



## **This document has been provided by the International Center for Not-for-Profit Law (ICNL).**

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at  
<http://www.icnl.org/knowledge/library/index.php>  
for further resources and research from countries all over the world.

### Disclaimers

**Content.** The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

**Translations.** Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

**Warranty and Limitation of Liability.** Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

# Country Report from Laws, Rules & Regulations for the Voluntary Sector, March 1996

## Pakistan

### LAWS AND REGULATIONS GOVERNING NON-GOVERNMENTAL ORGANISATION IN PAKISTAN

**Ms. Sadiqa Salahuddin**

#### I. INTRODUCTION

In Pakistan, the term 'NGO' has not been defined in any statute and is used to refer to all types of organisations. The perceptions about what an NGO is as well as the categories of NGOs, are widely divergent. Traditionally, NGOs have been seen as welfare-oriented organisations staffed by volunteers. The concept of developmental NGOs, staffed by professionals, has not yet been fully understood or accepted.

For the purposes of this paper, the focus is on those organisations: which are clearly intended to be non-profit; which by virtue of the law covering them would necessarily be organisations; and which by law are not government-controlled. It must be pointed out,

however, that this excludes a number of organisations which have emerged and function as NGOs, although the concerned law does not deal with 'organisations' per se. It also ignores charities and trusts which are legally government-controlled, even though they may be functioning as fairly autonomous organisations, as well as some which are actually non-profit organisations, but are registered under laws which view them as profit-making.

There are a number of laws which deal with the registration and regulation of NGOs, others which recognise the existence of entities which may be NGOs. Having emerged over a period of time, the laws use varying terminology and concepts, and have obviously tried to cover gaps or meet new situations

**Traditionally, NGOs have been seen as welfare-oriented organisations staffed by volunteers. The concept of developmental NGOs, staffed by professionals, has not yet been fully understood or accepted.**

---

Note: The studies/reports done in Pakistan do not provide information on all the areas addressed in the format for the country report. Thus the information or analysis contained in this paper may be incomplete or generalised, based on reports, studies and discussions which are area-specific.



without interfering with previous legislation. This has resulted in substantial differences in the legal status, structure and functioning of NGOs in accordance with their registration. Thus, while some NGOs are recognised as bodies corporate, others in effect are merely extended agencies of the government. While some have recourse to independent judicial review, others are legally restricted from such access. While some can operate fairly independently, others require governmental permissions in a number of areas. This obviously affects the autonomy of a large proportion of NGOs, since there are a number of limitations on their powers.

The laws (as with all laws in the country) are neither widely disseminated, nor their intent or legal effect widely understood, even by those who deal with them or get registered under them. At the most, they may be aware of the legal registration requirements, but knowledge or understanding beyond this is limited. In any event, the language of the laws (English) and the legal terminology ensures that the majority of the population cannot understand them. Their application depends largely on the persons in charge or on the policy of the current government. And the cumbersome documentation, combined with inefficiency and poor administration, ensures non-compliance.

The government does have the requisite authority to oversee the activities of NGOs and to enforce the laws. In fact, in an environment where NGOs are often viewed as protagonists, many of its powers, though rarely used, are seen as excessive authority

and control. The role of NGOs is particularly important in the context of countries like Pakistan, where many of them provide essential services which the state has failed to provide, facilitate the participation of groups and communities at various levels and raise issues from a non-partisan standpoint. It is primarily the catalyst and advocacy role played by NGOs which is often perceived as a threat by government. Yet, the governments' lack of credibility and outreach combined with the conditionalities of international and bilateral funding for NGO involvement, has ensured increased interaction between government and NGOs, without diminishing the mutual mistrust.

## II. PROVISIONS OF THE GENERAL LAWS

### A. Consistency and Clarity of the Laws.

There are a number of laws which deal with NGOs, many of them overlapping in terms of the areas of activities they cover. However, there is divergence in their applicability, and the consequent functioning of the NGO. While the laws may appear to be too numerous on the face of it, most NGOs basically feel that the plurality of statutes allows them a choice in terms of their structure and functioning.

Though the laws are not contradictory in themselves, they do allow for similar organisations to be registered under different statutes, and very dissimilar ones to be registered under the same statute. This is

**Though the laws are not contradictory in themselves, they do allow for similar organisations to be registered under different statutes, and very dissimilar ones to be registered under the same statute.**

particularly so in the case of the more general legislation like the Societies Registration Act or the law for non-profit companies, where foundations, support organisations, professional associations, developmental organisations and special membership associations (e.g. housing societies), all get registered without any distinction. There also appears to be no clear prohibition on NGOs from registering themselves under more than one statute. This has been done by a number of NGOs for various reasons: some government departments often only give financial support to NGOs registered as social welfare agencies, thus pushing NGOs registered differently to also get the concerned registration; donors sometimes require a particular form of registration; special incentives are sometimes available for particular types of NGOs e.g. subsidised amenity plots for societies in Karachi. Because of the ineffective functioning of most of the concerned authorities this has not surfaced as a problem, but it could bring into question the very nature of the NGO and its legal status.

A study has indicated a number of problems concerning clarity of the laws. The language of the laws (English) and the legal terminology constitute major problems. Moreover, the details contained in the schedules, rules and subsequent orders, and the cumbersome documentation and procedures lead to confusion about what is required, both in terms of registration as well as for future obligations. This results both in a prolonged preparation period for registration documents, as well as in massive non-compliance with obligations

later. Thus, though most of the laws are relatively uncomplicated, the form of documentation required for follow-up processes, combined with the inefficiency and red tape which is an integral part of the system, makes administration problematic.

The laws are basically the same in all provinces (with occasional minor differences), the rules may be slightly different, while the procedures and policies in each province change somewhat according to the persons in charge as well as current government policy.

## **B. Constitution**

Articles 16, 17 and 19 of the Constitution of Pakistan guarantee freedom of assembly, association and speech for every citizen. However, the right to assembly is subject to any reasonable restriction imposed by law in the interest of public order. The right to form associations or unions is subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. And the right to freedom of speech and expression is subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offense.

## **C. Types of Organisation.**

Basically, there are five or six statutes that deal with the formation, regulation or

recognition of entities, which could be organisations. While the entity in most cases is clearly an organisation (Society, Cooperative society, agency or company), in other cases (public trusts and charitable endowments) it can result in being an organisation both because of intent or functioning.

The types of organisations that can be formed under the laws are (a) societies under the Societies Registration Act of 1860, (b) social welfare agencies under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance of 1961, (c) cooperative societies under the Cooperative Societies Act of 1925, (d) non-profit companies under the Companies Ordinance of 1984, (e) public charitable endowment trust under the Charitable Endowments Act. 1890.

In recent years, an internal debate between NGOs has been initiated about whether the entities recognised by some of the laws are, strictly speaking, organisations, whether they are all non-profit, and whether all of them are non-government. Technically, of course, public charitable trusts and charitable endowment trusts are not organisations. However, in many cases they have been established with the same intent, function in the same manner and think of themselves as organisations. In fact, sometimes the only reason for registration as a public charitable trust is either because of lack of awareness of other options, or simply because of easier registration and lack of official interference in its functioning. The profit issue emerges most clearly in terms of cooperative societies within which the self-help and profit-distribution

concepts are present, but has also been raised as an ethical issue in relation to NGOs which pay what are considered exorbitant salaries. While the ethical issue is yet to reach some conclusion, it may be mentioned that not all cooperative societies are profit-sharing, some work far beyond the self-help concept and are only so registered because of lack of knowledge of other options as also because the cooperative structure extends to the sub-divisional level which facilitates registration of groups which do not have easy access to the larger or capital cities. The 'government or non-government' issue clearly hits charitable endowment trusts which are created by executive order and the 'corporation sole' is a government officer. But there are many grey areas, where the deciding factor yet has to be resolved. If the basis for being considered an NGO is the type of registration, then all the government-sponsored and government-controlled organisations so registered would also be considered NGOs. If government sponsorship or promotion is the deciding factor, this could affect NGOs which are functioning as independent organisations even though their inception was governmental. If total or sizable government funding is the deciding factor, this would exclude a large number of social welfare agencies, which function almost exclusively on small funding from government. And if government control (exemplified by having the deciding power on governing bodies or as exercising judicial powers) is the deciding factor, this ignores the control it exercises through funding and other means.

Societies are basically associations set up for

charitable purposes or for the promotion of literature, science, and the arts. Social welfare agencies are agencies established primarily for rendering welfare services. Cooperative societies are associations for the promotion of thrift, self-help and mutual aid among agriculturists and others with a common economic need. Non-profit companies are associations formed for promoting commerce, art, science, religion etc. Public charitable trusts are trusts created for the benefit of society or certain sections of it. And charitable endowments are trusts for charitable purposes and the advancement of any object of public utility.

The laws recognise most types of organisations as juridical entities, but there is a qualitative difference of degree. Cooperative Societies and non-profit companies are clearly given the status of bodies corporate. In the case of a society, its juridical identity is inferred through various provisions of the statute: the property of a society is deemed to be vested in the trustees or governing body; while the society may sue or be sued in the name of an office-bearer, the suit does not abate in the absence of such office-bearer; a judgment can only be enforced against the property of the society; and its members can be sued as strangers. In the case of social welfare agencies, their juridical status is dubious; the statute does not clearly establish its status; its powers are severely curtailed; and the power of judicial review lies with the government. In the case of public trusts, the trust property vests in the trustees, but the trust survives the death or discharge of any of the trustees and passes on to others. In the case of a charitable

endowment trust, the Treasurer of Charitable Endowments (a government officer) has been declared the corporate sole of the property of the trust which vests in him.

Some of the statutes cover only those NGOs that provide public benefit e.g. the Voluntary Social Welfare Agencies Ordinance, the Charitable Endowments Act and the law relating to public charitable trusts. The Cooperative Societies 'Act is clearly designed for serving the mutual interests of its members. However, the Societies Registration Act and the law relating to non-profit companies does not distinguish between NGOs that provide a public benefit and those that serve their members' private and mutual interests. While many of the emerging developmental NGOs are registering themselves under these statutes, professional and other special membership associations are also registered under these acts.

Trade unions and political parties are regulated separately under different statutes. Religious entities or groups with religious objectives have various options e.g. registration as a political party, an educational institution, an agency registered with the Zakaat board, or as any one of the NGO registrations except that of a cooperative society.

Various types of NGOs are permitted to exist and function. They do not necessarily have to register to function or even receive funds. Of the registered organisations, there are various types - charitable organisations,

**The laws recognise most types of organisations as juridical entities, but there is a qualitative difference of degree.**

welfare organisations, support organisations, coordinating organisations, self-help groups, advocacy and pressure groups, professional bodies, research-oriented/developmental organisations, grass-root organisations, resource centres etc., many with overlapping spheres of activities and several of them multi-purpose organisations.

#### **D. Purposes.**

The purposes of a society include charitable work; the promotion of sciences, literature or the fine arts; instruction and the diffusion of useful knowledge or political education; the foundation or maintenance of libraries or reading rooms; public museums and galleries, collections etc. and educational and medical services. The purposes of a voluntary social welfare agency is the rendering of social services in one or more of the following fields; child, youth and women's welfare, welfare of the physically and mentally handicapped, juvenile delinquents, socially handicapped, beggars and destitute, the aged and infirm, welfare and rehabilitation of released prisoners, and of patients; family planning; recreational programmes to prevent anti-social activities; social education in civic responsibilities; training in social work; and coordination of social welfare agencies. The purpose of a cooperative society is the promotion of thrift, self-help and mutual aid to bring about better living, better business and better methods of production. The types of societies are: resource societies; producers societies; consumers societies; housing societies; and general societies. The purposes of a non-profit company include the promotion

of commerce, art, science, religion, sports, social services, charity or any other useful objective. The purpose of a public charitable trust can be any charitable purpose i.e. the advancement of knowledge; religion; commerce; health and safety of the public; or any other objective beneficial to mankind. The purpose of a charitable endowment includes any charitable purpose e.g. relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

This paper primarily focuses on the law relating to social welfare agencies, societies and non-profit companies, which are clearly intended to be non-profit organisations.

#### **E. Registration or Incorporation Requirements**

The registration or incorporation requirements are different under each of the statutes. Apart from fulfilling the requirement of having purposes and areas of activity which fall within the ambit of the particular form of registration, there are specific requirements to meet.

A social welfare agency may be formed by a minimum of 10/11 adult persons who reside in the area of operations of the organisation. There must also be a management committee of about 15 persons. There are no base capital requirements for registration. The registration authority is the Directorate of Social Welfare, located in the provincial capital. The documentation to be submitted includes: four



copies of the application for registration on a prescribed form; four copies of the constitution containing all the items listed in the schedule; four copies of the minutes of the association where it was decided to form the agency, a brief statement about the accommodation, list of qualified persons, sources of income, future plans, details of equipment etc., and a copy of the treasury challan for Rs. 25/- paid as registration fee. After the documents are checked, site inspection takes place, followed by the issuance of the certificate of registration which has to be collected from the Directorate. If an application is rejected, an appeal can be made to the provincial government within 30 days, and its decision will be final.

To form a Society there must be a minimum of 7 members and a minimum of 3 members on the governing body. There are no base capital requirements to form a society. The registering authority is the Registrar Joint Stock Companies located in the Directorate of Industries in the provincial capital. The documentation to be submitted includes; three copies of the Memorandum of Association according to the form given in the Act; three copies of the National Identity Cards of the office bearers; bank challan for Rs. 50 payable as registration fee (may be different in the provinces e.g. Rs. 1500 in Sindh); authority letter undertaking; rent agreement; NOC if main office bearer is a government servant. If the society is an existing one assent to registration by a 3/5 majority at the general meeting is also necessary. Further documents may also be required in particular cases e.g. academic certificates of the subscribers in the case of an educational

society. After the documents are found in order, site inspection takes place, followed by the issuance of the certificate of registration by the office of the Registrar of Joint Stock Companies. There is no provision made in the act for appeal against rejection of registration, presumably because registration by the authority is legally mandatory if the documents filed are in accordance with the requirements. However, when rejections do take place and the NGO complains the matter goes to the Director Industries.

For the incorporation of a non-profit company, a public company with limited liability, there must be a minimum of 7 members. The Corporate Law authority is the relevant authority which grants the license and directs that the company be registered. The registering authority is the Registrar Joint Stock Companies (including an additional registrar, deputy registrar or assistant registrar, performing the duty of registration) in the province or part of Pakistan where the registered office of the company is situated. If the company is being registered at the provincial level the assistant registrar located at the Directorate of Industries is usually the registering authority and issues the certificate of incorporation. If the company is being registered at the federal level, the joint registrar located at the office of the Corporate Law Authority is usually the registering authority and issues the certificate of incorporation. The documentation to be submitted for obtaining a license includes; an application to the CLA; three copies of the draft memorandum; three copies of the articles of association; a list of promoters of the associations with occupations

and addresses: a declaration by a senior advocate, chartered accountant or director/officer of the company that the documents are in conformity with the requirements; the names of the companies, associations and institutions in which the promoters hold office; for existing companies, a copy of the preceding year's audited balance-sheet, income and expenditure account and the annual report; an estimate of the future annual income and expenditure, specifying sources etc. a brief statement of work already done or proposed to be done. Once the license is approved/issued by the CLA on the conditions it deems fit, the registration authority requires; three copies of the letter of authority or power of attorney; declaration of undertaking by a director/officer; notice of registered office; list of directors; consent of directors; particulars of directors; undertaking and copies of NICs of subscribers; copies of NICs of persons witnessing signature; copy of ownership documents of registered office and NOC from landlord; a challan for Rs. 170 as registration fee; other particulars in case of residential flats/shops etc. After the documents have been found in order; site inspection takes place, following which the company is registered and the Certificate of Incorporation issued by the concerned registrar. The process is somewhat different at the provincial and federal levels. If an application for incorporation is rejected, the applicant can appeal within 30 days to the registrar; but if the order has been passed or upheld by the Registrar, to the Corporate Law Authority.

All documentation under the different statutes is subject to prescribed conditions of

attestation, notarisation etc. with specifications as to the type of paper to be used. The process of registration (from application till the registration) can take from one week upto one year. There have been instances of registration taking place overnight (under political or official pressure) and there have been instances when they have taken longer than a year (because of political/policy reasons; refusal to register organisations using different or 'unacceptable' concepts or terminology e.g. non-hierarchical structures, 'political empowerment', etc. ). However the largest proportion get registered within 1-3 months, most delays taking place because of incomplete or defective documentation. It appears that the process of preparation of documents takes much longer than the actual process of registration. the number of documents, the complicated language, the non-availability of guidance/models in many cases, the requirements of attestation and type of paper, the multi-window operations and the general inefficiency of registration offices are the main reasons.

There is no statutory bar on the membership of foreigners though the conditions of membership may result in excluding foreigners. Nor does there appear to be a bar on the formation of umbrella organisations or association of NGOs. The Voluntary Social Welfare Agency Act specifically includes co-ordination of agencies as a legitimate area of activity, the other statutes are silent. However, presumably this allows for associations if the overall purpose of such association is the promotion or advancement of the approved objectives. However the

conditions of membership relating to 'natural persons' must be observed, though they may in fact be representing organisations.

### **F. NGO Registers**

The Registration authorities of social welfare agencies and societies do maintain registers of all registered organisation with relevant particulars submitted at the time of registration (e.g. the Directorate of Social Welfare maintains a register of all registered social welfare agencies containing the following particulars; name and address of the agency; registration number; date of registration and establishment; details of the founder members and; details of the office bearers). However, it appears that the information is neither updated thereafter, nor are defunct NGOs purged from the lists. Legally the public has access to the documents subject to a normal fee. However, this is not the reality in terms of actual functioning.

The registrars of non-profit companies are legally obliged to maintain a number of registers, update them regularly and exchange information with the provincial registrars and Registrar Pakistan. The types of registers include a Register of companies with the name, registration number, date of incorporation, other particulars, all other documents and facts in chronological order; an alphabetical index of the companies registered with the concerned company registration office ; an alphabetical index of companies registered with all the company registration offices; register of foreign companies; of mortgages etc; chronological index of mortgages etc.

companies into liquidation; companies whose names have been struck off register of fees; copying register; inspection register; of persecutions etc; check register of AGMs etc. check register for issuance of half-yearly accounts; statutory meeting reports etc. The public is legally allowed access to inspect certain registers and records upon payment of a fee. However a study indicated that company registration offices in one province had certainly not maintained or updated their registers or were unwilling to allow access to them.

### **G. General Powers**

All registered organisations have the right to own property, open bank accounts and enter into contracts. However, there are some specific limitations on their powers under the different statutes. For example, a social welfare agency; cannot amend its constitution, rules, regulations, bye-laws etc. without approval of the registration authority; it cannot voluntarily dissolve itself without permission; and any assets left over after dissolution must be transferred to another registered social welfare agency with similar objectives. Any complaint about contravention of the legal province (including failure to comply with limitations) had to be made in writing to the court by the registering authority or an authorised officer. The assets of a society remaining after dissolution must be transferred to another registered social welfare agency with similar objectives. Any complaint about contravention of the legal provisions (including failure to comply with limitations) has to be made in writing to the court by the registering

authority or an authorised officer. The assets of a society remaining after dissolution must be transferred to another society. Presumably, any complaint in this regard would ordinarily be made by the registering authority, but could be initiated or made by any member. A society in which the government is a member, contributor or otherwise interested in, cannot dissolve itself without the consent of the concerned provincial government. A non-profit company: cannot make donations or grants to or affiliate itself with any other charitable institution/trust etc. which is not approved by the CBR; in the case of dissolution, it must transfer its remaining assets to institutions having similar objects; must invest its un-utilised moneys exceeding a certain amount in government securities; cannot amend its constitution without approval of the CLA. A complaint for any offence against the ordinance must be made to the court or Corporate Law Authority in writing by the registrar, any member or creditor entitled to present a petition for the winding up of the company. It does not appear that possible or intended beneficiaries of NGOs have the right to go to court to seek action against them.

#### **H. Membership Organisation**

All the statutes contemplate a basic membership. The kind of membership (open, strictly restricted, professionally determined etc.), however, depends on the character of the organisation, its own rules and the statute by which it is governed. Whatever the source or process for the rules, the governing bodies of the organisations usually have the power to accept, exclude or remove members.

For social welfare agencies, special provisions for membership are contemplated in the model constitution prepared. Apart from the basic eligibility criteria (age, residence, non-employee etc.), different forms of membership are categorised: patrons; life members, ordinary members; associate members; affiliated members; honorary members; and co-opted members. Associate and affiliate membership applies to other agencies, not persons. There are different qualifications and procedures for the categories, but basically all applications have to be approved by the executive (management) committee, but if twice rejected, by the general body whose decision is final, membership can be terminated due to non-payment of subscription; absence from 3 consecutive meetings; detrimental conduct. Resignation of a member is through a written resignation, to be accepted by the Executive Council. For societies, there are no special rules concerning membership, since the law does not differentiate between different kinds of organisations, including professional societies. The conditions for membership, removal and resignation would therefore be according to the rules and regulations of the society. For non-profit companies, membership criteria would be according to the articles of association, as would be the procedures for acceptance, removal and resignation.

#### **III. GOVERNANCE**

The provisions relating to governance of NGOs are different under each of the statutes.

The governing body of a social welfare

**The governing bodies of the organisations usually have the power to accept, exclude or remove members**

agency is a management committee, (or executive council, committee etc.) to whom by the constitution of the agency, its executive functions and the management of its affairs are entrusted. It must have about 15 members, comprising (according to the model constitution and schedule) a president, vice-president, general secretary, joint secretary, treasurer and 10 executive members. The governing body has the powers and functions to: to represent the organisation and execute the policy etc., to appoint sub-committees; to invite, cancel, restore membership etc.; to appoint, discipline dismiss paid staff and determine terms and conditions of employment; to prepare schemes, budgets, reports etc.; to co-opt members on the committee in case of vacancy; prepare annual reports, audited accounts and present to the general body; arrange for general body meetings when due; draw up programmes and be responsible for implementation; and maintain the register of members. All members of the committee are honorary and the property of the agency vests in the committee. The powers and functions of the office bearers are also laid down in detail. Basically, the president is the head, presides over and adjourns meetings, supervises the working of the organisation, has the casting vote, meets emergency expenditures etc., with the vice-president to assist and assume the powers in the president's absence. The General Secretary is the chief executive with duties of preparing agendas, calling meetings, preparing and submitting reports, general supervision, verification of bills/vouchers, ex-officio member of all committees etc., with the joint secretary to assist and assume

responsibilities in the general secretary's absence. The treasurer's responsibilities are to maintain accounts, operate accounts and moneys, proper auditing, collection of payments/donations, maintain account registers, preparing annual budgets, quarterly account reports, handle petty cash etc. The general body, composed of life and ordinary members: determines the policy/programmes; approves the fiscal budget; holds elections of the executive committee; appoints chartered accountants, approves the report and audited accounts; decides appeals and other matters referred; amends the constitution.

The quorum for an annual general meeting and meetings of the governing body is one-third of the total membership, different for special and requisitioned meetings. All decisions are by simple majority except in particular cases e.g. 3/4 majority of total membership of general body for an amendment to the constitution; 2/3 of members present in a requisitioned meeting; 3/4 of the total membership of the governing body for suspension of membership. Persons (including members of the governing body) are indemnified against prosecution or legal proceedings for anything done in good faith under the ordinance. But any person who contravenes the provisions of the statute or makes a false statement or false representation etc. is liable to imprisonment upto 6 months or fine upto Rs. 2000. The complaint has to be made by the registering authority or authorised officer.

The governing body of a society (governors, council, directors etc.) is the body to whom,

**The governing body of a society (governors, council, directors etc.) is the body to whom, by the rules and regulations of the society, the management of its affairs is entrusted.**

by the rules and regulations of the society, the management of its affairs is entrusted. There must be a minimum of 3 persons on the governing body. There is no mandatory provision or bar regarding the kinds of officers and, consequently, no specified powers or functions. Even an AGM is not mandatory, leaving the operation fairly flexible. For altering, extending or abridging its purposes, or for amalgamating the society, there must be a 3/5th vote of the members at a special meeting convened by the governing body, to be confirmed by 3/5th members present at a second meeting convened by the governing body after one month. Bye-laws can be made in accordance with the rules and regulations of a society, but if the rules do not provide for this, they can be made at a general meeting of the members, specially convened for the purpose, by 3/5th of the members present. Persons (including officers) are not personally liable for suits against the society in their names. Any member (including an officer) who breaches a rule or bye-law is liable for the pecuniary penalty accrued, which can be recovered in a court of law. Members (including officers) can be sued as strangers for damage to the society and can also be prosecuted and punished as strangers for specified criminal offences.

The governing body of a non-profit company, if it can be so called, is its board of directors, although many of the powers lie with the members in general meetings. There must be a minimum of 7 directors of a non-profit company and only natural persons can be directors, none a variable representative of a body corporate. The business of the company

is managed by its directors, who may exercise all powers which are not exercised by the company in general meeting, whether in accordance with the law, the articles or a special resolution. The members of a company, in AGM, are responsible for the consideration of the accounts, balance sheets and reports of the directors and auditors, the appointment and fixation of remuneration of auditors, the election or appointment of directors. The company must have directors, a chairperson and a secretary. The provisions of meetings, quorums, voting etc. are the same as for any other public company.

Amongst other things, the directors may borrow money invest funds, make loans, approve accounts and bonus etc. Except with the consent of the general meeting, the directors cannot sell, lease or dispose of undertakings or give any relief for the repayment of specified outstanding debts. The company must have a chief executive, unless managed by a managing agent. The directors are responsible for appointment of the chief executive and may also remove him by a resolution of 3/4th of the total number. A chief executive cannot engage directly or indirectly in competing business. Every director or officer, who is directly or indirectly concerned or interested in any contract or arrangement, must make a disclosure in this regard. If these provisions are contravened, apart from the liability to fines, the court may declare a director to be lacking fiduciary behaviour. Under the law, the company itself is liable for defaults and harm to third parties. However, all officers responsible for

contravention and defaults, and in some cases if they are 'knowingly or willingly' in default are personally liable. Except as provided in the statute, indemnification of any officer against liability for negligence, default, breach etc. is void, except in particular circumstances.

#### **IV DISSOLUTION, WINDING UP, AND LIQUIDATION OF ASSETS.**

If the registration authority believes that a social welfare agency is acting in contravention of its constitution or the laws/rules or in a manner prejudicial to the public interest it may make a report to the provincial government, after giving the agency an opportunity to be heard. If satisfied, the provincial government may order the agency dissolved. There appears to be no appeal against involuntary dissolution. No registered agency can dissolve itself. However, at least three-fifths of its members can apply to the provincial government for dissolution, and if the provincial government is satisfied, it may order the agency dissolved. Upon dissolution, the registration of the agency stands cancelled. The government may order any bank or person holding moneys securities or assets of the agency not to part with them without written permission of the government, appoint a competent person to wind up the affairs of the agency, order any moneys etc. remaining after satisfaction of debts and liabilities, to be transferred to another agency having similar objects, all such orders to be enforceable by a civil court.

There is no involuntary dissolution process for

a society. A society may be dissolved by the decision of 3/5 of the members of a society at a general meeting called for that purpose. However, it must obtain the consent of the provincial government if any government is a member of, contributor to or otherwise interested in any society. The property of the society will be settled according to the rules, or as the governing body finds expedient, and in the event of a dispute among the governing body or members, the matter will be settled in court. If any property remains after payment of debts and liabilities, this must be given to another society agreed upon by 3/5 members at the time of dissolution, or by a court if this is not done.

The winding up of a non-profit company may be either by the court, or voluntary, or subject to the supervision of the court. It may be wound up by court: if it has so resolved by special resolution; if default is made in delivering the statutory report to the registrar etc., if it does not commence its business for a year or suspends it for a year; if its membership gets reduced to below the minimum; if it is unable to pay its debts; if it has been carrying on unlawful, fraudulent, unauthorised business etc., if the court (company bench) considers it just and equitable etc. An application can be made by the company, or creditors, or contributory, or registrar, or the CLA or person authorised, subject to certain conditions. If the court orders the company to be wound up, an appeal can be made to the Supreme Court if leave to appeal is granted. The court will appoint a provisional manager or official liquidator when it orders a company to be wound up. Within

**There is no involuntary dissolution process for a society.**

30 days of receiving sufficient funds, the liquidator will distribute the funds among the creditors or contributors after providing for expenses. A company can be wound up voluntarily if, its fixed period of duration expires; or its resolves so in a special meeting. The company in general meeting will appoint the liquidators. It can be wound up under supervision of the court when it has passed a resolution for voluntary winding up and the court decides that it should be under its supervision, either of its own motion or upon application. A company continues to be a company till its final dissolution.

## V. REGULATION

The Directorate of Social Welfare has regulatory authority over social welfare agencies. The agency must submit an annual report and audited accounts to the authority at the close of each financial year. The report must contain details about general management of the agency; nature and extent of services; programme for the next year; and audited accounts. The annual report must be published and becomes a matter of public record. The failure to file reports, amounting to failure to comply with the provisions or as acting contrary to the provisions of the law, could result in supercession or dissolution.

The Registrar Joint Stock Companies has regulatory authority over societies. The society must send the authority a list of the names, addresses and occupations of the governing body once a year, either within 14 days of the AGM (if the rules provide for it) or in the month of January. Annual audit reports verified

by a chartered accountant are also asked to be submitted. In practice, in the past year, there have also been demands for minutes/decisions at AGM and governing body meetings, but there is no information if this has been done in all the provinces and with all societies.

The Corporate Law Authority (CLA) has principle regulatory authority over non-profit companies. The reports/statements by a company are ordinarily submitted to the company registrar in their area. The company must submit annually copies of the balance-sheet and income/expenditure presented at the AGM within 30 days of the meeting, list of directors and their consent etc. It must also intimate change of its registered office and keep its accounts/books open to inspection. The authority may also require the company to submit any additional statements of accounts and reports. Failure to submit the reports etc. makes the company and the officer, knowingly or willfully defaulting, liable to fines.

## VI. FOREIGN ORGANISATIONS

### A Registration etc.

There are no special rules for the registration, regulation or dissolution of foreign organisations. They are apparently registered with the Foreign Office which regulates their functioning according to their existing policy and rules as well as the agreement arrived at with them, whereafter the Economic Affairs Division deals with them. Essentially, foreign organisations function according to the terms of agreement with the government. Some of

**There are no special rules for the registration, regulation or dissolution of foreign organisations.**



the organisations come within the ambit of the bilateral agreement between their government and the Government of Pakistan (e.g. the USAID and the German Foundations of the different political parties), others have separate agreements (e.g. Asia Foundation).

## **B. Foreign Grants.**

There are no special rules for domestic organisations to receive foreign grants. Any rules, restrictions, conditionalities etc. are on the donor agencies operating in the country. If grants are received from outside the country, these are not subjected to any official process.

## **VII. MISCELLANEOUS**

The rules for mergers of NGOs are different according to their registration. In a society, the governing body may submit a proposition for amalgamation to the members, which would have to be agreed to and confirmed at 2 special meetings by a 3/5th vote.

Where NGOs have approval of the Central Board of Revenue (CBR) for exemptions, a certain percentage of any money put aside or un-utilised in excess of a prescribed limit must be invested in government securities or approved investments. There is no specific bar on NGOs per se on investing abroad. But they would be subject to the same regularities of the State Bank as are applicable to others.

There is, in principle, no bar on NGOs from engaging in political and legislative activities. NGOs have helped to draft laws and lobbied

with government on laws and policies. However there may be problems about endorsing candidates. Non-profit companies are prohibited from making any contribution to any political party or for any political purpose. The registration authorities and government policy is also discouraging to any overt political activity.

## **VIII. TAX LAWS**

The basic income tax structure in Pakistan is a federal one, while the excise taxes etc. come within the provincial jurisdictions. The relevant statute is the Income Tax Ordinance 1979, which extends to the Central Board of Revenue under which the following classes of income tax authorities have been established: regional commissioners; directors of survey, vigilance, inspection and audit; commissioners; additional commissioners (appellate or inspecting); income tax panels; deputy commissioners; and inspectors.

Income is deemed to include any income, profits or gains, from whatever source derived as well as any loss of such income profits or gains. It has been classified under the following heads; salary; interest on securities; income from house property; income from business or professional capital gains and income from other sources.

### **A. Tax Exemptions for NGO**

NGOs are not automatically exempt from income-tax. However, they can be granted tax exemption in total income if they meet specified conditions, and certain kinds of income is also exempt.

**NGOs are not automatically exempt from income-tax.**

Any income of a religious or charitable institution derived from voluntary contributions applicable solely to religious or charitable purposes of the institution, is exempt. Receipts which are of a casual and non-recurring nature are also exempt if they are less than Rs. 25,000.

Trusts or welfare institutions can only get exemptions from total income if they are approved by the CBR for this purpose. This will include income from donations, voluntary contributions, subscriptions, house property, investments in securities of the federal government and so much income from business or profession as is expended in Pakistan for the purposes of welfare activities, the last being subject to certain limits.

For getting exemption on total income, the institution must apply to the CBR in prescribed form along with: duly attested copy of the memorandum etc.; certified copy of the certificate of registration; copies of audited balance sheets and final accounts, auditors reports for the preceding 3 years certified by the chartered accountant; names of the office bearers and relationships; detailed report on the performance of the institution for the 3 preceding years.

The CBR may give approval subject to certain conditions: that the institution has been formed for establishing hospitals, providing education or for community welfare; has operated at the national level for at least 3 years; has acquired national recognition; that its operations extend to the whole of Pakistan; that its accounts are maintained with generally accepted principles,

and there are satisfactory arrangements for inspection. Further to these, the institution cannot be granted approval if: it has been, is being or is likely to be used for propagating the views of a particular political party or religious sect; and has not or will not be able to achieve its aims etc.

The constitution, memorandum etc. must also provide: for annual audit by a chartered accountant; transfer of assets, in the event of dissolution, to another CBR approved institution; regular maintenance of books in accordance with generally accepted principles of accounting, and arrangements for inspection; utilisation of its income etc. solely for promoting its objects; for maintenance of its accounts in scheduled banks; its objects; for prohibiting amendments of the constitution etc. without prior approval of the CBR; for restricting un-utilised money and investment of any excess in government securities etc.

The CBR approval is valid for 1 year and can be renewed for the following year and thereafter if the conditions are met. Approval can also be withdrawn for non-compliance.

## **B. Deductions for Donor Contributions**

Assesses are entitled to an allowance in respect of donations to any institution or fund which is established in Pakistan for a religious or charitable purpose and is approved by the CBR for this purpose. This excludes donations made to a private religious institution or fund which does not ensure for the benefit of the public. (A charitable purpose, as defined,

includes relief for the poor, education, medical relief and the advancement of any other object of general public utility).

The maximum limits for sums eligible for allowance, in respect of donations to any institution or fund specially approved by the CBR, is Rs. 25,000/-. Subject to this limit, the aggregate of allowances cannot exceed: 10% of the total income, in the case of a company and 25% of the total income, in any other case.

The CBR has made rules regulating the procedure for the grant of approval under these provisions. The institution, fund, trust or society established in Pakistan for a religious or charitable purpose and requiring CBR approval must make an application to the CBR in prescribed form along with: a duly attested copy of the memorandum, articles, rules, etc.; the original registered trust deed or registration certificate, duly attested copies of the balance sheet and revenue accounts, audited by a chartered accountant, for the preceding year; list of names and addresses of office bearers and trustees, indicating family relationships if any; a detailed report of the performance of the institution, endorsed by the income-tax officer of the area.

Approval cannot be granted if the memorandum, constitution etc. do not provide; for annual audit by a chartered accountant; for a quorum of 4 or 1/3rd of the total members for meetings of the governing body; for the transference of its assets, in the event of its dissolution, to another institution which has CBR approval; for prohibiting any transfer

of income etc. to any of its members or relatives; for accounts to be kept in scheduled banks; for prohibiting the amendment of its memorandum etc. without prior approval of the CBR; and for restricting un-utilised amounts within prescribed limits and certifying that amounts in excess of these have been invested in government securities etc.

After the necessary inquiries and process, the CBR may grant approval valid upto 31 December of the calendar year in which it is granted. Approval may be refused if the CBR is satisfied that the institution; has or is being used for personal gain; has been propagating the views of a particular political party; is calculated to personally benefit the members or their families; or has not or will not be able to achieve its aims in view of its administrative set-up or otherwise. If approval is granted, the Regional Commissioner can renew the approval for the following year in accordance with prescribed procedures and requirements. The CBR can also withdraw approval if the institution has failed to comply with mandatory provisions etc.

### **C. Endowment Issues.**

Certain incomes are exempt from taxation, subject to conditions: yields from certain national saving schemes: interests on specified deposits; returns from specified bonds; income from specified dividends subject to limits and conditions etc. Income invested in certain approved securities, investment holding and industrial companies, is subject to allowance or exempt. This is subject to limits.

### **D. Commercial/Business/Economic Activities**

There appears to be no bar on commercial, business or economic activities of NGOs, provided that the profits are utilised for the purposes of the NGO and there is no distribution of profits among the members etc. in any manner whatsoever. If the organisation has CBR approval for exemption for total income, the income from business or profession is exempt to the extent that it is utilised in Pakistan for the purposes of welfare activities, and is also subject to certain limits and conditions.

### **E. Reporting**

There are certain prescribed forms and statements for filing income-tax returns. Income (except income from dividends) is computed in accordance with the method of accounting regularly employed by the assesses, though the CBR may require that the accounts be maintained in a prescribed manner in specified cases. Every person deriving income from business or profession (except categories otherwise specified), where estimated annual sales/receipts are expected to exceed Rs. 500000/-, must issue cash memos.

## **IX COMPLIANCE**

### **A. General**

By and large, there is no compliance with rules applicable to NGOs. The fact that 40-50% of NGOs registered under the different statutes cannot even be located at the

addresses given is in itself an indication that the NGOs have not informed the concerned authorities of their change of office, winding up etc. Nor has there been any effort on the part of the registration authorities to follow-up on NGOs registered with them or to enforce the rules. It appears that compliance ends with the registration process. It is only when the government changes or considers changing policies or when some particular issue emerges (e.g. in recent months the issue of Afghan NGOs and the NGO bill), that overnight enforcement orders are given. Done under pressure, trying to cover work which should have been regularly over years, and with a total lack of understanding, the enforcement is neither fair nor effective. In any event, the perception, both on the part of the government and NGOs is very clear that these sudden moves towards enforcement are attempts at government control. There appears to have been only one study (provincial level) done which gives some indications on compliance or non-compliance. But the subject of the study was the registration of NGOs, hence compliance was not the focus.

### **B. Specific.**

There is no particular perception that NGOs have been used to avoid taxes, except in pockets of government. However, there is a very definite perception that NGOs are used for financial and political benefit. The influx of funding for NGOs, the high salaries being paid by a few NGOs as well as their more visible urban functioning has given the impression, fueled by vested interests, that NGOs are 'minting money'. Meanwhile,

many of the political and religious parties, as well as individual politicians, having established NGOs, they are used both to funnel money to as well as for political purposes. In fact, many of the smaller community-based organisations perform the dual role of political organisation as well as welfare-related work in their communities

### **C. Sanctions**

There are very clear provisions in all the laws relating to violation of the laws by NGOs and the subsequent action.

If the registration authority of a social welfare agency is satisfied that the agency has been responsible for irregularity, maladministration or non-compliance, it may suspend the governing body and appoint an administrator or caretaker body. The order of suspension must be placed before a board constituted by the provincial government which may reinstate or reconstitute the governing body. The governing body may appeal to the provincial government within 30 days of the order, and its decision will be final and not called in question in any court.

The provincial government may declare the governing body of a society to be superceded for up to one year and replace it by another governing body constituted by itself if it is of the opinion that the governing body is unable or fails to discharge its duties; unable to administer its affairs or meet its financial obligations; acts in a manner contrary to public interest or the interests of its members. After the specified period, the governing body would again be constituted according to the memorandum and rules of the society.

If the CLA, upon an inspector's report, is of the opinion that the business of the company

has been conducted in a fraudulent manner; the persons concerned with the formation or management has been guilty of fraud etc.; information is being withheld from members etc., it may remove directors/officers, initiate changes in management amongst other actions.

### **X. GOVERNMENT FUNDING**

There are no bans on NGOs per se from bidding for government funds etc. However, each tender would have its own rules and conditions for eligibility to complete, which may result in ousting NGOs. NGOs can also gain access to government funds through unsolicited proposals for grants and contracts. However, they would ordinarily have to be able to show that the activity contemplated comes within the scope of the five-year plan. There is nothing to prevent NGOs becoming recipients of assets the government is seeking to privatise, though this has rarely happened. There is a definite perception that government funding ends up disproportionately in the hands of NGOs formed or controlled by government. It is only the inability of many of these NGOs, the proven work of a number of developmental NGOs and the determination of the donor community which still provides most of the funds for development work, that this has not been allowed to hog the funds.

### **XI PRIVATISATION**

The government has not yet seriously considered or devised a policy for privatisation in the social sector. However, because of the effectiveness of many NGOs, the limitations of the government and international funding conditionalities, the Eighth 5 year plan places emphasis on the involvement of NGOs

**There is a definite perception that government funding ends up disproportionately in the hands of NGOs formed or controlled by government.**

in the provision of services etc. How this has actually worked has depended on the relevant ministries and departments e.g. many of the social sector ministries like the ministries of women's development, population welfare, social welfare, health, zakaat etc. have contracted NGOs for programmes and running centres etc. No special forms or procedures have been devised; the existing P.C. forms are used. However, this is being done on a fairly small scale.

## **XII. CONCLUSIONS**

There are, of course, a number of legal issues facing NGOs. The issues of definition, differentiation of types of NGOs, judicial identity, legal status, autonomy and access to independent judicial review are just some of the issues that need to be addressed. Beyond the purely legal issues, are the issues relating to the increasing interaction with government the mutual mistrust, the issues of control and regulation political pressures, bureaucratic and ineffective functioning, as well as some of the legitimate concerns of government. And finally there are issues relating to gaps - the lack of understanding, the lack of policy and even the inadequate internal interaction, debate and dialogue between NGOs.

Where the last is concerned, perhaps the one thing that the proposed NGO bill by government did was to bring about an immediate interaction and debate between a large number of NGOs, leading to the emergence of a number of networks, coalitions etc. Initiated through a joint resistance, these are now providing space for debate and dialogue on a number of issues. Much more structured, intensive and wider debate is needed by

NGOs to at least internally begin to resolve some of the issues.

As far as the other issues are concerned, the immediate danger still is that of the NGO bill which the NGOs have categorically rejected. This is not a denial of the genuine concerns of government. In fact, since the proposed draft does not even address most of these concerns, it is the mala fides of government or certain sections of it, which are an issue. Moreover, since the proposed bill is clearly an attempt at further control, there is grave concern that the autonomy of NGOs is being curtailed while none of their concerns are being addressed. While the strong reaction did force the government into entering into dialogue with NGOs, the entire approach (as in most other interactions with government) was one of a major concession being made with no relaxing the position of control. What is needed is a genuine dialogue between government and NGOs towards developing an enabling environment within which just and effective ways for addressing the concerns of both can be devised. Some of the major objectives could be devising a rational privatisation policy in the social sector (which is obviously here to stay despite a number of strong reservations), which does not result in the commercialisation of state assets and making them the reserve of the elite, thus depriving peoples access to them and deepening class divisions, developing an environment conducive to effective interaction and collaboration between government and NGOs an understanding of each others work constraints and concerns; and then, at the right state, developing mechanisms and initiating legal reform to address all concerns.



# Sri Lanka

## REPORT ON LAWS AND REGULATIONS GOVERNING NON GOVERNMENTAL ORGANISATIONS IN SRI LANKA

**Ms. Ramani Jayasundera**

### BACKGROUND

The NGO sector is a very active one in Sri Lanka and it is estimated that over 3000 NGOs function within the country at present. No official count is available as to the exact number of NGOs operating in the country but studies have shown that three main types of organisations exist in the NGO sector.

1. Popular or grassroots organisations (GROs) also known as People's Organisations or grassroots level NGOs. This organisational type also includes indigenous voluntary associations with a service or development orientation as well as those with religious, cultural or recreational interests.
2. National NGOs - the indigenous type as well as those with international affiliations.
3. International NGOs operating within Sri Lanka.

The organisations that fall into all three

categories share common features such as being of non governmental nature, voluntary, autonomous and non commercial entities.

GROs are usually single village community based while NGOs are usually regional or national and often cover one or more administrative districts.

Further, there are distinct distinguishing features, especially when taking the differences between group one made up of GROs and groups two and three made up of national NGOs and international NGOs operating within Sri Lanka. These differences primarily relate to resources, both financial and management, scale of operation, funding patterns, areas of jurisdiction, organisational structure and the issue of accountability.

While most of these factors can be easily measured in terms of area or amount, accountability remains the most intangible yet most important aspect in the functions of very

**The NGO sector is a very active one in Sri Lanka and it is estimated that over 3000 NGOs function within the country at present.**