09 From a Code of Ethics to a Code of Conduct

The idea of NGOs being bound by a code of ethics or a code of conduct would not have been thought of in the early years of ACFID, but by the 1980s a number of events occurred that saw the development of NGO codes internationally as not only desirable but to some extent inevitable. The original code has broadened since the 1980s from a set of principles for NGO practice to a more normative focus on what constitutes good development practice across many dimensions. This has been quite a radical shift in NGO thinking on what they should be accountable for to their peers, supporters and aid recipients.

The original Code of Ethics was adopted in 1989 and over the following 25 years it has grown and developed. The current ACFID Code of Conduct is regarded as a benchmark for NGO standards globally, and has been drawn upon as a source by many NGOs and NGO peak bodies to develop their own codes to guide their operations and work (Obrecht et al. 2012). By 2010 there were over 300 worldwide national and international NGO codes of conduct and ethics (Warren and Lloyd 2009), with ACFID being a leader in their development. Comprehensive codes such as ACFID's also raise arguments of how NGOs may be constrained by being party to these codes in terms of the options they have and the choices they can make in how they do their work. This is why there are still some major Australian NGOs that are not code signatories as they believe it constrains their operations and how they can be true to their values.[1]

There are four major ethical dilemmas facing NGOs that codes may be able to help with, without necessarily providing an answer: whether to intervene in a particular context or not (Singer 2010; Doyle 2011); whose values and priorities drive an intervention – leading to arguments of Western imperialism (Mawdsley 2012; Barker 2013); what ethical compromises are acceptable in order to deliver aid to those who need it most – aid diversion and rent seeking (Gourevitch et al. 2012; Menkhaus 2012); and, finally, to what extent does

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1   In Australia neither Compassion nor Médecins Sans Frontières (MSF), two of the larger NGOs, are code signatories.

helping individuals threaten a broader group or tacitly support broader human rights abuses – for example, aid to Khmer Rouge refugee camps in Thailand or aid to Hutu refugee camps in Goma (Slim 1997, 2014; De Waal 1997; Das 2010; see Chapter 5).

Codes of ethics and codes of conduct do not address all of these ethical dilemmas as some are in many ways intractable, but they should give some guidance as to how these and other issues are to be addressed. If it is hard for a code to be all encompassing and many of the code provisions may not be relevant in a wide variety of circumstances, such as advocacy or humanitarian response, it may be better to be guided by separate codes, such as the Humanitarian Code of Conduct (Tupper 2012).[2] The debate in Australia in the 2010s, however, is about the breadth of the ACFID code rather than the broad principles it enshrines which were developed in the late 1980s.

The challenge that the ACFID code has had to manage is that while codes of conduct and ethics are ostensibly about self-regulation, there is a very real risk that they are developed as an implicit or sometimes explicit response to meeting external agendas. Codes can thus compromise individual NGO values and practices in order to conform to a broader external vision or set of values, and so fall into the trap of managerial conformity at the expense of diversity and values (Gulrajani 2011; Roberts et al. 2005). Rudy von Bernuth from ICVA noted at the ACFID Council in 1997, when the new code of conduct was being debated, that while codes of conduct were in part about professional standards they were (not coincidently) also about efforts by governments, both North and South, to regulate NGOs in ways that NGOs may not like. Governments having an input or oversight of self-regulation is one way of achieving what is effectively a proxy for government regulation (ACFOA 1997b, p. 48). The other downside to codes, which Stephen Morrow pointed to at that time, was that over time codes may lead to a standardisation or 'coercive isomorphism, where NGOs all start to look the same' (Morrow 1997, p. i) and risk compromising the sector's diversity (DiMaggio and Powell 1983). These issues may seem inevitable, particularly when compliance with NGO codes coincides with government funding priorities, approaches and regulation; nevertheless, they still remain a risk for the autonomy of NGOs and peak bodies like ACFID.

The ACFID Code of Conduct had its origins in the ACFID Code of Ethics of 1989, one of the first NGO codes globally, with most other national development NGO codes taking a lead from it and introducing their own national codes in the early to mid-1990s. The Private Voluntary Organisation (PVO) Standards by InterAction for the United States' NGOs were developed in 1993 and would have

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2   The full title is The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief.

used the ACFID Code as a reference point; CCIC in Canada based part of its 1993 code on the Australian Code, as well as using the template from InterAction of the US (CCIC 2000; Smillie 2013). In 1994 the Humanitarian Code of Conduct developed by the ICRC was also adopted by NGOs involved in disaster relief (Ebrahim 2003; Mowjee 2001). This chapter will look at the development of the ACFID Code, which was triggered in the mid-1980s by the different pressures that ACFID and its members had to respond to from government, external events, and internal pressures within ACFID (Syme 2008; ACFOA 1985f, 1985e).

NGO codes and their origins

Codes of ethics and codes of conduct are one way of setting standards and rules of behaviour among groups and organisations, most notably in the corporate sector but also in sectors such as health and education, while avoiding a 'command and control' approach by government (Kolk and Van Tulder 2005, p. 2). They serve to mediate the relationship between the public and private spheres and 'anticipate or prevent mandatory regulation' (p. 4). One of the earlier mooted codes was in India in the mid-1980s at around the same time the ACFID code was being thought of. The Indian NGO code did not get very far, in part because it was felt to have been driven by a government agenda to restrict the religious and more overtly political NGOs rather than meeting NGO priorities (Deshpande 1986). The ACFID Code of Ethics was a little different in that it had its origins not only in avoiding regulation by government but also in maintaining a sense of solidarity among its members and thereby broader support for NGO aid work. Like many other codes, it was developed during the march of neoliberalism through the 1980s when the questioning, if not the decline, in the role of government had left a gap in regulation. In the 1980s and 1990s, codes of ethics and codes of conduct were being developed across many corporate sectors to protect individual companies and whole industrial sectors from bad publicity and, probably more importantly, litigation as a result of poor behaviour. NGOs were no exception, having experienced their own share of scandals and public questioning (Gibelman and Gelman 2001; Smillie 1997; Lloyd 2005; Stalker 1982; van Eekelen 2013).

The major NGO codes as they have been developed, however, generally are much stronger in terms of possible sanctions and acceptable standards, than say business association codes (Kolk and Van Tulder 2005). This difference can probably be put down to the higher level of reputational risk that NGOs have; that is, they are expected to act more ethically than a profit-making corporation (Winston 2006). Bad publicity about what may be an isolated incident can have a disproportionate impact on the broader NGO sector, a point I will return to later in this chapter (see also Chapter 8). There was also an element

of realpolitik involved. As NGOs were promoting corporate codes on issues such as labour, health or environmental standards, it was important that NGOs should be covered by a similar, if not a better, accountability regime in order to have credibility when calling for industry standards and codes (Braun and Gearhart 2004; Compa 2004).

The process of developing a code itself is also important for its effective socialisation among members: 'The legitimacy of a code is influenced by the process through which it was established, thus making the code creation process crucial to its final adoption' (Ebrahim 2003, p. 820). Negotiations around developing codes can go on for many years, something ACFID was to discover more than once, with three years seeming to be the norm. In the early 1990s, the focus of NGO codes was on maintaining ethical standards for their work, specifically in their relations with stakeholders. This led to a series of difficult questions needing to be addressed at the operational level with a range of stakeholders, such as donors and aid recipients. There is a risk that stakeholder pressure can paradoxically lead to a drift away from core ethical principles of behaviour when certain accountabilities are privileged over others. Like ACFID before them, InterAction in the US and CCIC in Canada took three years to negotiate their respective codes and another two years to allow members to become compliant (InterAction 2013; CCIC 2000).

The ACFID Code of Ethics

Since the 1970s ACFID, along with other international NGOs and UN bodies such as the ILO, had been asking for industry codes of ethics and conduct for companies working in developing countries following concerns around poor labour, environmental, and health standards. There had been examples of the use of child labour, the way infant milk formula was marketed, and lax environmental standards in the mining and timber industries, all in countries with poor regulatory regimes (ACFOA 1981a; Kolk et al. 1999; Sikkink 1986; Doh and Guay 2004). ACFID's role in those campaigns as well as its criticism of major companies working on Australian aid projects, such as the Zamboanga Del Sur project in the Philippines, raised the obvious question as to NGOs' own ethical behaviour in their aid work. Already questions were being asked of child sponsorship programs and how children were being portrayed to potential sponsors (ACFOA 1982a; Stalker 1982). There was also the broader issue the Jackson Committee raised, in having some common understanding by donors to all NGOs as to what their funds were being used for:

> There could be an advantage in standardising voluntary agency definitions, accounting procedures, and agreed disclosure of information on administration and operation but such objectives should be pursued by and through ACFOA (Jackson Committee 1984, p. 111).

ACFID saw the idea of a code as meeting these concerns and had the discussion of a code put on its work program for 1985 (ACFOA 1985f). The need for a code was also spurred on by a dispute as to how some agencies were portraying others publicly and within ACFID. There had been a long running tension between what were seen at the time as the 'progressive' Christian agencies, which were long established in Australia, and World Vision which started in Australia in 1966 and joined ACFID in the mid-1970s. In the 1970s World Vision was seen as a conservative agency with a strong pro-US agenda, particularly around the war in Vietnam where it had its first project. Its focus on child sponsorship with strong religious messaging was also criticised (National Youth Council 1975; Hill 1975a; Henderson 1976, 1977; Webb 1977; Stalker 1982). World Vision felt at the time that a lot of this criticism was unfair and unfounded, and certainly by 1985 they had changed considerably. Despite these changes World Vision felt it was still not getting accepted by the other agencies for what it had to offer and so was thinking of leaving ACFID. This would have been a huge blow for ACFID's reputation and could have triggered an exodus of other more conservative agencies.

A special meeting was held with World Vision in Melbourne in December 1985. The idea of a code of ethics, which had been raised earlier in the year at the ACFID Council, was seen to be a way to stop member agencies criticising other members and to develop a common view on how stories were presented to the public in ways that respected the dignity of those portrayed – another ongoing issue for NGOs (ACFOA 1985e). This meeting provided some impetus for moving the development of a code of ethics along, and ACFID thought that given the high level of in-principle support for a code it could be finalised fairly quickly. The ACFID Quality of Aid Committee was tasked with drafting a code to be presented to the 1986 Council for adoption (ACFOA 1986a). In fact, it was to take three years for the code to be developed, in part because it was the first NGO code globally and so presented a wide range of unknowns. While there might have been a natural consensus on what constituted appropriate ethical behaviour among NGOs, the devil was in the detail, and there needed to be a long process of socialisation of the idea of a code, not to mention the reputational implications a code could have on signatories that were found to be in breach.

The first draft of the ACFID Code of Ethics went out for consultation in August 1986 (ACFOA 1986c) with the aim of its adoption in 1987. Initially it was to be a voluntary code of behaviour for agencies to trial and then be adopted as a Code of Ethics at the ACFID Council in 1988. In 1987 a revised draft was prepared

and circulated outlining three principles for all ACFID members to accept: a commitment to humanitarian services; creative and trusting relationship with partners (avoiding arrangements that might seem to be paternalistic and patronising); and that people, rather than NGOs change their own lives. Signatories to the draft code were also required to provide to ACFID a report on their budget and an annual report with audited accounts including income received from government. They also had to commit to provide accurate information to the public; to not denigrate other agencies; to have monitoring and evaluation systems in place showing efficiently managed and effective programs; and to provide details of how they consulted with beneficiaries about their programs. Finally, the code required a statement by the board chair and CEO on compliance to these principles and procedures. While these principles and procedures might seem to be uncontroversial, the implications of what a too literal interpretation of them had for agencies' work was a concern for many. Just prior to the 1987 Council some member agencies baulked at the levels of specificity being sought by the code and sought some loosening of the language (ACFOA 1987c). These objections were overcome after a further year of negotiations and the Code was adopted in 1988, first as an interim code of behaviour with no compulsion (ACFOA 1988). After a year of operation it was finally approved as a Code of Ethics in 1989, with an ACFID committee established to monitor compliance (ACFOA 1989a).

There were a number of gaps in the early Code of Ethics, the most serious being the lack of an independent complaints and sanctions mechanism, and the lack of a set of standards on presenting NGO accounts to the public so they could be easily compared – a problem that still applies to many codes in other countries (Smillie 2013; Armstrong 1991b). These omissions were not oversights as such, but rather a set of difficult issues that would be best addressed once the code was agreed to and agencies had signed up. At the time this represented a huge step for agencies: to be compliant to a formal process imposed by themselves and to be accountable to each other. This is probably the main reason why the code took so long to be socialised and fully accepted. It is worth noting that it would be another 20 years before good practice standards for NGOs' in-country development work were put into the code, even though these principles were in the original code.

The Code of Ethics had its first cases of complaint in the early 1990s when agencies claimed other agencies' media releases misrepresented their work and did not respect the dignity of aid recipients in advertising (for example, images of starving babies as helpless victims). The process of resolving these complaints was slow and cumbersome, and they took up to a year (Rollason 1990; Hunt 1992), with the findings being that there was no breach of the code.

In these cases it was found that there had been inadvertent mistakes due to agency staff being unaware of the code, and it being poorly socialised across agencies (Loughland 1991).

The operation of the Code of Ethics Committee was also problematic with the ACFID executive director being involved in any referrals to the Committee, and thus creating an obvious perception of a conflict of interest, particularly if the complaint was made by or against a major member agency. While it was clarified that the executive director was not an *ex officio* member of the Committee their involvement still caused unease, as did the requirement for ACFID associate members to be compliant, but not have a representative on the Committee (ACFOA 1991a, 1991b, 1991c). Similarly, it was not clear as to how complaints could be received from the public (Ingram 1995), let alone from the partners of Australian NGOs in developing countries. Finally, despite the requirement of the Code to report on the level of compliance of agencies to its adherence, there was no mechanism in place to do so, and the Committee was not proactive in developing one. For example, the suggestion that there be common approaches to financial reporting and accounting, which was to become an issue in 1996, was first raised in 1985 by Russell Rollason as part of a response to issues raised in the Jackson Committee report (ACFOA 1985f), and again in 1991 by Community Aid Abroad (Armstrong 1991a), but was not addressed at either time.

An important and precedent-setting dispute arose in this period when an advocacy member of ACFID criticised a development organisation (also an ACFID member) of being involved in government education programs in PNG that disadvantaged local teachers and local NGOs (ACFOA 1995a). This case raised the thorny issue for the Committee of whether local NGOs could complain about international NGOs, and whether the code applied offshore. Waldon Bello, from a Southern advocacy organisation, had been very critical of Northern NGO advocacy work for not representing the views of affected communities (Lloyd 2005). These cases, however, come down to judgements about matters of degree of whether local communities were fairly represented or not (Lloyd 2005; Winston 2002). So the issue of offshore complaints was not fully resolved until the 2010 revision of the code when aid recipients were stakeholders in the code and could (and did) make complaints (Blunt 2013; ACFID 2013c).

Despite its strong normative wording, the code in its early years was for all intents and purposes a vehicle for dealing with complaints between agencies, rather than a set of minimum standards with which agencies would comply and be held accountable to. The complaints mechanism and the process of resolving them were not clear, and there were no clear guidelines on how agencies should adhere to the code. The issue of what was the most appropriate mechanism was to be an ongoing one. There were numerous 'tweaks' over the following 20 years, but in the early 1990s there was neither a workable process nor a strong sense of

ownership by the members, despite them being signatories. The Committee only met on an 'as needed' basis, and it seems from the records that there were few meetings between 1992 and 1994. A survey of signatories in 1995 found that very few had complied with the code's reporting requirements, and there was a very low level of commitment of ACFID members to the code (ACFOA 1995b).

These experiences highlighted a need for an amendment to the code rules so that complaints could come to the Ethics Committee directly, a separation of the Committee from ACFID executive and staff, and for the Committee to be more proactive (ACFOA 1995b). This change was spurred on by an issue that emerged in 1994 and 1995, which further highlighted the weaknesses of the Code of Ethics. CARE Australia had not signed the code, as it was not an ACFID member, but it had complaints against it from other agencies which it did not directly address. This was compounded by allegations of impropriety with government funding which had been around since the early 1990s (Hunt 1992; ACFOA 1992d, 1993a, 1993c; McPhedran 1994) (see Chapter 8). On top of this, the Industry Commission Report of 1995 on NGOs, much like the Jackson Committee report 10 years earlier, had also recommended that common financial reporting standards to the public be part of the code (Industry Commission 1995, p. 161). The Code of Ethics Committee picked up these issues with a flurry of meetings in 1995 to work on them (ACFOA 1995a, 1995c), but it was all too late and minister Gordon Bilney intervened as the problems with CARE Australia deepened.

The Code of Conduct

The CARE media story in early 1995, the perceived poor reporting by NGOs to AusAID, related debates around NGO accountability, and the Industry Commission report, when put together prompted minister Gordon Bilney to take control of the code of ethics process. He proposed a code of practice with a much higher level of government control (Syme 2008; Hunt 2012). ACFID fought strenuously against the idea of government oversight right up to when the ACFID Code of Conduct was finalised 18 months later in October 1996 as a self-regulating model without any government input or control. Even though the Code of Conduct was 'sold' as something new, it was essentially a beefed up version of the existing Code of Ethics, with improved coverage of NGO governance, financial matters, improved compliance process, and greater autonomy from ACFID management.

Bilney had set the ball rolling by raising issues of the probity of the NGO sector as a whole, and he seemed to suggest the CARE case was merely the tip of the iceberg of NGO impropriety (Hunt 1995c; see Chapter 8). Bilney went on to

argue that as the existing code did not apply to CARE and, rather than asking them to sign up to it, a new mechanism was needed. A Parliamentary Select Committee would now decide how NGOs might be better regulated in terms of codes (Bilney 1995a). In the end it was agreed that the existing code be the basis of the process, with the proviso that the existing Code of Ethics Committee not be involved, effectively signalling a lack of confidence in the existing ACFID process. The Parliamentary Select Committee was to be composed of AusAID staff, politicians from the two major parties, ACFID nominees, a representative of donors nominated by the Australian Consumers Association,[3] and chaired by an AusAID executive officer. After intense debate on the membership of the committee, the minister announced a Code of Practice Advisory Committee (COPAC) with an independent chair, Jim Ingram, a former head of AusAID who had resigned from public life. The NGO section of AusAID would act as the secretariat, and the Committee was to report on the implementation of the draft code of practice by September 1995 (Bilney 1995b; Lee 1995).

The COPAC report initially recommended a Code of Practice Committee to be chaired by a ministerial appointment, with three ACFID nominees and two others nominated by the minister (AusAID 1995b). This recommendation was rejected by ACFID (Hunt 1995a). Alternative structures were put forward, including adding a set of standards to an updated Code of Ethics (Hunt 1995b). In its final report, COPAC recommended an Interim Code of Conduct Committee (ICCC) independent of government to finalise a sector-wide code to cover all NGOs, not just ACFID members, with a chair approved by the minister (Ingram 1995). COPAC did not draft a new code but rather drafted a financial reporting structure and revised the existing Code of Ethics, passing these to the ICCC to consider as the basis for their ongoing development of a code. Despite arguing to the very end, ACFID had lost the fight to keep the process within the existing Code of Ethics Committee and have them beef up that code (ACFOA 1995e). Nevertheless, ACFID had retained effective control of the ongoing process and it kept the existing Code of Ethics Committee in place pending the finalisation of the new arrangement:

> ACFOA were not ready to dissolve the Ethics Committee and their Code until the principle of self-regulation and code ownership were clearly acknowledged as being in the NGDO domain of responsibility and the adequacy of the new Code of Conduct was tested (Syme 2008, p. 28).

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3   This happened because a few months earlier *CHOICE* magazine printed a review of charities and their annual reports, both domestic and overseas, and as usual said they could be a lot clearer and provide better accountability to donors.

The ICCC first met in November 1995 with an independent chair nominated by ACFID and agreed to by the minister, four ACFID members including a representative of donors and specialist finance adviser, and one from outside the ACFID membership. The ICCC developed a new Code of Conduct with a new structure and presented it to ACFID in August 1996. Along the way there were a number of consultations with NGOs, which at times were quite heated. NGOs were very anxious, their main concerns being the idea of having an additional layer of accountability over and above what the domestic NGOs have; the unfairness of an imposition due to misdeeds of one agency; an implicit suggestion that NGOs could not be trusted; and, finally, the imposition of administrative demands on NGOs' limited resources. Even though ACFID had wrested control back, NGOs still saw the Code of Conduct as an imposition by government and a slap in the face for ACFID and the existing Code of Ethics (Franks 2013). There was still a feeling the NGOs could do it themselves and all that was required was for the existing code to be tweaked, a process already underway. What was not well understood was that the time for tweaking the existing code had long passed, even if that is arguably what the final outcome looked like – there was too much political capital invested in being seen to be doing something new and solving what was seen, at least by the minister, as an endemic problem.

The draft Code of Conduct fully incorporated the existing Code of Ethics but also drew from US InterAction's PVO Standards to add sections on governance and financial reporting. These were further strengthened by having a common financial reporting format for NGOs, which is still unique among international codes (ICCC 1996). The draft code went from the two pages of the existing Code of Ethics to four pages which, considering the scope of the code in the 2010s (40 pages), represented a relatively modest change. The ICCC also recommended a code of conduct committee to oversee the code, replacing the existing Code of Ethics Committee. The ICCC reported to both ACFID and the minister, but as the government had changed in early 1996 the new minister Alexander Downer did not see himself or the government as having a role in the ACFID Code. As a matter of principle the new Coalition government preferred self-regulation (Franks 2013; Syme 2008). In the end it was a change of government that brought the issue to a close.

The ACFID Council in 1996 formally accepted the ICCC report, adopted the Draft Code, and asked its members to sign up by July 1997. The Council also acknowledged the role of the Code of Ethics Committee through the process (ACFOA 1997c). This new iteration of the Code had more 'teeth' than the previous Code of Ethics, as it was not only a requirement for ACFID membership but also a requirement of the AusAID/NGO Umbrella Contract covering all AusAID funding of NGOs. Overall, the code was developed and implemented to achieve the accepted principles for good self-regulatory codes: coverage (ideally

sector wide); an open consultative and public process of code formulation; balanced representation on the committee (ACFID and non-ACFID members plus consumer representation); transparency in reporting and compliance checking; strong sanctions and good enforcement; an independent chair; and independent external auditing (Franks 2013). The original Code of Ethics had some of these features but not all.

The Code of Conduct was formally launched by the Governor-General in 1998 after all agencies had formally signed up (Wilson 1997). By 1999 there were 118 signatories and a very busy committee that met six times that year and ran four seminars for member agencies. There was also a deliberate decision that there would be no AusAID funding for the administration of the code, but rather signatory fees (initially $200) would cover it (Syme 2008, p. 32). The new processes also overcame the long delays that complainants of the Code of Ethics had encountered, with the requirement that the Code of Conduct Committee must consider a complaint within 12 weeks of receiving it (ACFOA 1999a).

The politics of the process has meant that the importance and ground-breaking nature of the original Code of Ethics has been largely lost in ACFID's collective memory, and is not generally referred to as a precursor of the existing code in either the code itself or the broader ACFID context. This is unfortunate as the original Code of Ethics was the first NGO code anywhere, and its provisions and principles were essentially kept in full and expanded to include new areas and clarify and expand others. One could argue that the revision of the code in 2009 was far more comprehensive and nearly as traumatic for the code signatories as the 1995–96 process.

Implementing the code

The code was seen as one with teeth. It was signed by all ACFID members, including CARE Australia, which joined ACFID at the same time, as well as a number of non-ACFID members (ACFOA 1996b; Eggleton 1996). The early years of the code were devoted to having it work smoothly and achieve a certain level of minimum standards, particularly in financial and annual reporting before any further expansion of its scope. The early focus was on improved reporting, and by 2000 the primary goal of comparability of revenue and expenditure across NGOs had been largely achieved (Syme 2008). This was a huge step, something that CCIC in Canada was not able to do and has since regretted (Smillie 2013). In August 2000 a compliance monitoring working group was established to ease the workload on the secretariat and the full committee. Three code committee members met twice yearly to assess all reports submitted and follow up with

those agencies that were finding it difficult to understand the minimum requirements. With these efforts full compliance by all code signatory NGOs had been achieved by 2004.

Most of the changes to the code in the early 2000s were 'tweaking' some content to reflect legislative and other changes and where it was felt the code should be in line with personnel and management practice, professional conduct and gender equity. A further refinement and clarification of financial reporting requirements was also made. Explicit links were made to other international codes such as the ICRC Humanitarian Code. While the Committee did not formally take advice from AusAID, as it was not an instrument of government, it did brief the government in bi-annual meetings. A subsequent lunch discussion, which included AusAID, covered any major sector-wide trends with potential implications for the code, and the Committee did keep an eye on what issues AusAID thought appropriate to consider (Franks 2013). Some of these 'messages' resulted in new clauses being added, covering child safety and protection and a 'no strings attached' clause with regard to the use of funds for party political and/or religious purposes.

In addition, the format of the code changed and a new guidance document was endorsed providing extensive information on how to implement code standards. The Code of Conduct Committee was also given new powers to initiate its own investigations, and experts were appointed to the Committee, most commonly to advise on fundraising and accounting standards. Given the Indian Ocean tsunami was such a large event, involving hundreds of millions of dollars of the public's money to be spent over a number of years, a tsunami reporting amendment was added to the code in 2005 to address that specific situation (Syme 2008; O'Callaghan 2013).

In 2008 a major review of the code was proposed, given it had been more than 10 years since the 'new' code was adopted. Fundamental issues regarding the code were emerging, in particular:

> maintaining the established principle of 'self-regulation' [and] ensuring 'Code credibility' through 'independence'. Self-regulation was and still is an important right of the NGDO sector that was 'won' after much uncertainty about the intentions of Government to regulate the Sector itself. It is cherished by the sector as a 'non-negotiable'. Credibility of the code is also non-negotiable, for without it, the Code would be merely an aspired [to] list rather than a substantive standard (Syme 2008, p. 6).

The specific issue that David Syme was referring to was a perceived conflict of interest that may occur when the body providing self-regulation was also the body promoting the sector and advocating for it (in this case ACFID). The role

of peak bodies being an accreditor, code manager, custodian of standards, and advocate for member interests, however, is common in other sectors such as the health sector, for example, the Pharmacy Guild and the Australian Medical Association. There was no real suggestion at the time that this was a serious concern beyond the more general off-the-record type comments from AusAID that the code's compliance mechanisms were not as rigorous as its accreditation, but such a comment would be expected given the competing nature of the two processes.[4]

There was also a risk as code signatories which were not ACFID members (35 per cent of code signatories) were not coming to code training sessions to be updated on requirements. As a result, a significant minority (15 per cent) of NGO Code signatories said during the review that they would prefer a separate structure to administer the code (Syme 2008, p. 15). This was enough to prompt some members of the code Committee to argue that it may be better to set the code up as a body completely independent of ACFID, with no formal links, and possibly have a mandate beyond NGOs. How it would work was not spelt out but most probably as a separate NGO solely responsible for the code. The risks to ACFID were touched on by the report, the key one being that such a structural move away from the notion of self-regulation to a different form could, over time, lead to over-regulation, a duplication of AusAID's accreditation processes, and a blurring of the distinction between government regulation, self-regulation and standard setting.

This proposal for an independent body was rejected out of hand by the code Committee and the ACFID executive (Blunt 2013). The executive, however, while reiterating the governance of the code should not be changed, supported a full review and revision of the code given the increased risk profile of the NGO sector following the Indian Ocean tsunami and a mood for increased regulation of the broader NGO sector from the new Labor government. Such a review could also provide an opportunity for the code to take greater responsibility for government-funded programs, strengthen relationships more broadly, and meet some of the ongoing concerns about the effectiveness of the NGO sector (Khouri and Russell 2009). While issues of NGO effectiveness were not new (see Chapter 8) the idea of using the code to address it was an important, and to some extent a controversial, step as earlier iterations were about standards and principles of NGO operation rather than the effectiveness of the work.

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4   It is probably worth noting that the budget for accreditation is around $6,000 per NGO per annum (in 2015), something that ACFID could not possibly afford for the code compliance costs for each of its 140 members.

The revised code went beyond a set of minimum standards and sought to embed the notion of good practice and continuous improvement, and at the same time built the compliance aspects and broadened the scope considerably. As with the previous major code revision in 1996, the process was tortuous with 40 drafts prepared (Blunt 2013). A steering committee for the review was made up of ACFID executive committee members rather than experts who it was felt may be more removed from the political exigencies of agencies. The result was a code embedded with a notion of progressive obligations; that is, agencies were expected to show improvement from year to year. The key elements were a stronger requirement that NGOs publicly reported they were code signatories; a more transparent complaints process; mandatory self-assessment; and a greater focus on partners and aid effectiveness. Overall the process elevated the understanding of the code, and the mandatory self-assessment was deferred for two years to 2012 to allow time for agencies to comply. The revised code suited the medium-tier NGOs, while the big NGOs often had the complication of global affiliate issues to contend with. The smaller NGOs found the code more complex to manage with their limited resources. Partial compliance is the most commonly reported self-assessment report, but it was expected the proportion of agencies being fully compliant would increase. With 140 separate obligations to comply with, however, full compliance still remains a daunting task to many agencies.

The downside was that the revised code of 2009 had grown to 40 pages from just two when it was the Code of Ethics and four pages of the original Code of Conduct. This level of complexity and specificity can be argued to be embracing a managerialist ethic that the NGOs and ACFID so trenchantly resisted in the early 1990s (Roberts et al. 2005; Gulrajani 2011; Morrow 1997). While the shift from the Code of Ethics to a code of conduct was regarded as a landmark shift in 1996, the 2009 revisions were far more radical and drilled far deeper into organisational practice, and possibly ran the risk of seeking an unnecessary conformity or more 'coercive isomorphism' within the sector (Morrow 1997, p. i). The other major shift, which addressed the issue of ACFID and non-ACFID members being code signatories, was that all code signatories must be members of ACFID. This resulted in a sharp increase of ACFID membership from a low of 69 in 2010 to 144 in 2014. This was important for ACFID's credibility and is in line with many other industry bodies that provide accreditation for practitioners. By keeping self-regulation in the same space as the policy driver, it is more likely the code will stay in touch with the sector rather than drift away from it, which would present a real risk.

Gaps in the code

There is an important set of challenges for NGO codes that have generally not been covered well, and the ACFID Code is no exception. These are to do with how agencies operate in developing countries and engage with the broad ethical challenges NGOs face, touched on at the beginning of this chapter. These challenges focus on how NGOs behave and deal with moral and ethical choices in working with local communities. The key one of these is the disruptive effect NGO programs can have on local communities, whether this is to do with distorting local priorities or favouring one group over another. While the code does ensure local participation, it is still a step short of the program being consistent with local priorities; and there is still no mention of duplication of services and activities either with other NGOs or with government. Generally, local partners have quite lot of influence over program content but not the broader issues of policy in a particular country or context (Elbers and Schulpen 2011). The risk is of a plethora of uncoordinated activities that are a drain on scarce local resources, particularly staff resources, leading to resentment (Barber and Bowie 2008; Rahmani 2012). The ethical question then is whether NGOs should be 'gap fillers' and only provide services as they push the state to take on the responsibility, as only the state can provide a social guarantee:

> NGOs should not allow key duty [bearers] to abrogate their responsibility to provide secure access to services that form the substance of basic rights where individuals cannot secure those rights effectively through their own activities (Donaghue 2010, p. 60).

One example of a code which attempts to address some of these issue is the NGO Code of Conduct for Health Systems Strengthening, which pledges to 'pursue practices that bolster the public sector in the countries in which they operate and encourage use of the public system as the platform for the delivery of services' (Bristol 2008, p. 2162). Part of this includes a commitment not to weaken local staffing by taking staff at much higher salaries from existing service providers for what is often short-term NGO work and so weaken what are often already over-stretched local systems. While this Health Systems Code is comprehensive, by 2014 there were still fewer than 60 signatories globally, and there were no review or sanction processes in place. Another example of how donors may be distorting priorities is how HIV has dominated development programs in Africa to the point that in Malawi in the early 2000s HIV programs overshadowed all other development work: 'AIDS in Africa is at risk of becoming a facile means of engaging with the continent's human development' (Deneulin and Rakodi 2011, p. 74). The challenge for donor country NGO codes such as the ACFID Code is how to be more proactive in looking at the effects NGO work has on existing local resources and processes.

A second area the code ignores is to do with how Western development NGOs tend to see liberalism as the norm, and a desired outcome in the situations where they work. This is the basis for many aspects of human rights work (see Chapter 6). However, when liberalism is the starting point there is little space for the priorities and values of inscriptive groups whose membership is not open ended, such as indigenous people's organisations, caste groups, and some religious groups (Eisenberg and Spinner-Halev 2005). In debating just outcomes in terms of development work and social change, a liberal ideal is often seen as the starting point and NGOs will work back from that to reach an agreed outcome (Kingsbury 2002). This goes to Lissner's (1977) point of NGOs being values-based organisations with a particular world view, or Weltanschauung. The ethical issue for various codes is how any clash in values is resolved given the power relations that exist between the donor NGO and the 'partner' NGO. This issue is not directly addressed in the ACFID Code and perhaps is too big for it. Nevertheless this issue is a dilemma NGOs (should) face.

The third broad policy area which codes do not address arises most acutely in humanitarian responses, but often in development programs as well. It is the 'do no harm' principle. There is often a situation where what is best to do as an individual NGO and what is best to do as a group of NGOs, in particular contexts, may be different. Collectively, a group of NGOs may be able to resist unjust situations such as those outlined at the front of this chapter, for example, relief camps controlled by belligerents in a conflict. Das (2010) refers to this as 'a collective problem of altruism' (p. 176), where there is an obligation on NGOs to take a more politically activist role but doing that may deny them access to the most needy. While the Humanitarian Code of Conduct does not address this question, Das (2010) argues that NGOs are morally required to act cooperatively to address any harm perpetuated on individuals by larger groups. The current ACFID Code does not address this issue. But guidance for NGOs who regularly encounter this issue would be important, with processes put in place to mandate collective responses. Whether a single national code can deal with these complex international situations is of course another question.

Conclusion

The story of the Code of Ethics and Code of Conduct is important in the history of ACFID and to varying degrees has been an important part of the latter half of ACFID's life. The development of the code serves to illustrate the changes that have taken place in NGOs over the past 30 years and how they have grappled with them. For the first 20 years (1965–85) of ACFID, members signed up to a set of principles by virtue of their membership, and how they interpreted or conformed to those principles was essentially up to them. This inevitably led to

different interpretations of these principles in the 1970s and thus tension and conflict (see Chapter 3). In the 1980s, with increased government funding and an increased broader public profile (outside their own constituencies), NGOs were increasingly being subjected to the same harsh spotlight they themselves had been shining on government and public corporations. It was, therefore, inevitable in the 1980s era of neoliberalism and self-regulation that NGOs would think about codes of conduct. To its credit ACFID was the first global peak body to act in having a code of ethics in 1989.

The development of the code increased the level of prescription on how NGOs should be governed, interact with their stakeholders and, to some extent, how they implement their programs. Two very large NGOs are not code signatories (MSF and Compassion), ostensibly because they find the code obligations restricting on the way they work. On the other hand, being a signatory provides a powerful solidarity tool for NGOs to be able to be 'a sector rather than a collective'. The question remains, however, whether that is happening (Harris-Rimmer 2013).

The growth and complexity of the Code of Conduct in the 2000s raises the broader issue of maintaining diversity in the sector. While the broad ACFID membership of 2015 probably represents a similar level of diversity and numbers that the different categories of membership represented in the 1970s, the question remains whether ACFID has been hoisted by its own petard in the fight to defend NGOs against the inevitable march of managerialism in the 1980s and 1990s. Has it set a managerial agenda that may ultimately be counterproductive to the broad-based diverse set of NGOs which are its members? The real question for the Code as Harris-Rimmer (2013) notes is: 'when agencies are being asked how to be more ethical … it is not about each other, rather the question is: am I being ethical at doing what I do?'