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LEGAL FRAMEWORK FOR NGOs IN PAKISTAN

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1. Overview of the NGO Sector in Pakistan: Scope, Potential and Possibilities

1.1 Development of NGOs

When Pakistan came into existence in 1947, the concept of social welfare as a conscious and planned activity was very new and little practised while the concept of a NGO (as understood today) was non-existent. The few NGOs that existed at the time were mainly Hindu trusts or social welfare associations largely concerned with running hospitals or medical relief programmes, libraries or schools. While exceptions like the Anjuman Himayat-i-Islam and local branches of international institutions like the YWCA and YMCA did exist, the real impetus for NGOs came in the wake of independence and the massive transmigration of refugees (close to 10 million in one direction) across the borders of the newly independent states of Pakistan and India. The scale of the transmigration was matched by the level of violence and many NGOs were created specifically in response to the urgent needs of these refugees.

Since then the NGO sector has steadily grown. Today, Pakistan's NGOs vary in size, capacity, scope and range of activities, with affiliations ranging from the immediate local environment (such as the neighbourhood) to the international. The NGO sector includes a large variety of institutions such as professional and special interest groups, service and social clubs, research institutions, universities, semi-autonomous bodies, charitable, sectarian, religious and neighbourhood groups, besides the NGO organizations and associations in the welfare or development context.

NGOs can roughly be divided into six categories according to the activities they undertake. These not mutually exclusive categories are:

- welfare and/or charity oriented
- religious societies
- recreational activities (primarily sports clubs)
- development-oriented activities, further divided into sub-sector interests such as community, rural, urban, environment, women etc.
- human rights advocacy and aid
- information services and consciousness-raising

Associations, societies, trusts and foundations focusing on the first three types of

activities have existed in Pakistan from the start as a means of both philanthropic work and self-help. These initiatives have been motivated by one or several of the following concerns: (a) to "do good" - as in the charity approach; (b) a perception of the government's inability to provide basic services to its citizens; or (c) a desire to promote a particular religious point of view (usually through the establishment of educational institutions).

In its current usage, the term NGO refers largely to the category of organizations involved at some level with development activities - though the definition of development may differ. This is clear from the term's emphasis on not being governmental, while implying that such bodies also address issues that concern, or should concern, the Government and its parts. With notable exceptions, this NGO category developed relatively recently, starting in the mid-seventies and mushrooming in the eighties. The primary concern of these NGOs is not to "do good" in the charitable sense of the term, but to improve upon the existing socio-economic development policies in the country, with which they are dissatisfied. The period 1977-1988 which saw - under martial law and quasi-martial law governments - the suspension of the human rights clauses of the Constitution, the establishment of parallel legal systems and the rescinding of the rights of certain segments of the population such as minorities and women, had its own impact. In reaction to the perceived onslaught on human rights sponsored by the government, a number of 'NGOs' were established during the eighties, focusing on human rights advocacy and aid and/or consciousness-raising. It should be noted, however, that a few of these organizations are adverse to the label of NGO which they feel connotes funded project activities and excludes human rights advocacy in particular. In any case, the numerical strength of these newer types of NGOs - whose activities frequently span both development and human rights issues - remains quite small, though their impact is more significant than their numbers may imply.

1.2 Welfare NGOs

Welfare-oriented NGOs remain the norm in Pakistan and these operate mainly at the level of the neighbourhood. They provide civic amenities such as basic health, education, loans, emergency relief, library facilities, vocational training, youth programmes, income-generating activities and neighbourhood watch.

1.3 Development-oriented NGOs

Development oriented NGOs can have one or several of the following objectives:

- to organise the local population so as to enable them to access government resources theoretically available to citizens or groups of citizens,
- to develop alternative development models in specific fields (such as education like the Adult Basic Education Society, or community development, or rural

development etc.), or

- to review and critically analyze development policies in their specific fields of interest and to lobby with concerned government institutions and policy-making bodies in an attempt to modify the government's own approach.

Such organizations frequently work in collaboration with international agencies and receive financial support from them, and less frequently with government agencies though sometimes with both. Some of these NGOs also act as consultants to government and international agencies.

Recent years have seen a proliferation of women's organizations coinciding with the growth of the women's movements. Initially the International Women's Year 1975 provided an impetus for the emergence of a new breed of women's organizations (such as Shirkat Gah) that consciously rejected the charity approach, common to most women's organizations at the time, in favour of a development-oriented approach. Since the eighties, the work of organizations involved in development has been greatly facilitated by the policies of multi-national and bilateral agencies that earmark certain amounts for women's development or 'the WID sector'. Later, the plethora of laws and directives considered or passed by the government since 1977 which rescinded women's rights and/or their access to resources (or proposed to do so) accelerated the formation of new women's NGOs and groups, many attempting to bridge the issues of development and rights, other focusing exclusively on the latter.

Similarly, the last few years have seen the establishment of organizations that focus on community development projects. These NGOs are concerned with enhancing the capacity of the local population where they work, empowering them to access government institutions and schemes and to fend for themselves. Inspired by the concept of participatory development, these NGOs aim to make the communities they are involved with self-sufficient, and therefore view themselves as facilitators in an interim period.

Most recently, testifying to the impact of international trends on the national scene, international concern with issues relating to the environment and its protection has likewise engendered a number of NGOs with a focus on Pakistan's environment. Some are concerned with documenting the degradation, others with evolving a strategy for affirmative action to rectify negative trends. These NGOs frequently work in close collaboration with international NGOs and agencies as well as with the concerned government departments.

1.4 Human Rights Advocacy and Aid

The period 1978-88 accelerated the growth of human rights advocacy and relief

organizations such as Women's Action Forum and the Human Rights Commission of Pakistan. A number of these organizations have specialized focuses such as political prisoners, brick kiln workers, children's rights, the environment, prisoners in general, women's rights, minority rights etc. Some also provide legal aid services and are engaged in legal literacy programmes. Additionally, in this period a number of older organizations shifted their focus from other activities to concentrate more on human rights issues.

1.5 Registration

Article 17 of the Fundamental Rights and Principles of Policy of the Constitution holds that the formation of associations is a fundamental right. It states:

"Every citizen shall have the right to form association or unions, subject to any reasonable restrictions imposed by the law in the interest of the sovereignty or integrity of Pakistan, public order or morality".

(Clause 2 of the same Article speaks of the right to form political parties). Following on from this, each specific law providing for registration indicates the purposes for which registration of associations is permissible and the requirements etc. Options available to NGOs for registration are under: the Social Welfare Agencies (Regulation and Control) Ordinance 1961; the Societies Registration Act 1860; as a non-profit company under the Companies Ordinance 1984; the Trusts Act 1882; or the Co-operative Society Acts 1912 and 1925.

Until 1961, most NGOs had either been registered as trusts, foundations or societies under the Societies Registration Act 1860, administered through the Registrar, Joint Stock Companies of the Ministry of Industries. In 1961 the growth of NGOs prompted the government to pass the Voluntary Social Welfare Agencies (Regulation and Control) Ordinance administered through the Social Welfare Departments and Directorates at the provincial level and the National Council for Social Welfare at the federal level. Currently there are an estimated 6500 NGOs, of which approximately 4000 are registered with the Social Welfare Departments in all four provinces. About 70 percent of these are registered in the Punjab (2926 NGOs in 1984) which as a province accounts for just over half the population. In contrast, there are only eight NGOs registered with the National Council.

In addition to NGOs operating under the Social Welfare Ordinance, there are some 21,000 cooperative societies registered under the Cooperative Societies Act 1925, as well as an unspecified number of organizations that have not, for one reason or the other, bothered to register under any provision. Associations and organizations also have the option of registering under pursuance of a Trust Deed under the Trusts Act 1882. Though NGOs can register as a Non-Profit Company under the Companies Ordinance, (1984), very few organizations seem to have made use of this provision for reasons discussed below

A majority of those registered as cooperatives function exclusively as banking and/or savings institutions with no activities that fall under charity, development or human rights advocacy. Consequently they have not been included in the present review of NGOs. The majority of NGOs under consideration are registered with the Directorates of Social Welfare. However, one needs to view with caution the figure given for registered NGOs. A 1982 survey of NGO activity in Pakistan showed that only 50% of the registered NGOs could actually be located: 40% of those located and interviewed were involved in the provision of education, 11% in health and over 45% in social community services (including cricket clubs etc.)(Hussain) A 1984 study of the NGOs registered with the Directorate of Social Welfare, Punjab, came to much the same conclusion. (Khan and Shaheed) The 1984 survey also pointed to the paucity and inaccuracy of information available with the Punjab Directorate of Social Welfare on NGOs and their activities. For instance, in the annotated directory of Faisalabad District, of the 201 societies registered with the Directorate, the activities of 150 (or 75%) were unspecified. Of those that did specify activities, the majority (52.6%) addressed themselves to women while the self-defined aim of 77 percent NGOs surveyed was "social welfare" or "physical and social welfare".

In Lahore District there are 539 NGOs registered with the Social Welfare Department (SWD) located in the metropolitan area, another 66 in the cantonment area and only 20 in the rural areas of Lahore District. A large Lahore-based NGO felt that few of these are active organizations and many do not have any office at the addresses given in the registration forms. The NGO came to this conclusion when it wrote hundreds of letters to the 605 NGOs listed in Lahore city proposing the formation of a Lahore Association of NGOs, and despite many reminders, received only 40 responses.

Reasons for which the majority of NGOs register with the Social Welfare Directorates are discussed below.

2. Issues of Concern

2.1 Benefits and Drawbacks of Registration

Before examining the legal framework available to individual NGOs, one needs to ask why groups/associations or societies should bother to register at all. NGOs do not have to register to collect donations or carry out charitable, welfare or developmental activities, and non-registration allows greater flexibility in working procedures. Many groups and associations in fact operate without registration and the oldest law governing associations, the Societies Act of 1860, acknowledges that these exist and function and that their non-registration simply means that they are not recognized as 'legal entities'. The rationale for the Societies Act is said to be to facilitate the running of affairs when disputes arise between the society and outside persons or institutions. Essentially, the benefits a NGO can hope to derive from registration are: (a) by giving legal coverage, it allows the organization to

maintain discipline through the enforcement of rules and regulations; (b) it provides official recognition facilitating participation in seminars, conferences and consultative meetings; and (c) it provides them with an entity, it allows the organization to sue (and of course to be sued, though this is clearly not an advantage from the NGO's point of view). Additionally, under some provisions, registration allows access to government assistance which, however, is fairly nominal.

Essentially, apart from the internal assistance that may be derived in terms of self-clarity and the running of the organization's business, there are two main motivations for NGO registration in Pakistan, both of them financial in nature. Firstly, in accordance with the Banking Act, opening a bank account in the name of an organization requires documentary proof of registration and the submission of the memorandum of association. [Another interesting side issue is that according to a new directive (though not effectively enforced) clubs and societies can only maintain a current account and will not have the option of operating a savings account]. Secondly, registration is a precondition for receiving financial assistance from institutions and agencies - whether national or international. International funding agencies sometimes do ask for registration papers, particularly when it concerns a United Nations project or agency. All United Nations programmes are bound to involve some government department and require any collaborating NGO to be registered and, for instance, some projects of the International Labour Organization failed to materialize despite approval because the concerned NGO could not get registered in time.

Nevertheless, de facto, if not de juri, NGOs can operate an account or receive funds without being registered anywhere - the former being easier than the latter. In a number of instances, banks have opened accounts in the names of organizations without asking for documentary proof; similarly, though funding agencies require NGOs to be registered before receiving financial assistance, they do not always ask for documentary proof.

Aside from the fact of resolving disputes within its members and being able to go to court, other benefits derived from registration are in minor aspects such as facilitating the approval of a post-office box, or attending a meeting, etc. But again, registration is not essential since getting a post-office box, like opening a bank account can depend as much on how well one knows the officer in charge or how well one can present one's case, as on providing documentary proof. Similarly, reputation rather than registration is the deciding factor in being invited to most meetings, conferences or consultations. As for instituting legal cases, few organizations have adopted this procedure though there is some indication that public interest litigation may increase in the future, especially on issues such as the environment or in challenging the existing provisions of law.

On the other hand, with the exception of a charitable and public trust, registration allows for various levels of interference and/or control by government departments. The level of control depends on the type of registration and the rules and directives which each

provincial government may initiate in this regard - to say nothing of being sued or taken to court by others.

Firstly, the government assumes the right to de-register NGOs under all provisions excepting the Trusts Act (because registration in this case legalizes the document and not the organization). In many provisions, the NGO is obliged to make itself accountable to the government for its activities, and this accountability extends beyond finances to encompass all aspects. The government can demand audits, carry out inspections, ask for information and under many laws can suspend, dismiss and replace governing bodies. (Each legal provision is discussed separately below). This raises the question of the relationship between NGOs and the government since it is this interaction that informs the passing of laws, directives and rules.

2.2 NGOs and the Government

Other than the intrinsic benefits or drawbacks registration may imply, it is clear that for some time now, but especially since the mid-seventies, the NGO sector's relationship with the government has been marked by a visible and growing tension. This tension is reflected in the increasing regulatory (or control) legislation that is being passed as well as in the directives and rules being devised to narrow the scope of the law. At the root of this tension are the developments that have taken place in both the NGO and public sectors. Within the NGO sector, the last two decades have seen a shift away from associations and societies run by volunteers whose primary concern was charitable activities to professionally run organizations administered by highly qualified personnel, i.e. 'NGOs' in its present understanding of the term as non-governmental organizations addressing themselves to the same issues as the government.

It is not coincidental that this new trend in NGOs (and the ensuing tension between the NGO and public sectors) has grown in tandem with the government's own inefficiency (or inability) in delivering social and/or economic amenities to its citizens. Having qualified personnel, the NGOs are in a position to effectively challenge the policies and programmes of the government - whether in the field of human rights or that of development - and many NGOs are very vocal in their criticism. Unhampered by the notoriously slow and bureaucratic procedures characteristic of public sector institutions, NGOs have successfully experimented in pilot projects to produce alternative models of development. International recognition has increased NGO credibility and improved NGOs access to international policy-making bodies and to financial support. This combination of improved access to financial support and growing NGO credibility has contributed to the tension between the NGO and public sectors. Talk of 'community participation' and 'ownership of projects' - increasingly the language adopted by the international development agencies as well as by NGOs - also appears to be increasing the government's unease viz-a-viz NGOs. Two examples of attempted dialogue between the two serve to illustrate the tension and underlying mistrust.

In February 1992, a funding agency and a local NGO organized a two-day workshop in Lahore to share the experiences of NGOs working at the grassroots level and policy makers working in the fields of education, health, culture, housing facilities and environment. The purpose was: (a) to inform policy makers of the methods adopted by the NGO workers at the grassroots and the problems they confront in consequence of government policies, and (b) to initiate a dialogue between the two sectors. The workshop was designed to formulate measures to improve coordination and cooperation between the NGO and public sectors and to achieve a more harmonious relationship. Despite confirming 15 participants, only one government official from the Health Department attended the meeting. Furthermore, instead of opening a dialogue, his contribution to the discussions led to an argument since the NGOs felt that his only interest in attending was to use the opportunity to present - and have NGOs accept - the government policy which NGOs perceived to have already failed. NGOs also felt that the government representative was not in the least interested in hearing the grassroots NGOs' point of view.

Another example of this tension surfaced in a workshop organized to assess and plan for grassroots initiatives in the implementation of the National Conservation Strategy (NCS) in 1990. The workshop, which brought together NGOs and government officials, started with a heated debate on the relationship between the state as represented by the government (irrespective of which one in particular) and the NGO sector. NGO "participants expressed many grievances against the government" to the point that "it appeared that, because of the association of the NCS with the government, participants viewed the NCS strategy with some suspicion". The workshop facilitator concluded that -

"it is a challenge for the NCS Coordinator and its collaborating (...) NGO to not only cooperate with the government, but also maintain their credibility in the eyes of the people and the NGOs". (NCS Workshop on Grassroots Initiatives: p.13)

From its side, the government expressed its own irritation, giving an equally spirited response -

"to the spirited criticism of the government and donors. It was pointed out that graft and misappropriation are not only the legacy of the government. If NGOs want the support of the government and donors, then NGOs too would have to consider and implement monitoring, evaluation and other procedures".

These two attempted dialogues indicate the general sentiment amongst NGOs that the government has not yet accepted their contribution to development and that it is only

interested in a one-way channel of communication - from the government to the NGO. On their part, government representatives appear irritated by what they perceive to be a lack of cooperation on the part of the NGO sector, particularly those from the grassroots, as well as general disorganization and lack of accountability amongst NGOs. To this one might add that the government's attitude towards NGOs whose members are well-educated and frequently well-connected) is very different from its attitude to the average NGO. On the one hand, to accept the qualifications of the former, the government is far more accommodating in its dealings with such organizations. There is no compulsion to do likewise with respect to grassroots and smaller NGOs, where all too frequently interaction is characterized by a patronizing and dismissive attitude on the part of government officials.

The government's desire to control such NGOs - usually presented as "guiding" - has been visible for some time now. In an earlier government-sponsored National Conference on Non-government Women's Organizations in 1984, the Deputy Secretary, Social Welfare, Zakat Department from Punjab perceived the fact of NGOs being administered by their own rules and having their individual Action Plans as a problem. In his talk he stressed:

"It is high time that the system of the development and execution of a coordinated Action Plan be evolved so that welfare programmes are undertaken in a systematic way". (Women's Division: p.5)

The way to do this, he asserted, was for the government through the Social Welfare Departments to coordinate the efforts of the NGOs. Curiously, he said that -

"a Non-Governmental Organization has been formed by the Social Welfare Officer (in charge of the centre) among the community leaders including elderly women... The NGO being responsible for the success of the Centre reduces resistance, and makes all endeavours to run the Centre successfully by making contributions in the shape of building, additional furniture and other facilities. This Plan also ensures that all other NGOs which have similar objectives and functions would coordinate and strengthen these Pilot Women's Centres". (ibid: pp.5-6)

This statement clearly shows government intentions to channelize NGOs in general but grassroots ones in particular, into becoming virtual extensions of government departments. It also raises the moot point of how non-government an NGO would be when formed at the instigation of and under the supervision of a government official, since the very raison d'etre of NGOs is to be able to work independently of government directives and

departments.

Presumably, it is with these thoughts in mind that, in the late eighties, the government established a National NGO Coordinating Council. The official justification was said to be to facilitate the work of NGOs and to give them better access to government departments and schemes as well as to open a two-way channel of communication. In fact, the NGOCC is viewed by smaller and (not so small) grassroots NGOs as just another means of controlling access to external funds (since the NGOCC is to process applications) and as an additional para-legal instrument for monitoring their activities.

In a similar exercise, the government set up a Trust for Voluntary Organizations in 1992 to "institutionalize an indigenous grant-making capacity outside the GOP and its PC-1/Annual Development Plan/Ministerial process". The initial purpose was to channelize a substantial amount of money provided for the social development sector in Pakistan by the United States Agency for International Development (USAID). Originally the governing body was composed largely of government officials, once again indicating the government's desire to control NGO activities and to vet who receives money and who does not. After considerable protest by NGOs, the TVO board was reconstituted to reflect NGO rather than government concerns; nor is the TVO any longer dependent on USAID money.

The government also exercises financial control through the Economic Affairs Division that has to sanction any amount exceeding a certain stipulated sum from abroad (in 1990 this was set at one million rupees). Foreign funding to NGOs in Pakistan is subject to protocols negotiated by the donor country with the Economic Affairs Division. So far donor countries/agencies have had no problem in this process, but problems can arise. NGOs sometimes have to wait for the disbursement of funds for years, delaying work, and in certain cases, the E.A.D. has failed to give its approval in the time schedule stipulated for the project, with the result that the project has had to be cancelled.

At a slightly different level, with regards to seminars organized by UN agencies, the participation of individuals or NGO representatives¹ must be cleared by government departments and intelligence agencies. Instances of permission being refused have been recorded.

Other than this, NGOs and other associations having contacts with similar organizations in countries with whom the government has adversarial relations have generally been entered in the 'blacklists' of intelligence agencies. For many years associations cooperating/corresponding with counterparts in the Soviet Union, Eastern Europe and India were considered 'suspicious'. The position of those with contacts or working with Indian counterparts remains unchanged. Such associations and their activists are discriminated against in the grant of travel permissions and may be subjected to surveillance.

Finally, the government has different attitudes towards NGOs depending on their activities. Organizations characterized purely by social welfare activities are the most acceptable category, followed by those associations seen to be operating in the development field that do not raise developmental issues considered embarrassing for the government. These NGOs do not normally attract the attention of the government's intelligence agencies. It is undoubtedly NGOs concerned with sensitive issues (as defined by the government) such as harassment of political dissidents, persecution of and discrimination against minorities (or women), religious/ sectarian intolerance, etc. which are kept under the strictest watch. Intelligence agencies consciously collect information on the office bearers of all such organizations and the people as well as the organizations function under visible pressure.

At best, the government suffers NGOs working in the fields of social welfare or a narrowly defined scope of development. But where the vast majority of NGOs do not receive any cooperation from the administration and the human rights advocacy groups frequently confront open hostility. Their rights to access to information is often denied while NGO requests to the administration to act upon, even acknowledge, their inquiries into cases of excesses committed by government officials remain unanswered.

Equally, NGOs upholding the due process of law, respect for democratic norms (especially fair elections), and justice for minorities (especially the Ahmadis) are under considerable threat from social groups benefitting from such deviations from international standards of justice, human rights and democracy. Quite often these NGOs are denounced by such undemocratic groups as pro-terrorists or foreign-funded organizations helping 'the detested minorities'. Normally, the government fails to take cognizance of threats directed against NGOs from such groups. On the one hand, such prejudices reflect the government's attitude while, on the other, the persecutors of human rights activists are emboldened by the lack of government action to curb them.

Despite all these constraints and pressure from both the government as well as undemocratic forces in society, there is an increasing number of NGOs actively involved in the field of human rights and in upholding the law, the membership of existing ones is increasing, and with growth and experience, these NGOs are also learning how to deal with the various legal, procedural and administrative measures that are stumbling blocks to their effectiveness.

3. Legal Provisions

3.1 Voluntary Social Welfare Agencies (Regulation and Control) Ordinance of 1961:

Any ten persons can register an NGO under the Social Welfare Ordinance with the objective of providing welfare to sub-groups of the population, i.e. children, youth, women,

physically or mentally handicapped, beggars and destitutes, patients or the aged and infirm. Other acceptable purposes are: family planning activities, providing social education (i.e. developing a sense of civic responsibility), imparting training in social work or for coordinating social welfare agencies. Any person above the age of 18 can become a member provided that they (a) are of sound mind and good reputation, (b) agree with the aims and objectives, (c) agree to abide by the registered constitution and bye-laws of the NGO, and (d) live in the area of operation defined by the NGO. However, the Social Welfare Ordinance precludes employees becoming members.

Unlike other legal provisions, the Social Welfare Ordinance has prescribed forms for registration (Form B Schedule II). Form B asks for the name of the agency, its address, aims and objectives, area of operation, plan of operation, how it proposes to finance itself, names, occupation and addresses of founder-members, name/s of the bank/s in which funds will be kept. The application has to be signed by all founder-members and signed by two witnesses. The constitution of the NGO must specify all of this and, in addition, describe the organizational structure, financial administration and how amendments to the constitution are to be made. Additional information required prior to registration is: where the NGO proposes to be accommodated, a list of qualified persons (with qualifications) working in the agency, a description of the NGO's future plan and details of equipment and record.

NGOs who are registered then have to comply with the following legal requirements:

- maintain audited accounts;
- publish an annual report and audited accounts for general information;
- pay all money received by it into a separate account kept in its name at bank/s approved by the registration authority;
- maintain: a cash book supported by vouchers, a ledger of all accounts, an income and expenditure account to be audited annually by a chartered accountant or auditor approved by the Registration Authority, a membership book with names and addresses of all members, a minutes book recording the meetings, an inspection book to record the views of persons authorized to inspect the agency;
- all employees handling cash and stores must sign a fidelity bond from an insurance company with a copy sent to the Registration Authority; and
- publish an annual report that includes the general management, nature and extent of services rendered in detail, programme of the next year and audited accounts.

Apart from receiving this information annually, the Registration Authority may request information whenever it feels the need to do so and has the right to inspect the books of account and other records, securities and cash at "any reasonable time". A change of address must be communicated within 7 days of moving, and amendments to the constitution

require the approval of the Registration Authority. Finally, NGOs registered under this Ordinance can be dissolved by the Provincial Government and/or their governing body can be suspended or dissolved. The provisions for this are:

- (a) If the Registration Authority has reason to believe that the registered agency is acting in contravention of its constitution or contrary to the Ordinance or Rules, or in a manner prejudicial to the interests of the public, it may, after giving the agency an opportunity to be heard, make a report to the Provincial Government. The Provincial Government, if it considers it proper, may dissolve the agency from a specified date.
- (b) If, after inquiry, the Registration Authority believes that an agency has shown irregularity in respect of its funds or maladministration of its affairs or failed to comply with the provisions of the Ordinance, it may suspend the governing body and appoint an administrator or caretaker body in its place. This suspension order will be placed before a Board constituted by the Provincial Government which can order re-installment or dissolving and re-constitution of the governing body. The dissolved governing body can appeal against such an order.

Instances of both have occurred, and clearly there are a number of provisions in the Ordinance intended to allow the government to exercise control over the workings of NGOs registered with the Social Welfare Directorates. NGOs have, in fact, experienced a number of difficulties, and have had to contend with a high level of interference from the department. The first problem is the printed proforma that is devised in a manner that excludes the activities of most of the development-oriented, conscious-raising NGOs from its purview. Secondly, in 1984 the Punjab SWD added a pre-condition of 100 members for registration. Though the official reason given by the Director SWD was that it has become impossible to regulate and keep track of the thousands of NGOs registered with the SWD, there is no doubt that this condition is a big hurdle since most NGOs are very small. Consequently, those desiring registration without the requisite number of members have resorted to showing false membership to get registered. But this false record of members can lead to de-registration whenever the SWD decides to use its prerogative. In fact, any NGO can be de-registered for any minor loophole in its working, including non-fulfillment of its annual plan of activities, insufficient membership or on the supposed complaint of a member. Especially in the smaller towns, Social Welfare Officers exercise a strong control over the working of NGOs registered with them. They can, and do, interfere even when guidelines for operation have been provided by the concerned Social Welfare Officer.

On the other hand, the SWD is able to provide Rs.5000/- annually to each NGO. This disbursement is not, however, automatic and many small organizations, particularly youth groups who do not have any approach to SWD officials, find it difficult to have this funding sanctioned. NGOs desiring government support are therefore obliged to keep the Social

Welfare Officer happy in order to run their groups. This clearly restricts the development and activities of NGOs. In Quetta, Baluchistan, in the summer of 1991, the Director of SWD de-registered 32 NGOs over a disagreement between them and himself (reportedly he felt he had not been given sufficient importance at a seminar).

If, despite these restrictions, NGOs continue to register under this provision, it is essentially because the SWDs employ a large number of people whose fields of operation extend to the smallest administrative levels. Consequently, SWD officers are in the best position to pursue organizations to register with them, which is part of the job description of the Social Welfare Officers. In contrast, not only are NGOs ignorant of other possibilities for registration, there is no representative of the Ministry of Industries - that deals with the Societies Act and the Companies Act - at the lowest administrative levels.

As against the vast majority of NGOs, big organizations and/or those who are well-connected do not face so many problems from the SWD. One large and well-established NGO said it did not allow the department people to interfere in its working. It had managed to avoid control and interference by a delicate balance between maintaining relationships with the department people yet avoiding its participation in decision-making. Hence, while there is a member of the Social Welfare Directorate on their Board, the concerned person frequently receives meeting notices too late to attend. On the other hand, the NGO very consciously pursues a policy of maintaining friendly relationships with the top officials of the SWD. Nevertheless, this organization does not receive any local funds from the department though it conscientiously applies every year. When the NGO complained to the concerned ministry, the secretary gave typical replies such as "Your application was late", "It was not correctly filled", etc.

During the eighties, the tension between the SWD and NGOs deepened due to the SWD's attempt to bring NGOs under government control either by registering them with the Department or by controlling their projects. When this effort proved unsuccessful, a second strategy was to establish government-sponsored NGOs parallel to the existing ones, and funds were diverted from the latter to the former.

Finally, there is no doubt that the SWD has assumed the role of being the government's watch-dog on NGOs, to the extent that even those NGOs not registered with the SWD have been approached and asked to account for themselves and to allow an inspection of their records, premises, activities etc.

One NGO (registered under the Societies Act) that experienced this was well informed and refused to comply. Nevertheless, it was subsequently visited by different SWD officials asking the NGO to register with the SWD. On asking why they should take this step, the NGO was informed that the SWD would come and inspect their working, see that they were fulfilling their plan of action and that, furthermore, the 'intelligence people' would come to

see what they were doing. Unintimidated by these visits and understandably uninspired by the potential list of 'benefits', the NGO in question found it easy to ignore such attempts at interference. However, a less self-confident NGO may have felt obliged to comply with the "requests". This episode also illustrates the self- or government-designated role of the SWD.

3.2 The Societies Act

Most of the new development-oriented NGOs try to register with the Societies Registration Act. According to the Act, it is possible for any seven persons to register a society by forming a "memorandum of association and registration" with the condition that the members of these societies shall not receive property or profits from the activities of the society. The purpose of this law is said to be that of making the society/association etc. a legal body "which can sue and be sued". Acceptable purposes for such societies are defined in Section 20 as:

"Charitable societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs".

To register, one needs to prepare a memorandum which contains the name of the society, its objectives, the names, addresses and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations of the society, certified to be correct by not less than three members of the governing body, is to be filed along with the Memorandum of Association. This is submitted to the Registrar of Joint Stock Companies along with a registration fee. (The statute books say Pak.Rs.50/-, but in Punjab the fee is now Rs.200/-). If the Registrar feels that the aims of the society and Memorandum of Association fill the criteria defined in Section 20, he will certify registration, which also means that it can be refused on these same grounds. The only subsequent requirement is that the registered society submit a list of its current managing body to the Registrar on an annual basis.

Other than this, NGOs registered under this Act are free to make their own provisions for running the affairs of the society, including how to make members (as well as expel them). For each new activity not stipulated in the original memorandum or for modifying intents or objectives etc., the general body of the society needs to make a resolution of three-fifths of its members as outlined in Section 12.

While this is the least restrictive of the legal provisions under which NGOs can

operate, nevertheless, it too contains a clause allowing for the suppression of the governing body of the society (Section 16-A) that was added in 1976. Section 16-A holds that notwithstanding anything contained in the rules or regulations of a society registered under this Act,

"If after such inquiry as may be necessary, the Provincial Government is of the opinion that the governing body of the society:

- (a) is unable to discharge or persistently fails in discharging its duties, or
- (b) is unable to administer its affairs or meet its financial obligations, or
- (c) generally acts in a manner contrary to public interest or the interests of the members of the society",

it may declare the governing body to be superseded for a period not exceeding one year. During this period, the society will be "governed by a governing body constituted by the Provincial Government or by such authority as the Provincial Government may appoint for the purpose". (our emphasis). In fact, this allows the government to circumvent the by-laws of the association. A case of a development-oriented NGO operating in Rawalpindi illustrates just how severe the repercussions of this section can be. In 1990, maintaining that the NGO's governing body was not able to run the organization, the government intervened and decided to appoint its own authority to run the affairs of the society. This government-appointed authority then proceeded to make 100 new members (of its own choosing), and with these 100 new members managed to modify the objectives as well as the rules and regulations of the NGO by simply out-voting the original membership. In effect, this meant that the original NGO was closed down.

Testifying to the government's perceived need to further control the numbers and types of NGOs registering, the Societies Act now requires a lengthy procedure for registration. Earlier it was possible to register under this provision within a matter of a few days. Today, the application of any society is sent through a series of administrative bodies for approval/vetting, starting with the officer in charge of the police station where the society is proposing to establish its office right up to the District Commissioner. It seems fairly obvious that this has been instituted as a means of discouraging registration of new organizations as well as a means for exerting control over the type of organization being formed.

Though organizations registered with the Ministry of Industries under the Societies Act face less problems than those registered with the SWD, undertaking large projects which involve foreign funding can be a problem. For example, in the case of one United Nations-funded project to be executed by a NGO, the Economic Affairs Division withheld the release of funds for eight months. During this time the Section Office harangued the NGO with questions regarding its registration. Finally it took the intervention of six federal secretaries, including the Secretary Women's Division and the Secretary Finance, to have the funds

released. Obviously the vast majority of NGOs are unable to mobilize this type of support. Furthermore, despite its connections, the same organization failed to get funds released for another UN project the following year (1988). Funds were withheld for one and a half years, in the meantime the project time lapsed. Overcoming such hurdles involves a substantial loss of human resources that then have to be diverted into the pursuit of financial support, which understaffed NGOs could more productively use in some concrete developmental activity.

Further restrictive aspects are that NGOs registered under the Societies Act are not eligible for any development projects underwritten by the Women's Division. For this an NGO has to be registered with the Social Welfare Department. While registration with the SWD is not obligatory for receiving projects from other government department projects, in practice, projects are only sanctioned for those NGOs that are either registered with the SWD or have close links with high-level government officials - presumably the government feels that any NGO fulfilling either of these two conditions is unlikely to do anything contradictory to official policies.

Aside from showing preference for SWD-registered NGOs, even within the Societies Act, the government has initiated changes that impede the earlier easy and speedy registration under this provision. As indicated by the case of Women's Action Forum (WAF) in Lahore, registration is not automatically given. As a women's rights lobby and consciousness-raising body, WAF originally tried to register its Charter as it stood. Despite the fact that Section 20 of the Act allows one to register societies for the purpose of "political education", the registration was refused and WAF was advised to register as a political party - at a time when all political parties had been banned by Zia ul-Haq's martial law regime.

Another Lahore-based NGO had to fight its case for one and half year before being allowed to register, and registration was only granted when the NGO threatened to take the matter to the High Court. The registration authority had objections to the terms "Human Resource Development" and "Human Rights Violations" (used to describe two of the NGOs stipulated activities) which it said were meaningless. Further attempts to "streamline" registration is by bifurcating NGOs. Currently all NGOs desiring registration with the SWD must contain the words "social welfare". On the other hand, those containing the words "charity" are referred to the Societies Act.

3.3 Public and Charitable Trust

A trust may be created for any lawful purpose and can be either revocable or irrevocable. A public charitable trust is one that is not created for the benefit of particular individuals but for the benefit of certain social segments or for society at large. To register a public charitable trust there must be: a creator (or author) of the trust, trustee or trustees responsible for administering the trust and some trust property, whether in cash, assets, land or building. The objectives must be charitable or for the benefit of mankind, who become

the beneficiaries. Anyone can set up a trust since there is no registration authority and registration is optional. Registration, however, gives greater legal sanctity in case of later disputes, but it is the document and not the organization that is registered.

Consequently, registration simply requires that a document is prepared that: (a) gives the objects of the trust, (b) identifies who the trustees are going to be (number, possibility and procedure for changing these, terms of service and duties and powers), (c) identifies the beneficiaries and the trust property. This has to be written down on a Rs.10/- stamp-paper signed by two witnesses and registered with the Sub-Registrar in court. The procedure takes 1 to 2 days and requires a total of Rs.80/-. (There is no minimum property requirement for registering a trust).

In the absence of a responsible authority, there are no specific requirements and procedures for trusts. However, in principle, the trustees are bound to fulfill the purpose of the trust and obey directions of the author, stay informed of the state of the trust property and prevent wastage as well as invest money that cannot be immediately used.

Though the easiest form of registration is that of a charitable public trust, the main difference with other types of registration is that the trust is not a legal entity as an organization, only as a document. Recently, the exasperation of the founder of the Sattar Edhi Trust indicates the manner in which the government can interfere even with NGOs registered as trusts. The Sattar Edhi Trust is one of Pakistan's few large truly charitable organizations with an unblemished reputation for integrity and honesty (gained in its courageous relief activities in riot-torn situations as well as the day-to-day operations). However, the government has seen fit to harass Sattar Edhi and his Trust with income tax inquiries to such an extent that an irate Sattar Edhi declared in April 1992 that he was going to withdraw his registration. Since Sattar Edhi runs his trust mostly on vast amounts of donations given by private individuals and institutions, de-registration would not be a main issue with him, though it is uncertain whether it would solve his problems with the Income Tax Department.

3.4 Cooperatives Act

Under the Cooperatives Act, there are far more regulations and requirements to fulfill. Registration is provided for five different types of cooperatives:

- resource society formed to obtain credit, goods or services by its members;
- producers society formed to collectively produce and dispose of goods, including those proposing to collectively dispose of the labour of its members;
- consumers society to obtain and distribute goods or provide services for its members as well as for other consumers and to divide the profits accruing in a proportion prescribed by the rules or bye-laws of the society;

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- housing society formed to provide its members with dwelling houses on conditions laid down in the bye-laws;
- general society which does not fall under the above-mentioned rubric.

The Cooperatives Act requires a minimum number of ten members above the age of 18 years. However, if the purpose is to create funds for its members and activities that benefit them economically, the "economic" is understood in a fairly broad sense to include, for instance, activities such as cricket clubs, educational purposes etc. The one advantage of the Cooperative Act is that it allows for a cooperative to be formed consisting of other societies and individuals as well as just individuals and, in this case, the minimum number of ten may be waived. However, unlike the Societies Act and the Voluntary Social Welfare Act, which are exempt from unlimited liabilities, under the Cooperatives Act it is the Registrar Cooperatives who decides the status of each cooperative.

All cooperatives are subject to audit and inspection of books and property at all times by officials of the Cooperative Departments who are also competent to carry out inquiries. Cooperatives which fail to pass inspection can be ordered dissolved by the Registrar Cooperatives. Genuine cooperatives, as understood in the development sense, are rare in Pakistan and more commonly, the Act has been used by landlords and others to avail of the loans available through the cooperatives bank. Recently the entire cooperatives sector has been the centre of much financial scandal, involving many of well-known names in the country.

Even prior to the scandals, few grassroots or development-oriented groups used this provision. One society which registered as a cooperative in Lahore, the Family Welfare Cooperative Society, later changed its registration to the Social Welfare Department because it said there was too much interference on the part of the department officials. (Khan and Shaheed)

3.5 Non-Profit Companies

For the purpose of promoting commerce, charity, social services, religion, sports, arts or science, "or any other useful object", associations can register under Section 42 of the Companies Ordinance 1984 at either the provincial level (with the Assistant Registrar Joint Stock Companies, Directorate of Industries), or at the federal level with the Corporate Law Authority. This provision has mainly been used by owners of small shops, shopping centres, residents of apartment buildings and clubs though a few welfare NGOs have also made use of it. To register under this Ordinance, there must be a minimum of two members for a private limited company and seven for a public limited company. No member may receive any share of the profits earned by the company and all members must undertake to contribute a stipulated amount on the winding up of the company.

Setting up a non-profit company requires more documentation than other options: three copies each of the Memorandum of Association and the Articles of Association, and filling in the Forms Nos.1, 21, 27, 28, and 29A. Accompanied by the National Identity Cards of office-bearers, these forms attest to the registered office address, lists of those consenting to be directors, consent of person who will act as director/chief executive, names and addresses of directors, undertaking by the subscribers specifying their contribution. A number of these forms then have to be attested by various persons. The manner in which the Memorandum of Association is to be prepared is also very specific. All documents have to be attested by a public notary, except for the prescribed undertaking in the Articles of Association which must be made in the presence of a First Class Magistrate. If all documents are in order, this procedure takes 2 to 3 months to complete. After a site visit, a report is sent to the Director Industries for approval. On approval, it is forwarded with a letter to the Secretary Industries for the issuing of a license. Once a license has been granted, a certificate of registration is made out by the Director Industries.

The same procedure exists for federal-level registration with the exception that the Corporate Law Authority must first issue a licence which must be submitted with the application for registration.

Once registered, a non-profit company is required to: maintain a registered office and a register of members with particulars and one of the directors and officers. It is obliged to hold an annual meeting of its members initially within 18 months of formation and thereafter after each calendar year. But perhaps the most intimidating to NGOs is the requirement to keep financial accounts in the same pattern and details required of companies in general. These must be audited and if it is a public limited company, a copy of accounts sent to the Registrar within 30 days of having been presented to the members. Books must be available for inspection at all times and any information document or explanation "with respect to any matter" requested by the Registrar must be supplied by the officers, directors and auditors of the company. Moreover, the Memorandum and Articles of Association cannot be modified without the approval of the Corporate Law Authority.

Finally, the court has the right to wind up a non-profit company for a variety of reasons such as: when resolved by the company members, on failure to commence activities within a year of establishment or on suspension of activities for a whole year, when the membership falls below the minimum required, if it is unable to pay its debts, etc. but also if "the court is of the opinion that it is just and equitable that the company be wound up".

Few NGOs have bothered to register under this provision partially because of a lack of knowledge but also partially because the requirements of filing returns is the same as that for the profit companies. Most NGOs are intimidated by this stipulation.

4. CONCLUSION

In conclusion, it is evident that there is a growing mistrust between the government and NGOs. In consequence, the government has tried multiple methods of controlling the NGO sector, to the extent of making those registered under the SWD virtual extensions of the government schemes. The desire of the government to control NGOs is visible in the increasing regulations being imposed on NGOs, the refusal of registration in certain cases, the increased monitoring role in others. It also seems clear that the government is most concerned about (a) the newer categories of developmental and human rights advocacy groups, especially as these receive recognition from international agencies, and (b) the fact that international agencies are providing financial support to these NGOs.

For their part, NGOs register partially because they do not realize that they may not need to do so and partially to receive financial support - either from national or international sources.

Many of the new developmental and human rights advocacy NGOs depend, to a large extent, on funding from external sources. Though NGOs in Pakistan are apprehensive about any strings that may be attached to foreign funding, their apprehension regarding government interference is even greater. Some NGOs attempt to bridge needs by also undertaking consultancies that allow them some resources over which they then have absolute control. However, it is only exceptional NGOs such as the Women's Action Forum that, as a matter of principle, will not accept funding from either national or international sources. Others focusing on human rights have decided not to get registered at all to avoid all government monitoring and interference.

Finally, it needs to be said that so far NGOs have not gone to court either to contest the authority's refusal to grant them registration or to contest the government on the dismissal of their governing bodies. Frequently, NGOs are themselves ignorant of the law and its provisions, as, for instance, the fact that in principle the dissemination of political information is a valid objective for an NGO under the Societies Act. Instead, NGOs normally decide to avoid lengthy procedures and hassles by complying with the registration authority's demand to re-word and re-design their objectives. As a result, no legal precedence has been set which could then be of use to others who find themselves in a similar situation.

Another consequence of ignorance concerning legal provisions is that some NGOs registered under the Societies Act feel obliged to provide annual reports and accounts to the Registration Authority even though this is not a requirement under this Act. Others may comply with requests from government officials - such as inspection - when they are not obliged to do so. In any case, it is clear that the growing level of monitoring and control being exercised by the government and its officials increases the need for NGOs to familiarize themselves with the legal provisions which govern their registration.

It is unlikely that the tension characterizing the interaction between NGOs and the government will dissipate in the near future. Ideally, NGOs should focus on ways in which they can generate independent funds since finance is a major control mechanism. At the same time it is clear that a majority of NGOs will not be able to do so and will continue to be dependent on funds either from government sources or from international agencies or groups. They will, therefore, have to be creative in their strategies for survival and growth in which closer interaction and collective strategizing would be of great mutual benefit.

REFERENCES

Report of the NCS Workshop on Grassroots initiatives, Peshawar, 5 May 1990. Pakistan National Conservation Strategy Secretariat, Islamabad, May 1990.

Agha Khan Foundation

Proceedings of a Workshop on Support Services for Non-Government Organizations in Pakistan, Agha Khan Foundation, 5-6 April, 1987, Lahore.

Khan, Nighat Said & Shaeed, Farida,

Women's Development Programmes in the Punjab -Skill Development and Income-Generating Schemes and Projects, UNICEF Pakistan, Lahore, 1984.

Women's Division:

Papers of the National Conference on Non-Government Women's Organizations, Islamabad, 1984.

Hussain, Tariq:

Managing the Environment: Social Organization, the Informal Sector, and Participatory Approaches to the NCS Report, especially, 'Annex II: The NGO Sector: An Overview', DRMS, Islamabad.