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THE TREATMENT OF NGOs IN THE SAARC REGION
SUMMARY AND BASIS FOR DISCUSSION
(L&ST Paper)

This brief paper is intended to outline the schemes of regulation for the operation of NGOs in Bangladesh, India, Pakistan and Sri Lanka.

The paper is intended to provoke discussion as to the most acceptable form of regulation. The last section of the discussion of the position in Sri Lanka contains analysis of the need for reform, a matter that may be of significance for each country.

NEPAL

NGOs may register under the Societies Registration Act of 1977, as to which the Social Services National Co-ordination Act is relevant, or the Nepal Company Act. Some do not register while others are given status by Charter from the government. The Social Services National Co-ordinating Commission is the apex body given charge of all NGO activity. Registration with the Commission is necessary for authority to function and to obtain financial support.

Various powers of investigation and termination of operation exists in the Society Registration Act which challenge the autonomy of NGOs in Nepal. NGOs registered under the Company Act are afforded the same privileges and are subject to the same liabilities as Companies. The law here is relatively standard in the region. NGOs created by Charter are more autonomous.

BANGLADESH

NGOs may exist in different legal forms and tend to assume the following structures: Unincorporated Associations, Societies (under the Societies Registration Act 1860), Trusts (under the Trusts Act 1882) or Co-operatives (Co-operatives Act 1940), and as Private Limited Companies (under the Companies Act 1913).

All organizations engaged in welfare activities and dependant for resources on either public subscriptions, donations, government aid, or which intend to obtain foreign donations must be registered with the Directorate of Social Welfare. As such the majority of NGOs are compulsorily registrable under both the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 and the Foreign Donations (Voluntary Activities) Ordinance 1978. In addition the Foreign Contributions Regulations Ordinance of 1982 stipulates that no such donation can be made to any citizen or organisation without government permission.

The NGO Affairs Bureau, directly under the Prime Minister's Secretariat, provides a one stop service for the

registration of NGOs, approval of their projects, funds and appointments of their personnel and all matters failing within the purview of the Foreign Donations (Voluntary Activities) Regulation Ordinance 1978 and the Foreign Contributions (Regulation) Ordinance 1982.

PAKISTAN

NGOs may but need not register under the Social Welfare Agencies (Regulation and Control) Ordinance; the Societies Registration Act; the Companies Ordinance; the Trusts Act or the Co-operative Society Acts. Each Act imposes a regime concerned with accounting and operational matters. There is also a scheme for registration under the Voluntary Social Welfare Agencies (Regulation and Control) Ordinance. More NGOs are registered with the Directorate of Social Welfare.

NGOs may validly operate without registration, although certain administrative problems, such as those involved in opening a bank account may arise.

Some financial control is exercised, pursuant to the protocols administered by the Economic Affairs Division, over the receipt of money from abroad.

INDIA

NGOs may take the form of a Society (Societies Registration Act 1960), a Trust (Indian Trust Act 1882 or Charitable and Religious Trusts Act 1920), as a Union (The Trade Union Act 1926), or a Co-operative (the Co-operative Societies Act).

Financial control is exercised by way of the Income Tax Act 1956 and the Foreign Contribution (Regulation) Act 1976 and its amendment of 1985. The latter Act stipulates that an NGO in order to receive foreign funding must be registered with the Ministry of Home Affairs and have its permission to accept grants from foreign donors.

SRI LANKA

1. The Legislative Frameworks: Formation and Operation

No universally applicable system of registration exists for NGOs. There is, however, a measure of control exercised over those NGOs that, as a consequence of their juristic form, fall within the purview of certain legislative enactments. These statutes which are activated by the formal attributes of a NGO, rather than its activity or function, contain provisions as to operation and accountability. Additionally, there exist other statutes that focus on NGOs whose operations are concerned with certain identified areas such as social welfare. Again, provisions for effective regulation do exist. The lacunae that exist in the existing statutory framework are not substantial: those NGOs that adopt a form not subject to regulatory controls such as those NGOs that opt to operate as unincorporated associations. These concerns can, for the most part, be adequately addressed either

by reform of the existent legislation or the adoption of a voluntary code of conduct.

2. Is there a need for Reform?

The operations of NGOs at times requires the NGO to stand in opposition to the policies or philosophies of a particular government in power. The fear of unprincipled interference with the work of a NGO by a regime driven by political motivations necessitates acceptance that, in some areas, such as human and civil rights work, there is simply no scope for government supervision of the activities of NGOs. It is, however, acknowledged that where NGOs approach the public for funds, legitimate interest in how those funds are utilized may manifest in regulatory control. Additionally, NGOs remain accountable to their donors.

An argument is raised that NGOs obtain financial benefits from their status and, are therefore, open to scrutiny. The argument, it is submitted, justifies only so much scrutiny as is strictly necessary to ascertain whether the NGO merits the award of its status which attracts the financial benefits.

The operation of NGOs in the public, as opposed to the private, sphere is a further base relied on by proponents of control. However, the scope and effect of the criminal law would tend to suggest further control is unnecessary.

Three concerns inform, and have instigated, the debate over effective and elementary, in the sense of universal, regulation of NGOs. First, the proliferation and pervasive influence of the NGO's has initiated examination of their governance. Secondly, there is the spectre of impropriety and misappropriation raised because of fears that in the absence of close scrutiny, NGOs can engage in activities detrimental to public order and cultural harmony. The third concern is the most tangible; it legitimately questions the extent to which NGOs are accountable. Accountability involves several aspects; financial accountability in the sense of substantiated ascertainable expenditure on proper purposes; and operational accountability involving the achievement of established objectives in conformity with the law. It is therefore submitted that the prior question with respect to most NGOs (leaving aside those who raise funds from the public) is whether they must be accountable. In a larger sense, the operations of NGOs are but extensions of the work of individuals. Any challenge to the right of association must, therefore, be seen as a challenge to individual rights.

No concern individually subsists as a rationale for reform. The mere number of NGOs and the breadth of their activities marks them as a phenomenon meriting some policy. However, this concern implicitly recognizes that a global approach to regulation, in an environment where among NGOs there is no uniformity in form or function, is not feasible. The fear of maladministration and improper action is closely tied to the expressed need for accountability. However, a real question exists as to whether, if at all, this duty of accountability is well founded.

Two distinct strategies may be used to tackle the accountability issue. First, the extent legislative framework may be amended to bolster and strengthen provisions for accountability. Secondly, the introduction of a voluntary code of conduct, capable of universal application, and addressing, on a consensus basis, all major

concerns may resolve the accountability problem without impinging on the fundamental principles of autonomy and independence crucial to the efficacious and sound functioning of NGOs.

3. Voluntary Code of Conduct

The primary element of a voluntary code is the fact that it is a voluntary system based on self regulation within the NGO sector. Therefore, it would involve the preparation of a voluntary code of conduct, primarily in respect of financial and substantive accountability and the voluntary element in this scheme would relate to membership and a willingness to adhere to the terms of the Code.

The implementation and execution of the Code of Conduct by member organizations could be monitored by a committee comprised of representatives of the organization concerned. Such members could be elected by secret ballot, thus hopefully minimizing factional loyalties.

Those organizations that volunteer or take membership, would do so only to the extent that they would undertake to adhere to those terms incorporated within the Code.

The firm submission is that:

(a) There is no clear foundation for the existence of controls over and supervision of NGOs. Indeed, it becomes wholly unacceptable for the state to infringe on the operations of certain NGOs, such as those working in the human rights area, by seeking to exercise measures as to supervision or even requiring the disclosure of information.

(b) It is inappropriate and impracticable to establish a universally applicable framework for the supervision of all NGOs. A global approach to regulation, in an environment where among NGOs there is no uniformity in form and function, is neither feasible nor desirable. Accordingly, both the Bangladesh model for regulation, which involves a central supervisory agency, and the Indian model for control, which revolves around a prohibition on the receipt of funds by a NGO except with State approval, must be rejected.

(c) The diversity of the activities of NGOs which includes key development work, and the work of some NGOs, which involves, at times, criticism and scrutiny of Government policies and operations, is predicated on and necessarily requires an absence of measures which threaten or impair the integrity and independence of NGOs.

(d) The goals of transparency and accountability can be achieved by the twin strategies of strengthening the existing legislative framework and the implementation of a voluntary code of conduct, providing for provisions as to registration, accountability, dispute resolution and the establishment of a monitoring committee comprised by NGO representatives, and representatives of the Ministry of Home Affairs and have its permission to accept such grants.

CONCLUSION

The work of NGOs in the region is vital to the achievement of a just society. To the extent that such is hampered by administrative regulation, there is a need for reform to allow effective and independent operation of the programme of the NGO. This is a concern for all the SAARC countries. Further, the prospect of co-operative work amongst NGOs in the region would appear to legitimate the standardization of laws.