



The non-profits and philanthropic sector of Switzerland: Definition, Regulatory Framework, Infrastructure and Future Development

Prof. Lichia Saner-Yiu, Ed.D., President, Centre for Socio-Eco-Nomic Development (CSEND), Geneva

Prof. Raymond Saner, PhD, University of Basle & Sciences Po, Paris; and Director, Diplomacy Dialogue, Geneva

Paper submitted to the “Seminar on Administrative System Reform of Public Service Units”, 21-22 September 2013
(version 27.08.2013)

Synopsis

The term "non-governmental organisation" or NGO designates voluntary groups of individual organisations formed to provide services or to advocate certain public policies. This paper presents a classification scheme to capture the full diversity of the philanthropic eco-system in Switzerland and in International Geneva which is an integrate part of the Swiss NGO scene.

This paper presents also the regulatory framework covering the Swiss Not-for-Profit and Philanthropic organisations and the international NGOs registered in Switzerland. The legal framework governing the philanthropic sector is reviewed based on the Swiss Civil Code and other legal instruments. Also discussed is the “Swiss Foundation Code” which was first published in 2005, and revised and annotated in 2008¹ along with other voluntary instruments for better governance . This Swiss Code adopted and completed the first European Good Governance Code for grant-making foundations (2005).

A brief description is made of the Swiss philanthropic infrastructure.² The final section discusses ways to strengthen the philanthropic infrastructure of Switzerland and including recommendations for setting up a learning platform for knowledge sharing and further professionalization of this field. One scenario for the future development of Swiss philanthropic foundations is to leverage the resources available for impact investing and mission driven programming. In this context philanthropic foundations become more of a

¹ Safford, J. (translator), 2011, Principles and Recommendations for the Establishment and Management of Grant-Making Foundations, abridged version, Publikationsreihe Foundation Governance,

² Von Schnurbein, G. & Bethmann, S. 2010, *The Swiss Philanthropic Infrastructure*, CEPS, Basle University.

Accessed on 17.07.2013,

http://ceps.unibas.ch/fileadmin/ceps/redaktion/Downloads/Forschung/The_Swiss_Philanthropic_Infrastructure_02.pdf

“change angel” rather than an “operational doer”. Moreover, targeted theoretical developments are needed to ensure sustainability of the foundation’s activities and results.

Keywords: Regulatory framework, philanthropy, non-government organisation, code of conduct, knowledge management, learning platform and change theory, philanthropic supply chain, The International Geneva

1. Introduction

The philanthropic and non-profit sectors of Switzerland are rich and diverse in size and scope with a tradition dating back hundreds of years. For example, one of the oldest registered foundations, the Inselspital in Bern, was founded in 1354 through the will of Anna Seiler, a wealthy woman from Berne, the capital of Switzerland. The hospital remains functional today and is officially known as Berne University Hospital and is operated by the original founding charitable foundation.³

“Today, Switzerland ranks number 1 among the most generous nations in Europe. Excluding church taxes, private giving in the Confederation amounts to an estimated 1.2% of annual disposable income, more than UK and the Netherlands” (McKinsey & Company, 2008).⁴

Over two thirds of households give regularly (Spendenmonitor 2008; gfs-zürich; 2009) while a typical German Swiss citizen donates twice as much per year than does a Romand (French Swiss) amounting to 400-500 CHF vs 200 CHF per year (Spendenmonitor 2008). Both figures, however, are four times higher than those of their nearest neighbours (Germany and France, respectively) according to a FSG interview published in Bilan on 4 Nov 2009.⁵

The international philanthropic response to the tsunami of December 2004 underlines this point: the Swiss gave around 45 CHF per head, the most of any nation.⁶ In particular, Switzerland donated twice as much per capita from private funds as second ranked Norway, nearly four times as much as France and Germany, and more than twelve times as much as the US (Fondation 1796, 2010)⁷.

³ Inselspital see reference at <http://en.wikipedia.org/wiki/Inselspital>

⁴ Gesellschaftlichen Wandel gestalten: Drei Ansätze für mehr Philanthropie in Deutschland; McKinsey & Company; 2008

⁵ Parmary Vakaridis; Les 20 philanthropes qui font la Suisse; Bilan; 4 Nov 2009. FSG interviews.

⁶ International Committee on Fundraising Organizations; Tsunami Donations: An International Comparison; 2005.

⁷ Advancing Philanthropy in Switzerland: A vision for a cooperative and recognised philanthropic sector, 2010, Fondation 1796. Accessed at

http://www.rwi.uzh.ch/oe/stiftungsrecht/aktuellesausdemzentrum/EN_Rapport_Philanthropie.pdf

“Switzerland, with its political stability and secure legal framework, offers an ideal legal environment for philanthropic structures”, some analysts say.⁸ The clear, liberal and ethical framework conditions help to attract many foundations to Switzerland which in turn make available private resources for the public interests domestically and internationally.

By the end of 2011, there were 12,700 charitable foundations active in Switzerland with a total endowment of approximately CHF70bn and annual payouts estimated to be around CHF1–1.5bn (Swiss Foundations Report, 2012). Around half of the federally registered foundations give internationally (Interim Update of the “Promoting Philanthropy in Switzerland Initiative”⁹).

How to leverage this highlevel of financial resources and sizeable infrastructure in Switzerland for the common good and to achieve the agreed outcomes and impact will be a critical questions to address in the continued development of Switzerland’s philanthropic sector.

“International Geneva”

“International Geneva” is an unique feature of Switzerland which lends itself well for the development of the NGO and philanthropic sector. Due to its location advantage, i.e., UN Office at Geneva (UNOG), and long humanitarianism tradition, Geneva and indirectly Switzerland has formed a strong international community, known as “International Geneva”.

International Geneva is made up of international organisations (governmental and non-governmental), foreign missions, headquarters of NGOs, think tanks and representations of diverse organisations and groups.¹⁰ In addition, universities and specialised higher learning institutions complete this unique constellation creating a global commons where global public interests are debated and negotiated. Various forms of NGOs contributed to the vibrancy and productivity of this community.

2. Terminology and Legal Definitions

The concept of Non-Government Organisation (NGO) is broad and varied. It can be attributed to any legally constituted bodies created by natural or legal people that operate independently from government and have non-commercial or non-profit purposes. However, it is important to note that political parties are not considered to be NGOs who - in contrast to political parties - are pursuing wider social goals.

⁸ Public Benefit, Cosima von Rechteren, BÄR & KARRER, Nov. 2012. Accessed at http://www.baerkarrer.ch/upload/publications/13_00_06ArtikelCosimafrWebsite.pdf

⁹ Promoting Philanthropy in Switzerland Initiative - Interim Update, February 2010, accessed at http://www.lombardodier.com/annexes/24597/24616/Philanthropy_Interim_Report_Feb2010.pdf

¹⁰ Ministry of Foreign Affairs, Swiss Confederation, International Geneva. Accessed at <http://www.eda.admin.ch/eda/en/home/topics/intorg/un/unge/geint.html> on 16/08/2013.

The same applies to other terms like not-for-profit organisation, charity, voluntary organisation, civil society organisation, philanthropic foundations and non-profits. Often times, these concepts overlap with and are used interchangeably with that of NGO. Lewis (2009) suggests the emergence of these different terms used is a reflection of different cultures and histories; rather than lack of descriptive or analytical rigour.¹¹ For example, “non-profit organisation” is normally used in the US; while “voluntary organisation” or “charity” is frequently used in the UK; while in Switzerland, all these terms are used in Geneva due to its international diversity and due to the presence of the United Nations Office.

However, within the Swiss legal context, only “not-for-profit organisation” and “foundation” are defined as legal forms for the non-profit sector and are subjected to different legal requirements and obligations in Switzerland.

2.1 Non-Governmental Organisation (NGOs)

NGO is defined as an organisation founded on private initiative in order to fulfil aims of public interest. It may have several legal forms, most of the time as non-for-profit associations or foundations. Additionally, the basic resources of the organization must be derived in the main part from contributions of the national affiliates or from individual members.”¹² If, a NGO receives funding from the government, it is important that this particular NGO can demonstrate it is not under the influence of the government nor of any other funding sources.

According to the official Swiss NGO portal, Mandate, a NGO has to meet the following criteria:

1. Having an organisational structure with statute and a legal form;
2. Founded by individuals or organisations independent of the state;
3. Having a decision making bodies independent of government authorities;
4. Aiming at non-lucrative and public interest, going beyond the interests of its own members.¹³

NGO, thus, can be used as an umbrella term that covers all not-for-profit and charitable organisations including foundations.

Historical roots

¹¹ Lewis, D., 2009, Nongovernmental Organisations, Definition and History. Encyclopedia of Civil Society, Berlin & Heidelberg: Springer-Verlag. Accessed at <http://personal.lse.ac.uk/lewisd/images/encylciv%20societyngos2009-dl.pdf> on 24/08/2013

¹² UNECOSOC, Jan. 2011, Record number of NGOs seeking participation in the UN. Accessed on 20/08/2013 on <http://www.un.org/en/development/desa/news/ecosoc/ngos-applications-ecosoc.html>

¹³ Definition given by Mandat International, accessed at <http://www.mandint.org/en/guide-ngos#1>

Historically, NGO was a term devised by the United Nations in 1945 when this designation “non-government organisation” was awarded to 41 international non-state organisations that were given consultative status in UN activities. Today, any NGOs can apply for such accredited status to the ECOSOC (United Nations Economic and Social Council)¹⁴ in order to participate in the UN process and debates. At this moment, the NGO Branch of the UN DESA (United Nations Department for Economic and Social Affairs) which provides support and coordination to the ECOSOC is serving 3,500 organisations with consultative status accredited by ECOSOC.¹⁵

UN ECOSO consultative status

To be eligible for consultative status accredited by ECOSOC, a NGO “must have been in existence for at least two years, and have an established (“registered”) headquarters, a democratically adopted constitution, authority to speak for its members, a representative structure, appropriate mechanisms of accountability and democratic and transparent decision-making processes.”

2.2 Foundation

A foundation is a legal entity responsible for managing an asset (money, buildings, etc.) for a given purpose. A foundation can be founded by family members in memory of deceased loved ones, such as the Fondation Pierre Gianadda in Martigny and the Fondation Prix Henry Dunant in Geneva; or for a public cause, such as the Foundation Franz Weber in Montreux and International Foundation for Population and Development in Lausanne; or for assistance to victims of diseases, maltreatment and environmental degradation, such as International AIDS Society in Geneva and the Baiji.org Foundation in Zurich (research oriented).

Since many of the Swiss foundations are privately “owned” and richly endowed, their engagement capabilities are significant covering a broad spectrum of issues from being patrons of arts and humanities to sponsoring scientific inquiries. Increasingly, Swiss foundations are taking up the issues of international development and social-environmental impact in addition to the more traditional community services oriented charities.

2.3 Not-for-profit Association

The not-for-profit association is the most common legal form for NGOs. As a not-for-profit entity, the aim of the association must be non-profit. Should there be profit generated from its

¹⁴ Information ECOSOC concerning its mandate and programmes can be seen at <http://www.un.org/en/ecosoc/>

¹⁵ DESA News. 2012. Serving the Well-being of future generations. Vol. 16(10), October. Accessed at <http://www.un.org/en/development/desa/newsletter/desanews/feature/2012/10/> (18/08/2013)

activities, profits made may not be distributed to members and must be used by the association in order to achieve its aims.

Not-for-profit associations are abundant in Switzerland and form the basic DNA of Swiss societies and are the basis of its 700 year old democracy. As this legal definition is very broad, there is a lot of flexibility for self-organising. Associations are organised around themes such as sports, music, theatre performance type of interest groups to environmental protection, integration of migrant workers, peace, cancer prevention, or specific human rights issues.

By law an association is considered to be a body in its own right. It can, therefore, employ personnel, make agreements, etc. Equally, it is liable for the actions carried out in its name.

2.4 Foundation with international organisation status (IGO)

It is not uncommon that international funding and coordination bodies are set up as a legal “person” and registered in Switzerland, mostly in Geneva, as a non-profit “foundation”. They are recognised by various national governments including Switzerland as an international organisations.

In Geneva, thirty-five INGOs have been registered and have signed headquarters agreement, fiscal agreements or agreements on privileges and immunities with the Swiss Federal Council.¹⁶ Such INGOs and their employees are granted the same status as the UN organisations and diplomatic establishments. Example of such organisations are the Global Fund for Malaria, Tuberculosis and AIDS (Global Fund), WWF International (World Wide Fund for Nature) and IUCN (*the* International Union for Conservation of Nature), just to name a few.

Despite special privileges, these INGOs remain accountable to and are subject to supervision of the Federal Supervisory Board for Foundations. However, not all International NGOs (INGOs), such as Caritas, Doctors without Borders (MSF), Oxfam, Amnesty International, Geneva Call, etc. enjoy similar diplomatic privileges as the Global Fund, or WWF.

3. Diverse Landscape of Non-Profit Organisations and Philanthropy Foundations in Switzerland

¹⁶ Ministry of Foreign Affairs, Swiss Confederation, <http://www.eda.admin.ch/eda/en/home/topics/intorg/un/unge/geint.html> (accessed 17/08/2013).

The World Bank defines a non-governmental organization (NGO) as "private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development"¹⁷.

This definition hints at great diversity of NGOs and their respective orientations. It is proposed to construct a typology of classification along three major classification schemes. Besides their legal status, non-profit organisations and philanthropic foundations can also be differentiated in accordance to their mission types, funding sources and roles they play in various forms of partnerships.

3.1 Mission Types by primary purpose

Although all NGOs (used here as a umbrella term for foundations and for not-for-profit associations) are (supposed to) engage in activities of public interest, their activities may cover a wide spectrum of socially and development oriented objectives - from education, health, social work, animal rights to environment, peace, migration, legal services and development, just to name a few. These NGOs can be active internationally or nationally when implementing their mandate.

Primary Purpose NGOs	Charity and gifts	Sector Specific service provisions	Research and Public Policy	Advocacy & Campaigning	Monitoring and Watchdog	Consulting and capacity building for other NGOs
By Countries						
By Locations						

3.1.1 Charities

Charitable foundations or associations which provide financial assistance, gifts or volunteers to needed groups, communities or other social service organisations. Charitable associations raise funds through donations. The leading Swiss listing for charities and volunteering is Charity Vault¹⁸.

Charities can be either secular or religion based.

¹⁷ "World Bank and NGOs." October 3, 2007. (accessed November 10, 2010). http://library.duke.edu/research/subject/guides/ngo_guide/igo_ngo_coop/ngo_wb.html.

¹⁸ Information about Charity Vault and its listing of Swiss Charitable organisations is available at <http://www.charity-charities.org/Switzerland-charities/Switzerland.html>

3.1.2 Services and operation oriented

The mission of a Foundation or not-for-profit NGO can also vary greatly in addition to the domain of their work . Some are active in providing services to the underserved, neglected or marginalise populations and close gaps that the state failed to close or cannot to close due to the lack of resources.

Taking up the current concern in the context of sustainability, the following schema is proposed on sector specific services and operations:

- Social services and equitable development
- Economic participation and inclusive growth
- Environmental protection and climate change
- Governance and global commons
- Special interests, such as native populations, island states, animal rights etc.

3.1.3 Research and policy oriented

Responding to the democratisation or enlargement of the policy space, both non-profits and philanthropic foundations have taken on a more researcher role in public policy making. Non-governmental organisations apply analytical rigor to these policy studies by collecting first hand data, set measurement indicators and provide policy feedback and recommendations through their independent research activities.

The World Economic Forum (WEF) for instance is a not-for-profit foundation which was started in 1971 and is subject to Swiss law. It is "committed to improving the state of the world" and goes about achieving this objective through projects, initiatives and reports, and also through fostering dialogue on economic, geo-political and global issues.¹⁹ One of its widely consulted research reports is its annual publication entitled "Global Competitiveness Report" which assesses the competitiveness landscape of 144 economies and has become an important benchmarking tool for economic policy formulation of governments.

There are other not-for-profit and non-governmental think tanks in Switzerland working on different policy research in order to create deeper knowledge, transparency and sustainable development. CSEND, Centre for Socio-Eco-Nomic Development in Geneva, founded in 1993 is one of the non-governmental think tanks in Geneva. Its mandate is to promote sustainable development at the nexus of employment, trade, environment and governance.²⁰

3.1.4 Advocacy oriented

¹⁹ Information concerning WEF can be accessed at <http://www.weforum.org/faq> (accessed 20/8/2013)

²⁰ Information concerning CSEND can be accessed at <http://www.csend.org>

The primary purpose of some NGOs is to advocate needed change ranging from current practices to policies and to governance structures. They actively advocate and lobby for a policy position and mobilise public support for their claims and demands. Alliance Sud is a Swiss alliance of 6 leading Swiss development organisations i.e., Swissaid, Catholic Lenten Fund, Bread for All, Helvetas, Caritas and Interchurch Aid, for development policy.

These type of non-profits or foundations commit themselves to promote basic human rights, conservations and other ethic behaviours through information dissemination, monitoring, education programmes and public campaigns.

In the ILO Advocacy Guidebook, “Decent Work and PRSPs: An ILO advocacy guidebook” (2005), the following landscape mapping is presented concerning the non-state actors who are active in the policy advocacy domain. It provides an analytic framework in examining the “locale” of different actors in the development arena.

Table 1: Scope of social mobilization by stakeholder groups and level of intervention
(Source: ILO, 2005)²¹

Stakeholders Levels	Inter-governmental bodies	National authorities, Parliaments	Trans-national NGOs	Civil society organizations*	Transnational companies	Private sector**	Citizens and public at large
International & global	X	X	X	X	X		X
Hemispheric/ Continental	X	X	X	X	X		X
National	X	X	X	X	X	X	X
Regional		X	X	X	X	X	X
Communal		X	X	X	X	X	X
Household		X	X	X	X		X

* Including the trade unions and employers’ organizations.

** Excluding the transnational companies.

3.1.5 Monitoring and watchdog oriented

Coupled with the above mentioned public policy role, more and more NGOs assume the role of a watchdog or monitoring role in order to ensure the compliance of rules, norms or international treaty and conventions, such as human rights, or International Humanitarian Law

²¹ ILO, 2005, “Decent Work and PRSPs: An ILO advocacy guidebook”, pp. 2:8. Accessible at http://www.csend.org/images/articles/files/20100206-Advocacy_Guidebook.pdf (accessed 20/08/2013)

in national or international arena. Or they serve as watchdog simply to uncover the facts on the ground whether in a community or inside of UN or national governments²².

With the implementation of its Public Information Law, Swiss federal and cantonal (provincial) governments make available their records and data bases to the general public. For example, IDEAS (Independent Development Experts Association) is a non government organization constituted under Swiss law with a mission to monitor the use of Swiss overseas development aid in terms of effectiveness and impact of interventions by government agencies and their contracted implementation partners, mostly development oriented Swiss NGOs.

3.1.6 Consulting and capacity building for other NGOs

Within the ecosystem of non-profits and philanthropic foundations, there is a sub-category of Non-profits whose primary purpose is to strengthen the functioning and institutional capabilities of other NGOs. This subcategory is more similar to consulting and training providers in the for-profit sector. These types of NGOs contribute to the healthy functioning civil society organisations through providing services in competence development, organisation development or consulting on other organisation and management matters.

NGO Management Association Switzerland, a non-profit organisation, is an example of this type of NGOs. It aims to enhance the management capabilities of NGOs in the world to address today's most challenging development and humanitarian concerns.

3.2 Funding Types by Sources

Non-profit organisations and philanthropic foundations may receive funding through different sources and channels. The founding sources can be classified as follows:

3.2.1 Private endowment -- financed by larger personal or family endowments, such as Stiftung Edith Maryon (Basle), Aga Khan Foundation (Geneva), Bill and Malinda Gates Foundation (Seattle);

3.2.2 Corporate financing-- financed by large corporate endowments, such as Novartis Foundation (Basle), UBS Foundation (Zurich). The UN Global Impact initiative encouraged multinational companies to become active as development partners;

²² Saner, R. & Michalun, M.V.(eds.), 2009, Negotiations between state actors and non-state actors: Case analyses from different parts of the world. In Druckman, D. & Donohue, W. (Series Editors), International Negotiation Series, Dordrecht: Republic of Letters, Vol. 7, pp. 28-32.

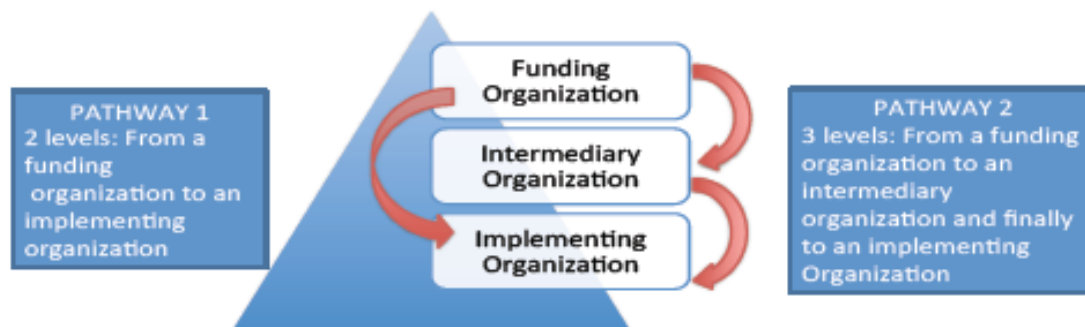
3.2.3 Community-based -- financed through community fund raising, such as Enfance Et Vie – Fondation Dominique Rogeau (St. Gallen), Help2kids (a Swiss based organisation located in Dar es Salaam, Tanzania).

3.2.4 Mixed-funding-- financed by multiple sources including individuals, corporations, other private foundations and government agencies, such as Antinea Foundation, Alliance Sud, CO-OPERAID Charity.

3.3 Types by task roles within the “Gift Economy” or “philanthropic supply chain”

“Gift Economy”, according to the definition in Business Dictionary²³ is an economy based on giving and relationships rather than as a form of transactions for profit or for personal material gain. In contrast to barter or commercial economies, a gift economy does not rely on a notion of exchange of goods or labour against monetary payment.

In this context, philanthropic foundations tend to engage in multiple task roles within the philanthropic supply chain. According to Nam et. al. (2013), there are two configurations of the philanthropic supply chain and respective task roles: philanthropic organizations that serve as a funding entity to intermediate organisations who in turn contract local organisations to implement project in the field. Other foundations work directly with local organisations to execute various projects. Specifically, there are three distinctive roles, namely, funding, Intermediary and implementing agencies (see Figure 1).



(Source: Nam, S; Obeng Ampofo, F.; Sosa Altamirano, E. and Toure, M.S., 2013, p. 11)²⁴

3.3.1 Funding organizations – “The Money”

²³ <http://www.businessdictionary.com/definition/gift-economy.html>

²⁴ Enhancing Learning in Monitoring and Evaluation: Six Cases from Philanthropic Organisations Working in the Health Sector. Centre for Socio-Eco-Nomic Development and Sciences Po Master of Public Affairs. Accessed at <http://www.csend.org/site-1.5/images/files/20130623-Health%20M%20E%20Report%20v9%20%20FINAL.pdf> on 22.08.2013.

Funding organizations provide funds either to local execution organizations or to intermediary organizations that could be international, e.g., International Labour Organisation, World Health Organisation; or national, e.g., Rotary Club.

3.3.2 Intermediary organizations – “The Aggregators”

Intermediary organizations pool funds from official, development, and voluntary sources. The Global Environment Facility, The Green Fund, the Global Fund for Malaria, Tuberculosis and AIDS, and the World Bank are examples of intermediary organizations. These intermediary organisations tend to be non-profit foundations, such as the Global Fund or an inter-governmental entity, such as The World Bank.

3.3.3 Implementing organizations - “The Doers”

Implementing organizations are local organizations in low-income countries that execute health projects. Implementers take a variety of forms and can be government agencies (often units within a government responsible for implementing a particular project) or NGOs. The organizations often receive funding from a variety of sources, including intermediary and funding organizations, as well as money from national governments (Nam, et.al. 2013, p.12).

3.3.4 Mission or Impact Investors – “The Change Angels”

In addition to the archetype of task roles identified before, philanthropic foundations are increasingly becoming major “actors” regarding poverty eradication and other development issues. This category of foundations could be considered as part of the Money category, however, this new breed of foundations takes an active stance in their development interventions through substantial investment in either a specific development programme or through market oriented financial investments. This trend has been propelled forward by Ted Turner’s generous gift to the UN in 1997²⁵ which created the UN Foundation, a public charity to broaden support for the UN and its development agenda.

Within the context of the Millennium Development Goals and specifically tied to the MDG 8: Develop a Global Partnership for Development,²⁶ a facility was made available which provides an entry point for non-state actors to be engaged in the global development agenda.

²⁵ <http://edition.cnn.com/US/9709/18/turner.gift/>

²⁶ MDG 8 uses 6 indicators to measure success: 1) Development further an open, rule-based, predictable, non-discriminatory trading and financial system, 2) Address the special needs of least developed countries, 3) Address the special needs of landlocked developing countries and small island developing states, 4) Deal comprehensively with the debt problems of developing countries, 5) In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries, 6) In cooperation with the private sector, make available benefits of new technologies, especially information and communications. For the full set of MDGs, see <http://www.un.org/millenniumgoals/global.shtml>

Many other wealthy individuals followed suite, such as Bill and Melinda Gates and the Hewett family representing a new generation of philanthropists in addition to the Ford, Rockefeller, Carnegie etc. the new philanthropists introduced private sector management tools into the philanthropic sector for instance by setting performance standards and performance contract, sunset clauses and longer term commitments in comparison with the traditional donors. They also pursue a clearly defined mission and agenda to “get the job done.” Results and impact are expected of their funding activities!

The spill over effect of their activist’s agenda and private sector mindset has influenced many Swiss foundations who took a similar approach with their grants and financial investments on both domestic and international issues. In light of the growing collective financial resources of the private philanthropic foundations for development and change, banks and other financial advisers also got involved by promoting value oriented investment products and by gradually moving into “impact or mission” oriented investment grade. Mission investing differs from “negative screening”, i.e., avoiding potential investments that could damage the reputational capital or that contradict with goals of a foundation; but actively seek out “programme-related investment” opportunities, i.e, the use of investment tools to support specific projects linked to a foundation’s purpose (Knoepfel & Imbert, 2012).²⁷

Engagement by philanthropic foundations in the development agenda through direct or indirect avenues has dynamised the development field and spurred innovations on many fronts.

4. Regulatory Framework and Governance Infrastructure for Foundations and Non-Profits

4.1 Legal bases

4.1.1 Regarding foundations

The Swiss regulatory framework and infrastructure concerning governance of foundations is based on the Swiss Civil Code. Articles 80 to 89 cover the constitution, organisation, supervision, modification and dissolution of a philanthropic foundation.

²⁷ Knoepfel I. & Imbert, D. 2012. Putting Mission Investing to Work: Outcomes of the 2nd European Foundations Meeting on Mission Investing. Accessed on 17/08/2013 at http://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&ved=0CE0QFjAG&url=http%3A%2F%2Fwww.centre-francais-fondations.org%2Fressources-pratiques%2Fgerer-ou-faire-vivre-un-fonds-ou-une-fondation%2Fgestion-patrimoniales%2Fgestion-financiere%2Fvers-de-nouveaux-modes-de-selection-des-placements%2Freport-on-2nd-european-foundations-meeting-on-mission-investing%2Fat_download%2Ffile&ei=6TlaUv3DNoTMtAbqxYDYBQ&usg=AFQjCNEH3XvGvCqgo67dFziyldPRuuvf2A&sig2=LhHH-Z5GpHZjhKnZXRmWgw&bvm=bv.51156542,d.Yms

To register under the Articles 80 to 89 of the Swiss Civil Code which define and regulate “public utility” foundations, a minimal starting capital and public oriented purpose have to be fulfilled.²⁸ In order to establish a foundation, a minimum starting capital of CHF 50,000 is required if the foundation is to operate nationally or internationally. A minimum capital of CHF 10,000.- is required if its activities are exclusively cantonal.

Swiss Foundation Law also distinguishes 4 different types of foundations, namely family foundation, corporate foundations, depended foundations and trusts and public law foundations.²⁹ Foundations are subjected to an annual audit by an organ of federal or cantonal surveillance to ensure that the foundation's resources are used in accordance with its goals. A foundation is a relatively rigid legal structure: once the aims are adopted when initially created, they cannot, as a rule, be changed.

As of January 2011, there were 17,897 foundations registered in Switzerland consisting of both non-profit foundations and for-profit entities (Grüninger, 2011)³⁰ of which 12,000 are structured as genuine non-profit foundations (Wagner, 2007).³¹

4.1.2 Regarding not-for-profit associations

In Switzerland, the legal framework governing the establishment and functioning of these not-for-profit associations are based on Articles 60 to 79 of the Swiss Civil Code,³² which deal with the constitution, organisation, status and rights and obligations of members and dissolution.

In addition, chapter 10 of the Swiss Private International Law Act applies to foundations and associations in an international context. However, the tax legislation does not provide for an actual non-profit status, or a separate legal form.³³

4.2 Supervisory authorities

²⁸ For the details of these articles within the Swiss Civil Code, reference <http://www.admin.ch/opc/fr/classified-compilation/19070042/index.html>

²⁹ Jakob, D. & Studen, G., Foundation Law in Switzerland – Overview and Current Developments in civil and tax Law (paper to be published) accessed on 08/08/2013 at http://www.rwi.uzh.ch/lehreforschung/alphabetisch/jakob/lehre/unterlagenfs12/artmarketstudies12/EMAMS_Foundation_Law_Reader.pdf

³⁰ Grüninger, 2011, Aktuelles aus dem Stiftungs- und Gemeinnützigkeit sbereich, in: successio, p. 112.

³¹ Wagner, 2007, Der Nonprofit Sektor in der Schweiz, in: Badelt, Meyer, Simsa (eds.), Handbuch der Nonprofit Organisation: Strukturen und Management, 2007, p. 43 et seq

³² Ditto.

³³ Merkt, B. & Brunschwig, S. 2012. Switzerland, in Anne-Marie Piper, Farrer & Co (ed.) Charity Law, published by European Lawyer, European Lawyer Reference Series, First Edition. P.230.

To ensure compliance with these relevant Articles to the civil society sector, the Federal Supervisory Board for Foundations³⁴ - a department of the Swiss Federal Ministry of Interior and of the respective Cantonal Supervisory Board for Foundations - monitor, audit and inspect all not-for-profit associations and philanthropic foundations registered in Switzerland and regulated by the Swiss law.

4.3 Mandatory Measures

4.3.1 Annual reporting

The monitoring activity by the supervisory authorities are based primarily on the jurisprudence of the Federal Court on art. 84, para. 2 CC, which states: "The supervisory authority provides that the property of foundations is used for their intended purpose." In this context, anyone who wants to create a foundation or questions about the activities of a foundation may apply to the supervisory authority. It also has jurisdiction to hear appeals related to surveillance processes.

Responsibilities of The Swiss Federal Supervisory Board for Foundations include:

- a. the screening (optional) of activities of foundation projects;
- b. assessment of the foundations;
- c. reviewing the annual audit reports;
- d. the amendment of the statutes and regulation
- e. the dissolution of foundations;
- f. mergers and asset transfer,
- g. to review the exemption from the obligation; and
- h. to advice on the design of foundations and respective organs of the foundation.

4.3.2 Fiduciary Duty

The fiduciary duty of the foundations and non-profit associations is to carry out proper bookkeeping in accordance to acceptable accounting rules and principles e.g., Swiss GAAP FER accounting standards. These organisations are subject to annual audits by a recognised and qualified third party.

Together with the Management Report or annual report, the financial audit report is submitted to the relevant supervisory authority for review and taxation.

4.4 Voluntary or self-regulating measures

³⁴ Information concerning the functions of Federal Supervisory Board for Foundations is available at www.edi.admin.ch

Foundations and non-profit organisations alike also practice self-regulation. In this context, governance code, labelling and benchmarking certification have been developed.

4.4.1 Swiss Foundation Code (SFC) for grant making foundations

Swiss Foundation Code (SFC), a landmark standard and first of its kind was developed in 2005. This Swiss Code adopted and completed the first European Good Governance Code for grant-making foundations. This is a voluntary code for good practices.

SFC is based on three main principles “Effective realisation of the Foundation’s purpose”, “Checks and balances” and “Transparency”. The principles are further explained in 26 recommendations and refer to the following topics: creation of Foundations, organisational structure, management, grant-making, finance and investment policies. Every recommendation is commented in detail and illustrated with case studies that show different options of how to act in specific situations, questions to be asked and the possible problems faced.

The very positive response by the foundations to the codes in recent years is a clear indication of the growing importance of Foundation Governance as a discipline in its own right.

Foundations and their executive bodies find themselves in a situation where the absence of control through the market or by an owner, combined with a liberal Swiss Foundation law, offers a considerable amount of room for manoeuvre (Centre for Philanthropy Studies)³⁵.

Three years later, in October 2008, a second revised and annotated edition was published. The French version was published in March 2009 (Volume Six) and the English version was released in 2011 (Volume Nine).

4.4.2 Swiss NPO-Code

The Swiss NPO-Code provides corporate governance guidelines for large non-profit organisations (both foundations and associations) headquartered in Switzerland and was adopted in 2006. It is specially designed for fundraising by mutual aid organisations, that can choose to subject themselves to the Code. In this case, the NPO-Code becomes mandatory for them.

The Swiss NPO-Code was elaborated by the Conference of Chairs of Large Mutual Aid Organisations (KPGH) and supervised by proFonds, the umbrella association of Swiss foundations of public utility, as well as ZEWO Foundation.

4.4.3 Voluntary Audits

³⁵ Accessed at <http://ceps.unibas.ch/en/research/swiss-foundation-code/> on 17.07.2013

4.4.3a NGO Accountability certification audits

A private certification body, Société Générale de Surveillance (SGS), has developed a certification scheme in order to assess the compliance level of an NGO with international best practices and to establish a framework towards continuous improvement when receiving grants from donors or grantors.³⁶ The rationale for such a private voluntary standard is that by applying such a system, the grantee can detect risks and weaknesses and correct them before it is too late. This should be paramount for those grantors preoccupied by the transparent, efficient and effective use of their financing.

The reason for using of a third party audit is to guarantee objectivity and impartiality when assessing an NGO's accountability. The performance of an NGO is assessed against 101 verifiable indicators and grouped into four key perspectives, namely, best practices of the field, contributor's expectations, management components and continuous improvement.

4.4.3b ZEWO "Seal of Approval" for charitable organisations

The ZEWO seal of approval is unique in Switzerland and is based on the Swiss NPO-Code. This label distinguishes those non-profit organisations which manage the funds entrusted to them in a conscientious manner. The ZEWO seal of approval certifies that the donations will be used economically, effectively and for their designated purpose. It stands for organisations which offer transparent information and true and fair financial reporting, have independent and appropriate control mechanisms, provide open communications and which procure their funds in a fair manner.

Any non-profit organisation based in Switzerland may apply for the ZEWO seal of approval. The prerequisite for this is that the organisation is committed to carrying out social, humanitarian and socio-cultural tasks or to protecting nature and the environment, and that it has been in existence for at least two years.

ZEWO Foundation (Stiftung ZEWO)³⁷ an independent body that regularly checks its members for transparency and is a member of the ICFO (International Committee on Fundraising Organisations – The association of national mentoring agencies). Established in 1958, ICFO helps to harmonize accreditation procedures and standards, and acts as an international forum for discussion and debate on accreditation issues.

Other Institutional Infrastructure

³⁶ NGO Benchmarking services by the SGS, accessed at <http://www.genevainternational.org/navigate.php?kind=1&id=2540&lang=en&last=87&lastsub=218>

³⁷ Information concerning Zewo Foundation can be accessed at http://www.zewo.ch/ueber_uns/about-us

The Swiss philanthropic infrastructure is relatively well developed (see Annex 1). For all categories at least two institutions can be identified. Many of the institutions are also active in more than one area and fulfil multiple functions (von Schnurbein, G. & Bethmann, S., 2002)³⁸. Centre for Philanthropy Studies of the Basle University is active in research, leadership development and also provides organisation development services.

While CEPS provides general research of the philanthropy sector, a separate initiative was launched in 2004, The Enhanced Analytics Initiative (EAI) aiming at incentivising investment research to provide better information on non-financial aspect of issues relating to social investing and other similar financial instruments.

Philanthropic fund management organisation, such as SwissFoundations, was created to provide better management structure for the giving. SwissFoundations is an independent association uniting 11 funding foundations in Switzerland. It distributed in 2011 approximately 210 million CHF to different research, education, innovation, social services, art and culture activities.

There are also ranking agencies when grade the performance of the philanthropic foundations and charities.

Databases also exist to provide information and easy access to NGOs and Foundations in Switzerland. Geneva International and Charity Vault are two examples.

5. Major challenges and future development

Over the last decade, efforts to develop the scale and impact of philanthropy in Switzerland have gathered momentum according to a 2010 report on Advancing Philanthropy in Switzerland prepared by Fondation 1796.³⁹

However, challenges and gaps remain concerning the upstream development of the infrastructure as well as enhancing the sector's capability in contributing effectively complex issues such as climate change, peace and security, equity and sustainability are some of the major challenges on the agenda of Swiss NGOs and Philanthropic organisations. This requires collaborative effort and partnerships, established shared vision and coordinated actions to effect scalable impact. Managing partnerships and cooperation is easier said than

³⁸ Von Schnurbein, G. & Bethmann, S. 2010, *The Swiss Philanthropic Infrastructure*, CEPS, Basle University. Accessed on 17.07.2013, http://ceps.unibas.ch/fileadmin/ceps/redaktion/Downloads/Forschung/The_Swiss_Philanthropic_Infrastructure_02.pdf

³⁹ Accessible at http://www.rwi.uzh.ch/oe/stiftungsrecht/aktuellesausdemzentrum/EN_Rapport_Philanthropie.pdf

done. Here lays the biggest challenge for the POs to develop both their competences and governance instruments.

5.1 On-going challenge of transparency and good governance of NGOs

Transparency and good governance of the NGOs and philanthropic sector remains a major challenge, especially in view of legitimacy and financial accountability for the former and the integrity for the latter. Common concern for both categories of social actors is their capability in achieving desired impact. Management of philanthropic organisations and impact arise as related and pressing issues.

Through various self-regulatory initiatives and greater adoption, accountability of this sector will continue to improve. Engagements by the research organisations and other monitoring bodies enhances the performance of the philanthropic sector and ensures appropriate use of the donation.

Similarly a more professional management approach by philanthropic foundations can also be important to enhance the performance of this sector. A recent study commissioned by CSEND on the monitoring approach adopted by the funding Foundations⁴⁰ offers a pioneering view in terms of how philanthropic foundations manage their financial support in the field by other operational NGOs. More such research would contribute to the overall healthy functioning of this sector.

5.2 Need for scaling up research and learning platform for NGOs

NGOs are now recognised as key third sector actors in the field of sustainable development, human rights, humanitarian action, climate change and many other areas of public interest. In the 1980s and 1990s, the number of NGOs expanded dramatically worldwide. Yet there are no comprehensive or reliable statistics kept to indicate how many NGOs exist in the world today (Lewis, 2009).⁴¹ According to the UN estimates, in 2000 there were about 35,000 large established NGOs globally.

There is no accurate account either of total resources that NGOs receive from aid, contracts, grants and private donations. It was estimated in 2004 that NGOs were responsible for about US\$23 billions of total aid funding, or approximately one third of total ODA) (Riddell, 2007)⁴². Newsweek (5 September 2005) cited figures suggesting that official development assistance

⁴⁰ Enhancing Learning in Monitoring and Evaluation: Six Cases from Philanthropic Organisations Working in the Health Sector. Centre for Socio-Eco-Nomic Development and Sciences Po Master of Public Affairs. Accessed at <http://www.csend.org/site-1.5/images/files/20130623-Health%20M%20E%20Report%20v9%20%20FINAL.pdf> on 22.08.2013.

⁴¹ Lewis, 2009, ditto.

⁴² Riddell, R., 2007, Does foreign aid really work? Oxford: Oxford University Press. Cited in the article of D. Lewis, 2009.

provided through NGOs had increased from 4.6% in 1995 to 13% in 2004, and that the aid volume had increased from US\$59 billion to US\$78.6 billion in the same period.

“International Geneva” is the major global focal point of NGOs, IOs and the international development sector consisting of universities, independent research centres and think tanks to ensure sustainable growth, “International Geneva” has to scale up the current learning platform to support the efficiency and effectiveness of NGOs and the embedded international development cluster . More research is urgently needed to understand the dynamics of structural transformation of societies with different political systems, levels of development, cultures and historical legacies. So far, development theory is incomplete and falls short in providing adequate design principles for societal change in terms of planning and structuring development and change processes.

“International Geneva” can also facilitate global exchanges among potential partners for development between the “North” and the “South”. Increasingly, this dichotomy is not a valid description anymore of global partnerships for development. The strengthened participation of the BRICS countries in international development also brought in new partnership arrangements besides the private sector companies. The enlarged Swiss Network for International Studies (SNIS) is one example for the type of research and learning platforms needed. More can be done!⁴³

5.3 More robust and granular database for more accurate analyses

As development is not a linear process. Only a handful countries have been able to achieve a level of advanced development since the end of WWII. It took 30 years for the East Asian economies (Hong Kong, Singapore, South Korean and Taiwan) to industrialise while most of the low-income developing countries and transitional economies either continue to languish in poverty trap or fall into middle income trap.⁴⁴

Many of these countries do not have reliable statistics for better planning and monitoring. Nationally aggregated data disguise the internal disparities and hinder more effective allocation of resources. While foundations are assuming more and more the role of “change angels” and adopt managerial approaches, it would be critical to have more timely, accurate and sub-national data for diagnosis and programming. Otherwise, the danger of unintended and informal “neo-colonization” might occur, disenpowering the developing countries,

⁴³ See: www.snis.org

⁴⁴ Saner, R.; Yiu, L.: “Learning from the Asian NICs: Policy Options for Central and Eastern European Republics”, *Advances in International Comparative Management*, vol. 9, 1994. Accessible at <http://www.csend.org/images/articles/files/20081121-Learning%20from%20the%20Asian%20NICs.pdf>

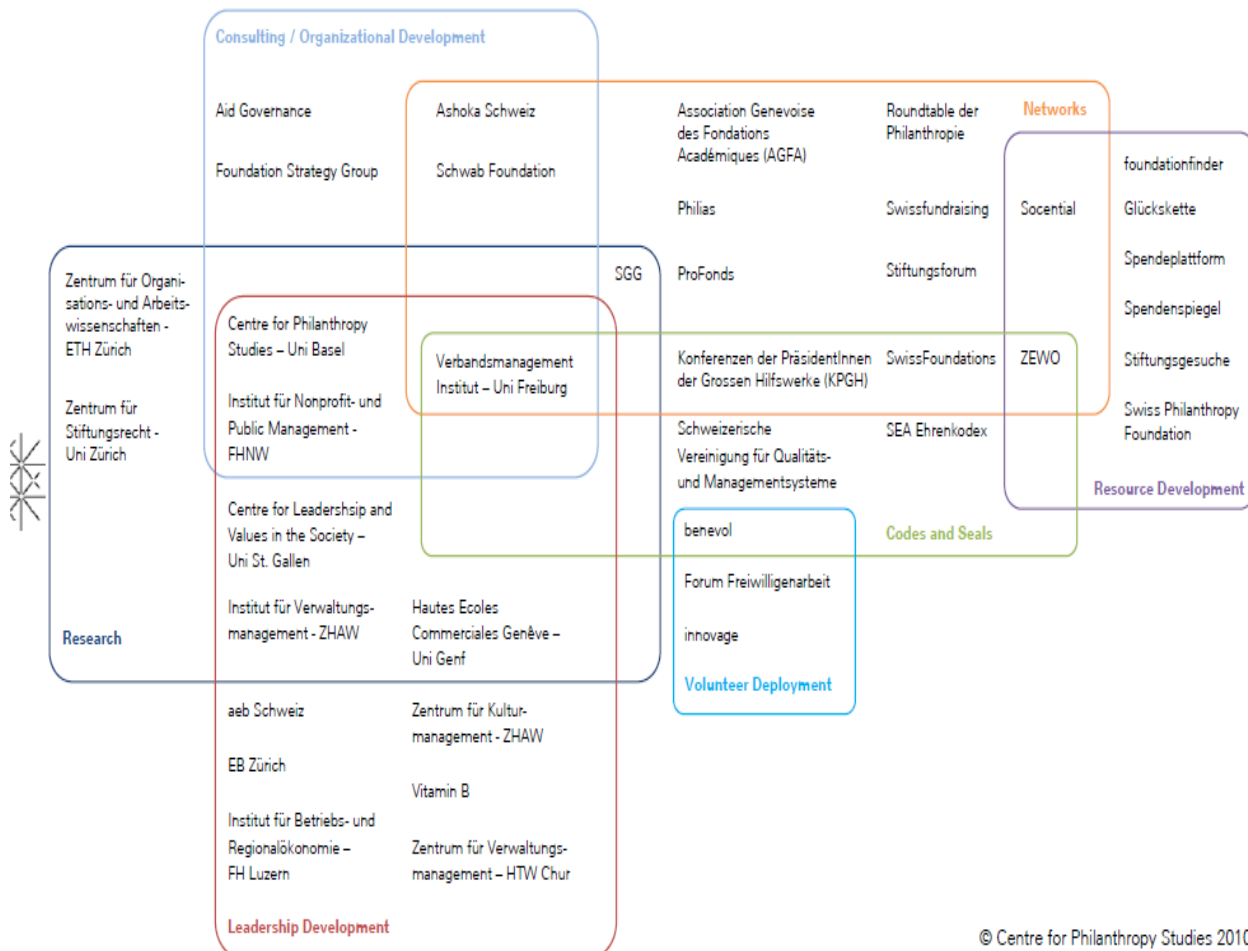
especially the least developed countries of their own agency and opportunity to determine their own future.

6. Conclusion

This paper offers a summary overview of the governance structure and regulatory instruments governing the philanthropic sector of Switzerland . Attempts were also made to provide an analytic framework for future study of the not-for-profit and philanthropic sector.

The paper ends with recommendations in how the philanthropic infrastructure in Switzerland could be further enhanced so as to help the Swiss NGO actors move upstream of the supply chain and achieve more efficient and effective use of their substantial resources devoted to the giving economy and to their international development partnerships.

The Swiss Philanthropic Infrastructure



(Source: von Schnurbein, G. & Bethmann, S. 2002, The Swiss Philanthropic Infrastructure. Centre for Philanthropic Studies (CEPS), Basle University. P. 4)