



The International Journal of Not-for-Profit Law

Volume 8, Issue 3
May 2006

A Quarterly Publication of

The International Center for Not-for-Profit Law
1126 16th Street, NW, Suite 400
Washington, DC 20036
(202) 452-8600

Except Where Otherwise Noted,
Copyright 2006 © by the International Center for Not-for-Profit Law.
All Rights Reserved.

ISSN 1556-5157

Publisher:

The International Center for Not-for-Profit Law
1126 16th Street, NW, Suite 400
Washington, DC 20036
(202) 452-8600
www.icnl.org

The International Journal of Not-for-Profit Law

**Volume 8, Issue 3
May 2006**

Letter from the Editor 3

SPECIAL SECTION: RUSSIA AND THE NEWLY INDEPENDENT STATES

Some Issues Related to Russia's New NGO Law
Natalia Bourjaily 4

Civil Society and Philanthropy Under Putin
Alexander Livshin and Richard Weitz 6

Philanthropy in Russian Society Today
Julia Khodorova 12

Why NGOs?
How American Donors Embraced Civil Society After the Cold War
Sada Aksartova..... 15

Charitable and Private Foundations in Ukraine
Alexandr Vinnikov 21

ARTICLES

*Evaluating the Impact of Legal and Regulatory Reform
on Canada's Voluntary Sector*
Douglas Rutzen and Michelle Coulton 26

Nongovernmental Ogres?
How Feminist NGOs Undermine Women in Postsocialist Eastern Europe
Kristen Ghodsee..... 43

Identifying Nonprofit Institutions in New Zealand
Statistics New Zealand, in consultation with
The Committee for the Study of the New Zealand Non-Profit Sector 59

Letter from the Editor

This issue of *The International Journal of Not-for-Profit Law* features a special section on a particularly timely topic, Russia and the Newly Independent States. We open with an examination of Russia's new NGO law and some of the knotty issues that it raises, written by **Natalia Bourjaily**. Next, **Alexander Livshin** and **Richard Weitz** examine the shifts in Russian civil society under Vladimir Putin, and **Julia Khodorova** offers an overview of Russian philanthropy. In a provocative article, **Sada Aksartova** suggests some factors that may explain why American donors gravitated toward civil society in general and NGOs in particular after the Cold War. And **Alexander Vinnikov** summarizes Ukrainian foundation law and regulations.

Leading off our other articles, **Douglas Rutzen** and **Michelle Coulton** consider a range of possible approaches to assess how legal and regulatory reform may affect the voluntary sector in Canada; much of their analysis applies equally to other countries facing the same issue. In another provocative article, **Kristen Ghodsee** argues that feminist NGOs must change their ways if they truly want to help women in Eastern Europe. Finally, **Statistics New Zealand** and **The Committee for the Study of the New Zealand Non-Profit Sector** set forth criteria for identifying not-for-profit organizations; again, though the focus is on New Zealand, much of the article applies elsewhere as well.

We gratefully acknowledge the assistance of Thomas Robinson and Dafina Blacksher Diabate of Duke University Press; Andrew Rae of Non-Profit Institutions Satellite Account, Statistics New Zealand; our HTML master, Kareem Elbayar; Erin Means, formerly of the International Center for Not-for-Profit Law (ICNL); *IJNL* volunteer Asad Kudiya; David Robinson, of ICNL's Advisory Council; and, especially, our deeply informed and gracious authors.

Stephen Bates
Editor
International Journal of Not-for-Profit Law
sbates@icnl.org

Law.

SPECIAL SECTION: RUSSIA AND THE NEWLY INDEPENDENT STATES

Some Issues Related to Russia's New NGO Law

Natalia Bourjaily¹

On April 17, 2006, the Russian Federal Law “*On Introducing Amendments to Certain Legislative Acts of the Russian Federation*” (hereinafter “NGO Law”) entered into effect.

The Law amends four existing laws – the Civil Code, the Law on Public Associations, the Law on Non-commercial Organizations, and the Law on Closed Administrative Territorial Formations.² It introduces a number of new requirements for public associations (PAs), non-commercial organizations (NCOs), and foreign nongovernmental non-commercial organizations (FNNOs). These new requirements restrict who may form an organization in the Russian Federation, expand the grounds on which registration may be denied, and enhance the supervisory powers of the state over organizations.

The major changes to the laws include the following:

- *Denial of Registration.* The law expands the grounds upon which an organization's application to register can be denied by the registration authority, known as *Rosregistration*. The provisions relating to denial of registration for branches of FNNOs are of special concern: they provide that the authority may deny registration to a branch if its “goals and objectives . . . create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation.” The European Court of Human Rights has specifically held that it violates a country's obligations under Article 11 of the European Convention on Human Rights to deny registration on grounds almost identical to these.
- *Expanded Government Supervisory Powers.* The law increases the reporting burden on organizations by, among other things, requiring them to report on all funds received from foreign sources and on how these are allocated or used. In addition, the law gives the government invasive powers to interfere in the internal operations of a PA, NCO, or FNNO, including the following:
 1. *The power to summon resolutions of the organization's governing body.* The registration authority now can demand documents concerning details of an organization's governance, including day-to-day policy decisions, supervision by the organization's management, and oversight of finances.

¹ Natalia Bourjaily is Vice President for Newly Independent States of the International Center for Not-for-Profit Law.

² The Civil Code of 1994, the Federal Law of the Russian Federation # 82- FZ *On Public Associations* of May 19, 1995 (“LPA”), the Federal Law of the Russian Federation #7-FZ *On Non-commercial Organizations* of January 12, 1996 (“LNCO”), and the Federal Law of the Russian Federation #327-1 *On Closed Administrative Territorial Formation* (“LCATF”).

2. *The power to send representatives to an organization's events.* The law even allows the government to send a representative to all of an organization's meetings and other events, without restriction. Thus, government representatives can attend strategy meetings, board meetings, and other meetings that are strictly internal to the organization. This power will have a chilling event on the ability of organizations, especially advocacy groups, to hold such gatherings, and on the willingness of members, service recipients, and others people to attend. The provision appears to violate Article 8 of the European Convention on Human Rights, protecting the right to privacy, which prohibits authorities from arbitrarily entering private premises or interfering with people's private activities.
1. *Supervisory powers over FNNOs.* The law gives the registration authority two additional intrusive powers over the branches, representative offices, and affiliates of FNNOs. First, the government can terminate any existing program of an FNNO's subdivision.³ The law does not set forth any criteria for when to exercise this power; it appears to be entirely discretionary. Second, the law lets allows the registration authority to bar an FNNO (through its branch, representative office, or affiliate) from transferring funds or other resources to recipients if necessary for purposes of "protecting the basis of the Constitutional system, morality, health, rights and lawful interests of other persons, and with the aim of defending the country and the state security." By conferring such broad discretion to interfere with the operations of a branch, these rules violate Article 11.
- *Restrictions on who may found a PA or NCO.* The law requires that a foreign national or stateless person must be domiciled in the Russian Federation in order to found, participate in, or join a PA or NCO. This requirement raises a number of questions about whether the Russian Federation is fulfilling its obligation to protect the right to associate under international conventions to which it is a party. The European Convention on Human Rights, for example, requires a signatory to secure the enumerated rights for "everyone within" its jurisdiction.

The law also prohibits certain categories of persons from founding, joining, or participating in PAs or NCOs, including foreign nationals whose presence in the Russian Federation is found to be "undesirable." This determination can be made by certain federal agencies, each of which has complete discretion to establish pertinent criteria.

In sum, several provisions of the law appear to be inconsistent with the Russian Federation's obligations under international agreements. This is particularly so in the case of the European Convention of Human Rights, which, under Article 11, requires a nation affirmatively to protect the right to association, and to interfere with the exercise of that right only where "necessary in a democratic society" for compelling state reasons. It will be critical to monitor implementation of the law in order to determine the extensiveness of the practical problems arising under it.

³ LNCO, Article 23¹.

SPECIAL SECTION: RUSSIA AND THE NEWLY INDEPENDENT STATES

Civil Society and Philanthropy Under Putin

Alexander Livshin and Richard Weitz¹

In January 2006, Russian President Vladimir Putin signed into law a controversial bill regulating non-governmental organizations (NGOs). The act requires NGOs operating in Russia to re-register with the government, disclose their funding sources, and undergo expanded state auditing. At the same time, the Russian government has declared 2006 “The Year of Philanthropy” (*God blagotvoritel’nosti*), and Russian officials are contemplating new ways to encourage charitable giving. We seek to analyze this apparent contradiction by exploring the complex relationships between Russian philanthropy and Russia’s government, civil society, and developing NGO sector.

Philanthropy and Russian Politics

There is no inherent contradiction between philanthropy and Russia’s current political system of “managed” or “sovereign” democracy. In recognition of philanthropy’s growing importance and its potential impact on society during the 2008 national elections and after, the Putin administration declared that 2006 would be “The Year of Philanthropy.” Russian officials hope that major philanthropists will support the government’s “Four National Projects”: improving Russians’ healthcare, housing, agriculture, and education.

The authorities fear, however, that Russian philanthropists might back other projects, including activities not supported by the current government. In March 2006, the bank accounts of the Open Russia Foundation, led by imprisoned Russian businessman Mikhail B. Khodorkovsky, were frozen. The foundation had been active in the controversial area of promoting civil liberties.² It is too early to determine whether the move will further discourage Russian philanthropists from supporting politically controversial activities. Although arrested for tax fraud associated with his Yukos corporation, Khodorkovsky was independently funding opposition political parties at the time of his arrest, and had been cited in the media as a potential presidential candidate in 2008.

Government officials have succeeded in concentrating philanthropy among a small number of mostly large corporate benefactors in order to exercise greater control over it. For example, current regulations make it difficult for an individual citizen to offer

¹ Dr. Alexander Livshin is a Professor at the School of Public Administration, Moscow State University, and a Visiting IREX Fellow at Hudson Institute’s Bradley Center for Philanthropy and Civic Renewal. Dr. Richard Weitz is a Senior Fellow and Associate Director of Hudson’s Center for Future Security Strategies.

² C. J. Chivers, “Russia Effectively Closes a Political Opponent’s Rights Group,” *New York Times*, March 18, 2006. In the words of Khodorkovsky, the activities of Open Russia “have been oriented towards creation of democratic institutes and implementation of a civil society. The democratic structure of the State, the freedom of expression in word or in business, the openness of the society—are not given ‘from above’ by destiny or by authorities. They should be achieved by people themselves, by their energy, knowledge and creative capacities.” “Open Russia: About Us,” at http://en.openrussia.info/about_en/.

a charitable donation. A potential benefactor must take the initiative of going to a branch of the Savings Bank of Russia and completing a complex form for even a modest donation. Partly as a result, a small number of wealthy Russian philanthropists and Russian corporations provide a large proportion of the aggregate donations.³

The Growth of Russian Philanthropy

The increasing importance of philanthropy in Russia would naturally attract the attention of any Russian government. In recent years, charitable giving has expanded at a rapid pace. Although the overall rate of growth in the nonprofit sector has slowed considerably since the 1990s, owners of large and medium-size Russian companies are becoming more and more involved in charitable social welfare. Some analysts anticipate the emergence of several thousand private and corporate philanthropic foundations in the near future. Although a 2001 law ended virtually all tax breaks for charitable giving, approximately 60% of people making charitable donations have increased their contributions since 2001. At present, more than 80% of all Russian companies make charitable donations, amounting to an estimated 11 to 17% of their total profits. (Uncertainties regarding Russian statistics, especially those regarding taxable activities, make more precise estimates difficult.) Many of them have established a special “social budget” to fund charitable giving. In contrast, the typical Western company allocates only 1 to 2% of its profits for philanthropic purposes.⁴

The reasons for the recent growth of Russian philanthropy are complex. Russia has a rich tradition of pre-revolutionary charity, but historically such giving had been confined to the aristocracy. It was only at the turn of the 20th century, with the rise of wealthy industrialists, that other social classes and larger groups of people began to engage in patronage of the arts and support of the poor. In Soviet times, however, the authorities forbade philanthropy as a demeaning capitalist practice that challenged the commitment of the Soviet state and the Communist Party of the Soviet Union to care for citizens’ material and spiritual needs.⁵ With the USSR’s demise, newly wealthy Russians appear to be returning to pre-Bolshevik traditions of proper social behavior.⁶

Patriotism also motivates much Russian philanthropy. Many philanthropists give money because they genuinely want to improve the lives of their fellow citizens. Understanding that the state today is fundamentally inefficient at providing public goods such

³ On advantages and disadvantages of having Russian corporations dominate the country’s philanthropic endeavors, both nationally and regionally, see Stephen Schmida and Elizabeth Buchanan, “Philanthropy in Russia in 2003: Two Steps Forward, One Step Back,” *SEAL: Social Economy And Law Journal* (Autumn 2003), at <http://www.efc.be/cgi-bin/articlepublisher.pl?filename=SS-SE-10-03-1.html>.

⁴ “Srazu neskol’ko komissiy Obshchestvennoy palaty reshili ob’edinit’ usiliya dlya razvitiya blagotvoritel’nosti v Rossii,” *Agenstvo sotsial’noy informatsii*, April 10, 2006, at <http://www.asi.org.ru/ASI3/main.nsf/0/078FC1A1A267AB4DC3257148004A361C>.

⁵ Local Communist Party organizations continue to perform public functions in some Russian regions where NGOs and other competing civic institutions are weak; see Ivan Kurilla, “Civil Activism without NGOs: The Communist Party as a Civil Society Substitute,” *Demokratizatsiya: The Journal of Post-Soviet Democratization*, vol. 10, no. 3 (Summer 2002), pp. 392-400.

⁶ Jamey Gambrell, “Philanthropy in Russia: New Money under Pressure,” *Carnegie Reporter*, vol. 3, no. 1 (Fall 2004), at <http://www.carnegie.org/reporter/09/philanthropy/index.html>.

as healthcare, they feel duty-bound by patriotism to fill this gap. The younger generation is especially inclined to support a strong Russian society, despite their individualism and materialism. In addition, some large Russian corporations, seeking to gain access to international markets and capital, are trying to improve their global image through acts of philanthropy.⁷

Official coercion accounts for additional contributions. Three-fourths of Russian philanthropists report experiencing pressure from local authorities to donate to public projects. Ironically, half of this group looks favorably on such overtures, because they see the solicitations as strengthening their ties with the local bureaucracy. In addition, over 70% said they would donate to state institutions despite this pressure, though often they would choose different recipients for their largesse—officials often pressure them to pay to sustain the decaying public infrastructure, in the manner of the 19th-century American “company town,” whereas the philanthropists would prefer to address urgent social needs. Although respondents believe that maintaining the infrastructure should be the government's responsibility, they acknowledge that official incompetence and corruption often prevent its fulfillment.⁸

Philanthropy in Russia is growing notwithstanding several political impediments. As noted, current tax legislation does not reward charitable giving. In addition, such donations, especially for small to medium-sized companies, often attract unwelcome attention from the authorities and public regulatory agencies such as the Federal Taxation Service. Government personnel often suspect that philanthropic donations seek to conceal shady business practices or other illicit activities. Representatives of the media and other social sectors, including the NGO community, also see much business philanthropy as motivated by a desire to secure favor with elites or, at worst, as covert forms of bribery. When a company announces that it will give money to state officials for supposed social purposes, such as purchasing better equipment for a local hospital, the immediate suspicion is that the recipients will pocket some if not most of the funds. During Russia's first years of independence under President Boris Yeltsin, the lax regulatory environment allowed many unscrupulous entrepreneurs to establish “foundations” that used their funds for shady and often illegal activities. Although these abuses seem less frequent in today's Russia, the image of fraudulent charitable behavior persists.⁹ For this reason, much of Russian philanthropy is not publicized.

Facts and Myths

Russian philanthropy has many distinctive features. First, almost all of the donations stay in Russia. Russian philanthropists are overwhelmingly concerned with solving domestic problems. Not even a catastrophe on the scale of the December 2004 tsunami in Southeast Asia engendered substantial private Russian contributions to international humanitarian and relief operations. Second, very few philanthropists use NGOs to deliver

⁷ Steven Schmida, “Emergence of Philanthropy in Russia and the other New Independent States,” *SEAL: Social Economy And Law Journal* (Autumn 2002), at <http://www.efc.be/cgi-bin/articlepublisher.pl?filename=SS-SE-10-02-1.html>.

⁸ Donor motivations are discussed in Elena Chernyshkova, “Vse kompanii delaiut eto,” *Vedomosti Forum* (April 4, 2006).

⁹ Gambrell, “Philanthropy in Russia.”

aid to fellow citizens. Most Russian donors see NGOs as inefficient if not thievish. In turn, most NGO leaders share common Russian prejudices against rich business leaders – the very people who make the largest philanthropic donations. Thus, it would be a gross misperception to characterize the Russian NGO community as predominately liberal or pro-Western. Finally, almost 90% of donations in Russia go to state-run bodies such as local orphanages and cultural institutions. This striking fact results partly from official coercion, partly from philanthropists' general distrust of NGOs, and partly from a provision in the tax code that atypically permits some deductions for direct donations to state institutions. Whatever the cause, one result is that secular rather than religious causes obtain the overwhelming percentage of donations.

Russian politicians and publicists often imply that Western governments and NGOs seek to use financial subventions to influence political developments in Russia and other countries. At least in Russia, the facts belie this perception. The contributions from Russian corporations constitute about 70% of the total value of all charitable donations in Russia.¹⁰ The remaining 30% is split between foreign donors and individual benefactors. Despite the popular myth of pervasive Western influence in Russia's third sector, foreign private donors actually constitute only 8.4% of total Russian philanthropy, though they tend to contribute to different recipients than Russian philanthropists (e.g., NGOs rather than state institutions or public infrastructure projects).

Russia's NGOs and the New NGO Law

Russia currently has approximately 600,000 NGOs (defined as not-for-profit groups), although not all of them are active. Russian law recognizes some thirty NGO forms. In practice, Russian NGOs tend to fall into one of three categories. "Elite" NGOs are relatively wealthy organizations with million-dollar budgets. They are often associated with big Russian businesses or serve as "VIP landing grounds" where former government officials can use a "golden parachute" to occupy an influential and prominent position after leaving office. Some influential Russians create organizations to occupy family members—especially wives and children, in this still highly patriarchal country. Second, "intermediary institutions" such as museums and social welfare organizations have characteristics of both government and non-government bodies. Wealthy donors sometimes purchase works of art, advanced medical equipment, or other expensive items for their favorite organizations. For example, Vladimir Potanin's extensive support for St. Petersburg's Hermitage Museum, a quasi-public institution, resulted in his being elected as chairman of its board of trustees. Finally, "grass-roots organizations" are the most numerous and varied. These NGOs have pursued a variety of causes, both at the national and local levels. Many of them can be considered political, if the definition encompasses non-partisan social advocacy.

Whither Russian Philanthropy?

The new NGO law may not greatly affect Russian philanthropy. The current political system is already highly centralized and paternalistic. Recent government efforts

¹⁰ ITAR-TASS, "Chastnoy blagotvoritel'nost'yu zaimayutsya vsego 15 protsentov rossiyan, 70 protsentov vsekh pozhertvovaniy prikhoditsya na biznes," March 23, 2006, at <http://ami-tass.ru/article/6554.html>.

to exert greater control over Russia's voluntary nonprofit sector have not reversed the long-run growth of indigenous philanthropy or its contribution to developing Russian civil society. The new law could substantially influence constrain and deter foreign donors, but they constitute a minor share of philanthropic activity in Russia. In addition, the legislation could have the consequence of allowing the bureaucracy to decide arbitrarily whether a group constitutes an unlawful NGO, impeding its rights to collect and spend donations. Meeting its regulations also will increase the operating expenses of small foundations, potentially driving some of them out of business. In the end, however, no one knows precisely what the law will do, because so much depends on how it is implemented.¹¹

According to a study by Hudson Institute's Bradley Center for Philanthropy and Civic Renewal, the increasing resources and independence enjoyed by American foundations have enabled them "to attempt projects that government and business have been unwilling or unable to carry out for political or financial reasons."¹² Russian philanthropy likewise could fill in substantial gaps. The continued growth of indigenous philanthropy is thus important for improving socioeconomic conditions and strengthening civil society in Russia.

Russian philanthropy has already helped to alleviate major social problems. In today's Russia, the voluntary nonprofit sector collaborates with government and business (including large corporations) on a wide variety of endeavors, including creating an effective social welfare infrastructure and supporting research, education, and the arts. In this third sector, foundations serve as primary channels through which profits earned by individuals and businesses are distributed to address important social issues. In some Russian regions, such as the city of Togliatti, "community foundations" have become effective mechanisms for delivering resources to those organizations and individuals most in need of support.¹³ Donors can address urgent social needs through the proliferating number of private and family foundations, which often have the flexibility to respond much more rapidly than public institutions, with their extensive legal requirements and cumbersome bureaucratic processes.

In Russia, the influence of foundations within the third sector results less from the monetary values of their grants—which is relatively small compared with government spending and corporation investments—than from their flexibility in responding to needs,

¹¹ The recent experience with the equally controversial 1997 law, "On Freedom of Conscience and Religious Associations," is instructive. The Russian authorities applied its provisions differently, both over time and by locality. In addition, it took federal agencies and Russia's courts years to agree on how to interpret some of its provisions. For additional information on the 1997 law see Marina Thomas, "Russian Federation Constitutional Court Decisions on Russia's 1997 Law 'On Freedom of Conscience and Religious Associations,'" *The International Journal of Not-for-Profit Law*, vol. 6, no. 1 (September 2003), at http://www.icnl.org/journal/vol6iss1/rel_thomasprint.htm.

¹² Peter Frumkin, *Trouble in Foundationland: Looking Back, Looking Ahead* (Washington, D.C.: Hudson Institute, 2004), p. 23, available at http://www.cof.org/files/Documents/Emerging_Issues/EI%20for%20Philanthropy/Whats%20New/Frumkin-Trouble_Foundationland-03.04.pdf.

¹³ Community foundations can combine donated resources from individuals, businesses, the local authorities, and larger Russian and foreign foundations to address a region's specific needs.

their willingness to innovate and take risks, and the pluralistic and transparent nature of their decision-making processes. With time, many Russian foundations may go on to develop unique expertise in their special areas of interest and become clearinghouses of information about new approaches to problems and other funding sources, like many American foundations.¹⁴

As Russian philanthropy grows, it will provide additional funding for activities that have previously been supported primarily by Western donors. With both Russian authorities and Western foundations becoming increasingly uneasy about continuing American and European philanthropic activities in Russia, indigenous donations may need to account for a growing percentage of the costs of these activities. These contributions could help sustain essential social work and strengthen Russia's third sector in general.

Creating a more robust independent civil society in Russia requires making philanthropy more independent of the state and less dependent on corporate generosity. Yet, increasing the involvement of individuals and the middle class will take some time. It will require not just new legislation, but a great deal of socio-cultural change as well, particularly the development of a new culture of individual philanthropic behavior. In a recent opinion poll, over half of Russian respondents lacked awareness of the existence of philanthropic organizations in Russia.¹⁵ Additional educational efforts are clearly necessary to persuade Russians of the importance of philanthropy for creating a healthy and dynamic society.

¹⁴ David P. Freeman *et al.*, *Handbook on Private Foundations* (Washington, DC: Council on Foundations, 2005), p. 7.

¹⁵ Data obtained by the "Cirkon" agency on the basis of opinion poll ordered by the Donors' Forum in late 2004.

SPECIAL SECTION: RUSSIA AND THE NEWLY INDEPENDENT STATES

Philanthropy in Russian Society Today

Julia Khodorova¹

Philanthropy is developing with great energy in Russia today, as a result of innovative methods of donor participation in tackling social problems. Over 80% of Russian companies are involved in philanthropic activities. According to unofficial sources, corporate donors have generally provided some \$1.5 billion a year, including \$70 million in grants and scholarships given by Russian private foundations.²

Philanthropy in Russia radically changed in the last ten to fifteen years. During the Soviet era, philanthropy was nonexistent and unmentioned. The first steps toward developing philanthropy came in the late 1980s, through programs launched by international foundations. Their main purpose was to help foster democratic ideas, principles, and institutions. New Russian business companies started to donate a bit later.

In the early 1990s, few companies had any strategy or policy to guide their philanthropy. Most simply responded to emergency appeals from communities, petitioners, or local authorities. Companies spent a great amount of money on charity, but in most cases they had no opportunity or mechanism to monitor the results – which often were minimal. Moreover, few companies established priorities for funding and procedures for choosing the most effective proposals.

Fraud was also a problem. After Russia entered the market economy in the mid-1990s, legal chaos prevailed. Tax incentives for charitable foundations were widely abused. Along with depriving the government of tax funds, these abuses had the effect of sapping public confidence in foundations and philanthropy.

Today, Russia has a wide range of charitable foundations and programs, including some 200 foreign donors, ten private and family foundations, and twenty community foundations.³ At the same time, corporate donors provide the bulk of donations.

Companies have come to understand how social investments can help them maintain a positive image in communities. And they have started to become more strategic in their philanthropic activities – to consider not just current crises but sustainable and long-term development. Many companies have shifted from quantitative to qualitative approaches in their community philanthropy, out of a belief that the amount of funding is less important than the recipients and the consequences.⁴

¹ Julia Khodorova is development manager for the Charities Aid Foundation - CAF Russia in Moscow.

² O. Alexeeva, presentation at Donors Forum, May 2005

³ Based on Donor's Forum Research.

⁴ L. Zelkova (board member of the Interros Holding Company and CEO of the V. Potanin Foundation), "Towards Strategic Philanthropy: the experience of Russian business."

Along with the humanitarian concerns that spur philanthropy everywhere, Russian businesses may have an additional motive for making charity a part of their general development strategy. Some Russians view corporate philanthropy as a form of social compensation for unfair privatization, in which the property, industry, and other capital that previously belonged to the society as a whole were transferred to big industrial companies. Now that the businesses are thriving, the society expects repayment.

Corporate social responsibility (CSR) has become an indispensable part of the business agenda. Companies develop complex and sophisticated CSR programs, often using the services of professional development organizations such as CAF, some other NGOs, and community foundations. Many corporate officials realize that they lack the expertise to design effective charitable programs themselves.⁵

Regional activities often stand in a class by themselves. Such leaders as SUAL (Siberian-Ural Aluminum Company), RUSAL (Russian Aluminum Company), the oil company TNK-BP, and others manage their own programs in the regions where they operate. Such charitable programs are typically integrated into the corporate development strategy in a given region, resulting in well-designed structures, defined target groups, and estimated results.

Many Russian companies still take responsibility for funding municipal social institutions in their regions, including hospitals and schools – virtually assuming the role of local authorities. In most cases the social institutions have no other recourse, and the contributions help to make local authorities more loyal to the company. Experts estimate that more than 80% of corporate funds are distributed in regions, with more than 90% directed to state institutions.

According to the Center of Economic and Finance Research, companies spend about 17% of their profits on social needs. Significantly, current Russian law does not provide any tax incentives or other benefits to companies spending money for charitable purposes. Russian companies' spending in this area generally comes out of their net profits.

As for the objects of charitable spending, research indicates that international foundations and Russian donors tend to establish different philanthropic priorities. International foundations concentrate on civil society initiatives and institutions, development and sustainability, human rights, global environmental protection programs, HIV/AIDS, and economic development.

By contrast, Russian donors focus on social initiatives, youth and children programs, youth professional and occupational orientation, culture, sports, education, talented children or children with special needs, and rehabilitation of people with special needs. And, as noted above, corporate programs commonly support state services in their regions of operation.

Education is an especially high priority for business companies. Corporations have had increasing trouble finding professional, well-educated employees. Russians tend

⁵ Vadim Samorodov. *Community Foundations: Developing Donors*. International Fellows Programme Center for Philanthropy and Civil Society, New York, 2004.

not to migrate to different cities, so local education is key. A regional corporation's potential is significantly affected by the size and quality of the local labor market. Consequently, many companies have launched support for youth, including scholarships, professional training and orientation, internships, and invitations to the head office. For example, the company Norilsky Nickel has a "Professional Start" program, which includes competitions for students to win internships. The most successful interns often receive job offers. Some scholarship programs require the recipient to sign a contract to work for the company after graduation, whereas other programs seek to develop better-educated citizens for the good of the country.

Generally the leaders of Russian companies recognize the risk that funds spent on social problems in the territories may be wasted. To reduce the risk, many of them have established effective relationships with communities.

Russian private and family foundations support a spectrum of issues, mostly focused on education. For example, the Dynasty Foundation, founded by D. Zimin, supports natural sciences, education, and scientific research; and the V. Potanin Foundation runs scholarship programs for students all over Russia. Apart from education, grantmaking in Russia often emphasizes culture. Alfa Bank, one of the leading banks in Russia, has a well-planned philanthropy policy, one designed to correspond to the bank's image as an intellectual, technologically high-end, and stable financial establishment. Alfa Bank funds large concert tours for the Mariinsky Theater and the Russian Ballet, as well as concerts and performances in different regions. Similarly, the private V. Potanin foundation supports museum development in Russian regions.

Although private foundations are significant, corporate philanthropy dominates the Russian public's understanding of charity today. The socialist "equalization," followed by the overnight impoverishment of many people in the post-Soviet period, have produced a general hostility to individual wealth. Most Russian companies are owned by their top managers, and the public identifies companies with their dominant shareholders. A company's philanthropy, in turn, is commonly viewed as the doing of its principal owner. By the same token, the owner will generally channel his or her donations through the company, rather than making them as an individual.

Whether as individuals or through their companies, wealthy Russians are increasingly undertaking high-profile philanthropic activities. For example Vladimir Potanin launched a national scholarship program in his name; Viktor Vekselberg (of SUAL and Tyumen Oil Company) purchased the Fabergé egg collection, to return it to the country; and Mikhail Fridman (Alfa Group) established a personal fund to assist children requiring urgent and expensive surgery. So too outside the capital. In the city of Pervouralsk, for example, the CEO of the Pervouralsk Novotrubny Plant (a producer of metal pipes), which is a major founder of the Pervouralsk Community Foundation, opened a donor-advised fund in partnership with the foundation to assist local schools.⁶

In the view of Russian experts, companies' and foundations' overall giving is likely to continue to increase, and they will develop new forms of philanthropy.

⁶ Id.

SPECIAL SECTION: RUSSIA AND THE NEWLY INDEPENDENT STATES

**Why NGOs?
How American Donors Embraced Civil Society
After the Cold War**

Sada Aksartova¹

Throughout the 1990s, the most ambitious American efforts to promote democracy and civil society were directed at Russia and other post-Soviet states. Civil society assistance provided by both the U.S. government and private American foundations has centered on creating and supporting nongovernmental organizations (NGOs) in recipient countries. Largely as a result of this assistance, there are now tens of thousands of post-Soviet NGOs, and the well-being of these NGOs is taken to be a principal measure by which the United States assesses the state of post-Soviet democracy.

American assistance to civil society rests on two taken-for-granted assumptions: (i) civil society is primarily embodied in NGOs, and (ii) because civil society is a prerequisite of democracy, NGOs are indispensable for democratization. Because these assumptions are considered self-evident, both in donor circles and in much of the academic literature, there are few analyses of their origins. Democracy may date back millennia, but these two assumptions do not: they gained the status of self-evident truths only after the Cold War.

This article considers how these assumptions came into being in the early 1990s. Stated briefly, my argument is that embracing the idea of civil society enabled foreign aid institutions to make themselves relevant to the world after the Cold War and without the Soviet Union. I also address the question of why donors operationalized civil society in terms of professional NGOs. I conclude by discussing some of my argument's implications for analyzing U.S. assistance to civil society in the post-Soviet region.

The Rise of the Idea of Civil Society

The end of the Cold War made civil society the central idea of the 1990s. Its rise was prompted by the events in Eastern Europe, whose intellectuals, such as Václav Havel in Czechoslovakia and Adam Michnik in Poland, were the first to describe the decline of socialism in their countries as the triumph of civil society over the totalitarian state. This interpretation resonated with Westerners and Western institutions, caught unawares by the sudden and unexpected demise of the Soviet Union, and nowhere more than in the United States, the Soviet Union's principal Cold War opponent and the self-professed champion of anti-communism and anti-totalitarianism.

In American discourse, the idea of civil society remains very general — essentially, it means citizens empowered vis-à-vis the state — and contains multiple normative

¹ Sada Aksartova is a Japan Society for the Promotion of Science postdoctoral fellow at Hosei University in Tokyo, Japan, where she researches Japanese foreign aid. For more detail on the material discussed here, see her doctoral dissertation "Civil Society from Abroad: US Donors in the Former Soviet Union" (Department of Sociology, Princeton University, 2005).

assumptions regarding the economic and social organization of society. The central theme is the triumph of market over the state and, by extension, of capitalism/democracy over socialism/totalitarianism. Two well-known statements from the 1990s — by Lester Salamon and Jessica Mathews— summarized the thesis in these terms:

A striking upsurge is under way around the globe in organized voluntary activity and the creation of private, nonprofit or nongovernmental organizations.... The scope and scale of this phenomenon are immense. Indeed, we are in the midst of a global “associational revolution” that may prove to be as significant to the latter twentieth century as the creation of the nation-state was to the latter nineteenth.... The rise of the third sector ... reflects a long-simmering crisis of confidence in the capability of the state.²

The end of the Cold War brought no mere adjustment among states, but a novel redistribution of power among states, markets, and civil society. National governments are not simply losing autonomy in a globalizing economy. They are sharing powers — including political, social, and security roles at the core of sovereignty — with businesses, with international organizations, and with a multitude of citizens groups, known as nongovernmental organizations (NGOs). The steady concentration of power in the hands of states that began in 1648 with the Peace of Westphalia is over, at least for a while.³

Significantly, the idea of civil society fit into intellectual trends in the United States itself. In the early 1990s, the work of political scientist Robert Putnam generated an active debate on the relationship between social capital — defined as “social networks and the associated norms of reciprocity”⁴ — and the state of American democracy. In addition, in his 1993 book *Making Democracy Work*, on civic traditions in Italy, Putnam made a broader claim about the relationship between social capital and long-term development: more social capital leads to better economic outcomes and a more democratic polity. Even a casual glance at the World Bank’s website and promotional literature demonstrates how prominent the notion of social capital, used interchangeably with civil society, has become in the rhetoric of international development.

The idea of civil society also brought to the forefront the theme of democratization that had always been present in American foreign policy and development discourse. In the words of a senior American policy maker, the United States’ foreign policy throughout the 20th century concentrated on “the adversary visions of the relationship between the individual citizen and the government ... [or] freedom versus tyranny.”⁵ Accordingly, the Soviet Union’s disintegration was interpreted as the victory of the American vision.⁶

² Lester M. Salamon, “The Rise of the Nonprofit Sector,” *Foreign Affairs* 73, No. 4 (1994): 109.

³ Jessica T. Mathews, 1997. “Power Shift,” *Foreign Affairs* 76, No. 1 (1997): 50.

⁴ Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000): 21; see also “The Prosperous Community: Social Capital and Public Life,” *The American Prospect* 13 (1993): 35-42.

⁵ Strobe Talbott, “Democracy and the National Interest,” *Foreign Affairs* 75, No. 6 (1996): 49.

⁶ As the U.S. House of Representatives put it: “In December, 1991, the Soviet Union ceased to exist. Cold War has ended and the United States has won.” U.S. House of Representatives, “Foreign

As a result of the confluence of these multiple currents of ideas, civil society came to be seen “as the force par excellence symbolizing freedom, antistatism, and the defense of democracy.”⁷ As anthropologist Katherine Verdery noted in her seminal 1996 book *What Was Socialism, and What Comes Next?*, the symbolic force of civil society derived from the fact that it, along with “democracy,” “markets,” “privatization,” and other symbols, signified the end of socialism. At the same time, the idea of limiting the state’s reach in the political realm complemented economic aid policies aiming to reduce the state’s hold on the economy.

The idea of civil society helped to redefine what set the West apart from the rest of the world: during the Cold War, the main division was among the developed, socialist, and underdeveloped countries; now, it is between democracies with strong markets and civil societies, on the one hand, and undemocratic countries of the former Second and Third Worlds deficient in both, on the other. Along with everyone else, donors (private foundations and bilateral and multilateral organizations) embraced this interpretation. By the end of the 1990s, they had come to view civil society as a means for bringing about vast social, political, and economic improvements.

Adopting the narrative of civil society enabled foreign aid organizations to do two things: update the development paradigm that had expired alongside the Cold War, and incorporate postsocialist countries into the realm of development. Foreign aid no longer needed to contain the Soviet Union’s international influence, and postsocialist countries did not need development *per se* — after all, they were not lacking in modernity as measured by industrialization, urbanization, female emancipation, or literacy. Framing Western assistance in terms of promoting democracy and civil society justified donors’ involvement in the former socialist countries. Donors, again like many others, equated civil society with the nongovernmental organizations already ubiquitous in Western societies and in international development. The U.S. Agency for International Development (USAID), in its programmatic Guidelines for Strategic Plans, stated that a “vibrant civil society is an essential component of a democratic polity” and “that the Agency will concentrate its support for civil society on ... nongovernmental organizations.”⁸

Once the abstract concept of civil society was linked to a concrete and familiar organizational form, foreign aid donors set about disseminating professional NGOs on a large scale, beginning with Eastern Europe and the former Soviet Union. Donors, by reorienting the delivery of development assistance to nongovernmental actors at home⁹ and initiating civil society assistance aimed at creating NGOs abroad, fueled a rapid

Operations, Export Financing, and Related Programs Appropriations Bill, 1993: Report from the Committee on Appropriations to accompany HR 5368,” (report 102-585), 102nd Congress, 2nd session (Washington, DC: Government Printing Office, 1992): 6.

⁷ Jude Howell and Jenny Pearce, *Civil Society and Development: A Critical Exploration* (Boulder: Lynne Rienner, 2001): 4.

⁸ Gary Hansen, “Constituencies for Reform: Strategic Approaches for Donor-Supported Civic Advocacy Groups,” USAID Program and Operations Assessment Report No. 12 (PN-ABS-534) (Washington, DC: USAID, 1996): 11.

⁹ By the end of the 1990s, USAID channeled one-third of its funding through NGOs. See Carol Lancaster, *Transforming Foreign Aid: United States Assistance in the 21st Century* (Washington, DC: Institute for International Economics, 2000).

growth of the number of NGOs in recipient countries, thereby further boosting the legitimization of NGOs as *the* embodiment of civil society. American donors, including private ones, such as George Soros's Open Society Institute, played the most prominent role in this process, as the earliest and largest sources of civil society assistance in post-socialist countries.

Why NGOs?

As the above quotations from Jessica Mathews and Lester Salamon demonstrate, the terms civil society, NGOs, and the nonprofit sector have been treated as synonymous since the early 1990s. What made NGOs so attractive to donors? I suggested earlier that the ubiquity of NGOs in the United States predisposed donors toward these organizations, but this outcome was not inevitable. In fact, by enthusiastically incorporating NGOs as partners in development and recipients of aid, donors have vastly contributed toward the worldwide legitimation of the professional NGO as an organizational and associational form. For a donor agency such as USAID to incorporate NGOs into development practice, there had to be an organizational fit between the way donors go about their business and what NGOs have to offer.

First, it is necessary to define NGOs.¹⁰ Professional NGOs promoted by Western donors in the former Soviet Union are distinguished by the following: (i) they are nonprofit organizations and are legally recognized as such; (ii) they are staffed by salaried employees¹¹; (iii) fundraising is an integral part of their operations; and (iv) they define their purpose in terms of representing public interest. In short, the professional NGO is a formal bureaucratic structure.

As we know from a long line of sociological research going back to Max Weber, formal bureaucratic organizations enjoy the greatest legitimacy in Western societies. Therefore, it is widely assumed that developing societies need more of them too. The trope of "capacity building," so common in international development, is precisely about that: replacing local knowledge and practices with Western-style formal organizations. Even development economists now state explicitly that development "is no longer seen primarily as a process of capital accumulation, but rather as a process of organizational change."¹² This is one reason why NGOs came to be seen by donors, as well as many others outside the donor circles, as the primary incarnation of civil society at home and abroad.

Donor organizations' main activity, giving out money, predisposes them toward bureaucratic structures capable of processing funds and accounting for them. Professional

¹⁰ Contrary to what one might expect, there is no well-established definition of NGOs. One researcher who grappled with this issue notes that the lack of consensus impedes both theoretical and empirical efforts to "understand and facilitate the functioning of the NGO sector." Anna C. Vakil, "Confronting the Classification Problem: Toward a Taxonomy of NGOs," *World Development* 25, No. 12 (1997): 2057-2070.

¹¹ Whereas professional NGOs in the West often rely on volunteers, this is not the case in the former Soviet Union, where volunteering is rare.

¹² Karla Hoff and Joseph E. Stiglitz, "Modern Economic Theory and Development," in Gerald M. Meier and Joseph E. Stiglitz (eds.), *Frontiers of Development Economics: The Future in Perspective* (New York: Oxford University Press, 2001): 389.

NGOs are perceived as both legitimate and organizationally suitable recipients. Indeed, research on American social-movement philanthropy shows that professional NGOs attract the lion's share of foundation grants compared to informal grassroots groups.¹³ A government aid agency is even more strongly drawn to professionalized organizations with the ability to meet its cumbersome reporting and accounting requirements and, often, with a good command of English. Hence, both private and public American donors favor professional NGOs over less formal types of associations as grant recipients.

In short, once American donors embraced the idea of civil society, they operationalized it in terms of professional NGOs for two principal reasons: NGOs were bureaucratically suitable vehicles for donors' funds; and by the early 1990s, NGOs had become the dominant form of associational activities in the United States itself.¹⁴

To be sure, additional factors made NGOs more attractive for donors. In the early 1990s, the U.S. Congress decided to cut the foreign aid budget, because there was no Soviet threat to contain and because corruption among recipient governments was rampant. So, with two dozen East European and post-Soviet countries clamoring for assistance, USAID had to do much more with much less. Under those circumstances, NGOs looked attractive as both partners and recipients, because they cost far less than traditional government-oriented development. An added benefit in the eyes of Congress, USAID's most important political audience, was that less money now ended up in the pockets of foreign government officials and more in the realm of democratically inclined civil society. Besides, it is easier for USAID to cut off an unaccountable NGO than a corrupt and unaccountable government.

Another important factor was U.S. donors' unfamiliarity with former socialist countries. When donors first set foot in Moscow, the organization of post-Soviet society was all but inscrutable. Most existing institutions were either unrecognizable or ideologically inimical because of their association with the Soviet state. By spreading familiar organizational forms, donors could simultaneously make the terrain more comprehensible and create organizations capable of receiving donors' funds. Donors were further drawn to fostering professional NGOs, common in the West but conspicuously absent under the Soviet regime, because host societies targeted by aid are always deemed to need new institutions and "capacities," and because donors prefer to give their aid to formal organizations. Thus, NGOs became the key to building civil society in postsocialist countries.

¹³ As sociologist Craig Jenkins has found, foundations prefer professional NGOs over less formal grassroots groups because "[p]rofessional projects are typically organized hierarchically and directed by experienced, full-time managers who are likely to share the professional and social values of foundation executives and trustees. These organizations are sufficiently isomorphic with the hierarchical and professionalized organizations of the business and nonprofit world from which come foundation trustees and managers that these donors readily see them as being legitimate." J. Craig Jenkins, "Channeling Social Protest: Foundation Patronage of Contemporary Social Movements" in Walter W. Powell and Elisabeth S. Clemens (eds.), *Private Action and the Public Good* (New Haven: Yale University Press, 1998): 210.

¹⁴ Theda Skocpol, *Diminished Democracy: From Membership to Management in American Civic Life* (Norman: University of Oklahoma Press, 2003); Mayer N. Zald and John D. McCarthy (eds.), *Social Movements in an Organizational Society: Collected Essays* (New Brunswick: Transaction Books, 1987).

Conclusion

U.S. donors embraced civil society in the early 1990s not because they suddenly recognized NGOs' self-evident virtues, but rather because civil society provided a symbolic means for interpreting the radical changes caused by the Soviet Union's disintegration and for attempting to adapt to them. American donors prescribed NGOs as the remedy for the ills afflicting post-Soviet countries because of the donors' own institutional environment.

Although, as noted earlier, these beliefs are not specific to donor institutions but reflect a far wider Western consensus, foreign aid donors have played a crucial role in the legitimation and world-wide proliferation of NGOs. Foreign aid is the biggest thing to happen to NGOs in the past fifteen years, and we would better understand the spread of NGOs in the former Soviet Union and elsewhere by paying a great deal more attention to the influence of donors. Because civil society assistance on a large scale began in Eastern Europe and the former Soviet Union, donors' encounters with postsocialist societies hold great significance.

Focusing on donors would benefit analyses of U.S. assistance to post-Soviet countries in another way. Now, such analyses exist largely apart from the scholarship on development and foreign aid. Yet U.S. assistance to the former Soviet Union, including civil society assistance, was not and is not *sui generis*, but embedded in and shaped by the larger institutional landscape of foreign aid. Therefore, incorporating insights of the development scholarship, which has long examined the patterns, institutions, and effectiveness of foreign aid, would enable researchers to raise new questions about the workings of this assistance and improve our understanding of it.

For instance, in recent years development scholars have concluded that foreign aid has been largely ineffective because it is unresponsive to the needs and characteristics of the recipient societies. My argument here comports with this line of thinking, namely that donors initiated programs supporting professional NGOs because — for a variety of reasons, symbolic, organizational, and political — it made sense to the donors, and not because post-Soviet societies were found to be especially well-suited — for symbolic, organizational, economic, or political reasons — to such assistance.

Since the early 1990s, U.S. civil society assistance has made possible the creation of tens of thousands of NGOs in Russia alone. These NGOs remain dependent on Western funding, and many of them have only weak domestic support. Why have the NGOs failed to take root? The Soviet legacy, represented by the passive public and/or the repressive state, is commonly cited as the main explanatory factor. Perhaps it is time for us to consider an alternative explanation: yet again, Western aid has been ineffective because it was guided by considerations having little to do with the needs and characteristics of receiving societies.

SPECIAL SECTION: RUSSIA AND THE NEWLY INDEPENDENT STATES

Charitable and Private Foundations in Ukraine

Alexander Vinnikov¹

Unlike many countries, Ukraine has no special law on foundations. Indeed, before adoption of the Law on Charities in 1997, Ukraine had no foundations whatsoever: all Ukrainian nonprofits operated as associations, with three or more founders, and for the mutual benefit of their membership. Today, foundations do exist in two forms: charitable foundations, established under the Law on Charities, and private foundations, established under the Civil Code. This article will provide an overview of the laws governing foundations and take note of some of their problems and inconsistencies.

Both charitable and private foundations can be created by a sole corporate or individual founder. The provisions of the Civil Code governing institutions apply to private foundations. The same provisions apply to charitable foundations (paragraph 4 of article 83 of the Civil Code), though in the event of conflict between the Civil Code and the Law on Charities, the latter applies to charitable foundations. The Law on Charities also regulates associations for certain purposes.

Registration procedures

The Omnibus Law on Registration of Legal Entities, effective since July 2004, sets forth the procedures for registering foundations. Whereas private foundations are subject to the same procedure as business corporations, charitable ones become legal entities after getting the registration certificates as provided in the Omnibus Law. Article 3 of that law states that special provisions for registering charities (and some other nonprofits) can be found in the applicable law, i.e. the Law on Charities. The result is that charitable foundations are subject to double registration: by the Ministry of Justice, under the Law on Charities and CMU Decree # 382/98; and then by the public registrar under the Omnibus Law. This section will address the provisions applicable to all foundations first, and then the additional provisions applicable to charitable foundations.

Article 24 of the Omnibus Law on Registration requires the founder(s) or their authorized representatives to submit the following to the public registrar:

- 1) a formal application for registration;
- 2) a notarized copy of the decision to set up the foundation;
- 3) two notarized copies of the founding act; and
- 4) the original receipt for the registration fee.

If the papers are submitted properly, the public registrar in a district or a town shall check whether there are legal reasons for refusing to register the entity. Such reasons are listed in article 27 of the Omnibus Law; the most important one is breaching the law. The

¹ Alexander Vinnikov is Legal Advisor, UCAN-ISC Project, Kyiv, Ukraine.

denial of registration may be challenged in the administrative court of the local jurisdiction.

The founding act shall be made, signed, and approved in writing by all the founder(s) of the entity, unless another procedure for approval of the founding act is provided for by the applicable law (par. 1, article 87 of the Civil Code). No oral agreements or obligations of the founder(s) are effective in Ukraine, unlike many European Union members. Founder(s) also may cancel the founding act until registration is completed. Under article 88 of the Civil Code, the founding act must specify the foundation's goal, the assets to be transferred to it as necessary for achieving its goal, and the governance structure. If the founding act in the will lacks some of the required provisions, the public registrar has the authority to add them. The goal or the structure of governance in foundations can be amended only by approval of the competent court, as provided by article 103 of the Civil Code.

Article 90 of the Civil Code requires that the name of a foundation specify the scope of its activities. Should the foundation change its name, it must announce the change in printed media authorized to publish registration information and notify all its contractual counterparts.

To reiterate, all types of foundations must follow the forgoing procedure. In addition, charitable foundations are subject to an additional registration procedure, which they must complete first. We turn now to that.

Under article 8 of the Law on Charities, the Ministry of Justice or its local agency considers the foundation's application. A charitable foundation's founder(s) or authorized representatives must submit the following:

- 1) an application for registration (a form approved by Ministry of Justice and not compatible with application form under the Omnibus Law);
- 2) the minutes of the founders' meeting or the notarized decision by the founder;
- 3) two notarized copies of the founding act;
- 4) personal data on the founder and the members of the governance bodies;
- 5) the data on local branches of the charitable foundations (plus their minutes) and/or representatives in other jurisdictions; and
- 6) the original receipt for the registration fee.

The authority must grant a registration certificate before the organization can register with a public registrar.

The most problematic implications for charitable foundations arise from outdated regulations concerning the territorial status of a charitable foundation. Article 7 of the Law on Charities stipulates that charities shall have local, national ("pan-Ukrainian"), or international status. The applicable regulations restrict setting up offices and branches outside of the foundation's residence jurisdiction, because a charitable foundation seeking national or international status must have representatives or branches in 14 or more Ukrainian oblasts.

Another serious drawback for charitable foundations is that the registration procedure takes two months, whereas registering a private foundation takes just three working days.

Registration fees are a small disparity favoring charitable foundations: 17 Ukrainian hryvnias (UAH) or \$3.50 to register a local charity; 34 UAH (\$7) for a national one, and 51 UAH (\$10) for a charity of international status. By contrast, the uniform fee is currently 170 UAH (\$35) for registering any legal entity, including a private foundation, by the public registrar – and a charitable foundation registered previously by the Ministry of Justice is exempt from paying this fee. In sum, a charitable foundation can register for between 17 and 51 UAH, whereas a private foundation must pay 170 UAH to register.

Governance

Any foundation, whether private or charitable, must have a board and a supervisory committee appointed by the founder under article 99 of the Civil Code or articles 5 and 17 of the Law on Charities, respectively. Any decisions by the board require approval by a majority vote of the attending members, unless otherwise provided for by the founding act. Any decisions on amending the founding act, disposing of 50% or more the foundation's property, or liquidating the foundation require a supermajority vote: three-fourths of the board members in attendance (articles 98 and 99 of the Civil Code).

Paragraph 3, article 92 of the Civil Code imposes liabilities on the members of governance bodies of any legal entity. They must act in the best interests of the entity, in a prudent and reasonable manner, and without exceeding their statutory powers. Limitations on acting on behalf of the entity are null and void as for the third parties, unless the third party was to be aware of such limitations. All provisions on conflict of interest, except transactions with affiliated persons, must be specified in the founding act or bylaws of a foundation.

The Civil Code imposes more severe liabilities on board members. They can be dismissed at any time, unless the founding act specifies otherwise (paragraph 3, article 99 of the Civil Code). Any decisions by the general meeting and/or the board may be claimed by the founder(s) or members at court (paragraph 5, article 98 of the Civil Code).

Minimum capital and investments

Ukrainian law does not require the founder(s) to transfer any minimum capital or specific types of assets, in cash or in kind, to establish a charitable or private foundation. However, the founding act should specify some assets assigned for statutory purposes. Under article 102 of the Civil Code, the actual transfer should be done after registration is completed. Article 96 of the Civil Code indicates that the founder(s) shall not bear any other liabilities for the obligations of the foundation and vice-versa, except ones made before registration is completed.

Charitable foundations may not take loans or pledge their assets, under article 19 of the Law on Charities. Further, maintenance costs (rent, salaries, etc.) must not exceed 20% of the total income of a charitable foundation within a fiscal year (article 20 of the Law on Charities). Private foundations are not subject to such a restriction.

Investments in business companies (except banks and some other financial institutions) are allowed for all types of Ukrainian nonprofits. Ukrainian law does not provide any regulations on investments yet.

The Civil Code provides that foundations and non-business corporations must not pursue profits and redistribute them among founder(s) and members. Under the Law on Charities, further, charitable foundations must spend all income from their corporate activities on either programmatic activities or on reinvestments (article 22).

Taxation

Charitable foundations enjoy substantially more generous tax exemptions than private foundations, though the deductibility for donors is the same for both types of foundation.

Pertinent rules are set forth in paragraph 7.11 of the Law on Corporate Income Tax, # 334/94, and the National Tax Administration Decree on the Registration of Tax-Exempt Organizations, # 355/00. All registered charitable foundations can get tax-exempt code 0005; private ones are eligible for code 0011.

Paragraph 7.11.3 of the Law on Corporate Income Tax exempts charitable foundations from paying tax on the following:

- 1) non-assigned and/or assigned donations from any residents of Ukraine (including proceeds from fundraising events, such as auctions, charitable concerts, or festivals, under article 19 of the Law on Charities);
- 2) investment income (interest, dividends, royalties, and insurance premiums);
- 3) subsidies from the national and local budgets, and public development funds;
- 4) income from related business activities; and
- 5) non-assigned and/or assigned donations from any nonresidents, including humanitarian and technical assistance under the international treaties and the laws of Ukraine.

Charitable foundations also enjoy another significant exemption, from Value Added Tax (its flat rate is 20% in Ukraine). Thus, donations in kind assigned for beneficiaries or for other charitable, non-business activities are exempt in full (paragraphs 3.2.5 and 5.1.21 of the Law on Value Added Tax, # 168/97).

Private foundations, under paragraph 7.11.5 of the Law on Corporate Income Tax, are not exempt from paying taxes on non-assigned donations from residents of Ukraine. Legally, a private foundation is not entitled to any VAT-exempt donations of in kind and/or humanitarian assistance. In addition, private foundations are the only type of nonprofits subject to taxation of retained income (paragraph 7.11.9 of the law on Law on Corporate Income Tax).

As for deductibility, since April 2005, donations to both charitable and private foundations are deductible for corporate donors, if they amount to 2-5% of the company's taxable income (profit) declared in the previous fiscal year (paragraph 5.2.2 of the Law on Corporate Income Tax). Similar deductions are provided for individual donors: their tax credit may amount to 2-5% of their year taxable income, if donated to any nonprofit

registered in Ukraine (paragraphs 5.3.2 - 5.3.4 of the Law on Individual Income Tax # 889/03).

Dissolution

The rules here are the same for both types of foundation. The court may make a legal resolution on liquidating a foundation as provided for by article 38 of the Omnibus Law. The legal grounds for liquidation by the court are as follows:

- 1) breaching in certain respects the law for setting up the foundation;
- 2) systematic activities prohibited by the law and/or the founding act;
- 3) failure to submit tax and financial reports pursuant with the applicable law over a year; or
- 4) filing a notice on the absence of the foundation at its registered office into the Uniform Register.

Conclusion

A special law on foundations is not a top priority in Ukraine, with the new Civil Code is in effect. However, the Law on Charities needs a number of amendments to comport with the Civil Code and the Omnibus Law on Registration of Legal Entities.

ARTICLE

Evaluating the Impact of Legal and Regulatory Reform on Canada's Voluntary Sector

Douglas Rutzen and Michelle Coulton¹

Introduction

The Voluntary Sector Initiative (“VSI”) is a five-year, \$94.6 million initiative designed to strengthen the voluntary sector’s capacity to engage in policy dialogue and to fortify the relationship between the voluntary sector and the federal government. The VSI included a number of components, including amendments to the legal and regulatory framework under which the voluntary sector operates. Social Development Canada has invited the International Center for Not-for-Profit Law (ICNL)² to prepare this paper, which discusses possible methodologies to assess the impact of these legal and regulatory reforms.

This paper is written from a practitioner’s perspective. ICNL has worked in more than 90 countries to improve the legal environment in which the voluntary sector operates. As part of this work, ICNL regularly engages in projects to assess the impact of legal and regulatory reform. For example, ICNL has assisted with the development and implementation of the World Bank’s ARVIN Framework,³ the implementation of USAID’s NGO Sustainability Index in Europe and Eurasia,⁴ and the refinement of the

¹ Douglas Rutzen is the President of the International Center for Not-for-Profit Law (“ICNL”). Michelle Coulton is reading MA Voluntary Sector Studies at University of East London and is on a career break from the Charity Commission for England and Wales. This paper was presented at the Social Development Canada (Audit & Evaluation Directorate) Conference on Methodology, Ottawa, December 5-6, 2005.

The authors wish to thank Jennifer Green for her research assistance, and Erin Means for her assistance in finalizing this paper. The authors also express their particular appreciation to Lester Salamon for his help in thinking through key aspects of this paper. This article reflects the views of the authors only, and not those of the Social Development Canada, the Charity Commission for England and Wales, or any other entity.

² The International Center for Not-For-Profit Law is an international not-for-profit organization that promotes an enabling legal environment for civil society, freedom of association, and public participation around the world. It works with local partners through participative programs to provide assistance in the design and implementation of civil society laws and initiatives and to develop skills in policy formulation and legislative activity. For more information visit <www.icnl.org>.

³ See Catherine Shea, *Assessment of Legal and Regulatory Environment in Albania* (presentation given at the Enabling Environment for Civic Engagement Advisory Board Meeting, 6-7 June 2004), World Bank Website <<http://lnweb18.worldbank.org/ESSD/sdvext.nsf/66ByDocName/NewsandEventsLearningSeries-CivicEngagementEvent1>> [accessed 2 November 2005].

⁴ See USAID Website <http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex> [accessed 2 November 2005].

legal/regulatory component of CIVICUS's Civil Society Index.⁵ ICNL is also working with partners in countries from Turkey to Mexico to assess the impact of prospective and enacted legislative reform.

Part 1 of this paper provides a brief introduction to various Civil Society Indices. These initiatives provide a useful conceptual framework to assess the relationship between the enabling environment and the development of the voluntary sector. Indices are also a useful tool to determine whether the VSI's legal and regulatory reforms are generally enabling or disabling. At the same time, we recognize that they are not specifically designed to provide data on the practical impact of certain reforms that have received considerable attention within the voluntary sector in Canada (e.g., increased due diligence requirements for large donations, intermediate sanctions, etc.). To inform discussions relating to these provisions, we build on existing models and suggest an evaluation methodology to assess the micro, meso, and macro-level impact of specific VSI reforms.

A Brief Introduction to Indices

This section explores Johns Hopkins University's Global Civil Society Index,⁶ CIVICUS' Civil Society Index,⁷ and USAID's NGO Sustainability Index.⁸ Volumes have been published on these Indices, and it would be impossible to describe these Indices in a comprehensive fashion in this short paper. We therefore provide an introduction to these Indices below and refer readers to other publications for additional detail.

The Johns Hopkins University Global Civil Society Index

The Johns Hopkins Comparative Nonprofit Project published its latest "Global Civil Society Index" ("GCSI") in 2004. The GCSI assesses civil society along three dimensions:

- capacity, or the level of effort or activity mobilized by the sector⁹;
- sustainability, or the ability to secure resources to operate over time¹⁰; and
- impact, or the contribution of civil society to social, economic and political life.¹¹

⁵ See CIVICUS Website <http://www.civicus.org/new/CSI_overview.asp?c=FD8912> [accessed 2 November 2005].

⁶ See Salamon, Lester M., S. Wojciech Sokolowski, and Associates, *Global Civil Society: Dimensions of the Nonprofit Sector, Volume Two* (Bloomfield, CT: Kumarian Press, 2004).

⁷ See Heinrich, Volkhart Finn, *Assessing and Strengthening Civil Society Worldwide: A Project Description of the CIVICUS Civil Society Index: a participatory needs assessment & action-planning tool for civil society*, Index Paper Series, Vol. 2, Issue 1, 2004.

⁸ See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/.

⁹ See Salamon, Lester M., S. Wojciech Sokolowski, and Associates, *Global Civil Society: Dimensions of the Nonprofit Sector, Volume Two* (Bloomfield, CT: Kumarian Press, 2004), 67.

¹⁰ *Ibid.* 70.

¹¹ *Ibid.* 73.

The legal environment is encompassed under the concept of “sustainability” and assessed using a specially designed Civil Society Legal Environment Scale.¹² This Scale applies the concept of transaction costs to analyze legislative provisions.¹³ Specifically, the Scale identifies and examines provisions that affect the “demand” for civil society organizations and the trust that individuals have in organizations (e.g., rules that prohibit the distribution of profit, establish internal governance requirements, impose reporting and transparency requirements, etc.).¹⁴ The Scale then examines provisions that affect the ease with which organizations can form and operate – thus affecting the “supply” of civil society organizations. Examples include provisions affecting registration/incorporation requirements, minimum capitalization requirements, and tax/fiscal benefits for organizations and their donors.¹⁵

The GCSI utilizes a coding system and detailed scoring worksheets. Scores are integers between 0 and 2, and are assigned based on memoranda developed by legal experts. Scores are then validated by local experts and summed to form the “demand” and “supply” scores for each country.¹⁶ To normalize the different indicators for composite scoring, Johns Hopkins uses a scale that rates each country on its percentage of the maximum value achieved by any country for that indicator.

The GCSI recognizes that the law as written may diverge from the law as applied.¹⁷ To address this issue, the GCSI draws on governance indicators developed by the World Bank. Specifically, the GCSI uses an average of two indicators developed by the Bank:

- the “government effectiveness” index, which measures the capacity of a government to enforce legislation; and
- the “rule of law” index, which measures compliance and enforcement of governing legislation.¹⁸

The GCSI then “weights” *de jure* provisions by this composite measure of *de facto* operation of the law to derive a more nuanced measure of the legal and regulatory framework for civil society in a particular country.

In summary, the GCSI provides a useful conceptual framework for considering the legal and regulatory factors that affect civil society. It also identifies twenty-four key features of the legal and regulatory framework, which adds further rigor to the analysis.

¹² Ibid. 72.

¹³ Salamon, Lester M, and Stefan Toepler, *The Influence of the Legal Environment on the Development of the Nonprofit Sector*, Center for Civil Society Studies: Working Paper Series No. 17 (Baltimore, MD: Johns Hopkins University, 2000), 4.

¹⁴ See Salamon, Lester M., S. Wojciech Sokolowski, and Associates, *Global Civil Society: Dimensions of the Nonprofit Sector, Volume Two* (Bloomfield, CT: Kumarian Press, 2004), 72

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

The CIVICUS Civil Society Index

The CIVICUS Civil Society Index (CSI) assesses the state of civil society along four dimensions:

- The *structure* of civil society;
- The *external environment* in which civil society exists and functions;
- The *values* practiced and promoted in the civil society arena; and
- The *impact* of activities pursued by civil society actors.¹⁹

These dimensions comprise twenty-five sub-dimensions. Most relevant to this study, the “external environment” contains the following factors:

- Political context;
- Basic freedoms and rights;
- Socio-economic context;
- Legal environment;
- State-civil society relations; and
- Private sector-civil society relations.²⁰

These sub-dimensions are then measured according to a number of indicators. For the “legal environment,” the CSI provides four main indicators:

- *CSO Registration*: How supportive is the CSO registration process? Is the process simple, quick, inexpensive, following legal provisions, and consistently applied?
- *Allowable Advocacy Activities*: To what extent are CSOs free to engage in advocacy and criticize the government?
- *Tax Laws Favorable to CSOs*: How favorable is the tax system to CSOs? How narrow/broad is the range of CSOs that are eligible for tax exemptions, if any? How significant are these exemptions?
- *Tax Benefits for Philanthropy*: How broadly available are tax deductions or credits, or other tax benefits, to encourage individual and corporate giving?²¹

Other sub-dimensions are also relevant. For example, components under state-civil society relations include:

¹⁹ See Heinrich, Volkhart Finn, *Assessing and Strengthening Civil Society Worldwide: A Project Description of the CIVICUS Civil Society Index: a participatory needs assessment & action-planning tool for civil society*, Index Paper Series, Vol. 2, Issue 1, 2004, 7

²⁰ Ibid. 35-48.

²¹ Ibid. 42.

- *Autonomy*: To what extent are CSOs free to operate without excessive government interference? Is government oversight reasonably designed and limited to protect legitimate public interests?
- *Dialogue*: To what extent does the state dialogue with civil society? How inclusive and institutionalized are the terms and rules of engagement, if they exist?
- *Cooperation/Support*: How narrow/broad is the range of CSOs that receive state grants?

The CSI uses a variety of data collection methods depending on the indicator. Methods include: regional stakeholder consultations, individual questionnaires, group discussions, community surveys, a review of appropriate media, and fact-finding. Central to this process is the National Index Team (NIT), which selects a diverse group of stakeholders for the National Advisory Group (NAG). The NIT compiles secondary data for review by the NAG, decides on the definition of “civil society” for use in the country, adapts the proposed methodology to include indicators appropriate to this definition and the country, and contextualizes civil society within the broader society by considering other society actors and power relationships. All findings are submitted to the civil society expert who then prepares a draft country report. Using this report and the scoring guidelines, the NAG then meets to assign scores to the indicators. These are aggregated into sub-dimension and dimension scores, which, along with the draft country report, are reviewed at a national workshop. The actors and stakeholders at this workshop analyze the findings and propose plans of action for strengthening problem areas. All of this information is published as part of the final country report.²²

CIVICUS uses a 0-3 scale. Similar to the GCSI, the CSI also provides guidelines on the key attributes of various indicator scores. Ratings for each indicator are then averaged for each sub-dimension. Indicators are scored on an integer scale, but other numerical values, for example the sub-dimension scores, are averages and may therefore be expressed as decimals. Sub-dimensions are averaged and placed into four dimensions. The dimension scores are then plotted, producing the “Civil Society Diamond.”²³

USAID’s NGO Sustainability Index

The United States Agency for International Development (USAID) initiated the NGO Sustainability Index in 1997. It has become an annual publication (now implemented by Management Systems International and ICNL under a contract with USAID), providing data on the “strength and continued viability” of the nonprofit sector in Central and Eastern Europe and the countries of the former Soviet Union.²⁴

The Sustainability Index assesses sustainability along seven dimensions: legal environment, organizational capacity, financial viability, advocacy, service provision, infrastructure, and public image. Each dimension is then subdivided into sub-dimensions

²² See Salamon, Lester M., S. Wojciech Sokolowski, and Associates, *Global Civil Society: Dimensions of the Nonprofit Sector, Volume Two* (Bloomfield, CT: Kumarian Press, 2004), 9.

²³ *Ibid.* 28-29.

²⁴ See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/.

with corresponding indicators. For example, the legal environment comprises seven components categorized under the following headings, with illustrative questions presented below:

- *Registration*: Is a favorable registration law in place, and are NGOs easily able to register in practice?
- *Operation*: Are there appropriate rules governing internal management, permissible activities, financial reporting, and government oversight?
- *Administrative Impediments and State Harassment*: Are NGOs free from harassment by the central government, local government, and tax police?
- *Local Legal Capacity* : Is competent legal advice available to NGOs, particularly outside of the capital?
- *Taxation*: Are there organizational tax exemptions and tax incentives for philanthropy?
- *Earned Income*: Does the law allow NGOs to generate income from the sale of goods and services?

USAID, either directly or through a contracted party depending on the country, convenes a panel of local stakeholders to score various components. USAID encourages a cross-sectoral panel, including government officials, NGO representatives and others. Moreover, an effort is made to include representatives from outside of the capital city, and some panels calculate scores for different parts of the country.

Scores are calculated on a seven-point scale to facilitate comparisons to Indices developed by Freedom House. This is the most expansive scoring scale of the three Indices; Johns Hopkins provides three scoring options (0, 1, and 2), by contrast, and CIVICUS provides four (0, 1, 2, 3). Also, the NGO Sustainability Index not only allows but also encourages decimal scoring. Scores are then averaged to determine a dimension score.

The NGO Sustainability Index provides scoring guidelines identifying the key attributes of each integer along the seven point scale. These are general guidelines, however, and do not define the key attributes of any particular indicator. For example, the instructions provide the following guidelines for a score of “7”:

NGO sector’s sustainability significantly impeded by practices/policies in this area, generally as a result of an authoritarian government that aggressively opposes the development of independent NGOs.

In contrast, a score of “1” is appropriate when:

NGO sector’s sustainability enhanced significantly by practices/policies in this area. While the needed reforms may not be complete, the local NGO community recognizes which reforms or developments are still needed, and has a plan and the ability to pursue them itself.

The NGO Sustainability Index also identifies key attributes of countries that are in the “consolidation” phase (for scores between 1-3); “mid-transition” phase (for scores

between 3-5), and the “early transition” phase (for scores between 5-7).

A narrative report is also produced to support and explain scoring. The narrative reports and scores are then sent to USAID/Washington, which convenes an Editorial Board of experts that reviews reports and scores to help promote comparability across the region. If differences arise, USAID/Washington typically discusses these issues with the local USAID mission and then determines final scores.

Strengths and Limitations of Indices

Indices provide an important conceptual lens through which to view the legal and regulatory environment for civil society. They are a marked improvement over the disparate hunches and estimations about the relationship between law and civil society, which marked prior dialogue on the subject.

It is also interesting that, though significant conceptual differences remain, there is increasing consensus about the key attributes of an enabling environment for civil society. To a greater or lesser degree, all three Indices include indicators concerning the following:

- The legal existence of civic organizations (i.e., registration/incorporation);
- Internal governance;
- Advocacy/lobbying activities;
- Reporting and governmental oversight;
- Incentives for philanthropy; and
- Organizational tax benefits.

Two of the Indices also refer explicitly to the right of civil society to engage in fee-for-service activities and to engage in self-regulatory initiatives.

Of course, there are also some stand-out provisions. Only one Index contains an indicator explicitly relating to protections against arbitrary dissolution by the state. That said, this issue is the downstream component of the right to establish an organization, so this indicator may be implicit in other Indices. In addition, the following provisions are referenced in only one Index: the ability to form unincorporated associations, and the existence of institutionalized forms of engagement between the government and civil society (such as compacts). In a separate forum, it would be interesting to analyze these divergences to see if further consensus can be reached concerning appropriate indicators.

Indices also provide a rich source of data and have provided a quantum leap in understanding the relationship between the law and civil society. Moreover, resource constraints often limit the ability to assess the impact of multifaceted reform packages, and Indices help capture the “essence” of the NGO legal framework. They can help answer the question of whether a reform package was, on the whole, enabling or disabling for civil society. In addition, the use of standardized templates enables comparability across countries and time.

However, we must also recognize the limitations of Indices. Weighting, for example, is a key issue, and has at least two interrelated components. First, existing

Indices seem to give equal weight to all sub-dimensions. For example, the USAID NGO Sustainability Index gives equal weighting to state-sanctioned harassment of the sector and the availability of legal services. Although the two issues are obviously related, one could argue that – at least in certain restrictive contexts – state harassment may better reflect the state of civil society than the availability of legal advice.

It is also important to recognize weighting issues implicit in the design of any Index. In other words, the relative weight of a provision may depend on how it is incorporated into an Index. Taking a simple example, the NGO Sustainability Index asks a stand-alone question about “earned income” issues. Accordingly, this issue accounts for one-sixth of the total legal environment score for a country. In the GSCI, however, a subcomponent of this issue is addressed – unrelated business activity – and is one of nine indicators under “Financing,” which in turn is only one of three components of the “supply side” score. As such, earned income issues have a far smaller impact on the total legal environment score under the GSCI than under the NGO Sustainability Index.

Third, while the Indices provide an important conceptual framework and tend to capture the essence of a country’s legal framework, they are less well-equipped to assess the specific impact of incremental change in sophisticated environments, which is a feature of a number of VSI reforms. For example, we understand that operational charities are now subjected to a 3.5 disbursement quota. Perhaps it would be possible to shoehorn this issue under the CSI indicator relating to “capitalization,” but this seems like a stretch.

Even if this conceptual leap can be made, problems arise because the ratings are rather coarse (integer ratings on a scale of 0, 1, 2, or 3), and it is not clear what value should be assigned to intermediate sanctions. Should this account for no change, or for 1/8 of a point, 1/4 of a point, or 1 point? Moreover, is the net change positive or negative? Reasonable people could spend considerable time arguing over such matters.

Our proposition is that for these sorts of provisions, it is not all that useful to engage in lengthy theoretical debates about the numerical value of the reform. Instead, for select reforms, we think it would more productive to shortcut the debate over numerical values (which after all are merely proxies for practical impact) and instead focus on assessing the actual effect of reform. For example, it would be interesting to evaluate this provision’s practical impact – if any – on the activities, funding, and capitalization of operational charities.

Armed with this more detailed information, the government and other stakeholders can make more informed judgments about whether the reform achieved intended objectives, whether unintended consequences were incurred, and whether further reform is necessary. This information would seem more interesting than a bald numerical proxy and is similar to the approach used in the ARVIN assessment tool developed by the World Bank and ICNL.

Of course, designing a system to assess the practical impact of select provisions is easier said than done. The following section seeks to advance the discussion of how such a methodology might be constructed.

Toward an Evaluation of Practical Impact

Before looking at the VSI regulatory reform, program theory relating to voluntary sector regulation merits consideration.²⁵ If Canada's voluntary sector regulatory regime is understood as a program in itself, of which the VSI reforms are a refining or sub-program, then the reasons or objectives behind Canada's regulatory framework – together with the linkages between the framework and the attainment of these objectives – may help inform the program theory relating to reform. A full discussion of nonprofit sector regulatory program theory is too great a task to tackle here and for this reason we leave aside the issue of the link between program and outcomes entirely, and touch only briefly on regulation objectives.

Regulatory theory has received surprisingly little recent attention; it merits greater research, particularly in relation to the nonprofit sector.²⁶ Nevertheless, theories can be understood as implicit within, and thus extrapolated from, literature dealing with the sector's regulation, if not attributable to a particular author. Revisiting the Johns Hopkins Civil Society Legal Environment Scale, splitting the effects of the legal environment on sector sustainability into demand and supply-side impacts suggests a regulatory objective of market correction or balance.²⁷ Applying Le Grand's theory might suggest that voluntary sector regulation is necessary to ensure that nonprofit actors exhibit knightly rather than a default, knavish, behavior.²⁸ Again, there is an idea of optimizing or balancing: that the sector is not proscribed altogether in this model suggests dual premises: a) the sector is desirable, but b) leaving it unchecked would lead to under-performance or abuse. Different models may offer alternative views about what is being held in balance; likewise, different ideologies would identify differing optimal points along the regulatory continuum. For example, rights-based theories, where regulation seeks to balance people's competing freedoms and rights, may more naturally give rise to an enabling, light-touch model.²⁹ By contrast, where regulation seeks to maintain the political status quo, the optimal may be more restrictive.

For this reason it is important that Canada satisfies itself as to its regulatory program theory, viewing it as something to be defined, agreed upon, and owned internally. Some theories can be found in the VSI literature but would merit further

²⁵ Nelson and Bickel define program theory as "a summary of outcomes a program is intended to achieve and [...] the strategies and interventions it uses to get there. In other words, program theory is a statement of how a program is supposed to work." Catherine Awsumb Nelson and Bill Bickel, *InfoLink Program Theory* (University of Pittsburgh Learning Research and Development Center, 7 August 2000) <<http://itclass.heinz.cmu.edu/infolink2003/InfoLink03/docs/ProgramTheory.pdf>> [accessed 22 November 2005].

²⁶ A notable exception is David Campbell and Sol Picciotto (eds.), *New Directions in Regulatory Theory* (Oxford: Blackwell, 2002).

²⁷ See Salamon, Lester M., S. Wojciech Sokolowski, and Associates, *Global Civil Society: Dimensions of the Nonprofit Sector, Volume Two* (Bloomfield, CT: Kumarian Press, 2004), 71-2.

²⁸ See Julian Le Grand, *Motivation, Agency, and Public Policy: Of Knights and Knaves, Pawns and Queens* (Oxford: Oxford University Press, 2003).

²⁹ See, for example, Leon E. Irish, Robert Kushen, Karla W. Simon, *Guidelines for Laws Affecting Civic Organizations* (New York: Open Society Institute, 2004).

exploration, such as to "enhance public trust and confidence";³⁰ to balance "the need to ensure public confidence in voluntary organizations, and the need to ensure a supportive and enabling environment for them";³¹ increasing effective performance and credibility;³² and contributing to the integrity of the charitable sector and the social well-being of Canadians.³³ For other recent thinking, Canada may wish to consider regulatory program theory from other countries. For example, the UK's dedicated "Better Regulation Task Force" is stimulating debate around regulatory theory, giving rise to ideas about the purpose of regulation such as to "improve standards & protect rights"³⁴ and to "improve our economic performance and quality of life."³⁵

Although the design of regulatory reform may be informed by an understanding of the objectives motivating Canada's voluntary sector regulatory framework and the means by which these are attained, such an understanding may be of limited relevance to the evaluation of the reform. It cannot be assumed that the goals and means for the reforms correlate with those of the original program, because reform may require fine-tuning/adjusting a balance. For example, regulation may emphasize ensuring compliance, whereas reform/refinement may emphasize enabling by cutting red-tape (or vice-versa) – an adjustment in the opposite direction along the regulation scale. Therefore, reforms cannot necessarily be evaluated in terms of the overarching regulatory objectives, but must be assessed in terms of their own (albeit related) objectives.

One possible approach for an impact evaluation of the regulatory reforms is outlined as follows:

- Identification of reforms to assess;
- Development of indicators;
- Selection of metrics;
- Data collection, aggregation and validation;

³⁰ See Joint Regulatory Table, *Final Report of the Joint Regulatory Table: Strengthening Canada's Charitable Sector: Regulatory Reform*, (Canada: Voluntary Sector Initiative, May 2003), 20, Voluntary Sector Initiative Website <<http://www.vsi-isbc.ca/eng/regulations/reports.cfm>> [accessed 2 November 2005].

³¹ Working Together: A Government of Canada/Voluntary Sector Joint Initiative: Report of the Joint Tables (Aug. 1999), 45.

³² (Broadbent) Panel on Accountability and Governance in the Voluntary Sector, *Building on Strength: Improving Governance & Accountability in Canada's Voluntary Sector* (Ottawa: 1999), 7.

³³ CRA Charities Directorate mission statement, <http://www.cra-arc.gc.ca/tax/charities/mission_vision-e.html> [accessed 22 November 2005].

³⁴ Better Regulation Task Force, *Formal Government Response. Less is more: reducing burdens, improving outcomes. A better regulation taskforce report* (London: Better Regulation Executive, July 2005), 3.

³⁵ Better Regulation Task Force, *Regulation - Less is More. Reducing Burdens, Improving Outcomes. A BRTF Report to the Prime Minister*, (London: Better Regulation Executive, March 2005), 11; see also *Imaginative Thinking for Better Regulation* (September 2003) and *Better Regulation for Civil Society* (November 2005) <www.brtf.gov.uk> [28 November 2005].

- Contextualization (in terms of outstanding problems – those not addressed; new problems created); and
- Analysis and learning

The following sections unpack each stage sequentially after providing some contextual comments.

Context

Although concerned with the evaluation of democracy assistance programs, Gordon Crawford's critique of recent evaluation attempts is helpful in informing the question of whether an existing methodology might suitably be used to evaluate particular VSI regulatory reforms.³⁶ Distinguishing two main approaches, he identifies the main weaknesses of logical framework (logframe) or results-based evaluations as too narrow and too focused on quantitative data to take account of wider impacts (e.g., effects beyond a program's pre-defined objectives and more qualitative changes). Additionally, these evaluations typically fail to take sufficient account of pluralism (different stakeholders may understand problems, objectives, and effects differently, so it matters who does the scoring).³⁷ Moreover, country impact studies often deal inadequately with methodological difficulties (most notably attribution, by making leaps from micro changes to macro conclusions).³⁸ He recommends that to overcome these difficulties, an appropriate methodology would take account of the dynamic context in which an intervention was made,³⁹ link micro changes to macro impacts through a meso stage,⁴⁰ and be genuinely participatory.⁴¹

Identification of reforms to assess

Canada's reforms can be understood at various levels:

- Micro – individual initiatives (e.g., a shortened tax return; educating the public on how to make a complaint; the introduction of intermediate sanctions)⁴²;
- Meso₁ – clusters or themes of reforms, such as the groupings within the JRT final report⁴³ or within Budget 2004⁴⁴;

³⁶ See Crawford, Gordon, "Promoting Democracy From Without – Learning From Within (Part 1)," *Democratization*, Vol. 10, No. 1, Spring 2003, 77-98. See also Part 2 in *Democratization*, Vol. 10, No. 2, Summer 2003, 1-20.

³⁷ *Ibid.* Part 1, 79-86.

³⁸ *Ibid.* Part 1, 86-95.

³⁹ *Ibid.*, Part 2, 2-5.

⁴⁰ *Ibid.*, Part 2, 5-6.

⁴¹ *Ibid.*, Part 2, 6-7.

⁴² See Department of Finance Canada, *New Agenda for Achievement: The Budget Plan 2004* (Ottawa: Public Works and Government Services Canada, 2004), especially Chapter 4 and Annex 9, Department of Finance Canada Website <<http://www.fin.gc.ca/budget04/bp/bptoce.htm>> [accessed 2 November 2005].

⁴³ See Joint Regulatory Table, *Final Report of the Joint Regulatory Table: Strengthening Canada's Charitable Sector: Regulatory Reform*, (Canada: Voluntary Sector Initiative, May 2003),

- Meso₂ – voluntary sector regulatory reform package;
- Macro – VSI as a whole, or, alternatively, overall alterations to Canadian legal framework, etc.

Although policy-makers may need to draw broad conclusions at more macro levels (e.g., an appraisal of the VSI's overall impact may inform a judgment on whether the it was worth the investment), it is perhaps more useful for them to distinguish and understand the different effects (by degree or by design) of different reforms, which contribute to the overall impact.

A comprehensive evaluation of each of the 60 JRT recommendations pursued would be neither feasible nor sensible. We therefore propose that critical or contentious reforms for evaluation be selected through dialogue with key stakeholders. This may help overcome the pluralism problem of different stakeholders with different interests and differing perceptions of reforms' relative importance.

In addition, as we discuss below under "Contextualization," we strongly recommend that the evaluation not only identify reforms that were undertaken but also reforms that were rejected. For example, we understand that the VSI did not address issues relating to the definition of charity, issues relating to political activities by charities, and certain challenges relating to cross-border philanthropy.

Development of indicators

A second step is to articulate the problems that the reform was designed to address. It is by reference to problems or intended goals that "improvement" or policy effectiveness may be meaningfully assessed.⁴⁵ Thus, indicators may be developed to show to what extent a problem was remedied or a goal attained.

A review of literature around the VSI reveals a number of articulated problems and goals.⁴⁶ One common theme is the goal to improve the Canadian quality of life, although other ultimate objectives are possible. For each reform, it might be possible to describe how it is linked with an ultimate goal by tracing a pathway through a series of sub-goals (i.e., a theory of change).⁴⁷ For example, shortened tax returns may affect filing

Voluntary Sector Initiative Website <<http://www.vsi-isbc.ca/eng/regulations/reports.cfm>> [accessed 2 November 2005].

⁴⁴ Department of Finance Canada, *The Budget Plan* (2004).

⁴⁵ See the model of policy analysis developed by the Centre for Institutional Studies, University of East London, as set out in John Pratt, Michael Locke and Tyrrell Burgess, *Popper and problems, problems with Popper*, Readings in Institutional Studies, 1 (1994).

⁴⁶ See for example (Broadbent) Panel on Accountability and Governance in the Voluntary Sector, *Building on Strength: Improving Governance & Accountability in Canada's voluntary sector* (Ottawa: 1999); Arthur Drache and Frances Boyle, *Charities, Public Benefit and the Canadian Income Tax System: A Proposal for Reform* (Ottawa: Drache, Burke-Robertson, & Buchmayer, 1998); and Ontario Law Reform Commission, *Report on the Law of Charities* (Ontario: Government of Ontario, 1996).

⁴⁷ See J. Connell, A. Kurbisch, L. Schorr and C. Weiss, *New Approaches to Evaluating Community Initiatives: Concepts, Methods and Contexts* (Washington, DC: The Aspen Institute, 1995); see also Theory of Change Website <<http://www.theoryofchange.org/html/basics.html>> [accessed 2 November 2005].

rates, which may in turn affect public information levels, thus public trust, thus donations, thus the sector's financial resources, thus more cost-effective service delivery, thus Canadian quality of life. By taking measurements at the various stages, it is possible to test the theory of change. Sub-goals along the pathway essentially form indicators to show whether the reforms are having the intended effects.

This basic model is complicated by a number of factors:

- Each reform may have multiple effects – designed or unintended, positive or negative (e.g., intermediate sanctions may affect compliance but also increase supply-side transactions costs; in addition, they may increase public trust while straining governmental/sector relations). Theoretically, to understand the full impact of a given reform, it would be necessary to look at various plausible pathways. The conceptual frameworks set forth by various Indices may be helpful in this regard.
- Conversely, several reforms may affect a given (sub)goal (e.g., intermediate sanctions, compliance education, and shortened tax returns might all affect filing rates, which may then affect both “supply-side” and “demand-side” indicators). It would therefore be inaccurate to ascribe a change to just one reform where there is a plausible pathway from several reforms. Clustering reforms according to goals may be helpful in this situation. Several groupings are described in the VSI literature.⁴⁸ We suggest that some of these clusters may be appropriate, although some reforms may meaningfully appear in more than one cluster.
- More complex still is the existence of external variables, from the wider VSI or beyond (e.g., the economic climate may affect giving, and a particular scandal may affect trust in NPOs). Progressing to higher-order goals increases the number of variables potentially contributing to a discernible change. Effectively, a complex pyramidal network of plausible pathways feed into the ultimate goal, only some of which are traced from the VSI regulatory reforms. Consequently, at higher levels, attribution confidence levels diminish.

Beginning at micro levels and gradually building up permits greater confidence than by making cosmic leaps from the micro to macro levels in the chain of attribution.⁴⁹ At the same time, it is also useful to test theories of change by measuring macro levels to ensure that higher-level objectives are actually being achieved.

Broad participation should be integral to the process of selecting which reforms to assess, articulating the problems that a given reform sought to address, describing plausible theories of change pathways, and identifying the critical pathways to test. A process of dialogue and negotiation between different groups lends legitimacy to the evaluation, by taking different perceptions of the original problems and critical reforms

⁴⁸ See notes 25 and 26 above, for example.

⁴⁹ Crawford, Gordon, "Promoting Democracy From Without – Learning From Within (Part 1)," *Democratization*, Vol. 10, No. 1, Spring 2003, Part 1, 87-88.

into account, capturing unintended effects and plausible pathways more comprehensively (including those beyond the sector), and providing wider context.

Selection of metrics

Once indicators have been identified (i.e., points along the plausible pathways), appropriate metrics and data collection methods can be selected. Possible data collection methods could include surveys, key informant interviews, literature reviews, cases studies, and other methodologies, depending on the indicator. Additionally, we offer the following suggestions for selecting metrics.

- Using several metrics per indicator will permit verification through triangulation. The use of both qualitative and quantitative data enables hard evidence to be supplied where possible, while capturing those changes that cannot be easily quantified.
- Despite the difficulties, there is value in collecting data further up the pathways. Although attribution becomes increasingly tenuous, it is by observing changes through to a macro level that the wider impact of the reforms can be understood (i.e., micro changes are aggregated and in some sense contextualized).
- In keeping with the participatory principle, effects on different groups/from different perspectives should be measured, including those beyond the voluntary sector. Again, this method helps to provide a fuller picture of a reform's likely impact and the context within which it operates. Dialogue may also be appropriate to identify metrics where none immediately presents itself.
- The design of metrics should include metadata to permit disaggregation to trace effects on different groups and sub-sectors (e.g.: by Province, organization size, activity, cultural group, etc). For example, it might be interesting to compare the impact of reform in major cities versus rural areas, and on particular ethnic groups.
- In the case of preventative reforms (such as the due diligence requirement on larger donations), consideration should be given to measuring what did not happen. How to evaluate an absence or negative is beyond the scope of this paper, but we recognize that it may present even greater challenges than assessing those changes that did occur.

Data Collection and Collation

Once the evaluation has been designed, the data can be collected and collated, by feeding them into the hypothetical pathways and observing the magnitudes of change at each stage/indicator. Certain results may be verified by using aspects of the existing Indices.

Comparisons of magnitudes at consecutive stages on a path may suggest stronger or weaker linkages. For example, the average time burden of completing tax returns may be shown to have decreased from a day to an hour, but filing rates may not have increased as much as expected. This evidence may suggest that shortening tax returns was not an effective way to encourage filing returns (i.e., weak link). Although this

analysis is oversimplified, by looking at the data within the web of pathways, it may be possible to identify the more likely "cause-effect" type patterns.

"Cross-purposes" of pathways may also be detectable, whereby a reform may contribute to one goal but undermine another (e.g., intermediate sanctions may increase filing but also give rise to tension between the sector and the government). Though complicated (how do you decide whether such a reform's overall effect is "good" or "bad"?), tensions between policy objectives inevitably exist. These data may therefore help inform choices between competing policy priorities by addressing the questions of "did it work and was it worth the trade-off?"

Data may also be disaggregated at this stage (according to metadata) for different key groups. This analysis will be important in later determining, for example, if new organizations receive most fines, or if smaller organizations continue to file late returns, or if certain reforms had a disparate impact on certain groups.

Contextualization

Evaluation would be incomplete without consideration of context. Among other issues, it is important to consider unaddressed issues and rejected recommendations. Just as each reform can be understood as intended to address particular problems, so there may be problems that the regulatory reform sought not to address or proposed solutions that were not taken forward (e.g., defining "charity" in legislation, lack of clarity around political activities, and issues relating to cross-border philanthropy).⁵⁰

This stage in the evaluation process is critical, lending legitimacy and context to any conclusions. However effective the reforms are shown to be in achieving their aims, their significance – and ultimately success – can only be fully understood by reference to the context in which they were introduced. This wider consideration helps one understand attribution and impact, and reveals whether the problems the reforms sought to address were appropriate (most pressing, most prevalent, most costly) as well as what work remains to be done.

Analysis and Learning

At this stage, conclusions can be drawn on the effectiveness of the regulatory reforms. The evaluation process proposed lends itself to the drawing of full, nuanced conclusions, whereby the impacts of the reforms may be understood from multiple perspectives, in terms of their efficacy or ability to solve a range of problems, the likely mechanism(s) by which they took effect, and their inter-relationships, contextualized by the wider sectoral and social context. Sophisticated conclusions can be drawn and should be encouraged.

Evaluation using a trial solution/theory of change model enables learning to be implemented and shared. Rather than evaluating simply in terms of "better or worse," this approach seeks to address the questions of how effectively the reforms resolved the

⁵⁰ Both Arthur Drache, "Unintended Consequences Taint Reform of Federal Charity Law," *Not-for-Profit News* (October 2005), and Kathy L. Brock, "Judging the VSI: Reflections on the Relationship Between the Federal Government and the Voluntary Sector," *The Philanthropist*, 19 (2005), 168-81, point to issues that the VSI did not address.

problems (e.g., how good was the theory of change?) and why; what else happened; and what remains to be done; what might have been done differently. Conclusions in this form lend themselves to such practical applications as the refinement of policies and reforms; the introduction of new or elimination of undesirable initiatives; identification of new problems to be tackled; and policy transfer between departments and states. Additionally, connections, trade-offs, and compromises between competing policy priorities may be better understood and reviewed.

Key Features & Limitations

Evaluation itself has an impact. In Canada's situation, evaluation through a carefully facilitated participatory process has the potential to significantly and positively affect the VSI objectives (e.g., civil society vibrancy, sector-government relations).

The process we have described has attempted to address the limitations of existing methodologies as they apply to evaluating the impact of VSI regulatory reform. Its key features are that it is participatory; "aggregatable" through plausible, sequential pathways to improve attribution confidence; "disaggregatable" to reveal differential impacts according to key factors; and designed to capture outcomes or impacts against defined problems; as well as focusing resources on critical reforms/clusters. In effect, the process attempts to hybridize logframe-style indicators with participatory dialogue to decide which reforms to assess, what improvements might look like, how to measure them, and what data to collect. This helps to account for pluralism and provide a wider context (both beyond the sector itself, beyond intended effects, and beyond abstract or prescribed "improvements") while ensuring some accepted and meaningful framework in which to assess impact.

Recognizing that selecting one evaluation methodology over another inevitably involves trade-offs and compromise, we have identified some of the issues the suggested approach raises.

- Participatory evaluation overcomes some problems (pluralism, context) but raises others.⁵¹ These include barriers to participation (e.g., capacity, culture, distrust), self-selection yielding a distorted picture, logistics (full participation would be unfeasible), and the inevitability that someone will take a lead in the process for conclusions to be drawn (e.g., deciding which views to canvass, and their weightings, or merely to adopt a participatory model).
- Evaluation can only be participatory to the extent that the sponsor is prepared to relinquish control over the process, which is difficult for the sponsor to do in some contexts.
- Acknowledging resource limitations, we proposed a selective rather than complete approach. This approach inevitably involves a trade-off, risking the omission of the wrong things, and forcing the optimal balance between cost and completeness to require careful negotiation.

⁵¹ See also C. C. Rebien, *Evaluating Development Assistance in Theory and Practice* (Aldershot: Avebury, 1996).

- The problem of attribution in terms of cause/effect is difficult, but we have suggested that attribution confidence levels can be increased through triangulation between different metrics and narrowing the gap between micro reforms and macro goals by tracing meso stages of aggregation through the pathways. Indices are also useful tools for triangulation of results.
- A model in which an evaluation is developed for and within a specific context lends itself well to understanding the impact of technical reforms within their context, but less well to comparison between situations (across time or country), for which existing Indices are better suited.
- We have assumed the VSI's delimitation, but in practice its parameters may be less clear. Although the VSI was the five-year initiative that has now concluded,⁵² some of the recommendations have yet to be implemented fully, and for others, a more extended time period may be necessary before the impact of change is fully known.

Conclusion

There are a number of questions from the original conference brief which this paper has not addressed. We have neither commented on whether the VSI has improved the regulatory framework – a task for the evaluation itself – nor defined what constitutes improvement, suggesting instead that improvements should be defined by reference to their context and the problems the regulatory reforms were intended to solve, through the voicing of and negotiation between different perspectives. Neither have we come up with a magic formula to prove attribution.

Supplementing the contribution of Indices, we have suggested a practical framework within which an evaluation method might be developed to expand the practical impact of specific VSI reforms. We have not offered a "ready-to-use" method: we believe its development should be collaborative and context-specific. In our suggested approach, we have attempted to recognize both the inherent constraints and necessary trade-offs in evaluation (pluralism, attribution, limited resources, etc.) and Canada's need for a practical solution.

The dearth of suitable models for evaluating the impact of specific regulatory change creates both a challenge and opportunity for Canada. We recognize that much work remains to be done, and we at ICNL are prepared to provide further assistance to the Government of Canada as it embarks on this ground-breaking initiative.

⁵² See Voluntary Sector Initiative Website <<http://www.vsi-isbc.ca/eng/about/history.cfm>> [accessed 2 November 2005].

ARTICLE

Nongovernmental Ogres? How Feminist NGOs Undermine Women in Postsocialist Eastern Europe

Kristen Ghodsee¹

Just two blocks from Vitosha Street in downtown Sofia are the offices and information center of one of the premier women's NGOs in Bulgaria. The building itself is rather humble; the stairwell is dirty and worn. I walk up four flights of stairs because there is no elevator. The office, like most in Bulgaria, is a converted apartment. The lobby/library area is the information center – a relatively large room with two modern couches and a low coffee-table cluttered with brochures, magazines, and ashtrays. On one wall of the room is a floor-to-ceiling bookshelf filled with binders and books in Bulgarian, German, and English about women's issues. Against the other wall, there is an antique dining table now used as a conference table. It is also covered with papers, folders, ashtrays, lighters, and several open packs of different brands of local cigarettes. The five large windows allow the room to fill with natural light. UNIFEM charts on the status of the world's women and other women's empowerment posters provide the decor. There is an old photocopy machine in one corner.

The director's office is large, with two wide windows looking out onto the street. A kidney-shaped desk sits in the middle of the room. The desk is covered with files, newspapers, and magazines. There is a catalogue from an office supply store and a stand-up desk calendar from the British Know-How Fund. Pictures of the director's family are taped around the frame of the monitor of her desktop computer. The walls are bare save for a white-board listing the names of different international organizations and what I assume are application deadlines. Against three of the walls are bookshelves jammed full of magazine files with labels written in English: "Trafficking," "Domestic Violence," "Sexual Assault," "Poverty," and so on.

The director is an attractive Bulgarian woman in her early forties with dark, curly, shoulder-length hair. She wears beaded chandelier earrings that swing as she talks. She sits across from me behind her desk gesticulating with an ultra-thin cigarette. For an hour, I listen as she explains all of the projects that her organization has done in the past and how successful they have been at improving the lives of women in Bulgaria. She has

¹ Kristen Ghodsee has her Ph.D. from the University of California at Berkeley and is an Assistant Professor of Gender and Women's Studies at Bowdoin College. She is the author of *The Red Riviera: Gender, Tourism and Postsocialism on the Black Sea* (Duke University Press, 2005), from which this article is adapted by generous permission of Duke University Press. Her articles on economic transformation, development and women have been published in journals such as *Signs*, *Women's Studies Quarterly*, *The International Journal of Politics, Culture and Society*, and *L'Homme: Zeitschrift für Feministische Geschichtswissenschaft*. She has won numerous fellowships to support her ongoing fieldwork in Bulgaria and has been the recipient of residential fellowships at the Woodrow Wilson International Center for Scholars and the Princeton Institute for Advanced Study. Copyright 2005 by Duke University Press.

complained about the ungrateful female politicians in Parliament who do not promote a feminist legal agenda and resist all lobbying attempts by her organization. When I ask about her "constituencies," she admits that Bulgarian women do not care about women's issues. "After 45 years of 'emancipation,' women have had enough," she says. "Women now do not care about gender issues. They are too tired to care about these things. We have to care for them.

"The strength of the organization," she continues, "is networking. We belong to many networks. It is one of our main programs after the information center. We have created a large network of NGOs within Bulgaria and we belong to four international networks working on gender issues."

She proceeds to tell me about a presentation that she recently gave on Bulgarian women's issues in Helsinki. I ask her if she was in Beijing in 1995 for the World Conference on Women, and she tells me she was there. She has also been to Croatia, Poland, Ukraine, the Netherlands, Belgium, Austria, Germany, and the United States for different gender-related conferences and trainings. Foreign donors funded all of the costs for her and a colleague to represent Bulgaria in these forums.

She spends a long time talking about the importance of forging international networks between women and women's organizations. Although she knows that I am an academic, I feel that she considers me a possible source of future funding. Her presentation seems too rehearsed; her Western feminist jargon is too precise. She knows all of the right buzzwords and speaks perfect English with flawless political correctness. I feel that she is trying hard to convince me that her organization's lobbying and training activities are valuable and important. Throughout her monologue, she sprinkles comments about the difficulty of obtaining funding.

"DemNet is already gone, and USAID is graduating Bulgaria by 2006. Many of the individual European countries are also deferring to the EU, but the EU funding has not quite started yet. These next few years will be very hard for us."

"What about funding from Bulgarian sources?" I ask.

"There is no culture of charity among Bulgarians anymore. The communists took it out of us. Even if there was, people are too poor to make donations to NGOs. As far as the business sector is concerned, the new law on NGOs gives no financial incentives for corporations to donate to us, no tax breaks. The government will not give us anything. Our only hope is the international organizations, but many of them are leaving now."

She begins to talk briefly about the political situation and the problem of corruption. I realize then that she has not quite understood how long I have been living in the country, and that I am married to a Bulgarian. Switching to Bulgarian, I give her several examples of the corruption I saw in the tourist resorts and drop the names of several high-profile politicians that I have interviewed. I also slip something into the conversation about my in-laws and the shrinking value of their pensions, and then I complain about the rising electricity prices in Sofia.

Slowly, the director's demeanor starts to change. She, too, switches to Bulgarian and uses English only for words that do not have direct translations – *gender*, *advocacy*,

lobbying, and so forth – or when I cannot remember a word in Bulgarian. At this point, I pull out my secret weapon: Bulgarian cigarettes. I ask her for a light, and she smiles.

"Very few of you Americans smoke," she says.

Americans have the reputation of being openly hostile to cigarettes. Most Bulgarians, both men and women, smoke everywhere and at all times. American businessmen, advisors, and consultants have been known to ask complete strangers to put out their cigarettes in public places such as bars and restaurants where smoking is allowed. The reputation of American intolerance of smoking is such that many locals intentionally smoke twice as many cigarettes in the company of Americans just because they can. To smoke as an American in Sofia immediately marks me as different from the rest of my compatriots.

Smoking Bulgarian cigarettes, however, is always the real clincher. Imported cigarettes cost about four times more than their domestic equivalents. Most Bulgarians who can afford to buy the imported cigarettes (mostly American and French brands) do so as an act of conspicuous consumption. A handful of the intelligentsia smoke local cigarettes, not only because they are cheaper but because of a sense of national pride. Cigarette production is one of the few remaining viable "industries" left in the country. When I smoke these cigarettes (and I always make sure I leave the pack on the table so that everyone can see that they are Bulgarian), I have noticed that people start talking to me more freely.

"What do you see as the biggest problem facing women today?" I ask, exhaling a lungful of smoke.

Without a beat, she answers, "Unemployment."

"Isn't that a problem for everyone?" I say.

"Yes, for both men and women. But single mothers, women between the age of 18 and 25, and widows are the most badly affected by unemployment today. This situation is really bad."

I pause and think back on all of the projects that her organization has been doing for the last seven years. "You don't have any projects that are dealing with unemployment?"

"No," she says.

A long moment of silence passes between us as we smoke our cigarettes. She taps hers on the rim of the ashtray, sighing.

"Nobody will fund projects for unemployment. Maybe there are some workshops and trainings for starting your own business, but the truth is that most small businesses fail after one or two months. The women are worse off after trying to start the business, because they are often in debt. I have heard of women who had to sell their apartments to pay for the loan they took to start their small businesses. Then they have no job and no home. This is not a solution. A woman is better off playing the lottery than she is trying to start a small business in this country."

"But if this is the biggest problem for women in Bulgaria – and I agree with you that it is – then somebody must be willing to fund projects dealing with unemployment," I say.

The director laughs at me, shaking her head. Her chandelier earrings swing back and forth. She crushes out her cigarette. She switches back to English.

"Look, Kristen," she says, "Bulgaria needs foreign direct investment if we are going to develop out of this transition mess. I hate that word *transition*, because it does not mean anything if you are transitioning for 15 years. This is not transition anymore. It is just a mess. Bulgaria's competitive advantage with America and the European Union is our cheap, educated labor force. High unemployment keeps wages down and makes us more attractive to foreign investors. Neither the EU nor the U.S. has any desire to see less unemployment here, because they do not want to see wages rise."

Her telephone rings.

"Excuse me," she says, picking it up.

I stare at her for a long time. She is right, of course, but I cannot believe that she would come out and say it so bluntly. She has obviously thought about this problem before. It does not seem to trouble her too much, and she seems surprised that I do not know how these things work. I glance up at the white-board of international organizations that she is applying to for funding and see that they are all in the West.

Soon after, we stand to say goodbye. I thank her for her time and promise that I will send some articles and materials from the United States for the information center. She shakes my hand and gives me a stack of brochures about her organization in English for me to pass around to my colleagues. As I turn to leave, she calls after me. "You forgot these." She hands me my cigarettes, smiling. In English, she says, "We do the best we can."

It was this conversation that made clear to me the disconnect between the lives of women in Bulgaria and the kinds of advocacy projects being pursued by the women's NGOs in Sofia. These NGOs issue a steady stream of documents and reports. Statistics and "facts" about women regularly appear in the national media. Yet many women in Bulgaria reject the idea that "Bulgarian women" as a whole have unique, gender-based problems. And women's NGOs not only disregard the fundamental problems, but may actively obscure them.²

² There is an extensive body of literature on NGOs and civil society in general. For information on the role of NGOs and international aid in general see: James Petras, "Imperialism and NGOs in Latin America," *Monthly Review* 47, no. 7 (1997): 10-16; and "NGOs: In the Service of Imperialism," *Journal of Contemporary Asia* 29, no. 4 (1999): 429-41; James Petras and Henry Veltmeyer, *Globalization Unmasked* (Halifax, Nova Scotia: Fernwood, 2001); Julie Fisher, *Nongovernments: NGOs and the Political Development of the Third World* (West Hartford, Conn.: Kumarian, 1997), and "Third World NGOs: A Missing Piece of the Population Puzzle," *Environment* 38, no. 4 (1994): 6-17; Michael Edwards and David Hulme, *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World* (West Hartford, Conn.: Kumarian, 1996), and *NGOs, States and Donors: Too Close for Comfort?* (New York: St. Martin's, 1997); Gerald Clarke, "Non-governmental Organizations (NGOs) and Politics in the Developing World," *Political Studies* 46, no. 1 (1998): 36052; Marina Ottoway and Thomas Carothers,

* * * *

In the late 1990s, the Sheraton Hotel in Sofia was the epicenter of foreign consultants and "experts" sent from the West to assist Bulgaria through its period of economic transition. This was before Hilton and Radisson SAS came to Sofia, and the uber-luxurious Sheraton represented the only "decent" accommodation available. The hotel actually shares a building with the offices of the Bulgarian president; its tall ceilings towering over marble columns and floors are palatial. On the velvet upholstered chairs in the lobby or in the Las Vegas-style Capital Bar and Diner, the experts would meet to share observations about the country and compare their strategies for the liberalization of the Bulgarian economy.

These consultants in the Sheraton were part of a much larger phenomenon. After the unexpected collapse of communism in 1989, billions of dollars in aid and assistance flowed from the United States and Western Europe into the former Eastern bloc. These men and women in the Sheraton were part of an army of advisors that descended into capital cities to fashion the foundations of capitalism and liberal democracy from

eds., *Funding Virtue: Civil Society Aid and Democracy Promotion* (Washington D.C.: Carnegie Endowment for International Peace, 2000).

On the specific topic of Western aid to Eastern Europe, see Janine Wedel's excellent book, *Collision and Collusion: The Strange Case of Aid to Eastern Europe* (New York: Palgrave, 2001). For information on NGOs in Eastern Europe, see Sarah Mendelson and John Glenn, *The Power and Limits of NGOs: A Critical Look at Building Democracy in Eastern Europe and Eurasia* (New York: Columbia University Press, 2002), and *Democracy Assistance and NGO Strategies in Post-Communist Societies*, Carnegie Endowment Working Papers, Democracy and Rule of Law Project, no. 8 (Washington D.C.: Carnegie Endowment for International Peace, 2000); Kevin Quigley, "Lofty Goals, Modest Results: Assisting Civil Society in Eastern Europe," in *Funding Virtue*, edited by Ottaway and Carothers.

On women's NGOs in Eastern Europe and the former Soviet Union, see Laura Grunburg, "Women's NGOs in Romania," in *Reproducing Gender*, edited by Gal and Kligman; Rebecca Kay, *Russian Women and Their Organizations: Gender, Discrimination, and Grassroots Women's Organizations, 1991-1996* (New York: St. Martin's 2000); Valeria Sperling, *Organizing Women in Contemporary Russia: Engendering Transition* (Cambridge: Cambridge University Press, 1999); Gal and Kligman, *Politics of Gender*; Julie Hemment, "Global Civil Society and the Local Costs of Belonging: Defining Violence Against Women in Russia," *Signs: Journal of Women in Culture and Society* 29, no. 3 (2004): 815-40; Elissa Helms, "Women as Agents of Ethnic Reconciliation? Women's NGOs and International Intervention in Postwar Bosnia-Herzegovina," *Women's Studies International Forum* 26, no. 1 (2003): 15-34; Armine Ishkanin, "Working at the Global-Local Intersection: The Challenges Facing Women in Armenia's NGO Sector," in *Post-Soviet Women Encountering Transition: Nation-Building, Economic Survival, and Civic Activism*, edited by Kathleen Kuehnast and Carol Nechemias (Washington D.C.: Woodrow Wilson Center Press, 2004).

For discussions of NGOs in Bulgaria, see Keith Snively and Uday Desai, "The Emergence and Development of Nonprofit Organizations in Bulgaria," *Nonprofit and Voluntary Sector Quarterly* 27, no. 1 (1998): 32-48; Krassimira Daskalova, "Women's Problems, Women's Discourses in Bulgaria," in *Reproducing Gender*, edited by Gal and Kligman; United Nations Development Program, *National Human Development Report 2001: Citizen Participation in Governance from Individuals to Citizens* (Sofia: UNDP, 2001); Snively, "Welfare State;" Gerald Creed and Janine Wedel, "Second Thoughts from the Second World: Interpreting Aid in Post-Communist Eastern Europe," *Human Organization* 56, no. 3 (1997): 253-64; Cellarius and Straddon, "Environmental Nongovernmental Organizations," 188. Finally, for a more thorough discussion of women's NGOs in Bulgaria, see Kristen Ghodsee, "Feminism-by-Design: Emerging Capitalisms, Cultural Feminism and Women's Nongovernmental Organizations in Post-Socialist Eastern Europe," *Signs: Journal of Women in Culture and Society* 29, no. 3 (2004): 727-53.

scratch.³ These consultants brought with them the ideological "tool kits" of capitalism – thorough but untested blueprints for how to "transition" these societies away from communism. The proper institutions and legal frameworks needed to be put in place in order to secure the way for the eager foreign "investors" who would soon start carving up the spoils of socialism's demise. This was "capitalism-by-design" at its very best.

During this same period, many Western feminists and women's organizations also jumped on the aid bandwagon. The money was abundant. Women's organizations undertook studies and prepared reports to show that women were being disproportionately harmed by the economic transition from communism. The majority of Western scholars who wrote about gender and economic transformation (on both sides of the political spectrum) painted a very dark picture of women's position in the emerging post-socialist societies. They often cited gender-disaggregated national statistics from which they could draw the easy conclusion that all women in Bulgaria were worse off compared to all men.

Although well intentioned, these statistics distorted the situation of women in several ways. First, under communism and in the early years of post-communism, statistics were rarely disaggregated by gender. Once the National Statistical Institute began issuing the numbers for men and women separately, it was impossible to know whether the situation of women was actually getting worse, or whether the statistics were merely showing phenomena that had existed before the transition but never been studied. Second, because the statistics looked at women as a whole, the dramatic class differences emerging between women were erased by the use of averages that showed them to be more vulnerable to income erosion and unemployment. Finally, women in Bulgaria, as elsewhere in the post-socialist world, were more likely to be involved in the informal sector of the economy.⁴ Women's income and employment was much less likely to show up in the official statistics, thus making it appear that women had been more negatively affected than men. Relying on these numbers alone would paint a very dark picture of the women's position in post-socialist society.

Many Western feminist activists and NGOs really discovered the "plight" of their Eastern sisters after the United Nations conference on women was held in Beijing in 1995. Bulgarian women also became aware of the vast resources commanded by the international feminist community. Coalitions were formed between Eastern and Western women to help the Eastern women manage the transition. The capitalism-by-design model guided the solutions to the "problems" of Eastern European women. Each country was encouraged to reinvent its "national machinery" to deal with women's issues; the sections and oversight committees were formed, but they were rarely effective because transitioning countries had more pressing concerns, and women's issues were considered a low priority by post-socialist governments. The other "institutions" of Western feminism – the women's advocacy groups, the gender think tanks, the battered women's shelters, the rape crisis hotlines, the women's resource centers – began springing up throughout the former communist countries. Most of these entities were attached to local

³ Wedel, *Collision and Collusion*.

⁴ For examples from Hungary, see Szalai, "From Informal Labor"; and Fodor, "Gender in Transition."

nongovernmental organizations either directly funded by large multilateral and bilateral donors or supported by Western women's organizations subcontracted by USAID or the European Union's PHARE Program to foster "civil society" in the region. Thus, donors hired professional Western feminists to produce what I call "feminism-by-design," in much the same way as the World Bank retained consultants from the big international accounting firms to create capitalism-by-design.⁵ Just like the communists who tried to abolish private property by administrative decree, the international community tried to create a new "gendered" subjectivity virtually overnight by importing the "best practices" from the West.

Interviews with the directors and employees of several Bulgarian women's NGOs in Sofia showed me just how dependent they were on external funding and how this dependence translated into an inability to set their own agendas. After 1989, "democracy-building" grants often included monies earmarked for promoting gender awareness and creating alternatives to the Communist Party-based mass women's organizations. Nonprofit organizations, think tanks, law firms, and universities in the West began to bid on "gender projects." If one of these institutions won a large contract from their government to provide democracy assistance in Eastern Europe, they could either send their own employees or hire freelance "experts" to provide the needed advice. In either case, women working in American and Western European corporations, universities, and human rights or women's organizations were subsequently subcontracted as gender "experts" even if they knew nothing about the region or its communist past. These "experts" would fly into a country for one or two weeks and make policy recommendations to the government and newly formed women's organizations. Since many of these women knew little about the local context, they came with prepackaged gender advice developed and tested in the Western countries from which they came.

Because of this, gender "consultants" who did not live in the country determined the study and documentation of the situation of women in Bulgaria. They knew what the relevant gender issues were in their own countries, and assumed that the same would be true for Bulgaria. These Western women would then make recommendations for what kind of policies should be implemented, and more importantly, which local women's organizations were worthy of being subcontracted to carry out pre-designed gender projects. Thus, solutions to local problems were imported from abroad. Although some issues were culturally specific to Bulgaria, there was almost no room for the creation and implementation of homegrown projects and programs to deal with them. Because Bulgarian women's NGOs relied so heavily on their Western "sisters" for financial and logistical support, the flow of ideas was only one way. The local women's organizations that thrived were the ones that were best at doing exactly what they were told needed to be done. Certainly, not all of the Western experts were oblivious to local circumstances, and there was some valuable "knowledge transfer" done under these programs, particularly with regard to what was called "civil society capacity building," or teaching East European women how the nonprofit sector is supposed to work. But overall, it was the Western freelance "experts" who benefited from these ironically named "exchanges,"

⁵ Ghodsee, "Feminism-by-Design."

raking in generous per diems and all-expense-paid explorations of Eastern European capitals.

This imbalance of resources often resulted in what has been called the "political economy of begging."⁶ The concept originates in Africa, where different countries receive aid only when there are natural disasters, famines, droughts, or genocides. Western countries give aid only to countries that have "problems," and it is in the interest of the politicians of those countries to play up their problems in order to secure more aid. In the world of NGO funding, countries that have the direst "women's issues" tend to receive a larger share of the aid. Thus, it is in the interest of local women's NGOs to play up women's problems and downplay their successes.

In the early 1990s, USAID and the Open Society Institute in Bulgaria provided money for program funding to cover the start-up costs of forming single-issue NGOs: gender, ethnicity, environment, health, etc. As the 1990s progressed, most new funding to NGOs became project-based, meaning that the NGOs must now write grants to carry out only the specific tasks designed by gender "experts" at the grant-giving institution. Several NGO directors complained to me about the difficulty of securing funding for overhead and general operational expenses. They are always stretching their resources and capabilities in order to secure the next grant – a bureaucratic hand-to-mouth existence. The donors set the priorities, and the local women just spin the proposals out to meet those priorities. This project-based funding is one specific mechanism that creates a disincentive for women's NGOs to come up with their own, original solutions to local problems. Even if they think they know how to solve a problem more effectively, there are very few places they can go to get a new idea funded.

Many women's NGOs in Bulgaria have become distributorships for Western ideas about gender. As the vast majority of the Bulgarian population grows poorer and poorer, these women's NGOs continue to focus on gender-specific issues in an economy that, even after over a decade of transition, still has a lower standard of living than it did in 1989, when communism collapsed. For most Bulgarians the major issues are unemployment, crime, and the increasing income polarization between the politico-mobster elite and the ordinary people. Despite this, a survey of national Bulgarian NGOs dealing with gender in 2002 showed that their "top priority issues" were "1) Violence against women, including sexual harassment; 2) Discriminatory employment practices; 3) Limited access of women to decision-making; 4) Unequal distribution and unjust treatment of unpaid labour; and 5) Negative gender stereotypes in education and sexist advertisement."⁷

If you spend even a few weeks in Bulgaria and talk to women on the street, almost none of these issues would be mentioned. Indeed, the registered unemployment of men surpassed that of women in 2001, and Bulgaria had more female members of Parliament than any other post-socialist country. You would be far more likely to hear complaints about the rising price of food and social services, the shrinking value of

⁶ Manuel Castells, *The End of the Millennium*, vol. 3 of *The Information Age: Economy, Society and Culture* (Malden, Mass.: Blackwell, 1998).

⁷ Regina Indjewa and Stanimir Hadjimitova, "Mapping NGOs Dealing with Gender Issues," report of the Women's Alliance for Development, 2002, (www.women-bg.org/index_en.html).

pensions, the stagnating of individual wages, the decreasing employment opportunities, or the growing inability of divorcees to collect their child-support payments. Outside the offices of women's NGOs, I never once, in the almost two years that I spent in the country, heard a Bulgarian woman discuss "sexist advertisements." As they worked and struggled to keep themselves and their families fed, a few publicly exposed breasts here and there were the least of their worries.

So what is gained by focusing on these issues that pit men and women against each other and construct women as victims of capitalism? The shift from a class-based analysis of oppression to a gender-based analysis of oppression, as created and perpetuated by many women's NGOs in Bulgaria, may have actually smoothed the way for foreign governments and transnational corporations looking to take root in the Bulgarian economy by preventing any form of class solidarity or collective bargaining that could put upward pressure on wages. Constant attention to the supposed challenges that women face in the newly liberalized labor market may have helped discursively create a category of people who can "naturally" be excluded from it. Since 1989, the Bulgarian government has no longer been able to guarantee full employment to all men and women. The onset of capitalism created severe unemployment for the first time. Theoretically, there were only two possible solutions – create more jobs or find a way to reduce the number of people actively seeking work.

Since many women's NGOs in Bulgaria are informed by Western cultural feminism, they tend to view women as biologically or psychologically less competitive and more risk-averse, and therefore in need of extra help in the form of training programs and micro-credit schemes.⁸ Women's "lack of success" in the labor market is not explained in terms of the overall weakening of workers' rights and opportunities throughout the economy, but instead by women's own inherent incapacity to compete in a free market for labor. This attention to women's supposed marginalization erases the increasing marginalization of the majority of the Bulgarian people and undermines the possibility of class-based coalitions between men and women that might politically challenge neoliberal policies. Thus, more than being the representatives of a "civil

⁸ Cultural feminism proposes that there are critical biological and psychological differences between men and women that are irreversible, and make the literal equality of the sexes impossible. In this view, men and women are not the same, and have different needs that must be met separately in order for women and men to achieve social equality. Cultural feminism as an ideology has been "mainstreamed" into societies around the world through its gradual integration into the bilateral and multilateral aid agencies and the thousands of local and international women's organizations they fund. Cultural feminism is a convenient package of ideas for the promotion of a free-market agenda; it allows donors to recognize that women may be differentially affected by macroeconomic changes, and to address their "special" needs within the established status quo without challenging the logic of neoliberalism. Because men and women are so fundamentally different, cultural feminism argues, all women have more in common with each other than they do with men. This idea of a global sisterhood, however, erases important differences in power and access to resources among women of varying race, ethnicities, and nationalities. Previous critiques of cultural feminism have gone unheeded in the reconstruction projects of the former "Second World."

society," the NGOs may be the unsuspecting allies of Western states in promoting ideologies that support the expansion of Western capital into the region.⁹

One good indicator of how biased many of the women's nongovernmental organizations are in favor of the ideology of Western donors is to look at the publications they produce and disseminate in Bulgaria. In one women's magazine funded by the Netherlands Organization for International Development Cooperation, the editorial content is overwhelmingly about women's antagonistic relationships with men in society. Most articles revolve around issues of domestic violence, prostitution, trafficking in women, infidelity, sexual performance, alcoholism, divorce, single motherhood, and child support. The majority of the articles focus on the struggle between men and women – the ways in which men lie, cheat, and exploit women for their own gain. Furthermore, although there was a Bulgarian version of this magazine until 1999, eventually it was published only in English due to lack of funding, and therefore became linguistically inaccessible to the vast majority of Bulgarian women.

Another example revolves around child support. Collecting child support is a major challenge that divorcees have faced since 1989. During communism, child support was automatically deducted by the state from the father's wages and transferred to the mother. The shrinking of the public sector and the relocation of many men into private-sector employment has undermined this system. The courts are considered inefficient and corrupt; few women have faith in the legal system. As a result, many women no longer receive support from their ex-husbands. Since 1997, the Bulgarian government and the multilateral lending institutions have vigorously promoted the independence of the market from state interference. Consequently, the government has failed to pass new legislation regarding how women should collect their support. A handful of women's organizations such as the Bulgarian Association for University Women are lobbying to reintroduce the state into child-support collection, since the "market" solution is obviously not working. But most women's organizations completely deny the state's role and continue to point the accusative finger at the errant fathers. Thus their ability to help women find workable solutions to their problems is constrained by the neoliberal tendencies of their donors.

In Bulgaria, many NGOs also promote micro-credit schemes for women or support women's entrepreneurship, but they have met with limited success.¹⁰ Micro-credit schemes and micro-entrepreneurship promotion by NGOs assume that women are willing to borrow or work to pay for "basic needs," needs that were once provided by the socialist state. Under socialism, these "needs" existed as the basic *rights and entitlements* of the communist citizen. Indeed, one of the most lauded achievements of the communist countries was the high level of human development. This was particularly true for women, who benefited from generous maternity leaves, free education, free healthcare,

⁹ Theodore H. Moran, *Foreign Direct Investment and Development: the New Policy Agenda for Developing Countries and Economies in Transition* (Washington D.C.: Institute for International Economics, 1998).

¹⁰ Microcredit schemes extend small loans to groups of poor women. These women either use the money to meet immediate basic needs or invest in some small income-generating project that allows them to pay the money back after having made a profit.

free or subsidized childcare, communal kitchens and canteens, communal laundries, subsidized food and transport, subsidized holidays on the Black Sea, etc.

In the post-socialist period, these rights and entitlements have all but disappeared. The collapse of communism in Bulgaria has relegated these *rights* to the status of *needs* for the first time in many women's lives. It should be no surprise that micro-credit and women's entrepreneurship projects are not welcome or useful in Bulgaria, where many women have not fundamentally accepted that it is their responsibility to meet these "basic needs" in the first place. Women in Bulgaria may have incentives to work for consumer items or to save money to travel abroad, but many are resistant to the idea of taking loans to start businesses to make money to pay for things that they consider the responsibility of the state. Bulgarian women prefer to seek political solutions, which has led to Bulgarian women's dominance in the membership of the Bulgarian Socialist Party.¹¹ Ideologically, women may be less likely than men to accept that things such as education or healthcare can be justly provided by private, profit-seeking enterprises.¹²

A newer model is "social entrepreneurship," of which even the women's NGOs in Bulgaria are skeptical. One report prepared by a local NGO claimed, "Promotion of social entrepreneurship is a new (*imported*) issue, meant as a tool for the development of a social services market, able to absorb unemployed women and men and to fill the growing gap in social service provision after the withdrawal of the State."¹³ The concept of social entrepreneurship once again displaces the responsibility for what were basic rights in Bulgaria – healthcare, childcare, elder care, education, nursing, and other social services – away from the Bulgarian state and onto the "free market," and expects that providing these services will be profitable for the unemployed. The model assumes that Bulgarian families are both willing and able to pay for these services, and that these services will be performed in the formal economy, two assumptions that do not match the Bulgarian reality. Most likely, women will have to provide these services for their families and communities for free. It is understandable that women's NGOs are hesitant to implement projects promoting social entrepreneurship even if they are desperate for funding.

As these examples show, women's NGOs that are overly influenced by Western funding, and "experts" do more to weaken grassroots opposition to unfettered free markets and the dismantling of the social welfare state than to actually help Bulgarian women. First, they ignore the women who have been successful after 1989 and place the blame for the drastic reduction in living standards for women squarely on the shoulders of traditional Bulgarian patriarchy. They deflect attention away from the three key actors primarily responsible for the disappearance of the social safety net that once supported women and their families: structural adjustment policies of the World Bank, the stabilization programs of the IMF, and the complicity of the Bulgarian government.

¹¹ In 2001, over 60 percent of BSP members were women. United Nations Development Program, *Human Development Report 2002* (New York: UNDP, 2002).

¹² United Nations Development Program, *National Human Development Report 2000* (Sofia: UNDP, 2001).

¹³ Indjewa and Hadjimitova, "Mapping NGOs," 12. Emphasis added.

Second, the NGOs ignore that education and cultural-capital acquisition are the keys to women's success, and that there simply are not enough jobs in the Bulgarian economy available to employ all Bulgarians who want to work. Instead, many women's NGOs focus on the technical fixes of social problems and avoid tackling larger issues of economic injustice and inequality in society.¹⁴ Because of the project-based nature of their funding, women's NGOs emphasize individual projects, which address specific goals, narrowly defined by the project's funders. Community-based self-help projects are encouraged over national mobilizations. NGOs find it difficult to support broad-based social movements that challenge the status quo or that implicate class differences in the ever-widening gap in living standards.¹⁵

Third, women's rights and women's issues are once again being used as a tool to support the dominant political and economic system. Participation in NGOs that are entirely dependent on foreign funding breeds both cynicism and opportunism in the few committed women leaders who genuinely do believe that free markets and liberal democracy are more desirable alternatives to communism. In informal conversations, Bulgarian women activists complained to me that capitalist "civil society" is really not too different from its communist counterpart. Being forced to digest the rhetoric of international organizations and proposing only those projects which support "American or European interests" is really no different from being forced to regurgitate the Marxist propaganda once required under the old regime.

Most importantly, NGOs in Bulgaria co-opt educated middle-class women who might otherwise organize a solid, class-based opposition to free-market neoliberalism, the same way they organized against the communists before 1989. Instead, these women now scramble to write grants and reports and attend international conferences in Helsinki and Minsk. It seems that almost every other month there is some gender congress or workshop on the "problems" of post-socialist women that requires a Bulgarian feminist representative.

By focusing exclusively on patriarchy at the micro-sociological level, these Western-influenced women's NGOs and the middle-class women who often run them help create the perception of the victimized woman, and indirectly benefit from that perception. For some, the business of looking after women's issues has been lucrative. Middle-class women can make careers out of their "civil society"-building activities by emphasizing the problems women in their country face in order to secure the grants to "fix" them, despite the evidence that shows that some Bulgarian women are doing very well. In addition to the successes of women who work in particular sectors such as tourism, almost all of the classic indicators for gender discrimination in a society show no problems in Bulgaria. Bulgarian women outlive men; infant mortality for boys is higher

¹⁴ Kevin Quigley, "Lofty Goals, Modest Results: Assisting Civil Society in Eastern Europe," in *Funding Virtue: Civil Society Aid and Democracy Promotion*, edited by Marina Ottaway and Thomas Carothers (Washington D.C.: Carnegie Endowment for International Peace, 2000); Jenny Pearce, "NGOs and Social Change: Agents or Facilitators?" *Development Practice* 3, no. 3 (1993): 222-27; Clarke, Non-governmental Organizations."

¹⁵ Petras and Veltmeyer, *Globalization Unmasked*.

than for girls; women have higher levels of education at almost all levels.¹⁶ Women have the right to own property and assets in their own name (which they can keep in case of divorce). Women enjoy longer paid maternity leaves than in most Western nations. In 2002, there were more female members of Parliament than in most Western European countries; there has been a female foreign minister (1997-2001), a female deputy prime minister (2003-2005), and even briefly a female prime minister (October 1994-January 1995). Nonetheless, Bulgarian women's NGOs are forced to focus on such stock phrases as the "feminization of poverty" in order to attract external donor funding. But why would foreign governments and organizations spend money to fix problems that do not really exist?

And here is where we return to the idea of revalued cultural capital. One of the purposes of NGOs in Eastern Europe is to provide employment for displaced intellectuals from the old system, to allow them to adjust to the new capitalist reality. Because capitalism is dependent on meritocracy in order to justify its unequal distribution of resources, the new system must visibly reward those with excessive cultural capital even if that capital was acquired under the old system. Bulgarians working in the NGO sector have high levels of general education. In fact, intellectuals and academics run many NGOs. As in tourism, these intellectuals had their cultural capital revalued after 1989, because they could speak foreign languages and were familiar with the West (in this case, Western literature and ideas). But this cultural capital was not revalued by the unfettered international dynamics of supply and demand (such as the foreign demand for the Bulgarian tourist resorts), but instead by foreign *states* that provided funding for the creation of a civil society. In 2000, the UNDP found that "the NGO sector is growing not only because of the availability of a *solvent and low-risk market* as represented by donors, but also because of the growing unemployment among intellectuals. From its very origin this market is an *export of services*. Therefore, the NGOs sector has not emerged in a natural way, as a result of internal citizen needs; it complies with an external demand, articulated in the donors' aspiration to stimulate civic society in Bulgaria."¹⁷ The Bulgarians working in women's NGOs have themselves admitted that one of the most important roles NGOs play is in creating employment.¹⁸ Thus, foreign governments have essentially bought out the intellectuals. Professors and academic researchers in almost all fields have been pulled into the civil-society sector by the attraction of high consultancy fees and opportunities to travel abroad for international networking.

Meritocracy justifies capitalism's unequal distribution of resources by arguing that anyone – regardless of race, class, gender, or religion – can be successful if she has the ability and if she works hard enough. Formal education (or the lack thereof) allows people to be sorted out into the haves and have-nots in a capitalist economy. If you receive less than a "fair" share of society's resources, it is because you have somehow failed to meet the requirements for being worthy enough to have that share. Meritocracy

¹⁶ For comprehensive statistics on women in Bulgaria, see UNDP, *Human Development Report 2000*.

¹⁷ UNDP, National Human Development Report 2000, 41.

¹⁸ Indjewa and Hadjimitova, "Mapping NGOs."

deflects blame for injustice away from the economic system and places it on the shoulders of the individual. This allows the privileged to enjoy their wealth without guilt or concern for the less fortunate. The privileged believe that they achieved their wealth because they worked hard – they come to believe that they *deserve* it. Thus, in order to establish a functioning meritocracy, those with education and skills must be given a higher status in the social space than those who do not have education and skills.

What the idea of meritocracy hides is that education (not just at the university level, but at all levels beginning with preschool) is a commodity under capitalism. Only those already in a privileged position in society have access to the best educational opportunities, while the children of the less fortunate have to make do with substandard schools and underpaid teachers. Capable young people may be unable to get the right qualifications because they are economically beyond their family's means. This is particularly true in a small post-socialist country like Bulgaria, where the state cannot afford to subsidize many scholarships. Certainly, this situation also holds true for many advanced capitalist countries like the United States, but what is different in Bulgaria is that this supposedly meritocratic system did not exist until the very recent past. Many Bulgarians believe that meritocracy is a lie, and they are angry at the deteriorating opportunities for social mobility for their children.

The need to prove the efficacy of meritocracy has meant creating jobs for the educated unemployed in the post-socialist period, because unemployed intellectuals are dangerous and may challenge the imposition of globalization in their country. At worst, they can be the vanguard of a new class-based social opposition to capitalism, particularly since many academics have access to large audiences of idealistic youth in their university classrooms. Moreover, if there are a lot of educated unemployed, people will cease to believe in a meritocracy and may begin to criticize capitalism as simply an unjustified, unequal distribution of resources to those who are the most immoral (like the Mafia). The Western-funded NGO culture thus creates a new habitus among the intellectuals, one in which the tastes that mark one as privileged have steadily become Western tastes that are in line with the logic of global capitalism, especially regarding consumption. Business trips taken to Western countries, stays in nice hotels, and relatively generous per diems allow those employed in the NGO sector to acquire both the experiences and the material accoutrements of "success" under the capitalist economic system, which may dampen their opposition to it.

Under communism, cultural capital was not an asset that allowed individuals a greater share of scarce economic resources.¹⁹ Indeed, intellectuals under the old system were frustrated with what they perceived to be a total lack of meritocracy – where political connections and age determined everything regardless of education. These intellectuals were the dissidents who helped bring communism down. According to Gil Eyal, Ivan Szelenyi, and Ellen Townsley, in *Making Capitalism without Capitalists*, these are the inheritors of political power, with their ideological commitments to free markets and liberal democracy. However, not all of the intellectual class made it into political

¹⁹ For an interesting look at the role of intellectuals under communism see: George Konrád and Ivan Szelenyi, *The Intellectuals on the Road to Class Power*, translated by Andrew Arato and Richard E. Allen (New York: Harcourt Brace Jovanovich, 1979); and Szelenyi, *Socialist Entrepreneurs*.

office, and salaries for professors and researchers steadily declined throughout the 1990s. The salary for teaching one semester at Sofia University in 2002 was 250 leva, compared to the 600 leva that a maid earned cleaning hotel rooms for the same period of time. Almost every Ph.D. or professor I knew was moonlighting at a variety of different jobs just to survive. In one case, a professor earned her entire monthly salary for attending one afternoon workshop. Many others found lucrative positions as "consultants" to the projects of international organizations or started their own NGOs. The funding was easily available in the early 1990s. For foreign governments, whether intentionally or unintentionally, funding NGOs was a way to funnel resources to members of Bulgarian society with the greatest amount of cultural capital. NGOs bolstered the structures of the meritocracy necessary for the growing acceptance of class difference among Bulgarian women based on newly scarce cultural capital. The irony is that women's NGOs may help to create the class divisions among women that the women's organizations then help to obscure.

Given these critiques, there are several things that women's NGOs can do to become more responsive to the needs of Bulgarian women, including the young women struggling to find their way in the new economy. First, these organizations must find ways to become more independent of funding from Western governments and Western organizations. Of course, this is easier said than done, but it is absolutely necessary if NGOs in Bulgaria are to gain any legitimacy among the Bulgarian people. This process may already be happening by default as foreign aid moves away from the Balkans and into Central Asia and other regions of the world that need "developing" and "liberalizing." The withdrawal of these Western donors from Bulgaria may actually give the prominent national women's NGOs the push they require to start listening to the real needs of women in their country. At the very least, the withdrawal may stop the constant stream of bad news about Bulgarian women emanating from the country in order to attract funding.

Second, women's NGOs need to become more independent of imported Western feminist "consultants" and the generic gender-project templates they support. NGO leaders must realize that projects designed in the United States or Belgium may not resonate with Bulgarian women, and can actually hinder the ability of NGOs to reach out to constituents who reject the very idea of a "gender issue." NGO leaders must be more creative in finding homegrown solutions to local problems. Of course, there are women in both America and Western Europe who have some relevant knowledge and are committed to helping solve the real problems of women and men in Eastern Europe. Some of these women remain dedicated to work in the region even after the lucrative subcontracted consultancies have disappeared.²⁰ More equal coalitions between these groups should be encouraged based on mutual understanding, with women from the region taking the lead and women from abroad doing what they can to support a locally driven agenda.

²⁰ After 2003, most of the gender "experts" had already moved on to Central Asia, Afghanistan, or Iraq.

Third, civil-society leaders and Western "experts" should recognize and accept the legacies of socialist feminism, and not continue to attempt to organize women as a biologically homogenous group in opposition to men. Women raised under socialism were taught to believe that working-class men and women are natural allies in their struggle against bourgeois men and women – bourgeois women and working-class women did not share similar interests. NGOs could instead organize women not only as women, but as professionals or students in sectors of the economy or areas of the educational system where women dominate. For instance, a professional association of receptionists would be a de facto women's organization without the "gender" stigma attached to it. So would an association of maids or hotel managers. In fact, a professional association of tourism employees would be largely a women's organization, generating projects and addressing issues that would primarily benefit women.

Another example would be to create an NGO to help young people prepare for the university entrance exams in tourism by coordinating volunteers to work as language tutors, creating a library of study materials, or simply organizing study groups among students. Again, a few men would take advantage of the services, but on the whole tourism programs attract an overwhelming majority of women, so much so that some programs have had to create special quotas for male students. NGOs could also be formed for exams in other subjects for which a majority of young women apply.

Once the organizations are formed, they can begin to lobby the government for legislative changes or mobilize political support for certain parties. While this approach to creating women's civic organizations may not be ideologically in sync with mainstream Western feminism, it may be more successful at getting women in Bulgaria involved in shaping their own political and economic futures. In the end, this should matter most.

Finally, nongovernmental organizations and their leaders need to publicly challenge the negative effects of neoliberalism and agitate for change. If the post-socialist state can no longer interfere in the market, then NGOs must step in to address the growing imbalances in society. Women's NGOs can play a very important role in the next generation, but only if they, too, are truly independent of the market. This means that NGO work cannot be a professional position, led by salaried employees of foreign governments. Their role, further, should not be to justify dismantling the welfare state, but to work against the most egregious excesses of free-market capitalism. Particularly after Bulgaria becomes a member of the European Union, those disenfranchised by an increasingly liberalized economy will be in desperate need of public advocates. Intellectuals and activists can then use their cultural capital to become dissidents once again.

ARTICLE

Identifying Non-Profit Institutions in New Zealand

**Statistics New Zealand, in consultation with
The Committee for the Study of the New Zealand Non-Profit Sector**

Abbreviations

ACC	Accident Compensation Corporation
CCO	Council-Controlled Organisation
ICNPO	International Classification of Non-Profit Organisations
ITO	Industry Training Organisation
LGNZ	Local Government New Zealand
NPI	Non-Profit Institution
NPIsH	Non-Profit Institution serving Households
NZSNA	New Zealand System of National Accounts
PHO	Primary Health Organisation
PSIS	Public Service Investment Society
TAB	Totalisator Agency Board
UN	United Nations

Executive Summary

Satellite accounts are recognised internationally as a way of presenting information in particular areas of interest not covered by conventional economic accounts. By extending the central national accounting framework they enable additional information, both financial and non-financial, to be presented alongside standard economic measures such as Gross Domestic Product and household spending.

This paper sets out to address the following questions:

- What is the broad scope of non-profit institutions?
- What are the units of interest we want to group and measure?
- What are the characteristics that distinguish them, allowing us to formulate decision criteria for their inclusion?

In answering these questions, the paper applies the United Nations structural-operational definition, comprising five criteria:

- Organisation
- Not-for-profit
- Institutionally separate from government (that is, private)
- Self-governing
- Non-compulsory.

For each criterion a decision tree has been developed that allows us to test if entities meet that criterion. Where an organisation meets all five criteria then it is in-scope for the NPI satellite account. The outcome, in terms of the economic sectors of the New Zealand System of National Accounts (NZSNA), is that the broad scope of the Non-Profit Institution (NPI) sector for the satellite account embraces all of the NZSNA sector for Non-Profit Institutions serving Households (NPIsH) sector, those organisations in the corporations sector established by businesses to serve their interests and some NPIs in the government sector.

As shown in Table 1, with regard to broad categories of organisations examined in the paper, the outcomes are:

Table 1

Example	Organisation	Not-for-profit	Private	Self-governing	Non-compulsory	In
Education / research providers						
Universities	√	√	X	√	√	No
School boards of trustees	√	√	X	√	√	No
Parent teacher associations	√	√	√	√	√	√
Private schools	√	√	√	√	√	√
Kindergartens	√	√	√	√	√	√
Playcentres	√	√	√	√	√	√
Kohanga reo	√	√	√	√	√	√
Industry training organisations	√	√	√	√	√	√
Health providers						
District health boards	√	√	X	√	√	No
Primary health organisations	√	√	√	√	√	√
Private hospitals	√	√	√	√	√	√
Child health organisations	√	√	√	√	√	√
Social service / emergency providers						
Welfare organisations	√	√	√	√	√	√
Child support organisations	√	√	√	√	√	√
Women's refuges	√	√	√	√	√	√
Volunteer fire brigades	√	√	√	√	√	√
International aid organisations						
International aid organisations	√	√	√	√	√	√
Art and culture organisations						
Repertory theatres	√	√	√	√	√	√
Brass bands	√	√	√	√	√	√
Literary societies	√	√	√	√	√	√
Sports organisations						
SPARC	√	√	X	√	√	No
Regional sports trusts	√	√	√	√	√	√
Cricket clubs	√	√	√	√	√	√
Racing clubs	√	√	√	√	√	√

Advocacy organisations						
Residents' associations	√	√	√	√	√	√
Community law offices	√	√	√	√	√	√
Philanthropic trusts						
Community trusts	√	√	√	√	√	√
Gaming trusts	√	√	√	√	√	√
Charitable trusts	√	√	√	√	√	√
Community-based organisations						
Credit unions	√	X	√	√	√	No
Veterinary clubs	√	√	√	√	√	√
A & P societies	√	√	√	√	√	√
Licensing trusts	√	√	X	√	√	No
Tangata whenua-based organisations						
Runanga iwi	√	√	√	√	√	√
Marae committees	√	√	√	√	√	√
Political parties						
Political parties	√	√	√	√	√	√
Social clubs						
Rotary clubs	√	√	√	√	√	√
Workingmen's clubs	√	√	√	√	√	√
Unions, business and professional organisations						
Trade unions	√	√	√	√	√	√
Business associations	√	√	√	√	√	√
Chambers of commerce	√	√	√	√	√	√
Religious congregations						
Church parishes	√	√	√	√	√	√

Chapter 1

The Satellite Account and the Units of Interest

This chapter briefly describes the aims of the NPI satellite account, discusses what organisations in the economy represent the units of interest for such an account and how they might be defined.

In New Zealand, the majority of goods and services are produced by private enterprises that operate in the market to make a profit and distribute it to their owners. Government also provides goods and services, usually to the community at large and funded by taxation, often because of market dysfunction but also as it fulfils its political, regulatory and service delivery roles (such as defence, law and order, and the provision of health and education services).

Outside these market producers and government yet more goods and services are produced, principally by way of households combining together in clubs, societies and the like. These organisations, while they may make profits, do not have profit-making as a goal, do not distribute any profits to their members and are often reliant on the voluntary

provision of free labour and resources to operate successfully. As such, they have been broadly described as non-profit institutions (NPIs).

The New Zealand System of National Accounts (NZSNA), in line with international standards, covers all of the formal activities in the economy, whether undertaken by business, government, non-profit organisations or households. However, the standard measurement conventions result in a considerable amount of informal economic activity being omitted from the accounts and hence from key measures such as GDP.

In particular, the value of free time and resources are omitted, so the contribution to the economy of non-profit organisations employing volunteers tends to be undervalued. Furthermore the classifications adopted in the national accounts do not result in the publication of comprehensive separate measures for all non-profit institutions.

The NPI satellite account aims to provide this missing information. It supplements the existing NZSNA; analysing the contribution non-profit institutions make to the economy, as well as measuring the value of volunteer work.

It is important to note that the NPI satellite account is not intended to measure the full range of goods and services that are produced in what might be more broadly referred to as the 'non-profit sector', 'voluntary sector' or 'civil society'. The satellite account is confined to **institutions** found within this sector. Individuals, households or groups of persons coming together informally to mutually provide services to either themselves or third parties are not included in this account.

In similar vein, and as a consequence of the above, the NPI satellite account will not measure the full range of 'voluntary' activity occurring in society: it will only include those voluntary activities that take place within the non-profit institutional boundary. To capture this wider range of voluntary activity requires the development of household 'satellite accounts' that would measure all voluntary work, regardless of the particular institutional setting it occurred in. (This is discussed further, below, with reference to Table 3.)

In analysing non-profit institutions we are interested in units that provide goods and services or transfers to households and the community, that are not profit-oriented, and are operating both voluntarily and independently of government. This is a fairly loose definition and in this paper we aim to make it more specific. To do this it helps if we look at how we conventionally – through the NZSNA – view the units that make up the economy and how we group them for analytical purposes.

The Institutional Framework in the National Accounts

In the national accounts we recognise the following institutional units:

- Corporations (including quasi-corporations, companies etc) usually set up to make a profit or operate in the market
- Government units
- Households, as producers and consumers
- NPIs, both formal and informal.

If we look at how we group them into broad sectors on the basis of the roles they play in the economy we get the matrix as shown in Table 2.

Table 2

NZSNA Institutional Framework

	Institutional units			
Institutional sector *	Corporations	Government units	Households	NPIs
Non-financial corporations	Non-financial corporations			1. Non-financial market NPIs 2. NPIs serving business
Financial corporations	Financial corporations			1. Financial market NPIs 2. NPIs serving business
General government		Government units		NPIs controlled by government units
NPIsH				NPIsH
Households			1. Households 2. Extended households (eg whanau) 3. Informal groups	

* Institutional sectors are broad economic groupings which bring together units that play similar roles in the economy and react similarly to various market prices and/or economic policies.

Table 2 recognises several types of NPIs, namely:

- *Market NPIs*
Although being institutionally non-profit in form, some NPIs operate predominantly in the market to the extent that their income is mainly derived from goods and services they provide at market (competitive) rate and these prices are sufficient to determine supply/demand of their output. Racing clubs and some private schools and hospitals have the potential to be so classified.
- *NPIs serving business*
Organisations such as trade associations, industry training organisations and research and quality testing organisations whose essential role is to provide services on a non-profit basis, but often on a cost-recovery basis, to member companies.
- *NPIs serving government*
Traditionally, governments have operated and funded a wide range of institutions such as schools, hospitals and research organisations operating on a non-profit basis.

- *NPIs serving households*
 - Participative collective associations providing individuals with the opportunity to engage in one or other form of collective activity, such as trade unions, professional societies, consumers' associations, political parties, churches or religious societies, and social, cultural, recreational and sports clubs
 - Associations where individuals come together to provide social services including charities, relief and aid organisations. They are usually financed by voluntary transfers in cash or in kind from other institutional unit. The services may be available only to members of the group or distributed charitably to persons beyond the group.

Table 2 also shows that NPIs can fall across four of the sectors found in the national accounts. However, we are not interested in all of them. If we come back to our original definition then we want to eliminate those that (although they appear to be NPIs) may in fact be largely operating to make a profit and, similarly, eliminate those operating as an arm of government.

Identifying the NPIs to be included in the satellite account

In order to define the scope of the account we need to firm up our definition of the area of interest. The UN Handbook¹ proposes a definition that brings together those entities that meet all five criteria. Accordingly for the satellite account, the non-profit sector consists of entities that:

- are organised to the extent that they can be separately identified
- are not-for-profit and do not distribute any surplus they may generate to those who own or control them
- are institutionally separate from government
- are in control of their own destiny, and
- are non-compulsory, in both terms of membership and members' input.

This definition is described as the 'structural-operational' definition.

Working with this definition, we see that our centre of interest can potentially cut across the established sectors, as indicated by the yellow cells in Table 3. How much the scope of the satellite account embraces the various groups of NPIs indicated depends on the extent to which the structural-operational definition differs from the sector definitions, for example, the notion of government control.

With regard to cell (a) in table 3 below, if we include in the NPIsH sector those NPIs that have some form of ongoing existence and are separate from households, then where do we include temporary and informal groups such as family/clan gatherings or child minding groups? In the NZSNA we would not recognise these as separate entities in the first place, that is they are not even identified as NPIs, hence cell (a) has zero entries. However, they do exist, and they would be viewed as types of (extended) households

¹ United Nations (2003). "Handbook on Non-Profit Institutions in the System of National Account", 2.14

undertaking production or consumption activities within the household sector. These units – to the extent that they can be identified – may well be a source of great interest, especially as they report collective activities of individuals that could be important for some forms of welfare. However, they are not the subject of the NPI satellite account. Instead, they are better identified and analysed as part of a household satellite account.

This does not mean that the NPI satellite account only includes unincorporated entities when formally organised. The organisational criterion from the structural-operational definition imposes neither type of organisation nor size. However, the organisations must have some observable existence separate from their members, permanence (and, in practice, significance), and the ability to compile accounts, to be identified. The application of the structural-operational definition is discussed in Chapter 2.

Table 3
Identifying NPIs to be included in the satellite account

	Institutional Units			
Institutional Sectors	Corporations	Government units	Households	NPIs
Non-financial corporations				1. Non-financial market NPIs 2. NPIs serving business
Financial corporations				1. Financial market NPIs 2. NPIs serving business
General government				Government NPIs: 1. controlled by government units 2. independent of government units
NPIsH				NPIsH
Households			(a)	

Chapter 2

Structural-Operational Definition of the Sector

Having discussed the broad scope of the NPI sector and the units of interest within it, this part of the paper examines the characteristics that distinguish NPIs in terms of the structural-operational definition.² Decision rules are then formulated for each of the five criteria within the structural-operational definition to determine whether specific NPIs should be included.

To be in-scope for the satellite account an organisation must meet all five criteria. Most organisations, NPIs or otherwise, meet some of the criteria. Therefore, if any one criterion is looked at in isolation, an organisation may appear to be in-scope. For example, public companies meet four of the criteria, only failing on the not-for-profit one. Statistics New Zealand, on the other hand, meets the not-for-profit criterion but is not institutionally separate from government. A neighbourhood watch group is both not-for-profit and independent of government but is unlikely to have the structure to meet the organisation criterion.

Criterion 1: Organisation

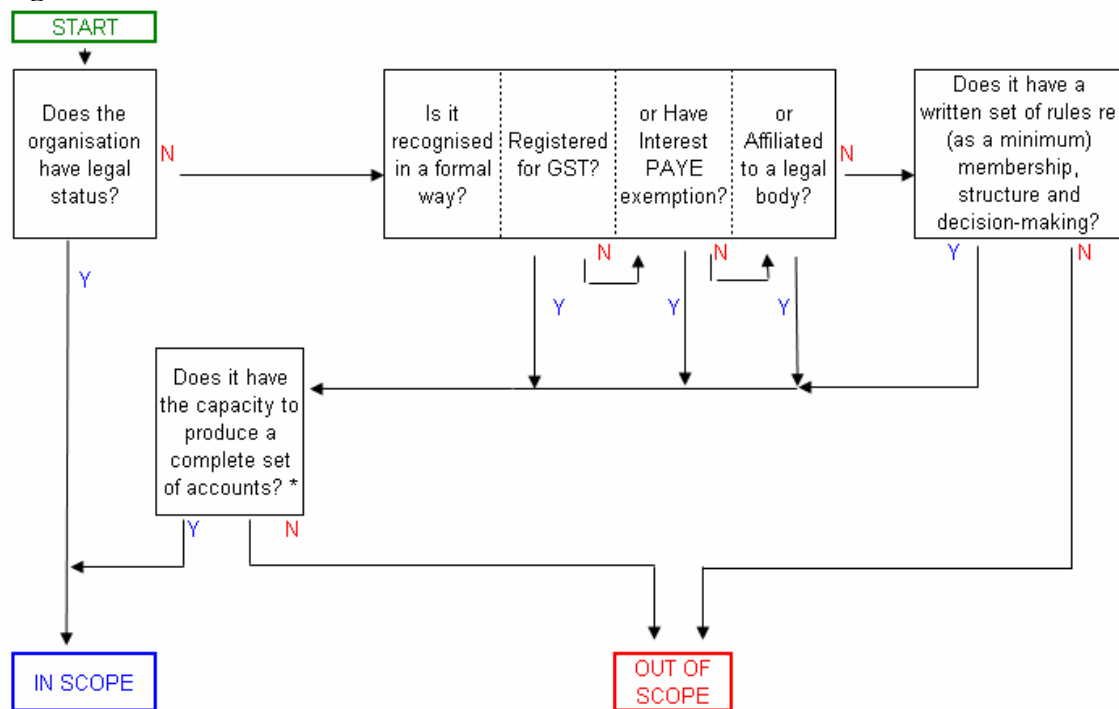
Organisation means that the entity has “some degree of internal organisational structure; persistence of goals, structure and activities; meaningful organisational boundaries; or a legal charter of incorporation”.³ So, an NPI must be either created by process of law, such that its existence is recognised independently of the persons, corporations or government units that establish, finance or control it, or, if it does not have any legal status, then its separate existence must be recognised by the society in some formal way. Excluded are purely ad hoc and temporary gatherings of people with no real structure or organised separate identity.

In the decision tree below (Figure 1), various tests are applied to informal entities (including unincorporated associations). The final test in all cases is whether the entity has the capacity to produce a complete set of accounts. In practice, this requirement means that, if necessary, the entity has sufficient financial data available such that statements of financial position and performance can be produced for the entity.

Associations of people that are too informal to be classified as in-scope organisations include extended families such as whanau, neighbourhood watch, child minding groups and car pools. Informal groups that are out-of-scope would be included in a household satellite account.

² United Nations (2003). “Handbook on Non-Profit Institutions in the System of National Account”, 2.15

³ Ibid., 2.15

Figure 1

* That is can the entity put together Statements of Financial Position and Performance.

Criterion 2: Not for profit

Not-for-profit means that organisations do not exist primarily to generate profits, either directly or indirectly, and are not primarily guided by commercial goals and considerations.⁴ Under this criterion, members are not permitted to gain financially from the organisation's operations and cannot appropriate any surplus which it may make. It does not imply that an NPI cannot make an operating surplus on its production, but any surplus must be ploughed back into the basic mission of the organisation and not distributed to the owners, members, founders or governing board. In this sense, "NPIs may be profit-making but they are non-profit distributing, which differentiates NPIs from for-profit businesses".⁵ If the surplus is distributed to another NPI, the first is still an NPI under the not-for-profit criterion because the surplus remains within the NPI sector to be used for charitable and other not-for-profit purposes. As a point of clarification, this does not mean that a profit-oriented company owned by an NPI is in-scope, as the former is not itself an NPI. Therefore, while the Seventh Day Adventist church, the Automobile Association and the NZ Rugby Union are all in-scope for the NPI satellite account, limited liability subsidiary companies owned by each are not.

In New Zealand, organisations that seemingly meet the test, automatically, include incorporated societies and charitable trusts. Both types of organisation are non-profit in character. The Incorporated Societies Act 1908 allows for the registration of associations formed for a lawful purpose but without pecuniary gain for the individual members.

⁴ United Nations (2003). "Handbook on Non-Profit Institutions in the System of National Account", 2.16

⁵ Ibid.

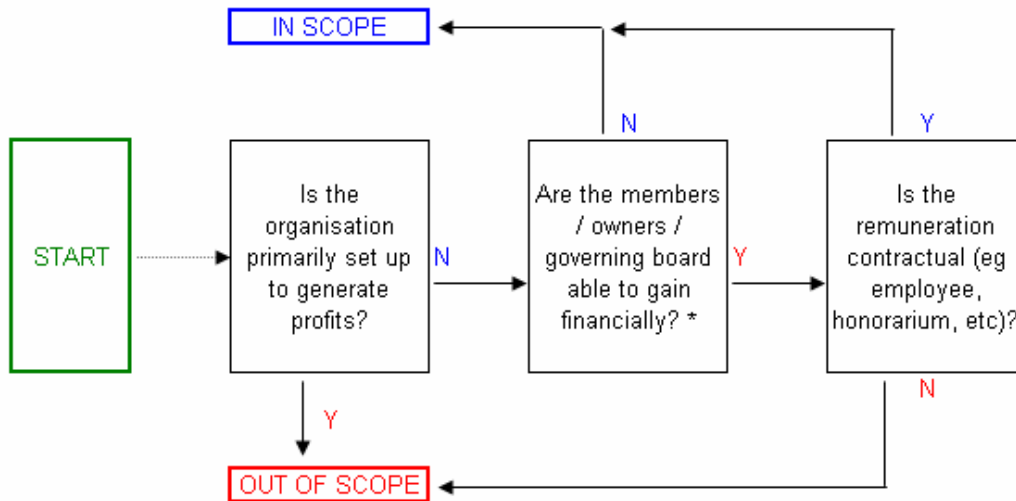
Alternatively, where the lawful purpose is deemed to be charitable, societies may choose to register under the Charitable Trusts Act 1957.

Some non-profit organisations can be regarded as more akin to profit-oriented corporations and although membership comprises individual householders they are not classified in the NZSNA as NPIs serving households. Such examples are racing and trotting clubs. Nevertheless, with the clubs being incorporated societies, the members are not able to gain financially and therefore under the not-for-profit criterion, the clubs are in-scope NPIs.

Organisations such as the PSIS, mutual insurance companies, trustee companies, United Friendly Society dispensaries and credit unions, where members pool resources for a co-operative purpose also exist. However, the members’ relationship with the organisation is commercial, since the ultimate goal is for each member to gain personally from the operation of the organisation. Therefore these organisations are out-of-scope. One of these examples – credit unions – is looked at in more detail in chapter 4 of this paper.

In the decision tree below (Figure 2), members etc, are permitted to gain financially where the NPI is paying them for services rendered, including contractual labour services such as wage employment or board member honorariums. Such contractual outlays are not viewed as profit distribution.

Figure 2



** Notwithstanding contractual remuneration, any such income received by members, etc., will not be exempt income under the Income Tax Act 2004*

Criterion 3: Institutionally separate from government

This criterion means that an organisation “is not part of the apparatus of government and does not exercise governmental authority in its own right”.⁶ Therefore it has an institutional identity which is not an instrument of any unit of government, central or local.

⁶ United Nations (2003). “Handbook on Non-Profit Institutions in the System of National Account”, 2.17

In assessing whether an NPI is an instrument of government, the UN Handbook distinguishes between organisations that are given authority by enactment and those that receive it by delegation. In the latter case, the organisation has no sovereign authority on its own and can be regarded as independent. For example, a trade association might be given authority to set and even enforce industry standards, but that authority could be withdrawn if misused or no longer necessary.

An example of sovereign authority is the Maritime Safety Authority which under the Maritime Safety Act 2004 is the designated authority responsible for implementing and administering the Act. (The Authority is also a crown entity in terms of the Crown Entities Act 2004, see below.) An example of delegated authority is the Retail Industry Training Organisation, an incorporated society which has responsibility for setting standards for the retail trade industry. (For further discussion on industry training organisations, see chapter 4.)

The UN Handbook also regards NPIs empowered to distribute government subsidies, grants or contracts to individuals or other organisations, within a given set of regulations determined by government, as independent of government. An example is the Te Kohanga Reo National Trust which receives a government grant from the Ministry of Education and in turn funds and controls kohanga reo.

Both central and local government in certain circumstances can choose to establish NPIs as a device to enable an organisation to operate with a degree of independence. The question is then whether the organisation is still an instrument of central or local government or independent enough to be regarded as in-scope for the satellite account.

In other situations, NPIs established privately can come into the ambit of government by first becoming reliant on government funding and then as a consequence becoming instruments of government policy. The Winston Churchill Memorial Trust is such an example. Although only partially funded by government, its board and chairman are appointed by the Crown and it is required to report to Parliament. In contrast, however, the Royal NZ Plunket Society remains independent. Although, for the year to June 2002, the Society received 80 percent of its total income from government grants, these were *contracts* with the Health Funding Authority and Early Childhood Development. While the Society had to be accountable for the funding, it was neither under direction from the Crown nor required to report to it as an agent.

Crown reporting entities (ruled as out-of-scope, as agents of sovereign authority) include the following: government departments, state-owned enterprises, the Government Superannuation Fund, the Reserve Bank and crown entities. Other categories of entities, in their own right, are crown companies, crown subsidiaries, school boards of trustees and tertiary education institutions (universities, colleges of education, polytechnics, specialist colleges or wananga).

Many crown entities are in effect NPIs established by the government. Under s107 of the Crown Entities Act, the Ministers of State Services and Finance can jointly direct crown entities (as a group) to comply with specified requirements for the purpose of either supporting government policy or improving public services.

The principal form of crown entities (in terms of the number of entities) is statutory entities, being bodies corporate set up by or under statute. Within this type, the Crown Entities Act recognises crown agents, autonomous crown entities and independent crown entities:

- Crown agents, since they must give effect to government policy when directed by the Minister responsible, are not institutionally separate from the government. Examples include: Accident Compensation Corporation, district health boards, NZ Fire Service, NZ Qualifications Authority and the Maritime Safety Authority.
- Autonomous crown entities must have regard to government policy when directed by the Minister responsible. They are also dependent on government funding. The New Zealand Symphony Orchestra, for example, derives income primarily through the provision of outputs to the Crown for services to third parties and, for 2005, this was budgeted at 84 percent of its total income. Other examples include: Broadcasting Commission, Te Papa, Film Commission, Lotteries Commission and Public Trust.
- Independent crown entities are described as generally independent of government policy. Nevertheless these organisations not only undertake regulatory functions but are required to report to the Crown. Examples include: NZ Sports Drug Agency, Commerce Commission, Electoral Commission and the Office of Film and Literature Classification.

Local authorities include regional, city and district councils as well as organisations owned and/or controlled by these councils. The Local Government Act 2002 allows for what are called council-controlled organisations, where local authorities can establish entities which they control both financially and operationally (through board appointments). Council-controlled organisations include subsidiary limited liability companies and charitable trusts, established by local authorities (for example the Wellington Zoo Trust). See also chapter 4.

Also part of the local government sector are:

- special purpose authorities, not included in crown entities, established under specific legislation (see also chapter 4)
- local governance entities, not included in crown entities, such as licensing trusts (see also chapter 4).

The UN Handbook, with regard to government appointees on boards of governance, also makes the distinction between those appointed with the power to exercise government authority and those appointed in their capacity as private citizens. Community trusts would appear to be an example here. Although appointments are made by the Minister of Internal Affairs, on recommendation, they do not carry with them instructions by the Minister or the Department; appointments are as private citizens. (See also chapter 4.)

The decision tree below (Figure 3) also acknowledges organisations set up by the Crown under public statute. Many of these are out-of-scope under the self-governing criterion (see below) but some are also ruled out-of-scope under the separate-from-government criterion. This occurs where the organisation is answerable to the Crown or a local

authority, such that it is required to report to a Minister or Council, with its report to be either formally tabled in Parliament or at a Council meeting, as the case may be.

What is at issue here is the definition of ‘government’. Government units are legal entities established by political processes which have legislative, judicial or executive authority over other institutional units in an area. In the case of crown entities, it is argued that sovereign authority has been delegated, and similarly with regional and territorial local authorities where sovereign authority is delegated by way of the Local Government Act 2002. Beyond these delegations, the authority weakens, as in the case of local governance entities such as licensing trusts. In Figure 3 below they are ruled out-of-scope by the question, “Is the organisation a local authority, council controlled organisation or local governance entity?” Licensing trusts are further elaborated on in Chapter 4.

Finally, in relation to government, there are organisations that sit between the Crown and Māori and have a tribal governance mandate. Traditionally such organisations have been Māori trust boards established under the Māori Trust Boards Act 1955. The boards are also recognised as ‘public entities’ under the Public Audit Act 2001. However, following recent cases of settlement between the Crown and certain iwi regarding claims made under the Treaty of Waitangi, the Crown has preferred to reconstitute Boards, or their subsequent runanga.

The Runanga o Ngai Tahu Act 1996 recognises the te runanga “as the representative of Ngai Tahu Whanui” such that, “Where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngai Tahu Whanui, be held with Te Runanga o Ngai Tahu”. In the case of the Runanga o Ngati Awa Act 2005, the preamble describes the restructured runanga as a “governance entity”, its purpose being “to receive and administer the settlement redress for and on behalf of Ngati Awa and generally represent Ngati Awa’s interests in the future”.

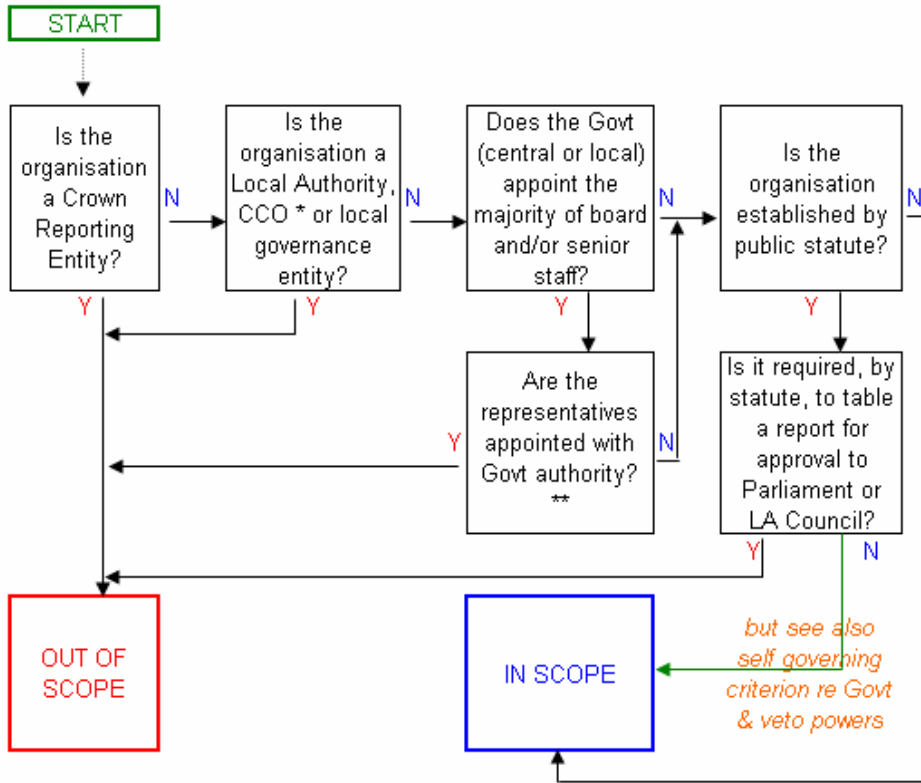
Te Runanga o Ngai Tahu and Te Runanga o Ngati Awa, along with 52 other organisations, are also “recognised iwi organisations” under the Māori Fisheries Act 2004. As such they are recognised as iwi governance entities and, for the purposes of the Act, upon application become “mandated iwi organisations” required to act for the benefit of all members of the iwi. (See also chapter 4.)

Again we are faced with the definition of government. Do iwi authorities such as Runanga, have authority, sovereign enough, for the organisations to be government units, in the broadest sense? Relevant to any answer to this question is that, as has been noted by the Community and Voluntary Sector Working Party, many tangata whenua organisations are not just community groups but are partners with the Crown under the Treaty of Waitangi.⁷

In conclusion, the view has been taken that mandated iwi organisations, while they have a recognised relationship with the Crown, also exist as organisations in their own right, serving their people. As such they are classified as NPIs in-scope for the satellite account. This is further elaborated in Chapter 4.

⁷ Community and Voluntary Sector Working Party (2001). “Communities and Government: Potential for Partnership/Whakatapu Whakaaro”, p11

Figure 3



* Council-controlled organisation as defined under the Local Government Act 2002.
 ** Otherwise they are appointed as private citizens.

Criterion 4: Self-governing

This criterion means that “the organisation is able to control its own activities and is not under the effective control of any other entity”.⁸ Therefore the organisation has to be independent not only of government but of other entities as well.

The UN Handbook adds that, “The emphasis here is not on the origins of the organisation, that is what organisation *created* it, or on the degree of government regulation of its activities or the dominant source of its income. The emphasis is instead placed on the organisation’s governance capacity and structure”.

A question, however, arises when considering whether the Crown can wind up an organisation. Since the Crown has extensive powers in this regard, as the ultimate authority in a society’s affairs, this aspect of the criterion needs to be tempered, such that it reduces to whether organisations “have their own mechanisms for internal governance, are able to cease operations on their own authority, and are fundamentally in control of their own affairs”. In principle all crown reporting entities, for example, lack the fundamentals of self-governance in that they can neither change their purpose nor dissolve themselves.

⁸ United Nations (2003). “Handbook on Non-Profit Institutions in the System of National Account”, 2.18

Beyond crown reporting entities, there are organisations set up by public statute, which, while operationally independent of government, are not fully in control of their ‘destiny’ to the extent that the UN structural-operational definition requires. For although these statutory organisations manage their day-to-day affairs and operations, they can neither dissolve themselves nor change their purpose of existence. Furthermore, the statute by which an organisation is set up *may* also require the organisation to formally report to Parliament and/or give a Minister of the Crown the power to direct it in certain matters. Accordingly, if not ruled out-of-scope through not being institutionally separate from government, these organisations are ruled out-of-scope under the self-governing criterion. An indicative, but far from exhaustive, list of such statutory bodies includes:

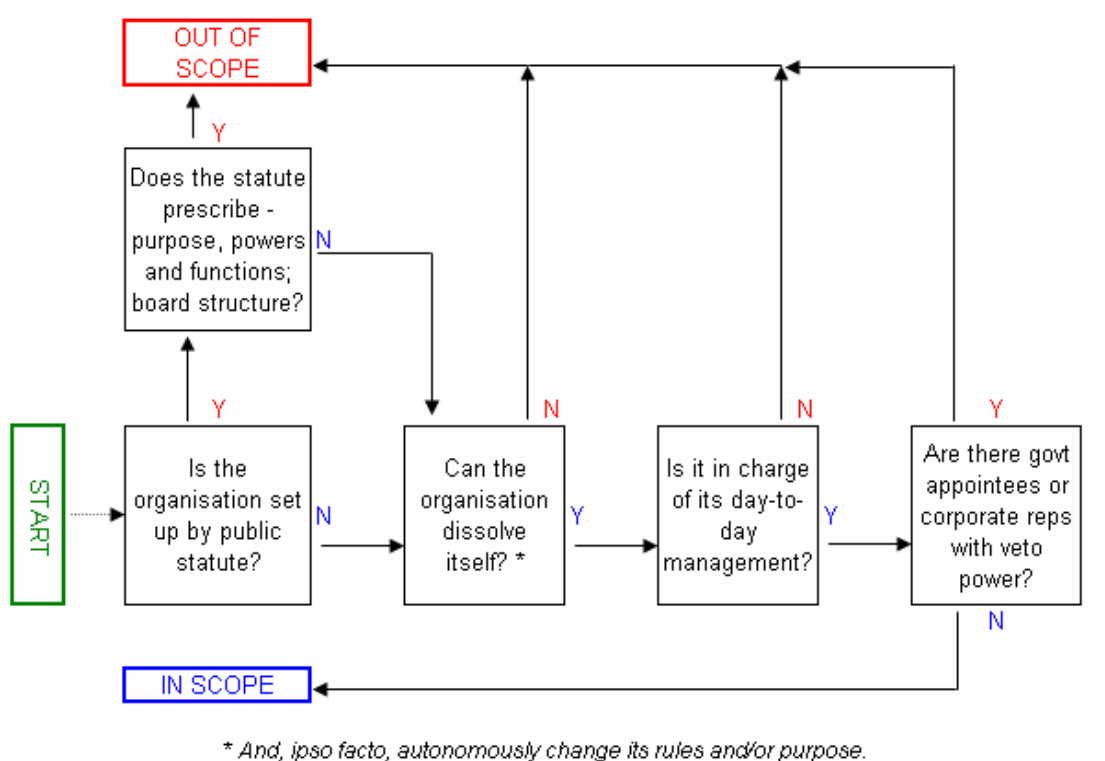
- New Zealand Kiwifruit Board
- New Zealand Pork Industry Board (see also Chapter 4)
- New Zealand Conservation Authority
- New Zealand Parole Board
- Nursing Council of New Zealand
- Gambling Commission
- District Legal Services Committees
- New Zealand Geographic Board
- Māori Television Service
- Waitangi Tribunal
- New Zealand Racing Board (incorporating the TAB).

As a result, the decision tree (Figure 4) assessing self-government begins by dealing with statutory bodies. If the organisation is set up by public statute (as opposed to the organisation freely registering under a statute such as the Incorporated Societies Act or the Charitable Trusts Act), then the question is asked as to whether the statute prescribes the purpose, functions and board structure. If it does, then the organisation is out-of-scope. Conservation boards, set up by the Conservation Act, come into this category.

However, if the statute merely gives general recognition to the organisation and its purpose, then the organisation stays in-scope to be further assessed on its day-to-day management, etc. Community trusts (that arose out of the dissolution of the former Trustee Banks) are considered to be an example of the latter case. Although they are recognised by their own statute (the Community Trusts Act), each has their own trust deed setting out their specific purpose, functions and structure. Changes to powers, functions and structure can be made by changing the trust deed. (See also chapter 4.)

In the decision tree (Figure 4), the ability of an organisation to change its rules/mission is subsumed in the question: Can the organisation dissolve itself?

Figure 4



Criterion 5: Non-compulsory

“Non-compulsory means that membership and contributions of time and money are not enforced by law or otherwise made a condition of citizenship”.⁹ Thus this criterion emphasises the voluntary nature of NPIs with regard to both membership and contribution.

As far as is known, there are no private NPIs in New Zealand where citizenship is a condition of membership. However there are some circumstances where, if a person wishes to practice a trade or profession or course of study, the compulsory membership of an NPI is required. For example, at most of New Zealand’s universities it is compulsory for students to belong to their local student association. Furthermore, law prescribes that practising lawyers be members of the New Zealand Law Society. The UN definition permits these organisations to be in-scope on the basis that the situation where people find themselves compelled to join is freely chosen. This exemption is accordingly built into the decision tree (Figure 5).

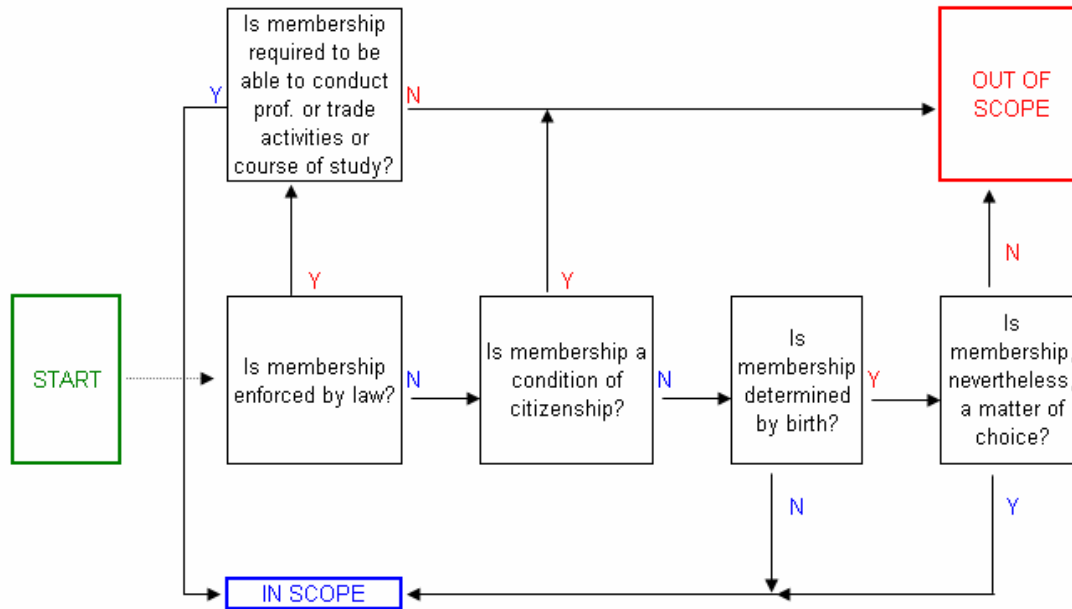
Also under this criterion, groups that are extended families are ruled out-of-scope, resulting in them being more correctly included in a household satellite account. In the case, however, of clan societies and the like (eg Clan MacLeod Society of Canterbury, see Chapter 4), although membership derives from common ancestry, it is freely chosen

⁹ United Nations (2003). “Handbook on Non-Profit Institutions in the System of National Account”, 2.19

and its relationship to the society is removed enough for the society to function no differently from other in-scope NPIs.

In the case of NPIs established by and for Māori, while again membership of the various organisations derives from birthright, this fact doesn't appear to be a reason to exclude them. The situation parallels that described above regarding membership of professional organisations or student unions, in that those with birthright choose to be members of the organisation concerned.

Figure 5



Beyond the issue of whether a Māori institution is in-scope, as in Figure 5 above, there is also a question as to whether members contribute voluntarily. To what extent are contributions made under some degree of cultural obligation to be included? In many Māori institutions such as marae-based organisations, contributions are not considered voluntary in the sense of being ‘self chosen’ or serving ‘others’. It is done through a sense of duty, the moral obligation of being Māori.

“In Māori society, volunteerism is not a commonly used term. You know your place and you contribute accordingly. If your whakapapa shows you are a noble then you behave like a noble and your place is there for you to take. If your whakapapa reveals you are a worker then you take your place there as a worker, irrespective of anything else.”¹⁰

However, with the urbanisation of Māori and with the members of whanau moving to live in other parts of New Zealand, fewer people are being brought up around marae. Accordingly, a diminution of the sense of duty has been observed.¹¹

¹⁰ Suggate, D. (1995). “An Overview of the Voluntary Sector”, quotation from Fred McRae, Rotorua Link Manager

¹¹ OCVS (2004). “Report on Research into Maori Cultural Obligations and ‘Volunteering’”.

Consequently, if it is admitted, as with membership, that there is now an element of free choice with regard to active participation in Māori organisations, then the concept of voluntary contribution can encompass cultural obligation.

Chapter 3

Identifying the Types of Units to be Included

Collectively, NPIs have been seen to belong to a sector variously described as the non-profit sector, the third sector, the voluntary sector, the civil society or the social economy. However it is described, the sector is well-rooted in New Zealand society.

Maori society, being village-based, had what has been described as an ‘economy of affection’. Simply put, each person had a duty of care to one’s community, be it whanau, hapu or iwi, to contribute in whatever way was necessary to maintain the strength and wellness of that community. This ethos continued in many walks of life as Europeans settled in New Zealand.

From early in the history of European settlement, people came together for mutual assistance, without government direction or the desire to make profits. The building society movement, begun in northern England, in which people clubbed together to save for housing was an early example. The first building societies in New Zealand were established in the 1860s.

Friendly societies were established even earlier. In these societies, members contributed to a common fund from which benefits were paid at times of sickness or old age. As early as 1883, there were 18,843 members of friendly societies. And when European settlers experienced failure and hardship through unemployment and poverty, the churches provided the first orphanages. Moreover, the churches had already established the first schools, primarily mission schools to introduce Maori to Christianity.

Mutual cooperation also underpinned the celebration of early achievements. Organised thoroughbred racing was a feature from the beginning of European settlement. Race meetings were held to celebrate the first anniversaries of the Auckland, Wellington, Nelson, Otago and Canterbury settlements and racing clubs in each area soon followed. It was also not long before small orchestras, choral societies, operatic groups and brass bands, all amateur, arose spontaneously from community interests.

Today, in the 21st century, NPIs are numerous and involved in a wide range of activities in New Zealand society, such as arts and theatre, sport and recreation, education, health, welfare, animal safety, environmental protection, international aid and relief, trade unions, political parties and religion.

The range of organisations that typically¹² appear in the non-profit sector includes:

- . *Non-profit service providers*, such as hospitals, tertiary education institutions, day-care centres, schools, social service providers and environmental groups

¹² United Nations (2003). “Handbook on Non-Profit Institutions in the System of National Account”, 2.21

- . *International aid and relief organisations* promoting economic development or poverty reduction in less developed areas
- . *Arts and culture organisations*, including museums, performing arts centres, orchestras, ensembles and historical or literary societies
- . *Sports clubs* involved in amateur sport, training, physical fitness and competitions
- . *Advocacy groups* that work to promote civil and other rights, or advocate the social and political interests of general or special constituencies
- . *Philanthropic trusts and other organisations*, that is, entities that have at their disposal assets or an endowment and, using the income generated by that asset, either make grants to other organisations or carry out their own projects and programmes
- . *Community-based or grass-roots associations* that are member-based and offer services to, or advocate for, members of a particular neighbourhood or community
- . *Tangata whenua-based organisations* that draw their membership from *tangata whenua* and provide governance for a particular iwi, hapu or marae and offer social services to, or advocate for, their people
- . *Political parties* that support the placing of particular candidates into political office
- . *Social clubs* that provide social services and recreation opportunities to individual members and communities
- . *Unions, business and professional associations* that promote and safeguard labour, business or professional interests
- . *Religious congregations*, such as parishes, synagogues, mosques, temples and shrines, which promote religious beliefs and administer religious services and rituals. It should be noted that religious congregations are different from religiously affiliated service agencies in such fields as health, education and social services.

In chapter 4 the scope of the NPI sector is examined by systematically using the above outline and applying the structural-operational definition to specific NPIs or groups of NPIs, in line with the decision rules established in chapter 2.

Chapter 4

Identifying the Scope of the NPI Satellite Account in Practice: Specific cases

In what follows, the scope of the NPI Satellite Account is examined by systematically using the outline from chapter 3 and applying the structural-operational definition to specific organisations in line with the decision rules established in chapter 2. The specific cases presented are not meant to be definitive of a group of organisations. Firstly, they are discussed to illustrate the application of the structural-operational definition and, secondly, in some cases, to resolve the treatment of organisations for which inclusion in the NPI satellite account, for various reasons, is unclear.

Non-profit service providers: Education and research

This group includes NPIs that provide pre-school, primary and secondary education, tertiary education, other education (such as adult literacy organisations, academies, sheltered workshops, industry training organisations) and research services, where the organisations in question meet all five criteria of the structural-operational definition.

Table 4

Examples of education and research providers

Example	Organi- sation	Not-for- profit	Private	Self- governing	Non-com- pulsory	In
Universities	√	√	X	√	√	No
Kindergartens	√	√	√	√	√	√
Kohanga reo	√	√	√	√	√	√
Playcentres	√	√	√	√	√	√
School boards of trustees	√	√	X	√	√	No
Parent teacher associations	√	√	√	√	√	√
Private schools	√	√	√	√	√	√
Industry training organisations	√	√	√	√	√	√
Leather and Shoe Research Association.	√	√	√	√	√	√

Specific cases:

Universities

Universities are crown reporting entities and specific examination confirms that they are not sufficiently separate from government control to be in-scope for the NPI satellite account.

Each of the eight universities was established and constituted under their own statute or statutory instrument. Accordingly, the universities are bodies corporate with perpetual succession. Universities have all the necessary powers to operate in their own right.

In the case of dissolution of universities, the residual assets go to the Crown, which also bears any outstanding liabilities. The process for dissolution requires a resolution of the House of Representatives, along with requirements for consultation, reasonable grounds, and consideration of placement of the assets elsewhere in the tertiary education sector.

In relation to who controls universities, the Education Act 1989 balances the need for academic freedom and institutional autonomy on the one hand, and the national interest and accountability on the other. This balance is reflected in the structure of university governance. At one level the university councils govern the operations and policies of universities, with the government having only minority representation on the councils. This enables universities to have academic freedom and institutional autonomy. At another level, there is a cascading set of 'steering' documents which allow the government some ability to ensure the efficient use of national resources, the national interest, and the demands of accountability are met.

In addition to these powers there are a number of other powers:

- Section 223 of the Education Act allows the Minister to direct universities to provide (or continue to provide) particular courses of study or training
- Under the Public Finance Act 1989 and Education Act, ministerial approval is required for all significant borrowing and investment
- Under the Education Act, in serious cases of financial risk, the Council can be dissolved and a commissioner appointed by the government.

In summary, while the government cannot *unilaterally* determine the financing and operating policies of universities, it does have a significant level of control such that universities should be regarded as part of the government sector and not as independent NPIs.

Kindergartens

There are approximately 36 kindergarten associations. These are umbrella district-wide organisations for the kindergartens in their area. Each of the associations is an incorporated society and comprises several ‘sub-district’ kindergartens. Each kindergarten has its own parent committee, but management responsibility lies with the regional kindergarten association. They collect the financial accounts for each of their kindergartens.

As incorporated societies, the kindergarten associations are therefore NPIs, free to dissolve themselves or change their mission. However, while they manage, control and fund certain operations such as caretaking and cleaning of the kindergartens, the bulk of their funding comes from the Crown and brings with it some measure of control, such that teaching staff, under the State Sector Act 1988, are part of the State education service. The government funding pays for the teaching staff, for which the qualifications and remuneration are set by government policy, as is the teaching curriculum. For these reasons kindergartens are classified in the government sector in the NZSNA. However, in terms of the structural-operational definition, the control is not considered to be institutional in that kindergartens themselves remain autonomous organisations. As such, kindergartens are deemed to be in-scope or the NPI satellite account.

Kohanga reo

Kohanga reo are childcare centres that focus on teaching the Māori language and culture. They are funded and controlled through the Te Kohanga Reo National Trust Board, which receives a government grant from the Ministry of Education. Furthermore, inspection is by government so, like kindergartens, there is a case for them to be classified to the government sector.

Unlike kindergartens, however, the teachers do not have to be qualified and the funding is not direct from the government. The Te Kohanga Reo National Trust Board is a charitable trust established under the Trustee Act 1956. Therefore, because the various kohanga reo are controlled and funded by a charitable trust, they meet all of the criteria of the NPI structural-operational definition.

Playcentres

Playcentres are parent cooperatives, registered as incorporated societies, providing early childhood education based on the importance of parents as educators of their own chil-

dren and promoting child-initiated play. Playcentres are funded by government in a similar manner to kindergartens and kohanga reo. However, as private, self-governing NPIs, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, playcentres are in-scope for the NPI satellite account.

School board of trustees

School boards administer schools on behalf of the Crown and are recognised as Crown entities. Under the Education Act 1989, “Every Board is hereby deemed to be the agent of the Crown in respect of its property and the exercise of its functions, and is entitled accordingly to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations”. Accordingly, they are not independently separate from government and therefore do not meet all of the criteria of the NPI structural-operational definition.

Parent teacher associations

Parent teacher associations (PTAs) are incorporated societies made up of parents who come together to support their children’s education, staff, and Board of Trustee members. They operate with a degree of informality to the extent that they can choose their own role in the school’s operation. The focus is usually on raising funds for particular projects, facilitating communication between home and school, and supporting parents as children’s first teachers. As private, self-governing NPIs, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, PTAs are in-scope for the NPI satellite account.

Private schools

Although assisted by government funding for teaching staff, private schools charge fees that can result in the school making a surplus. However, as incorporated societies or charitable trusts, any surplus cannot be used for the private gain of members or governors of the board and therefore, in terms of the structural-operational definition, they are in-scope for the NPI satellite account.

Industry training organisations

Industry training organisations (ITOs) are the standard-setting bodies for the industries they represent and are jointly funded by government and industry. They are allowed for under statute (Industry Training Act 1992) but each one is not individually set up under statute, being instead (with the exception of Sfrito - Sport, Fitness and Recreation Industry Training Organisation) an incorporated society that chooses to register.

Under the Act, the Minister accords recognition to an industry organisation if it meets specified criteria, as set out in section 7. The Minister has to be satisfied that the organisation can “effectively and efficiently”:

- set skill standards (that the NZ Qualifications Authority is prepared to register)
- deliver and monitor industry training and assess attaining of standards
- provide leadership on skill and training needs
- identify current and future skill needs

- develop strategic planning and promote training.

Once recognised, the ITO is eligible for government funding. For example, for the year ended 2003, the Retail ITO received 64 percent of its income from government (Tertiary Education Commission funding), 31 percent from the retail industry and 5 percent from other sources.

Nevertheless, although ITOs require recognition by the Crown, have much of their activity specified by the Crown and receive more than half their funding from the Crown, they remain institutionally independent of the government and in-scope. Their authority is delegated rather than sovereign and their relationship with the Crown is more akin to a partnership.

Leather and Shoe Research Association of New Zealand

This is an incorporated society whose principal members consist of the businesses of fellmongers, hide processors or tanners. Ancillary members include shoe manufacturers and wholesalers. The association provides analytical and testing services, as well as undertaking research for companies. For the year ended 31 December 2003, industry subscriptions contributed 18 percent of income, and government research funding through the Foundation for Research Science and Technology contributed 43 percent. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, the Association is in-scope for the NPI satellite account.

Non-profit service providers: Health

This group of NPIs includes hospitals, nursing homes and NPIs providing rehabilitation,, mental health and crisis intervention, and other health services, where the organisations in question meet all five criteria of the structural-operational definition.

Table 5

Examples of Health Providers

Example	Organi- sation	Not-for- profit	Private	Self- governing	Non-com- pulsory	In
District health boards	✓	✓	X	✓	✓	N
Primary health organisations	✓	✓	✓	✓	✓	✓
Private hospitals	✓	✓	✓	✓	✓	✓
Health Care Aotearoa	✓	✓	✓	✓	✓	✓
Children’s health camps	✓	✓	✓	✓	✓	✓
IHC	✓	✓	✓	✓	✓	✓
Hepatitis Foundation	✓	✓	✓	✓	✓	✓
Plunket Society	✓	✓	✓	✓	✓	✓

Specific cases:

District health boards

As crown reporting entities, the district health boards are an institutional arm of the government and are therefore out-of-scope for the NPI satellite account.

Primary health organisations (PHOs)

Primary health organisations are not-for-profit and funded by district health boards to work with enrolled populations and their communities to achieve strategic goals set by government. They have a public health focus and involve a team of health professionals (including family doctors and nurses) offering a variety of services. They are charged with providing continuity of care for their enrolled populations and receive a set amount of funding from the government to subsidise a range of health services. Most New Zealand practices are now part of a PHO.

The Crown's service agreements with PHOs set out organisational requirements such that PHOs must continue to ensure, and be able to demonstrate that:

- a. they are a not-for-profit body with full and open accountability for the use of public funds and the quality and effectiveness of the services, and their constitutional document includes rules to this effect.
- b. their communities, iwi and consumers are involved in the PHO's governing processes and the PHO is responsive to its communities.
- c. all contracted providers and practitioners can influence the PHO's decision making.

Nevertheless, the service agreements with the Crown do not compromise the self-governance of PHOs and accordingly they are in-scope for the NPI satellite account.

Private hospitals

Although assisted by government funding contracts through district health boards, private hospitals charge fees that can result in the hospital making a surplus. But as with private schools, in terms of the structural-operational definition they are in-scope for the NPI satellite account.

Hospitals within the Southern Cross Healthcare group are administered by the Southern Cross Health Trust, which is registered as a charitable trust. The trust is financially and administratively independent from the operations of the Southern Cross Medical Care Society (medical insurer), which established it, although each has the same board members. The hospitals operate within the trust on a stand-alone basis, receiving no direct financial support from the Southern Cross Medical Society and are managed in order that they provide an appropriate financial return on their operations. Therefore, although the operation of the hospitals reflects a market orientation, its core purpose is charitable. Any profits cannot be used for the private gain of the trustees or trust members and therefore, the trust is in-scope for the NPI satellite account.

Health Care Aotearoa Inc. (HCA)

Health Care Aotearoa is an incorporated society, being a national network of primary health providers which are not-for-profit and community controlled. Its mission statement is "to be a highly effective support and lobbying network for not-for-profit, community-controlled primary health care providers in Aotearoa." It has 54 member organisations and 15 associate members. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, HCA is in-scope for the NPI satellite account.

New Zealand Foundation for Child and Family Health and Development

As the Children's Health Camps Board, this organisation was primarily funded through contracts with the Crown, was required to report to Parliament and be audited by the Auditor General. However, in April 2000 the Board was dissolved by an act of parliament and became an independent charitable trust, the New Zealand Foundation for Child and Family Health and Development. It is therefore in-scope for the NPI satellite account.

This example also demonstrates that the scope of the NPI satellite account changes over time. Any time series for the satellite account aims to record this. Although now in-scope, when constituted as the Children's Health Camps Board, this organisation would have been out-of-scope as not being independent of government.

Intellectually Handicapped Society (IHC)

The IHC advocates for the rights, inclusion and welfare of all people with an intellectual disability and supports them to lead satisfying lives in the community. It is an incorporated society and its controlling body is privately appointed. Although a large proportion of its funds is sourced from government grants, the funding is contractual and the society must bid for the contracts. It therefore charges the government (through district health boards) for its services at market prices still. Yet it remains an organisation that is not profit-oriented, as it continues to raise a significant proportion of funds from donations, has a large voluntary labour force and any surplus cannot be used for the private gain of members. It therefore is in-scope for the NPI satellite account.

Hepatitis Foundation

The Hepatitis Foundation of NZ is a charitable trust governed by a board of trustees in terms of the Charitable Trusts Act 1957. The Foundation is now contracted to the Ministry of Health as the national provider for long-term follow-up of hepatitis B carriers in New Zealand. In recent years, increasing numbers of hepatitis C carriers have also registered with the Foundation for follow-up and information. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the Hepatitis Foundation, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Royal New Zealand Plunket Society

The Plunket Society is an incorporated society, providing well-child and family health services in New Zealand. It provides a mix of a professionally educated workforce working hand-in-hand with volunteers throughout New Zealand. Plunket programmes aim to support families with young children by providing appropriate clinical and support programmes, educational activities and so on. They are the only non-profit organisation in New Zealand to provide these facilities to New Zealand families. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, Plunket is in-scope for the NPI satellite account.

Non-profit service providers: Social Services

This group includes NPIs providing social services, emergency and relief; and income support and maintenance, where the organisations in question meet all five criteria of the structural-operational definition.

Table 6

Examples of Social Service Providers

Example	Organi-sation	Not-for-profit	Private	Self-governing	Non-com-pulsory	In
Presbyterian Support	✓	✓	✓	✓	✓	✓
Barnardos New Zealand	✓	✓	✓	✓	✓	✓
Women's refuges	✓	✓	✓	✓	✓	✓
Age Concern New Zealand	✓	✓	✓	✓	✓	✓
Volunteer fire brigades	✓	✓	✓	✓	✓	✓

Specific cases:

Presbyterian Support New Zealand

Presbyterian Support is an incorporated society made up of seven autonomous regional organisations. Service emphasis varies between the regions but the core activities concentrate on assisting youth in need, children and families, and elderly people through residential and community services. Presbyterian Support regional organisations are incorporated societies registered under the Charitable Trusts Act 1957. Although Presbyterian Support shares a common heritage with the Presbyterian Church it is independent, and responsible for raising its own funds for its services and determining the direction of those services. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, Presbyterian Support, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Barnardos New Zealand

Barnardos is a charitable trust and is New Zealand's largest children's organisation. Barnardos provides a range of care, education and support services developed specifically for New Zealand children and their families, aimed at providing all children with the very best start to life. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, Barnardos, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Women's Refuge Auckland

Women's Refuge Auckland is an incorporated society run by women for women and children. It is one of 51 local women's refuges that are part of the National Collective of Independent Women's Refuges Inc. On average, the various refuges employ two paid workers plus unpaid advocates. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the Auckland refuge, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Age Concern New Zealand

Age Concern New Zealand is a not-for-profit, charitable organisation, registered as an incorporated society. Its mission is to promote the quality of life and well-being of older people, advocating positive healthy ageing for people of all ages. As a national organisation it is a federation of local Age Concern councils, which each provide information and services in cities and most major provincial centres around the country, Age Concern NZ operates as a strategic national body for the local Age Concern Councils. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, Age Concern is in-scope for the NPI satellite account.

Volunteer fire brigades

To operate as brigades, associations are required to register with the crown entity, the Fire Service Commission. Furthermore, the brigades have to meet public criteria of efficiency in organisation and operation, monitored by the Fire Service Commission, and can be deregistered accordingly. Separate to their registration with the Fire Service Commission, the associations are also incorporated societies and are therefore independent of the Commission in terms of both governance and finance.

So while in their day-to-day operations they must meet government administered standards, on the other hand they remain independent of government and are in-scope for the NPI satellite account.

Non-profit service providers: Environment

This group includes NPIs engaged in environment and animal protection, where the organisations in question meet all five criteria of the structural-operational definition.

Table 7
Examples of Environment and Animal Protection Organisations

Example	Organisation	Not-for-profit	Private	Self-governing	Non-compulsory	In
RNZSPCA	√	√	√	√	√	√
Veterinary clubs	√	√	√	√	√	√
Forest and Bird Society	√	√	√	√	√	√

Specific cases:

Royal New Zealand Society for the Prevention of Cruelty to Animals

The RNZSPCA is an incorporated society which, through its district branches, provides help to animals and owners. The national governing body of the organisation is the National Council, elected at the AGM by representatives from the districts. Each of the 54 local SPCAs incorporates in its title the name of the district in which it operates. For example, the Waikato Branch RNZSPCA, Canterbury Branch RNZSPCA, and so on. Not all local SPCAs are ‘branches’. A small number are member societies. These member societies do not use ‘RNZ’ in their name (eg Wellington SPCA, Otago SPCA).

Each of the 54 local SPCAs runs its own affairs and handles its own finances. A voluntary committee controls the activities. The larger SPCAs have some paid staff, but most

rely on unpaid personnel. Each has one or more warranted inspectors, paid or unpaid, to investigate complaints of cruelty and to enforce the Animal Welfare Act 1999. Funding comes from donations, bequests and the society’s own fund-raising efforts. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, the RNZSPCA is in-scope for the NPI satellite account.

Veterinary clubs

Veterinary clubs and associations are incorporated societies. They exist in rural areas, being a community-based partnership between farmers and veterinarians to ensure the provision of veterinary services in their area. Under the club concept, the veterinarian is paid a salary (as opposed to a private practice where the veterinarian shares in the profits). While the dominant form of veterinary service is now private practice, there are still about 30 such community-based practices throughout the country, employing 135 -140 veterinarians.

As constituted, veterinary clubs are in-scope for the NPI Satellite Account. However, some clubs are now moving to profit sharing. Under the Income Tax Act, income derived by the club is exempt if none of its funds is used for “private pecuniary profit”. If profit sharing by the veterinarian is deemed not to be part of the contractual payment to the veterinarian (eg a bonus), but instead a reduction in the club’s income exempt from income tax, then the club will move out-of-scope.

Royal Forest and Bird Protection Society

Forest and Bird, as it is referred to, is an incorporated society. Its objectives are to preserve and protect the indigenous flora and fauna and natural features and landscapes of New Zealand, for their intrinsic worth and for the benefits of all people. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, this society, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

International aid and relief organisations

This group includes NPIs engaged in international activities, such as promoting economic development or poverty reduction in less developed areas, where the organisations in question meet all five criteria of the structural-operational definition.

Table 8

Examples of International Aid and Relief Organisations

Example	Organi-sation	Not-for-profit	Private	Self-governing	Non-com-pulsory	In
Oxfam	√	√	√	√	√	√
World Vision	√	√	√	√	√	√
Pacific Leprosy Foundation	√	√	√	√	√	√

Specific cases:

Oxfam New Zealand

Oxfam NZ is a charitable trust and an affiliate of Oxfam International (OI). The OI secretariat, based in Oxford, UK, coordinates the strategy and international advocacy programmes of the 12 Oxfam affiliates who are bound by its constitution and code of conduct. Oxfam NZ is affiliated to the Council for International Development (CID), the NZ umbrella group for development and humanitarian agencies. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, Oxfam NZ, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

World Vision New Zealand

World Vision is an international Christian humanitarian aid and development organisation, involved with development and relief projects in 96 countries. World Vision New Zealand is a fundraising office which partners with other World Vision entities to carry out programmes focusing on community development, emergency relief, rehabilitation and disaster mitigation, and advocacy and education. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members in terms of the structural-operational definition, World Vision is in-scope for the NPI satellite account.

Pacific Leprosy Foundation

The foundation (formerly the Leprosy Trust Board) is a national, charitable organisation working within New Zealand and the South Pacific region. The foundation is non-denominational and registered under the Charitable Trusts Act 1957. Its purpose is “the elimination of leprosy as a public health risk in the Pacific and the continuing care of patients with disability or social disadvantage due to past active leprosy.” As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the Leprosy Foundation, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Arts and cultural organisations

This group of NPIs includes organisations such as film societies, community theatres, community libraries, historical associations, garden societies, operatic societies, youth orchestras, pipe bands and Māori performing arts groups, where the organisations in question meet all five criteria of the structural-operational definition.

Table 9

Examples of Arts and Cultural Organisations

Example	Organi-sation	Not-for-profit	Private	Self-governing	Non-com-pulsory	In
Canterbury Museum Trust	√	√	√	X	√	N
Wellington Zoo Trust	√	√	X	√	√	N
Riccarton Bush Trust	√	√	X	√	√	N
Repertory theatres	√	√	√	√	√	√
Brass bands	√	√	√	√	√	√

Four of New Zealand’s six special purpose local authorities are arts and cultural organisations, namely: Aotea Centre Board of Management, Canterbury Museum Trust Board,

Council of the Auckland Institute and Museum, and Otago Museum Trust Board. (The other two are the Masterton Trust Lands Trust and the Greytown District Trust Lands Trust.)

Specific cases:

Canterbury Museum Trust Board

The Canterbury Museum Trust Board is a non-profit-making institution for which the current establishing legislation is the Canterbury Museum Trust Board Act 1993. The board of 11 comprises six appointed by local authorities, but with no local authority having a majority. The Christchurch City Council has four members. The board is principally funded by way of levies from the five local authorities represented, who include funding for the levy in their rates. The Christchurch City Council provides 90 percent of the levy income.

Whether the Board is institutionally separate from local government or not, it does not quite pass the decision question regarding government appointees having veto power or not. Section 16 of the Canterbury Museum Trust Board Act gives either the Christchurch City Council or two or more of the remaining contributing authorities the right to object to the level of levies proposed in the Board's draft annual plan. Furthermore, the local authorities can vary the amount of the levy independently of the Board if not less than three of them agree, or the Christchurch City Council can do so alone. On the major issue of funding, the Christchurch City Council has power beyond its representation on the Board and therefore the Board is viewed as part of the local government sector and out-of-scope for the NPI satellite account.

Wellington Zoo Trust

Although established as a charitable trust, this is a council-controlled organisation (as defined by the Local Government Act 2002), 100 percent owned and controlled by the Wellington City Council. It is therefore out-of-scope. (See also chapter 2 above.)

Riccarton Bush Trust

A public entity under the Public Audit Act 2001, the trust was incorporated under a 1914 Act of Parliament. Under the act, the Trust has the power to levy the Christchurch City Council for funding to maintain and operate Riccarton Bush, Riccarton House and its grounds. The Christchurch City Council appoints six of the nine members on the Trust Board. Since the majority of the board is appointed by a local authority the Trust is not self governing and is therefore out-of-scope for the NPI satellite account.

Repertory theatres

Registered as incorporated societies, repertory theatres are private, self-governing NPIs, for which any surplus cannot be used for the private gain of members. They are, in terms of the structural-operational definition, in-scope for the NPI satellite account.

Brass band associations

Registered as incorporated societies, brass bands are private, self-governing NPIs, for which any surplus cannot be used for the private gain of members. They are, in terms of the structural-operational definition, in-scope for the NPI satellite account.

Sports clubs

This group includes NPIs engaged in sport and other recreational activities, such as sports clubs, tramping clubs, vintage car clubs, where the organisations in question meet all five criteria of the structural-operational definition.

Table 10

Examples of Sports Organisations

Example	Organi- sation	Not-for- profit	Private	Self- governing	Non-com- pulsory	In
Regional sports trusts	√	√	√	√	√	√
Cricket clubs	√	√	√	√	√	√
NZ Rugby Union	√	√	√	√	√	√
Racing clubs	√	√	√	√	√	√

Specific cases:

Regional sports trusts

The regional sports trusts are 17 charitable trusts, being community owned, autonomous, non-profit organisations governed by boards of trustees. They are contracted by the Crown entity Sport and Recreation New Zealand to undertake work in the areas of junior sport, sport development and 'Active Living' programmes, on a regional basis. As private, self-governing NPIs, for which any surplus cannot be used for the private gain of the trustees, the sports trusts, in terms of the structural-operational definition, are in-scope for the NPI satellite account.

Cricket clubs

Registered as incorporated societies, cricket clubs are private, self-governing NPIs, for which any surplus cannot be used for the private gain of members. They are, in terms of the structural-operational definition, in-scope for the NPI satellite account.

NZ Rugby Union

The NZ Rugby Union is an incorporated society and owns subsidiary limited liability companies. It is also very large by NPI standards in New Zealand. In 2002, it earned more than \$80 million from commercial sponsorships and broadcasting rights, as part of a total income exceeding \$90 million, and a surplus of nearly \$10 million. Yet, as an incorporated society, the surplus cannot be appropriated for the benefit of the members or directors. The members do not gain personally from the union's activities, instead income earned is used for the operation, development and promotion of the sport.

The directors of the board, however, are paid nominal director's fees for their services. Furthermore, some members of affiliated clubs have earned income under players' payment contracts. For example, in 2002, \$1.2 million was paid in minimum player payments for non-Super 12 players. Nevertheless, for both the directors and the players, the payments are for services rendered/contracted. The conclusion therefore is that, despite its commercial size, the NZ Rugby Union has not been established for commercial purposes and remains in-scope for the NPI satellite account analysis.

Racing clubs

These clubs are incorporated societies that undertake three major activities:

- a. the provision of entertainment services to households
- b. the conduct of horse races (a service purchased by breeders, owners and trainers)
- c. the provision of gambling activity (purchased by both households and the TAB)

The main source of income is that received from businesses, namely acceptance fees and sponsorship, and this has guided their treatment in the NZSNA as a non-financial corporation, on the grounds that they predominantly serve business rather than households. As private NPIs, not distributing surpluses to members, racing clubs meet the criteria for inclusion in the NPI satellite account.

Advocacy groups

This group includes NPIs providing civic, advocacy, law and legal services, where the organisations in question meet all five criteria of the structural-operational definition.

Table 11

Examples of Advocacy Organisations

Example	Organi-sation	Not-for-profit	Private	Self-governing	Non-com-pulsory	In
Automobile Association	√	√	√	√	√	√
Consumers Institute	√	√	√	√	√	√
Pork Industry Board	√	√	X	√	√	N
Community law offices	√	√	√	√	√	√

Specific cases:

Automobile Association

This is an incorporated society that is an advocacy group for owners of motor vehicles. While the Association owns several commercial enterprises, which significantly augment income from members’ subscriptions, it remains an NPI. Neither members nor directors obtain any pecuniary gain from the Association’s activities. It therefore is in-scope for the NPI satellite account analysis.

Consumers Institute

Previously the Institute’s council members were appointed by government, its funds were from government and it was administered by a government department, so it was classified to the government sector. However, as a result of a succession of changes, the Institute became 90 percent financially independent of government. Although three of the councillors are directly government-appointed and government has some influence in choosing the rest, the government influence is now regarded as relatively limited and, accordingly, the Institute is classified as an independent NPI. This puts it in-scope for the NPI satellite account.

New Zealand Pork Industry Board

The Board is established by statute, Pork Industry Board Act 1997. The act outlines the objects of the Board, its functions and its powers. It also instructs the Board:

- to prepare and maintain statements of strategic and consultative intent
- to consult with pig farmers
- to consult with representative organisations
- to take account of farmers' concerns and views

The Minister (of International Trade), under S.12, “may give the Board a written notice specifying (a) a particular international obligation of New Zealand; and (b) an element of the Board’s functions or the exercise of the Board’s powers to which, in the Minister’s opinion, the obligation is relevant. Until the notice is revoked, the Board must ensure that its performance or exercise of the element is consistent with the obligation.”

The Board also has the power (S.35) to levy money which becomes part of the Board’s funds. The levy is imposed on all pigs slaughtered in licensed premises other than on the Chatham Islands. Under S.4, the Board’s assets belong ultimately to pig farmers and are for the time being held and administered for the benefit of the pig farmers.

But, the Board is required under S.27 to report to Parliament. The annual report and audited financial statements must cover the exercise of its statutory powers during the year, details of all particulars of indemnity and insurance recorded during the year, and where “a resolution ... applicable to the next financial year was approved at an annual general meeting in that year, the maximum annual aggregate remuneration and benefits approved by that resolution.” It is this last requirement which definitely brings the Board into the government sector and out-of-scope for the NPI satellite account.

Community law offices

Community law centres provide services for people with unmet legal needs and who cannot afford legal services. They provide legal advice and assistance and in some cases representation in court. They also provide law-related education, information, and law reform and advocacy on behalf of communities. Community law centres are all individually managed, usually as incorporated societies or charitable trusts. Funding can come from a variety of sources, but mainly from the NZ Law Society Special Fund through the Legal Services Agency, a Crown entity. As private, self-governing NPIs, for which any surplus cannot be used for the private gain of members, community law offices, in terms of the structural-operational definition, are in-scope for the NPI satellite account.

Philanthropic trusts and other organisations

This group of NPIs includes grant-making foundations, other philanthropic intermediaries and voluntarism promotion, where the organisations in question meet all five criteria of the structural-operational definition.

Table 12**Examples of Philanthropic Organisations**

Example	Organi- sation	Not-for- profit	Private	Self- governing	Non-com- pulsory	In
Community trusts	√	√	√	√	√	√
Gaming trusts	√	√	√	√	√	√
Winston Churchill Mem. Trust	√	√	X	X	√	N

Specific cases:

Community trusts

Community trusts were established under the Trustee Banks Restructuring Act 1988 to acquire the shares in the capital of a trustee bank's successor company. They are now governed by the Community Trusts Act 1999. Under this Act, the trusts must hold a public meeting each year in the area/region of operation, at which they are required to report on the operation of the trust in the preceding financial year and to present the financial statements of the trust for that year. They are also required to send their financial statements to the Minister of Finance.

Trust members are appointed by the Minister of Finance on the recommendation of the Department of Internal Affairs who consult the relevant members of parliament (and local authorities). However, trust members are appointed as private citizens, not as policy representatives of the Minister. While the trusts are recognised by statute, the detail of their purpose, functions and structure are set out in individual trust deeds. While the Minister of Finance has the final say on the trust deeds, the trust boards can initiate changes to their trust deeds. To this extent the trust boards are considered to be institutionally independent of government and self-governing and therefore in-scope for the NPI satellite account.

Gaming trusts

Gaming trusts are charitable trusts, funded by income from the licensing of gaming machines, which they own. They do not have client members but they do have clients, in the form of applicants. The aim of the trusts is to manage the operation of the machines and distribute the surpluses to the applicants, according to the stated objects of the trust and in line with government regulation. Examples are the Lion Foundation, NZ Community Trust and Pub Charity Inc. They are in-scope for the NPI satellite account.

Winston Churchill Memorial Trust

This trust was established by statute in 1965 with initial fund coming primarily from the investment earnings of money contributed mainly from non-governmental sources, with the government contributing only 20 percent. The Trust does get some assistance from the government in the form of office accommodation and salaries but the Trust's own income provides for other expenses. Members of the board are appointed by the Governor-General on the recommendation of the Minister. The Governor-General also appoints the Board's chairman. The Trust must report to Parliament and have its accounts audited by the Audit Office. Thus the level of government control is significant and the Trust is

not considered institutionally independent of government. It is ruled out-of-scope for the NPI satellite account.

Community-based or grass-roots associations

This groups includes NPIs providing economic, social and community development; and housing and employment and training services, such as member-based organisations offering services to or advocacy for members of a particular neighbourhood or community, where the organisations in question meet all five criteria of the structural-operational definition.

Table 13
Examples of Community-based and Grass-roots Organisations

Example	Organi-sation	Not-for-profit	Private	Self-governing	Non-com-pulsory	In
Credit unions	√	X	√	√	√	N
Licensing trusts	√	√	X	√	√	N
A & P associations	√	√	√	√	√	√
Residents' associations	√	√	√	√	√	√

Specific cases:

Credit unions

Credit unions are financial co-operatives which encourage savings, thrift and education to enhance the social and economic well-being of their members. Members save and borrow from each other at reasonable rates of interest.

Credit unions are registered under the Friendly Societies and Credit Unions Act 1982 and describe themselves as not-for-profit. They are member-owned and locally operated. Each credit union operates under membership rules that define the group of members by way of a common bond or mutual interest. For example, members may live in the same community, work for the same employer, belong to the same profession, or attend the same church.

Once overheads and other expenses are paid, income from loans is returned to members in the form of dividends on savings, reserves, improved or additional services. The dividends are not exempt income under the Income Tax Act.

While the credit union is a not-for-profit organisation, to the extent that there are no shareholders or profit distribution to directors, members do enjoy the benefits of any surpluses by having a commercial relationship with the credit union. Therefore credit unions are ruled out-of-scope through not meeting the non-profit criterion.

Licensing trusts

Licensing trusts are examples of local governance entities, being organisations that offer services in local communities with boards that are elected or appointed to represent the interests of that community. Other examples are district health boards and school boards of trustees but, unlike these examples, licensing trusts are not included in Crown entities.

The social mandate of licensing trusts is to sell alcohol with care, moderately and responsibly. They must abide by the Sale of Liquor Act 1989 but they also have certain privileges under section 216 of the Act. Profits are not the sole objective of the trusts, and with publicly-elected boards and community ownership, the rationale is that there is direct accountability back to the public. In areas with licensing trusts, elections are held as part of local authority elections, with the same rules for voting and being a candidate.

Licensing trusts are a form of local government and therefore are out-of-scope for the NPI satellite account.

A and P associations

Agricultural and pastoral societies (or associations) are incorporated societies under the Agricultural and Pastoral Societies Act 1908, or in some cases specific Acts. One of their purposes, as set out under the Act, is the encouragement of farming “by the holding of meetings for the exhibition of implements and produce, the granting of prizes thereat for the best exhibits, and by competitions for prizes for inventions or improvements, or for skill or excellence in agricultural or pastoral arts”. Known as A & P shows, the meetings are the public face of the societies. However, other purposes include the collection and dissemination of information and the promotion of practices that enhance the farming industry. As private, self-governing NPIs, for which any surplus cannot be used for the private gain of members, these associations, in terms of the structural-operational definition, are in-scope for the NPI satellite account.

Residents’ associations

Registered as incorporated societies, residents’ associations are private, self-governing NPIs, for which any surplus cannot be used for the private gain of members. They are, in terms of the structural-operational definition, in-scope for the NPI satellite account.

Tangata whenua-based organisations

This group includes organisations providing governance and a range of services such as development services, social services and advocacy for the tangata whenua of a particular iwi, hapu or marae, where the organisations in question meet all five criteria of the structural-operational definition. Organisations can be tangata whenua-based and also provide a specialist service. Note that organisations catering specifically to a Māori membership but also providing a specialist service are not included here but are grouped with other like providers. For example, Kawea te Rongo (Māori journalists’ association) is grouped with other professional associations.

Table 14

Examples of Tangata Whenua-based Organisations

Example	Organi-sation	Not-for-profit	Private	Self-governing	Non-com-pulsory	In
Rūnanga iwi	√	√	√	√	√	√
Marae committees	√	√	√	√	√	√

Specific cases:

Rūnanga iwi

The essential characteristics of an iwi include the following:

- descent from tupuna (common ancestry)
- hapū (sub-tribes)
- marae (forums/common assembly areas and buildings)
- belong historically to a takiwā (area of representation)
- existence traditionally acknowledged by other iwi.

Rūnanga iwi are organisations which are embodied through a democratic marae process of consultation with constituent hapū and represent iwi of a takiwā. Some rūnanga iwi have authority by way of statute, eg Ngai Tahu Runanga. Others have adopted various organisational forms – for example incorporated societies, charitable trusts or Māori trust boards.

Rūnanga iwi provide a mechanism to ensure tribal assets are managed on behalf of and for the benefit of people with birthright who register. Those who register make no contribution financially or otherwise; their birthright entitles them to vote for those governing the rūnanga iwi and to benefits. Rūnanga iwi are NPIs with a tribal governance function. Although they can therefore be viewed as a specialised form of local (iwi) government, they are self-governing and independent of government and are included in the NPI satellite account.

Marae committees

Marae are registered under the Māori Land Court and provide a focus for hapū and whanau administration. They offer:

- a physical base for community activities, which for hapū members are provided on a koha basis
- services to the hapū and community on behalf of, or in conjunction with, government agencies
- advocacy and support work on behalf of the marae members and the wider community
- a forum for political issues.

While participation, as with rūnanga iwi, derives from birthright, members do contribute of their free time to the life of the marae. Although describing such contributions as voluntary cuts across cultural differences, in the sense that voluntarism is not a traditional concept in Māori society, doing so brings marae-based organisations in-scope for the NPI satellite account (see also discussion in chapter 2).

Political parties

This group includes political organisations, where the organisations in question meet all five criteria of the structural-operational definition.

Table 15**Examples of Political Parties**

Example	Organisation	Not-for-profit	Private	Self-governing	Non-compulsory	In
NZ Labour Party	√	√	√	√	√	√
NZ National Party	√	√	√	√	√	√

Specific cases:

New Zealand Labour Party

As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, this society, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

New Zealand National Party

The same argument as for the Labour Party holds, just as it does for other political parties represented in, or seeking representation in, the New Zealand Parliament.

Social clubs

This group includes NPIs that provide social (non-welfare) services and recreation opportunities to individual members and communities, including sports and business-related social clubs, where the organisations in question meet all five criteria of the structural-operational definition.

Table 16**Examples of Social Clubs**

Example	Organisation	Not-for-profit	Private	Self-governing	Non-compulsory	In
Rotary clubs	√	√	√	√	√	√
RSAs	√	√	√	√	√	√
Workingmen's clubs	√	√	√	√	√	√
Clan MacLeod Society	√	√	√	√	√	√
Statistics NZ Social Club	√	√	√	√	√	√

Specific cases:

Rotary clubs

Registered as incorporated societies, rotary clubs are private, self-governing NPIs, for which any surplus cannot be used for the private gain of members. They are, in terms of the structural-operational definition, in-scope for the NPI satellite account.

RSAs

Returned servicemen associations (RSAs) are organised as incorporated societies. Contrary to some opinion, membership is not restricted to returned servicemen or their descendants but is instead open to anyone who supports the mission of the Returned Services Association. As private, self-governing NPIs, for which any surplus cannot be

used for the private gain of members, the associations, in terms of the structural-operational definition, are in-scope for the NPI satellite account.

Workingmen’s’ clubs

Registered as incorporated societies, workingmen’s’ clubs are private, self-governing NPIs. While most clubs will provide restaurant and bar facilities intended to operate at a profit, the club’s main purpose is to provide facilities for members, to enable them to take part in a wide range of social, recreational and cultural activities. Any surplus generated by the club cannot be used for the private gain of members. They are therefore, in terms of the structural-operational definition, in-scope for the NPI satellite account.

Clan MacLeod Society of Canterbury

The various clan societies in New Zealand are organised as incorporated societies. The Clan MacLeod Society of Canterbury aims to bring together Clan MacLeod descendants whatever the spelling of their surnames. Membership of the society includes not only those who bear the surname MacLeod but also those descended from a MacLeod. These include those with names such as Beaton, Lewis, McCrimmon, McCaskill, McNicol or Norman. Although membership derives from common ancestry, it is freely chosen and each member’s relationship to the society is removed enough for the society to function as independent entity in its own right. Accordingly, the society is in-scope for the NPI satellite account.

Statistics New Zealand Social Club

The Statistics NZ Social Club was established by staff of Statistics NZ as an incorporated society. It operates independently of Statistics NZ and is a private, self-governing NPI, for which any surplus cannot be used for the private gain of members. The club, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Unions, business and professional associations

This group includes business associations, professional associations and labour unions, where the organisations in question meet all five criteria of the structural-operational definition.

Table 17

Examples of Unions, Business and Professional Associations

Example	Organi-sation	Not-for-profit	Private	Self-governing	Non-com-pulsory	In
Trade unions	√	√	√	√	√	√
Chambers of commerce	√	√	√	√	√	√
Federated Farmers	√	√	√	√	√	√
NZ Bankers Association	√	√	√	√	√	√
Veterinary Council of NZ	√	√	√	X	√	N
Local Government NZ	√	√	√	√	√	√

Specific cases:

Trade unions

Registered as incorporated societies, trade unions are private, self-governing NPIs, for which any surplus cannot be used for the private gain of members. They are, in terms of the structural-operational definition, in-scope for the NPI satellite account.

Until the Employment Contracts Act 1991 was legislated, membership of trade unions was compulsory in the industries/occupations which they represented. This does not mean that prior to 1991 trade unions would have been out-of-scope under the non-compulsory criterion of the NPI structural-operational definition. Prior to 1991, their situation was the same as that for student unions (see chapter 2) in that employees were free to choose to work in an industry or occupation for which trade union membership was required.

Chambers of Commerce

The Canterbury Employers' Chamber of Commerce is a membership-driven, not-for-profit business service organisation with close to 3,000 members. Its primary role is to assist members' enterprises to be as successful as possible, with the ultimate objective of ensuring that Canterbury becomes the most desired place in New Zealand in which to do business. The chamber provides specific employer and industry support, general business advice, membership networking and marketing opportunities, and training and development. It also recruits the services of external providers as appropriate. The chamber lobbies both nationally, through Business New Zealand and the New Zealand Chambers of Commerce and Industry, and locally, to ensure the continuing promotion of an environment that is supportive of sustainable and profitable business. As private, self-governing NPIs, for which any surplus cannot be used for the private gain of members, the various chambers of commerce, in terms of the structural-operational definition, are in-scope for the NPI satellite account.

Federated Farmers of New Zealand

As an incorporated society, Federated Farmers describes itself as, "a voluntary, member-funded organisation ... accountable to its farmers". It is New Zealand's leading rural sector organisation and represents 18,500 member farmers and rural families throughout New Zealand. A network of 24 provinces, together with associated area networks or branches, provides a locally-based, democratic organisation that gives farmers a collective voice nationally and within each province. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the federation, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

NZ Bankers' Association

Established in 1891, the association is a forum for member banks to work together on a co-operative basis. It is a non-profit unincorporated association funded by member banks through subscriptions. Currently, nine registered banks are members. The governing body of the association is the council, comprising the chief executive of each member bank. Member banks undertake the bulk of the association's work through committees, supported by a small professional and administrative team in Wellington. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the

association, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Veterinary Council of New Zealand

Established under the Veterinarians Act 1994, the functions of the council include receiving applications for registration, promoting professional education and conduct, hearing and determining complaints, recommending to the Minister with regard to minimum standards, entering into reciprocal arrangements with registration bodies in other countries, and advising universities. Membership comprises three veterinarians elected by veterinarians, three persons appointed by the Minister – one veterinarian and two not, and the Dean of Veterinary Science at Massey University.

Since the council is established under a statute which governs its purpose and prevents the council dissolving itself, the council does not pass the self-governance test and is therefore deemed to be out-of-scope for the NPI satellite account.

Local Government New Zealand (LGNZ)

Local Government New Zealand is an NPI established by local authorities to not only represent their national interests, but also to provide policy, advice and training to its member councils. As an incorporated society, which itself is not an instrument of local governance authority, the organisation is in-scope for the NPI satellite account. As such, LGNZ is similar to the examples of NPIs serving business. On the other hand, organisations such as the Society of Local Government Managers, while also in-scope, are NPIs serving households since the managers join in their employee capacity.

Religious congregations

This group of NPIs includes religious congregations and associations, where the organisations in question meet all five criteria of the structural-operational definition. Service agencies with religious affiliations, in fields such as health, education and social services, are grouped with other relevant service providers rather than being included here.

Table 18

Examples of Religious Organisations

Example	Organisation	Not-for-profit	Private	Self-governing	Non-compulsory	In
Anglican Church	√	√	√	√	√	√
Roman Catholic Church	√	√	√	√	√	√
Quakers Religious Society of Friends	√	√	√	√	√	√
Muslim Association of Canterbury	√	√	√	√	√	√

Specific cases:

Anglican Church

As a constitutionally autonomous member of the worldwide Anglican Communion, the Anglican Church is a private, self-governing NPI, for which any surplus cannot be used

for the private gain of members. In terms of the structural-operational definition, the church is in-scope for the NPI satellite account.

Roman Catholic Church

With approximately 250 parishes and 500 churches, the Roman Catholic Church is a major religious denomination in New Zealand. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the church, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Quaker Religious Society of Friends

The Religious Society of Friends (Quakers) in New Zealand is Christian in origin and inspiration, but is open to ideas and values from other forms of religious expression. The society is a non-hierarchical organisation, having no ministers, creed or dogma. It forms a single yearly meeting, which is divided into nine monthly meeting regions. The people associated with each monthly meeting are referred to as either members or attenders. Members are those who have formally applied for and been accepted into membership with a particular monthly meeting. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the Society of Friends, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

Muslim Association of Canterbury

The association is an incorporated society affiliated to the Muslim Association of New Zealand, which was set up for the primary purpose of organising and arranging religious gatherings, and “to help the Muslims” as one of the founders put it. As a private, self-governing NPI, for which any surplus cannot be used for the private gain of members, the Muslim Association, in terms of the structural-operational definition, is in-scope for the NPI satellite account.

References

Office of Community and Voluntary Sector (2004). “Report on research into Māori cultural obligations and ‘volunteering’”.

Suggate D (1995). “An Overview of the Voluntary Sector”.

United Nations (2003). “Handbook on Non-Profit Institutions in the System of National Accounts.

Acknowledgement

Statistics New Zealand would like to acknowledge the contribution made by the following staff members: Stuart Payne and Jeff Cope. Statistics New Zealand would also like to acknowledge advice received from the Committee for the Study of the New Zealand Non-Profit Sector during the writing of this report. This report was prepared by the National Accounts Business Unit and published by the Product Development and Publishing Business Unit of Statistics New Zealand.

Liability statement

Statistics New Zealand gives no warranty that the information or data supplied in this paper is error free. All care and diligence has been used, however, in processing, analysing and extracting information. Statistics New Zealand will not be liable for any loss or damage suffered by customers consequent upon the use directly, or indirectly, of the information in this paper.

Reproduction of material

Any table or other material published in this paper may be reproduced and published without further licence, provided that it does not purport to be published under government authority and that acknowledgement is made of this source.