

# Philanthropy, Civil Society, and Law in the Caribbean

a preliminary overview of the legal framework supporting philanthropy and the nonprofit sector in the insular Caribbean

A Report of the Caribbean Philanthropy Network

Prepared by: Judith A. Towle, William S. Moody and Adrian J.L. Randall

May 2010

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For further information about the Caribbean Philanthropy Network, contact:

Caribbean Philanthropy Network  
c/o Community Foundation of the Virgin Islands  
Post Office Box 11790  
St. Thomas, U.S. Virgin Islands 00801  
Telephone: 340.774.6031  
[www.caribbeanphilanthropy.org](http://www.caribbeanphilanthropy.org)

Contributors to this report are:

Judith A. Towle, CPN Advisory Board

William S. Moody, CPN Advisory Board

Adrian J.L. Randall, Charities Management Consultant

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Adrian J.L. Randall, an economist and charities management consultant from Barbados, prepared two papers that preceded and informed the current document (see Randall, 2010). We extend a special acknowledgement to Mr. Randall and our sincere appreciation for his invaluable research and documentation and for helping us through the essentials of Caribbean philanthropy law.

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It is our hope that the document which follows will generate a lively discussion and thoughtful discourse on the timely subject of *philanthropy, civil society and the law in the Caribbean*.

*Judith A. Towle and William S. Moody*  
May 2010

## Abbreviations and Acronyms

BANGO	Barbados Association of Non-Governmental Organisations	CPN	Caribbean Philanthropy Network
CAIPO	Corporate Affairs and Intellectual Property Office (Barbados)	CSO	Civil Society Organization
CARICOM	Caribbean Community	CSR	Corporate Social Responsibility
CBO	Community-based Organization	ICNL	International Center for Not-for-Profit Law
CFP	Centre for Philanthropy (Barbados)	NGO	Nongovernmental Organization
CFVI	Community Foundation of the Virgin Islands	NPO	Nonprofit Organization
CI	Cayman Islands	OECS	Organisation of Eastern Caribbean States
COF	Council on Foundations	UK	United Kingdom
		UWI	University of the West Indies

## Executive Summary

The current study was undertaken on behalf of the Caribbean Philanthropy Network (CPN), which recognizes that key to maintaining a healthy and vibrant nonprofit sector in the Caribbean is the presence of a viable legal and regulatory framework to encourage, support, facilitate and oversee the sector. The CPN further acknowledges that an impartial and well-functioning legal framework governing philanthropy and civil society is important to inspiring donor confidence—whether corporate, individual, or public sector—in the objectives and programs of the region's nongovernmental organizations. In short, the legal framework serves as the foundation to safeguard and encourage civil society and philanthropic engagement.

This document provides a preliminary analysis of the structures and laws in place in selected English-speaking islands of the Caribbean and makes recommendations for the further strengthening of these frameworks in order to encourage the growth and effective use of philanthropy throughout the Caribbean region.

As long as charity in the Caribbean focused primarily on non-monetary assistance and mutual-aid activities, there was not a pressing need for a more structured legal and regulatory framework to govern philanthropy and the nonprofit sector. Friendly Societies, and supporting legislation, were formed early in the twentieth century as a more structured, non-government response to addressing the welfare needs of island societies.

In the 1960s, as most of the English-speaking islands of the Caribbean began to move from British colonial dependency to full independence, the business of nation building preoccupied much of the region. Yet, by the 1970s and 1980s, nongovernmental organizations also began to flourish. To deal with this emerging sector, many of the newly independent islands employed the provisions of Companies Acts—developed to provide for the registration of *for-profit* companies—to also register *not-for-profit* organizations.

Charities Acts also began to emerge in the 1970s, modeled after the 1960 England and Wales Charities Act. Clarity of purpose could more easily be identified in such legislation, which represented a first generation of Caribbean law that more specifically defined the charitable or nonprofit sector in the Caribbean. Still later, a newer generation of nonprofit/nongovernment law emerged, represented by Nongovernmental Organizations Acts legislated in the first decade of the twenty-first century, based in part on a CARICOM initiative to strengthen relationships between NGOs and Caribbean states.

The current report examines the relatively recent emergence of these legal frameworks in selected islands of the Caribbean. Legislation has been reviewed using four key components for analysis adapted from the International Center for Not-for-Profit Law: (1) Establishment and Legal Status; (2) Good Governance; (3) Financial Sustainability; and (4) Accountability and Transparency.

Additionally three case studies are provided that focus on recent efforts in Barbados, the Cayman Islands, and the Federation of St. Kitts and Nevis. Each represents a promising initiative to improve and modernize the legal and regulatory framework for philanthropy and the nonprofit sector, while adapting it to the Caribbean experience and understanding.



# 1. Introduction

The Caribbean Philanthropy Network (CPN) is a project of the Community Foundation of the Virgin Islands (CFVI). It is a successor to the Association of Caribbean Community Foundations (ACCF), which operated from 2003-2007 as an umbrella organization for community foundations and other grant-making entities in Anguilla, St. Lucia, St. Croix and St. Thomas (U.S. Virgin Islands), Tortola (British Virgin Islands), Antigua, Dominican Republic and Puerto Rico.

In 2008, under a two-year grant from the Ford Foundation, the Community Foundation of the Virgin Islands launched the CPN project with the overall goal of linking groups and individuals that make grants and provide resources to charitable nonprofit organizations working to improve the quality of life for residents of the Caribbean region.

During the first year of its operation, the CPN focused on the need for more comprehensive data on giving in the Caribbean region. To this end, the CPN engaged the Center on Philanthropy and Civil Society at the City University of New York to develop and execute a mapping study to identify the size, scope and nature of the Caribbean philanthropic community. The results of the study were presented at CPN's annual meeting in May 2009 and were subsequently published as *Caribbean Philanthropy Mapping Project: Analysis and Report* (June 2009).

A recommendation in this report led to a second major initiative of the CPN, specifically, the recommendation that:

*CPN may want to pay greater attention to the various national, philanthropic, legal and tax frameworks [in the Caribbean] ... which can eventually lead to an advocacy role to promote a more unified framework that would encourage the growth and effective use of philanthropic dollars throughout the region.*

With this recommendation in mind, and based on their own Caribbean experiences, CPN Advisory Board members, Judith Towle and William Moody,\* embarked on a new CPN initiative for which they were to provide oversight and leadership. The two formed a sub-committee of the CPN board that would focus on reviewing legislative and regulatory frameworks for philanthropy in the insular Caribbean, including a preliminary analysis of the institutional structures and laws already in place and providing recommendations for strengthening such frameworks.

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\* Judith A. Towle is Vice President of the Island Resources Foundation, a Caribbean-based organization she co-founded with her late husband in 1972 to provide a fresh perspective on environmental planning for sustainable island development. Her more than 35 years of Caribbean experience have focused on institutional development, nongovernment organizations, public policy and fiscal management.

William S. Moody was affiliated with the Rockefeller Brothers Fund for almost four decades, where his responsibilities included management of RBF programs in Latin America, sub-Saharan Africa, the Caribbean, Central and Eastern Europe, and the West Balkans. He is currently writing a memoir about his long career as a grantmaker.

In its second year of activity, the CPN board had concluded that key to maintaining a healthy nonprofit sector in the Caribbean was the presence of a viable legal and regulatory framework to encourage, support, facilitate and oversee the sector. At the outset, our general perception was that legal frameworks for philanthropy in Caribbean countries were weak or incomplete, but we also recognized that additional data to support conclusions about the effectiveness of existing laws needed to be assembled, organized, and evaluated.

We further recognized that laws governing charitable giving and the nonprofit sector needed not only to facilitate philanthropy but also, most critically, inspire confidence on the part of donors of all kinds—whether corporate, individual, or public sector. We would therefore look at how current laws provided for the registration, operation, monitoring and enforcement of rules and regulations governing recipient organizations, nonprofit institutions, and other charitable groups, as well as how extant legislation provided for making donations and grants, including incentives for donors. We needed to understand what mechanisms already existed and how well they functioned before the CPN and others interested in these issues could move forward in assessing how and where legislative reform might work best.

In time, we developed a mission statement to govern our work for this particular CPN initiative, although we acknowledged it could only be partially implemented during the timeframe of the Ford Foundation grant. Our long-term goal was:

*To increase confidence in philanthropic engagement in the insular Caribbean by identifying opportunities, strategies and procedural measures to —*

- Strengthen legal and regulatory frameworks governing the nonprofit sector in Caribbean countries;*
- Increase tax incentives for philanthropic support of activities undertaken by the nonprofit sector in Caribbean countries;*
- Support the development, enactment, monitoring and enforcement of practical, non-intrusive, and impartially administered laws and regulations governing philanthropy and the nonprofit sector in Caribbean countries; and*
- Undertake efforts to improve public understanding of the role and value of such laws and regulations, and of the nonprofit sector, within an insular Caribbean context.*

To commence activities, the CPN engaged the services of a charities management consultant in Barbados, Adrian J.L. Randall, FCA, BSc (Econ), FCIE, who was tasked with preparing a preliminary briefing paper on laws and regulations governing Caribbean philanthropy. Mr. Randall's report was presented at a meeting of the CPN Advisory Board in January 2010 under title of "Draft Briefing Paper on the Status of the Legal and Regulatory Framework for Philanthropy and the Non-Profit Sector in the English-speaking Caribbean". That paper (and a follow-up "white paper" on the same subject submitted in March 2010) provided much of the background research and initial findings that have been incorporated into the current report.

Because of constraints that limited the scope of the study and this report, we determined early on that the geographic focus of our effort would be:

(1) the *insular* Caribbean

and

(2) the *English-speaking* or Commonwealth Caribbean.

Additionally, the study is a *selective* overview of the insular, English-speaking Caribbean as there was not sufficient time or adequate resources to implement a more extensive research protocol that would have included all Caribbean countries falling within the selected parameters. Nevertheless, a sufficiently broad perspective is presented to allow for preliminary assessments and conclusions.

This document, with a complementary report on the emergence of the Caribbean NGO/Civil Society Sector (Webson, 2010), provide a working agenda for the Caribbean Philanthropy Network as it moves forward to a new phase of development. As stated by Dee Baecher-Brown, president of the Community Foundation of the Virgin Islands, at a meeting of the CPN Advisory Board in January of this year, the CPN is still very much an *evolving* concept. Likewise, this report is also an *evolving* study that will:

- help guide CPN in making decisions about its programmatic agenda and institutional growth going forward,
- assist CPN and other Caribbean entities in identifying priorities for strengthening the influence and effectiveness of philanthropy in the Caribbean region,
- determine what imperatives exist for reform of legislation and regulations governing philanthropy and Civil Society in the Caribbean, and
- provide an opportunity for further discussion and action by the region's national governments, by charitable and nonprofit organizations, by donors and donor institutions, and by all who are a part of Caribbean Civil Society.

## 2. Caribbean Philanthropy

### OVERVIEW

Etha J. Henry writes in her Ford Foundation-funded study on Caribbean philanthropy (Henry, 2008) that the earliest forms of philanthropy in the Caribbean were based on strong social networks and on an even stronger sense of community. Traditions of giving were built on structures of mutual support and mutual aid with social burdens shouldered by the entire community, for example at the death of a community member or for communal activities such as house raising, the planting and bringing in of crops, and boat building. Initially, philanthropy consisted of “donations in kind” and was primarily of a voluntary nature built around existing social systems.

Even today—and despite increased materialism and individualism that often erode older patterns of society—there is still evidence of citizens and entire communities using a variety of more traditional giving networks, service clubs, indigenous associations, and the like to tackle societal needs. As long as charity in the Caribbean focused primarily on non-monetary assistance and mutual-aid activities, there was not a pressing need for a more structured legal or regulatory framework to govern charities or provide philanthropic standards.

Furthermore, as most of the English-speaking Caribbean under British rule began, in the second half of the twentieth century, to navigate a pathway from colonial dependency to fully sovereign statehood—a process beginning in the 1960s and continuing through the mid-1980s—the region was pre-occupied with the business of building new political structures and establishing post-colonial economies. The decades of the sixties, seventies, and eighties were heady times that witnessed the beginning of nation building in the region and the emergence of institutions and leaders who moved small islands through a political disengagement process to full nationhood. In this environment, addressing issues related to the governance of charities, standards for philanthropic giving, or defining the nonprofit sector was generally not a priority for emerging Caribbean governments.

However, this would change as the number and impact of a wide spectrum of nongovernmental organizations grew<sup>1</sup>, as the influence of international donors expanded in the region (now largely comprising independent nations), and as the responses of the nonprofit sector to the complexity of social and economic needs in a more modern and global Caribbean likewise became more intricate and complex. In short, contemporary legal frameworks for the civil society sector have emerged in varying forms throughout the Caribbean in response to the changing, evolving functional role of civil society in the region.

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<sup>1</sup> For a more complete discussion and historical overview of the NGO sector in the Caribbean, see Dr. W. Aubrey Webson’s *Philanthropy, Civil Society, and NGOs in the Caribbean*, also prepared for the Caribbean Philanthropy Network (Webson, 2010).

The document that follows examines the relatively recent emergence of legal and regulatory frameworks for the governance of philanthropy and the nonprofit sector in the English-speaking, insular Caribbean. It is a snapshot rendering of a selected piece of the Caribbean (*i.e.*, insular, English-speaking, and primarily British in political and legal background). Nevertheless, a sufficiently full assessment is provided to permit preliminary summations and recommendations, with the expectation that further work, to broaden both the geographic scope and the richness of information assembled, will be carried out at a later date.

## REGIONAL INITIATIVES ON PHILANTHROPY

Before turning to the substance of this report, it is appropriate that we first briefly acknowledge two recent initiatives in the region designed to assess Caribbean philanthropic development and to identify new approaches and strategies to strengthen the nongovernment, nonprofit sector in the Caribbean.

In addition to the Caribbean Philanthropy Network (and its predecessor organization, the Association of Caribbean Community Foundations, both summarized in Chapter 1 of this report), a second regional effort to focus on Caribbean philanthropy was established at the University of the West Indies (UWI), Mona campus in Jamaica. In February of 2005, UWI's Development and Endowment Fund hosted the first regional conference on Caribbean philanthropy. As articulated in pre-conference invitational material (UWI, 2004), conference conveners hoped to increase dialogue about the impact of philanthropic activities on development in the Caribbean, while also building links to the philanthropic community internationally.

The conference was attended by approximately 200 persons from the Caribbean and North America and is summarized in a report prepared for the W.K. Kellogg Foundation by Sonia Barnes-Moorhead, a member of the CPN Advisory Board (Barnes-Moorhead, 2005). It is interesting to note that in her summary report, Ms. Barnes-Moorhead points out that the word "philanthropy" itself did not resonate with many of the conference attendees. It was not a word rooted in the "community," and it therefore lacked meaningful context. A delegate from Anguilla even offered an alternative—*jollification*. Barnes-Moorhead points out that while *jollification* is more widely used in Anguilla, it does have a broader Caribbean understanding, denoting individual payment of a hot meal and rum in return for assistance provided by one's friends and neighbors. The concept of helping a neighbor for a simple reward is one to which Caribbean people can relate; the term philanthropy, on the other hand, is not as readily accessible as a conceptual framework.

One set of conference sessions revolved around the theme of "The Relevance of Philanthropy in Developing Nations." The specific objective was to establish strategies for influencing the perceptions held by Caribbean governments about the nonprofit sector and to engender public sector support for the nongovernment sector, for example, through incentives that encourage contributions to and investments in the sector.

A second major theme of the conference focused on corporate social responsibility, with discourse aimed at providing comparative models for corporate giving. In pre-conference materials distributed by UWI, it was noted that the UWI Development and Endowment Fund was developing a research initiative directed at establishing “Principles of Social Responsibility” for corporations conducting business within the Caribbean. The establishment of such principles of conduct would be an important step for any Caribbean country seeking to strengthen responsible corporate values and social responsibility practices. However, while a preliminary literature review and some interviewing took place following the February 2005 conference, the initiative was not completed (*pers. comm.*, Nicole Sharpe, former executive director of the UWI Development and Endowment Fund, April 2010).

A third theme of the UWI conference covered topics related to the methodologies and techniques of philanthropy, with an emphasis on endowment funding and organizational development for the nongovernmental sector, with a fourth and final theme of the conference focusing on building bridges among those “dedicated to the ideals of social responsibility” in the Caribbean, including the African philanthropic Diaspora.

In her report on the regional conference, Barnes-Moorhead summarized data from the Council on Foundations (COF) as presented in a session on “current trends”. Firstly, she provided what was termed the “good news”, albeit the data provided focused only on U.S. philanthropic contributions:

- U.S. philanthropic funding to the Caribbean grew from US\$5 million in 1990 to US\$22 million in 2002.
- U.S. foundations funding to the Caribbean more than doubled between 1998 and 2002, due, in part, to large grants to Haitian organizations by the Gates and Kellogg foundations.

Secondly, Barnes-Moorhead provided the “bad news” from COF data, again with a focus on U.S.-based philanthropy in the region:

- The portion of direct overseas funding to Caribbean-based organizations declined from 2% of all U.S. cross-border grantmaking in 1990 to 1.2% in 2002 (about US\$10 million).
- U.S. dollars expended for Caribbean activities decreased from 3% to 1% in 2002 (approximately US\$12 million).

As evidenced by these figures, the Caribbean region’s share of U.S. philanthropy was declining. Other conference participants, e.g., a representative of the Organization of American States Jamaica’s office, indicated that this trend could be seen in other forms of aid to the region. For example, many foreign assistance organizations have designated island states in the Caribbean as “mid-income” countries (for example, Jamaica, Barbados, and Trinidad and Tobago), while some are even assigned “high-income” status (the Bahamas), with only one Caribbean country designated as “low-income” (Haiti). Thus, over time, the region has been viewed less and less as

an area in need, a perception that is reinforced by the region's image as a tourist enclave and offshore financial services center.

Additionally, conference participants recognized an important shift in overseas assistance to the Caribbean—whether bilateral, multilateral, or foundation assistance—as priority program funding directed at the Caribbean in the 1970s-1980s shifted to new global hot spots such as Eastern Europe, Africa and the Middle East. Such fundamental shifts have important implications for the nongovernmental organizations (NGOs) and other civil society organizations (CSOs) based in or providing funding to the region. Barnes-Moorhead concludes that the so-called Third Sector may need to become more organized—more strategic—in order to address more effectively the social and economic challenges still confronting the Caribbean in a time of diminished funding.

A second conference on Caribbean Philanthropy was also sponsored by UWI-Mona and held in Jamaica in May of 2006, in collaboration with the National Center for Black Philanthropy in the United States. Additionally, an inaugural issue of *The Gift: The Journal for Caribbean Philanthropy* was published in 2006 by the UWI Development and Endowment Fund's Centre for Caribbean Philanthropy. It was described as “the first regional publication dedicated to providing documentation, case studies and analysis of philanthropy in all its dimensions.” The contents of the inaugural publication (see Figure 1) included contributions of international and regional academia and the nonprofit and corporate sectors as well as presentations from the February 2005 conference. A second issue of *The Gift* was published in 2007. It is a promising and unique publication, and its continuance should be encouraged.

Despite the importance and timeliness of the issues addressed by UWI's Development and Endowment Fund in 2005 and 2006, and several initiatives that were in progress but not completed, the Centre for Caribbean Philanthropy (part of UWI's Development and Endowment Fund, see <http://www.uwifundmona.org.jm/>) is not at present an operational entity with an ongoing program. CPN consultant, Karen Johns, reporting to the CPN Advisory Board in September of 2009 about her recent visit to the University's Mona campus, indicated that the Centre might be in the process of identifying a new executive director.

Both of the recent initiatives to examine, energize and support Caribbean philanthropy—the **Caribbean Philanthropy Network** initiative, currently based at the Community Foundation of the Virgin Islands in the U.S. Virgin Islands, and the **Centre for Caribbean Philanthropy**, housed at the University of the West Indies Development and Endowment Fund in Jamaica—are important to the further advancement of philanthropic efforts in the Caribbean and to the strengthening of civil society throughout the region. They are timely and opportune, appropriate and judicious; both are deserving of continued support and encouragement.

Figure 1. Table of Contents from the inaugural issue of *The Gift: The Journal for Caribbean Philanthropy*.

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### 3. Philanthropy Law in the Caribbean

#### THE LEGAL FRAMEWORK MATTERS

Given the benefits to society provided by the nonprofit sector (or, more broadly defined, the civil society<sup>2</sup> sector), governments may seek to facilitate the work and contributions of these organizations and provide an appropriate legal framework for their functioning within the nation. Often referred to as the “third sector” (the first two being the government/public sector and the business or for-profit sector), nonprofit or charitable organizations often take on tasks and responsibilities the government cannot or will not do or provide goods and services more efficiently than government can or address problems created by market failures in the business sector. It is to the benefit of the country that governments contribute to the growth and stability of a vibrant nonprofit sector, and, to facilitate this process, governments need to create a legal and regulatory foundation that establishes stability and certainty **for** nonprofit organizations (NPOs) and confidence and trust **in** nonprofit organizations by those individuals and organizations wishing to support, contribute to or invest in such organizations.<sup>3</sup>

Thus, as Douglas Rutzen, president of the International Center for Not-for-Profit Law (ICNL), pointed out at a January 2010 meeting of the CPN Advisory Board, the presence of a viable legal framework is relevant to both the “supply” side of philanthropy (the donor side) and the “demand” side (the recipient side).

The relationship between government and civil society is a complex one, and while the role of government can be facilitation, it can also be one of control, *i.e.*, the state's need to manage and regulate philanthropy and the nonprofit sector. As pointed out by ICNL in a series of case studies in South Asia (ICNL, 2008), modern philanthropy law in developing countries often develops, at least in part, from colonial legal systems where control, restraint and limitations on the growth and activities of nongovernment organizations prevailed. Today regulatory constraints on the sector can serve to stifle the very energy and innovation that make NPOs/NGOs/CSOs<sup>4</sup> particularly effective and will most often occur when governments perceive that the strength and influence of the sector have political implications.

It is the legal framework for philanthropy that is the crucial factor dominating both the government's **desire to facilitate** and its **need to control** philanthropic activity. While that legal framework may continue to emphasize control and management, it is only as it evolves and adapts to facilitate the growth and influence of NPOs/NGOs/CSOs, rather than constraining them, that a more open process will result, providing opportunities for a diversity of groups to

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<sup>2</sup> “Civil society” constitutes that element outside of government and business sectors, both organized and essentially disorganized, that represents the engagement of people among and with one another to achieve their aspirations, meet their needs, and live creative, active, healthy lives (as defined in Klingelhofer and Robinson, 2001).

<sup>3</sup> For additional discussion on this topic, see Klingelhofer and Robinson (2004) and Sidel and Zaman (2008).

<sup>4</sup> Nonprofit organizations (NPOs), nongovernmental organizations (NGOs), and civil society organizations (CSOs) are defined in the Glossary and are used interchangeably in this report.

become active and enabling a wide range of organizations to operate with reasonable autonomy (ICNL, 2008).

The International Center for Not-for-Profit Law points out that while the legal framework governing civil society is not the only element in determining the nonprofit sector's health, it is certainly an essential ingredient, permitting and protecting NPOs/NGOs and allowing them to exist and operate freely. In short, the legal framework serves as the foundation to safeguard and to encourage civil society and philanthropic engagement (see Klingelhofer and Robinson, 2001).

## **BASIC COMPONENTS of the LEGAL FRAMEWORK**

In the sections to follow in this Chapter and in Chapter 4, coupled with the detailed country-by-country data found in **Appendix A**, key components of a legal and regulatory framework for Caribbean philanthropy and the nonprofit sector are identified, along with a discussion of how selected Caribbean countries have incorporated such components within their legislative structure. We have grouped these components into four broad categories, adapting our overall format from the International Center for Not-for-Profit Law's "*Checklist for CSO Laws*" (ICNL, 2006). ICNL's checklist is based on information assembled from over 150 countries and analyzed to identify prevailing practices. The four legal framework components we have identified for analysis in the Caribbean are:

- (1) Establishment and Legal Status
- (2) Good Governance
- (3) Financial Sustainability
- (4) Accountability and Transparency

Let us begin with a brief discussion of each component and the general provisions which should be included in legislation governing philanthropy and the nonprofit sector. The reader is further referred to Appendix A where we have assessed selected Caribbean countries on the basis of how well the legal framework in each has provided for these elements.

### **(1) Establishment and Legal Status**

Laws and regulations governing the establishment and legal status of nonprofit organizations should, according to the ICNL, allow such organizations to freely come into existence via a written process that is administered in a relatively quick, easy and inexpensive manner. Whether the nonprofit is registered or incorporated, there should be a single, national registry of all such organizations that is accessible to the public.

As the creation and registration of nonprofit organizations pertain to the Caribbean, these processes are usually accomplished by means of the following types of legislation:

- (i) A *Friendly Societies Act*, referring to benevolent societies, credit unions, cooperatives, and the like, under which legislation NPOs have been created and registered in the Caribbean, particularly in the past.
- (ii) A *Companies Act* whereby all “companies” are registered in the country and provision may or may not be made for the specific registration of not-for-profit “companies”. A nonprofit organization registered under a Companies Act is often described as a “company limited by guarantee”. In British law, a company limited by guarantee is an alternative type of corporation primarily used for nonprofit organizations that require a legal personality.
- (iii) A *Charities Act* often modeled after similar legislation in the United Kingdom (in particular, the England and Wales Charities Act of 1960). In such legislation, the term “charity” is defined.
- (iv) A *Non-governmental Organizations Act*, representing a more recently employed legal instrument used in the Caribbean to create and register nonprofit/nongovernmental organizations.

The data summarized for Component (1) in Appendix A indicate that all four types of legislation have been used in the Caribbean countries surveyed.

Other provisions that ICNL (2006) recommends for legislative components that establish and provide for the legal status of NPOs and NGOs include:

- Provisions for the voluntary termination, dissolution and liquidation of NPOs/NGOs and for the involuntary termination of such organizations subject to judicial supervision.
- Provisions allowing NPOs/NGOs to have the same rights as other legal entities and to be permitted to engage in activities for the benefit of their members and the public, including freedom to speak freely about all matters of public significance.
- Provisions for the establishment of an independent, professional body to determine whether an organization qualifies for public benefit or charitable status, further noting that status decisions are best determined by independent, nonpartisan professionals and that creation of such bodies should always reflect the local context and culture in order to avoid unintended consequences when an external model is too broadly introduced.

## (2) Good Governance

According to the International Center for Not-for-Profit Law (2006), the legal framework governing nonprofit organizations should require that certain minimum provisions necessary to the operation and governance of the organization be stated in the organization's governing documents.

Additionally, laws governing nonprofit organizations should provide that no earnings or profits may be distributed to the organization's founders, members, officers, board members, employees or donors, including at the dissolution of the NPO/NGO; nor should assets, earnings and profits of the NPO/NGO be used to provide special benefits, directly or indirectly, to any of these persons (ICNL, 2006).

Basic standards of conduct for the governance of nonprofit/nongovernmental organizations should ideally be enacted in law or, alternatively, created as self-regulating initiatives. The legal framework might also encourage the formation of umbrella organizations to adopt and enforce principles of voluntary self-regulation by NPOs/NGOs (ICNL, 2006).

### (3) Financial Sustainability

Among other provisions to support NPO/NGO financial sustainability, the International Center for Not-for-Profit Law identifies the following provisions for inclusion in legal frameworks governing philanthropy and nonprofit organizations (ICNL, 2006):

- NPOs/NGOs should be permitted to engage in all legally acceptable and culturally appropriate fundraising activities.
- NPOs/NGOs should be exempt from income taxation on funding or other items of value received from private sector donors or governmental sources. Similar preferential treatment could be afforded NPOs/NGOs for other tax preferences, such as value added taxes, property taxes, and customs duties.
- To encourage philanthropy, donations by individuals and business entities to NPOs/NGOs should be entitled to income tax benefits (such as deductions or credits).
- NPOs/NGOs should be permitted to engage in for-profit activities as long as such activities do not constitute the principal purpose or activity of the organization. Any net profit from such activities could be either exempt from or subject to income taxation, as determined by the law.

Issues related to taxation must be addressed in legislation for the nonprofit/nongovernmental sector.

Governments developing a regulatory system for this sector need to determine whether and when tax benefits are appropriate. **This is a critical determination because, by awarding such benefits, governments create powerful incentives for both donors and recipient organizations, particularly for activities the government wishes to encourage** (ICNL, 2004).

#### (4) Accountability and Transparency

Again, according to the International Center for Not-for-Profit Law (2006), legislative provisions dealing with accountability and transparency should include requirements that NPOs/NGOs file appropriate and periodic reports with:

- The *Supervisory organ* responsible for general supervision of NPOs/NGOs:  
Reports preferably to be filed annually and to include in such filings information on the organization's finances and operations.
- *Tax authorities*:  
These reports are separate from those filed with the supervisory organ and may be specifically required by taxing authorities.
- *Licensing organs*:  
NPOs/NGOs subject to government licensing should be required to file the same reports as are required of all other business organizations or individuals.

Generally, reporting requirements should be simple to complete. Additionally, information requested by differing government agencies should be as uniform as possible among the agencies requesting information. Additionally, there should be a proportionality link between the reporting requirements and the size/complexity of the NPO/NGO reporting; for example, smaller NPOs/NGOs might be required to file simplified reports or no reports at all, while NPOs/NGOs receiving more than minimal benefits from the state or raising a significant amount of funding might be required to file more substantial reports.

The ICNL (2006) also recommends that any NPO/NGO with substantial public support or significant assets should be required to make information on its general finances and operations available to the public, although such public reporting need not be as detailed as reports filed with the supervisory organ, taxing authorities, or any licensing organ.

Special sanctions (for example, fines or involuntary termination) can be provided in law for violations by NPOs/NGOs (such as self-dealing or improper fundraising practices).

#### **TABULAR SUMMARY of FINDINGS from LEGISLATIVE REVIEW**

Our review of these four components as identified in the legislative frameworks of selected Caribbean countries is provided in Appendix A, with additional information on three targeted countries presented in Chapter 4. A summary table (Table 1) is next provided to recap these findings in tabular format.

Table 1.

Summary of legal framework components supporting philanthropy and the nonprofit sector in nine Caribbean countries.

SELECTED COUNTRIES From the Insular, English-speaking Caribbean	ESTABLISHMENT AND LEGAL STATUS							GOOD GOVERNANCE				FINANCIAL SUSTAINABILITY			ACCOUNTABILITY and TRANSPARENCY			
	Establishment by Companies Act?	Establishment by Charities Act?	Establishment by Friendly Societies Act?	Establishment by NGO Act?	Provisions for voluntary & involuntary termination provided?	Provisions provided for freedom of activity by NPOs/NGOs?	Registration process provided to determine nonprofit/charitable status?	Minimum provisions for NPO/NGO governance specified in the law?	NPO/NGO Articles of Association or Incorporation required for registration?	Provisions for non-distribution of profits/benefits to NPO-affiliated persons?	NPO/NGO Standards of Conduct provided?	NPOs/NGOs permitted to engage in all legal fundraising activities,?	NPO/NGO exempt from income taxation?	Donors entitled to income tax benefits?	NPOs/NGOs permitted to engage in profit-making activities?	Supervisory body to monitor NPOs and NGOs called for in legislation?	Provisions for periodic reporting by the NPO/NGO to Government or a supervisory organ?	Financial/operational information available to the public?
Antigua and Barbuda	✗		✗				✗					✗						
Bahamas				✗	✗		✗	✗	✗	✗		✗		✗		✗	✗	✗
Barbados		✗			✗		✗	✗				✗	✗		✗	✗		
Bermuda		✗	✗		✗		✗	✗				✗			✗	✗		
Cayman Islands	✗	✗*					✗	✗	✗			✗*			✗*	✗*	✗*	✗*
Jamaica	✗				✗		✗	✗				✗	✗					
St. Kitts and Nevis				✗	✗		✗	✗	✗	✗*		✗	✗	✗	✗	✗	✗	✗
St. Lucia	✗						✗					✗	✗					
Trinidad and Tobago	✗				✗		✗	✗				✗	✗	✗				

\* Denotes a proposed action

## SUMMATION of FINDINGS from LEGAL FRAMEWORK REVIEW

Perhaps the first insight provided by this review of the legal and regulatory framework for Caribbean philanthropy is that the framework is more complete than the members of the CPN committee formed to study this issue had originally assumed. Even a cursory examination of Table 1 illustrates how many of the components of the basic legislative provisions identified by the ICNL are present in the legislative structures of nine selected Caribbean island states. But, of course, that is not the entire story.

### FINDINGS: Establishing and registering nonprofit/nongovernmental organizations

Friendly societies were formed early in the twentieth century as a more structured, non-government response to addressing the welfare needs of island societies. Legislation to govern such organizations was enacted throughout the Caribbean, and, even at the close of the century, **Friendly Societies Acts** were still employed to register some NPOs/NGOs in the absence of more modern, explicatory legislation (for example, the Environmental Awareness Group in Antigua was first established as a Friendly Society in the 1980s and later re-registered under the Companies Act). Since Friendly Societies legislation was developed in a much earlier era, it generally is not as effective for regulating and supporting twenty-first century NPOs/NGOs, with more complicated institutional structures and expansive program agendas than the mutual aid societies for which the legislation was originally intended.

**Companies Acts**, which provide for the incorporation and registration of for-profit companies, are also employed in the Caribbean to register not-for-profit organizations, with provisions for such companies usually “limited by guarantee” as they do not have a share capital. Antigua and Barbuda, the Cayman Islands, Jamaica, St. Lucia, and Trinidad and Tobago in our survey all employ this legislative vehicle to register NPOs/NGOs. More recent revisions in some Companies Acts (for example, in Jamaica) have improved the registration process for charitable organizations. Nevertheless, unless a Companies Act clearly defines the special status of not-for-profit companies, the public identity and public role of NPOs/NGOs as public benefit/public service organizations may not be as clear in the public mind.

Clarity of purpose is more specifically addressed in islands employing a **Charities Act** to identify and register charitable organizations (in our survey, Barbados and Bermuda, with a new Charities Act proposed for the Cayman Islands). In both Barbados and Bermuda, the Act is modeled after the 1960 England and Wales Charities Act (since repealed and updated). Both Caribbean acts were enacted in 1978 and represent the first generation of legislation that moved more specifically to define the nonprofit/charitable sector in the Caribbean. The Act in Barbados has a more comprehensive definition of what constitutes a “charitable purpose,” and, by clarifying that definition, the law has simplified the process of registration.

The newest generation of nonprofit law in the Caribbean is represented by **Non-Governmental Organizations legislation**, as enacted in our survey in the Bahamas (2005) and St. Kitts and Nevis (2008). Both laws were modeled on similar legislation in Belize (2000), and both emerged as part

of a CARICOM initiative to strengthen relationships between NGOs and Caribbean states. These and other civil society issues had been articulated earlier when the Governments of the Caribbean Community (CARICOM) adopted the 1992 recommendation of the West Indian Commission that a *Charter of Civil Society* be subscribed to by Member States, and declared their resolve "... to respect and strengthen the fundamental elements of a civil society."

Thus, as a result of our partial review of philanthropy legislation in the insular Caribbean, we can now point to a developing framework of laws supporting civil society organizations —

- from the earliest Friendly Societies laws that grew out of Caribbean traditions of community giving and sharing and the creation of benevolent and friendly societies to support localized philanthropy,
- to the inclusion of nonprofit/nongovernmental organizations within the legal framework of Companies Acts in order to provide a legal identity for those organizations not established for profit-making purposes,
- to the development of Charities Acts in the 1970s, modeled after the charities law in England and Wales and more clearly defining "charitable organizations" for purposes of registration and receipt of benefits,
- to, most recently, the development of NGO laws specifically designed to improve procedures and regulations that recognize, organize, monitor and support non-governmental organizations.

The laws reviewed all include procedures for registering NPO/NGO/charitable organizations and provide for a variety of registration organs: Registrar (in Barbados, the Registrar of Corporate Affairs and Intellectual Property), Charity Commissioners (in Bermuda), NGO Commission (in St. Kitts and Nevis), and Companies Office (in Jamaica). Almost all the laws reviewed provide procedures for denying or terminating registration, including an appeals process.

What appears to be absent from the laws reviewed is what ICNL identifies as provisions that create an enabling environment, one that permits NPOs/NGOs to freely engage in activities for the benefit of their members and the public (at times, ICNL also notes, the *absence of too restrictive* regulations can be just as enabling for NPOs/NGOs). Specifically, ICNL (2006) states:

CSOs are key participants in framing and debating issues of public policy and should have the right to speak freely about all matters of public significance, including debate about and criticism of existing or proposed state policies and actions.

As stated earlier in this chapter, the legal framework exists not only to regulate and monitor NPOs and NGOs, but also "to safeguard and encourage civil society .... Laws that permit and protect CSOs and given them broad latitude to operate give real meaning to the freedoms of association and speech" (Klingelhofer and Robinson, 2001). When laws in the Caribbean "permit" NPOs/NGOs to exist but are less expansive about "protecting" the sector, then the potential of the legal framework—to support and enhance a healthy, engaged, and productive civil society sector—will not be as fully realized.

## **FINDINGS: Promoting good governance in the civil society sector**

Laws governing the civil society sector should address the governance structure of civil society organizations, including, according to ICNL (2006), provisions that:

- identify certain minimum provisions for governance that are required to be present in the registering organization's governing documents,
- define the extent to which potential conflicts of interest will be regulated, and
- prohibit the distribution of profits and other benefits to persons associated with the organization.

Almost all of the acts reviewed require that organizations applying to register under the legislation must submit Articles of Association or Articles of Incorporation, or similar documents, to a designated registering body. Only four however (see Table 1) identify minimal provisions of NPO/NGO governance that must appear in the organization's governing documents in order to be eligible for registration. Of these, the two that are most specific and encompassing in scope, particularly with reference to the organization's governing body, are the relatively newer NGO Acts in the Bahamas and in St. Kitts and Nevis.

Only three acts place prohibitions on the distribution of earnings or profits or other personal and special benefits. The Companies Act in the Cayman Islands prohibits the payment of dividends to members, and the NGO Acts in the Bahamas and in St. Kitts and Nevis provide provisions prohibiting persons affiliated with the NGO from using the organization's income for personal gain or profit.

We also reviewed legislation to determine whether more formal standards of good conduct had been provided. The St. Kitts and Nevis NGO Act includes a provision at Section 3 (5) stating: "An NGO shall adhere to the provisions of a Code of Good Conduct as may be prescribed by the Minister in Regulations." This is the only reference provided in the legislation reviewed that calls for a "Code of Good Conduct" (the pending legislation in the Cayman Islands mentions "conduct for fund raising" by registered charities). The St. Kitts and Nevis code—depending on what it incorporates and whether the Kittitian and Nevisian NGOs buy into the process—could strengthen NGO governance capacity in the country and increase confidence in the management of NGOs, especially by perspective donors and supporters. If ensuing Regulations to the Act in St. Kitts and Nevis were to include a "Code of Good Conduct," it could serve as a model for other Caribbean states.

In sum, if we were *only* to consider good governance provisions, we would have to conclude that the existing legal framework is weak except for the newer NGO Acts. The older Companies Acts and Charities Laws generally do not address governance at all, and the inclusion of governance provisions should be an area for focus in future legislative reform efforts in the region.

## **FINDINGS: Supporting NPO/NGO financial sustainability**

The legal framework must also deal with issues that promote the financial viability of the civil society sector, including issues of fundraising, profit-making activities, and elements of the tax regime that affect nonprofit/nongovernmental organizations.

Relative to fundraising activities, we found that current legal frameworks are mostly silent about providing specific standards or regulations for fundraising. Trinidad and Tobago has a Street Collections Act that is quite dated but provides provisions to regulate the collection of money or sale of articles in public places. Bermuda's Charities Act specifically places restrictions on fundraising except for registered charitable organizations. Charities legislation in the Cayman Islands is currently under review, a process that was initiated because charities had been using raffles—which are illegal under the country's gambling laws—to raise funds.

Only the two NGO Acts (in the Bahamas and in St. Kitts and Nevis) provide provisions that permit NGOs to engage in commercial, profit-making activities. Each law stipulates that such activities must be authorized in the NGO's governing documents and that funds so derived are used exclusively for the purposes for which the NGO was established.

With the exception of Bermuda and the Cayman Islands, which do not have an income tax, all islands surveyed have laws that exempt registered NPOs, NGOs, and charities from payment of income taxes.

With respect to income tax benefits for donors, to encourage philanthropy, the majority of the island states reviewed provide such benefits. The Bahamas and St. Kitts and Nevis provide for these benefits under their respective NGO Acts; Jamaica, St. Lucia and Trinidad and Tobago recognize donor tax benefits (or tax efficient giving) under each country's respective income tax laws. In Barbados, donor income tax benefits, provided under the Charities Act, are currently under review.

Barbados, St. Lucia, and Trinidad and Tobago require donors to enter into a legally binding Deed of Covenant (in Barbados and St. Lucia for a three-year period, in Trinidad and Tobago for a one-year period) before the donors are entitled to tax deductions. Barbados is currently reviewing its three-year covenant requirement.

If we are to draw one conclusion about the legal framework supporting financial sustainability in the civil society sector, it might be that there is little consistency in how this support is provided among the islands surveyed. For example:

- (1) Three different types of legislation are used to support tax exemptions and tax benefits: income tax laws, charity laws, and NGO laws.
- (2) All islands, except the two where there is no income tax, provide income tax exemptions for registered NPOs, NGOs, and charities.

- (3) In some countries (e.g., St. Lucia, Jamaica, and Trinidad and Tobago), legal provisions for the registration of NPOs/NGOs and the exemption of such organizations from income tax payment are provided in different laws, *i.e.*, the first, registration, under a Companies Act and the second, tax exemption, under an Income Tax Act.
- (4) Over half of the islands surveyed provide provisions in their laws for income tax exemption for NPOs/NGOs **and** for income tax benefits to donors contributing to NPOs/NGOs.
- (5) Three countries (Barbados, St. Lucia, and Trinidad and Tobago) use a deed of covenant to place an obligation on the donor to make payment to the charity, a legal practice drawn from British philanthropic models, while other countries—for example, St. Kitts and Nevis in its new NGO law (2008)—have moved toward a more US model in recognizing the tax deductibility of donations.
- (6) The monitoring and regulation of fundraising activities are scarcely addressed in existing laws.
- (7) Provisions permitting NGOs to engage in profit-making activities are only addressed in the two, more recent, NGO Acts.

In conclusion, we might be encouraged that Caribbean governments seem inclined to support the civil society sector through the application of tax exemptions and tax benefits, while the need to provide support for and oversight of fundraising and income-generating activities of the sector is less well developed.

#### **FINDINGS: Providing for NPO/NGO transparency and accountability**

One of the most critical regulatory needs for the legal framework governing philanthropy and the civil society sector is that it ensures transparency and accountability on the part of nonprofit/nongovernmental organizations. This imperative for transparency and accountability is well stated in a report from the International Center for Not-for-Profit Law on civil society and law in the South Pacific (Klingelhofer and Robinson, 2004):

Transparency will maintain public trust in individual organizations as well as in the sector as a whole. Reporting requirements will ensure that the organization is actually using its money for the purposes claimed. It will also be a method to ensure that any tax benefits granted to the organization are appropriate. In short, transparency is the ability for those outside the organization to see into its workings to guarantee its reliability.

Of the island states reviewed, we only identified four that included reporting requirements in their legal frameworks, with a fifth (the Cayman Islands) having such requirements included in proposed legislation. The Bahamas, Barbados, Bermuda, and St. Kitts and Nevis all require that

registered organizations submit (generally annually) financial statements of accounts, with the Bahamian NGO Act requiring that such financial records be independently audited. Additionally, the NGO Acts in the Bahamas and in St. Kitts and Nevis require that financial statements and other information submitted by registered NGOs be published annually in at least one local newspaper. The proposed law in the Cayman Islands requires that such documentation be available for inspection by the public at designated venues and during normal business hours.

We also examined whether extant laws provided for a supervisory body to monitor the sector and provide oversight of registered organizations, similar to a Charity Commission model (as currently provided in Bermuda) or a NGO Commission model (as provided in St. Kitts and Nevis). In Barbados, the Attorney General is authorized to conduct inquiries into the affairs of charitable organizations, and the Registrar of the Corporate Affairs and Intellectual Properties Office is authorized to determine whether a charitable organization is operating in compliance with the law.

According to our review, the model of the England and Wales Charity Commission has only been applied in a very limited way in the Commonwealth Caribbean. In that model, the Charity Commission is an independent statutory body reporting to Government. The members of the one charity commission identified in our review, the Bermuda Charity Commission, are appointed by a Minister and have only a limited oversight role.

A Non-Governmental Organization Commission, as an oversight body, is provided in the St. Kitts and Nevis NGO Act (although a sister NGO Act in the Bahamas does not provide for this commission). The responsibilities of the Commission are enumerated in Section 17 of the St. Kitts and Nevis NGO Act, and include:

- monitoring of registered NGOs to ensure compliance with the Act,
- mediation of disputes among NGOs and between NGOs and Government,
- review of decisions by the Registrar regarding NGO registration, and
- providing recommendations to further the goals and principles of good governance for civil society.

Another section of the law provides for the duties and responsibilities of the Minister under the Act, responsibilities which—if a structure more like that of the England and Wales Charity Commission had been employed—would be the responsibility of an independent Commission. Nevertheless, the St. Kitts and Nevis NGO Commission, as an oversight and monitoring body, is the strongest and most complete example identified in our review.

Overall, accountability and transparency are only moderately provided for in the legal frameworks examined for this report. Reporting by NPOs and NGOs is required in less than half of the island states in our sample, and only the two, more modern NGO Acts require that information reported by NPOs/NGOs be available to the public. Only one country's law (St. Kitts and Nevis) establishes an oversight body, but that commission is not yet functional and therefore

provides no basis yet for evaluating its effectiveness. The degree of the NGO Commission's independence from government may influence its ultimate effectiveness in monitoring and supporting NGOs in the country.

## **FINDINGS: A final word . . .**

The above findings point to a few final conclusions drawn from our review of the legal framework for philanthropy and the civil society sector in the insular, English-speaking Caribbean.

- Current laws seem to adequately address the “nuts and bolts” needed for a legal framework designed to govern nonprofit/nongovernmental organizations. Whether a given framework derives its structure as a Companies Act, a Charities Act, or a Non-Governmental Organizations Act, each provides a process for identifying, establishing, and registering organizations as nonprofit, nongovernmental, or charitable entities. Some of the procedures or details of the provisions provided may need updating or modernizing, but they are mostly in place.
- Likewise, procedures for exempting registered organizations from payment of income taxes (and, in some cases, from payment of other government taxes) and for providing tax benefits to the individual or company making a donation to a registered NPO, NGO, or charity are also in place in the majority of the island states surveyed.
- What is *not* addressed as fully, as effectively, or as consistently in the laws we reviewed are provisions for good governance and for accountability and transparency; the companies and charities acts are mostly silent on these issues. The two island states with the most current laws (the Bahamas and St. Kitts and Nevis) have generally addressed governance and accountability/transparency more effectively and expansively than the older laws. Time will tell how successful the administration and implementation of these newer laws will be.
- Island states with older legal frameworks may want to examine their legislation to identify limitations, weaknesses and/or gaps, particularly relative to good governance and to accountability and transparency. They may want to consider modernizing, revising or updating such legislation in keeping with accepted international practices and in order to strengthen the civil society sector within their countries and to increase philanthropic support of activities undertaken by the nonprofit sector.

## 4. A Closer Look — Barbados, Cayman Islands, and St. Kitts & Nevis

### BARBADOS

In this chapter we shall take a closer look at philanthropy and civil society in three Caribbean island states, beginning with Barbados.

On 7<sup>th</sup> July 2008, in his Financial Statement and Budgetary Proposals, the Prime Minister of Barbados announced a government initiative to encourage the growth of government partnerships with the private sector for the purpose of increasing philanthropy in the country. In the 11<sup>th</sup> August 2008 issue of the online newspaper [www.Caribbean360.com](http://www.Caribbean360.com), under the headline “*Barbados Targets Philanthropic Investment*,” it was reported that Government would create a Foundation for Corporate Social Responsibility to “attract and manage private investment for public purposes.” In this release, it was clear the country’s Prime Minister, the Honorable David Thompson, was closely involved in the effort.

The CPN’s committee on philanthropy law has been following this initiative since then; it seemed to represent a promising approach in the region for new thinking and new strategies on philanthropic giving and corporate social responsibility—and it was one occurring at the highest levels of government.

In the August 2008 press release cited above, Prime Minister Thompson noted that the initiative was aimed at harnessing a “new tributary of resources for development of [the] country” by focusing on:

- the business community (both local and international),
- residents (particularly “high net worth individuals”), and
- the Diaspora in North America and Europe.

Mr. Thompson stated that not only should these individuals and companies contribute to the social and economic development of the country, they were often eager to contribute but the existing legal regime presented problems in enabling them to do so “in a mutually beneficial way.”

One key obstacle to expanding philanthropy in the country had already been identified—namely, that the three-year Deed of Covenant<sup>5</sup> was overly bureaucratic and stifled philanthropy. Nevertheless, it was the only tax efficient<sup>6</sup> method of making charitable contributions in Barbados. The Ministry of Finance commissioned a study on the issue (see

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<sup>5</sup> Deed of Covenant is a legal document which can be used to place an obligation on the donor to make regular payment to a registered charity. The use of the Covenant for tax-effective charitable giving in the Caribbean was imported from the UK, where it is no longer used for such purposes. According to Professor Debra Morris of the Cayman Islands Law School (*pers. comm.*, May 2010), the same tax efficiency once afforded by the Covenant in the UK is now given to charitable gifts which are accompanied by an appropriate tax declaration.

<sup>6</sup> Tax efficient giving denotes that donations to a recognized charity will derive a tax benefit to the donor.

Randall, 2008), and in his 2009 Budget Speech, the Prime Minister specifically pointed to the inefficiencies in the process:

... the covenant form, being a legal document, has to be signed and witnessed by both the donor and recipient charity. It also has to be registered with the Registrar of Corporate Affairs and Intellectual Property (CAIPO) or the Registration Department; it must then be submitted to the Inland Revenue Department for approval and registration. This is very often a time consuming process for the charity concerned. This long bureaucratic process has been identified in the [Randall] report as the reason why many charities in Barbados do not actively seek to raise funds by means of covenant.

The Prime Minister concurred with the conclusions and recommendations provided in the Ministry's study, including that the Covenant Rules should be abolished and, in place of covenants, official donation receipts should be allowed and that donations should be tax deductible to the full extent of the law. The relaxing of Covenant requirements, implementing other recommendations regarding charitable giving, and easing requirements for smaller "benevolent organizations" were recognized by the Prime Minister in his Budget Speech as important steps forward in increasing efficiency in the nonprofit sector and in expanding funding available to support social and economic development.

At the same time legislative reform was being addressed, the Government was also moving to establish a Centre for Philanthropy (CFP), which, among other responsibilities, would take the lead in promoting an ethic of Corporate Society Responsibility (CSR). The establishment and operation of the Centre would be carried out as a project activity entrusted to the Ministry of Foreign Affairs and Foreign Trade. The two primary objectives of the 12-month project (commencing in March 2009) were identified as follows<sup>7</sup>:

- *To establish a national Centre for Philanthropy (CFP) to improve the quality and quantity of private giving for non-profit driven social development initiatives in Barbados.*
- *To identify the prerequisites needed to enable the CFP to harness existing capital from the international business community, diaspora, local private companies and individuals seeking to make a contribution to the social development of the nation.*

In the documents available for this study, it is not clear what the legal structure for the CFP will be. For example, will it be a statutory body or a public-private partnership of some kind? Either form would help ensure that the Centre's governing board is comprised of persons both within and outside of government. If the Centre for Philanthropy is viewed as a non-partisan, highly professional, and even-handed institution, instead of just another government entity, it will more likely be successful in Barbados and valued as a model for replication elsewhere in the Caribbean.

At a 9<sup>th</sup> February 2010 consultation of government representatives and non-government stakeholders, called by the Ministry of Foreign Affairs, a consultant, Mr. Richard Jones, presented

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<sup>7</sup> As per email from Sandra Phillips, Ministry of Foreign Affairs and Foreign Trade, to the chairpersons of the Barbados Association of Non-Governmental Organisations and the Men's Educational Support Association, dated February 02, 2010.

his draft findings for realization of the above-identified objectives. The presentation focused on concepts for a “Better Barbados Foundation”<sup>8</sup> that was identified as an “intermediary” organization to mobilize resources from:

- the Diaspora community,
- the local private sector,
- the international business community,
- the public sector,
- the regional and international donor community,
- the public at large, and
- high-net-worth individuals.

The Foundation would “invest resources in social development activities in Barbados primarily [to be] undertaken by the foundation itself and the non-profit community.” Both a Vision Statement and a Mission Statement for the Foundation were presented, both of which we reproduce here because of the potential value of the Barbados initiative as a model for replication elsewhere in the Caribbean.

#### Vision Statement

*We strive to foster high levels of philanthropy by mobilizing and utilizing available resources, skills and expertise of Barbadians and friends of Barbados, both at home and abroad for the betterment of the people of Barbados.*

#### Mission Statement

*To improve the quality and quantity of philanthropic partnership among the private sector, non-profit sector, Diaspora community and the general public to support alternative and innovative solutions for bringing about positive change.*

Additional items of interest as presented by the consultant included the following:

- The Foundation would incorporate a community foundation operational model.
- The Foundation would support direct financing of specific projects, with the goal being to grow an endowment fund and thereby finance projects.
- There are three options for registering the Foundation under Barbadian law: as an Act of Parliament, as a Non-Profit Company under the Companies Act, or as a charity under the Charities Act.
- Incentives for fundraising would be provided by Government.

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<sup>8</sup> We have not been able to establish if the Better Barbados Foundation is a new incarnation of the Foundation for Corporate Social Responsibility as identified by the Prime Minister in July of 2008.

At the time of the preparation of this CPN report, it of course is not possible to determine the full promise or success of these initiatives in promoting philanthropic engagement in Barbados. However, we can point to the following positive features as observed to date:

- Undoubtedly, the involvement of the Prime Minister in prioritizing issues of philanthropy and corporate responsibility has increased the visibility of these concerns on the public policy agenda and has enhanced the likelihood of positive forward action.
- It is encouraging to note the Government's readiness to take on the particulars of legislative reform in order to streamline the process of making charitable contributions in the country. It is our understanding that the issues surrounding the Deed of Covenant had been drawn to the Prime Minister's attention, at least in part, by the Barbados Association of Non-Governmental Organisations (*pers. comm.*, Roosevelt O. King, Secretary General of BANGO, October 2009), whose members were undoubtedly constrained in their fundraising efforts by the inefficiencies of the Covenant process.
- It is also encouraging to note the emphasis on corporate social responsibility, which may result in new approaches for more efficiently and more effectively engaging the business sector in the "business" of philanthropy.
- Finally, the thread of collaboration on behalf of philanthropic growth that runs through the Barbados initiative draws attention to a variety of public/private sector partnerships, e.g., residents and visitors, local businesses and international firms, citizens at home and citizens overseas as part of the Diaspora. In short, the Barbados initiative clearly recognizes that there are many pieces to creating a network of philanthropy.

## THE CAYMAN ISLANDS

Unlike almost all of the island states in our survey (the other exception being Bermuda), the Cayman Islands is not an independent country, but rather a British Overseas Territory with a large measure of self-government.

The issues examined in a recent review of charitable nonprofit organizations in the Cayman Islands (CI Law Reform Commission, 2009) first arose in the Legislative Assembly in 1994 when a Private Member's Motion to amend the 1958 Gambling Law<sup>9</sup> resulted in the formation of a Select Committee to address the Member's Motion and, additionally, to deliberate on related issues regarding (CI Law Reform Commission, 2009):

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<sup>9</sup> At the time, large numbers of charities and nonprofit organizations engaged in raffles as a means of fundraising even though the Gambling Law made raffles for any purpose illegal in the country.

- the need to define a charitable organization,
- the creation of a register to identify charitable organizations,
- the establishment of mechanisms to hold charitable organizations accountable for donations received and distributed, and
- facilitating the oversight of the operations of charitable organizations.

In the end, the Select Committee determined that it was more appropriate for a charities law to be formulated rather than to amend the Gambling Law that would only affect one particular fundraising issue. As these discussions began (and continuing to the present), there was (and currently is) no charity legislation in the Cayman Islands, and Government relies on its Companies Act to register nonprofit organizations and its Trusts Act for the vesting of property acquired for charitable purposes.

In beginning the process to formulate a new law, the Cayman Islands identified several issues which would inform the work of the Commission's (CI Law Reform Commission, 2009) including:

- (1) Charitable nonprofit organizations are registered in the Cayman Islands as a subset of a wider voluntary or not-for-profit sector that also includes NPOs that benefit only their members and not the general public. In other words, not all nonprofit organizations (called "associations not-for-profit" in the Cayman Islands) are classified as charitable organizations. The then Attorney General pointed out that these were two separate categories and that the focus of reform should be placed on regulating charitable organizations "in keeping with their traditional meaning."
- (2) In formulating new legislation, the Cayman Islands would be required to take cognizance of recommendations from the Financial Action Task Force related to combating money laundering and terrorist financing activities. The new legislation would need to provide measures to prevent the use of charitable organizations as conduits through which terrorism and money laundering could be facilitated.

In the Law Reform Commission's subsequent "discussion paper" on regulating charitable nonprofit organizations (CI Law Reform Commission, 2009), the Government states that its overall desire to undertake formulation of a modern legal and regulatory framework for philanthropy arose from —

*... a recognition that the work of charitable organizations is essential to the development of any society and that an environment in which charities operate should be one that remains free and independent. ... [Furthermore] the implementation of these measures would in turn increase public confidence in charities, help new and existing charities to work effectively, ensure that donations are applied for legitimate purposes and deal with abuses in an expeditious and effective manner*

There are several key phrases included in the above quotation, cited from the Law Reform Commission's report, that justify repetition and highlighting:

- The work of charitable organizations is essential to the development of any society.
- An environment in which charities operate should be one that remains free and independent.
- The implementation of these measures would in turn increase public confidence in charities.

To the extent that the Government of the Cayman Islands incorporates these concepts into legislation now pending, it will address some of the specific deficiencies and weakness identified in existing Caribbean legal frameworks for philanthropy as identified and discussed in Chapter 3. These background deliberations as reported on in the 2009 Law Reform Commission's discussion paper are important because they point to:

- the need for Government to recognize the essential and complementary role played by NPOs in the social and economic development of the Cayman Islands,
- the need for Government to recognize its responsibility to create an open environment in which NPOs can freely and independently operate and contribute, and
- the need for the nonprofit and charitable sector to recognize the imperative for the proposed regulations as a means to increase public confidence in their work and programs.

"A Bill for A Law to Provide for the Regulation of Charities ..." has been prepared and was approved by the Law Reform Commission in late March of this year. Both the Bill and the final Law Reform Commission report on charity regulation will shortly be submitted to the Attorney General (*pers. comm.*, Debra Morris, Cayman Islands Law School, April 2010).

Whatever the final disposition of the proposed Bill, the Law Reform Commission is to be commended on its January 2009 discussion paper entitled "*Regulation of Charitable Non-Profit Organisations in the Cayman Islands.*" It is an important document for review by other Caribbean countries considering reform of their own legal frameworks. It is a carefully devised discussion of charitable law in the Cayman Islands, the need for reform, and how the recommendations for reform and a new law were developed. It also includes an overview of legislative models on charitable non-profit organizations as found elsewhere (New Zealand, the United Kingdom, New South Wales, Bermuda, and Barbados).

## THE FEDERATION OF ST. KITTS AND NEVIS

The two-person CPN philanthropy law committee first had an opportunity to engage in these issues in the Caribbean when William Moody and Judith Towle served on the board of a private U.S.-based foundation, the Mukti Fund. The Fund focused almost all its grant-making program over a 20-year period on the dual island state of St. Kitts and Nevis. Mukti operated in St. Kitts and Nevis from 1983-2004, and during the final years of its efforts in the Federation, the trustees turned some of their attention to how the Mukti Fund could encourage the development of local philanthropy in the country.

This initiative emerged as a part of the Fund's final five-year program strategy, as a specific effort to collaborate with the for-profit sector and to promote incentives encouraging the business community's participation in projects supported by the Mukti Fund. As such, the Mukti trustees (including Moody and Towle) became involved in an effort to revise the country's legal code and to strengthen corporate philanthropic incentives.

It is interesting that concerns about the inefficiencies in the country's legal structure supporting philanthropy were expressed most vocally by the business sector, specifically in the person of the then director of the Chamber of Industry and Commerce, Mr. Richard "Ricky" Skerritt, now Minister of State for Tourism. Mr. Skerritt approached the Mukti Fund with a proposal to fund a legal consultancy to guide Government and the private sector in establishing a legal framework to strengthen corporate philanthropy. Important to the corporate community was the need to improve charitable giving laws and provide rational, consistent, and standardized regulations governing how the private sector would make philanthropic contributions and receive tax benefits in return. At the time, few, if any, of these procedures were in place in a way to generate confidence on the part of the business community.

These early initiatives emerged from the "supply" side of philanthropy, for it was the donor community that recognized the need for reform. Unfortunately, the Chamber and the Mukti Fund were unable to enlist sufficient support from the federal government to enable legislative reform to move forward at that time. The Mukti Fund pursued what it referred to as its "private philanthropy and legislative reform" initiative for a number of years, from about 1996-2000, but little was actually accomplished that resulted in real change.

Fast forward a few years, and we find, as reported in Chapter 3 and Appendix A of this report, that the Federation of St. Kitts and Nevis has recently enacted a new Non-Governmental Organizations Act (2008), representing a response not only to "regularize" the process of making donations (the objective sought by the business community a decade ago) but also to provide measures to "regulate" the operation of NGOs in the country.

The new NGO Act was not the result of efforts by either the for-profit or the not-for-profit sectors. Rather, the Act emerged out of a CARICOM project that aimed to establish a model legislative framework in the region for the NGO sector. The previously enacted NGO Act of Belize (2000) was recommended by CARICOM as a model to St. Kitts and Nevis, with an additional incentive provided by the country's mandate to comply with obligations to the Caribbean Financial Action Task Force. As noted above in the Cayman Islands sub-section, St. Kitts and Nevis also

had obligations to prevent the use of charitable organizations as conduits through which terrorism and money laundering could be facilitated. Consultations were held with the NGO sector as the law was being drafted, and changes in the legislation were made pursuant to the sector's recommendations (*pers. comm.*, Karen Hughes, Legal Department, Government of St. Kitts and Nevis, February 2010).

As noted in Chapter 3, a unique feature of the St. Kitts and Nevis NGO Act, among those reviewed for this study, is its provision for a NGO Commission to monitor registration, mediate disputes, review the Registrar's decisions and provide recommendations to further good governance for civil society. The International Center for Not-for-Profit Law has suggested such oversight entities should be independent, mixed with representatives of the public, the government and the NGOs themselves. ICNL recommends an oversight model similar to the independent Charity Commission of England and Wales (ICNL, 2006), but the St. Kitts and Nevis law delegates NGO oversight responsibilities not only to the Commission but also to the Minister. Therefore, while the establishment of the Commission is promising in of itself, it is important to wait for the Regulations yet to be promulgated to determine the degree of independence to be provided for the Commission, as well as the provisions designating the composition and representation requirements of its membership.

The Act also includes a provision for a Code of Good Conduct to which NGOs in the country will have to adhere as to be provided in the Regulations.

The NGO Act of St. Kitts and Nevis is an important law in the evolvement of legal structures for philanthropy in the Caribbean:

- It is the most current law studied for this report and includes two important features not seen in other legislation reviewed: the provision for a NGO Commission and the provision for a NGO Code of Good Conduct. Other Caribbean countries will want to monitor progress in the country as it moves ahead to fully implement the Act and, in particular, to draft regulations to the Act that will clarify the role of the NGO Commission and the good governance features of the NGO Code of Conduct.
- Of the countries reviewed for this study, the Federation of St. Kitts and Nevis provides the clearest example of direct engagement by the business sector—in this case, through the country's Chamber of Industry and Commerce—in efforts to improve the legal framework and enhance the legal processes associated with philanthropy.
- Given the earlier history of philanthropic initiatives in the Federation, in particular, those emerging from the corporate sector, it would certainly be of interest to monitor the flow of philanthropy from the for-profit sector to the nonprofit sector to determine if the new Act will address the concerns previously articulated by the business sector and thereby increase its confidence in and support for the nongovernmental/nonprofit sector. While it might be difficult to assemble

quantifiable data, at least initially perhaps anecdotal evidence might be available to estimate overall strengthening in philanthropic engagement.

- We also note that a survey of nongovernmental organizations and community-based organizations in St. Kitts and Nevis was carried out in 2002 (Jacobs, 2002). The Department of Gender Affairs in St. Kitts identified 101 sports, youth, political, church, professional, community and improvement groups on that island, of which 22 were short-listed as NGOs/CBOs for participation in the survey. The Department of Community Affairs and Gender Affairs on Nevis provided a list of 24 community-based groups in Nevis, of which 7 were identified as active and asked to participate in the survey. Only ten organizations (one in Nevis and nine in St. Kitts, two identifying themselves as CBOs and eight as NGOs) eventually completed the questionnaire. With the NGO Act now in place, and with the passage of time, it will be interesting to determine if and how the Act will alter this composition of NGOs/CBOs in the country and what its impact will be on how these groups function in and contribute to Kittitian and Nevisian society.

## 5. The Way Forward

The three mini-case studies offered by Barbados, the Cayman Islands, and the Federation of St. Kitts and Nevis in Chapter 4 provide additional evidence of “movement” in the Caribbean for strengthening the legal framework for philanthropy and the civil society sector. If the current survey was expanded to include the Wider Caribbean, we believe the pattern seen in this initial study would be replicated. In short, what we have learned is that the legal framework supporting philanthropy and civil society in the Caribbean includes —

*A variety of governing laws, many out of date and perhaps equally out of touch with more current thinking about the civil society sector, but also a number of promising initiatives to improve and modernize the legal and regulatory framework and also to adapt it to the Caribbean experience and understanding.*

We began this study with a recommendation growing out of the CPN's *Caribbean Philanthropy Mapping Project* (CPN, 2009). The very last sentence in that report became the starting point for this study:

*CPN may want to pay greater attention to the various national, philanthropic, legal and tax frameworks [in the Caribbean] ... which can eventually lead to an advocacy role to promote a more unified framework that would encourage the growth and effective use of philanthropic dollars throughout the region.*

CPN has now moved forward in addressing the first part of the above directive, *i.e.*, it has paid greater attention to the various national, philanthropic, legal and tax frameworks in the Caribbean, and this report is the output of that initial “paying attention” process.

Now our challenge—that of the Caribbean Philanthropy Network and of other organizations and advocates concerned about Caribbean philanthropy and the legal structures that govern philanthropy—is the second half of the above statement from the CPN mapping study: specifically, how do we identify “*an advocacy role to promote a more unified framework that would encourage the growth and effective use of philanthropic dollars throughout the region*”?

In this final chapter of the current study, we provide a number of preliminary recommendations or “next steps” aimed at strengthening the legal framework that affects nonprofit organizations and the civil society sector in the Caribbean.

## **(1) Support a process to update or replace existing laws in order to address weaknesses and to provide conformity with current international standards.**

In the Caribbean countries reviewed for this report, we identified legal procedures already in place for registering those organizations that provide a public benefit to the community, and, in most countries, there are also provisions in law regarding tax benefits for registered organizations as well as for donors contributing to registered organizations<sup>10</sup> (although tax benefits were not always in the same law that requires registration). However, we also identified concerns about the existing legal framework, which Caribbean countries may want to examine more closely and act upon as appropriate.

- A general legislative norm for many Caribbean countries is either the 1960 England and Wales Charities Act (since repealed and updated) or provisions under a given country’s Companies Act. Both models need to be more closely examined to determine how well they reflect modern Caribbean societies and international standards and how effectively their provisions strengthen civil society beyond procedures for establishment, registration and taxation.
- Some laws requiring updating or revision might be addressed through relatively straightforward amendment of existing laws (such as Barbados’s updating of the covenant provisions in its Charities Act).
- Some legislation needs to be addressed through a harmonization of existing laws, which may be required when provisions governing the nonprofit and charitable sector are found in more than one law, thereby weakening government’s ability to provide oversight while also increasing confusion for NPOs/NGOs who must deal with several laws, several agencies, several compliance regulations, etc. (as is the case in Jamaica).
- Some issues may require a major overhaul of the legal framework, as is now taking place in the Cayman Islands in its drafting of a new Charities Act.

The Cayman Islands case study in Chapter 4 provides an excellent model for legislative reform in the nonprofit/charitable sector. Through its Law Reform Commission, this UK territory undertook a careful review and assessment of existing regulations, including identification of issues to be

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<sup>10</sup> Anguilla is one Caribbean island state that has not yet provided legal authority for NPOs and charitable organizations. According to Eleanor Astaphan, Director of the Anguilla Financial Services Commission, the new Proceeds of Crime Act, gazetted on 17<sup>th</sup> July, 2009, makes provision for the designation of a supervisory authority for service providers who are not regulated persons, such “unregulated persons” including NPOs and charitable organizations. She also reports that Anguilla is currently in the process of developing a regulatory regime to undertake this responsibility (email communication, dated 12<sup>th</sup> April, 2010, from Ms. Astaphan to Mitzie Temple-Richardson, Attorney General’s Chambers).

considered when drafting a new law and examination of legislative models in other countries. The Commission's "Discussion Paper" (CI Law Reform Commission, 2009) on the regulation of charitable, nonprofit organizations is well worth study by any Caribbean country considering legislative reform in this sector.

The legislative framework for NGOs coming out of CARICOM and resulting in new NGO Acts in several Caribbean countries, including St. Kitts and Nevis, the Bahamas, and Belize, represents another approach to legislative reform. The framework (i) incorporates a regional model that each country can adapt to its own historical, cultural, and social situation and (ii) includes broader provisions for the governance of nongovernmental organizations than do earlier laws such as Charities Acts or Companies Acts. As such, the NGO Act model has considerable potential for strengthening civil society and good governance practices by NGOs. However, as we have seen in our review of St. Kitts and Nevis in Chapter 4, many of these particulars have been left to the Regulations yet to be promulgated. The Regulations, in turn, will determine not only how effectively Government will monitor and provide oversight of NGOs, but also how energetically Government will safeguard and encourage civil society and philanthropic engagement in the country.

## **(2) Support initiatives that offer promise for strengthening oversight of the nonprofit sector, applying good governance standards to the sector, and ensuring accountability by the sector.**

Caribbean governments and civil society organizations need to pay more attention to the practical challenges of monitoring and supporting the NPO/NGO sector. How well the legal framework serves to build public and government confidence in the sector will depend not only on the laws put in place, but also on the regulatory and administrative structures and practices put in place.

While most of the Caribbean laws we examined require a government entity to oversee registration, only one (the new NGO Act in St. Kitts and Nevis) provides for a NGO Commission with responsibilities broader than registration (in fact, the NGO Commission in St. Kitts and Nevis does not serve as the Registrar under the Act). The Commission's mandate includes responsibilities for monitoring registration, mediating disputes among NGOs and between NGOs and Government, and providing recommendations that further good governance practices by NGOs. The England and Wales Charity Commission has also been suggested as an oversight/supervisory model for the Caribbean, although Caribbean islands importing this or any model must insure that the borrowed model reflects local context and culture in order to avoid unintended consequences when an external model is too broadly introduced.

Periodic reporting by NPOs/NGOs to a supervisory body is required in less than half of the islands in our sample. Reporting generally takes the form of annual filing by NPOs/NGOs of financial statements that usually do not require an audit (one exception being the Bahamas which does mandate audits). There is almost no accountability by NGOs to the public, except for provisions

in the new NGO Acts in the Bahamas and St. Kitts and Nevis for Government to publish financial reports received from NGOs in local newspapers once a year. There is some evidence that accountability (for example, submission of annual financial reports) exists more on paper than in reality, although it was reported during the course of this study that the Government's compliance officer for charities in Barbados was more aggressively pursuing compliance by registered organizations, in particular for the timely filing of required financial statements (see Appendix A, Section (4), Barbados).

In evaluating reporting requirements for NPO/NGOs, governments may want to consider a "proportionality test" so that the requirements for smaller organizations are simplified and those for larger NPOs/NGOs (receiving substantial benefits from the state or raising a significant amount of funding) would be more demanding.

The new NGO Act for St. Kitts and Nevis the only legislation reviewed that mentions a Code of Good Conduct for NGOs, with the Code to be established by Regulations to the NGO Act.

Internationally, with the growing prominence of the nongovernmental sector, NPO/NGO accountability is also emerging as an issue of concern, with codes of conduct being one appropriate response to such concerns. Essentially a set of good practice principles for NGOs, such codes are generally established to (i) strengthen the NGO's internal governance structure and (ii) strengthen the NGO's reputation in order to increase acceptance. In addition to setting core values and guiding principles for the organization, NGO Codes of Conduct typically provide for the following, as reported by the Anti-Corruption Resource Centre (<http://www.U4.no>):

- Strong oversight boards that are independent from management and government,
- Complaints procedures,
- Conflict of interest policies,
- Whistleblower protection policies.

Codes of Conduct might also outline policies for program planning and evaluation, fundraising, and advocacy practices.

If a Good Conduct Code is eventually incorporated in the Regulations promulgated for the St. Kitts and Nevis NGO Act, this could be an effective means of strengthening good governance in the NGO sector in that country and thereby increasing confidence by Government and potential private-sector donors in the capacity of NGOs to, among other responsibilities, manage funds and implement programs. Its effectiveness will depend on how the Code is written (and by whom), what the Code includes, and if the NGO sector is supportive of the process and the product.

Indeed, there would be benefit for other Caribbean island states if a "model code" were to be developed for the region, perhaps under the auspices of CARICOM or the OECS. Among other benefits, such an exercise would help the region's NGOs address operational issues about which

there may be a “gray” area of uncertainty by both governments and NGOs, such as the advocacy role of nonprofit and nongovernmental organizations.

Basic codes of conduct can more broadly be encouraged in Caribbean countries where an umbrella organization for NGOs is present, such as the Barbados Association of Non-Governmental Organisations (BANGO). On its web site, BANGO asserts that it is a national focal point for civil society organizations in Barbados and an advocate for the participation of CSOs in the governance of society. As such, BANGO, and similar associations in other Caribbean countries, might well be the appropriate institutional vehicle to support the development and promulgation of Codes of Good Conduct for the nonprofit/civil society sector.

### **(3) Support initiatives that (a) increase public understanding of civil society and the role of the civil society sector and (b) increase governments’ appreciation of the contributions of civil society organizations.**

In several reports issued by the International Center for Not-for-Profit Law (for example, see Klingelhofer and Robinson, 2004), the importance of an educational program is stressed—often as part of a consultative process regarding legislative issues. According to ICNL, educational programs can build understanding about the nature of civil society and civil society organizations. For example, what is meant by “civil society” and what is included in civil society legislation?

Because these are newer concepts in the Caribbean and often not clearly understood, governments may not fully appreciate the contributions of civil society organizations. Their suspicion, even hostility, toward NGOs, has long been one factor in defining relationships between governments and NGOs in the region, particularly in the 1970s and 1980s (Webson, 2010). Likewise, the nonprofit sector too often is almost instinctively distrustful of government regulation, even when regulation may enhance public trust in the work and programs of the sector.

Similarly members of the public in the Caribbean may not sufficiently appreciate the importance of the legal framework governing modern concepts of philanthropy. As noted in Chapter 2, more traditional patterns of giving in the Caribbean, based as they were on mutual aid and existing social networks, did not require a legal framework within which to thrive. However, today’s more complex patterns of philanthropy do require legally based regulation, and these laws are not as well understood. Misunderstanding or lack of understanding of these official, more formal regulations, and their importance in promoting social development, can diminish support for the quality-of-life goals and activities of NPOs and NGOs.

As discussed by the ICNL in its assessment of law and civil society in the South Pacific (see Klingelhofer and Robinson, 2004):

Some community groups are cautious about the prospect of any change in the law, in case this brings more restrictions on their activities. Caution over legal reform

is based on the fear that it may lead to increased government control, rather than seeing the law as providing a “safe space” in ... society within which community organizations can operate.

ICNL recommends the development of simple publications that set out the nature of civil society organizations, their linkages with government but also how they differ from government, and the importance of legislation to the operation of NGOs. Such publications are most effective when they are developed as a part of a larger dialogue on legislation, such as the current process in the Cayman Islands to write a new charities law or in Barbados to amend its charities law or in St. Kitts and Nevis to implement its new NGO Act.

A related educational issue concerns the need for capacity building in the region for the nonprofit/nongovernmental sector. It is a dual challenge as it is important to build leadership capacity in NGO leaders **and** to strengthen the long-term sustainability of NGO institutions.

An improved legal and regulatory framework may do much to inspire confidence in the nonprofit sector. However, what is also needed is an informed, up-to-date, and well-functioning nonprofit sector, and, unfortunately, too little is being done in the Caribbean to ensure capacity building for the sector. The role of academia in the Caribbean in supporting NGO leaders and strengthening NGO institutional growth and maturation is not well developed. More needs to be done to complement the more recent and promising NGO legislation with equally promising initiatives that build competence and capacity in the NGOs themselves and in the individuals who guide the NGOs, whether board, staff, volunteers or other participants.

#### **(4) Support principles and practices of social responsibility in the Caribbean.**

Corporate social responsibility (CSR), also referred to simply as corporate responsibility, relates to the “supply side” of the philanthropy equation. The legal framework does not enforce or regulate corporate responsibility in the way that the legal framework might regulate the “demand side” through, for example, establishment of a code of conduct for nonprofit organizations. Corporate responsibility is a self-regulating mechanism, whereby the business sector or individual businesses monitor and ensure adherence to prevailing laws, ethical standards, and international norms and promote the public interest through non-profit-making activities. A common approach of CSR is philanthropy.

In Chapter 2, we noted that at the University of the West Indies, Mona, the Development and Endowment Fund had taken steps (not completed) to establish “Principles of Social Responsibility” for corporations conducting business within the Caribbean. Such principles, while they are not embodied in a formal act of legislation, represent standards of corporate values and social responsibility. The UWI initiative to establish these principles more formally in the region needs to be reexamined and steps taken to restart the initiative, not only by the University but also by others engaged in strengthening philanthropy in the Caribbean.

In Barbados (see Chapter 4), the Prime Minister's 2008 proposal to create a Foundation for Corporate Social Responsibility has evolved as a project to establish a Centre for Philanthropy that would address a variety of philanthropy issues in the country, including promotion of an ethic of Corporate Social Responsibility in the local and international business sector resident in the island. The ultimate goal is to create a self-sustaining source of complementary financing for social development activities in the country while fostering an enabling environment for philanthropy in Barbados.

Bermuda has already established a Centre on Philanthropy to represent both charities and donors. Its goal is to create a more collaborative Third Sector by working with all sectors of society: the public sector (government), the private sector (donors and volunteers) and the third sector (nonprofits) (see [www.centreonphilanthropy.org](http://www.centreonphilanthropy.org)). Its membership stands at over 260 individuals, corporations, and nonprofit organizations in Bermuda. Its programs and outputs include a variety of publications, forums, conferences, research, events and other resources that are directed at both the donor community and nonprofit organizations. A review of the agendas for the Centre's 2007 and 2009 "Third Sector Conferences" shows a mix of presentations for strengthening nonprofits as well as providing donor-focused discussions on social entrepreneurship, corporate responsibility, and corporate donor best practices.

The emerging initiative in Barbados and the established Centre on Philanthropy in Bermuda are but two examples of creative and exciting efforts underway in the Caribbean region to promote philanthropic engagement on a national level and to provide resources for all sectors of society to contribute to social development.

At the same time we applaud such efforts we also recognize that the legal framework is the foundation on which such strategies, programs and institutions are established. In the end, we return to that which will ultimately increase confidence in philanthropy and in "giving for the public good." Key to confidence-building is the trust we place in the legal structure that facilitates, protects, and monitors philanthropic activity.

# Glossary of Terms

## **Charity (or Charitable Organization)**

A charity is “a body which is established for charitable objects or purposes, and is intended to and does operate for the public benefit” (taken from the Barbados Charities Act, 1985).

Similarly, in the UK, a charity, or charitable organization is a particular type of voluntary organization incorporated or non-incorporated as a tax exempt body which (1) is created and operated for charitable purposes, (2) employs all its resources to those charitable activities that are under its direct control, (3) does not distribute any part of the income generated for the benefit of any trustee, trustor, member, or other private individual, and (4) does not contribute to or associate with political organizations (Webson, 2010).

## **Civil Society**

Civil society is composed of the totality of voluntary, civic and social organizations and institutions that form the basis of a functioning society.

The World Bank uses the term civil society to refer to: the wide array of non-governmental and not-for-profit organizations that have presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.

See also footnote 2 in this report.

## **Civil Society Organization (CSO)**

The organizations comprising civil society: community groups, nongovernmental organizations, labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.

## **Covenant**

A covenant, or deed of covenant, is a legal document placing an obligation on the donor to make regular payment, usually at least once a year, to a registered charity.

## **Friendly Society**

A mutual aid organization or benefit society composed of a body of people who join together for a common financial or social purpose.

## **Limited by Guarantee**

A private company limited by guarantee is an alternative type of corporation used primarily for nonprofit organizations. A guarantee company does not usually have a share capital or shareholders; instead it has members who act as guarantors. Like a private company limited by shares, a company limited by guarantee must include the suffix “Limited” in its name, except when specifically excluded by law.

### **Not-for-profit Organization**

Used interchangeably with nonprofit organization— see below.

### **Nongovernmental Organisation (NGO)**

An organization that is not part of and is independent from any government. NGOs may be established to carry out charitable activities and are also referred to as nonprofit organisations or civil society organizations.

### **Nonprofit Organisation (NPO)**

A nonprofit organization is formed for the purpose of serving a public benefit other than the pursuit or accumulation of profits for owners or investors; NPOs are established without the expectation of any commercial or monetary profit. NPOs are private as opposed to governmental; they are self-governing, often voluntary and always of public benefit.

### **Philanthropy**

Four relatively authoritative definitions (<http://en.wikipedia.org/wiki/Philanthropy>): “private initiatives for the public good” (John W. Gardner); “voluntary action for the public good” (Robert Payton); “the private giving of time or valuables ... for public purposes” (Lester Salamon); and “the aim of philanthropy ... is improvement in the quality of human life” (Robert Bremner).

### **Tax-effective or Tax-efficient Giving**

A specifically derived English term to indicate that a charitable donation will derive a tax benefit, usually to the donor or, as is the case in the United Kingdom, the charity.

### **Third Sector**

A term to cover the voluntary or nonprofit sector, *i.e.*, not the government or public sector and not the business or private sector. More recently, it may be used when referring to civil society.

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## APPENDIX A

### A Review of the Legal Framework for Philanthropy and the Nonprofit Sector in Selected, English-speaking Countries in the Insular Caribbean

The four key components of a legal/regulatory framework for Caribbean philanthropy and the nonprofit sector were identified and discussed in Chapter 3 of this report. In this Appendix, we provide a more detailed discussion of how selected Caribbean countries have incorporated these components within their legislative structure.

#### (1) Establishment and Legal Status

##### Preliminary Findings:

##### **Antigua and Barbuda** (*Establishment and Legal Status*)

###### **Companies Act**

###### **Friendly Societies Act of 1928**

Charities and nongovernmental organizations may register under the Companies Act or the Friendly Societies Act and will be governed accordingly. Antigua-Barbuda's legal structure for NPOs/NGOs is the least developed of the Caribbean countries surveyed. Reportedly, a few years ago NGOs in the country were provided with copies of the Belize Non-Governmental Organizations Act as a model for drafting similar legislation for Antigua and Barbuda, but the effort was not carried forward by Government (*pers. comm.*, Dr. Brian Cooper, former president, Antigua Environmental Awareness Group, April 2010).

##### **Bahamas** (*Establishment and Legal Status*)

###### **Non-Governmental Organizations Act, 2005**

The NGO Act, which came into effect in 2007, serves as a voluntary listing of nonprofit NGOs recognized by the Bahamian Government. The Act of 2005 sets out minimum standards that must be observed by NGOs and requires registration in order for NGOs to enjoy tax benefits provided under the Act.

A Register of Non-Governmental Organizations is provided for in the Act. If the Registrar refuses to register a NGO making application, a provision is made for legal appeal as well as for legal appeal when an NGO's Certificate of Registration is cancelled by the Registrar.

## **Barbados** (*Establishment and Legal Status*)

### **Barbados Charities Act of 1978, 1985**

The 1978 Charities Act, updated in 1985, provides registration procedures for charities and is modeled on the England and Wales Charities Act of 1960. To qualify as a charitable organization, an applicant must establish that it is in fact charitable and that it operates for the public benefit. The term “charity” is defined within the Act, in part, as a body which “is established for charitable objects or purposes and is intended to and does operate for the public benefit.”

“Charitable purposes” are defined by means of a non-exhaustive list covering 26 main purposes and 14 sub-headings. “Public benefit” is defined, in part, as a “benefit of a kind comprised within the scope of charitable purposes [and] which is available to members of the public at large or to a section of the public ascertained by reference to some specified geographical area.”

The Barbados Charities Act is one of the oldest in the region of those reviewed for this study, and, at the time a review was undertaken by the Government of Australia in 2001, it was the only common law country in the world to have attempted a major statutory redefinition of “charity” (Government of Australia, 2001).

Registration procedures are provided in the Act, and a process for appeal is available within the Act for any decision of the Registrar to enter or not enter an institution on the Register of Charities, or to remove or not remove an institution from the Register.

## **Bermuda** (*Establishment and Legal Status*)

### **Charities Act of 1978, 1989, 1998**

#### **Friendly Societies Act, 1868**

The 1978 Charities Act, revised in 1989 and further amended in 1998, is quite similar to the Barbados Charities Act of the same year, although, unlike the Barbados legislation, the definition of charitable purposes is limited.

The Act includes provisions for Charity Commissioners, appointed by the Minister, with powers, in part, related to the registration of charitable organizations, including cancellation of registration. An appeals process is available and outlined in the law.

## **Cayman Islands** (*Establishment and Legal Status*)

### **Companies Law (2007 Revision)**

#### **Trusts Law (2007 Revision)**

Currently charitable nonprofit organizations are registered in the Cayman Islands under the Companies Law (2007 Revision). Such groups are a sub-set of the wider voluntary or not-for-profit sector that also includes NPOs that benefit only their members and not the general public. In other words, in the Cayman Islands, not all nonprofit organizations (called “associations not for profit”) are classified as charitable organizations (Cayman Islands Law

Reform Commission, 2009).

Additionally, the country's Trusts Law (2007 Revision) provides for vesting in a trustee property acquired for a charitable purpose.

A Charities Bill is currently under consideration in the Cayman Islands, and this is discussed in more detail in Chapter 4 of this report.

### **Jamaica** (*Establishment and Legal Status*)

#### **Companies Act of 1965, 2004**

Most charities in Jamaica are formed under the Companies Act as companies limited by guarantee and not having a share capital. Prior to 2004, the prevailing legislation was the Companies Act of 1965, later revised as the Companies Act of 2004. All companies are registered with the Companies Office of Jamaica, and the Minister of Commerce has the power to remove the word "Limited" from the name of a charitable organization. It is relatively easier for charitable organizations to form a company under the new legislation (2004) than it had been under its 1965 predecessor (Goldson, 2006).

Charities in Jamaica can also be formed by means of a Trust, although Attorney Peter Goldson, writing in 2006 in *The Gift: The Journal for Caribbean Philanthropy*, maintains that while the rules for establishing a charity as a company are fairly standard and have years of legal precedence, those governing the charitable Trust are more diffused. He states, "It is almost as if a blank sheet of paper can be used in order to establish the rules that govern the [charitable] Trust."

### **St. Kitts and Nevis** (*Establishment and Legal Status*)

#### **Non-Governmental Organisation Act of St. Christopher and Nevis of 2008**

The Non-Governmental Organisation Act of St. Christopher and Nevis of 2008 defines an NGO as a non-profit-making, non-governmental body whose purposes "are primarily for the benefit of the public ...." The definition does not specify that the organization must be formed as a company limited by guarantee under the Companies Act, but the law does state, in Section 6 (Application to Registrar), that in order for a NGO to be registered, it must provide evidence that it is a company limited by guarantee. Therefore, unincorporated NGOs will not be able to register and will therefore not receive tax benefits under the Act, nor will donors to the non-registered organization receive tax-deductions for contributions.

The Act provides for a Non-Governmental Organization Commission as an oversight body to, among other responsibilities, review decisions of the Registrar regarding matters of NGO registration. If the Registrar refuses to register an applying NGO, appeal is made to the NGO Commission, whose decision is final. Should a NGO's Certificate of Registration be cancelled by the Registrar, then ultimate appeal is to the High Court whose decision is final.

## **St. Lucia** *(Establishment and Legal Status)*

### **Companies Act of 1996**

Nonprofit organizations are incorporated under the Companies Act of 1996 and are governed by the provisions of that Act. A Non-Governmental Organizations Act is reportedly in the pipeline in St. Lucia, but has not yet been acted upon.

There are tax provisions governing charitable institutions under the Income Tax Act, and these will be discussed below in Legislative Component (3), Financial Sustainability.

The St. Lucia National Community Foundation was set up by an act of Parliament in 2001 and is used to make social-issue grants in the country. Its principal funder is the National Insurance Corporation, and a representative from the Corporation sits on the Foundation's board of directors.

## **Trinidad and Tobago** *(Establishment and Legal Status)*

### **Companies Act of 1955**

NPOs, NGOs and other charitable organizations are incorporated under the Companies Act of 1955, under sections of the Act (Chapter 81:01 Part V Division 1 Sections 307-316) that relate to companies without share capital, *i.e.*, a nonprofit company. Those entities that are not incorporated are guided by common law. To register as a charitable organization for tax-exemption purposes, the organization must have been in operation for at least one year. A letter requesting charitable status must be submitted to the Permanent Secretary of the Ministry of Finance, including in the letter the objectives of the organization.

## (2) Good Governance

### Preliminary Findings:

#### **Bahamas** (*Good Governance*)

##### **Non-Governmental Organizations Act, 2005**

The NGO Act lists eight attributes required of NGOs registering under the Act, including independence from Government control; management and control by a board of directors elected to office as specified by the organization's Articles of Association; and prohibition on any director, officer or employee from using the organization for personal gain or profit. Additionally, the NGO's activities must be consistent with the Constitution of The Commonwealth of The Bahamas.

NGOs applying for registration must submit required documentation that includes the NGO's Articles of Association and Bylaws, its organizational structure, and its accounting and management practices.

Part III and Part IV of the Act outline procedures for NGOs relative to staff appointment and staff responsibilities (Part III) and for the NGO's governing body (Part IV). With regard to the governing body (designated as the principal policy-making organ of the NGO), the Act specifies certain procedures which must be included in the NGO's Articles of Association, such as the manner of election of the chairperson of the governing body.

There is a brief mention (Section 6 (4)) of adherence by registered NGOs to the "Code of Good Conduct for Caribbean NGOs", but this is not sufficiently clarified in the Act.

#### **Barbados** (*Good Governance*)

##### **Barbados Charities Act of 1978, 1985**

The current law states that any charity applying for registration shall provide "copies of its trusts ... and such other documents or information as may be prescribed or as the Registrar may require for the purpose of the application." This appears to be the only requirement with respect to the government's need for information about the charity's governing documents. Trustees of a charity registered under the Act may "apply to the Registrar for incorporation as a Board." From the date of the incorporation, the Board shall exist as a body corporate.

#### **Bermuda** (*Good Governance*)

##### **Bermuda's Charities Act of 1978, 1989, 1998**

"Charitable organization" under this Act is defined as "any person or body of persons having charitable purposes and relying for its funds substantially upon contributions from members of the public in Bermuda." Any charitable organization in Bermuda wishing to undertake money-raising activities must apply for registration in order that the Charity Commissioners may be satisfied that the applicant is a "fit and proper charitable organization". Applications are to include information about the principal officers, main purposes of the organization, nature of fund-raising activities, and purposes for which the funds raised are intended.

Applicants are also required to include as annexes copies of the organization's constitution, rules, by-laws, or other documents regulating the conduct of the charitable organization.

### **Cayman Islands** *(Good Governance)*

#### **Companies Law (2007 Revision)**

#### **Trusts Law (2007 Revision)**

Regulation of "Associations not-for-Profit" falls under section 80 of the Companies Law (2007 Revision), which confers on the Governor the power to register, on application, an association not-for-profit as a limited liability company. An applicant must demonstrate that the association was formed to promote "commerce, art, science, religion, charity or any other useful object," intends to apply its income to promoting its stated objectives, and prohibits the payment of dividends to members of the association (Cayman Islands Law Reform Commission, 2009).

Applicants must pay a fee (CI\$1,000) and provide copies of the organization's Memorandum or Articles of Association, information on board members, information on fund sources, and specify why the association wishes to be registered as a nonprofit organization.

The association's Articles of Association must include certain requirements, such as: the organization will maintain records of contributions, contributors, and how contributions were applied and it will execute an annual audit when gross income reaches CI\$50,000 (CI Law Reform Commission, 2009).

### **Jamaica** *(Good Governance)*

#### **Companies Act of 1965, 2004**

When a charitable organization registers under the Companies Act (2004), the organization's internal management is governed by a single document, its Articles of Incorporation.

Charities established by means of a Trust are unincorporated and are governed by a Trust Deed setting out the functions of the charity (Goldson, 2006).

### **St. Kitts and Nevis** *(Good Governance)*

#### **Non-Governmental Organisation Act of St. Christopher and Nevis of 2008**

When registering for NGO status under the Act, applicants must provide copies of the organization's Constitution or Memorandum and Articles of Association, demonstrating that it is a company limited by guarantee. It must also provide a statement of its aims and purposes and its organizational structure, including how directors are elected.

Each NGO registered under the Act must have a governing body designated as the principal policy-making organ of the NGO. Additionally, the NGO's Memorandum and Articles of Association, or its bylaws, must specify certain procedures which are enumerated in the Act, such as the manner of electing the chairperson of the board.

Under Part II (Registration) of the Act, it is noted in Section 3 (5) that NGOs should adhere to a “Code of Good Conduct” as such a Code may be established by the Minister (for Community Affairs) in Regulations to the Act. As Regulations are drafted for the NGO Act in the future, it would be a very positive step toward strengthening NGO governance and increasing confidence in philanthropic activities in St. Kitts and Nevis if indeed a “NGO Code of Good Conduct” were to be established. As such, it is likely to become a model for other Caribbean states.

### (3) Financial Sustainability

#### Preliminary Findings:

##### **Bahamas** *(Financial Sustainability)*

###### **Non-Governmental Organizations Act, 2005**

Provisions under Part V of the Act (Financial Provisions) exempt registered NGOs from payment of income taxes; as well, NGOs may apply to the Minister of Finance to be exempted from payment of business taxes or any other tax or duty imposed by Government. Furthermore, registered NGOs may engage in any commercial, income-generating activity provided that such activities are authorized in the NGO's Articles of Association or Bylaws and monies so derived are used exclusively for the purposes for which the organization was established.

Provisions also impose rules relating to the implementation of internal accounting and administrative procedures necessary "to ensure transparent and proper use of its financial and other resources," as well as listing penalties for non-compliance.

##### **Barbados** *(Financial Sustainability)*

###### **Barbados Charities Act of 1978, 1985**

The tax exemption rules for charities in Barbados are very loosely based on those relevant in the United Kingdom and include, for example, exemption from stamp duty and from the tax on dividend income and interest.

Tax regulations relating to charitable donations are currently under review (see Chapter 4) following the Government's 2009 Budget Speech, which promised a repeal of rules relating to the current three-year, legally binding "covenant" agreement required of donors contributing to charitable organizations. Legislation is under consideration that would provide donor tax deductibility to the full extent of the law, as is currently the case, for example, in the United States (Randall, 2010).

##### **Bermuda** *(Financial Sustainability)*

###### **Bermuda's Charities Act of 1978, 1989, 1998**

The Act places restrictions on fundraising activities except for registered charitable organizations. The Act states that no person or body of persons may solicit members of the public for a donation or receive a donation for a charitable purpose except a duly registered charity.

There is no income tax in Bermuda, and therefore the concept of income tax benefits for charitable organizations or charitable donations is not applicable. There is however relief for charitable organizations from other taxes such as stamp duty.

## **Cayman Islands** *(Financial Sustainability)*

### **Companies Law (2007 Revision)**

### **Trusts Law (2007 Revision)**

The recent review of charitable nonprofit organizations in the Cayman Islands (CI Law Reform Commission, 2009) had its beginning in a Private Member's Motion (No. 25 of 1994) to amend the 1958 Gambling Law. The issue under discussion focused on the use of raffles by charitable and nonprofit organizations as a means of fundraising since all raffles are deemed illegal under the Gambling Law. A Select Committee of the Legislative Assembly was formed to address the Member's Motion, with the areas targeted for review expanded to include the definition and registration of charitable organizations and related issues of NPO accountability and oversight. Chapter 4 discusses in more detail the recommendations from the Law Reform Commission.

Like Bermuda, there is no individual or corporate income tax in the Cayman Islands, and therefore tax exemptions for purposes of encouraging charitable giving are not relevant.

## **Jamaica** *(Financial Sustainability)*

### **Companies Act of 1965, 2004**

### **Income Tax Act**

Nonprofit "companies" are registered under the Companies Act, but issues of tax exemption are dealt with under the country's Income Tax Act. That Act, Section 12(h), states that the income of any organization or association organized and operated exclusively "for religious, charitable, scientific or educational purposes" may apply to the Income Tax Department to be approved for and receive exemption from income tax. Approved charities may also apply for waiver of or a concessionary rate on custom duties for the purchase of equipment and machinery.

Section 13 (1) (a) of the Income Tax Act restricts deductions for donations to a qualified charitable organization to an amount "not exceeding one-twentieth of statutory income." A list of approved organizations can be found at [www.jamicatax.gov.jm](http://www.jamicatax.gov.jm).

Goldson (2006) points out the complexity of doing business with three different government departments in order to deal with the full legal framework governing philanthropy in Jamaica, specifically:

- Section 16 of the Companies Act (Ministry of Commerce, Science and Technology) for establishment of not-for-profit companies and exemption from payment of the company assets tax if the "company" is formed for promoting commerce, art, science, religion, charity, or other useful object ...."
- Section 12 (h) of the Income Tax Act (Income Tax Department) for income tax exemption for corporations or associations "organized and operated exclusively for religious, charitable, scientific or educational purposes."

- Section 13 (1) (a) of the Income Tax Act (Ministry of Finance) concerning donations for philanthropic purposes that qualify as allowable deductions from the total income of a donor.

Goldson (2006) rightly points out that this diffusion of the legal structure for philanthropy is confusing. He writes, "If we are serious about philanthropy, the legal regime by which it is governed must change .... [Otherwise] fine sounding platitudes about the importance of philanthropy will remain hollow ...."

#### **St. Kitts and Nevis** *(Financial Sustainability)*

##### **Non-Governmental Organisation Act of St. Christopher and Nevis of 2008**

Part IV of the NGO Act, Section 12 (1), provides that every NGO registered under the Act will be exempt from payment of corporate income tax and may apply to the Minister of Finance to be exempted from payment of other taxes and duties levied by Government. The latter exemption is subject to Regulations that may come into effect.

Additionally (Part V, Section 13), all NGOs registered under the Act may engage in commercial, income-generating activities provided such activities are authorized by the organization's governing documents, the monies derived therefrom are used exclusively for the NGO's stated objectives and purposes, and monies so generated are not available for the personal benefit of those engaged in the governance of the organization.

The above provisions are similar to those found in the NGO Act for the Bahamas.

#### **St. Lucia** *(Financial Sustainability)*

##### **Income Tax Act**

Under the country's Income Tax Act, the income of "religious, charitable, or educational institutions of a public character", insofar as such income is not derived from a business operated for profit, is exempt, as provided in Section 25 (1) (r). Government can also grant specific tax incentives.

Donors to charitable organizations receive full deductibility for donations to charities if they enter into a covenant to give prescribed amounts to a registered charity over a three-year period. There are also provisions in the Tax Act supporting donations to sporting institutions.

#### **Trinidad and Tobago** *(Financial Sustainability)*

##### **Corporation Tax Act, Income Tax Act**

##### **Street Collections (Control) Act, No. 26 of 1939**

Donations to charities recognized by Government are tax deductible by the donor. However, companies making charitable donations must enter into a covenant arrangement when making donations, although the deed of covenant or other agreement need only be of one year's duration.

Additionally, there is legislation in Trinidad and Tobago relating to street collection for charities, specifically to regulate the collection of money or the sale of articles for charitable purposes in the streets and other public places.

## (4) Accountability and Transparency

### Preliminary Findings:

#### **Bahamas** (*Accountability and Transparency*)

##### **Non-Governmental Organizations Act, 2005**

Part V of the NGO Act, "Financial Provisions," requires that registered NGOs have their accounts independently audited annually and submitted to the Registrar of Non-Governmental Organizations within four months following the end of the organization's fiscal year. This is a tighter timeframe for filing than is found in other jurisdictions, such as the United Kingdom or the United States, where filers are given nine months in which to prepare and provide the required financial documents.

The Registrar is instructed once a year to publish in the Gazette, and in at least one local newspaper, a copy of the financial statements and other documents submitted by registered NGOs.

Other provisions in Part V of the Act require NGOs to implement internal accounting and administrative procedures "necessary to ensure the transparent and proper use of its financial and other resources" (Section 17 (1)).

The Act provides penalties for registered NGOs not meeting the requirements of this Part of the Act, including cancellation of the NGO's Certificate of Registration and loss of tax exemption privileges.

#### **Barbados** (*Accountability and Transparency*)

##### **Barbados Charities Act of 1978, 1985**

Section 41 of the Barbados Charities Act instructs that charities must keep proper books of account and prepare consecutive statements of account of income and expenditure covering a period of not more than 15 months. Such statements are to be transmitted to the Registrar of Corporate Affairs and Intellectual Property within one month following the period for which accounts have been prepared. One observer of charities management in Barbados has noted the need to update the features of the Act dealing with preparation of accounts as they are based on the 1960 England and Wales Charities Act and, as such, are seriously outdated (Randall, 2010/b).

The Registrar may also order that the accounts be investigated by an auditor appointed by the Registrar, with the expenses of the audit to be paid by the charity.

Furthermore, the Attorney General is authorized to conduct inquiries into the affairs of charitable organizations, and the Registrar of the Corporate Affairs and Intellectual Property Office (CAIPO) is authorized to determine whether a charitable organization is operating in compliance with the law. It has been noted that the oversight of charities as provided in the Act is generally the responsibility of a fairly junior CAIPO official with other, perhaps more demanding, responsibilities. However, the same observer notes recent improvements in

monitoring procedures and cites at least one charity having received a “Notice of Default” from the Registrar regarding back filing of annual Financial Statements. That organization is now in the process of “dusting off” 20 years of financial records to file with the Registrar (Randall, 2010/b).

### **Bermuda** (*Accountability and Transparency*)

#### **Bermuda’s Charities Act of 1978, 1989, 1998**

Part I (Section 3 (1) of the Bermuda Charities Act establishes a committee called the Charity Commissioners for Bermuda, which has some limited oversight of charities registered in the country. Members are appointed by the Minister of Health and Social Services. The Commissioners review and approve/disapprove applications for charitable status registration and may cancel the registration of any charity thought by the Commissioners not to be “a fit and proper charitable organization”.

Registered charities must maintain accounts of income and expenditures and shall submit to the Registrar a copy of such accounts, including a balance sheet, within six months of the end of each financial year. The Commissioners have the additional authority to require an independent audit of any charity’s accounts by an auditor approved by the Minister.

### **Cayman Islands** (*Accountability and Transparency*)

#### **Companies Law (2007 Revision)**

#### **Trusts Law (2007 Revision)**

#### **The Charities Bill, 2009 (proposed)**

The Bill for a proposed Charities Act in the Cayman Islands (see also Chapter 4 of this report) calls for the appointment by the Governor of a Registrar of Charities, as well as the appointment of such other officers as are thought necessary to assist the Registrar in the proper discharge of that person’s functions. Although not identified as a Charities Commission in the proposed law, the functions of the Registrar are extensively enumerated in Clause 4 (1), and the 19 primary functions listed are comparable to the five objectives for the establishment of a Charities Commission as recommended by the Cayman Islands Law Reform Commission (2009).

The proposed Charities Act also grants to the Attorney-General the authority to make inquiries into the condition and management of charities. This clause of the proposed act (Part IV) is quite detailed in its discussion of procedures and other particulars for such inquiries.

Under the proposed Charities Act, registered charities are required to maintain proper accounts of funds received and funds expended and to submit a copy of such accounts for a 12-month period to the Registrar within nine months of the end of each financial year. The Registrar may also require that the accounts of a charity be audited.

Accounts provided by registered charities to the Registrar, in compliance with the requirement to submit annual financial reports, or written reports resulting from an audit required by the Registrar, are to be available for inspection by members of the public “at prescribed venues during normal working hours” (Clause 24 (6)).

## **St. Kitts and Nevis** (*Accountability and Transparency*)

### **Non-Governmental Organisation Act of St. Christopher and Nevis of 2008**

The Act (Section 17) establishes a Non-Governmental Organization Commission to function as an oversight body, to monitor NGO compliance with the Act, to make recommendations to further the goals of good governance for civil society, to mediate disputes among NGOs and between NGOs and Government, and to review the decisions of the Registrar in relation to NGO registration. Further details about the Commission are to be provided in Regulations to the Act.

Section 14 (1) of the Act requires that registered NGOs maintain proper accounts and, additionally prepare an annual statement of accounts. The Act also requires that registered NGOs be audited annually, which may be too stringent a requirement for smaller NGOs and NPOs. Audited financial statements are to be submitted to the Registrar by the 30<sup>th</sup> of September each year, along with a report of activities and policies undertaken by the NGO during the reporting year.

The documents so submitted are to be open for inspection by any member of the public upon payment of a prescribed fee. Additionally, the Registrar is to publish each September, in at least one local newspaper, the financial statements and other documents submitted by NGOs, which may be difficult to execute since September is also the month required under the law for submission by NGOs of this documentation to the Registrar.