

**គណៈកម្មាធិការសហប្រតិបត្តិការដើម្បីកម្ពុជា**  
**Cooperation Committee for Cambodia**  
**Comité de Coopération pour le Cambodge**



**NGO Good Practice Project (NGO GPP) - Phase 2**  
**(March 2006 – February 2008)**

**NGO Self-Regulation Seminar**  
**Summary Report**

**Friday, 14 July 06, 8:00am – 4:45pm**  
**Sunway Hotel, Phnom Penh**

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## Summary

The NGO Good Practice Project (NGO GPP) – Phase 2 (March 06 – February 08) is a project of the Cooperation Committee for Cambodia (CCC), funded by AusAID and Forum Syd.

This project aims to strengthen the NGO sector in Cambodia by encouraging and promoting NGO accountability and good organisational practice.

On 14 July 2006, NGO GPP organised a one-day workshop on NGO Self-Regulation at the Sunway Hotel. This workshop was supported by AusAID, Forum Syd and Oxfam GB.

The seminar aims:

- To learn about NGO self-regulation systems in other countries and their impact/benefit on the NGO sector in those countries
- To raise awareness about how NGO accountability can be addressed through voluntary NGO self-regulation initiatives

The seminar (Annex 1) featured two guest speakers: Mr. Mark Sidel, Professor of Law at the University of Iowa, USA, and Ms. Rhonda Chapman, PhD Research Candidate and former Director of Standards and Practice for the Australian Council for International Development (ACFID) (Annex 2).

There were 58 (20 female) seminar participants from the NGO sector, donors, government representatives and other stakeholders. (Annex 9)

## Welcome Remarks - Ms Gina Frothingham, NGO GPP Project Advisor

Good morning and welcome everyone to this seminar on NGO self-regulation. My name is Gina Frothingham and I am the Project Advisor for the NGO Good Practice Project (NGO GPP). NGO GPP is one of the projects of the Cooperation Committee for Cambodia (CCC) and we are responsible for organising this seminar today.

I believe we are all here today because of a common interest that we share: NGOs and NGO accountability. But why has this topic, "NGO accountability", brought us together here today? How does accountability make a difference?

NGO accountability is a complex issue. Organisations need to be accountable to many different sets of stakeholders which play a fundamental part in their operations:

- donors provide funding
- governments provide legal frameworks
- beneficiaries or target communities provide the basis for an organisation's purpose and moral legitimacy
- supporters provide their money and time

Accountability makes a difference to both an organisation and to its stakeholders:

For the **organisation**, accountability increases credibility and legitimacy, it strengthens governance structures and it leads to learning and innovation.

For the **stakeholders**, accountability ensures that the needs of the different stakeholders are addressed in organisational policies and practices.

While some NGOs are addressing the issue of accountability individually, many are also attempting to address it collectively. Through self-regulation mechanisms such as codes of conduct and certification schemes, a growing number of NGOs worldwide are attempting to develop common standards of organisational practice to help increase and demonstrate their accountability.

The NGO GPP project started in 2004 with a 20-month pilot phase. During that time, a working draft *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* was developed by a Working Group and through consultation with the wider NGO community and other stakeholders. However, it is widely recognised that just developing a code of conduct is not enough to increase NGO accountability. A supporting system needs to be in place that ensures the code is being followed.

The second phase of the NGO Good Practice Project is underway. An important objective during this phase is to design and establish a voluntary NGO self-regulation system that can work in Cambodia, based on compliance with the new Code and Minimum Standards of organisational practice. As part of this process, we have looked to other countries for models and information on similar NGO self-regulation initiatives.

We are privileged today to have two guest speakers who have information and experience to share on the topic of NGO self-regulation, from which we can all learn: Ms Rhonda Chapman, Former Director for NGO Standards and Practice, and former Secretary for the NGO Code of Conduct, Australian Council For International Development (ACFID), and Mr. Mark Sidel, Professor of Law, University of Iowa, who teaches and has published extensively on comparative law in Asia, philanthropy, the non-profit sector, and civil society. We look forward to this opportunity today to share and learn from each other in our common search to find ways of improving NGO accountability.

**Introduction** - Ms Khus Thida, Executive Director of Silaka and Code Working Group Representative

The introductory speech was given by Ms. Thida Khus – Executive Director of Silaka, and the NGO Code Working Group Representative:

On behalf of the NGO Code Working Group members I would like to thank you all and especially our two valued guest-speakers: Ms. Rhonda Chapman from Australia, and Mr. Mark Sidel from USA. It has been mentioned that we now are in the second phase and trying to institutionalise the *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia*. The Code has been developed by the efforts of our Working Group members, in consultation with the wider NGO community and other stakeholders. I would like to thank Ms. Gina Frothingham, NGO GPP Project Advisor, and Mr. Soeung Saroeun, NGO GPP Project Coordinator, who are committed to this endeavour.

We had hard discussion or debate on this NGO Code, and standards and practices. Some NGOs are applying these standards already but too many other NGOs don't really know what the Code means to them or how can it be applied. The process and procedures of NGO self-regulation is new concept for all of us in Cambodia. We are concerned about the voluntary participation in the implementation of this new NGO Code and Minimum Standards, such as how these standards can be implemented effectively. We have debated in the Working Group meetings about this.

The culture of NGOs started in 1992 in Cambodia. This means that the NGO sector in Cambodia is only about 14 years old - still young, or arrogant, feeling that we are really powerful and invincible. Some NGOs have been successful, some others have encountered a lot of difficulties, and some others no longer exist. Regarding accountability to beneficiaries or people, NGOs have provided services in many sectors such as health, human rights and

monitoring, social and economic development, education and training, recently focusing on advocacy and policy.

In accordance with confidence in activities, NGOs have received funding and at the same time our roles have been trusted and recognised by the local community. NGOs are working in a disabling environment, but one important thing is that we have established ourselves as an important part of civil society in Cambodia. Based on the results of a survey on confidence in organisations, it showed that compared to other organisations, including pagodas, confidence in NGOs is the highest. We also have a lot of confidence from government institutions and donors in our duty not to get involved in corruption.

Because of transparency and accountability, a large number of NGOs have joined with CCC in this NGO GPP initiative to develop the NGO Code and Standards which are applicable and relevant for the Cambodian context. I do hope that the preparation of the Code of Ethical Principles and Minimum Standards will increase the effectiveness, accountability and integrity of NGOs for what we are doing today and in the future.

The development of this new concept (of NGO self-regulation) has been underway for 2 years. We will surely meet a lot of difficulties in the implementation and for that we need more participation and input. Today, we are fortunate to have two technical people who have experience in other countries, and will share their knowledge and experience so that we can apply some of this to our context. Therefore, we hope you will learn today from the shared information and experiences of the guest speakers and that together, this information can be used to help increase effectiveness of NGOs in Cambodia.

**Guest Speaker Presentation - NGO Self-Regulation Systems: Comparative and Asian perspectives**, presented by Mr. Mark Sidel, Professor of Law and International Affairs and Faculty Scholar, University of Iowa

Thank you, Thida, and thanks very much to all of you for being here today. This is my first visit to Cambodia and I am absolutely delighted to be here. Let me also express my thanks to CCC and the NGO GPP project, and to Gina and her colleague Saroeun for organising my visit and this seminar, and everyone else at CCC who helped the seminar occur today; we appreciate it. I am not a specialist on Cambodia so I am going to talk about some broader comparative and Asian perspectives on nonprofit self-regulation today. I am very interested in learning about the situation in Cambodia, but I will not be talking specifically about Cambodia. For our discussion this morning on self-regulation in the nonprofit sector I'll be using this handout, "Self-Regulation in the Non-Profit Sector" (Annex 3).

Let me start by saying that self-regulation in the nonprofit sector, or the voluntary sector or the NGO sector, is a topic of discussion, planning, drafting and implementation virtually everywhere in Asia from India, Pakistan and Bangladesh in South Asia, all the way through Southeast Asia, through China, Korea, Japan in East Asia. The nonprofit sector is concerned with systems of self-regulation, no matter which country in Asia we are talking about. Virtually every country is engaged in the kind of discussions and planning and implementation that you are considering and working on here in Cambodia.

So what I'd like to do is to cover five topics, very briefly, listed at the top of the handout:

1. Why nonprofit self-regulation?
2. The enormous diversity of nonprofit self-regulation: What are the different kinds of self-regulation?
3. What areas of nonprofit activity and governance does self-regulation cover?
4. What are other Asian countries doing?
5. What are some of the problems with self-regulation?

## **1. Why do we even talk about self-regulation of the nonprofit sector? Why would the non-profit sector want to regulate itself?**

There are number of reasons across Asia, and more broadly, worldwide, why various NGO or nonprofit sectors think about trying to regulate themselves, regulate their own activities. Sometimes they want to do this to:

- forestall or limit state (governmental) action against them;
- seek to promote self-regulatory models, not because of the state is strong but because the state is weak - a strong state can promote self-regulation but also a weak state can promote self regulation
- defend the nonprofit sector against attacks from various forces
- improve standards and professionalism within the nonprofit sector; restrain competition in the nonprofit sector by reducing non-profit providers and providing more work for those who remain (this may be, in some cases, a negative reason for self-regulation)
- facilitate fundraising by the nonprofit sector
- In some countries, nonprofit self-regulation is required by government in order to obtain government funds for programs, or to obtain tax exemption - tax status for the nonprofit sector, for example as in the Philippines.
- Sometimes nonprofit self-regulation is promoted by the organisations that are themselves engaged in drafting self-regulatory codes as a kind of “associational entrepreneurship” (eyeing a market).

What's most important here is that in most countries there are multiple reasons for self-regulation. For example, in virtually every country in Asia, self-regulation is being promoted for the fourth reason on my list: to improve standards and professionalism in the sector. That is common in every country that is thinking about self-regulation, or planning self-regulation. So these are multiple and overlapping reasons. Some countries display many of these motivations, some countries display only one or two, but “improving standards and professionalism in the sector” is common across many, many countries of Asia. Perhaps there are other reasons as well. I have put "Cambodia?" because I am not a specialist on Cambodia. I don't know the motivations for self-regulation here, but that may be something you can all talk about. But these are some of the motivations we notice on a comparative basis.

## **2. The enormous diversity of nonprofit self-regulation: What are the different kinds of self-regulation?**

We have an enormous diversity of forms of self-regulation. We have systems where nonprofit organisations or NGOs are:

- accredited by an accreditation body, or obtain certification
- ranking mechanisms: best, better, good, poor
- codes of conduct
- voluntary principles (broad principles, less specific than codes of conduct)

These are just a few of the terms used to describe the forms of nonprofit self-regulation across Asia and across the world.

In most countries of Asia, what's being pursued is some form of codes of conduct, or voluntary principles; what we sometimes call voluntary "minimum standards". This is common in a number of countries. And in most countries where the nonprofit sector is pursuing minimum standards through codes of conduct or voluntary principles, the primary

question is how to ensure compliance, or enforcement, with those kinds of voluntary minimum standards. Sometimes certification mechanisms, accreditation mechanisms, or even rankings, are used. These are just a few of the diversity of models across Asia.

### **3. What areas of nonprofit activity and governance does self-regulation cover?**

There are a few specific areas that a significant number of nonprofit self-regulatory codes or principles cover:

#### **Governance**

- legal compliance
- board (or other governing body) responsibilities
- board size
- board composition
- board meetings
- board terms
- independence of board members
- officers of board
- conflicts of interest
- board compensation
- board training
- board assessment of organisational performance
- assessment of governance and board member performance
- board assessment of executive

All of these can be included in self-regulatory codes or voluntary principles. They can be included at a great level of detail or they can be included at the level of principle. In a number of countries in Asia, these are being included more at the level of principle, or what we sometimes call minimum standards, than at a great degree of specificity of detail. Just to give an example, in the draft Cambodian Code (Annex 4), standard 2.2, for example, "The NGO has a functioning governing body, by whatever name." That is a minimum standard, it does not, for example, specify the number of board members or issues like that. Again, the standards can be stated in a relatively general, minimal way, or they can be stated with a high degree of detail and specificity, depending on the context in each country.

We generally think about the contents of nonprofit self regulation as including some aspects that relate to governance and some aspects that relate to financial standards.

#### **Financial Standards**

- Board approval of budget
- Reserves/net assets
- Reporting to government and public disclosure
- Independent audit
- Audit committee of board
- Finance committee of board
- Administrative expenses

- Program expenses
- Fundraising expenses
- President/CFO approval of financial statements
- CEO and staff compensation
- Investments
- Internal controls
- Record retention policy
- Annual report availability
- Financial disclosure

#### **4. What are other Asian countries doing?**

If I were going to try to cover what is going on in every country in Asia that is looking at nonprofit self-regulation, we could easily be here all weekend and you would be very tired of listening to me talk about each country. In the discussion section, I will be pleased to answer any questions about particular countries, if I know about them.

Let me highlight a few countries, not because they are particularly important for Cambodia, but because they represent different paths, different roads, on nonprofit self-regulation.

There are number of countries in the world having their own NGO self-regulatory system, but today we will highlight a few countries such as India, Philippines, Vietnam, and some other countries in Asia. These countries are mentioned not because they are necessarily important to Cambodia, but because they represent different types of nonprofit self- regulation.

India, for example, is a huge and diverse country in which, quite frankly, the kind of process that you are engaged in, here in Cambodia, would be virtually impossible. India has hundreds of thousands of NGOs and other nonprofit organisations, ranging from some of the largest and the most active NGOs in the world to tiny nonprofits or NGOs working at the individual village level. So what we see in India are multiple self-regulatory processes underway. We see codes of conduct in specific fields such as health education and we see the government collaborating with the nonprofit sector on some kinds of NGO ranking or validation exercises. We see international NGOs and donors involved in programs to help draft voluntary codes, such as in Cambodia. There has been an effort to promote voluntary minimum standards across the NGO sector. The case of India is that most of these efforts are directed toward the domestic NGO sector and it is quite rarely that the self-regulation's efforts include the international NGO sector. That is partly because there has been a decline in international NGO activities in India over the past 10 to 20 years, and there are no longer quite so many INGOs working in India. Some of those tend to be very large donor-type international NGOs. India represents a situation in which there are many self-regulatory experiments and initiatives underway but not the kind of national, widespread initiative that you are undertaking here in Cambodia or that is going on in other countries.

The Philippines represent a very different situation. In the Philippines, the most significant self-regulation activity is a collaboration between government and the NGO sector. Most NGOs would like to achieve what we call tax-exempt status, meaning they do not have to pay most taxes to the government. A number of years ago, the Philippine government said to the NGO sector, in effect: if you wish to have tax exempt status from us, the government, please establish a self-regulatory certification regime so that you may judge which NGOs meet minimum standards for tax exemption. The result is a group called PCNC (Philippine Council for Nonprofit Certification) which has been authorised by the government to determine which non-profit organisations demonstrate the minimum standards necessary to qualify for tax

exemption. So in the Philippines, nonprofit self-regulation displays some elements of government/nonprofit collaboration.

The PCNC certification process is very detailed process involving peer review by other NGOs and a lengthy process of certification. But the Philippines also is a large and diverse country and so other efforts are underway, as well, including efforts to build voluntary codes, minimum standards such as the effort that you are undertaking here in Cambodia, and other efforts, as well.

Vietnam represents a different situation entirely. The NGO sector in Vietnam is at the earliest stages of development. NGOs in Vietnam are concerned with issues of funding, service delivery, and only in the last several years has the question of voluntary minimum standards even begun to be raised. There is no effort in Vietnam comparable to the diversity of experiments that is underway in India, or the government/NGO collaboration that we see in the Philippines, or the effort to draft a code of the kind that is going on here in Cambodia. What is going on in Vietnam, in recent months, is a conflict over a draft law to regulate the NGO sector. We now see very intensive conflict in Vietnam over the draft law but very little discussion of nonprofit self-regulation.

So those are a few examples of the extraordinary diversity of approaches being taken in three countries but we can discuss other countries as well.

## **5. Problems with self-regulation**

The key problem with nonprofit self-regulation in virtually every country in which it has been tried is the combined problem of sustainability and enforcement. If a self-regulatory code or minimum standards can not be enforced or adhered to in some way, it is very difficult for it to be sustainable. And each country, each initiative, for example in India, struggles with this question of adherence, compliance, enforcement, sustainability.

In my own personal view, even though drafting such documents is very difficult, and takes a long time, even harder is the question of compliance and enforcement. And if you are having those discussions here in Cambodia, let me reassure you that throughout Asia, the same kinds of discussions are occurring, which is how to make nonprofit self-regulation enforceable in a way that continues to grow the role of the NGO sector, and in some cases enables the NGO sector to either forestall even more restrictive government action or enable self-regulation to help the NGO sector work more effectively with government. So that's the key problem with self-regulation in many countries around the region, and beyond – Africa and Latin America, as well.

Related problems include how to fund self-regulation. That may strike you as a strange problem because we don't really think about funding self-regulation, but most compliance or enforcement mechanisms require either volunteers or staff or some central office or some mechanism for thinking about compliance and enforcement, and that all take at least some resources. Are those fees paid by the NGOs or are they funded by government, are they funded by international donors? The question of funding self-regulation is an issue in many places.

Another problem is overlapping or multiple systems. In a number of countries, the NGO sector subscribes to voluntary minimum standards of the kind that you are talking about here in Cambodia, but may also subscribe to voluntary minimum standards in particular fields, such as education or health, and may also be subject to minimum standards set by the donor community and perhaps not even set by the donor community as a whole, but set by individual donors - multilateral donors or bilateral donors. We do have situations including my own country, the United States, where many nonprofit organisations are not subject to one self-regulatory mechanism but may, in fact, be subject to several overlapping self-regulatory mechanisms. And that is a reality, in many cases, of funding because in many cases self-regulation and compliance with minimum standards is tied to the funding patterns

and funding channels, there are NGOs that find themselves needing to comply with several overlapping self-regulatory systems. That is extremely common in a number of countries.

Finally, the role of government. As I have indicated in the Philippines, NGO self-regulation is tied to government tax exemption. In some other countries, such USA, NGO self-regulation is tied to the availability of government funding in areas such health or scientific research. If nonprofit or educational or research institutions in my country are not accredited, or do not comply with certain minimum standards, they would not receive funding. But in other countries, self-regulation and the role of government are largely completely separate. Where government is involved with the self-regulatory regime that can add complication, but can also provide a reason for enforcement or compliance.

I would be pleased to answer any questions you may have, during the break. Thank you very much.

**Guest Speaker Presentation - Case Study: Applying NGO Code in Practice- Australian NGOs**, presented by Ms. Rhonda Chapman, former Director of NGO Standards and Practice, and former Secretary of the Australian Council For International Development (ACFID) NGO Code of Conduct

Thank you very much for the invitation to come here. I hope our case study of working with the ACFID Code of Conduct (Annex 5), which is about to celebrate ten years of operation, is relevant and useful as you begin to develop your own NGO code of conduct.

The ACFID Code of Conduct is a set of minimum standards that was developed by the Australian international aid and development community for the Australian international aid and development community, and that's a really important point: it was developed by the Australian NGOs themselves. If I look at Mark's presentation about why do you develop NGO self-regulation, I would suggest the ACFID code was developed for three of those reasons:

- 1) to defend the sector
- 2) to improve standards and professionalism in the sector
- 3) to facilitate fund raising

There are other reasons, but those are the primary ones. Over the ten years of its development it has also become a code through which the public concerns about the conduct of Australian NGOs can be addressed through a process or mechanism of complaints, and that has become important.

The primary reason that we developed the Code of Conduct was to improve the confidence of the Australian community in the accountability and transparency of NGOs. In the current (Australian) context for NGO funding, that is particularly important because over the last six years government funding of Australian NGOs has decreased, while public fundraising -- the funds that the general public give Australian NGOs, which is the money that NGOs use to fund programmes here in Cambodia) -- has increased dramatically; public funding is about four times as much as government funding. So it is very important for the Australian public, who give that money, to be confident about what that money is being used for.

The Code of Conduct has also been used to improve NGO operations, such as governance, financial reporting (which is particularly important), etc. (Annex 6 for slide presentation)

1. *What is the ACFID Code of Conduct?*
2. *Why was the Code developed?*
3. *What kind of standards does it contain?*

4. *How does it work in practice?*
5. *What does it offer donors and the public?*
6. *What does it offer signatory agencies?*

In 1995, the Australian government said to the NGO community that there would be state regulation of NGOs, unless the NGO community developed a Code of Conduct that was acceptable to government. This was a collective process, and a committee was formed with both senior NGO staff and government representatives. This committee, along with external people, worked together to develop the Code of Conduct. The NGO Code of Conduct was officially launched in 1997. It took two years to develop the Code of Conduct itself. You have a handout of the current Code of Conduct, which is very different to the one that was launched in 1997, and I will tell you about that later.

This Code of Conduct addresses five main areas of organisational standards. If you look at the first section, the Preamble, you will see that it is the section where we define our values. This has become very important for the Australian NGO community. The logo on the front talks about "integrity, values and accountability". The values stated in the Preamble were developed by the NGO community collectively. They are values that reflect human rights, the way we behave as organisations, who we are in our community.

It is interesting to note that section 1.3 of this Code indicates the relationship between the ACFID Code of Conduct and government law. It is the only place where we refer to law, and it states that it is a requirement of this Code that all signatories comply with the law. Australia does not have a singular charities commission. Australian NGOs are required to comply with a range of laws -- charity, fund raising, tax laws; a number of laws at state and federal levels. What is expressed in the Code is that we expect signatories to comply with the applicable laws.

The rest of the Code talks about different areas of organisational behaviour. Section 2 talks about Organisational Integrity: respecting the dignity, values, religion, history and culture of the people our organisations work with. For international aid organisations this is very important, and it is around the human rights framework that informs our work. It is also required, within the Code, that NGOs must behave with respect and honesty towards other NGOs, which is especially important in the context of competition for funding. It also states that the NGO will not be involved in financial impropriety, fraud, corruption, etc.

I would like to point out that after a Code of Conduct is written, it is not the end of the work. In sections 2.6 and 2.7 of this document are two new clauses that have been added into this Code of Conduct in the last three or four years. This reflects that the Code of Conduct is what we call a living document, which changes according to the needs of the sector, of the community and of the environment in which we work. We included new clauses around ensuring the protection of children in the work that we do, and in the way that we use the money we raise for aid and development in the field. And increasing important for Australian aid and development organisations, that money is not used to promote political causes, that it is not used to promote evangelism, but used for the purposes of aid and development purposes, if that's what you were raising money for.

The next section is about Governance. I think you are very familiar with governance and what this is about: having a Board of Directors, having them accountable, having them make sure that your organisation is behaving properly. If I can make a comparison, Mark pointed to 2.2 of the CCC Code. I would suggest that 3.1 and 3.2 of the ACFID Code are possible comparisons.

In Australia we also have legal requirements about the behaviour of governing boards. The legal requirements are also reflected in the ACFID Code of Conduct, and we try to make sure the Code is consistent with these legal requirements. We do not state in the Code that there

should be a certain number of Board members, but we do state that there must be a minimum of two Board meetings each year, and that there must be an identified quorum, and evidence that the quorum is present at each of the Board meetings. So there is some specific detail about the accountability of the Board in the Code of Conduct.

The next section (of the Code) deals with communications, and this is about how you fundraise, how you represent the work of your organisation to the public. This is under increasing scrutiny in Australia at the moment, about the way you engage with the media; about the way Australian NGOs working in Cambodia, for example, talk about and represent that work to their Australian community. This is the section of the Code that is currently under review in Australia, and I would propose that within the next one or two years this is where we will see changes. So, again, this demonstrates that the Code is not just written once, but it is constantly being reviewed.

The next section of the Code deals with finances. In researching other codes of conduct, this, and monitoring compliance, is where the Australian Code of Conduct is different to many other codes. We are very particular about the requirements of financial reporting in the ACFID Code of Conduct. One thing the ACFID Code does, that not many codes do, is to stipulate a specific format for how you report your finances, and that format must be used (publicly disclosed) in your annual report. The reason for that is so people can make comparisons between different organisations. It's very easy for people to be clever about the way that you report your finances. So we require everybody to report using exactly the same headings of project accountability, fundraising accountability, education costs, advocacy costs according to the same definitions. This is primarily for the donor in Australia, so that they can look at an organisation's annual report and clearly see how an organisation is spending money. This has been important for Australian NGOs. There are links with the other sections, for example 2.7, the way you communicate and use your funds is linked to the way you report them in your finances. There are links across the different sections within the Code. We include some specific information about financial reporting and it also demonstrates that the Code is a living document. For example, when relief efforts began after the tsunami hit south Asia in 2004, within two months the Code of Conduct Committee had introduced a new requirement for financial reporting. The Code served as a useful mechanism to help with financial transparency.

Finally, section 6 is one that is very important, yet one that we often forget about in NGOs: looking after the staff who give, and commit, to the work of our agencies. There are two new clauses, in last three years: an organisation is now required to commit to, and fund, the training and professional development of their staff, and also a requirement in the Code to promote gender equity at the senior levels of management and decision-making in NGOs.

Another thing that we promoted is the inclusion of a professional code of conduct. Every organisation must require their staff to sign a professional code of conduct, regarding the way that they will behave publicly, representing their organisation, that is consistent with the standards and values in section 1 in the Code of Conduct.

How does the ACFID Code of Conduct work? In ten years, I thought we were struggling with some interesting things - every problem that Mark mentioned, we were struggling with. The Code was becoming increasingly important, requiring more input of secretariat staff. We are funded by membership fees, and membership fees for the signatories of the Code of Conduct have increased twice in three years. The Code of Conduct Committee – the decision-maker and the people who enforce the Code of Conduct – is voluntary. They have four official one-day Code of Conduct meetings per year, as well as three additional Compliance Working Group committee meetings in that year; seven meetings per year.

In the four years that I managed the Code of Conduct we primarily worked on compliance and ongoing compliance. Each year, we read the annual report and set of financial statements of every member signed on to the Code of Conduct, and that was only the financial and governance sections of the Code that we monitored every year. We also

managed an average of ten complaints, for which there is a complex process to ensure the confidentiality, consistency and fairness of anybody who brings a complaint against any organisation, and conducted investigations. All this work was carried out by one and three-quarters staff, and ten voluntary members of the committee. Resources and sustainability are important issues which are inherent in managing a code of conduct.

For the first time, we developed a Code Guidance Document. In order to help organisations understand what is required (to comply with the Code), we developed a 70-page guidance document with information on every clause in the Code. It tells you what is it that we are expecting at a practical level, what does this mean for you in your operations, what are some examples of scenarios that relate to this clause. The Guidance Document reflects a policy of the Code of Conduct that we have. We do not have a Code of Conduct because we want to catch out the bad behaviour of organisations. We want to have a Code of Conduct that more, rather than less, organisations are signed onto, and that we improve and help organisations comply with the Code of Conduct, rather than catch out their bad behaviour and remove them. Much work, including this Guidance Document, with one-to-one engagement with Code of Conduct Committee members and staff is undertaken with any organisation that has been found, either through a complaint or a compliance assessment, to not be complying with any part of the Code of Conduct. Efforts are made with that organisation to help them comply before we come to any decision about saying you are no longer compliant and are off the Code of Conduct. We would rather that they stay on and comply.

So just to quickly sum up how it works: It is a combination of training, of active monitoring by the Code of Conduct Committee of the organisation's financial reporting and annual reporting, of responding to complaints. But I want to emphasise the importance of having well-informed and enthusiastic secretariat staff and volunteer Committee who are willing and able to engage with members who are signatories to the Code to help them be compliant.

I also would like to stress the importance of the independence of those people making the decisions (to certify or not certify an NGO). While it is an ACFID Code of Conduct, the ACFID Executive Committee has no right or authority to overturn any decision of the Code of Conduct Committee, which is important because it removes any inherent conflict of interest between ACFID and Code signatories.

The Code of Conduct Committee compliance is done as peer assessment. The members of the Code of Conduct Committee, except for the independent chairperson, are elected from within the NGO community, but we elect them using the rules of the Australian electoral commission to ensure fairness and transparency in that process. So it is NGO staff members and representatives making decisions about their peers.

The final thing I want to say is in terms of what it offers the donors and the public, and this comes back to what does it offer the public. We spent four years in raising the public awareness about the Code. When the Code of Conduct started, it offered the public a process for complaining about an NGO if they were not happy with them. What became more important was the role that the Code of Conduct played in the media in representing the NGOs in the public arena, in defending the NGO sector against public attack and that became increasingly important in the Australian NGO community (but that requires caution, I would suggest, in stating what the Code can and cannot do, and represent for NGOs). We also use the Code a lot for organisational development and internal procedures with each NGO. If you use the Code in your strategic planning, it is a great organisational development and training tool. It identifies areas of weakness in your organisation and we use it a lot for that purpose.

But I would have to say, in conclusion, that (Australian) NGOs are very proud that they, voluntarily, choose to adhere to an increasingly credible Code of Conduct that represents their commitment to their own professional integrity and to minimum standards of organisational behaviour, and transparency and accountability. That remains the primary,

and most important, reason for the Code of Conduct and the one that is held very strongly by Australian NGOs who sign onto it and continue to create it. Every new clause within the Code is created by the NGOs themselves, not by the secretariat or the Committee.

I will happily answer any operational questions that can help you in the way that we work with the CCC Code. But I would just like to say something in recommendation of the CCC Code. Given how long it took the Australian NGO community to get their Code and how much it is still working, to really acknowledge and commend the work of the CCC NGO GPP project because you have done a good job in a short time, and you did it much quicker than the Australian NGOs did it. So thank you.

**Discussion Session, with Questions and Answers, Ms Thida Khus, facilitator**

### **A. Questions - NGO Self-Regulation**

Mr. Mark Sidel and Ms Rhonda Chapman provided responses to the following questions:

#### ***Is there a relationship between government transparency and NGO transparency?***

*Mark:* There is significant relationship between government transparency and NGO transparency. In a number of countries of Asia, the movement toward NGO self-regulation has been accompanied by increasing pressure on government for government transparency and accountability, as well. That can come from domestic NGO community, international groups with local links, like Transparency International. It can come from within government itself, it can come from legislatures and even from courts, but there is obviously a clear relationship between requirements that NGOs be transparent and an increasing push for governmental transparency, and that is true across Asia, including countries with very different social systems. We see that relationship between NGO transparency and governmental transparency in countries like China and Vietnam. But we also see it being expressed in countries such as Thailand, or Malaysia, or Singapore, or the countries of south Asia, as well.

#### ***Can self-regulation separate good NGOs from the bad NGOs?***

*Mark:* I think in many countries ineffective NGOs, or NGOs with problems, are, in effect, eventually weeded out by the market. And when I say the market, I mean the market for funding. In many countries governments and donors eventually recognise which NGOs are effective, and which NGOs are ineffective, or worse. So I actually think self-regulation plays a role, but is not necessarily the only factor in separating good from bad NGOs; I think there are other factors, as well.

In many countries the percentage of NGOs that implement self-regulation well, or efficiently, in many cases is quite high, especially if the code or voluntary principles is at the level of a voluntary minimum standards with some detail, some specification, but applicable across the sector relatively broadly.

#### ***Is there any danger that a Code of Conduct that seems to cater for more "professional" NGOs will squeeze out more innovative NGOs, CBOs and social movement?***

*Mark:* That is a danger. Sometimes, self-regulation is easier for the larger, more well-funded, better resourced, more well-staffed non-profits to comply with, especially in situations where NGOs may be subject to multiple overlapping self-regulation systems.

It is important that a number of countries, to formulate codes of conduct/voluntary principles, not only require a significant degree of professionalism but also honour innovation, especially at the local level, and do not impose burdens that are too high for smaller organisations. That is a difficult balance and a number of countries are struggling with that balance.

*Rhonda:* During my time managing the ACFID Code, this was a constant point of discussion. The smaller NGOs never expressed that they were not interested in complying with the Code; they were always highly committed to it. It was about enabling them to ensure their flexibility and to ensure their compliance to (the Code). We addressed it in a number of ways. We made sure that the requirements under the Code of Conduct are consistent with other requirements they had to maintain within their organisations, and according to legal requirements. ACFID developed common guidance documents and the training programme for every NGO, including small NGOs, to help them to be able to comply with the Code rather than to kick them off.

***How do you address the funding issue of self-regulation/ What are the sources of funding to train NGOs about the Code?***

*Mark:* In a number of countries, some of these resources required for self-regulation do come from the sector itself through voluntary action by the sector. For example in Australia, and a number of other countries as well, there are voluntary compliance committees or other voluntary activities undertaken by NGOs within the sector to investigate complaints, to read annual reports, to read financial reports; a kind of peer system within the nonprofit sector to undertake self-regulation. In some countries, being elected to such committees (e.g. a compliance committee, an audit committee, a complaint investigation committee) is a very significant honour within the NGO sector. It means that you have the confidence of your peers that they will be willing to trust you not only with investigating complaints or looking at records (that may be confidential records in some cases), but also judging issues that may arise within the sector. So some of the resources inevitably come from within the sector itself but there may also be funding available from other sources, whether it's external donors, foundations, other external actors. In some countries there may be some government funding available, though I don't know about the situation here.

My sense is that in a number of countries the question is not so much where to get the resources for implementing self-regulation, but how to set up the system for implementing self-regulation.

*Rhonda:* Following on from Mark's point, in my experience it is right that is the system for ensuring compliance, and to get organisations on board with the code, more than the resources, which requires more attention. Somehow, people will find the time, space and money to do it, but it is making sure that you have a system, procedures and mechanisms that people have confidence in. And the NGOs themselves must have confidence in the Code of Conduct Committee.

**B. Questions - ACFID Code of Conduct**

The following questions were addressed by Ms. Rhonda Chapman:

***Please compare/contrast the NGO Code of Conduct with ISO 9000 Certification.***

We felt that ISO 9000 was not very relevant for NGOs because the ISO system was primarily designed for manufacturing and production, not social development. But we used it as one model, and we learned from it.

***In Australia, from where are the members of the Code of Conduct Assessment Committee selected?***

This is a really important question. Because not only who these people are but the way they were elected has an important role over the way the Code of Conduct Committee is managed and administered; we have changed the rules about this recently.

There are six members of the Code of Conduct committee. Two members are elected from amongst the NGO themselves. And Mark is right, being elected to the Code of Conduct Committee is seen as a great honour, and a great vote of confidence in both the Code of Conduct Committee and in the staff person. We follow transparent and well-structured rules for the process of that election. It is an open election and it conducted according to the rules established by the Australian electoral commission used for all state and federal elections.

There are four other members on that committee. Each two years, the peak bodies representing public fundraising in Australia, the association for auditors and public accountants, and the body representing consumer associations -- those three public organisations -- are invited to nominate representatives to sit on the Code, so that we are ensuring that the financial requirements we are asking for in the Code of Conduct comply with the standards set by the financial and reporting standards set in Australia generally, that we are complying with current best practice in fundraising, and that we are fairly representing consumers as represented by general consumer associations. So it's a combination of peer and external assessment.

The chair of the Code of Conduct Committee is an independent, appointed person. This is the most difficult position to fill, because they must have a good working knowledge of INGOs, but have no association with any working INGO.

***Who are the people who helped in making the ACFID Code of Conduct?***

It was a combination of independent people from consumers associations, a representative of the government, and representatives of NGOs in Australia. It was a two-year participatory and consultative process with the NGO themselves who developed the first version of the Code of Conduct. In section 9 of the Code of Conduct, you will see that the Code can only be changed (revised) by full vote of the councils of ACFID -- all 80 members must vote to change, add, amend or remove any clause in the Code. Any changes in the guidance document must be made by the Code of Conduct committee and by the ACFID executive committee, but do not require full vote at the annual general meeting.

***NGOs in Cambodia are still young and are now starting to develop their Code of Conduct. Should this Code be a minimum principle or should it be detailed?***

The diversity of the NGO community is one of the best things about it, but also one of the most challenging things. It is difficult, or even counter-productive, to be too prescriptive about specific standards in the Code of Conduct, and they must be minimum standards which are agreed by the general community. They must equally apply (to large NGOs and small NGOs), and be relevant.

***Based on Australian experiences in implementing NGO Code of Conduct which areas would you kindly advise us more in Cambodia to consider?***

All of the areas in the Code of Conduct are very important, but you cannot focus on all areas of the Code. I think it's important to clearly state and identify all the general areas of standards of practice. Where you would focus your attention for training, for first steps in compliance, is a process that you take step-by-step.

In Australia, in the first 5 years that we were monitoring compliance, we focused on annual reporting, the financial requirements, and governance. In recent years we increased our scrutiny to make sure an NGO's constitution was up to standard. More recently we focused on the way an organisation carries out public fundraising. It is a step-by-step process but you start with the most important.

***Please clarify the roles of the Governing Board.***

There are training courses that go on for days that talk about the roles of governing boards. There are training courses that go on for years that talk about the difference between

governance and management. So I don't think we are going to clarify that specifically here. But if you look at the ACFID Code of Conduct, under section 3, some of those clauses outline the role of the governing board. And in summary, they are to ensure the integrity of your organisation, the way your organisation behaves. Making sure you have a check and balance with no conflict of interest between decisions made by the governing board and decisions made by the staff. One of the things I talk a lot about to NGOs in Australia is not having what I call a closed accountability loop – the same people making the decisions within the organisations are the same people making the governance decisions on the governing board. Somebody needs to be checking the decisions that the staff senior managers are making, so it's a check and balance process. It's also about the policies, the strategic direction. The role of the governing board is, fundamentally, to make sure the organisation is behaving appropriately, correctly and in the direction and doing the things that you want it to do. One of the things that we check, when we check the constitutions and the annual reports of NGOs, is that the work that they (the Board) do and talk about in their annual report is consistent with the purpose and mission stated in their constitution. The governing board makes sure that these are consistent and up to date.

***Clause 2.7 of the ACFID Code states that "Funds and other resources designated for the purposes of aid and development will be used only for those purposes and will not be used to promote a particular religious adherence, or to support a political party, or to promote candidate or organisation affiliate to a political party".***

***If some NGOs are established in the purpose of promoting religion, is it wrongdoing? There are a number of faith-based NGOs in Cambodia.***

The reason for this clause came out of a specific example. An NGO was involved in providing humanitarian relief to refugees in Iraq. They had a long-standing relationship with the communities in Iraq, as a religious organisation promoting Christianity. During the emergency phase that happened after they had been established there, they raised a lot of money and conducted emergency activities in Iraq. But they only offered to conduct activities with those people who participated in the Christian conversion programmes. We considered this inappropriate behaviour – this organisation was not an Australian Code signatory -- which breached a number of international standards, such the International Red Cross Code of Conduct, the Sphere Humanitarian Standards, etc. That organisation had raised money for the purpose of humanitarian relief and it was not using it for that purpose; that was fundamentally the reason. So we realised there was a gap in our Code of Conduct. The organisations who drafted this clause for the ACFID Code of Conduct were the faith-based organisations in Australia, and the trade union organisation, which is perceived in Australia to have strong political links. It is about what you say you are raising money for and what you do with that money. If you say you are raising money for evangelistic purposes, to convert people to Christianity, then that's ok. It is not about judging what you do; it is about being transparent and accountable for it. It took us eighteen months to get this clause included, after lots of very interesting discussions.

***NGOs in Cambodia now are very independent and unregulated. From your experience, how do you make an NGO accept/comply with the Code of Conduct or self-regulation?***

There have been many discussions about this over the years. It's a combination of people (organisations) being willing to take them (the minimum standards) on, agreeing with the principles, buying into the idea of wanting to improve our performance as NGOs for the sake of being good organisations, for having good standards of practice. But it needs to be balanced by having a credible code of conduct, a committee that people take seriously (respect), and a compliance assessment system that people respect and are willing to adhere to.

***What is the complaint rate regarding the implementation of the Code of Conduct in Australia?***

First, the Code must be widely promoted so that people know that they can make complaints. In the first year that I was with ACFID, there were two complaints, and in the final year I was with ACFID we had seven complaints. In all of that time, only one organisation was removed as a signatory to the Code of Conduct. This is consistent with our commitment that is better to get the NGO to fix the problem – to behave well, and improve their standards -- than to kick them off.

*Mark:* I think that's an important point. I think that the measure of an effective code is not the number of organisations that are punished or thrown out. The measure of an effective code is in the raising of standards of professionalism and conduct within the field. We make a mistake if we measure it (code effectiveness) by punishment, rather than by a sense that standards and professionalism within the NGO sector are gradually rising for a number of reasons, including a self-regulation mechanism.

***What is your advice on how an individual NGO would take the minimum standards of the NGO Code of Conduct to institutionalise in its own organisation?***

There are a number of things to do. You can use the code to identify the areas of weakness in your organisation and use that as part of your own strategic planning and internal training processes. Another important thing is to commit to it (the code): commit funding to it, take it seriously, be proud of it. Australian NGOs get their certificates of compliance to the NGO code every year and the majority of them are placed in a very prominent place in their offices. Be proud of being a member of the Code of Conduct.

***What are the obstacles and challenges encountered in carrying out compliance assessment?***

The first challenge is time of the voluntary committee because we had 130 signatories to the Code of Conduct – that's a lot of annual reports and financial reports to read, especially when two people have to read every one of them. We have our own check and balance within the Code of Conduct checking; it is not right for only one person to check if the NGOs are compliant or not. The other challenge was making sure we had clearly defined and articulated systems and procedures. People will not trust complaints investigations or compliance assessments if they do not trust the system that you are using to do that. It must be clear, they must know exactly what to expect, they must know it is the same every time and for every organisation. We put a lot of work into developing a seventy-page Guidance Document. We also used examples of checklist requirements to help people be compliant to the code, but also to let people know what we are checking. If we find something wrong, this is what will happen: you will have three opportunities to respond, you will not get kicked off immediately. It is important to clearly outline that process so that people trust the code, and they take it seriously when they trust it.

***Do all NGOs in Australia implement the Code of Conduct?***

No, we have a lot of NGOs who do not. It is a requirement that if people want to be a member of ACFID, which is the same as CCC, they have to sign on to the Code of Conduct. There is also another requirement that for those who want to get government funding, while the government has its own accreditation process, one of the things they check is that you are also a compliant member of the ACFID Code of Conduct. We have 130 organisations who are members and signatories to the ACFID Code of Conduct. How many more there are I don't know, but that is the majority of operational NGOs in Australia (who are working in international aid and development).

### ***How do you encourage NGOs to invest in/support staff professional development?***

I don't have any easy answers to that. It depends on funding, management, and leadership of the organisation. But we also have the same discussions in Australia about making sure you have appropriate staff/professional development in NGOs in Australia.

### **C. Questions - Cambodian Code of Conduct**

The following questions were answered by Mr. Soeung Saroeun, NGO GPP project:

#### ***When is it anticipated that the Code of Ethical Principles and Minimum Standards for NGOs in Cambodia will be launched?***

The Code will be officially launched by the end of this year (November 2006 according to the project timeframe).

#### ***Some NGOs, but not all NGOs, are interested in complying with the Code of Ethical Principles and Minimum Standards for NGOs in Cambodia. What are the benefits for those NGOs who become certified for complying with the Code? And what are the benefits for those who are not members of the Code?***

The Code aims to maintain and enhance standards of good organisational practice throughout the NGO community. It aims to ensure public trust in the integrity of the individuals and organisations that make up the NGO sector, and in the effectiveness of NGO programmes. So this means that every NGO can benefit from the Code as a member or not. The code is being developed along with the guidance document to explain and support the standards, so people will know how to apply the standards. This is being promoted publicly and made available to everyone.

#### ***Who or which institution enforces the Code of Conduct and ensures its effectiveness?***

An independent Code Compliance Committee will be established by NGO GPP and the Working Group, according to agreed terms of reference. The committee of 5-7 people will be selected among those individuals with a commitment to this initiative, who are prominent and respected in the Cambodian development community, and represent different sectors. The committee's role will be to review NGO applicants' desk and field assessment results, and make a decision about whether the NGO is compliant or not with the minimum standards in the *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia*.

Promotion of the code is ongoing, and we would like to encourage all NGOs in Cambodia who are interested to apply and implement the Code.

#### ***What examples are there of how codes address accountability to "beneficiaries"? Should these beneficiaries also contribute to aspects of standards and codes of NGOs?***

The code encourages applicant NGOs to be accountable to their beneficiaries. In the code there are three important standards that address and promote accountability to beneficiaries: standards 5.1, 6.1, and 6.2 where it is stated that NGOs must provide accurate information, to monitor and evaluate their organisation and program, and also ensure the participation of the beneficiaries in development processes.

During NGO GPP – Phase 2 (2007-2008), community representatives will be invited to attend and participate in the wider consultative feedback meetings on the code and guidance document. This will provide further opportunities for the beneficiaries to contribute their opinions and ideas, as well as to learn from the meetings.

***How appropriate are NGO codes for the development/mobilisation of local groups and associations?***

As we have recognised, there is a diversity of NGOs in Cambodia: international, local, community-based organisations, and associations. The focus of the new code is only on NGOs (but both international and local). Through the code, NGO GPP aims to bring interested NGOs together to discuss, share, define and establish a common set of principles and standards for their organisations and work. The code and guidance document could be helpful, though, to other organisations such as CBOs and associations, if they are interested to learn from them.

***Should there be different levels of certification?***

This is an issue discussed in the Working Group. It is still under discussion, and we will wait until the certification system pilot to decide if it is necessary and how to implement it.

***Will CCC provide a role model NGO for us?***

It is not easy to identify appropriate role models. NGO GPP will develop good practice guidelines and requirements regarding the standards, and those NGOs who become certified could then serve as good role models, possibly.

***Some organisations were developed to extort/cheat job seekers out of money. What should we have done?***

Our commitment is to help NGOs that want to be better in organisational practice and professionalism, and we encourage all those who are interested to participate in the certification system and try to comply with all of the standards and other requirement in the Code. The legal action against wrongdoing is the responsibility of the government, who has authority to deal with those cases.

**Presentation - NGO GPP Project Overview**, presented by Mr. Soeung Saroeun, NGO GPP Project Coordinator (Annex 7)

**Small Group Discussions: Reflect on NGO self-regulation**, Ms Rhonda Chapman, facilitator

Five groups discussed four different topics. Results of small group discussions:

***1. Compliance: What issues should we focus on for compliance at this stage in Cambodia?***

- Different levels of certification -- some NGOs, especially small NGOs and CBOs, will find it difficult to comply with certain standards in the code at the particular level required
- Awareness of the Code of Conduct -- it is the first stage and very important to encourage all NGOs in Cambodia to understand what the Code is about, and the importance of the Code
- Capacity Building -- the appropriate capacity of the applicant NGOs, regarding the Code and standards, should be increased
- Recognition by authorities and donors -- in order to give more value to the Code. The donors need to be coordinated to recognise and support the Code of Conduct because many NGOs have been receiving funds from a number of donors. The donors also need to be encouraged to allocate their funds for their partners to fulfil the

requirements in the Code such as annual audit, organisational and programme monitoring and evaluation etc. The donors can also help in capacity building of their partners, to enable their partners to comply with the Code.

- Compliance Mechanism -- setting committees to play key roles in coordinating and motivating interested NGOs to apply for certification. There also needs to be some complaint mechanism to enable the public and other stakeholders to register complaints against the certified members. The compliance mechanism is a good idea to enforce the Code, but the question is who is willing to take this role and be responsible for this system.

## **2. Adoption of the Code: How do we encourage and assist NGOs in Cambodia to adopt and institutionalise the Code?**

- Ensure that NGOs and other stakeholders understand about the importance of the Code
- Encourage participant NGOs about the Code through:
  - gaining support from donors – accessibility to funding
  - improving recognition by government – tax exemption
  - growing support from beneficiaries and public
- Provide training about the Code to the applicant NGOs
- Encourage donors to recognise the NGOs who have complied with the Code standards
- Independent Code Compliance Committee should be established

## **3. Inclusiveness and Diversity: How do we make sure the Code is useful and relevant to the diversity of NGOs in Cambodia?**

### ***Inclusiveness:***

- The Code is for both INGOs and Cambodian NGOs
- Organisations that are registered with the Ministry of Interior
- There should be a separate Code for CBOs, because they are too young

### ***Diversity:***

- The Code should be broad
- Wider consultation with NGOs and other stakeholders, representatives from all sectors, to get their feedback and increase their understanding about the importance of the Code
- Comprehensive dissemination on the Code should be made to the NGOs who volunteer to apply for the Code

## **4. Funding: What are some initial ideas to fund voluntary NGO self-regulation in Cambodia?**

There is a need to have both human and financial resources for Code implementation. The financial resources can be allocated from:

- Membership fees: interested NGOs who apply for the Code Certification membership should pay membership fees.

- Funded by donors: single donor or basket fund or co-financing from multilateral donors
- Service fee for field work with any non-member NGOs
- Contribution from government: government should allocate some of its national budget to support the NGO sector, as they are trying to aid and empower the poor
- Fundraising from charity donors and the private sector

**Guest Speaker Presentation - *Non-Profit law in Asia: A Comparative Perspective***, presented by Mr Mark Sidel, Professor of Law and International Affairs

I have been active in nonprofit law drafting, or research, in a number of countries including India, Bangladesh, China, Vietnam and several others. Initially, I want to give you some sense of the elements that tend to go into nonprofit, or NGO, law in a number of countries, in general terms (Annex 8). But in every country, regardless of the shape of the nonprofit law, the basic goal of the nonprofit law is generally the same, and that is to address in some form the relationship between the state and the nonprofit sector. The law that emerges may address that relationship by restricting the nonprofit sector, and giving extensive power to the state. The law that emerges may address that relationship by giving wide latitude to the nonprofit sector and balancing the nonprofit sector's and the government's interests. But these laws tend to address a common range of issues, and then to deal with them in different ways, depending on the country's context.

There are six fundamental issues that wind up being addressed in most of the non-profit or NGO laws, at least around Asia and I think in most cases beyond Asia, as well:

1. *How does the state govern the registration and status of nonprofits, including different types of nonprofits?*
2. *How does the state govern the purposes for which nonprofits may operate, including the relationship between nonprofits, advocacy, politics, religion and other issues?*
3. *How does the state govern the fiscal regime (primarily taxation) that applies to nonprofits?*
4. *How does the state govern the governance, accountability and operations of nonprofits?*
5. *How does the state govern the mobilisation of resources (capital formation) and financing of nonprofits?*
6. *How does the state govern the dissolution, termination or takeover management of nonprofits?*

In each of these categories, nonprofit law can be calibrated along a kind of scale involving more government control or less government control.

**1. *How does the state govern the registration and status of nonprofits, including different types of nonprofits?***

In some countries, nonprofit organisations require an application and approval process by the government. That can be a relatively lengthy and complex process. For example the draft law on associations that has been proposed for Vietnam – which is under enormous debate in Vietnam now -- proposes a three-step process involving up to 6 months of three steps of application and approval that has elicited substantial opposition from the nonprofit sector in Vietnam.

On the other side of the scale, the nonprofit law can mandate a kind of registration system – even a register -- in which the government play less role in approving which NGOs can be

allowed to register. Similarly, procedures, processes, time limits, and the availability of appeals can differ enormously from law to law.

How complex are the processes? Are there time limits on government decision-making to establish organisations? And do organisations have an ability to challenge a government decision that, for example, denies an organisation permission to register/permission to be established? In some countries the process and procedures are very long, the government is not subject to any time limits and there is little possibility of appeal. In other countries the procedures and process is very firmly defined, the government is limited to a certain number of days to make its decision (for example 30 or 45 days), and there are specific procedures for appeals, whether to an administrative agency or to a court system.

Where do nonprofits report? This is a crucial issue this month in Vietnam, for example. The drafters of the Vietnamese nonprofit code have attempted to set up what we call a “dual reporting” structure: NGOs in Vietnam would report to the Ministry of Interior and to a line ministry. This has elicited substantial opposition from the NGO sector in Vietnam. But in other jurisdictions in other countries there is often only a single reporting line, and generally not to line ministries but only to a single organisation whether it’s a Ministry of Home Affairs/Ministry of Interior or, perhaps, to tax authorities.

## ***2. How does the state govern the purposes for which nonprofits may operate, including the relationship between nonprofits, advocacy, politics, religion and other issues?***

The key issue here is in the “prohibited” purposes. What kind of language is in a law that prohibits certain activities for certain purposes on the part of NGOs? How broad is that language and how much discretion does it give to the government? Examples of broad language include “harming national unity”, “bringing disrepute to the state”; language that gives the government very wide discretion to move against NGOs. But it’s also possible to draft a purposes clause that has much tighter, or narrower, language that speaks in terms of violations of law rather than violations of policy. It speaks in terms of, for example, fraud rather than national unity. And again, in a number of countries around the region this question of purposes has sparked very wide debate.

## **3. How does the state govern the fiscal regime that applies to nonprofits?**

By “fiscal regime” we mean “taxation”, and we’re really talking about two issues: are nonprofit organisations exempt from taxation – the question of tax exemption. If they will be exempt from tax, is that an automatic exemption or does the law give the government discretion to exempt some organisations but not other organisations? A related question is whether the law provides tax exemption available more to certain kinds of organisations, such as public benefit organisations, but does not provide tax exemption to clubs and mutual benefit organisations; organisations with more limited purposes. And again, the same kinds of questions about process, about time limits, about appeals.

What about the business activities of nonprofit organisations? Many nonprofits in many countries need to engage in some kind of revenue generation activity. That may be a business activity, it may be a fee for service activities, with funds being provided by governments, by donors, but they generate revenues. What is the tax policy with respect to those revenues? A relatively liberal policy generally defines those revenues that come from services related to the organisation's nonprofit purpose, or where the revenues are devoted to nonprofit services, as being tax-exempt. But where the revenues come from business activities unrelated to the organisation's nonprofit purpose, they may be subject to tax. For example, in my country, if a nonprofit organisation generates revenues from business

activities unrelated to its nonprofit purpose, it must pay tax on the revenue from those activities.

The second fiscal, or tax, issue has to do with all of us as donors to NGOs and nonprofit organisations. If you give money to a Cambodian NGO, do you get a tax deduction, meaning is your income reduced for purposes of paying taxes. This is not relevant in all countries. In a number of countries where the tax system is very new, where the number of tax filers is very small, the question of deductibility of donations may not be particularly relevant. But it's worth thinking about in general terms, and let me give you an example. An example is China. Almost twenty years ago, when China began thinking about its nonprofit law, the Ministry of Finance refused to have any conversations about the question of tax exemptions and tax deductions. The Ministry of Finance in China, as most ministries of finance, is responsible for raising revenues, not excusing revenues or excusing taxation. But fifteen or twenty years later, the Ministry of Finance in China is being forced to undertake those conversations because of rising incomes in China, a much, much higher number of tax filers in China (people who must file taxes), a tax system that is much more effective; tax is, in effect, the last part of the Chinese system to be thought about in detailed terms.

#### **4. How does the state govern the governance, accountability and operations of nonprofits?**

Most nonprofit laws have some provision for the duties of the Board of Directors, for example, the duties of officers, by-laws, rules about personal benefit and whether NGO officials can derive personal benefits from the operations of nonprofits, accounting rules (loans, properties, those kinds of issues). It's very common to have at least general principles for governance in the law, and then require nonprofit organisations to detail those principles in the by-laws. NGO laws frequently stipulate at least general provisions about accountability: accountability to the state, accountability to the citizens, accountability to donors. Many nonprofit laws now require, or encourage, some form of self-regulation in the nonprofit sector. We talked this morning about the relationship between law and self-regulation. Law, of course, is not in conflict with self-regulation and many national nonprofit laws now require systems of self-regulation.

Most nonprofit laws consider the following issues:

Governance: It is included board duties and powers, management duties and powers, other organizational powers, decisions, meetings, other requirements, laws, bylaws, clarity, personal benefit, accounting, loans and property and self-dealing, other issues in governance, and supervising governance.

Accountability: This includes accountability to whom? Types of accountability: Returns, disclosures, annual reports, and supervising accountability

Self-regulation: In some countries, need to have NGO self regulation and the NGO law. The NGO law now encourages the NGO self regulation because the regulation is not conflict with any laws.

The government should encourage the NGO self regulation system. There should think about the reasons for self-regulation of the nonprofit sector (forestall state action; sector defence; improving standards and professionalism; competition; fundraising; and other motivations /reasons), the diversity of experience, overlapping self-regulation, and the role of the state in self-regulation (funding, mandates).

#### **5. How does the state govern the mobilisation of resources (capital formation) and financing of nonprofits?**

There are perhaps three key issues:

1. Does a nonprofit organisation have to have a minimum amount of capital in order to be registered and established (what we call "minimum capital requirement")? Some governments require minimum capital requirements for nonprofits to be established. If those minimum capital requirements are high, we call that a restrictive provision. If those minimum capital requirements are low, or nonexistent, we would call that a more relaxed provision.
2. Are there limitations or constraints on fundraising? India, for example, has a licensing regime for the receipt of foreign contributions. NGOs that wish to receive foreign contributions must be licensed by the government. This licensing regime has been in effect for thirty years and is the source of enormous conflict between the Indian NGO sector and the government.
3. Are there limitations on where nonprofits can invest their funds? In some countries, nonprofits are required to invest their funds in state banks and state bonds, for example; public entities, state banks and state securities. India used to be that way but the system has become liberalised in the last five to ten years. And Indian NGOs are now much freer to invest a wide range of stocks, bonds, bank accounts within the country/outside the country. That's an element of nonprofit law.

## **6. How does the state govern the dissolution, termination, and/or takeover of management of nonprofits?**

Does a nonprofit law provide the government with wide discretion to dissolve/terminate/takeover nonprofits, or is that discretion more limited: subject to restraint, subject to appeals, subject to time limits. And if nonprofits are dissolved/terminated/taken over by the state, what happens to the assets? In some countries there is very detailed provision for the assets to go to other nonprofit organisations with similar purposes. But in some countries wide discretion is given to the government to move those assets to government accounts or to other kinds of organisations. So again we see a spectrum of government discretion and limits on government. And we see that range in each of these six areas.

This is very general, of course, but it gives you a sense of some of the issues that virtually every country in Asia that has considered a nonprofit law, over the past twenty to thirty years, has had to think about. In many cases these issues boil down to how much discretion with the government have in its regulation of the nonprofit sector versus how much limitation, or specificity, will there be in the law that enables the government to undertake its proper role but appropriately controls government discretion; the power of the state. Those are very difficult issues. I was recently in Vietnam doing some consulting on the final draft of the Vietnamese law on associations. I say final draft with a smile because the Vietnamese nonprofit law drafting process has been going on since 1992, in two separate processes. From 1992 until 1998 and from 2000 to the present. I have had the privilege, or perhaps not the privilege, to be involved in both of those processes: initially when I served with the Ford Foundation in Vietnam and now as a consultant, occasionally, to UNDP and some of the other organisations in Vietnam. Even after fourteen years of drafting, this remains a very controversial set of issues in Vietnam: where should nonprofits report – should there be a dual reporting system to a central government agency like the Ministry of Home Affairs and to a line ministry, which is what the Vietnamese party and state prefer, or should there be a single system of reporting to a single government ministry. The NGOs support a single reporting system because they fear control by the line ministries. They don't want to return to a system in the 1980s and 1990s in which the NGOs were, in effect, administrative divisions of line ministries. They want more autonomy; that's a key debate. A second debate in Vietnam, and I have no idea how relevant any of this is to Cambodia, has to do with what we call "mass organisations". And I am going to apologise and display my lack of knowledge about Cambodia when I say I don't know if you have what the Vietnamese call mass organisations: the Vietnamese Women's Union, the Central Veterans Association, a Central

Peasants Union, groups like that. In Vietnam the draft nonprofit law has defined those groups as being outside the law, but many other NGOs and associations have objected to that very strongly. So there's a debate going on across a range of issues; a very healthy debate.

#### **Questions and Answers - Ms Rhonda Chapman, facilitator**

Mr Mark Sidel addressed the following questions:

#### ***Could you please make a recommendation as to what country would have an ideal legal regime?***

It is impossible to point out a country with an ideal legal regime for nonprofit law. Nonprofit law develops based on the context in each country. I can point to laws that are more detailed, perhaps more complete, but that is the result, in many cases, of decades of development in particular countries. Nonprofit law provisions in my country stretch for hundreds of pages, but that's because a number of questions have needed to be answered over the years and our congress has answered those questions with law and our tax authority at the national level has answered those questions with regulation. And our states have answered those questions at the state level. So it's more detailed, but it's not ideal, by any means. I think the fundamental question for a number of countries is where, along the spectrum involving state discretion, state control and a more relaxed attitude toward the nonprofit sector, does a country wish to place itself? And that's a very complex question. That partially depends on when, in its history, a country enacts a nonprofit law.

#### ***Is there any country that has no legal regime for NGOs, which is still labelled "good"?***

There are many countries in which nonprofit law is very limited, in which the results are very good because of the flexibility available to the nonprofit sector, in combination with inherent state power to control abuses. So, often, limited law is still very effective, the government continues to have power but there is also some flexibility in the NGO sector as well to address human and social needs within the country. So there are a number of countries that have a very limited nonprofit law that are very effective in the relationship between the nonprofit sector and the state. To this day, for example, China has no overarching, comprehensive NGO law. It's handled through a series of regulations, or smaller laws, and no one would say that the Chinese state is ineffective in regulating its nonprofits. It is possible to have limited nonprofit law, or no overarching, comprehensive nonprofit law, and still to have a very effective state. Again, that a question in a national context. And China's perhaps a good example of that because China has thousands of nonprofits; the Chinese state is effective in regulating that sector. After twenty years of state activity in the nonprofit sector, China still doesn't have a comprehensive nonprofit law, but a number of different regulations and provisions that govern particular areas, such as social welfare organisations, foundations, charity funds.

#### ***Which country that you have helped develop the NGO law has better relationship and cooperation between government and NGO sector?***

That's a very good question. There are a number of countries in which overly-detailed law results in a much worse relationship between the government and the nonprofit sector. In India, for example, the relationship between the government and the nonprofit sector is a conflicting relationship; partly because of very expensive government regulation of the NGO sector. At the same time, India has a very vibrant NGO sector. I will say, frankly, that the recent debate about the law on associations in Vietnam has provoked more conflict, more debate, than if the law were not being finalised now. Nonprofit law drafting processes sometimes tend to sharpen conflict. Again, I turn to China where there is no comprehensive nonprofit law and relations between the nonprofit sector and the government, in general, aren't too bad. The state still has the ability to control and regulate, the nonprofit sector still

has the ability to expand its operations and both sides seem relatively satisfied. But still, the Chinese state does regulate particular areas. So it's a complicated question and it is clear that the process of drafting nonprofit law (in most countries) involves debate, conflict, different interests – sometimes different interests within the nonprofit community and the government. There is no doubt that Vietnam is going to come out with a better nonprofit law because of thinking about this and debating it, and moving ahead – with ups and downs – over fifteen years. And the nonprofit law that emerges, maybe this year or next year, is going to be a much better law because of that process of consultation. But it takes a long time, and there are many NGOs, researchers and others in Vietnam who think that the time is still not right. I'm not sure that's a very good answer to your question. Again, I am the first to say that – this is my first visit to Cambodia -- I do not know the Cambodian scene, and so I am trying to give you a comparative perspective and I don't know if any of this is relevant or not relevant to Cambodia. So I'm not commenting at all on the situation here.

***What are the views to be considered in the NGO law to ensure social security or pension or support of the jobless?***

The question of social security or pensions for the jobless is almost never addressed in nonprofit law, even for employees of nonprofit organisations. Instead, in most countries that even address that issue – not all countries address that issue – that address the issue of social security or pensions, that is almost always addressed in separate legislation that is more widely applicable to workers, staff and employees not specifically in the nonprofit sector, but more widely applicable. Nonprofit law almost never addresses that issue.

***There are concerns amongst the NGO community regarding the NGO Law in Cambodia. While there are no clear existing laws such as judiciary legislation, corruption, etc, and no check and balance system, is it the time to have a law for NGOs or should this wait to have other important laws in place first?***

I can't speak to the timing of an NGO law, in any country, but I can say that it is important, in every nonprofit law – because nonprofit laws tend to give the state tools, or levers, for controlling or influencing the nonprofit sector – it's important that nonprofit law, in addition to providing the government with those tools or levers, also provide an effective mechanism so that organisations can, in some form, challenge decisions made about them. All nonprofit laws give the government discretion, to some degree: over registration, over status, over taxation; that's the point of a nonprofit law. There does need to be some balance, and every country finds this balance in its own way, between that influence over the nonprofit sector and some ability to challenge governmental decision-making. Now, again, I don't know the situation in Cambodia. Those opportunities to challenge, in various countries, can happen through administrative mechanisms and then go to the courts, or they can go directly to the court system, in other countries. But state discretion without the opportunity for some further conversation, some further dialogue, some challenge, is likely to lead to bigger problems in the long run.

***In the UK, 10 years ago, they changed the NGO law that all NGOs have to become registered as public limited companies, because until then the board of trustees, or governing body, was actually could be stripped of their personal assets upon some default from NGOs. Is that commonly done or something to be encouraged?***

Nonprofit law develops in different ways in different countries. In some countries it develops out of trusts -- a history of the trust system -- in other countries it develops out of the English notion of society. In other countries, in recent years, there has developed the notion of limited liability or nonprofit companies. And to complicate things further, in a number of countries all three of these strands exist at the same time. So, for example, in my country we can have charitable trusts, we can have nonprofit corporations. And nonprofit groups have to make a choice between how to operate. It is true that in recent decades, in a number of countries, there has been a gradual move away from the trust system and toward what we would call the corporate system, or the company based system, by which I don't mean a for-

profit company but I mean a non-trust entity, that we sometimes call a nonprofit corporation, or even a society. And that is because the trust concept is an ancient concept that in some cases has not been updated for the current day. So for example in some countries, trustees can be held liable – including personal assets – further than the directors of nonprofit corporations, for example. How different countries develop this really depends on their history. So, for example, in India, we have a long society's tradition that comes out of British law from the 1850s and 1860s, we have a separate tradition of public trusts that, again, originates in English law. And then we have a much older tradition of both Hindu and Muslim charitable institutions that goes back centuries. In India, given the complexity and diversity of India, all of these strands continue to the present day. And new nonprofits face a choice of form that be a very confusing choice of form. About ten years ago I was helping a group of Bangladeshis establish the first private foundation in Bangladesh. I would sit in on their Board of Directors meetings, as a consultant, and we faced a very complicated choice: should this foundation set up as a trust, as a society, as something else. Eventually a decision was made but it was quite complicated because the strands over history tend to continue, and then you have to balance the pros and cons between different forms of organisation. This is very complicated for the state because the state, whether it's nationally regulated or regulated at the sub national – the state or the provincial -- level needs to think about all the forms of nonprofit organisations, as well as other kinds of groups like religious organisations, trade unions, and others. Sometimes states try to simplify, but in countries with long traditions, for example a long tradition of trusts, that kind of simplification is very difficult and often opposed by the nonprofit sector. So I'm sure that's a very unsatisfying answer to a good and complex question.

***We have seen that in Vietnam developing a draft NGO law cause a lot of conflicts. What points contribute to the conflict and how do they address the conflicts, and what are the recommendations for Cambodia?***

By "conflict" I mean discussion and debate. And that has been very healthy discussion and debate. What has provoked it? What has provoked it for the most part is a strong sense in the NGO community in Vietnam that they have a strong contribution to make to Vietnam's development, and a desire to work with the government to come up with a law that balances effectively the power of the state to regulate nonprofits, on the one hand, and certain flexibility for nonprofits to operate, on the other hand. And increasing in Vietnam, as in many other countries, this is a consultative process; it's a discussion process and there's been a lot of discussion. One of the other factors that has provoked that discussion and debate is the growth of the nonprofit community in Vietnam. In my country, for example, most people still think of Vietnam as a one-party dominated state that allows very little other forms of activities. You know better than I that Vietnam is a party state but there is a wide range of activity in Vietnam, NGO and others. And after twenty years – this is the twentieth anniversary of the reform process in Vietnam – there is now a strong research, policy and NGO community that wants to have these discussions with the government. That has provoked that discussion and debate as well. But it's clearly, in Vietnam, a healthy discussion. And I think, as someone who has been involved in this process (in Vietnam) at different times, that Vietnam is going to come out with a better law as a result of that discussion.

***What is the use of "Ombudsman" system for complaints?***

It is a neutral third party to adjudicate complaints about NGOs, or perhaps about government regulation of the NGO sector. There are a number of countries that have established independent commissions, charity commissions, to look at conflict between the state and the nonprofit sector or complaints about government or nonprofits. That's clearly a kind of option.

***Do NGOs that engage in income generation activities tend to be seen as businesses?***

That's correct, and in a number of countries the question is: are these activities – income generating activities – related to the nonprofit purposes of the nonprofit organisation. For

example, if an educational nonprofit is generating income from selling textbooks and then applying that income to its nonprofit purposes, in many cases we would not think of that as a business. We would think of that as a nonprofit that has developed effective ways of generating income; related to its nonprofit purposes and applied to its nonprofit purposes. But that results in very difficult questions. There is no single answer to these questions and a number of countries have come out in different ways. But the question of income generation by nonprofits needs to be addressed in some ways again and again over time, as nonprofit income generation develops new forms.

**Wrap Up and Closing Comments - Mr In Samrithy, CCC NGO Liaison Coordinator**

Thank you to all participants for your attention and time today, to participate in this workshop. We would like to give a special thanks to our guest speakers, Mr. Mark Sidel and Ms. Rhonda Chapman, for their presentations, and Ms. Thida Khus for facilitation. Thank you for sharing so many good insights during this workshop; you have given us a lot to think about. Thanks, as well, to CCC staff and NGO GPP team members for organising this workshop and making it happen. To the NGO GPP team, thank you for your commitment to the development of the Code of Ethical Principles and Minimum Standards which serve as the guidelines or indicators for good organisational practice, and accountable and transparent activities of NGOs.

As we have seen, the NGOs in Cambodia are still young and therefore their practices need to be improved in order to build solid relationships between government and other stakeholders, and especially to gain recognition and support from those stakeholders.

We hope that this workshop was able to help all of you understand more about what is NGO self-regulation, how do we regulate ourselves, how can we be more accountable to our stakeholders and how we can we be more accountable for what has been done, and what will be done in the future .

Thank you, again, for your participation and contributions today, and your support of this seminar.

## Annex 1: Agenda

### The seminar aims:

- To raise awareness of different NGO self-regulation systems in other countries and their impact/benefit on the NGO sector in those countries
- To increase the understanding on how NGO accountability can be addressed through voluntary NGO self regulation systems

- 8.00-8.15 Welcome remarks – Ms Gina Frothingham, NGO GPP Project Advisor
- 8.15-8.30 Introduction – NGO Code Working Group Representative,  
Ms. Thida Khus – Executive Director, Silaka
- 8:30-9:45 Guest Speaker Presentations:
  - **NGO Self-Regulation Systems: Comparative and Asian perspectives**  
Mr. Mark Sidel, Professor of Law and International Affairs and Faculty Scholar, University of Iowa
  - **Case Study: Applying NGO Code in Practice - Australian NGOs**  
Ms. Rhonda Chapman, former Director for NGO Standards and Practice, and former Secretary for NGO Code of Conduct with the Australian Council For International Development (ACFID)
- 9.45-10.15 Break
- 10.15-11.45 Discussion Session, with questions and answers – Ms Thida Khus, facilitator
- 11.45-12.00 NGO GPP Project Overview – Mr Soeung Saroeun, NGO GPP Project Coordinator
- 12.00-1.15 Lunch
- 1.15-2:45 Facilitated Small Group Discussions – Ms Rhonda Chapman, facilitator
- 2:45-3:15 Break
- 3:15-4:00 Guest Speaker Presentation
  - **Non-Profit Law in Asia: A comparative perspective**  
Mr. Mark Sidel, Professor of Law and International Affairs and Faculty Scholar, University of Iowa
- 4:00-4:45 Questions and Answers – Ms Rhonda Chapman, facilitator
- 4:45 Wrap Up and Closing Comments – Mr In Samrithy, CCC NGO Liaison Coordinator

## Annex 2: Guest Speaker Biographies

### Rhonda Chapman

Rhonda Chapman is currently based in Cambodia conducting the field research for her PhD investigating NGOs and aid effectiveness. She works as an independent consultant and facilitator, specialising in participatory processes, monitoring, learning and evaluation and organisational development and systems.

She worked previously as the Director of Standards and Practice for the Australian Council for International Development (ACFID) for four years, during which time she was Secretary for the ACFID Code of Conduct, as well as responsible for NGO-Government liaison, analysis of NGO development practice and the NGO training program. During this time, she led a research process into NGO quality and effectiveness which resulted in the development of the ACFID NGO Effectiveness Framework. She has worked with NGOs for 17 years, and as a community development practitioner for 4 years in Central America and Azerbaijan, as well as conducted short-term assignments in many countries in Asia and Africa.

### Mark Sidel

Mark Sidel is Professor of Law at the University of Iowa and a research scholar at the University's [Obermann Center for Advanced Studies](#). His research focuses on law, philanthropy and the nonprofit sector, and on comparative law in Asia with a focus on Vietnam, China, and India and South Asia. Professor Sidel teaches philanthropy and nonprofit institutions, contracts, and comparative and international law. In the 2005-06 academic year Professor Sidel served as Visiting Professor of Law at Harvard Law School and Vermont Law School. Sidel studied at Princeton University (history), Yale University (history), and Columbia Law School.

Since 2000 Professor Sidel has served as academic director of a five nation research and policy project on Philanthropy and Law in South Asia, convened by the Asia Pacific Philanthropy Consortium. Sidel has also served as a consultant on legal reform, philanthropy, the nonprofit sector and related areas for the American Council of Learned Societies (ACLS), Asia Foundation, Asia Pacific Philanthropy Consortium, Asian Development Bank, Center for Educational Exchange with Vietnam, Economics Institute (Boulder), Ford Foundation, Luce Foundation, McKnight Foundation, National Foreign Affairs Training Center/Foreign Service Institute (Washington), Oxfam International, Oxfam America, Oxfam Hong Kong, Aga Khan Foundation/Pakistan Centre for Philanthropy, United Nations Development Programme (UNDP), U.S. Department of Justice (Civil Rights Division), U.S. State Department, Stanley Foundation, University of Iowa, Vietnamese Ministry of Justice, World Bank, and other institutions.

Professor Sidel has published extensively on comparative law in Asia, and on philanthropy, the nonprofit sector, and civil society. Publications include *The Guardians Guarding Themselves: Nonprofit Self-Regulation in Comparative Perspective*, [Chicago-Kent Law Review](#) (2005) and *Self-Regulation of the Nonprofit Sector in Asia: Experiments and Models* (Asia Pacific Philanthropy Consortium, August 2003, available at [www.asianphilanthropy.org](http://www.asianphilanthropy.org)).

## **Annex 3: Presentation - Self Regulation in the Nonprofit Sector: A Comparative Perspective**

Mark Sidel  
Professor of Law and International Affairs  
University of Iowa  
mark-sidel@uiowa.edu

### **Coverage**

1. Why nonprofit self-regulation?
2. The enormous diversity of nonprofit self-regulation: What are the different kinds of self-regulation?
3. What areas of nonprofit activity and governance does self-regulation cover?
4. What are other Asian countries doing?
5. What are some of the problems with self-regulation?

1. **Why do we even talk about SR of the NPS? Why would the NPS want to regulate itself?**

Fore stall or limit state (governmental) action  
State action unsuccessful/weak  
To defend the sector against attack from various forces  
To improve standards and professionalism in the sector  
As a means of restraining competition in the sector (by reducing providers)  
To facilitate fundraising  
To get government funds or tax exemption (SR mandated)  
“Associational entrepreneurship” (eyeing a market)  
Other reasons?  
Cambodia?

2. **The enormous diversity of nonprofit self-regulation: What are the different kinds of self-regulation?**

Accreditation/certification/licensing/tax exemption mechanisms  
Validation  
Rankings (evaluative mechanisms)  
Codes of conduct (or codes of ethics or principles) with enforcement  
Voluntary principles  
SR charities commissions or registers  
“Intranet” systems  
The issue of enforcement

3. **What areas of nonprofit activity and governance does self-regulation cover?**

See below

4. **What are other Asian countries doing?**

India  
Philippines

Vietnam  
Other countries

## **5. Problems with SR**

Sustainability  
Adherence and enforcement  
Funding SR  
Overlapping, multiple systems  
Role of government

### **Areas of possible self-regulatory content**

#### **Governance**

Legal compliance  
Board responsibilities  
Board size  
Board composition  
Board meetings  
Board terms  
Independence of board members  
Officers of board  
Conflicts of interest  
Board compensation  
Board training  
Board assessment of organizational performance  
Assessment of governance and board member performance  
Board assessment of executive

#### **Financial Standards**

Board approval of budget  
Reserves/net assets  
Reporting to government and public disclosure  
Independent audit  
Audit committee of board  
Finance committee of board  
Administrative expenses  
Program expenses  
Fundraising expenses  
President/CFO approval of financial statements  
CEO and staff compensation  
Investments  
Internal controls  
Record retention policy  
Annual report availability  
Financial disclosure

**Annex 4: Cambodia NGO Code**

**Cooperation Committee for Cambodia (CCC)  
NGO Good Practice Project (NGO GPP)**

**Code of Ethical Principles and Minimum Standards  
for NGOs in Cambodia**

**Revision 8**

**December 2006**

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## Preamble

### **What is the purpose of the Code?**

The *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* has been developed by a Working Group of representatives of the NGO community in Cambodia, and incorporating feedback from a wider audience of NGOs and other development stakeholders. These development processes have been facilitated by CCC's NGO Good Practice Principles (NGO GPP) project.

The *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* aims to maintain and enhance standards of good organisational practice throughout the NGO community. This Code also aims to ensure public trust in the integrity of the individuals and organisations that make up the NGO sector, and the effectiveness of NGO programmes.

These principles are based upon moral and ethical values which are held to be important throughout Cambodia, in combination with standards of good organisational practice (locally and globally). This accountability framework draws strength from both the body of knowledge developed globally and from the Cambodia's unique social context.

The *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* expresses a shared vision about the principles and good practice standards that guide the work of NGOs.

### **Who is the Code for?**

The *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* is for interested NGOs who are legally registered and have been operating for a minimum of one year.

The Code is voluntary.

NGOs that choose to sign on to the Code agree to be held accountable to the Ethical Principles and Minimum Standards in the Code.

Participating NGOs are likely to include both Cambodian NGOs and international NGOs.

### ***What is the history of the Code?***

*The Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* builds on the foundations that were started with the original *Code of Ethics for NGOs and People's Organisations in Cambodia*.

The first version of the *Code of Ethics for NGOs and People's Organisations in Cambodia* was drafted in English by the executive committee members of the CCC in 1995. The draft was then translated into Khmer by the Federation of Ponleu Khmer, a Cambodian NGO umbrella organisation and promoted among Cambodian NGOs. Ponleu Khmer was replaced by the NGO Star Kampuchea. In cooperation with Star Kampuchea's Cooperating Organisations, the Code of Ethics was reviewed and

revised. Star Kampuchea continued to promote the *Code of Ethics for NGOs and People's Organisations in Cambodia* during the following years.

In 2004, CCC's NGO GPP Pilot Project, in cooperation with Star Kampuchea, began facilitating the development of the new *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia*. A Working Group of 10 NGO leaders, working with NGO GPP, has led this process. There have been regular, wider consultations with the NGO community and opportunities for stakeholders to give feedback on the draft Code

The nine (9) principles provided in the new *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* were adapted from the original *Code of Ethics for NGOs and People's Organisations*. The format and Minimum Standards are new.

### **What does the Code contain?**

Ethical principles are the foundation for the *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia*, and are based on core organisational values of:

- cooperation
- respect and equity in our relationships
- quality
- efficiency
- openness

Nine (9) principles are provided in the Code. The principles are intended to guide the professional practice of NGOs, and to inform stakeholders and the general public about the principles they can expect to be upheld by NGOs.

Twenty-five (25) new NGO Standards have been developed and are provided in the new Code as practical indicators that describe how NGOs should act to be ethical and accountable in their governance, organisational management and programmes.

Participating NGOs must comply with applicable state laws, and the *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia* builds on that foundation. These principles and standards should proactively guide the behaviors of NGOs in everyday practice.

This accountability framework draws strength from both the body of knowledge developed globally and from Cambodia's unique social context

### **How does the Code be applied?**

In Phase 2 of the NGO GPP project, a certification system will be developed by the Working Group and a compliance mechanism established. NGOs choosing to participate in the system will be assessed for compliance with the Minimum Standards defined in the Code.

There will be an independent committee formed that will check and follow up with NGOs who apply to participate in the certification system. Certification of applicants will be based on compliance with the *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia*.

## Definitions

### **Accountability**

is the capacity to account for one's actions; or as a representative of one's organisation, to account for either your actions or the actions of your organisation

### **Audit/ Global Audit**

A formal examination of an organisation's or individual's accounts or financial situation, an audit may also include examination of compliance with applicable terms, laws, and regulations.

### **Global Audit**

Examination of all accounts and finances together as one

### **Certification**

The process of confirming that an organisation complies with specified requirements or standards

### **Code**

A central guide and reference for organisations to help clarify an organisation's mission, values and principles, linking them with standards of good organisational practice

### **Conflict of Interest**

A conflict between an individual's personal interest and his or her professional duty; this can exist whether or not money is involved

### **Ethics**

A set of moral principles or values

### **Equity**

Justice, impartiality or fairness

### **Goal**

A statement describing the intended long-term outcome of a programme

### **Governance**

An organisation's structure and policies for decision-making which include board, staff and other stakeholders

### **Objective**

A measurable statement about the end result that a service or program is expected to accomplish in a given period of time; objectives are based on goals, the purpose of a program, or the organisation's overall mission

### **Principles**

Statements or descriptions of what should or should not be done that describes the rules, parameters or guidelines for performing the task; values that govern a person's behavior

**Management**

The process of planning, leading, organising and supervising people within a group in order to achieve goals

**Mission**

A mission statement defines the core purpose of the organisation - why the organisation exists

**NGO**

A Non Governmental Organisation (NGO) is a non-profit, non-state, formal association of individuals created for the purpose of achieving certain common objectives

**Nonprofit**

A non-profit organisation (also called "not-for-profit") is an organisation whose main objective is to serve the public good without the motivation of profit

**Quality** is a fulfillment of expectation; the ability of a product or service to meet the expectations of the persons or group that are the direct beneficiaries of a project or service

**Stakeholders**

Individuals and groups that affect, or are affected by, an organisation and its activities

**Standards**

Statements that explain what organisations should do to achieve good organisational practice, used to measure organisational performance

**Minimum**

Representing the lowest possible amount or degree that is acceptable or attainable

**Sustainability**

Being able to continue into the future

**Transparency**

An openness and willingness to accept public scrutiny that reduces the capacity for an organisation to engage in dishonest or deceitful practices

**Values**

The deeply held beliefs of a person or group; in an organisation, values are demonstrated through the day-to-day behaviour of all staff.

**Vision**

The long-term desired future state of an organisation

## Principles:

NGOs engage in diverse activities, but have one constituency and that is the public. We aim to improve the welfare of the people we serve. We commit ourselves to the following ethical Principles:

- An NGO's purpose is to work in partnership with stakeholders for a sustainable development of Cambodian society, based on justice, equality, transparency, accountability and respect for human rights. (1.1)
- An NGO's policy and vision is appropriately and independently determined from that of any donor or government agency. (1.2)
- NGOs are not aligned or affiliated to any political party. (1.3)
- NGO activities will be carried out without discrimination on the basis of nationality, group, political affiliation, ideologies, race, age, religion, gender, HIV status or disability. (1.5)
- NGOs will respect the values, dignity, history, religion of the communities they serve. (2.1)
- An NGO's cooperation with other NGOs will be based on equality, dialogue and mutual respect. (3.1)
- NGOs will ensure that their relationships with funding agencies are honest and transparent. (3.5)
- NGOs will cooperate with the Cambodian people, the government and other stakeholders to improve the quality of life of the people. (4.1)
- NGOs will solve all problems, disputes and conflict on the basis of non-violence. (5.2)

*(Note: the numbers in parentheses are the location numbers of the principles in the original Code of Ethics document; some of these principles have been slightly revised by the Working Group)*

## **Minimum Standards:**

### **1. Mission and Values:**

- 1.1 The NGO has a clearly defined mission statement and set of organisational values.
- 1.2 The staff are aware of the organisation's mission and values.
- 1.3 The NGO's activities are consistent with its stated goal.
- 1.4 The NGO regularly reviews its mission statement to determine if the programme activities are consistent with stated mission.
- 1.5 The NGO is non-profit.

### **2. Governance:**

- 2.1 The NGO is legally registered.
- 2.2 The NGO has a functioning governing body by whatever name.
- 2.3 The NGO adheres to clear written statutes or bylaws.
- 2.4 The NGO develops all organisational policies, procedures and guidelines based on a participatory approach with staff members, reviewed and approved by the governing body.

### **3. Relationships/Communication:**

#### **Internal**

- 3.1 The NGO conducts and documents regular information-sharing meetings.
- 3.2 Management staff meet regularly, and meetings are documented, for decision making purposes.

#### **External**

- 3.3 An annual report is to be produced and made available.
- 3.4 Fundraising communication will accurately describe the NGO's identity, purpose, programmes, and scope of achievement.
- 3.5 The NGO will participate in networks to improve coordination, disseminate information, share experiences and good practices.

#### **4. Financial:**

4.1 The NGO has an annual global financial audit by a qualified and recognised auditor.

4.2 The NGO implements clear and written financial management policies, procedures and systems.

#### **5. Accountability and Transparency:**

5.1 The NGO provides members of the public, the target population, donors and governments with accurate information about their activities, finances and other relevant information.

5.2 The NGO has a written conflict of interest policy that applies to all board members and staff members.

#### **6. Quality:**

6.1 The NGO conducts regular monitoring and evaluation of the organisational management and the programme.

6.2 The NGO ensures the participation of the target groups/population in development processes.

#### **7. Human Resources:**

7.1 The NGO has clear and fair written staff policies and procedures which are implemented.

7.2 Management and staff roles and responsibilities are clearly defined and written.

7.3 Each staff member of the NGO has an annual performance appraisal.

7.4 The NGO has policies and procedures to promote gender and minority equity.

7.5 The NGO has a clear, written grievance policy and procedures that protects the interests and rights of all staff members.

## **Annex 5: The ACFID Code of Conduct**











## **Annex 6: Presentation - Case Study: Applying NGO Code in Practice - Australian NGOs**

### **What is the ACFID Code of Conduct?**

- A set of standards developed by Australian aid and development agencies FOR Australian aid and development agencies.
- Standards that were developed to ensure that signatory agencies conduct their activities with integrity, transparency and accountability.
- A mechanism through which public concerns about the conduct of an agency can be addressed. Anyone can make a complaint.

### **Why was the Code developed?**

- To improve the confidence of the Australian public in the accountability and transparency of Australian aid and development agencies.
- To raise the standards of internal operations and systems of signatory agencies.
- To standardise annual and financial reporting. Making it easier for members, supporters and the public to understand how and where funds are spent and to enable financial comparisons between agencies.
- In 1995 an advisory committee to the Minister for Foreign Affairs was established to draft a Code of Practice for non-government development organisations.
- The Code of Conduct was launched in February 1997 by the Governor General Sir William Deane.

### **What kind of standards?**

- Organisational integrity
- Governance
- Communication with the public
- Finances
- Personnel and management practices

#### ***Organisational integrity standards including:***

- Paying due respect to the dignity, values, history, religion and culture of the people that the organisation works with.
- Not making misleading or false public statements regarding other agencies.
- Opposing and not being a willing party to wrongdoing, corruption, bribery or financial impropriety.

#### ***Governance standards including:***

- Having a governing instrument (constitution, rules, articles of association) which is consistent with legal requirements.
- A governing body that holds ultimate responsibility for governance over all aspects of the Organisation.
- Members of the Governing Body, paid staff, and volunteers must make known to the Governing Body any conflict of interest they have.

***Communication with the public standards including:***

- Producing an annual report and making it available to members, supporters and the public upon request.
- Truthful fundraising. There must not be material omissions or exaggerations of fact and no use of misleading photographs.
- Being responsible for all fundraising activities outsourced to a third party and putting all such contracts and agreements in writing.

***Financial management and reporting standards including:***

- Internal control procedures to minimise the risk of misuse of funds.
- Publishing audited financial statements (prepared in accordance with the Code of Conduct Summary Financial Report Format) in the annual report,
- Using donations as promised or implied in fundraising appeals.
- Ensuring that a plan is in place for handling any excess funds when funding is invited from the general public for a specific purpose.

***Personnel and management practice standards including:***

- Well-defined policies and procedures relating to paid staff including expatriate and local staff employed overseas and volunteers working in Australia or overseas.
- Clearly communicated expectations of employees' and volunteers' professional conduct which are consistent with the requirements of the ACFID Code of Conduct.
- Policies and strategies to promote gender equity - especially in senior positions in the management and governance of the organisation.

**How does it work?**

- Governed and monitored by the ACFID Code of Conduct Committee.
- A self-regulatory Code that is primarily a complaints driven process.
- Actively monitored annual and financial reporting requirements.
- Regular information and training provided to signatories.
- Is a criterion for AusAID accreditation.

**What does it offer donors and the public?**

- Assurance that there are standards that aid and development organisations (who are signatories) must meet.
- Standardised annual and financial reporting. Easy to understand how and where funds are being spent, and to make comparisons between agencies.
- Confidence that signatory agency's financial statements are subject to regular scrutiny.
- A mechanism to investigate and address public concerns about the conduct of an agency. Anyone is eligible to make a complaint.

**What does it offer signatory agencies?**

- Increased public confidence in the way funds/donations are used.
- Can be used to measure and improve organisations internal operations, systems and guiding principles.

- Part of a publicly listed group of organisations that can be identified by donors, the public and other interested parties as being accountable and transparent in their operations.
- Adherence to the Code of Conduct is required for organisations to be accredited with AusAID in order to apply for funding from the Australian Government aid program.

**For more information:**

Visit the ACFID Website: [www.acfid.asn.au](http://www.acfid.asn.au)

**Annex 7: NGO GPP Project and NGO Code**

**A. Presentation on the NGO GPP Project**

**Goal:**

To strengthen the NGO sector in Cambodia by encouraging and promoting NGO accountability and good organisational practice

**Purpose:**

NGOs commit to participate in a voluntary self-regulation system based on compliance with the *Code of Ethical Principles and Minimum Standards for NGOs in Cambodia*

**Objectives:**

- 1) participant NGOs engage in active learning dedicated to improving the quality and accountability of NGOs in Cambodia
- 2) the “Code of Ethical Principles and Minimum Standards for NGO Practice in Cambodia” is finalised
- 3) a voluntary NGO certification system is established, based on compliance with the “Code of Ethical Principles and Minimum Standards for NGO Practice in Cambodia”

**Activities:**

- a. Select two levels of Focus Group
- b. Develop activity plans for 2 Focus Groups
- c. Level 1: Role Model NGOs
- d. Level 2: Intermediate NGOs
- e. Conduct 2-day bi-monthly workshop with level 1 and level 2
- f. *Conduct a full day meeting with NGOs in 5 different regions to disseminate information about the NGO self-regulation system.*
- g. *Meeting with stakeholders (government officials, donors, and target populations) to inform about NGO good practice issues and self-regulation system.*
- h. *NGO GPP Focus Group level 1 participates in provincial network meetings*
- i. Donor/government/constituents surveys re new NGO code
- j. Recruit Working Group members
- k. WG meeting bi-monthly for ongoing review and develop standards, design and establish certification and compliance system
- l. Wider consultation feedback meetings on standards and compliance system
- m. Recruit Code Compliance Committee
- n. NGOs (30-40) participate in certification system
- o. Develop support system for 2 different level members
- p. Review of the certification system

- q. Make resources available in the provinces
- r. Update documents in CCC Resource Centre
- s. Update information in CCC/NGO GPP website

**B. Presentation on the development of the *Draft Code of Ethical Principles and Minimum Standards for NGO in Cambodia* (see Annex 4)**

## **Annex 8: Nonprofit Law in Asia**

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Basic goal – addressing relationship between the state and the nonprofit sector  
As well as related issues – governance within the NPS, accountability, fundraising and a host of other issues

The six key issues that NPL generally addresses, each closely linked to the relationship between the state and the nonprofit sector:

1. How does the state govern the **registration and status of nonprofits, including different types of nonprofits?**
2. How does the state govern the **purposes** for which nonprofits may operate, including the relationship between nonprofits, advocacy, politics, religion and other issues?
3. How does the state govern the **fiscal regime** that applies to nonprofits?
4. How does the state govern the **governance, accountability and operations** of nonprofits?
5. How does the state govern the **mobilization of resources (capital formation) and financing** of nonprofits?
6. How does the state govern the **dissolution, termination, and/or takeover of management of nonprofits?**

### **Key Issues in Nonprofit Law**

1. **How does the state govern the registration and status of nonprofits, including different types of nonprofits?**

#### **Key issues**

Registration or application/approval?

Procedures and process, time limits, appeals, judicial role

Reporting

Discretion and rent-seeking

Definitions

Multiple statutory regimes

**2. How does the state govern the purposes for which nonprofits may operate, including the relationship between nonprofits, advocacy, politics, religion and other issues?**

**Key issues**

Required purposes?

Prohibited purposes (and breadth and discretion)

Deviation from purpose

Issues of business and personal benefit

**3. How does the state govern the fiscal regime that applies to nonprofits?**

**Key issues**

Issues in taxation (jurisdictions; differentiating exemptions and deductions; other issues)

Exemption: Automatic, nearly automatic, application/approval?  
Types of taxes  
Process, time limits, appeals, judicial role  
Distinguishing organizations  
Religious organizations  
Payout requirements  
Issues of business/for profit operations  
Requalification requirements  
Procedures and appeals on withdrawal/revocation of exemption

Deduction: Automatic, nearly automatic, application/approval?  
Types of taxes, types of giving, multiple levels and approvals?  
Process, time limits, appeals, judicial role  
Distinguishing organizations  
Giving to religious organizations  
Giving in kind  
Carryforward issues  
Requalification requirements  
Procedures and appeals on withdrawal/revocation of exemption

**4. How does the state govern the governance, accountability and operations of nonprofits?**

**Key issues**

Governance: Board duties and powers, management duties and powers, other organizational powers, decisions, meetings, other requirements  
Laws, bylaws, clarity  
Personal benefit  
Accounting  
Loans and property and self-dealing  
Other issues in governance  
Supervising governance

Accountability: Accountability to whom?

Types of accountability: Returns, disclosures, annual reports  
Supervising accountability

Self-regulation:

Reasons for self-regulation of the nonprofit sector  
(Forestall state action; sector defence; improving standards and professionalism; competition; fundraising; and other motivations/reasons)  
Diversity of experience  
Overlapping self-regulation  
Role of the state in self-regulation (funding, mandates)

**5. How does the state govern the mobilization of resources (capital formation) and financing of nonprofits?**

**Key issues**

Minimum capital requirements?

Constraints on fundraising/funding (ie foreign funding, domestic fundraising)

Restrictions on corpus growth through spending requirements

Limits on investment

**6. How does the state govern the dissolution, termination, and/or takeover of management of nonprofits?**

**Key issues**

Government dissolution/termination/takeover – grounds, breadth, discretion

More general license terminations (bylaws/laws)

Procedures, process, clear legal standards, appeals, administration/judicial roles

Assets

## Annex 9: Attendance List for 14 July 2006 Seminar on NGO Self – Regulation

Note: Total attendance is 58 (20 female)

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