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**Comments on the  
Draft Social Welfare Agencies  
(Registration & Regulation)  
Act, 1995**

**Government of Pakistan  
Ministry of Social Welfare  
& Special Education**

**Introduction.** The International Center for Not-for-Profit Law (ICNL) has been invited by the International Bank for Reconstruction and Development (World Bank) to provide technical comments on the Draft Social Welfare Agencies (Registration & Regulation) Act, 1995 (the Draft), which is currently pending in the Pakistani Senate. ICNL is honored to have been asked to make these comments and it hopes they will be helpful in considering possible changes to the proposal. As the attached informational material indicates, ICNL is the only international organization working to provide research services, education, and technical assistance to help develop the legal and fiscal rules for the not-for-profit sector world-wide. It has worked in all continents and regions. Under a contract with the World Bank, ICNL is presently researching the laws and regulations affecting NGOs in over 100 countries and preparing a Handbook of Best Practices for such laws and regulations. It is with that background that these comments on the Draft law in Pakistan have been prepared.

**General Comments.** We have reviewed the Draft in light of the changes that it would make in the existing Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 and Rules, 1962. However, we are unfamiliar with the general state of Pakistani law, particularly administrative law and criminal law, which means that some comments may not be as appropriate as they might be if we were experts in the local legal tradition.

**Relationship of the Draft to other laws affecting the status of NGOs.** One of the principal confusions in current law affecting NGOs in Pakistan concerns the issue of legal personality. From discussions with Pakistani lawyers, it seems apparent that incorporated status for an NGO is only obtained by registration under the Societies Act or the Company Act. Thus, registration under the current or proposed Social Welfare Agencies laws does no more than to make such an agency a qualified "social welfare agency" within the meaning of that particular law. That understanding of current Pakistani law is implicit in the Article 2 of the Draft, which refers to an agency as including a "society, association, charitable institution...." Nonetheless, considerable confusion arises because there are provisions both in the current law and in the Draft that refer to the "dissolution" of a social welfare agency registered under the law.

In order to eliminate the confusion and to clarify the intent and purposes of the Draft, it would be very helpful if the Draft were amended to eliminate references to

"dissolution" of a social welfare agency registered under the law. We presume that any agency incorporated as a society under the Societies Act would not be legally dissolved by any administrative dissolution action taken by the Registration Authority. It would seem only appropriate for the Registration Authority to have the power to revoke the registration on its own (one could call it "termination of registration"), but not to remove the legal status of a legally constituted agency. The latter might occur by court order in a proceeding initiated by the Registration Authority with just cause, but it should not be permitted to occur by administrative action alone. Changing the draft to reflect this idea would bring it more into line with the international norms in this regard.

**Administrative Discretion.** We think that the Draft reflects a general desire to better coordinate the activities of social development NGOs in Pakistan, which is a laudable goal. In addition, the Draft clarifies existing law in important ways that will tend to reduce the possibility of undue interference with the activities of NGOs (e.g., the Draft requires that applications for registration must be acted upon by the Registration Authority within 60 days; the current law is silent on whether there is a time limit). However, there is no question that some of the broad powers given to the government under this Draft could be subject to misuse. There is significant administrative discretion permitted in several areas -- the registration provisions, the provisions for the suspension of governing bodies and the provisions for dissolution, for example. The lack of defined rules to contain discretionary acts in these areas could permit possible undue intrusion into the internal affairs of agencies registered under this law. We would suggest as a general matter that attention be given to clarifying the circumstances in which the government can intervene in the internal affairs of an NGO. Specific situations in which this issue arises are referenced below.

**Registration Process.** We would also like to note the very broad scope of the proposed law, which, according to the attached schedule, would affect most of the social development NGOs in Pakistan save those dealing only with education. This broad scope means that almost every NGO in Pakistan is required to deal with several levels of bureaucracy in order to carry out its programs. First, it must incorporate under the Societies Registration Act or the Companies Act or it must be formed as a trust. It then must go through another elaborate process to become registered as a Social Welfare agency. If it wants to engage in certain activities it must be licensed by line ministries to perform certain functions. And if it wants to have tax exemptions, it must apply to the tax authorities as well.

The current and proposed registration laws essentially require two levels of permission before an NGO is permitted to carry out social welfare activities in Pakistan -- a general form of registration is required first, and an agency must then obtain special licenses if it wishes to engage in certain activities. It would be far better if an easier and less expensive initial registration process could be established. Perhaps the reality is that the Social Welfare registration substitutes for perusal by the line ministries (e.g., the Ministry of Health), but if it does not, attention should be paid to streamlining the process. In the end, the problems of registration can best be served by having registration criteria that are as few, simple, and objective as possible.

**Supervision.** There is considerable variety among legal systems in the choice of the organ of the state that is empowered to license NGOs to carry out their various

activities and to supervise them once they have received the licenses. In some countries NGOs must seek to be registered only with the ministry with jurisdiction over the subject matter of their proposed activity. In other countries a single ministry is put in charge of registering and supervising NGOs. In some countries the local branches of a single ministry (e.g., the Ministry of Social Welfare) perform the principal registration and supervision functions. The Draft would rationalize the system in Pakistan by clarifying which organs of the government supervise national, regional, local, and international NGOs. It would assure that a particular part of the Social Welfare and Special Education Division would be responsible for this supervisory role. That is a good step in helping to clarify the situation. It is not clear, however, how the general supervision and licensing functions will interact.

If a multi-ministry supervision system is used (i) different ministries tend to develop different standards for supervision, some of them being quite lenient and others being quite strict; (ii) because supervision duties are spread among many ministries, no ministry develops real expertise in dealing with NGOs; supervision of NGOs is essentially a sideline of each ministry; and (iii) some organizations have difficulty finding a ministry that will claim jurisdiction over their proposed activities. It can thus be seen that it may be useful to have one ministry charged with the supervision function. But it must also be remembered that this may lead to excessive bureaucracy, and the single agency may not be able to develop adequate expertise about so many activities.

There is no uniformly correct answer to the question of where to place authority for registration and supervision of NGOs, and the system chosen will need to depend on the legal traditions of the country involved. Perhaps the answer in the end is that any of the described arrangements can be made to work well by able people of good will, and any arrangement can also be administered badly or incompetently. It is best to have clarity about the supervision functions, which will aid both the NGOs and the government officials who must interact with them.

**Termination and other powers.** If a ministry of the government is given discretion to terminate an NGO, seize its assets, or take over its operations, the possibility of that happening has a chilling effect on the independence of NGOs. In order to assure a vigorous and independent civic sector, the law should provide for intermediate sanctions (e.g., fines) for various types of violations. Termination of legal existence, or the freezing of assets or assumption of control of a NGO, should only be the last resort. It should be possible for the government to take one of these actions only for the most serious and blatant violations, and then only if the NGO is given an opportunity to correct its behavior. There should be a right of judicial appeal from a decision to terminate an NGO, and termination should not become effective until the appeal is completed or the time for appeal has lapsed.

**Judicial Review.** We note that the two government organs created by the Draft, the Registration Authority (RA) and the Standing Appellate Committee (SAC), are deemed to be civil courts for purposes of the exercise of certain powers. While it may well be appropriate in Pakistani legal tradition to create courts within the executive branch of government (normally referred to as administrative courts), the normal practice when giving judicial powers to such executive branch agencies is to require

review of their decisions by independent judicial bodies. For example, the Charity Commission of England and Wales, which exercises many of the quasi-judicial powers this Draft would give to the RA and SAC, nevertheless cannot exercise its functions without permitting appeals to actual courts. A provision ensuring judicial review of any decisions of the SAC would be quite helpful.

**Specific Comments.**

**Article 2 (f).** This clarification of who the appropriate person is for registration is a significant advance over the prior law.

**Article 3 (1).** The provisos contained in this section are confusing and should be reworked. It seems intended by the first proviso that any NGO currently registered will not need to reregister. If that is the case, the second proviso should precede the first, as it appears to contradict it.

**Article 3 (2) and (3).** These two sections give almost unlimited discretion to the Registration Authority to control whether or not a new NGO can begin to provide services in a particular geographic area and whether it can continue to do so once it is in operation. This seems unwarranted. If registration is viewed as a licensing function, it may be appropriate to give significant powers to the RA, but general principles of administrative law require that there be rational and clearly articulated reasons for not permitting certain NGOs to function. We would suggest more clarity on these issues.

**Article 4 (1).** The change the Draft would make in current law seems unnecessarily burdensome. Suppose, for example, that an NGO is established to carry out certain purposes that would not require it to register under this law. If it then changes its purposes, will it be considered to be in violation of the thirty day requirement and thus subject to penalties? Perhaps this should be clarified.

**Article 4 (2).** This provision extends the reach of the law to foreign agencies, thus leveling the playing field (or pitch) for all agencies working in Pakistan.

**Article 4 (3).** The sixty day period for consideration of an application is a useful device for limiting administrative discretion. However, the fact that the RA has virtually unlimited discretion as to whether it will grant registration or not is not helpful.

**Article 4 (5), (6), and (7).** These provisions set out a system for appeals of a denial of registration within the government that is undoubtedly better than the situation that arises under current law Article 6. However, the fact that an adverse decision is not appealable to a court of general jurisdiction is inappropriate for the reasons stated above. Although the SAC is deemed to be a court, it is clearly an administrative court, not a judicial body.

**Article 5(c).** It seems a bit too large an intrusion into the internal affairs of the NGO to require it to submit all funding agreements, even if they have no relevance whatsoever to a particular project. This provision, which is not included in current law, shows excessive interest in the foreign funds received by Pakistani NGOs.

**Article 5 (d).** This requirement of annual reporting is consistent with international standards developed to ensure the accountability and transparency of operations of NGOs. However, it must be recognized that a delicate balancing is necessary between the freedom of association of the individuals who form NGOs and the need for protection of the public from fraud, abuse, and infringement of the rights of others. In the first instance, therefore, the laws governing NGOs should insist on adequate internal reporting mechanisms within NGOs so that they can adequately police themselves and ensure that their activities are appropriate. The government should also encourage and the social service sector should foster appropriate methods of self-regulation. In addition to the internal and self-regulatory mechanisms that have been mentioned, the basic tool for achieving accountability and transparency is to require the filing of an annual report.

By collecting and making public the annual reports it receives, the government can serve as an information gatherer to assist citizens themselves to perform a vital watchdog role. Thus, it is in the interest of the government to insist on public disclosure of basic information about social service NGOs. When information is available to the public, interested citizens often scrutinize it carefully and frequently discern improper activities or operations that escape the attention of bureaucrats, who typically do not have adequate time and resources to exercise adequate oversight of NGOs.

**Article 5(e).** It would be best to limit the information furnishing requirement to situations in which there is a rational reason for the request. Rules might spell out situations. Otherwise, this is very broad.

**Article 6 (1).** Under the current law the Social Welfare Ministry has published a model constitution, and under rules set out to accompany this model it is made clear that the Ministry may waive any requirements of the model. It seems a rather large intrusion into the internal affairs of an NGO to permit any provision in its constitution to be disapproved by the RA. It would be better to have a statement about certain mandatory provisions that must be provided for in accordance with the model form and leave the remainder of alternative provisions to the choice of the individual NGO.

**Article 7.** This provision does not seem to grant undue discretion because it limits inspections to situations in which there is cause.

**Article 8.** It may be appropriate to vest the power of suspension in the RA, with appeal to the SAC, and also to permit assets to be frozen, but it would be far better to make such actions appealable to a court of general jurisdiction. If such an appeal were taken the actions could be carried out on an emergency basis, but the appeal would allow a court to consider whether they were appropriate.

(1). The Draft provides for a hearing before suspension, which is an improvement over current law.

(2). The proposed composition of the care-taking body is appropriate, given that it would include people from the NGO.

(4). The time limit placed on the period during which a governing body may be suspended is an improvement over current law.

**Article 9.** It is unclear why this particular provision is necessary given the broad scope of Article 8. Why should an NGO not be responsible for getting rid of its own problematic members? Is the fear that a single person who is a problem will exercise such dominance that he or she cannot be removed except at the behest of the RA? Why not have the RA support a court intervention by the other members of the governing body? This provision seems a little curious given the unlikelihood of an NGO not being able to police itself. If it is considered to be necessary, it seems that the power to suspend and expel members of the governing body should not be exercised without supervision by a court of general jurisdiction.

**Article 10 (1).** Having double penalties for the same offenses is inappropriate. Although this provision is identical to a provision in current law, it is not a proper sort of penalty provision under international norms.

**Article 10 (2).** This is simply too broad. In most legal systems, officers and directors are held to be liable to the organization and/or to injured third parties for willful or grossly negligent performance or neglect of their duties. But, the officer or director should not be liable if he or she acted reasonably and in good faith, and there should be no presumption to the contrary, even in cases such as those referred to in this section.

**Article 10 (3).** This section seems to take cognizance of the notion that a court order is required to execute certain penalties against an NGO or its personnel. That is consistent with current law and an appropriate result. To the extent that Article 18 can be read as being to the contrary, the principle established here is the one that should be followed.

**Article 11.** The RA should be given authority to deregister an NGO, subject to an appeal of the deregistration to a court. On the other hand, no administrative termination of the existence of an NGO should be possible. The RA should be allowed to apply to a court for an order terminating the existence of an NGO only for the most flagrant of violations, and then only after a requested correction of a legal or ethical violation has not occurred. There should be a right of appeal to a duly constituted court of appeal with general jurisdiction in all cases of involuntary dissolution.

**Article 12.** It is curious that an NGO cannot voluntarily give up its registration with the Social Welfare Ministry. There seems to be no reason why this should not be permitted. Naturally it would have to notify the RA, but it should have discretion to do so. However, with respect to actual dissolution, the fact that the NGO has certain government contracts, etc. would create a situation in which dissolution as a legal entity should probably not be allowed. If that is what is intended here, it should be clarified. In addition, in international practice, voluntary dissolutions are generally only accomplished by court order upon application of the organization (after a 2/3 or 3/4 majority vote in favor of dissolution).

**Article 13.** In the case of NGOs that have received government funds, public donations, or significant tax benefits, it is appropriate for the law to provide that upon

termination the assets of the organization must go to another NGO with a similar purpose or to the government, and that those assets may not revert to the founders, officers, or directors. However, most laws permit the NGO to have a provision in its constitution specifying which other NGOs will receive its assets. If it turns out to not be an appropriate entity (if, for example, it has begun to do business for profit), then the RA could go to court to have such a provision in the constitution nullified.

**Article 14.** We presume it will take a court order to execute against the bank accounts of the affected individuals. It would be inconsistent with international norms to grant the RA extraordinary levy powers that are not circumscribed by access to judicial review.

**Articles 15-18.** The composition of the SAC proposed by the Draft is quite good in that it permits representation of NGOs on the Committee (although the government clearly retains the majority). However, the voting rules are unclear (does the Chairman always vote; it would seem so, as the decisions are to be reached by majority vote, but the language is not clear). In addition, to reiterate the points made above in our general comments, it is important that appeals from all actions of the RA and the SAC be allowed as a means of confining administrative discretion. It is not unduly cumbersome to permit such appeals, and they provide quite considerable protections.

**Article 18.** The levy of criminal sanctions seems problematic, but we are unsure about the rules for such sanctions under Pakistani law.

**Article 19.** This provision represents a major improvement over current law in that it permits a hearing before any decisions of the RA are taken. It would be useful if real judicial review were also provided so as to protect the rights of the NGOs who might otherwise be subject to undue burdens.

**Conclusion.** In analyzing this Draft and the ways in which it would amend the current law, we appreciate the careful analysis of the legal and social situation that has caused the Ministry to propose the Draft law in its present form. Significant progress has been made, and that should be noted with appreciation. We want to make clear, however, that despite these significant improvements over current law, we think the approach taken by the Ministry in this Draft does not adequately address the great need for protection of the NGOs from possible bureaucratic excesses. We hope that the considerations we have mentioned in our comments will be taken into account by the Government and by the Senate as this Draft moves forward through the legislative process. We will be happy to provide the drafters with materials from other countries and to continue our discussions with them if they feel such additional discussion and assistance would be helpful.