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Law and the Nonprofit Sector in Pakistan

Zafar H. Ismail

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The Johns Hopkins
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Prepared by
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Center for Civil Society, Johns Hopkins University, USA

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FOREWORD

This is one of a series of Working Papers being produced by the Social Policy and Development Centre (SPDC) as part of an international research initiative -the Johns Hopkins Comparative Nonprofit Sector Project spearheaded by the Centre for Civil Society Studies, Johns Hopkins University, USA. In Pakistan, this study is being undertaken by SPDC in collaboration with the Aga Khan Foundation (Pakistan).

The objectives of this study are to: document the size, scope, internal structure, finance and legal position of the nonprofit sector in the country; examine the relations between the nonprofit sector and government and identify the ways in which this relationship can be improved; to improve public awareness of this sector; and provide a more reliable basis for designing policies toward it. The essential rationale for this study is to accelerate the maturation of nonprofit sector by providing comprehensive information and analysis about the dimensions of the sector. The study will also provide the first true baseline of the sector.

The Working Papers provide a vehicle for the initial dissemination of the work of the project to a wide range of audience including policy makers, scholars, development practitioners, policy analysts, international donor organizations and country-wide or regional nonprofit organizations. Working Papers are intermediary products, and they are released in the interest of timely distribution of Project results to stimulate scholarly discussion, and to inform policy debates.

The study has been supported by Aga Khan Foundation (Pakistan). The Foundation's support for this study builds upon AKF's own programmatic interest in strengthening civil society and building human capacity in Pakistan. The study has been funded through the Pakistan-Canada Social Institutions Development Programme, which is supported generously by the Canadian International Development Agency (CIDA) and the Aga Khan Foundation Canada. The United States Agency for International Development (USAID) through a grant to the Aga Khan Foundation U.S.A. under the Pakistan NGO Initiative, has funded the support received from the Johns Hopkins University.

We are pleased to be able to make the early results of this project available in this form and welcome comments and inquiries about this paper or the project as a whole.



Dr. Kaiser Bengali
Acting Managing Director

CONTENTS

| | |
|-----------------------------------|----|
| Legal Regime | 2 |
| Eligibility And Registration | 13 |
| Rights And Obligations | 19 |
| Tax Exemption | 33 |
| Restrictions | 35 |
| Key Trends And Outstanding Issues | 37 |

LAW AND THE NONPROFIT SECTOR IN PAKISTAN

INTRODUCTION

Over the last decade or more, governments in Pakistan have been faced with a financial crunch. This has also been accompanied by a crisis in governance [HDR, 1999; Pasha, 2000]. These two factors have resulted in a cutting back of expenditures in a wide spectrum of public services. This in turn has resulted in the resurgence of the private sector in trying to fulfil the gaps caused by the withdrawal or retreat of the public sector. While a fairly large part of the gap in the health and education sectors has been filled by the for-profit organizations, a not insignificant share falls in the realm of the non-governmental organizations (NGOs). The declining availability of the other social or welfare services has been taken up by not-for profit organizations. The crisis in governance has also resulted in the international donor community diverting their development grants for Pakistan away from the government line departments to the NGOs as executing or partner agencies. This has increased the visibility of the NGOs or not-for-profit organizations (NPOs). The resource diversion has become entrenched as the government actively collaborates with the NPOs in delivering public services through partnership arrangements.

The growth of the nonprofit sector has created a number of organizations which have been established without due awareness of the procedures and consequences of the legal framework which governs their establishment and operations. Consequently a state of mistrust exists between the NPO sector and the government. This report attempts to explain what the legal framework is, how it impacts the sector, what is permitted, what is prohibited, and what are the rights given and responsibilities imposed by law.

The questions asked most often by any person(s) wishing to establish a nonprofit organization are:

1. what is a nonprofit organization?
2. what is the legal regime which governs, controls or regulates the existence and operations of a nonprofit sector?
3. under what conditions can an organization be eligible to call itself a 'nonprofit' organization?
4. which legislation should one apply under?
5. how does one register?
6. what are the obligations of and benefits from registration?
7. are there any restrictions regarding income generation, funding, operations management and personal benefits?
8. how to obtain tax exempt status?

These questions are answered sequentially in the following sections.

I- LEGAL REGIME

DEFINITIONS

To begin with one needs to understand the definition of terms used in describing or referring to the Nonprofit sector or the activities which may be carried on within its ambit.

A common error in defining the term 'nonprofit organization' is to equate it with "organizations which do not make a profit." To the layman this also refers to those organizations which incur losses in their operation(s). However, this is an inaccurate definition and understanding of the term 'nonprofit organization'.

The term 'nonprofit organization' refers to those which provide a service or facility without the motive of profit-making. Any profit generated is recycled for the purpose(s) for which the organization has been established. Such an organization will not distribute profits generated among the organizers or the directors of the organization. The terms 'organizer' and 'director' in the context of the NPOs is synonymous with 'sponsor', 'partner', 'those with ownership interest' or 'possessing proprietary rights'. The spectrum of the nonprofit sector organizations has been best captured by the International Classification of Nonprofit Organizations [Salamon and Anheier, 1996].

The NPOs in Pakistan are engaged in a wide spectrum of activities and consist of a host of different types of organizations ranging from the unregistered and informal sole proprietary to the most formal - a Company with limited liability. Most NPOs are created with either an implicit intent, or with an expressed purpose of being for "charitable purpose". Except for a very narrow definition of the term "charitable purpose" in the Income Tax Ordinance, 1979 no other definition is found in the body of legislation (civil law) in Pakistan. However, common law and case history as applied in Pakistan has acquired a technical meaning. This includes the objects specified by Lord Macnaghten (Desai, 1999, p.16) as being for *the relief of poverty, the advancement of education and/or religion, and/or for other purposes beneficial to the community but not meant solely for sport or hospitality*. The Transfer of Property Act extends this to include activities or organizations *for the advancement of commerce, health and safety of the public*.

The expression 'charitable fund' was defined in the Charitable Funds (Regulation of Collections) Act, 1953 (Ghafoor, 1992). The Act defined 'charitable fund' as any fund consisting of donations whether in money or in kind given by way of charity for the benefit of an individual, family, or the relief of poverty, sickness or distress or any other educational, religious, or philanthropic purpose.

LEGAL CONTEXT

In Pakistan, there are at least seven laws that are of principal relevance to the registration and operation of nonprofit organizations either singly or are applicable alongside others. There is only one law which requires that all nonprofit organizations engaged in providing for the welfare of a specified list of disadvantaged people or for specifically identified purposes must be mandatorily registered. Some of the laws confer the status of an “*artificial juridical person*” (namely it can be sued or sue under its own name and property and assets can be held under its own name) upon the NPOs. Registration under the incorporating Act/Ordinance and subsequently under the Income Tax Ordinance, however, bestows certain advantages, which may include one or all of the following:

1. the assets are held in perpetuity,
2. exemptions from tax on income and profits,
3. exemptions to donors on the donations they make, thereby improving the financial sustainability of the recipient organization, and
4. recognition.

The legal framework governing the nonprofit sector is both archaic and confusing, and is derived from laws enacted in the United Kingdom. These laws date back to just after the War of Independence in 1857 (according to one set of historians from the sub-continent) or the Indian Mutiny (as the British historians refer to it). The most recent specific legislation was issued as a Presidential Ordinance in 1961. Some cover the registration, internal governance and accountability of organizations, others cover how they are financed and managed and yet others cover the relationship between the state and these organizations with respect to reporting on their operations or the manner in which they treat their employees. Some were created for the larger public good while others have been legislated to control the benefits accruing to individuals, families or a larger body of members. While the latter laws restrict the ability to distribute profits among the beneficiaries they are however, not viewed as nonprofit in the wider context of the term since they bestow benefits, which would otherwise be paid for at substantially higher prices. It is argued that because these provide benefits resembling a ‘*subsidy*’ as a result of the creation of economies of scale and are, thereby, either increasing savings, or are sharing profits among the beneficiaries on the principle that ‘*money saved is money earned*’. These laws, have, therefore been excluded from the analysis.

There are a number of other laws which affect NPOs. For instance, if an NPO is involved in a fund-raising activity (a public show or ‘*mela*’), it will have to obtain permission from the office of the Local Deputy Commissioner, under the Charitable Fund (Regulations of Collection) Act, 1953. Once this has been granted, the NPO can apply for a waiver of Entertainment Duty on the sale of tickets from the provincial Excise Department. This permission, however, is not required when obtaining

donations from a private source (either from members of an NPO or philanthropists), and grants from governmental, national and international agencies. In this instance, the NPO would need to be registered under two different provisions of the Income Tax Ordinance, 1979 - one granting it exemption from taxation on its income and the other endowing the giver exemption from taxation on the donations given or grants made to the exempt NPO. The latter is of paramount importance for obtaining higher levels of grants and donations from the private sector – from both individuals and corporate entities.

NPOs function according to their own constitution, memorandum, rules or bye laws, provided they conform to the law in the country. If they obtain registration under any one of a number of Acts or Ordinances, they are compelled to stand by and act on the provisions laid out by that particular Act or Ordinance.

There exists a set of laws governing various types of nonprofit organizations which either require registration explicitly or implicitly to confer recognition. These have been categorized as **Type A** laws in the following list of Acts and Ordinances. These have been further subdivided into **Type A1** (which require registration), **Type A2** (which either recognize the existence of certain types of NPOs or regulate them), **Type A3** (which provide redress to the aggrieved beneficiary), and **Type A4** (which provide tax exemption and implicitly grants a status of being a responsible and accountable organization). Some of the laws which require registration, but endow members with the right to gain from benefits either financially or in kind (such as from purchases in bulk on behalf of members, thereby giving each member the benefit from the bulk rate, which is somewhat lower than the retail price) have been excluded from the analysis, and are included in the list as **TYPE B**. The other reasons for their exclusion have been explained earlier. The Registration Act impinges on NPOs only marginally as it governs the registration of documents without which title to property and assets cannot be established easily or that endows organizations with the ability to enforce rights or benefits conferred by agreement. This is excluded from the analysis and is listed as **TYPE C**. Yet other laws which are irritants to the NPOs and can be the cause of providing economic rents to the lower echelon government functionary¹ have also been excluded. These have been excluded from an in-depth analysis as they are applicable generally to all organizations. However, they have been commented upon with reference to the general nature of the types of interference which classify them as '*irritant*' laws. These have been listed as **TYPE D** laws in the following list.

¹such as the meticulous maintenance of records which would require the employment of additional staff specifically for this purpose. Owing to their discretionary powers to accept or reject such records, it is cheaper to pay off the inspecting staff.

Type A1

- I. The Societies Registration Act, 1860
- II. The Trusts Act, 1882
- III. The Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961
- IV. The Companies Ordinance, 1984

Type A2

- V. Religious Endowment Act, 1863
- VI. The Charitable Endowments Act, 1890
- VII. The Mussalman Wakf Validating Act, 1913
- VIII. The Mussalman Wakf Act, 1923
- IX. The Mussalman Wakf Validating Act, 1930

Type A3

- X. The Charitable and Religious Trusts Act, 1920

Type A4

- XI. The Income Tax Ordinance, 1979
- XII. The Income Tax Ordinance, 2001

Type B

- XIII. The Cooperative Societies Act, 1925
- XIV. The Industrial Relations (Trade Unions) Ordinance, 1969

Type C

- XV. The Registration Act, 1908

Type D

- XVI. The Charitable Funds (Registration of Collection) Act, 1953
- XVII. The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968
- XVIII. The West Pakistan Shops and Establishments Ordinance, 1969

These laws do not reflect recent changes in the nonprofit sector from its historical role with an almost exclusive focus on service delivery, to its recent excursion into development advocacy and research. The laws also require extensive modernization to align their procedures with current international practices.

There is no uniformity in the body of legislation. For instance, the size of membership required for registration varies. Definitions vary, for instance, section 42 of the Companies Ordinance 1984, refers to associations formed for "*promoting commerce, art, science, religion, sports, social services, charity, or any other useful object*", which the Societies Act 1860, section I, refers to as "*any literary, scientific or*

charitable purpose", the Charitable Endowments Act, 1890 refers to as "*relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship*", the Income Tax Ordinance, 1979 recognizes the NPOs as being established only for **charitable purpose** which is defined as "*relief of the poor, education, medical relief and the advancement of any other object of general public utility*". For the first time the Income Tax Ordinance, 2001 defines a **nonprofit organization**. The government's outreach to the sector is ill suited to identifying the appropriate form of registration. Both the Industries Department (responsible for registration of societies and companies) and the Social Welfare Department (responsible for registration of social welfare organizations) have each developed procedures that are published in English only, which is foreign to most people, and are thus inaccessible to many people in both urban and rural communities. Registration procedures are both cumbersome and costly. For instance, to register under section 42 of the Companies Ordinance requires that a draft of the Memorandum of Association (MAA) be printed and submitted to the Corporate Law Authority in Islamabad which may require several protracted meetings over a period of several months, which may result in changing and reprinting the MAA before submission to the Registrar. Frequently, sponsors are required to follow "suggested" constitutions, even though these are mere guidelines and NGOs may use alternative forms as long as the required information is provided. Once the registration process has been completed, an application to the Income Tax department will reveal that they have other conditions, which must be included in the incorporation documents. In the case of Companies, the modification requires fresh approval from not only the Corporate Law Authority, but also from the High Court. Another problem with the existing legislation is that their enforcement mechanisms are inadequate or unclear. For instance, the Societies Act 1860, contains no requirement for periodic reporting of activities carried out by a society, except for a list of the members of the managing body to be filed annually. In many cases accountability mechanisms are loosely enforced and inconsistently applied.

The true NPOs can come into existence under only seven of these laws. Two laws were enacted to give legal recognition to grant ex-ante recognition. The others are corollary laws which affect the day-to-day operations of the NPOs and govern the state/public/NPO relationship. The eleven laws which either require registration explicitly or confer registration either explicitly or implicitly, the form of and the *raison d'être* of the NPO are:

1. *societies, associations and clubs* under the **Societies Registration Act of 1860** by preparing a Memorandum and Articles of Association for the promotion of literature, science or the fine arts, or for the diffusion of useful knowledge, or for political or charitable purposes.

2. *religious societies* under the **Religious Societies Act of 1880** by executing a Deed of Trust which must be registered under the Registration Act, 1908 for maintaining property used for religious purposes.
3. *Public Charitable Trusts and Private Trusts* under the **Trusts Act of 1882** by executing a Trust Deed which must be registered under the Registration Act, 1908 with the express purpose of bestowing ownership of property in the Trustees which is to be used for the benefit of civil society.
4. *Charitable Endowment Trusts* under the **Charitable Endowments Act of 1890** by executing a Trust Deed which must be registered under the Registration Act of 1908, for the purposes of undertaking charitable work.
5. *Waqfs (Trusts)* under the **Mussalman Wakf Act of 1923** through the dedication of property by executing a Wakf Deed and which must be registered under the Registration Act, 1908, by a person of Muslim faith for religious, pious or charitable purposes for the larger comity of civil society and not for the benefit of the creating person or his descendants. This is in contrast to Waqfs recognized by the **Mussalman Wakf Validating Acts of 1913 and 1930** (the former applicable to those created from 1913 onwards and the latter granting ex-post recognition to those created before 1913) which extended recognition also to those created for personal or familial benefits.
6. *Voluntary Social Welfare Agencies* under the **Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961** by completing the registration form for the welfare of children, youth, women, physically and mentally handicapped, released prisoners, juvenile delinquents, socially handicapped, beggars, destitutes, aged and infirm and for : family planning recreational programmes social education (creation of civic responsibility), welfare and rehabilitation of patients, training in social work, and coordination of social welfare agencies.
7. *Public Limited Companies* under **section 42 of the Companies Ordinance of 1984** by filing the Memorandum and Articles of Association with the Securities and Exchange Commission of Pakistan to obtain the Licence (and then registering the Memorandum and Articles of Association along with the Licence) for promoting commerce, art, science, religion, sports, social services, charity or other useful object.
8. *Tax Exempt Charitable Organization* under **sections 14 and 47 and the rules framed as part of the Income Tax Ordinance, 1979** for

undertaking activities which can be classified as “*charitable purpose*” (Section 2 sub-section 14). Effective the income years starting on or after the 1st of July 2002 this will now be replaced by **sections 2, 53 and 80 and the rules framed as part of the Income Tax Ordinance, 2001**. This legislation has for the first time defined a **nonprofit organization**, but has dropped the definition of “*charitable purpose*” and has withdrawn the privilege for the recognition of a *Society* registered under the **Societies Registration Act, 1860** and *Voluntary Social Welfare Agencies* under the **Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961** by excluding them from the definition of a NPO. A detailed discussion of the implication of the new Income Tax Ordinance follows later in this Chapter.

In effect, every form of registration has different procedures and requirements for registration, along with basic rules for the functioning of the organization. With the exception of trusts, all organizations lay down specified conditions for membership. Under most forms of registration, the NPO has some basic obligations with regard to the registration authority. Each type of registration also offers some benefits. However, this does not mean that non-registered NPOs cannot obtain support. For instance, if the latter can convince the tax authorities about the charitable deeds they undertake, there is no legal bar to them being given the status of a *tax exempt organization*. Redress for grievance against any trust is through the **Charitable and Religious Trusts Act, 1920** irrespective of which act they have been created under.

NPOs registered under any one of the Acts or Ordinances, can receive funding from an international donor approved by the government of Pakistan, any national donor and any government department, as long as the NPO can meet the specific requirements and conditions of grants being offered. It should be pointed out here that most of the funds available from the government and international donors are in the form of project aid.

The Acts and Ordinances are operative simultaneously. Thus “*organizations engaged in one of the scheduled activities listed under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance of 1961, may register as social welfare organizations, but such registration does not confer legal personality on them. In consequence, many social welfare organizations are registered under another act as well, such as the Societies Act or the Companies Ordinance*” (Irish and Simon, 2000). The legal implication of this is that one NPO can have two separate constitutions for registration under the two separate acts, with each catering to the different requirements of the registration agency.

The purpose and applicability of the major legislation impacting on NPO registration and operation is described below.

a) The Societies Registration Act, 1860

This is the oldest of the four registration laws, and was promulgated by the British in pre-partition India. The legislation was created largely to regulate professional, scientific and fine arts activities and was later extended to include charitable and social organizations as well. Besides the associations for commercial purposes, other associations for literary, scientific and charitable purposes are often formed as well. Such associations may possess certain assets, owned by individual members, but of common use to the society. In such situations, disputes might arise not only between members, but also among members and the rest of society. In order to manage such a dispute, the concerned association must be recognized under a law enabling it to sue and be sued. This Act came into force in order to provide legal status to such associations. A Society under this act must register itself with the Registrar of Joint Stock Companies who is also the Registrar of Societies.

b) The Religious Endowment Act, 1863

The Act was created largely to relieve the Boards of Revenue from managing religious trusts and buildings and for reverting authority back to the Trustees and Boards of Governors. No organization can be registered under this Act. The Act only recognizes the existence of such Trusts provides for how they are to be managed and regulates their activities.

c) The Trusts Act, 1882

The Trusts Act provides legal cover for private acts of public charity, and allows the creators of the trust tremendous flexibility in their operations. The procedure for the creation of a trust is very simple. A mere declaration on a Rs 10 stamp paper will ensure its creation. Registration is optional and not mandatory. The Act has also been used to establish public trusts and this has been vindicated through case law.

d) The Charitable Endowments Act, 1890

The Act grants authority to the Government to appoint a Treasurer for better financial management of Trusts, thus ensuring the management and safeguarding of any Trust property which might be in financial difficulty.

e) The Charitable and Religious Trusts Act, 1920

The Act is yet another one which governs the operations of both charitable and religious Trusts. The Act permits any person claiming to have an interest in the benefits accruing from the Trust to file a suit for redress or for access to information, subject to the applicant first proving such interest. The Court (District Judge) in its

judgement can specify the manner in which the future operations of the Trust will be conducted thereby, ensuring accountability.

f) The Mussalman Wakf Validating Acts, 1913 and 1930 and the Mussalman Wakf Act, 1923

The former two Acts confer recognition on *Waqfs* created by Muslims for their personal benefit, or for the benefit of their descendants and eventually or specifically for charitable purposes. The 1913 Act is pro-active and the 1930 Act is retroactive. The Act of 1923 governs the financial management of *Waqfs*. It requires that annual accounts be audited by a licensed auditor (as provided in the Companies Act, 1913²) and submitted for scrutiny to the District Judge.

g) The Voluntary Social Welfare Agencies Registration and Control Ordinance, 1961

The Ordinance regulates grass-roots level organizations providing welfare services to those in need. The registration authority lies with the Directorate of Social Welfare that may be approached either directly or through a lawyer.

This ordinance is based on the premise that the “*poor and destitute*” in society need institutional, rather than only charitable, support. The Ordinance requires that all organizations engaged in social welfare or charitable works must be registered with the Social Welfare Departments of the provincial governments.

h) Section 42 of the Companies Ordinance , 1984 as a Nonprofit Company

Registration under this is similar to the registration of profit making Joint Stock Companies with the exception that profits, in this case, are not distributed among the individual shareholders. In law and theoretically, there are two different routes through which registration as a nonprofit company can be achieved. The first is through an application made to the Assistant Registrar Joint Stock Companies at the Directorate of Industries, and the second, through an application made to the Corporate Law Authority. In practice, however, only the latter route is followed.

i) Sections 14 and 47 of the Income Tax Ordinance, 1979

Section 14 of the Income Tax Ordinance provides relief from taxation to the NPOs and Section 47 provides relief to the giver of donations and grants for charitable purposes. Section 2 sub-section 14 defines charitable grants. To achieve the status of a tax exempt organization and to permit relief to donees, an application has to be

²Which has been replaced by the Companies Ordinance, 1984

made and on approval the Government provides these reliefs by notifying the name under Clauses 91 and 94 of Part I of the Second Schedule.

j) Income Tax Ordinance, 2001

This Ordinance defines a “nonprofit organization” for the first time, but the definition is very narrow and leaves considerable discretion to the department in extending the applicability to any organization. The definition is contained in Clause 36 of Section 2 of the Ordinance :

- (36) “nonprofit organization” means any person
 - (a) established for religious, charitable or educational purposes or for the promotion of amateur sport;
 - (b) which is registered under any law as a nonprofit organization and in respect of which the Commissioner has issued a ruling certifying that the person is a nonprofit organization for the purposes of this Ordinance; and
 - (c) none of the income or assets of the person confers, or may confer a private benefit on any other person.

In Clause 42 the Ordinance defines the term “person” to mean “a person as defined in section 80”. This is contained in Division I “Persons”, of Part I “Central Concepts” Chapter V “Provisions Governing Persons” as follows

- (1) The following shall be treated as persons for the purposes of this Ordinance, namely:
 - (a) An individual;
 - (b) a company or association of persons incorporated, formed, organized or established in Pakistan or elsewhere;
 - (c) the Federal Government, a foreign government, a political subdivision of a foreign government, or public international organizations.
- (2) For the purposes of this Ordinance:
 - (a) “association of persons” includes a firm, a Hindu undivided family, any artificial judicial person and any body of persons formed under a foreign law, but does not include a company;
 - (b) “company” means:-
 - (i) a company as defined in the Companies Ordinance, 1984 (XLVII of 1984);
 - (ii) a body corporate formed or under any law in force in Pakistan;

- (iii) a modaraba;
 - (iv) a body incorporated by under the law of country outside Pakistan relating to incorporation of companies;
 - (v) a trust, a co-operative society or a finance society;
 - (vi) a foreign association, whether incorporated or not, which the Central Board of Revenue has, by general or special order, declared to be a company for the purposes of this Ordinance;
 - (vii) a Provincial Government; or
 - (viii) a local authority in Pakistan;
- (c) “firm” means the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all;
- (d) “trust” means an obligation annexed to the ownership of property and arising out of the confidence reposed in and accepted by the owner, declared and accepted by the owner for the benefit of another, or of another and the owner, and includes a unit trust; and
- (e) “unit trust” means any trust under which beneficial interests are divided into units such that the entitlements of the beneficiaries to income or capita are determined by the number of units held.

Nowhere in the new Ordinance is there a provision for the continuity of the repealed 1979 Ordinance and the rules thereunder beyond the 30th day of June 2002. An analysis of the above relevant sections clearly highlights the extent of discretion available to the authorities and the clear exclusion of both a *Society* and a *Voluntary Social Welfare Agency* from the purview of these sections.

The extension of tax exempt status to any organization is governed by section 53 and the Second Schedule of this Ordinance. Rules for seeking and being given this status are yet to be framed.

While such diversity may allow NPOs the flexibility of choice for registration, there is, nevertheless a need to ensure that, first, the definitions used to describe “*charitable purposes*” and “*nonprofit organization*” are consistent across all of the 17 laws identified as having at the very least some implications for the NPOs. Second, the term NPO should be recognized in the body of the laws governing or affecting the nonprofit sector. The diversity in the laws relating to governance and accountability linked to the decay of government regulatory mechanisms and institutions in the 1990s has created an environment of friction and hostility between the current and former governments in Pakistan and the NPOs. The former allege that the latter are engaged in “*anti-state*” activities and are largely opaque and are not held accountable. The state also alleges that a large number of such organizations have been created solely for the purposes of seeking and siphoning economic rents in the name of *charitable purposes*. The latter allege that the government is bent upon destroying the sector as it considers NPOs a threat to government agencies. There

is merit in the arguments made by both sides. In the recent audit of NGOs registered under the 1961 Act in both Punjab and Sindh, a large number of organizations were found to exist on paper only. Consequently, their registrations were cancelled. There is, therefore, a strong justification for improving the monitoring capability of the Social Welfare Departments in the provinces that administer the 1961 Act.

II- ELIGIBILITY AND REGISTRATION

Eligibility for classification and recognition as a nonprofit organization is determined by the objectives for which an organization is created. Generally, the organization must confer and be seen to confer benefits to civil society as a whole and not to any particular segment. It must state that on dissolution the assets will be transferred to a similar organization, and that it will not distribute profits to those who have joined together to form the organization. For instance, if a trust is created solely to benefit members of a particular family, sect, religion or caste, then the trust will not be seen as benefiting society as a whole. However, there are instances where this status is enjoyed by some special types of organizations. These are foundations and trusts established by the government and its various departments and by other agencies for the benefit of either current or retired officials. However, this is limited to only that part which is devoted to “charitable, educational or medical relief” purposes.

ELIGIBILITY

The **Societies Registration Act, 1860** states that a society can be formed and registered if its purpose is to promote any one or more of the following activities:

- \$ Science
- \$ Literature
- \$ Fine Arts
- \$ Instruction and the diffusion of useful knowledge
- \$ Diffusion of political education
- \$ Foundation or maintenance of libraries or reading rooms for use among member or open to the public
- \$ Public museums and galleries of paintings
- \$ Works of art
- \$ Collection of natural history
- \$ Mechanical and philosophical inventions
- \$ Instruments or designs
- \$ Educational and medical services

Trusts usually take two forms, the commonly understood Trust in Common Law, and the *Waqf* in Muslim Law. For the creation of a Trust, as defined in secular law, no religious motive is necessary. However, a *Waqf* under Muslim Law is generally

made for a pious, charitable or religious purpose. While the former has no restrictions as to its intent and purpose, except that it be for lawful purpose, the latter is created for the ultimate benefit of mankind. A Trust property vests in Trustees, but a *Waqf* property vests in God. The Trustees have wider powers than the *Mutawalli* (manager or superintendent) of a *Waqf*. A Trust need not be perpetual and irrevocable. A *Waqf* once created cannot be altered or rescinded. What constitutes a Trust has been explained by Lord Macnaghten (see the Introduction to this Memorandum). As stated earlier *Waqfs* cannot be registered under the three Mussalman Wakf Acts, but are best registered under the Registration Act, 1908 either in the form of a written Deed or as a verbal statement of intent which, therefore, requires an affidavit.

A public charitable trust, under the **Trusts Act, 1882**, unlike other trusts created for the benefit of specific individuals, is for the benefit of society generally or for certain sections of society. Charitable objectives³ can be classified under the following divisions:

- a) Advancement of religion
- b) Advancement of knowledge
- c) Advancement of commerce, health and safety of the public
- d) Advancement of any other object beneficial to mankind

A nonprofit company, under the **Companies Ordinance, 1984**, is registerable if it is established for:

- a) furthering the development of commerce,
- b) furthering the development of art,
- c) furthering the development of science,
- d) furthering the development of religion,
- e) furthering the development of sports,
- f) furthering the development of social services,
- g) furthering the development of charity, or
- h) furthering the development of any other 'useful' objective.

The **Voluntary Social Welfare Agencies Registration and Control Ordinance, 1961** states that a Voluntary Social Welfare Agency is an organization or undertaking established by people of their own free will for the sole objective of providing welfare services in any one or more of the following fields:

- a) Child, Youth and Women's Welfare
- b) Welfare of the physically and mentally challenged

³In Pakistan, under Section 18 of the Transfer of Property Act, charity has been classified under these 4 principal divisions.

- c) Family Planning
- d) Social Education i.e education aimed at adults for developing a sense of civic responsibility
- e) Rehabilitation and welfare of patients
- f) Welfare of juvenile delinquents
- g) Rehabilitation and welfare of released prisoners
- h) Welfare of socially handicapped
- i) Welfare for the elderly and destitute
- j) Recreational programmes to ward off people from anti-social activities
- k) Training in social work
- l) Coordination of social welfare agencies

In effect, NPOs usually work in one or more of the above mentioned areas under this Ordinance. However, other areas of work are also permissible provided they fall into the category of 'social welfare'.

REGISTRATION

Nonprofit Organizations in Pakistan may be registered/incorporated by adopting any one of four forms, namely, society, trust, nonprofit company with limited liability, and social welfare agencies.

A society may be established under the **Societies Registration Act, 1860**, if seven or more persons join together of whom at least three must be the members of the Managing Committee. To establish a society a Memorandum and Rules and Regulations of Association must be printed. These documents must contain clauses which not only state the objectives for which the society is being established, but also how it will operate.

If an existing society or association, which may not be already registered, wishes to register itself under this act, an assent to its being so registered has to be given by three-fifths of the members present at a general meeting convened by the governing body for this purpose. This is considered to be one of the more lenient Acts with respect to registration requirements and to accounting and audit regulations.

The Memorandum of Association must include the following:

- XIX. The name and registered address of the society.
- XX. The names, addresses and occupation of each present member of the Managing Committee.
- XXI. Rules and Regulations of the society or Articles of Association duly signed by all office bearers.
- XXII. In the case of an educational society, the academic certificates of all the subscribers must be produced.

XXIII. Copies of the National Identity Cards of the office bearers.

XXIV. Rent agreement of the office premises.

In addition to the Memorandum of Association, the Rules and Regulations for governing the society must be set out and filed with the Registrar of Societies. The Rules and Regulations, certified by not less than 3 members of the Managing Committee, must contain obligatory clauses relating to:

- \$ Membership
- \$ General Body and Managing Committee
- \$ Meetings and quorum
- \$ Notices for meetings
- \$ The manner of elections and removal of officers
- \$ Procedures relating to accounting and audit
- \$ Dissolution

A trust is an obligation annexed to the ownership of property. It is a 'gift' of property to a person or institution providing benefit to both parties. In order to create a trust it is necessary that there should be a creator or author of the trust, a person in whom confidence is reposed, i.e. the trustee, and a person for whose benefit the trust is created i.e. the beneficiary (case law has recognized the concept of a public trust which is meant for the general benefit of a larger body of people, not necessarily restricted to one category). Beneficiaries cannot be specific individuals, but must be society generally or a particular section of society.

A trust is established under the **Trusts Act, 1882**. For this type of trust, the three conditions of a creator, trustee and beneficiary being present, are unconditional requirements. A private trust would fail for uncertainty if the objectives are not clearly stated. A public charitable trust is a trust which is established for the benefit of the society or at least a certain section of society. There are no particular laws relating to public trusts. However, the rules in the Trust Act of 1882 can be applied to the public and charitable trusts. In the case of public charitable trusts, the conditions governing private trusts are equally important. However, if the objectives are not clear, unlike the private trusts, these trusts would be sustained as long as there is an intention of charity.

Some of the essentials for a public trust to come into being are the following criteria:

- \$ There must be some trust property, whether in cash or capital assets (land or buildings)
- \$ The objectives of the trust must be charitable or for the benefit of society

Therefore, a Trust, in order to be valid, must fulfil these conditions or 'certainties.' This is strictly speaking not true of public charitable trusts. The certainty as to the intention to declare a binding trust and the certainty as to the property to be bound

by the trust are as strictly insisted upon in charitable trusts as in private trusts. A private trust would fail for uncertainty if the objects to be benefited are not clearly specified; but a public charitable trust would be sustained even though the object is not specified provided there is a general intention of charity.

A trust may be created for any lawful purpose, which can be revoked. The Trust Act provides legal cover for private acts of public charity, and allows the creators of the trust tremendous flexibility in their operations. The Trust Act is applicable to all the areas of Pakistan, and can benefit any group.

The procedure for the creation of a trust is rather basic. A public and charitable trust can be created merely by a declaration to that effect on a non-judicial stamp paper of a value (which differs across provinces) stated in the Stamp Act. Registration is optional. The legal status of a trust is that some property is pledged to the benefit of a prescribed group of people. Only the actual declaration of this intent (the trust deed) is registered.

There is no membership in a trust. Even if the trustees are inferred to mean the management, there is no lower or upper limit on the number of trustees. These details would depend on the terms on which the trust has been drawn up.

The application for registration of a public trust must contain the following:

- a) Particulars of documents creating the trust.
- b) Particulars of the trustees and the beneficiaries.
- c) Details of what the trust property is going to be. There is no minimum value of property for starting a trust. If the property is an immovable property then the transfer deed shall be on a stamp paper on the value of the property and it shall be registered.
- d) Preparation of the trust deed, that is, i.e. declaration of having created a public charitable trust.

A **nonprofit company** is registered under Section 42 of the **Companies Ordinance, 1984** as a public company with limited liability provided it meets the following criteria:

- a) It directs, or it intends to direct its profits, if any, or any other form of income, in advancing its objectives
 - b) It vetoes the payment of any return to its members
- Registration may be achieved through two means as follows:
- a) An application made to the Assistant Registrar, Joint Stock Companies at the Directorate of Industries (at the Provincial Level).
 - b) An application made to the corporate Law Authority (at the Federal Level).

The applicant will need to apply for registration to the Corporate Law Authority (CLA) in Islamabad who will issue the licence permitting the incorporation. The licence specifies the terms under which the company may be registered. Once the licence has been obtained application for registration is made to the concerned Registrar Joint Stock Companies who is empowered to issue the Registration Certificate.

The application for registration of a Nonprofit Company needs to fulfill the following requirements:

- a) Payment of the Registration Fee.
- b) Particulars of the Memorandum of Association. The Memorandum of Association has to be signed by seven members. This is the minimum number prescribed for both members and directors.
- c) Particulars of the Articles of Association. The Articles of Association, setting out the regulations for the company, must be signed by the subscribers to the memorandum.
- d) Particulars of the directors of the company.
- e) Details of ownership documents for the registered office.
- f) Information of the undertaking by the subscribers.

The Memorandum of Association must state:

- \$ The name of the company.
- \$ The province or part of the country in which the registered office is to be situated.
- \$ The objects of the company and the territories to which they extend.
- \$ That the liability of each member is limited.
- \$ That each member undertakes to contribute a specified amount to the assets of a company in the event of its being wound up.

Once the application for registration is complete the applicant will be informed accordingly in four to six weeks. If registration of the Memorandum is refused, the subscribers or any authorized personnel may either remove the defect, if any, or alternatively appeal to the Registrar directly. If the documents are accepted then an inspection may follow. While there are no specific requirements, the inspection proforma will require the name of the organization, nature of work, bank account, ownership or tenancy documents. After such formalities have been completed, the Directorate of Industries will certify the registration.

Once a Nonprofit Company is registered under Section 42 of the Companies Ordinance, and a certificate of incorporation has been issued by the Registrar, the legal status of the concerned association becomes that of a *'body corporate, having established succession, and a common seal'*.

Following registration the mandatory actions are:

- a) Situation of the registered office and of any change to be notified to the Registrar within 28 days of incorporation,
- b) the accounting books, including details of the income and expenditure accounts, must be open to inspection by the Registrar or an authorized authority. Audited accounts must be maintained,
- c) the Memorandum and Articles of Association may not be altered without prior approval of the Corporate Law Authority,
- d) submit audit reports annually to the Registrar, and
- e) publication of the annual report is to be available for the general public on demand.

The authority for registration under the **Voluntary Social Welfare Agencies Registration and Control Ordinance, 1961** lies with the Directorate of Social Welfare of the provincial governments. The application for registration must be accompanied by the constitution of the agency. This needs to contain all the provisions mentioned in the Elements of the Constitution of an Agency as per Schedule I of the rules which are as follows:

- I. Name and Address of the agency
- II. Area and Plan of operation
- III. Aims and Objectives
- IV. Details of Members
- V. Organizational Structure
- VI. Particulars of the Financial Structure

The minimum number of members required by an NPO for registration under this Ordinance is 10 or 11. Moreover, it must have no more than 15 people on its Management Committee, following a pattern set by the Social Welfare Department.

III- RIGHTS AND OBLIGATIONS

Good corporate governance requires that organizations are transparent in their operations, are held accountable for their actions and are cost-effective in the services that they provide. Through effective regulation governments are able to ensure that minimum standards of corporate behaviour are observed. Once registered the NPO enjoys the privileges which the concerned Act/Ordinance bestows on it. However, each piece of legislation also places certain responsibilities on the NPO with respect to not only its internal governance but also vis a vis the registration authority. This Chapter explains the rights, privileges and the responsibilities of not only the NPO, but also its members those responsible for the management of each of the four types of organizations which can be registered.

A) SOCIETIES

Once the NPO receives its certificate of registration under the **Societies Registration Act, 1860**, its legal status is that of a registered society, which means it can enforce its rules against its members, sue and be sued in its own name, and maintain bank accounts in the name of the society. In addition, if any judgement is passed against a person on behalf of the society, the judgement can only be enforced against the property of the society, not against the person. One major benefit of registration that is available only to registered societies in the province of Sindh, is that they may apply for 'amenity plots' at half of the rate for residential plots from the Karachi Development Authority (KDA) (NGORC, 1991). The only way to refuse recognition of its status would be if there was any evidence of its members making private gains by setting up the society.

Status of a Member

Under the law, it is imperative that there be a minimum of 7 members to form a society under this act. There must also be a minimum of 3 members as the 'governing body'. If any judgement is passed against a person or officer on behalf of the society, the judgement can only be enforced against the property of the society, not against the person or officer. No member shall be counted as a member, or be entitled to vote whose subscriptions at the time have arrears for a period of more than three years.

Rights and Liabilities of Members

The Members of a Society enjoy the following privileges:

- \$ Right to vote
- \$ Right to receive notices and reports
- \$ Right to resolve disputes and their liabilities are limited to:
- \$ be sued as a stranger (that is, a person who is extraneous to the Society itself)
- \$ Members guilty of misapplication of funds will be subjected to the same punishment as any other person
- \$ Recovery of penalty accumulating under bye laws

Governing Body

The governing body of the society is the heart of the society. The Act defines the 'Governing Body' to be the 'Management Committee' consisting of Governors, Councils, Directors, Committee, Trustees or other body to whom, by the rules and regulations of the society, the management of its affairs is entrusted. The governing body of the society is an alternating body. However, its constitution is not affected

by the change in its membership. There will always be a governing body to manage the affairs of the society whether or not the same has been properly constituted in terms of the rules and regulations. The criterion in all cases is who is managing the affairs of the society. The property of the society vests in the governing body and not in the members of the society.

The members of the governing body are either elected or nominated as per the rules and regulations set down. The members of the society may voluntarily step down from office or be expelled if it is provided in the rules. The provincial government has the power of superseding the governing body for up to one year, and replace it with a provincially nominated governing body. However, the governing body would be reconstituted after a specified period of time as per the Memorandum and rules of the Society.

The duties of the governing body as stated in the law include:

- a) The society has to file with the registrar of Joint Stock Companies all details concerning its members. This list includes the names, addresses and occupation of the Governors, Council, Directors, Committee or other governing body authorized with the management of the affairs of the society.
- b) The society is bound to hold meetings and follow procedures as laid down in its own Rules and Regulations. A statement on the societies activities, including income and expenditure, and any other information as laid down in the Rules and Regulations of the society must be presented in their annual general meeting.
- c) An amendment to its memorandum or bye laws must be registered with the Registrar of the Joint Stock Companies.

Registrar of Societies

The registrar of Joint Stock Companies is responsible for regulating the activities of the society. He scrutinises the Memorandum of Association prior to registration and can suggest modifications. The Registrar must first satisfy himself that all the documents are complete and meet the criteria specified for registration. Following this, the applicant is informed accordingly, and a site inspection is carried out. The Assistant Registrar might accompany the inspection team to note down information relating to the name, nature, address of the society, a bank account number, if any, and whether the office is rented or owned certified as by documentary proof. Once such formalities are completed, a report is sent to the Director of Industries who approves it. Only then, will the Assistant Registrar certify that the society is registered under the Act. The Registration Certificate, after being signed by the provincial assistant registrar Joint Stock Companies, will be handed over to the applicant.

Dissolution of Society

A Society may be dissolved when at least three-fifths of the members in a general meeting agree and specify the time of the dissolution. The society, however, cannot be dissolved without the consent of the government of the province of registration. At the time of dissolution, if any property remains after the payments of debt and liabilities, this must be given to another society as decided upon by three-fifths of the members.

Cancellation of Registration

The provincial government may declare the governing body to be null and void if the society is:

- I. Unable or fails to discharge its duties.
- II. Unable to administer its affairs or meet its financial obligations.
- III. Acts in a manner contrary to public interest or the interests of its members.

After a specified period, the governing body would again be reconstituted according to the Memorandum and Rules of the society.

Accounts and Audits

The Act does not provide for maintenance of accounts or their audit in any specific form or manner. Every society needs to keep correct and updated books of accounts containing information with respect to:

- a) All sums of money received and all sums of money disbursed by the society
- b) all sales and purchases of the society
- c) all assets and liabilities of the society

Furthermore, it is in the interest of the society to maintain the following books of accounts:

- i. Cash Book, showing daily income and expenditure.
- ii. Vouchers for contingent and other expenditure incurred by the society.
- iii. Ledger showing consolidated and separate accounts of all items of receipts, expenditure member wise, as well as item wise.
- iv, Monthly register of receipts and disbursement.

Auditing of Accounts

Every society is required to get its accounts audited once a year by a qualified auditor. The report should indicate the exact financial affairs of the society.

B) TRUSTS

Members of a Trust

There is no membership in a trust. The Trustees of every Trust constitute the management committee. There is no bar on the minimum or maximum number of trustees. This is governed by the terms of the trust.

Duties and Liabilities of a Trustee

Trustees are in principle bound to:

- \$ Fulfill the purpose of the trust and obey the directions of the author (i.e the person who reposes the confidence).
- \$ Inform themselves about the state of the trust property. This may enable the trustee to obtain, when required, the transfer of the trust property to himself, and to obtain for the trust, the funds that are invested on insufficient or hazardous security.
- \$ Protect the title to trust property and defend all suits that are required for the preservation of the trust property, and therefore, the protection of the title.
- \$ Take care of the trust property. However, in the absence of a contract, a trustee managing such property is not answerable for any loss or deterioration of the trust property.
- \$ Prevent wastage. If the trust property is prone to be wasted, or is of future or reversionary interest, then the trustee shall convert the property to a permanent and profitable nature.
- \$ Invest trust money which cannot be applied immediately. Further, proper accounts of the trust property must be maintained, and all information in this regard kept available at the request of any beneficiary.

A Trustee may be discharged from office if any one of the following conditions occur:

- a) the extinction of the trust,
- b) the completion of the duties under the trust,
- c) appointment of a new trustee in his place,
- d) by a voluntary consent, and
- e) on account of a petition for his discharge by the court.

Rights and Liabilities of the Beneficiary⁴

Subject to the provisions of the Trust a beneficiary:

- I. has a right to the rents and profits of the trust property,
- II. is entitled to have 'the intention of the author of the trust specifically executed to the extent of the beneficiaries interest'.

⁴A beneficiary is a person for whose benefit the trust is created. Further, every individual who has the capability to hold property may be a beneficiary.

- III. Has the right to inspect and take copies of the instrument of trust, accounts etc.
- IV. The right to transfer 'beneficial interest', subject to law.
- V. The beneficiary has a right to sue for the execution of the trust, if no trustees are appointed, or all trustees die, disclaim or are discharged.
- VI. Has the right to have a proper trustee who shall protect the trust properly.
- VII. Has the right to have the management of the trust in the right hands and by proper number of the trustees.
- VIII. Has the right to have the trustee compelled to execute any act of his duty and refrain from committing any breach of trust.

Governing Body

Since a trust is registered as a document, not as an organization, there is no official authority which can hold it responsible. Since there is no specific law which covers public and charitable trusts, there are no particular rules pertaining to either of them. There is also no official binding as to a governing body or meetings to be held and so on, since these would be in accordance with the terms and intent of the trust deed, and not any specific statutory law. However, in the absence of any other law, the principles laid down in the Trust Act of 1882, even though it only applies to private trusts, could also be construed to extend to public and charitable trusts. If there is a dispute concerning a Public Trust, the civil courts under Section 92 of the Civil Procedure Code are a competent judiciary.

Accounts

A Trustee is bound to keep clear and accurate records of accounts of the trust property; the beneficiary must be given full access to such information.

Dissolution of the Trust

A trust is brought to an end:

- \$ When its purpose is fulfilled
- \$ When its purpose becomes unlawful
- \$ When the fulfilment of its purposes becomes impossible due to the destruction of trust property
- \$ When the trust, being revocable, is expressly revoked.

C) NONPROFIT COMPANIES

All NPOs registered as nonprofit companies can use their name without the suffix 'Limited', '(Private) Limited' or '(Guarantee) Limited'. Each nonprofit company must, however, clearly indicate on all bills, receipts and correspondence that it is a Company with limited liability under section 42 of the Companies Ordinance, 1984. Its members are not entitled to any share in the profits of the company, nor are they

allowed to be remunerated for services rendered. Their liability is limited by the Memorandum to such amounts as each member may undertake to contribute to the assets of the Company in the event of its winding up.

Working and Management of a Company

The business of a company is to be managed by the directors. The office bearers of a registered nonprofit company are called the Directors and are elected from the body of Members. The initial Directors, unless specified are Subscribers to the Memorandum and Articles of Association.

Status of a Director

The status of the directors specified in the Ordinance is governed by the following principles:

- \$ Directors are not entitled to any share in the profits of the company.
- \$ The liability of its directors is limited by the Memorandum.
- \$ Each director undertakes to contribute a specified amount to the assets of a company in the event of its being wound up.

Rights of Directors

The directors have certain privileges granted by law. However, in the case of nonprofit companies these are somewhat limited. Rights which the directors can enjoy as a body are:

- \$ the induction of additional members under specific terms and conditions if such membership is not already specified in the Articles of Association.
- \$ the ability to invest funds of the company and make loans.

As individuals they have the right of free access to all records and information.

Appointment of Directors and Term of Office

The directors must be elected at the first annual general meeting and thereafter hold office for three years. The directors must then determine the rotation for resignation over the next three years. Each year thereafter a third of the directors must be re-elected for a three year tenure. Only a 'natural' person who is either a member of the company or who is the representative of an "*artificial juridical person*" can be a Director. No director can be the variable representative of a corporate body. This clause shall not apply in the case of:

- I. A person representing the government or an institution or authority which is a member.
- II. A full time director who is an employee of the company.
- III. A chief executive.
- IV. A person representing a creditor.

The directors can resign office voluntarily or be removed if he/she:

- a) is removed by the members at an annual general meeting, or
- b) is absent without leave from three consecutive Directors meetings or if he is absent from all meeting for a period of over three months, whichever is the longer.
- c) ceases to be a member, or
- d) becomes bankrupt or is declared to be an undischarged insolvent, or
- e) is convicted for an offence of moral turpitude or,
- f) has betrayed lack of fiduciary behaviour and is so declared by a Court, or
- g) becomes of unsound mind, or
- h) is a partner of any firm or he is a director of any private company of which he is the director :
 - i) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a chief executive, legal or technical adviser, or
 - j) accepts a loan or a guarantee from the company.

Appointment of Chief Executive

Every company, other than one which is administered by a managing agent must have a chief executive. The directors of the company are responsible for appointing a person to the chief executives position. The chief executive may be appointed from outside the body of members of the company. The term of office is up to the first annual general meeting (a maximum of 18 months from the date of incorporation) unless he resigns or ceases to hold office, and thereafter for three years.

The terms and conditions of appointment will be determined by the directors in accordance with the provisions set out in the company's Articles. A resolution passed by three-fourths of the total number of directors may remove a chief executive before the expiration of his term of office.

Duties of the Board of Directors

The directors' responsibilities of a nonprofit company include:

1. to meet at least twice a year,
2. to hold general meetings,
3. to manage the affairs of the company,

4. issue debentures and borrow money as and when required,
5. invest the funds of the company,
6. to make loans,
7. to approve periodical accounts,
8. to give special permission to associated undertaking to contract with the company,
9. to approve the payment of bonuses to employees,
10. to incur capital expenditure exceeding Rs 20,000 on any one item,
11. to dispose off any single asset valued at over Rs. 10,000.

The quorum for board meetings is the presence of at least four directors. All meetings must be called with a fourteen day notice and votes are by show of hands.

In the final analysis, all actions of the Board of Directors can be queried by Members at Special General Meetings. These can be requisitioned by at least one-tenths the number of registered members or by the directors themselves. Such meetings must be called within twenty one days of the requisition being deposited, failing which the majority of them may call the special general meeting at any time thereafter, but no later than three months from date of submission of the requisition.

Each year the company must hold a general meeting to elect directors in place of those retiring (one-third of the complement), approve the accounts and appoint and fix the remuneration of the auditors.

Accounts and Audit

Every Company needs to keep books of account with respect to:

- a) All sums of money received and disbursed by the Company.
- b) All sales and purchases of goods.
- c) All assets and liabilities.
- d) In the case of a Company carrying out activities in production, processing or mining activities, all particulars related to the use of material or labour or any other relevant inputs, are required to be included in the book of accounts.

Dissolution of a Company

A Nonprofit Company may be wound up in a number of specified ways. There is, however, one over-riding principle - no assets may be distributed among the Members. They must be given to any other organization with a charitable purpose by the liquidator with the approval of the court. The ways in which a nonprofit company may be wound up, dissolved or liquidated are:

- I. Through a Court.* A Company may be wound up through a court for a

number of reasons, some of which are as follows:

- If a Company, by special resolution, has resolved that it be wound up through court
- \$ If a Company does not commence its operations within a year of corporation, or suspends operations for one year
- \$ If the number of its members is reduced to less than the minimum requirements
- \$ If the Company is unable to pay its debts
- \$ If the Company has been undertaking unlawful activities, or business unauthorized by its Memorandum, or conducting itself in a manner not suitable to its members
- \$ If the court is of the opinion that it is just and equitable that The Company be wound up

II. *Voluntarily:* A Company may be wound up voluntarily on the following grounds:

- When the period, if any, fixed for the duration of the Company by the Articles expires, and the company in a general meeting resolves that the Company be wound up voluntarily
- If the company resolves in a special meeting that the Company be wound up voluntarily

III. *Subject to the Supervision of the Court.* Where a Company has passed a resolution for winding up on a voluntary basis, the court, may of its own motion or on application by any person entitled to apply to the court for the winding up of the company, may make an order that the voluntary winding up will continue under supervision of the court.

IV. *Revocation of License:* If the activities of the association are in violation of the provision of the Companies Ordinance of 1984, the license can be revoked by the Corporate Law Authority (CLA).

D) SOCIAL WELFARE AGENCIES

Every registered agency under the **Voluntary Social Welfare Agencies Registration and Control Ordinance, 1961** must:

- a) Submit its annual report to the registration authority and maintain audited accounts; these records must be made public.
- b) Obtain approval of the registration authority before making any amendments in the constitution.

- c) Grant due authority to the registration authority to inspect the books of accounts, and other records with respect to securities, cash and other properties held by the agency.
- d) Obtain approval of the registration authority before amending its constitution.

There are certain fundamentals with regard to the functioning of a voluntary social welfare agency. It must make public its annual reports and audited accounts. It is required to pay all funds received into a separate account at a nationalized commercial bank, all of which have been approved by the Department of Social Welfare for this purpose.

Once registered under this Ordinance, the welfare agency is legally established, but does not enjoy the status of an “*artificial juridical person*.” While it has the authority to institute and defend suits, and other legal proceedings, it cannot own property under this Ordinance. Further, it has the protection from suit, prosecution, or legal proceedings for anything done in ‘good faith’. Under the Ordinance the Department of Social Welfare can make funding arrangements to the Social Welfare Councils. Therefore, it would be in the interest of the Social Welfare agencies to not only maintain contact with the relevant authorities but more so to be registered. The main role of the registration authority, vis a vis a registered NGO, is that it can act as an arbitrator in the case of disputes or winding up. This is an important advantage.

Member of an Agency

The Act defines a member of a society as a person who:

- \$ According to the rules and regulations has been admitted to the agency
- \$ Has signed the list of members of the agency
- \$ Who agrees to abide by the constitution and bye laws of the organization
- \$ Who agrees to pay the prescribed fee of the organization

Status and Rights of a Member

The following are the types of membership offered under this Ordinance:

- a) Patron
- b) Life member
- c) Ordinary member
- d) Associate member
- e) Affiliated member
- f) Honorary member
- g) Co-opted member

Only the first three categories of members are allowed to cast their vote, take part in the meetings, and hold any office in the agency. The others can only attend the meetings.

Their rights are:

- \$ to vote
- \$ to receive notices and reports
- \$ to resolve disputes

Members' liabilities

Their liabilities are limited to:

- \$ be sued as a stranger
- \$ be held guilty for misapplication of funds
- \$ recovery of penalty accumulating under the bye laws

Appointment and Term of Office of Governing Body

The members of the governing body of an Agency are either elected or nominated as per the rules and regulations set down. An Election Committee, consisting of three members, including its chairman, shall be elected at the Annual General Body Meeting. The members of the Agency may voluntarily step down from office or be expelled if it is provided in the rules of incorporation. No employee can become a member of the organization. Further, members of the Committee are not entitled to seek elections for post in the Executive Committee.

The **General Body** shall consist of Life and Ordinary members. Its functions and powers include:

- \$ Determination of the policy and programme of the organization, and the approval of the fiscal budget.
- \$ Elections of office bearers.
- \$ Appointment of chartered accountants for audit and to approve reports.
- \$ To decide on appeals and matters of the members and executive committee respectively.
- \$ To make amendments in the constitution of the agency, as and when required.

The **Executive Committee**, made up of 15 people or less, shall have the following office bearers:

- \$ President
- \$ Vice President
- \$ Hon. General Secretary
- \$ Joint Secretary
- \$ Treasurer

\$ Executive Members

The office bearers and the members of the Executive Committee shall hold office for two years and not more than two consecutive terms. Their functions pertain to the following:

- I. To act and represent the organization in all matters, and execute the policy and decisions of the General Body.
- II. To appoint Sub-committees for any specific purpose.
- III. To invite, nominate, accept, suspend, or take other punitive measures against the staff of the organization.
- IV. To determine the terms and conditions of the staff.
- V. To prepare annual reports and audited accounts, and present them to the General Body for approval. Further, it has to prepare progress and budget reports, and maintain records of the office.
- VI. To hold Annual General Meetings.

All office bearers and members of the Executive Committee shall be Honorary and shall not charge any remuneration. All property, movable and immovable belonging to the agency shall be vested in the Executive Committee, who shall administer it only as per the aims and objectives of the Agency.

Duties of the Agency

Every Agency is required to:

- a) hold a general meeting, which must be called every year.
- b) have copies of the Act, Rules and Regulations and all Bye Laws which must be open for inspection at the registered office.
- c) have the accounts audited at least once a year.
- d) maintain a register of all details of its members, with names and addresses.
- e) maintain detailed books of all accounts to be kept in accordance with the rules.
- f) pay all money received by it into a separate account kept in its name in a bank approved by the registration authority.
- g) maintain a minutes book containing all records of the meetings of the Agency.

Powers and Duties of Registrar

The registration authority for a Voluntary Social Welfare Agency is the Directorate of Social Welfare. When the documentation for registering a society is complete, these documents, including the constitution of the Agency should be submitted to the Office of the Directorate.

Certification and Inspection of Documents

A society is registered only when the Registrar is satisfied with all the documents received and all other criteria fulfilled by the society. Once all has been found in order, the applicant will be informed accordingly, and a site inspection will be carried out. The Social Welfare Officer will accompany the inspection team to note down information relating to the name, nature, address of the society, a bank account number, if any, and whether the office is rented or owned, certified by documentary proof. Once such formalities are completed, a report is sent to the Director Social Welfare who approves it after which a certificate of registration is prepared. These procedures have been borrowed largely from the Societies Registration Act, 1860 under which most of the Agencies are registered.

Accounts and Audits

Every agency needs to keep correct, updated and audited books of accounts containing information with respect to:

- a) All sums of money received and all sums of money disbursed by the agency
- b) All sales and purchases of the agency
- c) All assets and liabilities of the agency

Further, it is in the interest of the Agency to maintain the following records:

- i. Cash Book, entering all amounts paid or received
- ii. Vouchers for contingent and other expenditure incurred by the agency
- iii. A ledger showing consolidated and separate accounts of all items of
- iv. receipts and expenditure member wise as well as item wise
- v. Monthly register of receipts and disbursement
- vi. An income and expenditure account to be audited each financial year

Every Agency should get its accounts audited once a year by a duly qualified auditor. The report must indicate as to the exact state of the agency's financial affairs.

Dissolution of an Agency

An Agency may be dissolved in a number of ways. These are:

- I. By the Provincial Government: If the registration authority has reason to believe that a registered agency is acting against its constitution, or contrary to the Ordinance or rules, or in a manner which is wrongful to the interests of its members, it may after giving the agency an opportunity to defend itself, make a report to the provincial government for dissolution.

- II. Voluntarily A registered agency cannot be dissolved by the governing body or members. However, if more than three-fifths of the members of the Agency make a dissolution application to the provincial government, the government may consider it.
- III. Suspension of the governing body If, after inquiry, the registration authority is of the view that an agency has shown irregularity with respect to its funds, mal-administration of its affairs, or has failed to comply with the provisions of the Ordinance, the governing body may be suspended and a caretaker administration appointed. The suspension will be placed before the Provincial Government which can order either a re-installation or the dissolution of the governing body. The dissolved governing body may put in an appeal against such an order within 30 days.

IV- TAX EXEMPTION

Although tax exemption is considered an automatic benefit of registration by many NGOs, it must be noted that the only type of tax exemption for NPOs is the exemption granted by the Central Board of Revenue (CBR) on a case by case basis. This is not part of the registration process and must be applied for separately.

It appears that income tax laws as applicable to NPOs is a grey area. Many organizations assume that since they are nonprofit organizations (except in the case of cooperatives) they are not liable to pay any taxes. According to the Income Tax Ordinance, 1979 (NGORC, 1991), some types of incomes are exempt from taxes and some are not, regardless of whether they are earned or obtained by profit making or nonprofit organizations. For instance, Trusts established for religious and charitable purposes are exempt from paying tax on income derived from investments in government securities. However, income derived from other investments, the sale of services and publications are exposed to the levy of Withholding Tax in which case an annual return has to be filed which is then assessed for tax purposes. Even when organizations are granted a tax exempt status this return must be filed.

The Income Tax Ordinance, 1979 does not distinguish between the various types of nonprofit organizations, nor the legislation under which they may be registered. Thus, it treats each type of organization equally. Each application for exemption of income from taxation or for recognition as a charitable organization so that a donee may claim exemption from taxation on the amount given as donation is treated on a case by case basis. Neither the Ordinance, nor the Rules framed as a consequence include any criteria against which each application should be judged. Exemptions from taxation are governed by the definition of the term "*charitable purposes*". Section 2 sub-section 14 of the Ordinance defines this as:

“Charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.”

As a consequence of the lack of established criteria to establish the validity of the application and the very limited interpretation of the definition applied by the authorities, there is, therefore, substantial and unbridled discretion available to the sanctioning authority, the Member Income Tax (for exempting the income) and the Income Tax Officer (for exempting donee grants).

Applications for exemption of income from Income Tax are governed by Section 14 of the Income Tax Ordinance. All applications must be made to the Central Board of Revenue in Islamabad. All applications must be accompanied by all of the documentation submitted for registration, the registration certificate, and the audited accounts, the tax returns as well as the assessment orders for the last three years. The last two are required to establish the fact that the income of the organization is limited to donations and grants from government and/or international aid organizations all of which are exempt income under international protocol for the latter and the argument that grants from government are derived *ab initio* from resources accruing from taxation. The decision for approval or otherwise rests solely with the Member Income Tax.

Applications for enabling donees to claim a rebate in their individual tax liability in proportion to the donation to their total income are governed by Section 47 of the Ordinance. All applications must be made to the Income Tax Department through the Income Tax Officer of the Circle in which the organization is located. The application must be accompanied by all the documents filed for registration and the registration certificate. The decision for approval rests solely with the Commissioner Income Tax in charge of the concerned Income Tax Circle. Once the application has been approved notifying the name under Clauses 91 and 94 of Part I of the Second Schedule, the organization is deemed to be a tax exempted company and a tax credit may be claimed on donations made to it by any external agency.

Such treatment is very restrictive as exemptions are only given to those agencies which depend on donations and grants. In practice, income from fees charged for medical services are also exempt once the organization has been notified as an exempt organization.

There is a limit on the amount of donations that either an individual or an organization can claim relief on. The limits were revised in the 1998-99 Federal Budget. The Finance Act 1998 contained changes with respect to the kind and level of donations for charitable purposes. Changes only to Section 47 of the Income Tax Ordinance, 1979 have been included. The first notification was with respect to the donation of articles or goods. The value and type of such articles or goods, will,

however be determined by the Central Board of Revenue. The cap on donations set at Rs 2.5 million has been removed entirely. The final amendment has increased the share of income that may be donated in any one year. The limit of 10 percent in the case of companies has been increased to 15 percent. In the case of all other assesseees 30 percent of income can now be donated for charitable purposes.

The recent changes in the taxation regime may also expose the NPOs to the levy of General Sales Tax on services. The situation has not been clarified as yet. In such a case, the NPOs are hard pressed to pass on this levy and the likelihood of their income declining is a matter of grave concern.

A registered NGO can also apply for exemption from entertainment duty to the local District Commissioner if the NGO wishes to raise funds through public activities such as carnivals, festivals, theatrical shows, etc. This will exempt it from the tax imposed on ticket sales etc.

Obligations to the Public

Other than the various Trusts/Waqf Acts, disclosure is mandatory. Annual reports and audited accounts must be submitted. Copies can be obtained from the registration authorities on request by civil society at large. The documents can also be inspected at the registered offices of companies registered under the Companies Ordinance.

All members of the managing committee called by whatever name have fiduciary responsibilities. If found guilty, they can be prosecuted in their *personaa*.

V- RESTRICTIONS

Personal Benefits

Only Ordinances in the Category A body of legislation prohibit the payment of remuneration to the governing body and the members of the NPOs. These and the other laws prohibit the sharing of left over assets after dissolution among Members. Insider trading is allowed only if such disclosure has been made and permission sought from the governing body. Executive salaries are implicitly required to be reasonable, but there is no explicit bar on them by law. However, the Articles of Association or the Trust deed can lay down limits at the discretion of Members or the Creators of the Trust.

Business Activity

Each of the laws explicitly require a statement of objectives and purpose to be clearly specified. Only the various trust acts permit these to not be in writing. However, in this case an affidavit has to be filed by the Trustees. Once registered, these statements of intent are the binding constraints on any activities undertaken by the concerned NPO.

NPOs can undertake businesses which are not necessarily related to their purpose, provided that their statements of intent (for instance, Trust deed, Memorandum of association) permit such activity. Irrespective of whether they have been approved as a “charitable institution” under the Income Tax Ordinance such profit-making activities are liable to tax. An instance of this treatment is the tax levied on the business and industrial undertakings owned and operated by the charitable trusts and foundations established by the defence forces of Pakistan. This was notwithstanding their ploughing back the profits for the welfare of retired defence forces personnel.

Other Funding Restrictions

All NPOs are required to seek approval for a concerted campaign to raise funds either through charity drives or through public gatherings for art, musical, theatrical or charitable purposes at which tickets/cards are sold in advance or gate money is collected. Such permission must be obtained from the Deputy Commissioner of the District in which the activity is to be undertaken. The application must be made under the Charitable Funds (Registration of Collection) Act, 1953 which then permits the NPO to apply for exemption from Entertainment Duty. The Deputy Commissioner has considerable discretion in either granting or rejecting the application without specifying any reason. Recent case laws have required that all decisions should be in the form of “*speaking*” orders (that is, the order must clearly stipulate the rationale which governs it).

Each piece of legislation requires that accounts be maintained. The form and manner is specified in all but the various trusts acts. Audit requirements are also stated. However, the stringency for both the maintenance of accounts and their subsequent audit differs in each case. The rigour is directly proportional to the rigour in preparing the registration documents. Thus only rudimentary accounting and auditing is required under the various trusts acts. On the other end of the scale the Companies Ordinance requires that accounts be maintained using the International Accounting Standards which are used by the Chartered Accountants for auditing the books of accounts.

A statement of receipts by the donor is required to be filed under the Voluntary Social Welfare Agencies Ordinance.

Political Activities

The body of law, other than the Voluntary Social Welfare Ordinance, does not prohibit NPOs either from engaging in political activity or contributing. However, under the Income Tax Ordinance 1979 no NPO engaged in political activity will be granted an exemption from income tax on the campaign funds it may collect. The Political Parties Act, which is the main body of legislation governing political activities does not refer to NPOs but refers primarily to organizations dealing solely with political activities.

VI- KEY TRENDS AND OUTSTANDING ISSUES

Over the last decade or so the growth in the nonprofit sector in Pakistan has been both visible and tangible. The recent sectarian strife has given birth to a number of schisms each of whom have established their own religious seminaries (*Madressahs*) attracting funding from diverse donors, both domestic and foreign. The start-up of the Social Action Programme saw the birth of a number of non-governmental organizations (NGOs) operating at the sub-national and national level and community based organizations (CBOs) operating at the regional or local level. Another factor in the rapid increase of these organizations was due to patronage wielded through the allocation of social welfare funds. Another phenomenon has been the retreat of the government in the provision and delivery of basic social services. The decline in social services has to some extent been taken up by the NPOs, the best and most effective of whom, have attracted multi- and bi-lateral funding from international donor organizations in the form of specific but generally small grants, which have been diverted away from the government.

Deregistration of NPOs

All of these factors have cumulatively threatened the nexus of power between the politician and bureaucrat, on the one hand, and the engineer and contractor, on the other. The resources these two coalitions have traditionally drawn rents from have shrunk considerably. The first action taken by the government, in response to rent decline, was a vilification campaign against the NGOs in the media. This was followed by a concerted effort by the provincial governments to curb the growth and activity of NPOs. They launched a *witch hunt* to weed out the *corrupt* and non-operational among the NPOs. While it may be true that a large number of the NPOs targeted for deregistration were actually fronts for vested elite interest groups, which were decrying their own existence, the bulk of the NGOs and CBOs were actually providing strong services to local communities. As a consequence of this campaign nearly 2,000 NPOs were served notice. The final fate of the exercise is not known as the exercise was interrupted initially owing to a change in government's priorities and subsequently because of the change in government.

Fiscal Framework

Faced with a substantial resource crunch and in the spirit of the action mentioned earlier, the Federal Government changed the tax laws favouring the NPOs. The very large list of institutions that had been recognized as charitable institutions were suddenly deleted from the approved lists and were asked to register anew. The bulk of whom have yet to see their status restored. Only those with an international reputation or which were government sponsored have been retained as charitable institutions. Donations made to these approved institutions can be claimed for exemption by donees.

For some time now, the NPOs have been faced with a resource crunch. They claimed that the taxation laws inhibited people from donating money to them. Taking the lead the Aga Khan Foundation in Pakistan initiated a study of the fiscal environment faced by the NGOs in Pakistan. This study (SPDC, 1998) was completed in 1998. It suggested a number of recommendations which were:

- a) a change in the definition of the concept of *charitable institution*: by redefining the term “charitable purpose” more strictly and widely and introducing the concept of “*public benefit non-governmental organizations*” and specifying substantial restrictions and conditions which would make them more transparent and accountable,
- a) broad basing exempt income from investment from the narrow base contained in the law,
- b) exempting income from a range of activities not inconsistent with the stated purposes of the *charitable institution*,
- c) changing the method for computing the extent of charitable donation for which a donee may claim a tax credit/rebate, and
- d) raising the limit on the tax deductible donations

Some of these issues are still outstanding and need to be addressed. The recommendations contained in the SPDC study are reproduced for reference:

In Section 2 sub-section (14) the term “charitable purpose” should be redefined to include:

- a) relief of poverty,
- b) provision of humanitarian or disaster relief,
- c) advancement of religion,
- d) provision of education, training, or development of human resources by targeting the poor,
- e) provision of health, nutrition, or family planning services,
- f) advancement of culture or the arts,
- g) non-commercial research, including scientific, technological, or social research, but not related to armaments or warfare,
- h) promotion of historical or cultural preservation,

- i) promotion of social or economic development primarily for the benefit of economically or socially disadvantaged individuals or groups, including micro-credit programmes,
- j) protection of human rights,
- k) protection or enhancement of the environment,
- l) elimination or reduction of discrimination, or
- m) any other object of general public utility.

The term *public benefit non-governmental organizations* needs to be defined. A new sub-section (36A) should be added to section 2 :

(36A) A “public benefit NGO” is any society registered under the Societies Registration Act, 1860, cooperative society registered under the Co-operative Societies Act, 1860, company registered under Section 42 of the Companies Ordinance, 1984, voluntary social welfare agency registered under the Voluntary Social Welfare Agencies (Registration and Control Ordinance, 1961), public and charitable trust registered under the Trust Act, 1882, or a waqf registered under the Mussalman Wakf Validating Act, 1913 and

- (i) which is established in Pakistan primarily for the purpose of engaging in one or more charitable purposes, and*
- (ii) from which no net earnings, profits, or assets can be distributed during the life of the organization or upon its termination to any member, founder, director, officer, or employee, or to any spouse or blood relative of such a person, and*
- (iii) that provisions similar to those of Sections 230, 233, 234, 236, 241 and 242 of the Companies Ordinance, 1984 shall apply equally to all public benefit NGOs registered under any of the foregoing Acts/Ordinances hereinbefore mentioned with respect to the maintenance and submission of accounts, and*
- (iv) that the provisions similar to those of Sections 252, 253, 254, 255, 256 and 257 of the Companies Ordinance, 1984 shall apply equally to all public benefit NGOs registered under any of the foregoing Acts/Ordinances hereinbefore mentioned with respect to the audit of the accounts of the public interest NGO.*

amendment in sub-clause (3) of Clause 62 of Part I of the Second Schedule should read:

- (3) A public welfare non-governmental organization or welfare institution approved by the Central Board of Revenue for purposes of this sub-clause.*

Broadening the classes of investment income that are exempt will permit charitable organizations to earn higher rates of return by inserting in Clause 93 of Part I of the Second Schedule, after the words “Federal Government”, the following comma and words;

, deposit with banks and financial institutions,

To clarify the content of Clause 94 of Part I of the Second Schedule add after the words “voluntary contributions,” the following commas and words:

, donations, or subscriptions

Income from contracts or other payments from private charitable institutions, other public interest NGOs, or bilateral, multilateral, governmental or para-statal agencies should be exempted from tax. This should be done by introducing this concept *de novo* by adding a new Clause (94A) after Clause (94) of Part I of the Second Schedule as follows:

(94A) Any income derived by a public interest NGO representing contractual payments from private charitable institutions, other public interest NGOs, bilateral, multilateral, governmental or para-statal agencies to carry out activities of social development in Pakistan.

The calculation of deductible donation for charitable purposes is restrictive. It is, therefore, proposed that Clause (e) of Para A of Part I of the First Schedule either be deleted or the words “average of tax” be deleted and replaced by “marginal rate of tax”.

Legal Framework: The NGO Bill

Another major source of worry to the NPO was also the result of the mistrust between the government and the nonprofit sector organizations fuelled by the perceived need of the government to control the functioning of the NGO sector. This started in 1994 when the government attempted to introduce amendments to the Voluntary Social Welfare Ordinance. The process was suspended for about four years and then revived in 1998/99. The bill proposed substantial modifications giving the government substantial oversight powers and also empowered it with draconian measures to dissolve any NGO and take over its assets without providing them with any remedy. This was seen as a contravention of the right to association guaranteed by the Constitution of Pakistan.

Scope of the Bill: The NGO Bill was designed to be an “umbrella” bill mandating that all social welfare organizations (SWOs) be registered under this law also even though they were registered under other laws. The Bill, however, did not attempt to

resolve the conflicting provisions of the proposed legislation with those already enshrined in civil and case law. This was perceived as an unnecessary bureaucratic burden on NGOs. The cynics in the NPS community saw this as yet another avenue for rent accruing to the bureaucrats. The understaffed, under-skilled Social Welfare Departments were to be the registration authority. While there is merit to creating a single consolidated registration authority, the Bill did not address the issue of transparency and accountability in the administration of the proposed law.

A major step to curtail the activities of the NGOs was the proposed removal of “*social education*” as a permitted activity of the SWOs. This clearly meant that the government was against the ability of the SWOs to create an awareness of and knowledge about the implications of government policy on a number of social and other issues among the public. One progressive step of the proposed Bill was the increase in the list of permitted activities and the inclusion of the term “*development*” for a number of the activities undertaken by the NGOs.

Audit and Accounts: The sweeping statement that all SWOs registered under the Bill were required to have their accounts audited has perhaps been included without sufficient thought. Large NGOs which are urban based and have multi-million rupee budgets already have their accounts audited by Chartered Accountants. The small CBOs operating in the rural areas do not have the wherewithal to maintain accounts in the manner which is visualized, nor do they have access to these auditors. Additionally, they will be unable to afford them. What may, therefore, result is the issue of audit certificates by complaisant audit firms. This has been seen in the case of some large for-profit organizations of both the public and private sector.

Sources of Funding: The initial “*Statement of Objects and Reasons*” clearly indicates that the government has not understood either how the NGOs operate or how they are funded. Information on funding can be available through a stricter compliance with the existing rules and regulations regarding maintaining bank accounts, account reporting and a greater coordination between the various agencies of government. For instance, all transfer of funds from abroad are reported to the State Bank of Pakistan (SBP) with a statement as to source and intent. Access to this information could be obtained from the SBP invoking the rules governing national security. While the majority of NGOs comply with these regulations there appears to be no need to have such a wide statement of reasons. The question being asked, and with some justification, “why should the larger body suffer for the sake of a few organizations which do not comply with the law”?

Judicial Oversight and Review: The Bill has provisions through which a government agency has the power to intervene in NGO affairs without legal oversight which is an integral part of good practice around the world. It also has total discretion to terminate an NGO, take over its assets and operations. This has a chilling effect on NGO independence. Instead of such draconian action in the first

instance, the Bill should allow for fines initially. Termination and seizing of assets should be resorted to as the final action that too only after judicial consent but only after the NGO has been given an opportunity to be heard.

The Bill also proposes to create administrative courts - the Registration Authority (RA) and the Standing Appellate Committee (SAC). This clearly goes against the Supreme Court decision to bifurcate the judiciary from the executive. Both the RA and SAC should be seen as regulatory bodies, the first for registration and monitoring purposes, and to impose penalties after the application of stated criteria with no leeway for discretion. An appeal against either should be permitted.

The NGOs objected vociferously to these provisions and after intense advocacy by the NGO Coordination Councils and other leading NGOs, the Senate constituted a committee to hear the NGOs. Before these hearings could be completed and the final agreed draft presented to the Senate, the National Assembly was suspended. Nevertheless the NGOs went ahead and prepared an alternative Bill and submitted this in 1999 to the new Government.

The basic differences between the 1996 Bill and the 1999 Bill are: one, that the former is a federal legislation while the latter is provincial, two, that automatic pre-registration in the latter is extended to include only those organizations registered under the 1961 Ordinance. Three, that registration under the former is mandatory, but voluntary under the latter, four, under the 1996 Ordinance the registration authority has draconian powers to suspend the governing body of an organization and replace it with its own nominees with a first appeal to an Appellate Committee which has a majority of government officials and two government selectees from the sector organizations, while under the 1999 Ordinance such power vests in a District Court (with an appeal to the High Court) with alternate membership being selected as per the charter of the organization. Five, the former requires that all registered organizations maintain auditable accounts, while the latter requires this of those with a turnover higher than Rs, 300,000, and finally, the former limits registration to organizations involved in one or more of a selected list of 17 activities, while the latter has no restrictions.

In conclusion, one may state that the 1996 Ordinance is draconian in character, but its extent is limited to only 17 activities most of which are undertaken by small community based organizations. The response, therefore, by the NGO community appears to have been a knee jerk reaction against government control and is a clear manifestation of the mistrust between the sector players and the government. The 1999 Bill itself is far reaching in its scope, but is limited to registration only by Voluntary Social Welfare Agencies (the 1961 Ordinance registrants).

In the dawn of the new millennium the government rapidly realized that it could no longer bridge the gap of social development on its own. This led to the conclusion

that there was a need to encourage the participation of the private sector (both for- and not-for-profit segments) to achieve the objectives and targets of social development moreover, an enabling environment was needed. Towards this end the Philanthropy Centre for Pakistan was asked to study the existing framework (largely legislative) and suggest an alternative through consensus building among the nonprofit sector organizations and other stakeholders, including government and donors. The objective of the Enabling Environment Initiative is *“To create a consensus based regime that provides for a regulatory role of the State without compromising the autonomy and independence of the CSOs”*. This effort is expected to materialise in recommendations being sent to Government by the end of June, 2002.

Future Action

To be able to overcome the problems with the draft bill and the inconsistencies in the body of legislation it is suggested that one possible alternate strategy would be to prepare a NGO Policy. The Policy should define the partnership between the government and the NGOs in the development and delivery of social and economic services.

This should be followed by a new legislation which:

- a) clearly demarcates the boundaries between the for-profit and not-for-profit organizations in the existing body of legislation,
- b) removes the inconsistencies between the administrative and tax laws,
- c) provides for a single registration covering both incorporation, and
- d) embodies the recommendations suggested earlier in the context of changes in the Income Tax Ordinance which should also be reflected in the relevant body of administrative laws.

Additionally, the government should consider the establishment of a Charity Commission which should be the regulating authority. Membership of such a Commission should largely consist of NGO representatives with only a nominal governmental presence. The Commission should also be required to evaluate each NGO at its request. This will ensure a mechanism through which potential donors can select the more responsive and responsible NGOs for funding.

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ACRONYMS

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| NGO | Non-Governmental Organization |
| NGORC | NGO Resource Centre |
| NPO | Nonprofit Organization |
| HDR | Human Development Report |
| MAA | Memorandum of Association |
| CLA | Corporate Law Authority |
| KDA | Karachi Development Authority |
| CBR | Central Board of Revenue |
| CBOs | Community Based Organizations |
| SPDC | Social Policy and Development Centre |
| SWOs | Social Welfare Organization |
| SBP | State Bank of Pakistan |
| RA | Registration Authority |
| SAC | Standing Appellate Committee |
| SCOs | Citizen Sector Organizations |