



Beyond Boundaries

Newsletter of the World Association of Non-Governmental Organizations

www.wango.org

Vol. 10, No. 2 Summer 2011

INSIDE

NONPROFIT LAW: LEGAL AND GOVERNANCE ISSUES FOR NGOs WORLDWIDE

Page 1, 2, 3, 4, 5, 6

SPECIAL EVENT FUNDRAISING: WITH INSIGHTS FROM THE RAINFOREST ALLIANCE

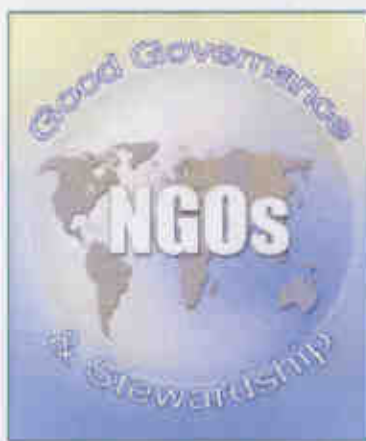
Page 1, 6, 7, 8, 9, 10, 11, 12, 13, 14

WANGO SECRETARY GENERAL ATTENDS 17TH AFRICAN UNION SUMMIT

Page 1, 14, 15

EVALUATION OF NGO CAPACITY TO DEMONSTRATE PERFORMANCE AND IMPACT

Page 2, 15, 16



NONPROFIT LAW: LEGAL AND GOVERNANCE ISSUES FOR NGOs WORLDWIDE

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Founder, Hurwit & Associates*

(The following is an edited excerpt from a presentation given on June 8, 2010 at the 2010 online World Congress of NGOs, www.wangoconference.org/2010.)

** Hurwit & Associates is a law firm that provides comprehensive legal counsel exclusively to tax-exempt organizations, foundations, and charitable donors.*

I send greetings to NGO colleagues around the globe. It is a privilege to be here addressing those of you that have shown interest in the operation of nonprofit organizations.

[continued on page 2]



SPECIAL EVENT FUNDRAISING, WITH INSIGHTS FROM THE RAINFOREST ALLIANCE

Staci Pierson
Manager of Special Events, Rainforest Alliance

(The following is an edited excerpt from a presentation given on June 8, 2010 at the 2010 online World Congress of NGOs, www.wangoconference.org/2010.)

Welcome everybody. It is a pleasure to be here. I appreciate the opportunity to share some of my experiences holding fundraising events with Rainforest Alliance. I hope you will be able to take away some tips to hold some very successful events of your own. I just want to preface this presentation by pointing out that

[continued on page 7]

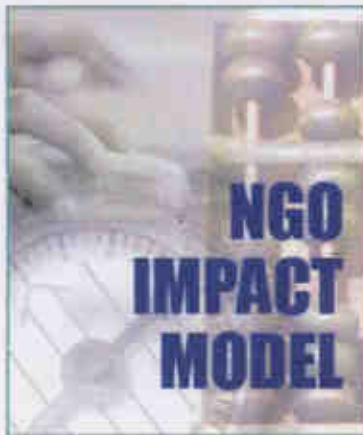


WANGO SECRETARY GENERAL ATTENDS 17TH AFRICAN UNION SUMMIT

The 17th Summit of the African Union (AU) took place from June 23 to July 1, 2011 in Malabo, Equatorial Guinea. WANGO Secretary General Taj Hamad was among the distinguished attendees. Held on the theme of "Youth Empowerment for Sustainable Development," the opening of the Summit had a unique flavor as articulate and motivated youth engaged in a frank and open discussion with the Heads of State, Heads of Government, and Heads of Delegations in attendance.

One of Taj Hamad's unique contributions to the African Union is as a co-chair of the Trypanosomiasis Vector Research and Control Foundation (TVRC). Trypanosomiasis is a serious parasitic disease, caused by a protozoan and transmitted in Africa by the Tsetse

[continued on page 14]



EVALUATION OF NGO CAPACITY TO DEMONSTRATE PERFORMANCE AND IMPACT

Lizzette Rojas, PhD and Flordeliz Serpa, PhD

Through the years, in Puerto Rico and worldwide, non-governmental organizations (NGO) had demonstrated their commitment to the communities they serve providing services and helping the government in this endeavor. However, if there are limitations in their ability to demonstrate their performance and impact in the community, in a timely, valid, objective, and transparent way, their capacity to continue operating can be significantly damaged.

In order to examine the NGO's capacity to demonstrate performance and impact, measuring programmatic alignment, operational alignment, and knowledge management,

(continued on page 14)

(continued from page 1, Nonprofit Law: Legal and Governance Issues for NGOs Worldwide)

Let me begin by introducing myself and the agenda. My law firm specializes in nonprofit law — the law of tax-exempt organizations. In a given year, we work with about 175 to 200 organizations involving a variety of tax and charitable-giving questions and, increasingly, the topics primarily at hand today: governance organizational structure and relationships between NGOs. Before entering this practice I was an Assistant Attorney General in the Massachusetts Attorney General's office in a division that oversees nonprofits in Massachusetts. Approximately 75% of our clients are located in the United States and probably about 25% are NGOs from outside the United States.

Our main topic today is governance. This is both in terms of the governance of organizations from the United States and also in terms of the relationship between them and their foreign counterparts, which is an increasingly important element in this age of globalization.

Stewardship

With the topic of governance in mind, the running theme throughout the session will be the concept of stewardship. If you have to take away one idea from this session, it would be understanding how important stewardship is in United States nonprofit law. It also underlies the relationship between U.S. "friends organizations" and their NGOs abroad.

Let me first describe an important case here in Massachusetts that I think in many ways captures the idea of stewardship. This case involves the Boston Marathon, which many of you may very well know.

What you may not know is that the Boston Marathon is owned, operated, and run by a nonprofit organization in Massachusetts: the Boston Athletic Association. Some years ago, what had been a relatively small organization, and mostly volunteer driven, had the opportunity to go national and obtain lucrative television contracts and corporate sponsorships. The board of directors felt that it was unprepared to conduct this operation. So what it did was delegate the operation of the marathon by contract to a for-profit promoter, who in the end earned for his firm over three million dollars for the running of the marathon. When a court took a look at this contract, it overturned the contract, saying that the money was supposed to be used for the benefit of the public and that

the board cannot simply delegate out its duties in this fashion to a private corporation. In the United States, the board has a responsibility to govern an organization and act as the final legal authority for an organization.

So the bottom line here is that the nonprofit board has a duty to govern, participate, oversee, review, monitor, and evaluate the activities of the organization. In a word, its job is to exercise stewardship over the organization.

So by stewardship we essentially mean holding the assets of an NGO and ensuring that those assets are used for the benefit of the public. They are not for one's own private interest. The board is holding those assets on behalf of another — the public. It is for the public's benefit. So if we could bring only one word to the table, which in many ways describes nonprofit law as a whole in the United States, it would be stewardship.

Good governance and stewardship

Let us look at how good governance and stewardship is done in practice. As the nonprofit funding relationships and organizational relationships grow more complex, there is increasing importance of good governance and stewardship in a nonprofit setting between countries.

This chart before you depicts a typical nonprofit organization as structured in the United States. Admittedly it is a very large organization; an institutionally sized organization. But it is a typical one nevertheless in that the empty boxes that you see at the bottom of the chart represent the staff who report and are accountable to the assistant directors, the vice presidents, the chief financial officers, and so forth. (According to whatever term may be used for each organization. In the United States, we do not really have defined terms for these positions and thus there may be some confusion when one introduces oneself as having a particular title. But there is great flexibility in employing these various terms as you like.) These assistant directors at that level report and are accountable to what is often called the executive director, but sometimes it is the president or the chief executive officer, who then reports and is accountable to the board of directors, which then itself is supposed to report and be accountable to the public, who are served by the staff people that we started with at the bottom of the chart. It is this cycle of responsibility

(continued on page 3)



Top Right: WANGO Secretary General Taj Hamad with H. E. Dr. Ibrahim Gambari, who spoke at WANGO's World Congress of NGOs in 2010. Dr. Gambari is Joint Special Representative, UNAMID (Joint Africa Union-United Nations Peacekeeping Mission in Darfur) and former UN Special Adviser on the International Compact with Iraq and Other Issues and UN Under-Secretary-General for Political Affairs



Non-Profit Evaluation & Resource Center, Inc. (NPERCI) conducted an evaluation in a sample of NGOs in Puerto Rico between May and November 2010. NPERCI used the Focused Active Evaluation Model[®] and the Institutional Strategic Mobility Model[®] to guide the evaluation. The first model, Focused Active Evaluation Model[®], was used to frame the evaluation process and was structured in three phases (Pre-Evaluation, Evaluation, and Post-Evaluation).¹ The second model, Institutional Strategic Mobility Model[®], was used to frame the variables measured during the evaluation.²

The evaluation was descriptive, cross-sectional, based on the mixed-design (quantitative and qualitative methods), and included components of the interactive evaluation and the monitoring evaluation.^{3,4,5,6,7} The Statistical Package for Social Sciences (SPSS) was used for data entry and analysis.⁸ The sample used was a non-probability sample of NGOs and voluntary subjects. The NGO's sample included 102 organizations that agreed to participate in the evaluation. In general terms, the NGOs studied offered education, health, and/or social services. The NGO's sample was representative of the principal geographic areas of Puerto Rico. Regarding the sample of participants, collaborators, and NGOs personnel, this sample was constituted by 405 subjects that agreed to participate in the evaluation and answered the questionnaire. The collected information was anonymous and confidential. The questionnaire administered to participants, collaborators, and NGOs personnel consisted of closed- and open-ended questions with simple instructions to facilitate its administration. The closed-ended questions included multiple choice and Likert scales. The data collection instruments were pre-codified to facilitate the data entry and analysis. Fifteen percent

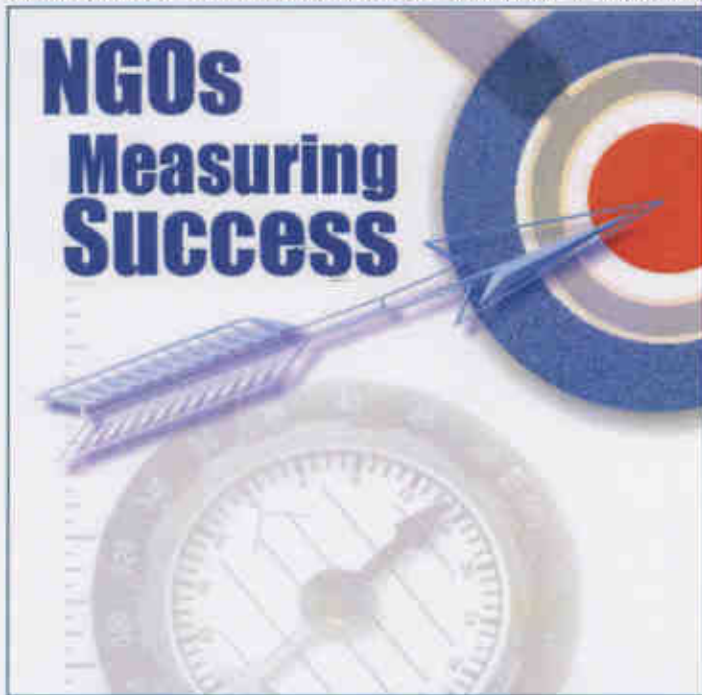
(15%) of processed data was randomly verified for quality control purposes.

The results of this study showed that most NGOs lack the capacity and/or tools to demonstrate the results of their performance and impact in the community in a valid, objective, and reliable way. The information provided by the NGOs and the evidence revised by the evaluators suggested that almost one third of the NGO's sample had a limited or very limited capacity to demonstrate their performance and impact; in more than one third of the NGOs, the programmatic alignment was slightly or not efficient; and, in less than one third of the NGOs, the operational alignment was slightly or not efficient. The knowledge management, in almost one fifth of the NGOs, was slightly or not efficient.

On the other hand, NGOs had been recognized for their contributions to the betterment and quality of life of their communities. However, many NGOs limit their monitoring and evaluation to the strategies and activities implemented and, therefore, confront serious limitations to demonstrate their effectiveness, based on the level of compliance with their objectives. The results of this evaluation showed that three fourths of the NGOs that participated in the study were slightly or not effective; they did not appropriately measure the progress toward reaching their objectives, could not demonstrate achieving them, and did not measure the changes in the population they serve. Regarding the sample of participants, collaborators, and NGOs personnel, the majority were satisfied with the NGOs and their services.

Based on the results of the evaluation, the evaluation team presented the following recommendations to improve

[continued on page 16]



the capacity of the NGOs to demonstrate their performance and impact:

1. To formulate a clear vision of the organization.
2. To clearly establish the priorities of the organization.
3. To improve the correlation between the mission, vision, philosophy, goals, objectives, strategies, activities, and services of the NGOs.
4. To define, revise and/or refine the philosophy or service model, assuring its reflection in the programs and services.
5. To specify the institutional objectives in quantitative terms, answering the questions what, who, how much, when and where.
6. To align the assistance provided to clients to the philosophy or service model to minimize the segmentation in the services offered and maximize the NGOs internal collaboration, limiting the internal competence for clients and providing integral services.
7. To improve the connection between the human resources management, the resources administration, and the institution's control system.
8. To strengthen the documentation of processes and activities and the internal control system, as well as, the measurement of the changes in the clients or community served.
9. To develop and implement a human resources training and development plan using available resources, free or at low cost, based on collaborative agreements, in order to keep the personnel well-prepared.
10. To strengthen the internal and external collaboration.
11. To establish well-planned, well-coordinated, and more versatile collaborative agreements.

During the last decades, the importance of evaluation

and its application and the demonstration of performance and impact have increased worldwide. Federal government, foundations, and donors have increased the score of program evaluation in their request for proposals. The development of an evaluation culture is unpostponable, particularly between NGOs, in view of the funds assigned to them. It is important to remember that the evaluation process informs about the operational situation, effectiveness, efficiency, and impact of a program, project, service or the organization itself. Also, the evaluation provides necessary data about clients, as well as, data about expected and achieved outcomes, providing a competitive advantage and placing the NGO in a better position when compared to its competitors. ■

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Flordeliz Serpa, PhD – Dr. Serpa is the President and Chief Executive Officer of Non-Profit Evaluation & Resource Center, Inc. since 2004. She has been a researcher and evaluator since 1993. She has an MS in Evaluation Research and a PhD in Administration.