiences, and also too big lots that all but eliminate most small to medium scale competition to the commercial and government regulars.
2. **Seeking grants for an NGO's own projects** that match criteria wanted by government. The most interesting benefit here for NGOs is that there is frequently very little guidance or oversight, save for some tax accountability and prudence in initial selections. For instance, when grants are solicited in rich countries the tax authorities usually require a minimal reference check to two other sources to vouch for the bona fides of the applicant and its project. Technical assistance grants have frequently been offered by international organizations and government aid agencies directly to NGOs.
3. Entering into some form of **cooperative arrangement** more as an equal partner but with financing coming from the government and usually with a little more guidance than for grants. This form is frequently seen when the government knows it needs some vague type of research work, but cannot be more precise before it begins, and thus needs to monitor the work as it progresses. This type of involvement can benefit NGOs.

**Tips:**

- How can NGOs find out about these opportunities and start to compete for the money? Check first with your governments and, if they have them, small business or entrepreneurial agencies or the like to see if they offer help in how to bid and get qualified for government projects, etc. Useful training or workshops might be offered by the governments themselves or with the support of development finance institutions.
- Another useful way to break the ice and get exposure to the government departments that may be judging the tenders could be through first being invited into policymaking procedures through comments from the public or giving evidence before hearings. In this way the NGO establishes its expertise in certain areas and begins to win the confidence of government bureaucrats responsible for the tenders.

**D. Consultation as equal partners? Potential pitfalls for NGOs of close involvement with government**

*Are NGOs and governments, or international organizations for that matter, equal partners? If not, are they ever going to be? What can NGOs do to even the balance in their favor? On the other hand, what are the pitfalls for NGOs becoming successful and getting too close to the government and becoming involved commercially in many of its projects?*

Most obviously, the risk in these situations will be for independent activists losing their prized possessions of political and financial autonomy and integrity. As that slips away, the tendency towards self-censorship by NGO management of itself and its members grows as an understandable way of keeping lucrative contracts and grants.

By their self-definition NGOs are supposed to be non-government, after all, and not a form of shadow or quasi government executing agencies. Getting too successful in government grants and contract awards may also make other members, other NGOs and general society become suspicious of the integrity of a “non-government” organization that mainly works on “government projects.” For instance many of the civil society organizations associated with the European Commission enjoy high levels of subsidies that have called into question their independence.

Sometimes, we have seen situations where government or the legislature has pretended to listen to civil society during a consultation and participation process, but does not really take account of the views expressed. These situations are frustrating and wasteful of NGOs’ time and resources. But it is often hard to know how a process with the government will eventually turn out when you first commence it.

It goes without saying that NGOs need to avoid being co-opted and used by governments for their own purposes. But often in practice it becomes very hard, especially for smaller or less experienced NGOs, to recognize when they are fairly engaging with the government and when they are being taken advantage of for political purposes.

At the World Bank it has been recognized that there is still precious little real will to be equal partners; more often than not the input of NGOs or civil society has been thought of, if at all, as “window dressing” or an afterthought, which is often required to appease other governments in international financial institutions.

## ✓ Open Access Resources

### **Sampradaan—Indian Centre for Philanthropy (SICP) Online Reports**

Portal to free Indian conference proceedings on subjects including making partnerships work, NGO-donor dialog and new leadership

<http://www.sampradaan.org/reports.htm>

### **The Sphere Project (consortium of humanitarian NGOs and the Red Cross/Crescent movement)**

Handbook on Humanitarian Charter and Minimum Standards in Disaster Response

<http://www.sphereproject.org/>

### **Bhutan Office of the Anti-Corruption Commission**

Code of Conduct for Staff, including declaration of conflicts of interest and no abuse of office or positions of authority

<http://www.anti-corruption.org.bt/pdf/Pages%20from%20ACCcodeofconduct.pdf>

### **Food and Agriculture Organization of the United Nations**

Literature review and annotated bibliography on Monitoring & Evaluating Participation in Agriculture and Rural Development Projects

<http://www.fao.org/sd/PPdirect/PPre0074b.htm>

### **George MacDonald Ross In Defence of Subsidiarity**

Comment originally published in *Philosophy Now*, No. 6, 1993

<http://www.philosophy.leeds.ac.uk/GMR/articles/subsid.html>

### **ACCION International, nonprofit for microfinance promotion**

Support for networks of NGO microfinance institutions, with a fund that also invests in commercial transformations into regulated financial institutions (i.e., banks)

<http://www.accion.org>

### **The Compact Website (UK)**

Social contracting between the UK government and the voluntary and community sector in England, including a standard set of core Compact commitments and an accreditation scheme

<http://www.thecompact.org.uk/>

**FirstGov.gov for Businesses and Nonprofits**

US government official web portal to most departments and agencies partnering with civil society

<http://www.firstgov.gov/Business/Nonprofit.shtml>

## **7** *Direct Funding, Aid Disbursement and Tax Incentives*

- A. Direct funding support and grants**
- B. Foreign funding restrictions**
- C. Qualifying to bid for aid disbursement funds**
- D. Direct and indirect tax incentives**

### **A. Direct funding support and grants**

Cash flows are the lifeblood of any organization. Nonprofits are no exception. Staff and supplies must be maintained for the larger NPOs; the smaller ones will need community funds or facilities to stage their events.

The four traditional sources will always be from members' dues and additional contributions, fees and charges from quasi-commercial services provided, government direct financial and in-kind supports or legislative appropriations and general public donations, including those inspired by tax incentives organized by the government. New sources, including unsecured loans and temporary bridging financing, are being tried out in the more developed countries, but reliable banking and access to capital markets are still a long way off for most NGOs.

Additionally, limited amounts of income may also be earned from a variety of sideline business-type sources: most often from sales of products or memorabilia, provision of other services, such as training and conference organizing, Christmas "charity gift" catalogues and the renting of facilities. (The foundation Google.org is even trying to apply profit-making principles to some of its public benefit activities as an experimental approach.)

Grants from the corporate sector are also becoming increasingly important. For instance, many multinational IT firms now offer charitable grants or support-in-kind to NGOs to help them better utilize ICT equipment and training techniques in their operations. Some companies will lend their name and resources to cool fundraising events, e.g., Gap's Charity Concerts for Japanese NPOs.

Many governments of major countries and most of the big funding foundations have fairly strict grant procedures that forbid them from financially supporting associations that are not legally incorporated or set up as a registered NGO. However, some international organizations are more flexible when it comes to the small-scale grants to help grassroot and local community groups that lack a formal legal personality.

**☑ Tip:**

- By their very nature as one-sided gifts, there remains a risk that a promised donation or grant may not come through on time or be honored as expected. Even after a public pledge has been made there is still some doubt unless the grant is clearly written down as a contractual promise. Therefore, NGOs and NPOs should be prudent in making financial commitments on the expectation of grant funding, especially if they involve large purchases or taking on paid staff through formal employment arrangements.

**B. Foreign funding restrictions**

Certain countries remain concerned about real or perceived outside influence of foreign supporters for NGOs operating within their borders. One way to minimize this concern is for the government to specify that foreign interests may not make contributions to their local NGOs or can only do so with government approval. This type of concern comes from a long tradition of general foreign ownership restrictions over such things as media or armaments industries, which is still seen in even a number of developed countries.

Although this is frequently bothersome to both foreign donors and local recipients, it is usually a stage that a country slowly grows out of as less industrial sectors are controlled and will be able to liberalize. Recommendations from sympathetic outside governments with influence can occasionally help hasten this process.

**C. Qualifying to bid for aid disbursement funds**

If an NGO has programs that parallel the social or aid priorities of its government, it is logical for that NGO to bid to undertake such programs either as part of the government delivery (see public-private partnerships chapter 6) or on its own, but with government backing or funding.

NGOs are generally required to register their interest in competing to carry out government programs or to receive funding. (Some countries may have a public lottery that shares funding among eligible claimants, including reliable NGOs.)

Often the receipt of grant funds from a government entity will come with strict reporting and accounting requirements of how the money can be used.

**☑ Tip:**

- Writing good grant fund proposals and effective marketing of them are becoming an integral part of every NGO's repertoire. Make sure some of your staff or volunteers attend any free training programs being offered to help them prepare better proposals with a greater chance of being accepted.

## **D. Direct and indirect tax incentives**

If the host government can be convinced, it is usually a very good idea to introduce laws or regulations that will inspire donors to give to qualified NPOs (usually in that host country) on the expectation of receiving comparable tax breaks, which can take a multitude of forms.

1. Obviously a qualified NPO should itself be exempt under its host country's income tax law, to the extent that it generates a sufficient amount of income that would ordinarily be taxable in the hands of individuals or commercial taxpayers.
2. As we have noted, limited moneymaking or subsidiary economic activities may sometimes be pursued by an NPO so long as they do not overtake the principle not-for-profit mission. The tax treatment of this income may be either simple exemption or subjection to taxation depending on its amount or whether the moneymaking activity is primarily related to the not-for-profit mission.
3. Donors to NPOs are frequently allowed by the tax authorities to receive tax deductions themselves when they are calculating their personal tax liability. These could also be given in the form of full or partial credits against taxes they would otherwise owe. In many jurisdictions it is common for gifts to charities and for certain political contributions to enjoy such tax credit treatment.
4. Often NPOs might have property interests and could be granted an exemption from any taxes they may incur on their real property. Another way to do this could be to set their taxation percentage rates at zero (i.e., no charges) for the purposes of calculating any value added tax.
5. Interest and other income received on an NPO's investments could similarly be exempt.

These tax preferences are thought to encourage greater levels of giving by donors and can be viewed as a kind of indirect funding support from the government. In other words, the government gives up collecting the taxes normally due in order to encourage others to make similar amounts of money available by way of gifts.

There is merit in trying to keep the preference schemes as simple as possible in operation. Often tax authorities try to complicate the regulations by specifying that exemptions will only apply to certain activities of NPOs in preferred sectors (e.g., health or education) or that there is a waiting period during which they would not qualify. The specification of preferred activities is frequently too controlling or is open to abuse by government and waiting periods make little sense as fledgling NPOs most need state support during the difficult start-up phase.

In many jurisdictions, particularly in the European Union, there is a common concern about whether these tax preferences and privileges should also be extended in the case of gifts going abroad or to foreign-based NPOs. In theory, this should not matter as much as it does, but the foreign element often fans a suspicion that the

purpose of the cross-border transaction may not always be completely bona fide.

Opinion is split as to whether qualifying for tax exemptions should be automatic simply upon registration as an NPO, or if a further application and tax ruling needs to be separately made with the tax authorities. This could depend on whether that country has gone through a period of abuse of its taxation laws by private foundations, family trusts or criminal fronts. Generally, though, tax authorities prefer to retain the power to make their own determinations on such matters.

Some standard forms are described in the tax incentive references listed below in the Open Access Resources section.

**Tips:**

- The law and practice concerning the tax status of not-for-profit foundations and charities, particularly in continental Europe and parts of Asia, is extremely complicated. Many companies or family estates also structure themselves in similar positions to take advantage of the tax exemptions of these non-profit-making entities. Therefore, legitimate NPOs would need to be careful that they do not find themselves confused with tax shelters or misused for inappropriate evasion purposes.
- Umbrella organizations that certify the validity and good faith of NPOs and their operations are another effective way to convince tax authorities of the legitimacy of an NPO and that it is not being used as an unproductive or illegal tax shelter.



## ✓ **Open Access Resources**

### **The Foundation Center**

Portal specializing in funding, proposal writing with links to corporate grant makers and foundations, along with their forms

<http://www.fdncenter.org/>

### **Institute of Fundraising Codes of Practice**

Detailed primers and best practice information sheets on wide variety of fundraising topics, including practical templates and model contracts

<http://www.institute-of-fundraising.org.uk/>

### **United Kingdom Charities Information Bureau Web Site**

Help and Advice pages, including funding and managing

<http://www.cibfunding.org.uk/pagea.htm>

### **Nonprofit Funding Web Resources for Grants and Related Resources**

(over 500 listings)

<http://www.lib.msu.edu/harris23/grants/4fcelec.htm>

### **Charities Aid Foundation's Venturesome Web Resources (UK)**

New funding and loan options for charities, including the **Charity Bank**

<http://www.cafonline.org/default.aspx?page=6903>

### **Nonprofit Finance Fund**

Provision of financial capital and advice to NPOs to improve their capacity

<http://www.nonprofitfinancefund.org/>

### **Dorothy A. Johnson Center for Philanthropy and Nonprofit Leadership —Nonprofit Good Practice Guide**

Extensive online resources especially in areas of grantmaking, fundraising and financial sustainability

<http://www.npgoodpractice.org/Default.aspx>

### **US Internal Revenue Service Official Web Site**

Tax information and forms for US charitable organizations, including links to individual states' web pages

<http://www.irs.gov/charities/charitable/index.html>

**UK Treasury's Portal on Guidance to Funders**

[http://www.hm-treasury.gov.uk/spending\\_review/spend\\_ccr/spend\\_ccr\\_guidance.cfm](http://www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_guidance.cfm)

# 8 *Legal and Business Relations with International Organizations*

- A. Understanding international playing field and rules of game**
  - 1. Case studies of Narmada Dam campaign and banning landmines
  - 2. Role of other umbrella organizations
- B. Opportunities to contract or provide services for fees**
- C. Co-financing and parallel financing**
- D. Consultation, project preparation and advocacy avenues**
- E. Ways to inspect and hold international organizations accountable**
  - Example of ADB's improved accountability procedures: consultation phase and compliance review
- F. Power of influencing member governments back home**

## **A. Understanding international playing field and rules of game**

Despite the considerable complexities often involved, there is probably more that can be achieved by NGOs seeking ways to cooperate more closely with host governments and international organizations (IOs). This is especially so in complicated rehabilitation settings arising out of recoveries from disasters or post-conflict situations.

Well-connected NGOs that know their host countries and project beneficiaries need to work better with IOs to head off problems before they become much more serious. Gradually the more experienced practitioners in development and civil society have come to accept the desirability of a wider field of actors contributing their differing expertise and advantages to international solutions.

To help us set the scene it is instructive to recall a few landmark case studies demonstrating some of the various ways NGOs have engaged with international organizations (IOs) with varying degrees of success.

### **1. Case studies of Narmada Dam campaign and banning landmines**

The ***Narmada Dam campaign*** in India is remembered on two accounts. It was the first time that involuntarily moved people got the World Bank to set up an inspection function to hold itself accountable for its actions (and failings). Second, this successful movement evolved into a standing International Dams Commission (there is now also one for International Rivers, etc.).

Princess Diana lent her personal charisma to the campaign to achieve the political negotiation through the United Nations of an international convention banning the use of landmines, although some major countries have not yet ratified it.

But not every cause succeeds this well on the international plane. For instance, notwithstanding a long and well-organized campaign going back to the 1970s, there is still only a simple UN recommendation for a code on the proper marketing and use of baby milk substitutes in less developed countries, especially those lacking clean water. The hoped-for, binding multilateral convention on this topic never eventuated.

## **2. Role of other umbrella organizations**

There is considerable scope in the myriad of dealings with IOs for the involvement of umbrella civil society organizations, which by rolling together like-minded NGOs, can usefully encourage group standards and ratings as conditions for membership. An umbrella grouping can also present a common and more powerful face to IOs, introduce partners online and comprehensively manage knowledge and portals, as on the Development Gateway.

There is now even the possibility of committed individuals or umbrellas quickly setting up online things such as global interest networks or communities of practice on fast-emerging particular issues. In a few weeks following the Indian Ocean tsunami many millions dollars in donations were received and coordinated from the general public through the Internet and online pledging sites.

Other notable examples in this burgeoning field for the blogosphere were the Howard Dean campaign fundraising drives in the last presidential nominee race and online political activists such as the Daily Kos, MoveOn.org and Citizenspace. There are an estimated 10 million blogs in the United States alone.

## **B. Opportunities to contract or provide services for fees**

In some of the recent big humanitarian operations, what we have often seen is that a lead agency, usually from the UN family, will negotiate access (with or without security) to a troubled area and then act as an umbrella for an integrated aid program involving NGOs, who often come as affiliated with the UN or under contract to them.

### **Services NGOs Offer to International Organizations**

1. Providing observers for elections (various democracy NGOs)
2. Providing legal training for judges and lawyers (by non-profit American Bar Association and its programs)
3. Providing monitoring of treaties on the environment (e.g., *CITES* or *Montreal Protocol*) or humanitarian rights in war (e.g., Red Cross/Crescent has duties delegated to it under the Geneva Conventions). This can be done either by way of being parallel, independent, such as a watchdog, or as a formal part of the treaty regime. One way to accomplish this is getting involved in the treaty's secretariat, such as by writing reports for them.
4. Providing a missing synthesis of grass-roots learning with scientific work and/or a mediated product for laypersons. Remember that a lot of IOs will readily give permission for non-profit use of their published materials with credit (or through a public commons licence, for instance).
5. More logistic types of involvement, such engineering, sanitation, transport services (frequently used by UN system in particular)
6. Traditional service package contracts for services or others for sale of goods

#### **Tips:**

- Although it appears complicated when starting out, there are really only a couple of key variations on how NGOs are contracted and remunerated. Most common is just payment for your negotiated fees plus actual costs. Fees can be stated as being lump sum, fixed fees or at unit rates applied to multipliers, usually of time, but maybe of outputs produced.
- Another method not used so often for NGOs could be a retainer on a standing basis to provide things at preagreed rates. These are sometimes also known as period contract arrangements.
- Usually the legal format will be that of an independent contractor or supplier of services to the commissioning IO. Usually the staff of an independent contractor will not be covered by the insurance of the IO and so separate arrangements will need to be made for them by the contracting NGO.
- Remember to watch out that your NPO does not get into too much of a business operation and breach its public benefit status or lose tax privileges as a non-profit. This depends mainly on how you are set up and the form of the local tax breaks you enjoy.

### C. Co-financing and parallel financing

Where there are shared interests, often co-financing or parallel financing alongside an IO is a possibility. These more independent forms would be getting closer to the types of partnerships we saw in the public-private chapter 6.

How this often arises is where an IO wants to do part of a project itself with either its own staff or consultants, but needs to collaborate with NGOs and civil society to make it a complete success and more inclusive.

In these situations they might enter into a *Memorandum of Understanding* and agree to either co-financing of a unified project budget (where one party clearly takes the lead) or more traditional parallel financing or paying each other's way themselves.

### D. Consultation, project preparation and advocacy avenues

These opportunities are more like traditional consultants' contracts on a time-basis or for producing outputs required by client IOs. A good model for NGOs to consider emulating could be the way some universities have set up their own consulting firms or arms to compete more commercially than they have before.

For years the Economic and Social Council (*ECOSOC*) of the United Nations has operated a procedure for NGOs to gain a formal consultative status with the committee. Many thousands of NGOs are registered in various capacities with the United Nations system of committees and specialized agencies.

Although NGOs are rarely allowed to appear formally before UN bodies or have access to bring cases to international tribunals, this consultative status can give them much better participation in practice to express their views or set the agenda (especially noticeable in the new Human Rights Council). Specialized dispute resolutions panels, such as those of the World Trade Organization, also on occasion may look at expert reports or unsolicited briefs prepared by NGOs on contentious matters.

Today, the processing cycles of most IOs require many earlier stages of feasibility and research, and then consultation and participation, before their policies, projects and programs are allowed to proceed by managements and governing boards. If an NGO can gain the trust of IOs and provide what will be perceived to be suitably impartial advice, there is no reason why they could not compete in these avenues on equal footing with commercial or university firms.

IOs must also have public hearings for major changes in their business procedures, program policies or rules. In these areas they often value calling in NGOs to offer comments and even criticize their draft proposals either through traditional face-to-face meetings or electronic consultations. Sometimes comments from external NGOs and other stakeholders are posted on a dedicated web page for others to view.

On occasions NGOs might even be invited to participatory “write shops” sponsored by IOs, where they can actively contribute to writing new policies or action plans that might affect them.

### ☑ **Tips:**

- Watch for announcements by the IOs in your field of their public hearings and apply to participate. Sometimes you will be allowed in, even if only on an observer basis to start with (usually you can ask questions). Later as you gain their trust you may be invited to formally offer comments.
- As your NGO gains greater acceptance and credibility with the target IO, opportunities to formally provide speeches or training courses for IO officials or their clients at conferences etc. may arise (often these come with honoraria or participation costs). A good way to break the ice and get known to an IO could be for the NGO to apply to some of the various awards and recognition contests held by the IO community, in particular the high-profile ones of the United Nations (e.g., UN Population Award).
- An independent NGO might also be appointed by an IO or government executing agency to monitor the implementation of a development program, for example to report on how successful the consultation and participation with affected people on that project has been.
- Other contractual opportunities well suited to NGOs might be the provision of community facilitation and empowerment services for a project (e.g., helping to identify local community leaders and enable them to take part in a consultation process with the government or IO proposing the project).

## **E. Ways to inspect and hold international organizations accountable**

1. **First**—know what they are doing. Start with the IO’s web site and get on their e-alerts, notifications, RSS feeds or newsletters.

Most IOs have adopted Freedom and Disclosure of Information policies (also called information policy and strategy). The key features of these strategies are:

- Presumption in favor of disclosure, but subject to terms on which information was originally supplied, usually sourced from a member government.
- Now seen as an important part of public relations and affairs and a part of the process of showing good faith toward stakeholders and the wider community.
- At the high end of the disclosure spectrum, the World Bank and other IOs now even publicly release summaries of minutes of their board meetings. In this fashion their proceedings can be closely checked by interested watchers, such as the Bank Information Center (BIC), an NGO advocacy watchdog following international financial institutions in particular.

☑ **Tip:**

- Don't forget the effectiveness of the old-fashioned approach of just writing to the resident office of an IO or right person at HQ to request information. Sometimes they will supply it willingly and you can receive it without having to go through formal requesting channels.
2. **Second**—evaluate results and unintended outcomes and ask the IOs to be accountable for what they said they would do and the actual results.

IO web sites often post draft terms of reference or issue papers about upcoming evaluations or investigations, which invite public comments to contribute or change them.

During evaluations, submissions from interested parties are invited and taken for study.

After the reports are finalized, they are made public, and then formal comments from interested stakeholders are again invited within a specified period (sometimes easier summaries in local languages will be made and outreach conferences convened in selected locales).

Even comments on the evaluation process itself will be occasionally solicited, say every three to five years.

Try to influence the contents of work programs of the evaluation offices themselves (sometimes they also invite comments). For instance, suggest new evaluation techniques or stakeholders who need to be consulted during the formal evaluation process. At the same time, recognize that these new procedures are not without costs in time and money.

Formal evaluations are mainly of actual projects. Another avenue is reporting suspected abuse or waste to an Auditor General of an IO (an internal auditor is more interested in internal misdeeds or waste of the IO or its staff, rather than the projects themselves). Whistleblowers or concerned NGOs that have credible information could come forward to file reports.

### **3. Example of ADB's improved accountability procedures**

In May 2003, as a result of external pressure and recognition of the need for reform, the ADB Board introduced new accountability steps to improve the operations of the Asian Development Bank's projects.

ADB's new accountability steps are primarily concerned with its projects' effects on people; the new procedures offer flexible and innovative ways to fix things before a problem becomes entrenched. They include:

#### ***a. Consultation phase***

This is comprised chiefly of consultative dialogues with an independent Special



Project Facilitator. He or she may use their good offices or either formal or informal mediation tools between the complaining parties and the ADB.

During this phase there are lots of potential roles for representative grass-roots organizations or supportive global NGOs. Well-connected and trusted local NGOs can frequently serve as facilitators, interpreters and cultural intermediaries with complaining villagers. And an international NGO, Bank Information Center (BIC), often assists local complaining groups in their disputes with international financial institutions by giving them advice or helping prepare compliance and rehabilitation status reports.

### ***b. Compliance review***

Then at a second, separate phase, affected people (or occasionally the ADB Board) can air complaints about a project and management's handling of it. This is done by filing a formal request for compliance review, but only of the ADB's conduct. Such a review does not yet extend to the borrowing country or any involved private sector sponsors.

Findings of these reviews are not adjudicative and are mainly into how projects were formulated, processed and implemented (n.b. but not complaints about hiring consultants).

Affected people can claim for a desired outcome or practical remedy (often called a course of action, which will be approved by the ADB Board), rather than money damages or declaratory awards.

### **☑ Tips:**

- Complaint filers are defined as
  - “any group of two or more people (such as an organization, association, society or other group of individuals) ....” and “a local or nonlocal representative of the affected group.”
- Filers can submit their documents in a local language if they are unable to provide an English translation.
- Names will be kept confidential if requested; however, anonymous complaints cannot be accepted.

## **F. Power of influencing member governments back home**

Most IOs are creatures of their owning governments. So if you can influence your government back home to support your ideas, they can then try to put them into practice in the IOs' boardrooms.

Use standard tactics to lobby governments and also try the embarrassment approach on IOs, which do not like to look bad in the eyes of their member governments,

who set their programs and approve their budgets.

Constituencies in home governments interested in IOs are generally small, however, so often politicians simply leave the bureaucrats to set the tones and policies towards the IOs over which they exercise supervision. (On the other hand, some commentators have felt that the strong response from civil society in the aftermath of the Indian Ocean tsunami has demonstrated to national politicians that their people really do care deeply about international aid and humanitarian issues.)

Nevertheless, dramatic things do occasionally happen, such as when the United States and Britain pulled out of UNESCO in dissatisfaction for many years in the 80s and 90s (both have since returned).

Certainly getting member governments to hold up, delay or abstain on budgets of IOs is most effective for sending a message.

It may even be possible to get parliament to pass legislation that directs agencies to refrain from supporting certain IOs until specified reforms or changes get implemented (e.g., the long-standing US congressional forays against the UN).

## ✓ Open Access Resources

### **United Nations Global Compact Network**

World's largest voluntary corporate responsibility initiative

<http://www.unglobalcompact.org/>

### **International Finance Corporation (of World Bank Group)**

Doing Better Business through Effective Public Consultation: A Good Practice Manual

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p\\_pubconsult/\\$FILE/PublicConsultation.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_pubconsult/$FILE/PublicConsultation.pdf)

### **Asian Development Bank**

Report on Involvement of Civil Society Organizations in ADB's Operations

<http://www.adb.org/Evaluation/reports.asp>

### **Development Gateway, putting the Internet to work for developing countries with portals, awards and communities**

<http://home.developmentgateway.org/>

### **Nam Theun 2 Hydroelectric Project Website (Lao PDR)**

International and local NGOs help IOs to openly assess potential environmental and social impacts of this high-profile dam project in Lao PDR

<http://www.adb.org/Projects/Namtheun2/consultations.asp>

### **Asian Development Bank**

Establishment of a new ADB Accountability Mechanism

[http://www.adb.org/Documents/Policies/ADB\\_Accountability\\_Mechanism/](http://www.adb.org/Documents/Policies/ADB_Accountability_Mechanism/)

### **IFC/MIGA's Office of the Compliance Advisor/Ombudsman**

International Finance Corporation & Multilateral Investment Guarantee Agency

<http://www.cao-ombudsman.org>

### **European Bank for Reconstruction and Development**

Independent Recourse Mechanism

<http://www.ebrd.com/about/irm/about/irm.pdf>

## **Inter-American Development Bank**

Independent Investigation Mechanism

[http://www.iadb.org/aboutus/iii/independent\\_invest/independent\\_invest.cfm?  
language+english](http://www.iadb.org/aboutus/iii/independent_invest/independent_invest.cfm?language+english)

## **World Bank Group**

International Bank of Reconstruction and Development & International Development Association

[www.worldbank.org/inspectionpanel](http://www.worldbank.org/inspectionpanel)

# 9 *Media and Advocacy Strategies*

- A. Legitimacy of NGOs in public debate
- B. Understanding and shaping the public debate: think globally—act locally
- C. NGOs as agents for change
- D. Tactics for media impact: those that work and pitfalls to avoid
- E. Handling a scandal or crisis sensibly

## **A. Legitimacy of NGOs in public debate**

NGOs are usually not approved by any traditional democratic or electoral processes (sometimes called legitimization or a public trust test), yet often they try to control or even make claims on public funds or subsidies just like elected governments. In this way it can be said that NGOs parallel the role of industry lobbyists or associations and their access to governments and attempts to influence political decision-making.

But the criticism that NGOs unfairly attempt to influence the public debate without proper legitimacy or accountability is often raised to try to silence them or balance the aggressive approach they may take.

The prudent use of a media outreach or broader marketing campaign can be helpful in trying to defuse these criticisms and convince wider society that a valid role in public debate remains for NGOs, just as much as it does for lobbyists, columnists, commentators and other public opinion shapers.

Therefore, formal or abridged statements of an NGO's philosophy, purpose or mission should appear frequently and forcefully in its own publications (often on the back cover), annual reports and certainly on its web site. If applicable, the NGO could also highlight the financial support it enjoys from the beneficiary community to buttress its legitimacy.

## **B. Understanding and shaping the public debate: think globally—act locally**

Even NGOs with worldwide reputations are strongest in their local market. They can cultivate local journalists and follow the preferred storyline and headline tactics of media based in their country. And usually, country media have a more immediate impact upon their compatriots in civil society or political power.

Transparency International's UK unit, for instance, smartly gained wide-scale awareness of the global problem of money laundering funds from corruption. They achieved this by highlighting for influential London-based media how much the

City is being used for this activity. Their media message was simple but effective: “If laundering is so bad in a well-regulated market such as London, then imagine how much worse the problem must be worldwide!”

If you achieve success in gaining publicity, do not be surprised if you also attract criticism from the government, IOs or media; they may challenge your arguments and report findings. And even other NGOs can on occasion be critical of some of your positions or activities. Be prepared to respond to such criticism with evidence in support of your position. ActionAid frequently posts on its web site the criticisms it receives from official sources; the organization accompanies these postings with its formal responses, including links to supporting documentation.

Using statistics or scientific research in an intellectually honest and responsible way can sometimes be hard for laypeople who are not experts in the particular field. Within the limits of their technical expertise NGOs should be careful in how they present and interpret their data and research so as not to mislead or overstate their case. Basing your positions on sound facts and credible analysis is the best way to enhance your NGO’s reputation. Take care about plagiarism and properly crediting the research work of others.

#### **Tips:**

- Try to interest local media by finding the local or national aspect that will immediately appeal to their audience.
- Watch how your target media covers similar “human interest” stories and try to frame your issue in the same style. Look for the opposing interests and try to set up the story as a conflict between the good and bad or big and little guys.

### **C. NGOs as agents for change**

The secret to a successful campaign is to clearly envisage what you and your NGO are aiming to change and then to set about crafting strategies to fit that end.

Some of the many things that NGOs seek to change are: institutional behavior; laws, policies and attitudes of public or private sectors; engagement of stakeholders; increasing public awareness and access to resources and information. They also seek to physically do projects or save things or people from destruction.

You must then ask the hard question: What causes real change in the things you want to do? And what actions are you or your NGO able to take to bring about those changes?

Of course, this can never be answered universally for every cause or problem. Nevertheless, history seems to suggest that going after the money stream is usually the most successful tactic, particularly when it comes to changing corporate or political behavior. For instance, industrial pollution was never-ending until the environmental movement caused the United States to introduce superfund clean-

up liability before the sales of land on which former factories had operated. More recently, we have witnessed the progress made in gradually changing consumers' tastes and getting them to prefer different products (organic cotton, fair trade coffee); these changes influence the manufacturers' profit margins.

Although it is the traditional path, people are becoming less convinced about the effectiveness of working through the political process. Even so, a powerful politician can still shape the public debate and place an important item on the global agenda. If these leaders can be influenced by the campaigns of an NGO, there is a meeting of interests. Be aware that politicians and their staff are more impressed by personal approaches rather than mass mailings using form letters from their constituents.

### **Pointers for Dealing Successfully with the Media**

- Generally speak to journalists "on the record" and allow your name and affiliation to be used
- Do not ask to vet a draft of an article, but do check to ensure that your direct quotations are correct
- Approach smaller or lesser-known specialist media outlets; they will appreciate the attention
- Prepare a key message and repeat it often throughout an interview
- Think and speak in short, memorable phrases (useful for TV sound bites)
- Vivid descriptions, anecdotes or human interest stories are naturally compelling and quotable
- Play up the relevance and newsworthiness of your NGO's message

### **☑ Tips:**

- Bringing about real change is always hard; it is especially hard if your group does not have ready access to the opinion shapers or decision makers. The best advice for a successful advocacy strategy is to know who or what you most want to influence and then to frame messages specially directed to them. Even better is to show them why it is in their own self-interest to implement the changes you recommend. Give them some options of short-term or long-term changes to increase the chances that something might get implemented.
- Always go well prepared to meetings or interviews with your facts and figures. Try to maintain a business-like demeanor even if you are being patronized, disregarded or insulted. If a politician or journalist asks for more details that you may not currently have, be sure to find those details out and remember to send them along later in a professional follow-up. Journalists will use again sources

who meet their deadlines and are reliable. And don't forget to express gratitude for the meeting and follow-up for the next step.

#### **D. Tactics for media impact: those that work and pitfalls to avoid**

In a number of countries the media strongly proclaim that freedom of speech and freedom of the press are fundamental human rights. In this regard they are natural allies of NGOs and civil society and therefore should be regularly engaged, through some of these methods:

1. **Open letters** to VIPs (most famously Amnesty International's clemency pleas), or to offending companies' CEOs and/or politicians. Sometimes these pieces can be just through the letter pages or done as a paid advertisement. Although they are harder to get picked up, editorial leaders or op-ed pieces submitted to mass circulation media can have a similar impact.
2. Staged incidents with graphic or novel appeal: arrests for blocking traffic and smearing blood on fast-food windows in Paris; blocking bulldozers in Tasmania's Franklin dam site; sitting in trees; mothers camping outside cruise missile bases in Europe; refugee sit-ins or occupations in front of the UNHCR visitors' center; street marches of all kinds.
3. If the media cannot be there at the time, do not forget to provide the images yourself (another form of transparency). Some memorable images have come from videotapes of Greenpeace anti-whaling and nuclear testing, asylum seeking at embassy gates and cruelty to donkeys in the Mediterranean. The simple power of video pictures dramatizes a complex or distant issue in many people's minds.
4. Start with letters to editors to lay out and highlight issues and then try to follow up with visiting them in person to make your case and put a face to the letter.

#### **☑ Tip:**

- Sometimes an interesting letter to the editor is spotted and investigated to see if it can be turned into a full story.
5. Web site sidebar ads in online newspapers are often cheaper than traditional print ads (e.g., the regular "Please no more fighting" sidebar from Save the Children in Sri Lanka on the online edition of the Sri Lankan Sunday Observer).
  6. Enlisting celebrities for full-page ads or the Hip Hop Action Summit/Live 8 for Africa events, making statements at awards shows or just wearing pins and ribbons. "When Russell Simmons speaks, millions and millions of people listen," claims PETA spokesperson Bruce Friedrich. Many media personalities are sympathetic to NGO causes and are often ready to donate their time and influence.
  7. Communicate honestly, politely and accurately, both externally and internally, about your mission, goals, objectives and programs. If the people most personally



affected by an issue want to make themselves available to the media for interviews, this can sharpen the appeal of the story. But as usual, be sensitive; do not turn your affected people into helpless victims or poster people. If an NGO's spokespeople feel they must criticize other individuals or organizations to make an important point, they must think carefully about whether the statements can pass the general standards of fair comment on a matter of public interest. In most progressive jurisdictions truth and reasonable expressions of opinion will be sufficient to protect your statements.

8. Reasons to communicate include advocacy of values and goals, information required by constituencies, and creation of favorable attitudes towards an organization and its goals and purposes.

#### **Tips:**

- Depending on the nature of the NGO, public relations should be directed locally, nationally, regionally and internationally and should be pitched to different audiences, including business and general public (at the very local level, for instance, street signs can complain about excessive building heights). To the extent possible, don't forget to think of ways of monitoring or measuring your success.
- Some other helpful tools to use and examples include: person to person contacts, phone, personal letters, mass or direct mails, faxes (n.b. sometimes busy media like old-fashioned hard copy faxes as opposed to e-mails, which they often delete, block with a filter, or don't bother to print out and read), electronic media, smooth looking promotional materials, and newsletters.
- Don't forget that cheap-to-produce and easy-to-walk-around-in message T-shirts often work very effectively. Some successful messages have been "Do Care" (a Domiciliary Care and visitation program for elderly in their homes), "No Dams!", "Fair Trade," and legal rights on being arrested; the latter became so popular that it even made some money. Paper leaflets get thrown away too easily but most people are happy to become walking billboards in free T-shirts if they have a cool message.

#### **E. Handling a scandal or crisis sensibly**

When things do go wrong (and they will) NGOs need to adopt the smarter practices observed in the corporate world. For instance, if a managing director makes a personal mistake that is starting to impact upon the reputation of the NGO, the board of the NGO needs to be seen taking the matter seriously and respond publicly and appropriately but in a caring and open manner. Trying to duck the issue and not actively step up to the responsibility will usually result in negative publicity and press reports about the NGO as a whole, even when the fault lies more in the managing director's behavior.

In situations of a major scandal or governance failures threatening the legitimacy

and continued existence of an NGO, calling in a special outside investigator or supervisor with credibility to correct errant behavior might be the only lasting solution that will be accepted by the outside world. If your advisers suggest this course of action, don't delay too long in accepting their advice. It always looks better if a troubled NGO responds quickly to complaints coming from the public or media rather than hoping they will go away eventually.

Where there is sector-wide skepticism, such as in the aftermath of a string of donation scandals, a collective approach taken by a majority of law-abiding NGOs might be the most effective antidote rather than each going alone (e.g., the Giving Scotland anti-scandal advertising and media campaigns in 2003).

**Final Tip:**

- Be guided in all public affairs activities by the principle of how best to retain the trust and confidence of the public.

## ✓ Open Access Resources

### **PROSHIKA Center for Human Development (Bangladesh)**

64 online project success stories from one of the largest NGOs in the developing world

[http://www.proshika.org/success\\_stories.htm](http://www.proshika.org/success_stories.htm)

### **Connecticut Association of Nonprofits' Toolkits and Resources for Advocacy, Lobbying and Media Relations**

Includes sample letters to the editor, public service announcements and pitching feature story ideas

[http://www.ctnonprofits.org/pages/NonprofitResources/Advocacy\\_Lobbying\\_Toolkit.asp](http://www.ctnonprofits.org/pages/NonprofitResources/Advocacy_Lobbying_Toolkit.asp)

### **Maquila Solidarity Network's Stop Sweatshops: An Education/Action Kit**

Openly available materials include guide on corporate research, codes primer, sample issues sheets, and complete script for staging a "sweatshop fashion show" publicity event

<http://www.maquilasolidarity.org/resources/garment/index.htm>

### **Oxfam's Art of Self-Defence for Supporters**

Stylish and effective macromedia pamphlet with answers to counter persistent criticisms ("myth-busters") about its methods and operations

[http://www.oxfam.org.uk/about\\_us/asd.htm?ito=1712&itc=0#](http://www.oxfam.org.uk/about_us/asd.htm?ito=1712&itc=0#)

### **The Democracy Center's Free Advocacy Materials**

Including advocacy strategies, policy analysis primer, lobbying and media and Internet advocacy

<http://www.democracctr.org/advocacy/materials.htm>



# *Open Access Resources Index*

## **accountability, evaluations of and guidelines for**

### **International Non Governmental Organisations' Accountability Charter**

First voluntary charter of international, cross-sector standards of accountability for the nonprofit sector

[http://www.amnesty.org/resources/downloads/INGO\\_Accountability\\_Charter.pdf](http://www.amnesty.org/resources/downloads/INGO_Accountability_Charter.pdf)

### **Asian Development Bank**

Establishment of a new ADB Accountability Mechanism

[http://www.adb.org/Documents/Policies/ADB\\_Accountability\\_Mechanism/](http://www.adb.org/Documents/Policies/ADB_Accountability_Mechanism/)

## **accountability index, what is it and how to measure it**

### **One World Trust Global Accountability Index**

Independent assessment of the transparency, participation, evaluation, complaint and response mechanisms of 30 of the world's most powerful organizations, including big NGOs

[http://www.oneworldtrust.org/?display=index\\_2006](http://www.oneworldtrust.org/?display=index_2006)

## **action campaigns, guidelines and ideas for**

### **For mother Earth (Belgian member of Friends of the Earth International)**

Includes campaign guide and handbook on using nonviolent direct action

<http://www.motherearth.org/inspection/inspection4.php>

## **audit report, sample of**

### **BRAC (Bangladesh)**

Sample independent auditor's report for 2005

[http://www.brac.net/downloads\\_files/Audit\\_Report\\_2005.pdf](http://www.brac.net/downloads_files/Audit_Report_2005.pdf)

## **advertising/marketing**

### **Coyote Communications Free Resources for Mission-based Organizations**

Tip Sheet to Using the Internet to Advertise Successfully & Ethically

<http://www.coyotecomunications.com/outreach/promote.html>

### **SpamCon Foundation**

Best practice links for diverse audiences and marketing, includes netiquette guidelines

<http://spamcon.org/directories/best-practices.shtml>

## **advocacy**

### **Maquila Solidarity Network (MSN)—labor and women's advocacy organization supporting grassroots groups in Mexico and Asia**

Implementation Guide to Ethical Licensing and Purchasing Policies

[http://www.maquilasolidarity.org/nosweat/pdf/Implementation\\_Guide.pdf](http://www.maquilasolidarity.org/nosweat/pdf/Implementation_Guide.pdf)

**Humanitarian Accountability Partnership International**

Sample monitoring, quality management standards, advocacy and complaints handling from an independent self-regulatory body

<http://www.hapinternational.org/en/page.php?IDpage=73&IDcat=10>

**Connecticut Association of Nonprofits' Toolkits and Resources for Advocacy, Lobbying and Media Relations**

Includes sample letters to the editor, public service announcements and pitching feature story ideas

[http://www.ctnonprofits.org/pages/NonprofitResources/Advocacy\\_Lobbying\\_Toolkit.asp](http://www.ctnonprofits.org/pages/NonprofitResources/Advocacy_Lobbying_Toolkit.asp)

**The Democracy Center's Free Advocacy Materials**

Including advocacy strategies, policy analysis primer, lobbying and media and Internet advocacy

<http://www.democracctr.org/advocacy/materials.htm>

**blogging and cyberdissidence**

**JISC Legal Information Service on Cyber-crime Overview (UK)**

<http://www.jisclegal.ac.uk/cybercrime/cybercrime.htm>

**Reporters Without Borders**

Handbook for Bloggers and Cyberdissidents, including chapters on ethics, maintaining anonymity and avoiding censorship

**certification procedures**

**Philippine Council for NGO Certification's Primer & Steps**

<http://www.pcnc.com.ph/>

**Pakistan Center for Philanthropy**

NGO Certification Model, includes detailed criteria for evaluation and process flow charts for Pakistan nonprofit and tax-exempt organizations

<http://www.pcp.org.pk/pdf/Certification%20Model.doc>

**codes of conduct, examples of**

**Christian Relief and Development Association (CRDA) Code of Conduct for NGOs in Ethiopia**

<http://www.crdaethiopia.org/Code%20of%20Conduct/CoC.htm>

**Independent Sector Compendium of Standards, Codes & Principles**

<http://www.independentsector.org/issues/accountability/standards.html>

**Maryland Association of Nonprofit Organizations**

Model code of ethical behavior entitled "Standards for Excellence: An Ethics and Accountability Code for the Not-for-Profit Sector" as well as practical recommendations under the heading of *55 standards*

[http://www.mdnonprofit.org/ethics\\_initiative.htm](http://www.mdnonprofit.org/ethics_initiative.htm)

**Minnesota Council for Nonprofits' Principles and Practices for Nonprofit Excellence**

[http://www.mncn.org/info\\_principles.htm](http://www.mncn.org/info_principles.htm)

**International Non Governmental Organisations' Accountability Charter**

First voluntary charter of international, cross-sector standards of accountability for the nonprofit sector

[http://www.amnesty.org/resources/downloads/INGO\\_Accountability\\_Charter.pdf](http://www.amnesty.org/resources/downloads/INGO_Accountability_Charter.pdf)

**People in Aid (UK) Code of Good Practice**

<http://www.peopleinaid.org/code/>

**InterAction (coalition of private relief and assistance NGOs)**

Private Voluntary Organization Standards

<http://www.interaction.org/pvostandards>

**InterAction's Guide to Appropriate Giving in Disaster Response**

[http://www.interaction.org/disaster/guide\\_giving.html](http://www.interaction.org/disaster/guide_giving.html)

**NGO Federation of Nepal (NFN)**

Developing country Code of Conduct in English translation from Nepali, with sections on professional conduct, impartiality and financial discipline

<http://www.ngofederation.org/html/codeofconduct-eng.htm>

**Bhutan Office of the Anti-Corruption Commission**

Code of Conduct for Staff, including declaration of conflicts of interest and no abuse of office or positions of authority

<http://www.anti-corruption.org.bt/pdf/Pages%20from%20ACCcodeofconduct.pdf>

**constitutions of NGOs, models and examples**

**National Federation of the Disabled—Nepal**

Constitution, as amended, of a nonprofit federation under the Organization Registration Act (Nepal)

[http://www.nfdn.org.np/constitution\\_of\\_nfdn.htm](http://www.nfdn.org.np/constitution_of_nfdn.htm)

**Northern Ireland Council for Voluntary Action**

Model memorandum and articles for a charitable company (UK)

[http://www.nicva.org/uploads/docs/r\\_RP\\_Appendix.pdf](http://www.nicva.org/uploads/docs/r_RP_Appendix.pdf)

**Oneworld International Foundation (UK)**

Memorandum and Articles of Association of a Company Limited by Guarantee (Html)

<http://www.oneworld.net/article/view/57707/1/>

**corporate governance and procedures**

**Robert's Rules of Order (Procedure) Revised**

(public domain original version)

Copyright on the original 1915 version has expired and so this online version is now in public domain; however, the enhancements to this work are only available through purchase

<http://www.constitution.org/r/or/ror--00.htm>

**Australian Stock Exchange**

Principles of Good Corporate Governance and Best Practice Recommendations

<http://www.shareholder.com/visitors/dynamicdoc/document.cfm?documentid=364&companyid=ASX>

### **Ernst & Young's Governance Toolkits for Directors**

Portal to free tools and publications for directors (primarily corporate) on their obligations, and frameworks for effective corporate governance

[http://www.ey.com/global/content.nsf/Australia/AABS\\_-\\_Corporate\\_Governance\\_-\\_Toolkits\\_Surveys\\_and\\_Resources](http://www.ey.com/global/content.nsf/Australia/AABS_-_Corporate_Governance_-_Toolkits_Surveys_and_Resources)

### **Thomson/CCBN's White Paper on Best Practices in Online Corporate Governance Disclosure**

[http://www.ccbn.com/\\_pdfs/whitepapers/corp\\_gov.pdf](http://www.ccbn.com/_pdfs/whitepapers/corp_gov.pdf)

### **International Committee on Fundraising Organizations (Association of national monitoring agencies)**

International Standards and Survey of Monitoring Practices

<http://www.icfo.de/standards.htm>

## **criminal acts, survey of possible**

### **JISC Legal Information Service on Cyber-crime Overview (UK)**

<http://www.jisclegal.ac.uk/cybercrime/cybercrime.htm>

## **developing countries**

### **Bhutan Office of the Anti-Corruption Commission**

Code of Conduct for Staff, including declaration of conflicts of interest and no abuse of office or positions of authority

<http://www.anti-corruption.org.bt/pdf/Pages%20from%20ACCcodeofconduct.pdf>

### **BRAC (Bangladesh)**

Sample independent auditor's report for 2005

[http://www.brac.net/downloads\\_files/Audit\\_Report\\_2005.pdf](http://www.brac.net/downloads_files/Audit_Report_2005.pdf)

### **Center for Development of Non-Profit Sector (Serbia)**

Forum of Yugoslav NGOs' model law on NGOs (in English)

[http://www.crmps.org.yu/xdoc/pr\\_regulativa\\_en.html](http://www.crmps.org.yu/xdoc/pr_regulativa_en.html)

### **Christian Relief and Development Association (CRDA) Code of Conduct for NGOs in Ethiopia**

<http://www.crdaethiopia.org/Code%20of%20Conduct/CoC.htm>

### **Development Gateway, putting the Internet to work for developing countries with portals, awards and communities**

<http://home.developmentgateway.org/>

### **Indonesian Peacebuilding Directory (CERIC FISIP UI direktori-perdamaian) (in English)**

Online guide to Indonesian organizations for social change, includes an automated registration and update template for donors and international organizations, training providers and over 500 civil society organizations

[http://www.direktori-perdamaian.org/english/main\\_id.php](http://www.direktori-perdamaian.org/english/main_id.php)

### **Maquila Solidarity Network (MSN—labor and women's advocacy organization supporting grassroots groups in Mexico and Asia)**

Implementation Guide to Ethical Licensing and Purchasing Policies

[http://www.maquilasolidarity.org/nosweat/pdf/Implementation\\_Guide.pdf](http://www.maquilasolidarity.org/nosweat/pdf/Implementation_Guide.pdf)



**Nam Theun 2 Hydroelectric Project Website (Lao PDR)**

International and local NGOs help IOs to openly assess potential environmental and social impacts of this high-profile dam project in Lao PDR

<http://www.adb.org/Projects/Namtheun2/consultations.asp>

**National Federation of the Disabled -- Nepal**

Constitution, as amended, of a nonprofit federation under the Organization Registration Act (Nepal)

[http://www.nfdn.org.np/constitution\\_of\\_nfdn.htm](http://www.nfdn.org.np/constitution_of_nfdn.htm)

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64 online project success stories from one of the largest NGOs in the developing world

[http://www.proshika.org/success\\_stories.htm](http://www.proshika.org/success_stories.htm)

**Sampradaan—Indian Centre for Philanthropy (SICP) Online Reports**

Portal to free Indian conference proceedings on subjects including making partnerships work, NGO-donor dialog and new leadership

<http://www.sampradaan.org/reports.htm>

**directors, guidelines and tools for**

**Personal Liabilities of a Company Director**

UK law firm's overview description of duties and liabilities

[http://www.elbornes.com/articles/commercial/com\\_0004.htm](http://www.elbornes.com/articles/commercial/com_0004.htm)

**Ernst & Young's Governance Toolkits for Directors**

Portal to free tools and publications for directors (primarily corporate) on their obligations, and frameworks for effective corporate governance

[http://www.ey.com/global/content.nsf/Australia/AABS - Corporate Governance - Toolkits Surveys and Resources](http://www.ey.com/global/content.nsf/Australia/AABS_-_Corporate_Governance_-_Toolkits_Surveys_and_Resources)

**disaster response**

**The Sphere Project (consortium of humanitarian NGOs and the Red Cross/Crescent movement)**

Handbook on Humanitarian Charter and Minimum Standards in Disaster Response

<http://www.sphereproject.org/>

**InterAction's Guide to Appropriate Giving in Disaster Response**

[http://www.interaction.org/disaster/guide\\_giving.html](http://www.interaction.org/disaster/guide_giving.html)

## discussion networks

### **The Aid Workers' Network**

Online discussion board for aid workers and their issues worldwide

<http://forum.aidworkers.org.uk/cgi-bin/discus/discus.pl>

## financial management, rules and guides

### **Good Bookkeeping and Simple Accounting Rules**

[http://www.startups.co.uk/Goodandnbsp\\_bookkeeping.YWMcmN1oh1OB9g.html](http://www.startups.co.uk/Goodandnbsp_bookkeeping.YWMcmN1oh1OB9g.html)

### **Carter McNamara's Basic Guide to Non-Profit Financial Management**

[http://www.managementhelp.org/finance/np\\_fnce/np\\_fnce.htm](http://www.managementhelp.org/finance/np_fnce/np_fnce.htm)

### **Mango's Guide to Financial Management for NGOs**

Accountability checklist and online guide, including training manual and sample financial system, spreadsheets and user booklet

<http://www.mango.org.uk/guide/section.aspx?ID=5>

## financial reporting

### **Guidestar.org Database**

Tax returns and other publicly filed documents by NGOs in US and other jurisdictions

<http://www.guidestar.org/>

### **US Internal Revenue Service Official Web Site**

Tax information and forms for US charitable organizations, including links to individual states' web pages

<http://www.irs.gov/charities/charitable/index.html>

## fundraising, best practices

### **Institute of Fundraising Codes of Practice**

Detailed primers and best practice information sheets on wide variety of fundraising topics, including practical templates and model contracts

<http://www.institute-of-fundraising.org.uk/>

### **Geneva Global Inc.**

Performance-based philanthropy based on benchmarking and evaluation metrics, includes a sample post-grant report

<http://www.genevaglobal.com/>

### **Dorothy A. Johnson Center for Philanthropy and Nonprofit Leadership—Nonprofit Good Practice Guide**

Extensive online resources especially in areas of grantmaking, fundraising and financial sustainability

<http://www.npgoodpractice.org/Default.aspx>

## fundraising, general

### **Sampradaan—Indian Centre for Philanthropy (SICP) Online Reports**

Portal to free Indian conference proceedings on subjects including making partnerships work, NGO-donor dialog and new leadership

<http://www.sampradaan.org/reports.htm>

**Charity Navigator Guide to Intelligent Giving**

Well-indexed tips and resources on business of charitable donations and solicitation, includes a CEO compensation survey

<http://www.charitynavigator.org/index.cfm/bay/content.view/catid/68/cpid/224.htm>

**New Philanthropy Capital**

Sector reports on charitable activities and research for informed giving

<http://www.philanthropycapital.org>

**United Way of Greater High Point's FAQ List of Questions**

Includes sample answer to "How much of every dollar I give is really spent on...?"

<http://www.unitedwayhp.org/faq.cfm>

**The Foundation Center**

Portal specializing in funding, proposal writing with links to corporate grant makers and foundation with their forms

<http://www.fdncenter.org/>

**United Kingdom Charities Information Bureau Web Site**

Help and Advice pages, including funding and managing

<http://www.cibfunding.org.uk/pagea.htm>

**Nonprofit Funding Web Resources for Grants and Related Resources**

(over 500 listings)

<http://www.lib.msu.edu/harris23/grants/4fcelec.htm>

**UK Treasury's Portal on Guidance to Funders**

[http://www.hm-treasury.gov.uk/spending\\_review/spend\\_ccr/spend\\_ccr\\_guidance.cfm](http://www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_guidance.cfm)

**fundraising, online**

**Justgiving—Fundraising made easy**

How to fundraise online, including a sample online fundraising page

<http://www.justgiving.com/process/raisemoney/>

**funding, support organizations**

**Charities Aid Foundation's Venturesome Web Resources (UK)**

New funding and loan options for charities, including the Charity Bank

<http://www.cafonline.org/default.aspx?page=6903>

**Nonprofit Finance Fund**

Provision of financial capital and advice to NPOs to improve their capacity

<http://www.nonprofitfinancefund.org/>

**governance, internal**

**United Way of Minneapolis Checklist of NPO Organizational Indicators**

Detailed internal evaluation tools for governance, planning and compliance

[http://www.managementhelp.org/org\\_eval/uw\\_list.htm](http://www.managementhelp.org/org_eval/uw_list.htm)

### **Humanitarian Accountability Partnership International**

Sample monitoring, quality management standards, advocacy and complaints handling from an independent self-regulatory body

<http://www.hapinternational.org/en/page.php?IDpage=73&IDcat=10>

### **humanitarian assistance in emergencies, guide to evaluating**

#### **OECD's Development Assistance Committee**

Guidance booklet for evaluating humanitarian assistance in complex emergencies

[http://www.reliefweb.int/library/documents/human\\_en.pdf](http://www.reliefweb.int/library/documents/human_en.pdf)

### **independent investigation procedures for IO projects**

#### **Asian Development Bank**

Establishment of a new ADB Accountability Mechanism

[http://www.adb.org/Documents/Policies/ADB\\_Accountability\\_Mechanism/](http://www.adb.org/Documents/Policies/ADB_Accountability_Mechanism/)

#### **European Bank for Reconstruction and Development**

Independent Recourse Mechanism

<http://www.ebrd.com/about/irm/about/irm.pdf>

#### **Inter-American Development Bank**

Independent Investigation Mechanism

[http://www.iadb.org/aboutus/iii/independent\\_invest/independent\\_invest.cfm?language+english](http://www.iadb.org/aboutus/iii/independent_invest/independent_invest.cfm?language+english)

#### **World Bank Group**

International Bank of Reconstruction and Development & International Development Association

[www.worldbank.org/inspectionpanel](http://www.worldbank.org/inspectionpanel)

### **information and communication technology**

**Development Gateway, putting the Internet to work for developing countries with portals, awards and communities**

<http://home.developmentgateway.org/>

**Coyote Communications Free Resources for Mission-based Organizations**

Tip Sheet to Using the Internet to Advertise Successfully & Ethically

<http://www.coyotecomunications.com/outreach/promote.html>

### **insurance**

**Community Insurance FAQ Website (Australia)**

Insuring not-for-profit community organizations, developed by the Municipal Association of Victoria

<http://www.communityinsurance.com.au/questions/>

### **laws, NGO-specific**

**Center for Development of Non-Profit Sector (Serbia)**

Forum of Yugoslav NGOs' model law on NGOs (in English)

[http://www.crmps.org.yu/xdoc/pr\\_regulativa\\_en.html](http://www.crmps.org.yu/xdoc/pr_regulativa_en.html)

**Survey of NGO Legislation in Countries of the Baltic Sea**

(Also covers Germany, Poland, Russia and Nordic Countries)

[http://www.nisc.lt/doc/Report\\_NGO\\_legislation\\_in\\_the\\_Baltic\\_Sea\\_Region.pdf](http://www.nisc.lt/doc/Report_NGO_legislation_in_the_Baltic_Sea_Region.pdf)

**BRAC (Bangladesh)**

Memorandum of Association for a charitable and welfare society under the Societies Registration Act of 1860 (Bangladesh)

[http://www.brac.net/about\\_files/BRAC\\_memorandum.doc](http://www.brac.net/about_files/BRAC_memorandum.doc)

**legal advice**

**Fitzroy Legal Service (Victoria, Australia community legal aid)**

Legal Fact Sheet on Dealing with the Police, includes sections on “Am I hindering the police?” and “What to do if arrested” [Note: spelling below intentional]

[http://www.communitylaw.org.au/fitzroy/files/links/Dealing\\_with\\_the\\_Ploice.htm](http://www.communitylaw.org.au/fitzroy/files/links/Dealing_with_the_Ploice.htm)

**JISC Legal Information Service on Cyber-crime Overview (UK)**

<http://www.jisclegal.ac.uk/cybercrime/cybercrime.htm>

**legal documents (laws, treaties, conventions) and general information**

**Pakistan Center for Philanthropy Download Library**

Extensive full-text laws and rules, sample policies, studies and a directory of certified NGOs from a developing country perspective

<http://www.pcp.org.pk/download.html#directory>

**Open Society Institute/ICNL’s Guidelines for Laws Affecting Civic Organizations**

Revised & enlarged 2004 edition prepared by L. Irish, K. Simon and R. Kushen

<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016333.pdf>

**World Legal Information Institute**

Free, independent and non-profit access to worldwide laws, including full texts of human rights treaties and conventions

<http://www.worldlii.org/catalog/2670.html>

**Human Rights Treaties at the University of Minnesota**

Full-text library of over 200 international human rights treaties and conventions

<http://www1.umn.edu/humanrts/>

**Council of Europe’s Official Treaty Web Site**

Texts of European treaties in html and Word formats, including explanatory reports

<http://conventions.coe.int/Default.asp>

**Federation of European Employers’ Int’l Treaty Extracts**

Relevant sections from key UN and Council of Europe treaties and conventions

<http://www.fedee.com/treatcon2.html>

**The International Center for Not-for-Profit Law’s Online Library and Knowledge Center**

Searchable directory of research, including country laws, major cases, general legal documents, reports and legal opinions

<http://www.icnl.org/knowledge/index.htm>

### **Constitutions of the World Online**

Constitution Finder and Database for Nations of the World

<http://confinder.richmond.edu/>

### **Nonprofit Integrity Act of 2004 (California)**

Summary of Key Provisions prepared by California Registry of Charitable Trusts

[http://www.ag.ca.gov/charities/publications/nonprofit\\_integrity\\_act\\_summary\\_oct04.pdf](http://www.ag.ca.gov/charities/publications/nonprofit_integrity_act_summary_oct04.pdf)

### **European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (No. 124 of 1986)**

Full text of first treaty to facilitate the mutual recognition of the legal status of NGOs operating transnationally

[http://www.coe.int/t/e/ngo/public/convention\\_124/text\\_of\\_convention\\_124/text\\_of\\_Convention\\_124.asp#TopOfPage](http://www.coe.int/t/e/ngo/public/convention_124/text_of_convention_124/text_of_Convention_124.asp#TopOfPage)

## **management**

### **Free Management Library**

Highly integrated, large online library for nonprofits and for-profits, includes links to online tutorial and training programs

<http://www.managementhelp.org/>

### **United Kingdom Charities Information Bureau Web Site**

Help and Advice pages, including funding and managing

<http://www.cibfunding.org.uk/pagea.htm>

### **The American Institute of Certified Public Accountants**

Summary text version of main sections of Sarbanes-Oxley Act of 2002 (more formally the *Public Company Accounting Reform and Investor Protection Act of 2002*)

<http://cpcf.aicpa.org/Resources/Sarbanes+Oxley/Summary+of+the+Provisions+of+the+Sarbanes-Oxley+Act+of+2002.htm>

### **Orrick, Herrington & Sutcliffe LLP (corporate law update)**

Executive summary and analysis of Sarbanes-Oxley, including sections on disclosure, governance, accountability & independence, whistleblower protection and document preservation

<http://www.orrick.com/fileupload/144.pdf>

## **media relations, resources for**

### **Maquila Solidarity Network's Stop Sweatshops: An Education/Action Kit**

Openly available materials include guide on corporate research, codes primer, sample issues sheets, and complete script for staging a "sweatshop fashion show" publicity event

<http://www.maquilasolidarity.org/resources/garment/index.htm>

### **Connecticut Association of Nonprofits' Toolkits and Resources for Advocacy, Lobbying and Media Relations**

Includes sample letters to the editor, public service announcements and pitching feature story ideas

[http://www.ctnonprofits.org/pages/NonprofitResources/Advocacy\\_Lobbying\\_Toolkit.asp](http://www.ctnonprofits.org/pages/NonprofitResources/Advocacy_Lobbying_Toolkit.asp)

### **Oxfam's Art of Self-Defence for Supporters**

Stylish and effective macromedia pamphlet with answers to counter persistent criticisms ("myth-

busters”) about its methods and operations

[http://www.oxfam.org.uk/about\\_us/asd.htm?ito=1712&itc=0#](http://www.oxfam.org.uk/about_us/asd.htm?ito=1712&itc=0#)

### **The Democracy Center’s Free Advocacy Materials**

Including advocacy strategies, policy analysis primer, lobbying and media and Internet advocacy

<http://www.democracyctr.org/advocacy/materials.htm>

## **monitoring agency, for fundraisers**

**International Committee on Fundraising Organizations (Association of national monitoring agencies)**

International Standards and Survey of Monitoring Practices

<http://www.icfo.de/standards.htm>

## **monitoring and evaluation, general**

**American Institute of Philanthropy’s Free List of Charities**

Useful free listing of most US charities, but their Rating Guide is through paid subscription only

<http://www.charitywatch.org/azlist.html>

**Food and Agriculture Organization of the United Nations**

Literature review and annotated bibliography on Monitoring & Evaluating Participation in Agriculture and Rural Development Projects

<http://www.fao.org/sd/PPdirect/PPre0074b.htm>

## **NGO information, from a developing country perspective**

**Bhutan Office of the Anti-Corruption Commission**

Code of Conduct for Staff, including declaration of conflicts of interest and no abuse of office or positions of authority

<http://www.anti-corruption.org.bt/pdf/Pages%20from%20ACCcodeofconduct.pdf>

**BRAC (Bangladesh)**

Sample independent auditor’s report for 2005

[http://www.brac.net/downloads\\_files/Audit\\_Report\\_2005.pdf](http://www.brac.net/downloads_files/Audit_Report_2005.pdf)

**Center for Development of Non-Profit Sector (Serbia)**

Forum of Yugoslav NGOs’ model law on NGOs (in English)

[http://www.crnps.org.yu/xdoc/pr\\_regulativa\\_en.html](http://www.crnps.org.yu/xdoc/pr_regulativa_en.html)

**Christian Relief and Development Association (CRDA) Code of Conduct for NGOs in Ethiopia**

<http://www.crdaethiopia.org/Code%20of%20Conduct/CoC.htm>

**Development Gateway, putting the Internet to work for developing countries with portals, awards and communities**

<http://home.developmentgateway.org/>

**Indonesian Peacebuilding Directory (CERIC FISIP UI direktori-perdamaian) (in English)**

Online guide to Indonesian organizations for social change, includes an automated registration and update template for donors and international organizations, training providers and over 500 civil society organizations

[http://www.direktori-perdamaian.org/english/main\\_id.php](http://www.direktori-perdamaian.org/english/main_id.php)

**Maquila Solidarity Network (MSN—labor and women’s advocacy organization supporting grassroots groups in Mexico and Asia)**

Implementation Guide to Ethical Licensing and Purchasing Policies

[http://www.maquilasolidarity.org/nosweat/pdf/Implementation\\_Guide.pdf](http://www.maquilasolidarity.org/nosweat/pdf/Implementation_Guide.pdf)

**Nam Theun 2 Hydroelectric Project Website (Lao PDR)**

International and local NGOs help IOs to openly assess potential environmental and social impacts of this high-profile dam project in Lao PDR

<http://www.adb.org/Projects/Namtheun2/consultations.asp>

**National Federation of the Disabled -- Nepal**

Constitution, as amended, of a nonprofit federation under the Organization Registration Act (Nepal)

[http://www.nfdn.org.np/constitution\\_of\\_nfdn.htm](http://www.nfdn.org.np/constitution_of_nfdn.htm)

**NGO Federation of Nepal (NFN)**

Developing country Code of Conduct in English translation from Nepali, with sections on professional conduct, impartiality and financial discipline

<http://www.ngofederation.org/html/codeofconduct-eng.htm>

**Pakistan Center for Philanthropy**

NGO Certification Model, includes detailed criteria for evaluation and process flow charts for Pakistan nonprofit and tax-exempt organizations

<http://www.pcp.org.pk/pdf/Certification%20Model.doc>

**Philippine Council for NGO Certification’s Primer & Steps**

<http://www.pcnc.com.ph/>

**PROSHIKA Center for Human Development (Bangladesh)**

64 online project success stories from one of the largest NGOs in the developing world

[http://www.proshika.org/success\\_stories.htm](http://www.proshika.org/success_stories.htm)

**Sampradaan—Indian Centre for Philanthropy (SICP) Online Reports**

Portal to free Indian conference proceedings on subjects including making partnerships work, NGO-donor dialog and new leadership

<http://www.sampradaan.org/reports.htm>

**NGO information and documents, general**

**Idealist.org’s The Nonprofit FAQs Page**

Encyclopedic collection of articles with further links covering all major fields of information for and about NGOs

<http://www.idealists.org/if/idealists/en/FAQ/Nonprofit/Home/default?sid=78287715-190-IEO>

**Minnesota Council for Nonprofits’ Principles and Practices for Nonprofit Excellence**

[http://www.mncn.org/info\\_principles.htm](http://www.mncn.org/info_principles.htm)

**MS (Mellemfølkeligt Samvirke) Danish Association for International Co-Operation**

Archived documents, including statute for an open members’ organization and 3-year rolling plan of action with virtual (cyber) membership feature

<http://www.ms.dk/sw26452.asp>



**The Australian Collaboration (of National Community Organisations)**

Portal for social, environmental and cultural constituencies and interests

<http://www.australiancollaboration.com.au/>

**United Kingdom Charities Information Bureau Web Site**

Help and Advice pages, including funding and managing

<http://www.cibfunding.org.uk/pagea.htm>

**The Aid Workers' Network**

Online discussion board for aid workers and their issues worldwide

<http://forum.aidworkers.org.uk/cgi-bin/discus/discus.pl>

**NGO-related tools, online courses, and support**

**Inter-American Development Bank Free Online Learning**

4 separate interactive courses are being freely offered electronically to the general Internet public on project planning and implementing (so-called logical framework approach), monitoring and evaluation, environmental impact assessment, and institutional and organizational analysis

<http://www.iadb.org/int/rtc/ecourses/index.htm>

**ACCION International, nonprofit for microfinance promotion**

Support for networks of NGO microfinance institutions, with a fund that also invests in commercial transformations into regulated financial institutions (i.e., banks)

<http://www.accion.org>

**nonviolent direct action, handbook and campaign guide**

**For mother Earth (Belgian member of Friends of the Earth International)**

Includes campaign guide and handbook on using nonviolent direct action

<http://www.motherearth.org/inspection/inspection4.php>

**online registration template**

**Indonesian Peacebuilding Directory (CERIC FISIP UI direktori-perdamaian) (in English)**

Online guide to Indonesian organizations for social change, includes an automated registration and update template for donors and international organizations, training providers and over 500 civil society organizations

[http://www.direktori-perdamaian.org/english/main\\_id.php](http://www.direktori-perdamaian.org/english/main_id.php)

**oversight**

**IFC/MIGA's Office of the Compliance Advisor/Ombudsman**

International Finance Corporation & Multilateral Investment Guarantee Agency

<http://www.cao-ombudsman.org>

**Nam Theun 2 Hydroelectric Project Website (Lao PDR)**

International and local NGOs help IOs to openly assess potential environmental and social impacts of this high-profile dam project in Lao PDR

<http://www.adb.org/Projects/Namtheun2/consultations.asp>

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## **police, dealing with**

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Legal Fact Sheet on Dealing with the Police, includes sections on “Am I hindering the police?” and “What to do if arrested” [Note: spelling below intentional]

[http://www.communitylaw.org.au/fitzroy/files/links/Dealing\\_with\\_the\\_Ploice.htm](http://www.communitylaw.org.au/fitzroy/files/links/Dealing_with_the_Ploice.htm)

## **projects, descriptions of**

**PROSHIKA Center for Human Development (Bangladesh)**

64 online project success stories from one of the largest NGOs in the developing world

[http://www.proshika.org/success\\_stories.htm](http://www.proshika.org/success_stories.htm)

## **public-private partnerships**

**Sampradaan—Indian Centre for Philanthropy (SICP) Online Reports**

Portal to free Indian conference proceedings on subjects ranging from making partnerships work, NGO-donor dialog and new leadership

<http://www.sampradaan.org/reports.htm>

**Nam Theun 2 Hydroelectric Project Website (Lao PDR)**

International and local NGOs help IOs to openly assess potential environmental and social impacts of this high-profile dam project in Lao PDR

<http://www.adb.org/Projects/Namtheun2/consultations.asp>

**The Compact Website (UK)**

Social contracting between the UK government and the voluntary and community sector in England, including a standard set of core Compact commitments and an accreditation scheme

<http://www.thecompact.org.uk/>

**FirstGov.gov for Businesses and Nonprofits**

US government official web portal to most departments and agencies partnering with civil society

<http://www.firstgov.gov/Business/Nonprofit.shtml>

**Asian Development Bank**

Report on Involvement of Civil Society Organizations in ADB’s Operations

<http://www.adb.org/Evaluation/reports.asp>

## **responsibility, corporate, social and environmental**

**Maquila Solidarity Network (MSN—labor and women’s advocacy organization supporting grassroots groups in Mexico and Asia)**

Implementation Guide to Ethical Licensing and Purchasing Policies

[http://www.maquilasolidarity.org/nosweat/pdf/Implementation\\_Guide.pdf](http://www.maquilasolidarity.org/nosweat/pdf/Implementation_Guide.pdf)

**Nam Theun 2 Hydroelectric Project Website (Lao PDR)**

International and local NGOs help IOs to openly assess potential environmental and social impacts of this high-profile dam project in Lao PDR

<http://www.adb.org/Projects/Namtheun2/consultations.asp>

**United Nations Global Compact Network**

World's largest voluntary corporate responsibility initiative

<http://www.unglobalcompact.org/>

**International Finance Corporation (of World Bank Group)**

Doing Better Business through Effective Public Consultation: A Good Practice Manual

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p\\_pubconsult/\\$FILE/PublicConsultation.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_pubconsult/$FILE/PublicConsultation.pdf)

**self-evaluation, tools for**

**United Way of Minneapolis Checklist of NPO Organizational Indicators**

Detailed internal evaluation tools for governance, planning and compliance

[http://www.managementhelp.org/org\\_eval/uw\\_list.htm](http://www.managementhelp.org/org_eval/uw_list.htm)

**Humanitarian Accountability Partnership International**

Sample monitoring, quality management standards, advocacy and complaints handling from an independent self-regulatory body

<http://www.hapinternational.org/en/page.php?IDpage=73&IDcat=10>

**Geneva Global Inc.**

Performance-based philanthropy based on benchmarking and evaluation metrics, includes a sample post-grant report

<http://www.genevaglobal.com/>

**subsidiarity**

**George MacDonald Ross In Defence of Subsidiarity**

Comment originally published in *Philosophy Now*, No. 6, 1993

<http://www.philosophy.leeds.ac.uk/GMR/articles/subsid.html>

**transparency**

**One World Trust Global Accountability Index**

Independent assessment of the transparency, participation, evaluation, complaint and response mechanisms of 30 of the world's most powerful organizations, including big NGOs

[http://www.oneworldtrust.org/?display=index\\_2006](http://www.oneworldtrust.org/?display=index_2006)

**web-based action, advice on**

**Reporters Without Borders**

Handbook for Bloggers and Cyberdissidents, including chapters on ethics, maintaining anonymity and avoiding censorship

[http://www.rsf.org/rubrique.php3?id\\_rubrique=542](http://www.rsf.org/rubrique.php3?id_rubrique=542)

# ✓ 100 Collected Practice Tips

## Finding the Right Form

1. **Unincorporated associations** are simple to get started, but in practice it becomes complicated for a nonlegal association to enter into contracts of employment with its staff, open bank accounts or lease premises. There are obviously legal and financial risks for founders to make such commitments and that is usually the reason why another form becomes inevitable when the NGO reaches a certain size.
2. It has become increasingly simple to establish a believable “**cyber presence**” online even though an NGO may actually lack a substantial membership or legal substance in reality.
3. **Registered charities and foundations** usually enjoy tax exemption privileges, so it is a worthwhile abiding by the form restrictions and reporting requirements. But NGOs and NPOs with advocacy and activist missions might find the trust form ultimately too restricting for them.
4. For the sake of transparency the **source of the original benefactor’s trust funds** could be mentioned either in the public literature, web site or annual report, even if this disclosure is not required by law.
5. There is a **wide body of legal knowledge and tradition** to draw upon for the key principles governing not-for-profit company NGOs. Many of the principles come from the operations of small to medium-sized enterprises.
6. The key benefit for founders and members of a nonprofit corporation is that they are **not ordinarily personally exposed to the debts** and other liabilities incurred by the NGO, which now has a separate legal personality of its own. Responsibility for the NGO’s debts and liabilities stops with the cash, property and other assets held by that NGO.
7. It should be an easy matter to get **quickly registered or incorporated** under a special NGO law at a centralized, one-stop agency—provided the domestic country is hospitable to NGOs in principle and acting in good faith.
8. NGOs set up under **specialty crafted laws** do not have to force their activities and reporting to fit into the provisions of other vehicles such as trusts and commercial companies.
9. A government may not try to stop the establishment of an NGO if it is only **promoting greater minority rights** or a different government form.
10. The hope for getting specialized NGO laws enacted is often slim as there is not a large “constituency” for NGOs unless Greens or other environmental parties

are powerful in the legislature. The key point for such a law is that it allows for a **simplified separate NGO or NPO status to be gained by easy unified filings** or registration without too much discretion being vested in the reviewing officer.

11. On balance a **registration procedure hosted by a government** is useful if it is mainly for recordkeeping or facilitating funding connections. When the government wants to try to use the registration process as a way of screening or vetting the NGO and its aims and programs, tensions invariably arise.
12. If your NGO has been registered with the government, do try to remember to file a **delisting notice when the NGO is wrapping up** its existence.
13. NGOs involved in the **legal defense of public rights** need not spend their own funds on legal representation in court cases. Many lawyers or university-supported institutes that are interested in these fields, particularly environmental protection and human rights, will be prepared to donate their services pro bono.
14. If the service is not offered by private insurance companies, the government might be able to offer a suitable **public liability insurance scheme** to their NGOs and citizens. However, political demonstrations and rallies are usually excluded from the insurance policies.
15. The **right to organize** to give voice to issues collectively is a core principle of NGOs. By allowing more stakeholders to participate in public debate, NGOs mitigate the dangers from only one power center dominating.
16. Individuals acting alone often face disillusionment, and occasionally intimidation and danger in their efforts to effect real change. **Acting collectively with others** in a larger group or NGO gives them a degree of protection and a greater chance at successful change.

### **Good Governance in Operations and Management**

17. An NGO with a global mission need not be restricted to one home country jurisdiction of incorporation or registration. It is also possible to have a more **inclusive networking arrangement** bonded together by an umbrella association with local chapters set up in diverse jurisdictions and even as different legal types.
18. On the question of **compensation or benefits for NGO staff**, the key will always be moderation and balance between public expectations of what is appropriate for a primarily voluntary sector and the practical concerns of being able to obtain qualified staff to execute competently the NGO's mission and work program.
19. Decision-making should almost always be subjected to a **crosscheck by oth-**

**ers.** Crosschecking is often achieved by a group vetting in committees or through regular reporting and disclosure of matters arising and the way they are proposed to be solved.

20. When something does not seem quite right, avoid the temptation to give the benefit of the doubt to your colleagues. Maintain a healthy skepticism and question things. Always **look beyond the form and surface** (which often exploit loopholes to seem compliant) and try to find out the substance of the matter and determine whether it has a valid business purpose for the benefit of the NGO.

### Useful Accounting Fundamentals

21. For very **small NPOs with little money flows**, simple accounting on a receipts and payments basis alone may suffice (i.e., no need to adopt the more sophisticated accrual basis).
22. The key elements of a **sound control system** over legal and financial commitments include a serious control environment; appropriate procedures for your size; good information, communication, and monitoring systems; firm written policies against tolerating corruption; keeping thorough records; and board review of compensation for high-level officers.
23. Even a small NGO will benefit from having an extra pair of eyes **check over some accounting transactions or payments**. Although it frequently happens, it is not a wise idea to have the same person occupy the jobs of making disbursements, keeping the books and holding the cash or bank accounts.
24. **Commingling of funds** belonging to an NGO and its founders are commonplace and dangerous when sloppy bookkeeping is practiced. It is usually a very bad idea for an NGO to consider making personal loans, advances or so-called “success payments” to any of its members or executives.
25. Avoid the temptation to compromise on what seem like minor or unimportant decisions at the time. The **road to serious governance meltdowns** and major fraud often starts with condoning minor indiscretions on the basis they are small-scale and in themselves would not harm the NGO or can be rationalized on their particular facts.
26. Preserve confidentiality of staff information, but sometimes there could be very good reasons to **disclose the salaries and short bios of the top 5 paid officers** to convince outsiders that an NGO or NPO’s money is being well spent. Occasionally a jurisdiction’s law might require such disclosure especially for not-for-profit companies or very large foundations.
27. Be careful **not to give any preferential treatment or priority payments** to certain favored suppliers, creditors, related parties or insiders if the NGO is

starting to experience difficulties in meeting its debts as they become due.

28. If there is sufficient warning and funds left over, the **winding-up of an NGO** can be properly managed by the existing members in a way so as to ease down ongoing projects and activities without an abrupt halt to the detriment of the beneficiaries who may be relying upon those programs.

### Some Basic Principles from Codes of Conduct

29. It is in everyone's interest to try to **prevent abuses, waste and fraud** in the NGO sector.
30. **Codes of conduct (and writing down best practices**, lessons learned or core office procedures) are also an excellent way of retaining the institutional memory in an NGO where there are many volunteers who roll over or move on.
31. Simple and easy to implement examples of **self-restrictions that are often good for public reputation** relate to setting modest standards of travel (certainly no chauffeur-driven cars or meetings in resorts) and limitations on accepting excessive gifts or hospitality that may look like they could sway judgment. This usefully avoids charges of hypocrisy, and is convenient for outsiders to see; internal discussions about them help focus everyone on the need.
32. There are more than enough **free accreditation organizations** and umbrella NGOs, so be wary of agencies that offer their services for commercial fees.
33. Of course, occasionally accepting someone's courtesy of a **free lunch** may be allowable in situations where you are not in a position to reward them with a favorable decision (especially if money is not changing hands). The rest of the time even NGOs need to be careful of this trap.
34. Whatever you do, make sure **unethical behavior of members or executive officers is never rewarded** or encouraged by the management structures you have in place. Frequent reminders of what is considered your code of conduct, which labels inappropriate practices, will help all members come to appreciate what is acceptable behavior and what is not.

### Foolproof Fundraising

35. It is prudent to set up a deadline (usually no more than five working days) within which **collected contributions should be properly deposited in the bank account** for a solicitation campaign or passed over to the appropriate NGO receiving officer. This avoids unnecessary mistakes of donations getting lost or misappropriated by collectors or volunteers.
36. If you solicit for one reason, make sure you **do not swap those funds to another worthy purpose**, or at least have fine print (not too small) that allows this. Even though you may have a legal right to make such a swap, be careful

to listen to the media and public opinion and realize when it is wiser to back down to the giving public's view of the fairness of the situation.

37. If there is a specific campaign for an appeal that requires a certain amount of donations, have a **publicly announced contingency plan** in place to deal with either a shortfall or excess in the collections.
38. Limit tightly the costs run up in raising your funds and regularly test to see if the solicitation methods being used are really **cost effective for the results achieved** (i.e., the fundraising ratio). If they are not, it's time to think of a new, less expensive fundraising strategy.
39. **Fundraising expenses should be reasonable** compared to the actual fundraising results achieved.
40. Lavish dinner events are usually a bad idea as the media often criticizes the costs of the food or the speaker's fee as **too extravagant for a charity**.
41. If your NGO decides to use a **commercial fundraiser** make sure they are registered, abide by an ethical code of conduct and are prepared to sign a customary written contract with the NGO, dealing with the campaign's purpose, parties' obligations and fee structure, etc.
42. Don't forget to apply for **third party insurance** to cover any liability that might befall members of the general public at your fundraiser event. Sometimes big events in public spaces will need advance clearance by the police and local authorities.
43. Be guided by the **80-20 principle**, which holds that 80 percent of an NGO's support usually comes from just 20 percent of its donor base.

### **Simple Rules for Better Accountability and Reporting**

44. A simple step to demonstrate inclusiveness could be to welcome general comments and criticisms from the public on an NGO's policies and programs through an **open feedback page on its web site**. Within staff resource limitations, appropriate enquiries could receive a reasonably prompt reply.
45. It is usually **good practice to account to the members of an NGO** as if they were similar to shareholders in a public company. And today many online members can be kept informed very cheaply by electronic communications or bulletin boards.
46. Complex transactions or those involving many related parties are often suggestive of the possible presence of sham or fraudulent deals. If management cannot explain clearly to members the purpose and justification for any transactions involving the NGO, a **review by outside experts** may be warranted.



47. As a useful rule of thumb, NGOs and NPOs could aim to spend at least 60% of their annual expenses directly on program activities. Otherwise they may find themselves facing criticisms for being **too profligate on overheads** with grant monies intended to be spent on beneficiaries.
48. It is prudent to aim to have **net assets available for use** in the following fiscal year not usually more than twice the current year's expenses or twice the next year's budget, whichever is higher.
49. **Do not run a persistent deficit** in the NGO's net current assets, as this suggests demonstrable financial danger and may even be fiscally irresponsible.
50. Obviously the central purpose behind any report to the public or other stakeholders is to **communicate relevant information clearly and in an accessible manner**. Although it is often difficult for volunteers to find the time, some care and thought needs to be put into the quality of information and style of language used.
51. If information, particularly of a financial nature, is being presented over time or across different areas, it is a great courtesy to the reader if it can be done in a way to make it **easier for comparisons to be made**. Constantly changing presentation formats from year to year is unhelpful and reduces transparency.

### **Practical Ideas for Measuring Success and Impact**

52. Consider if your NGO is brave enough to frankly **write up its failed projects in its public reports**. Others may learn valuable lessons from where your project went wrong. As NGOs do not have to worry about shareholders or the value of their stock, there might be little downside to such transparency.
53. The hard reality for **capturing full costs** is that it is very often difficult to do in practice even for sophisticated offices with the control know-how, much less volunteer NGOs. The best that might be achieved here is a commitment from management to try to introduce measures or reforms in this direction in a phased and modest manner. Often that will suffice to impress outside donors or monitoring governments.
54. If only one NGO does this form of full cost accounting, such an effort may be pointless and possibly even harmful to that pioneer, as it would tend to exaggerate its costs in comparison with the understatements from the competitors. How to extend this approach across sector, state or country? One way would be through self-regulatory organizations on whatever level trying to agree eventually on **common accounting standards and practices**.
55. Projects often run afoul of unanticipated risks or faulty or changed assumptions. **Constantly test your assumptions** and ask "what if" questions.
56. Having more people involved will help ensure that **most of the risks and as-**

**sumptions are properly addressed**, as often we don't fully appreciate what we are assuming ourselves until another person points it out to us.

57. Ask early and ask often the key question: **How feasible are our planned activities given the scale of our resources** and reasonably anticipated funding? If you don't have enough, the prudent course is to scale back or start the project on a pilot basis.
58. **Serving multiple stakeholders** (sometimes too many) can become daunting and have a chilling effect on the confidence of an NGO.
59. It is probably best to **be clear about who the NGO's main clients and paymasters are** and then aim to satisfy them first and always—with the others (including the government and media) in line or in turn whenever possible without expending too many resources.

### **Avoiding Criminal and Civil Pitfalls**

60. When advising its members on what actions they can take to advance a cause, an NGO's management needs to **be especially cautious about possible incitement to commit criminal acts**. The risk in advising others to directly break a law (whether it is bad or not) is that such advice will frequently constitute a crime in and of itself, e.g., suborning (or inducing) others to commit crimes.
61. Although companies frequently take legal action to try to stop cyber campaigns directed against them, the real risk often comes from aggrieved individuals who feel personally slighted or lose face. A good rule of thumb is to **be very careful when you plan to criticize or attack the reputation of an individual person** (ad hominem) even if they are the CEO and are powerful and famous.
62. Personal slander web sites are usually frowned upon by most courts and legal systems. Certainly, repeatedly targeting someone in a concerted "**character assassination**" **might be risky**, even if they are a public figure.
63. Generally be **cautious about creating and posting material** that could be considered excessively violent, obscene, harassing, against public morals or otherwise objectionable, even though you may think it might be free speech that could be protected under your constitution or general principles. Even humor is often misunderstood.
64. To make sure that your actions can withstand society's judgment of their moral legality, you should always consider whether the breaching individual or NGO is **breaking laws for a higher purpose or just choosing to violate laws of a country in pursuit of personal interest** and hoping not to get caught. The latter case would run close to simple or common criminality without any redeeming elements.

65. **Ask yourself:** Even if you have a “good or political explanation” for your action, will the courts consider it? Can you flaunt the law if you get no financial gain and it was done on principle?
66. There are also certain groups that must hold themselves to even higher standards of lawful conduct. Lawyers, politicians, clergy and other role models cannot choose which laws they will violate because of political beliefs. Generally, they **must uphold even bad laws** until they can be changed through a lawful process.
67. Remember: no matter how amusing or dramatic a direct act may seem when it is conceived, you must always consider whether it entails any criminal risks. Even **throwing a pie in someone’s face** for a striking picture to dramatize a cause is strictly an assault in most countries. The advice of volunteer lawyers before you begin your campaign can be invaluable as in most jurisdictions lawyers are ethically bound not to advise clients to commit criminal acts.
68. The following **direct actions may result in criminal or civil penalties** for the person committing it and the NGO encouraging it in certain countries: marching or demonstrating without a permit, failing to move on when ordered by the police, going onto another’s property without their permission, using a loudspeaker truck to complain outside a company’s offices, blocking the path of demolition or earthmoving equipment, letting loose laboratory test animals, putting paint on wild animals to spoil the use of their fur coats for fashion purposes.

### **Partnering Smoothly with the Government**

69. During some of the recent massive **disaster relief operations, friction has developed** between experienced expatriate humanitarian NGO operators and the local government relief coordinators who feel they have not been consulted enough. International NGOs and their staff would do well to remind themselves that they are guests in the host country and should try to show the appropriate level of respect to the local authorities even if they are critical of their performance.
70. In many developing countries the governments frequently see themselves as **competitors with NGOs for receiving overseas development assistance** from donor countries.
71. In the PRC, there has developed an interesting model that is worth watching for other countries and NGOs. As the state wants to attract **private donations for public purposes**, it will set up a foundation and pay all of the salaries and overheads, leaving 100% of the public donations to be directly spent on the programs and projects, such as helping indigenous peoples.

72. Remember to watch out that your NPO does not get into **too much of a business operation** and breach its public benefit status or lose tax privileges as a non-profit. This depends mainly on how you are set up and the form of the local tax breaks you enjoy.

### Getting more Contracts, Grants and Tax Breaks

73. How can NGOs find out about government opportunities and start to **compete for state money and contracts**? Check first with your governments and, if they have them, small business or entrepreneurial agencies or the like to see if they offer help in how to bid and get qualified for government projects, etc. Useful training or workshops might be offered by the governments themselves or with the support of development finance institutions.
74. Another useful way to break the ice and get exposure to the government departments that may be judging the tenders could be through first being invited into policymaking procedures through **comments from the public or giving evidence before hearings**. In this way the NGO establishes its expertise in certain areas and begins to win the confidence of government bureaucrats responsible for the tenders.
75. By their very nature as one-sided gifts, there remains a risk that a **promised donation or grant may not come through on time** or be honored as expected. Even after a public pledge has been made there is still some doubt unless the grant is memorialized in a contractual promise. Therefore, NGOs and NPOs should be prudent in making financial commitments on the expectation of grant funding, especially if they involve large purchases or taking on paid staff through formal employment arrangements.
76. **Writing good grant fund proposals** is now becoming an integral part of every NGO's repertoire. Make sure some of your staff or volunteers attend any free training programs being offered to help them prepare better proposals with a greater chance of being accepted.
77. The law and practice concerning the **tax status of not-for-profit foundations and charities**, particularly in continental Europe and parts of Asia, is extremely complicated. Many companies or family estates also structure themselves in similar positions to take advantage of the tax exemptions of these non-profit-making entities.
78. **Umbrella organizations** that certify the validity and good faith of NPOs and their operations are another effective way to convince tax authorities of the legitimacy of an NPO and that it is not being used as an unproductive or illegal tax shelter.

## Working Effectively with International Organizations (IOs)

79. Although it appears complicated when starting out, there are really only a couple of key variations on **how NGOs are contracted and remunerated by IOs**. Most common is just payment for your negotiated fees plus actual costs. Fees can be stated as being lump sum, fixed fees or at unit rates applied to multipliers, usually of time, but maybe outputs produced.
80. Another method not used so often for NGOs could be a retainer on a standing basis to provide things at preagreed rates. These are sometimes also known as **period contract arrangements**.
81. Usually the legal format will be that of an **independent contractor or supplier of services to the commissioning IO**. Usually the staff of an independent contractor will not be covered by the insurance of the IO and so separate arrangements will need to be made for them by the contracting NGO.
82. Watch for announcements by the IOs in your field of their public hearings and apply to participate. Sometimes you will be allowed in, even if only on an **observer basis to start with** (usually you can ask questions). Later as you gain their trust you may be invited to formally offer comments.
83. Human rights NGOs or local community activists interested in indigenous people should realize the surprisingly effective public relations potential of **filing complaints or critical reports before various United Nations commissions**.
84. As your NGO gains greater acceptance and credibility with the target IO, **opportunities to formally provide speeches or training courses for IO officials or their clients at conferences etc.** may arise (often these come with honoraria or participation costs). A good way to break the ice and get known to an IO could be for the NGO to apply to some of the various awards and recognition contests held by the IO community, in particular the high-profile ones of the United Nations (e.g., UN Population Award).
85. An independent NGO might also be appointed by an IO or government executing agency to **monitor the implementation of a development program**, for example to report on how successful the consultation and participation with affected people on that project has been.
86. Other contractual opportunities well suited to NGOs might be the provision of **community facilitation and empowerment services for a project** (e.g., helping to identify local community leaders and enable them to take part in a consultation process with the government or IO proposing the project).

87. Don't forget the effectiveness of the old-fashioned approach of just **writing to the resident office of an IO or right person at HQ** to request information. Sometimes they will supply it willingly and you can receive it without having to go through formal requesting channels.
88. **Complaint filers** are defined (according to ADB's rules) as:  
"any group of two or more people (such as an organization, association, society or other group of individuals) ...." and "a local or nonlocal representative of the affected group."
89. Filers can submit their **documents in a local language** if they are unable to provide an English translation.
90. Names will be kept confidential if requested; **however, anonymous complaints are usually not accepted.**

### **Making Allies with the Media and Public**

91. Try to interest local media by **finding the local or national aspect** that will immediately appeal to their audience.
92. Watch how your target media covers similar "human interest" stories and try to **frame your issue in the same style**. Look for the opposing interests and try to set up the story as a conflict between the good and bad or big and little guys.
93. Effecting real change is always hard; it is especially hard if your group does not have ready access to the opinion shapers or decision makers. The best advice for a **successful advocacy strategy** is to know who or what you most want to influence and then to frame messages specially directed to them.
94. Always go **well prepared to meetings or interviews with your facts and figures**. Try to maintain a business-like demeanor even if you are being patronized, disregarded or insulted.
95. If a politician or journalist asks for more details that you may not currently have, be sure to find them out and remember to send them along later in a **professional follow-up**. Journalists will use again sources who meet their deadlines and are reliable.
96. Sometimes **an interesting letter to the editor is spotted** and then investigated to see if it can be turned into a full story.
97. Depending on nature of the NGO, external communications should be directed locally, nationally, regionally and internationally and should be pitched to different audiences, including business and general public. To the extent possible, don't forget to **think of ways of monitoring or measuring your communications success**.

98. Some other **helpful tools to use** and examples include: person to person contacts, phone, personal letters, mass or direct mails, faxes (n.b. sometimes busy media like old-fashioned hard copy faxes as opposed to e-mails, which they often delete, block with a filter, or don't bother to print out and read), electronic media, smooth looking promotional materials, and newsletters.
99. Don't forget that cheap-to-produce and easy-to-walk-around-in message T-shirts often work very effectively. Paper leaflets get thrown away too easily but most people are happy to become **walking billboards in free T-shirts** if they have a cool message.
100. Be guided in all public affairs activities by the principle of **how best to retain the trust and confidence of the public.**

## Glossary

**Accountability.** Holding someone, some group or some entity responsible for its actions and failures, outputs and results.

**Audit committee.** A subcommittee of a board of directors/trustees that includes a high proportion of independent directors and those competent in accounting and auditing. It receives and acts upon the financial recommendations of outside auditors.

**Benefactor.** Person who uses their money to set up a trust or foundation during their lifetime or through their testamentary will.

**Beneficiaries.** Persons for whose benefit property (including money) is held, or for whom services are offered, by trustees or NGOs.

**Bequest.** A charitable gift by a donor. Often it comes with the entitlement to have your name associated with the gift.

**Board of directors or trustees.** The group of directors (or trustees) that has day-to-day operational control and oversight over an NGO or international organization (IO). Different names are used in each jurisdiction or legal tradition.

**Breach of trust.** Acting in a way inconsistent with your fiduciary duties to act in the best interests of the NGO above your own gain.

**Case law.** Law and principles made when judges or arbitrators decide cases and disputes and write up their decisions. It is non-statutory law, meaning it is not created by the legislature or sovereign.

**Certificate of incorporation or charter.** Formal document that establishes a corporate entity and frequently defines its scope and powers. It is usually filed with a government official, department or court responsible for registering such entities.

**Character assassination.** Extreme acts against a person's reputation or business integrity often as part of a protest campaign.

**Charity.** An entity set up for the purpose of providing educational, scientific, religious, artistic, or philanthropic relief to members of the general public. Many jurisdictions have long-standing specialized laws for the establishment and regulation of charities. Does not normally include private clubs and mutual societies for the benefit of its members.

**Chief operating/executive officer or managing officer (CEO).** Person who is the highest executive officer responsible for running the daily operations of an NGO. Often called a coordinator in more collective NGOs.



**CITES.** The Convention on the International Trade in Endangered Species of Wild Fauna and Flora, which entered into force in 1975, attempts to regulate the global trade in animals, plants and their products. Some NGOs have been able to play a useful role in monitoring countries' adherence to their treaty promises under this regime.

**Civil action or suit.** A legal case brought by one private citizen or company for relief or damages. Not initiated by the state or police prosecutors.

**Class action.** A civil suit brought collectively by a group of people who are affected by the same activities or negligence (e.g., consumers of a faulty drug or victims of an environmental accident).

**Code of conduct.** Voluntary guidelines and principles for how NGOs may conduct themselves and their affairs. Not established by the state through force of law.

**Commingling of funds.** Improper mixing of personal finances with those of an NGO.

**Compact (social contract).** Term referring to various legal and administrative arrangements between a government and a private or NGO social service provider, such as in the health or education fields.

**Conflict of interest.** Improper mixing of personal and fiduciary business interests, where a director or officer would gain personally from a business decision taken by the NGO. Such situations are best avoided by the conflicted director excusing herself from the board meeting, leaving the matter to be decided by the other impartial directors.

**Constitution.** Formal legal document as to how a state, international organization or NGO is organized and run.

**Constitutive documents.** Formal legal documents, such as charters or memoranda of incorporation, which are used to set up (constitute) the existence of an NGO or other legal entity.

**Control system.** Any system established to ensure financial and legal commitments are made by the right persons upon proper authorization and crosscheck.

**Convention or treaty.** International agreement between two or more states and/or international organizations. NGOs are usually not allowed to be formal parties in their own right to treaties.

**Criminal laws.** Body of law and principles that refer to illegal acts that are prohibited by the state on force of fine or imprisonment.

**Crosschecking.** Prudent financial or business management procedures to safeguard against fraudulent or negligent business decisions. Usually involves another more senior officer or body overseeing the work of the more junior operative.

**Direct action.** Any activity or demonstration that involves one-on-one confrontation, as opposed to more indirect means, such as boycotts, negotiations and lobbying to change policy.

**Direct mailings.** Approaching the general public for a contribution to an NGO through a bulk mailing campaign of brochures usually accompanied with pledge forms.

**Dissolution of an NGO (winding-up of an NGO and its operations).** Various procedures required in each jurisdiction to end the operations of an NGO and pay out its creditors in an orderly way.

**ECOSOC.** The Economic and Social Council of the United Nations is assigned to coordinate the economic, social, and related work of various parts of the UN. It receives advice from numerous NGOs, as well as academics and representatives from the business sector.

**European Convention on Human Rights.** The European Union's version of the Universal Declaration of Human Rights. It copies very closely the wording of many of the UN's sections. It also established a European Court of Human Rights, which has heard many cases upholding the rights of controversial NGOs to establish and register themselves in countries such as Greece and Turkey.

**Executive fiat.** An order from a government official whose decision is necessary to authorize actions or procedures, such as the registration of NGOs. Often marked by a high degree of unpredictable discretion that is frequently unchecked by another independent body or court.

**Fiduciary duty.** Duty of trust owed by a director, trustee, or officer to act in the best interests of the NGO, rather than for personal advancement.

**Foundation.** Usually a large-scale charitable or public purpose organization that may be established under a variety of laws. Some foundations are also incorporated as nonprofits (e.g., World Economic Forum in Switzerland). A favored form for grant-giving trusts or societies for the support of the arts.

**Founder.** Person, company or group that establishes or originates an NGO.

**Four-eyes principle.** So-called because at least two people will check a financial transaction before it is implemented. Based on the old military "two-keys" principle that the agreement of two officers is required before a weapon can be launched.

**Franklin dam campaign.** In 1982 environmentalists interfered with planned hydro construction works on state forest land in Tasmania, Australia to stop the destruction of a UN common heritage wilderness area. Their televised actions and arrests popularized the struggle and bought time for federal government intervention and ultimately successful court challenges to halt the works.

**Freedom of information laws.** Term to refer to various laws and disclosure practices in progressive jurisdictions that allow the general public to access non-sensitive government documents and archives. Certain non-public NGO reports and filings might be disclosed to the public or media if such laws apply to the government departments that collect these reports.

**Freedom to associate.** A bedrock principle for NGOs and their members to peacefully congregate to pursue their agenda. Often also enshrined in democratic constitutions or bills of rights.

**Fundraising ratio.** Amount of money raised against the costs of raising it.

**General assembly.** Most common term used to refer to the periodic meetings of all the members of an NGO. Universally must be held at a minimum on an annual basis, but can be more frequent depending on the terms of the constitutive documents or the business needs of the NGO.

**Gifts-in-kind.** Instead of giving money, personal property such as clothes, food or services may be contributed by donors.

**Governance.** Manner in which power is exercised by someone, some group or some entity in management.

**Governing body.** Term referring to the highest management group of an NGO. Often synonymous with the board or even the general assembly.

**Group guarantee.** The repayment of a microfinance loan is guaranteed by the other members of the borrowing village group, not just by the debtor herself. Group support is thought to encourage higher peer pressure to honor a loan.

**Guantanamo detainee case.** In the case of Hamdan the US Supreme Court decided in June 2006 to invalidate military commissions which had been set up in violation of the Geneva Conventions at the US-run prison at Guantanamo Bay for detainees from the campaigns against terror. Notable for a powerful judicial check on the executive branch's interpretation of their powers to act in times of a national emergency and for upholding international humanitarian and treaty principles in the face of domestic derogations or exceptions.

**Improper personal profit.** Any personal financial or business gain at the expense of the best interests of the NGO.

**Indirect action.** Myriad of NGO activities that do not involve one-on-one confrontation or physical acts, most of which are legal.

**Institutional memory.** The tacit knowledge and know-how possessed by staff who work for an NGO or IO. It is rarely written down or passed on to new personnel. Frequently it is lost to an entity when the long-serving staff leave, unless the entity introduces knowledge capture and management programs.

**Internal governance.** Procedures set up inside an NGO to ensure it is operated in an efficient and ethical manner.

**Legal identity or personality.** Capable of having legal rights and duties separate from the individual members. At law persons can be natural (real human beings or individuals) or artificial (companies or other formal entities, including registered NGOs).

**Libel.** Term referring to various criminal and civil laws that protect persons and companies (sometimes even their products) from unfair or untrue public accusations.

**Limited term charitable licensing.** Instead of having a perpetual license to operate indefinitely, a charity must periodically convince the registration authorities that it is operating responsibly and in the public interest before it can receive a renewed license. This reform is being considered in light of criticism that some large charities have become complacent and non-responsive to the reasonable demands of government and the general public.

**Management board or advisory board.** Often a board of outside advisers who are experts in their field and are selected to give independent guidance and comments to managers on the operations and programs of an NGO.

**Matching gift program.** Some companies will match the amount of money their employees give to a charity or qualified NGO through these programs.

**Memorandum of Understanding.** A written arrangement to collaborate on some project or activity often in the form of an exchange of letters between parties such as IOs, government departments and NGOs. It is not intended to have the force of being legally binding, although the parties will usually honor their promises to each other. It is widely used because it is more convenient to prepare and may not require the formal approval of higher authorities with legal and financial commitment powers.

**Mission.** The strategic direction or purpose of an NGO. Can be multiple but not too diffuse.

**Montreal Protocol.** One of the most successful treaties of all time, the Montreal Protocol on Substances That Deplete the Ozone Layer has enjoyed widespread adoption and implementation by countries since it was first opened for signature in 1987. Also has a multilateral fund that helps developing countries pay for their obligations under the treaty to phase out the use of ozone-depleting substances. Especially noteworthy for its fast negotiation after the scientific problem was understood.

**Moral turpitude.** Serious violation of normal moral standards, most usually involving the commission of a crime or a heinous personal act.

**Narmada Dam campaign.** In the 1980s local people formed a movement to protest their displacement for the construction of a major dam project on the Narmada river in India. The World Bank withdrew financial support after an independent review of the implementation of the project.

**Not-for-profit company.** A corporation set up under a special section of the company laws for an identified non-commercial reason, such as educational, charitable, social or humanitarian purposes. While NPOs may have the traditional management structure of a company, i.e., CEOs, officers and boards of directors, they do not have shareholders who receive profits or distributions of its assets.

**Open letter.** A protest or complaint letter addressed to the target of a campaign (e.g., CEO of an offending company) that is publicly displayed by the writer usually in a paid advertisement of a newspaper. Now more frequently posted on the Internet, which is cheaper but less visible.

**Outside oversight.** External checking by an independent body of an NGO's operations and governance.

**Overhead or administrative expenses.** Back office expenses that must be met to deliver aid or service in the field to the beneficiaries in need. Frequently criticized if too high or misspent on lavish rent and perks for HQ executives.

**Parody or hate site.** Web site with the purpose of making fun or criticizing its target, which might be a government, company or individual.

**Partnership.** Relationship among people carrying on a common business for shared profit, but who are not members of an incorporated company.

**Philanthrocapitalism.** Newly-coined phrase that refers to the new breed of wealthy capitalists or celebrities who are socially active in their preferred charities or causes.

**Public benefit.** An important concept for NGOs in order to obtain tax privileges and exemptions because their activities are beneficial to the general public good of society rather than being for a money-making endeavor or for members' personal enjoyment.

**Public liability insurance.** New form of insurance that covers an NGO for its damage or negligence to members of the general public. It may have to be offered by a government agency; commercial insurance companies may not find it a lucrative enough market to enter.

**Sarbanes-Oxley Act or SOX.** More formally the Public Company Accounting Reform and Investor Protection Act of 2002. After the Enron scandal, US legislators Sarbanes and Oxley sponsored this wide-sweeping reform of corporate governance of publicly traded companies in the United States. Certain provisions are also relevant for large NGOs and foundations. Similar legislative reforms have taken place

around the world; these are frequently known as SOX reforms.

**Self-dealing.** Improper mixing of personal business interests with those of the NGO, where a director or officer causes an NGO to enter into a financial or business arrangement for the benefit of the director or officer.

**Self-regulation.** Instead of being controlled by the government, an NGO or a sector of civil society undertakes to police its own activities.

**Sharp practice.** While not strictly illegal, this activity may cross the bounds of what is normally considered ethical or a good business practice for an NGO.

**Special-favor deals.** A business deal where an advantage is offered to an insider or a person connected with the managers of the NGO. Most often these are unfair and improper to the disadvantage of the NGO.

**Stakeholder.** Any person or group with an interest in an NGO or IO or their operations and programs. Does not have to be a member or volunteer and is often someone who is being helped by the NGO's programs.

**Statute or statutory law.** Laws formally written down by legislatures or parliaments in enactments, as opposed to judge-created case law.

**Subsidiarity.** Useful concept developed by the EU to mean taking important decisions at the lowest and most efficient level so as to encourage more direct involvement of the persons usually affected. Also sometimes known as "new localism."

**Tax exemptions and privileges (tax breaks).** Generic terms to refer to the myriad of tax relief provisions offered by governments for both the NGO and persons who donate money to registered NGOs that qualify for such privileges.

**Transparency.** Allowing outsiders to see the inside workings and decision-making processes of an NGO or its management body. Also known as "information flows."

**Trust.** Has many legal definitions; for our purposes mainly refers to a form of NGO set up by a wealthy individual (benefactor) either during their lifetime or through a testamentary will for a non-commercial purpose, frequently for the benefit of others or a philanthropic activity.

**Trustee.** One who holds property or money on trust for others, or provides services for the benefit of others; the managers of a trust.

**Unincorporated association.** A group that has not taken formal legal action to organize itself into a separate legal entity; such a group is unincorporated, not a corporate body of associated people. Many NGOs begin in this form but find they must evolve into a more formal entity as they grow.

**Universal Declaration of Human Rights.** The United Nations General Assembly's first bill of rights dating from 1948. While it is not strictly legally binding on states, it has long been recognized as declaratory of customary international human rights law.

**Venality.** Being susceptible to corruption or bribery or using one's position of trust for an improper personal benefit or dishonest gain.

**Watchdogs.** Usually independent NGOs that oversee (with or without permission) the operations of other NGOs or IOs that are active in areas of particular interest, such as the environment or indigenous peoples.

**Whistleblower.** Usually an inside person who discloses wrongdoing or sharp business practices in an NGO, IO or company. Many progressive jurisdictions protect them from retaliation that could affect their employment prospects.

### **About the Author**

**Grant Stillman** has been the Legal Adviser at the non-profit Asian Development Bank Institute in Tokyo since its establishment in 1997. He is Adjunct Professor of International Law at Temple University Japan and has worked in the United Nations system and OECD in Paris. Dr Stillman studied at Georgetown University Law Center and is an attorney in Australia and New York State.

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