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Policy and Legal Framework for NGOs in Pakistan

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The NGO sector in Pakistan, in terms of actual numbers, has grown rapidly in the last two decades. Even the modest estimate about the number of NGOs would indicate that there are at least 10,000 NGOs in the country, at least 5000 of them active.

By far the largest number are single-community or village-based group run by volunteers, with a minimal administrative structure, and usually welfare-oriented, though there are increasing trends towards building of the organization and developing more professional expertise and capacity to reach out to a larger number of beneficiaries. The most common activity of NGOs relates to charity, relief and welfare-oriented-provision of services in health, education and financial support for the underprivileged, handicapped, widows, orphans etc. the second type of activity is more developmental in nature and involves attempts to address longer-range issues of community mobilization and organization, participation and empowerment, while dealing with specific community and/or sectoral problems. A more recent activity being undertaken is an attempt to deal with the causes of the problems that the organizations seek to address, rather than the symptoms. Among these are the various advocacy groups and organizations working towards conscientization and mobilization.

Current Legislative Framework:

There are a number of laws which deal with the registration and regulation of NGOs, others which recognize the existence of entities which may be NGOs. The types of organizations 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 society** under the Cooperative Societies Act of 1925, (d) **non-profit companies** under the Companies Ordinance of 1984, (e) Public charitable trusts, indirectly under the Trust Act of 1882 and (f) charitable endowment trusts under the Charitable Endowments Act of 1890. Since this study is meant to address itself to a framework for non-government organizations, it will only cover societies, welfare agencies and non-profit companies.

Both non-profit companies and societies have the legal status of juridical entities. But social welfare agencies clearly do not have a corporate status. The relevant law for social welfare agencies is a law, which registers agencies, but does not create entities. As such, they do not acquire the status of a juridical entity through their registration.

The registration requirements are different under the various laws, but all of them involve a large amount of documentation. A study indicates that a large proportion of NGOs face problems in the preparation and submission of documents, largely because of the absence of clear guidelines. Nor is there a uniform application of the requirements of registration. The registration authorities all maintain registers of registered organizations, with particulars submitted at the time of registration. However, it appears that the information is never updated thereafter. Legally, the records are considered public documents, which the public can have access to subject to a nominal fee, but this is not the reality in terms of actual functioning.

All the registered organizations have the right to own property, open bank accounts and enter into contracts. However, there are all subject to certain restrictions, particularly social welfare agencies which cannot amend their constitution, rules, regulations, by-laws etc. or dissolve themselves without approval of the registration authority. All the organization also contemplate a basic membership, but the kind of membership depends on the character of the organization. All the laws provide for different governance structures, with more specific provisions for social welfare agencies and non-profit companies.

All the laws have specific regulatory provisions, far greater in the case of social welfare agencies and more demanding for non-profit companies. There are several sanctions in all the statutes for violation of the laws. The governing body of a social welfare agency can be suspended for irregularity, mal-administration or non-compliance and an administrator/caretaker body appointed. The provincial government can supercede the governing body of a **society** for a period of one year if: it is unable or fails to discharge its duties; unable to administer its affairs or meet its financial obligations; or acts in a manner contrary to public interest or the interests of its members. The **CLA** can remove director/officers of a **non-profit company** or initiate changes in management etc. if it is of the opinion that the business of a company has been conducted in a fraudulent manner; if the person information is being withheld from members.

NGOs are not automatically exempt from income tax. However, they can be granted exemption if they meet specified conditions of the Central Board of Revenue (CBR), and certain kinds of income is also exempt. The CBR approval is valid for one year and has to be renewed annually, if conditions are met. It can also be withdrawn for non-compliance. Allowance to tax payers in respect of donations is only possible if the institution is approved by the CBR for this purpose. There are special conditions, rules and procedures for obtaining this approval, which is valid for one year and renewable if conditions are met. It can also be withdrawn for non-compliance.

By and large, it appears that there is no compliance with the rules after registration. The fact that a substantial number of NGOs cannot even be traced from the records of the registration authorities is in itself a clear indication that the NGOs have either not been sending in reports, or they are no longer functioning. It is also quite clear that the authorities have neither maintained the necessary records, nor followed up in monitoring the existence or functioning of NGOs.

Proposed Governmental Legislation:

Over 1994-1995, the Ministry of Social Welfare proposed a number of laws to purportedly regulate and check the functioning of NGOs. NGOs clearly perceived these bills as an attempt to control the autonomy and independence of NGOs and to centralize control. They also felt that the stated objectives of government could be met through existing laws (at best with some minor amendments) and through use of the common penal laws. They proposed the setting up of a national commission on social policy and NGOs to review all social legislation policy after a due consultative process. However, since the Ministry rejected this proposal altogether, a number of consultations between government and NGOs resulted in a 'consensus' document, in which some of the points raised by NGOs were incorporated.

In March 1996, the Government suddenly moved a bill in the Senate called the **Social Welfare Agencies (Registration and Regulation) Act, 1996**. The bill was an entirely new piece of proposed legislation, which totally disregarded the consultative process held between the government and NGOs over 1994-95. There are specific implications and problems with the law which are briefly given below:

1. The Act defines 'agency' to cover all non-governmental organizations, regardless of their registration. This creates problems for NGOs in terms of the juridical status of NGOs registered elsewhere, confusion about which agencies they are responsible to and which legal requirements they must fulfill.
2. Since the law does not create agencies, merely to register and regulate all agencies/organizations, the organizations which are not registered elsewhere still do not acquire the status of a juridical entity.
3. The new Act requires all NGOs to re-register with the Ministry of Social Welfare within a specified period, which places an unnecessary additional burden on NGOs which are already legally registered, and raises issues about the conflict of registration requirements under the different laws.
4. The Act imposes compulsory registration for NGOs, CBOs, networks, forums etc. even if they are not receiving funds from government or donor agencies, thus violating their fundamental right to freedom of association.
5. It gives the Registration authority sweeping powers through its vague language, creating ample opportunities for misuse of power and harassment. It further allows the Registration Authority the power to veto any provision of the constitution of an agency at its own discretion, thus effectively ensuring control over the activities of NGOs.
6. It reverses the maxim of 'Innocent until proven guilty' by stating that ---- 'every director, manager, secretary and other officer thereof shall, unless he proves that the offense was committed without his knowledge or consent, **be deemed to be guilty of such offense**'.

7. It denies agencies recourse to independent judicial review, by vesting the registration authority and the standing appellate committee (also nominated by the Federal Government) with the power of a civil court, the decision of the standing committee being final.

Revised Draft of the Bill:

During this period, a number of structured coalitions and networks among NGOs had emerged. When the 1996 bill was introduced in Senate, the Pakistan NGO Forum (PNF), a representative body of the five regional coalitions, totally rejected the bill. Over 1996, after meetings with the Senate sub-committee on the NGOs law introduced in Senate and being asked for concrete suggestion, the NGO federations engaged legal experts and constitutional lawyers coupled with representatives of community-based organizations, networks and coalitions to prepare a revised draft of the bill. The revised draft attempts to improve upon the existing Voluntary Social Welfare Agencies Act of 1961 and the bill proposed by the Government. It makes the following critical revisions to the law proposed by government.

1. The Definition of the term 'agency' is restricted to entities that seek international assistance or government funds, to protect organizations funded by private, local or vocational sources.
2. Its saves already registered NGOs from re-registration.
3. The period for registration and other statutory obligations has been extended to 90 days, to address NGO concern that 30 days is too narrow a time frame for compliance.
4. It removes the applicability of certain provisions of the Act to corporate bodies, where their respective laws govern those areas.
5. It restricts inspection to only those cases where duly authenticated complaints of financial irregularity have been made.
6. It removes the finality of the decisions of the Standing Appellate Committee (SAC), and allows for judicial appeal.
7. It restricts the power of suspension of the governing body to situations of substantive irregularity, and minimizes the potential for unnecessary control and intrusion.
8. It removes the clause relating to expulsion of membership of the governing body.
9. It removes the clause relating to presumed guilt of members, on the basis of applicability of general criminal law.
10. The composition of the Standing Appellate Committee (SAC) has been changed to include two elected members from the general body, provides for provincial SACs and for chairmanship of the SACs by a senior-level judicial/legal person.
11. It provides that changes to Schedule and making of Rules should be done after consultation with the NGO representative body.

PNF's Position:

Pakistan NGO Forum (PNF) believes that the legislative framework must ensure:

1. Clarity of the law in terms of the organizations and categories of organizations that it covers, and the application of its provisions.
2. The right of all segments of society to establish and register a non-governmental organization, subject to its fulfilling the legal requirements, as well as the right to remain unregistered; clear, simple and inexpensive legal requirements for registration; and availability of registration facilities at convenient places.
3. A professionally staffed and specialized government agency responsible for the registration/incorporation of NGOs, conversant with the spirit and provisions of the laws, and even-handed in application.
4. That the registration/incorporation of an NGOs results in its attainment of status as a juridical entity; the right of NGOs to independent judicial review; to decide on their period of existence; to merge and split up, and to terminate themselves, subject to basic conditions. Involuntary termination, freezing of assets or assumption of control by the regulatory authority should not be allowed unless there has been a very grave violation, clearly specified in law, and with all necessary safeguards.
5. Every NGO must be required to have a constitution specifying: its purposes; governance structure; manner of operation; manner of changing structure and operations; and liability and non-liability provisions; the right to amend their constitution; prohibition on the distribution of earnings or profit to members, directors, officers or employees, excluding reasonable compensation or reimbursement for expenses etc.
6. The permission to indulge in commercial activities provided that the earnings/profit are used for the principal purposes of the NGO.
7. The right to speak freely on all matters of public debate.
8. The law must encourage NGOs to accept the responsibility of their own accountability and transparency and should not permit over-regulation by the government, nor should regulation result in intrusion in the functioning of NGOs.
9. Foreign NGOs should have the same rights and be subject to the same obligations as national NGOs.
10. A public registry of all NGOs, accessible to the public.
11. Foreign donors should be allowed to fund NGOs without any government control or approval. Conditions for funding on particular donors should only be imposed if strictly necessary for reasons of internal security.

Key Concerns of NGOs and Issues:

1. NGO's rights to freedom of expression, association and assembly should be recognized and respected
2. People's right to freely associate even without registration should be recognized
3. NGOs are non-government and cannot be directed, run or managed by government

4. A key that emerges from the entire discussion is the uneasy relationship between government and NGOs. The causes may be many, but at a time when the actual interaction between government and NGOs has intensified, there is a marked lack of mutual trust and understanding. Unless there are genuine attempts to address this issue, no legislative or policy framework can be expected to evolve or function effectively.
5. There is no mechanism or agency within government to ensure coordination between the different registration/regulation authorities. This has resulted in different standards and approaches by agencies in relation to NGOs as well as the lack of consolidated information about NGOs and their activities, both of which have been causes of concern for the government.
6. The absence of a just, cohesive and comprehensive NGO policy has resulted in varying working relationship between NGOs and different agencies of government, depending on the individual agency or responsible individual. Combined with fluctuating collaboration and continuing mistrust, this directly impacts the success of development initiatives being undertaken in the country by both government and NGOs.
7. There is insufficient understanding of the laws since the statutes are in English, there is inadequate information about the different kinds of laws, and inadequate information about registration requirements and subsequent obligations by NGOs in many cases. This obviously affects their compliance with the laws at a later stage.
8. The operation of different laws in relation to each other is becoming an issue in view of the proposed governmental legislation, since this is likely to cause major problems and conflict of laws. Another area that needs to be addressed is whether there is a need for a specific law relating to public trusts and what kind of regulation, if any, there should be.
9. One of the key issues, which must be addressed, is the definition of the term NGOs. This has not been defined in any law, and has inevitable led to massive confusion, since there are differing perceptions of what an NGO is. The government, by and large, continues to have a traditional view of NGOs. And within NGOs there are varying views about the types of organizations that could be considered NGOs. There must also be an effort to categorize NGOs according to either their type of registration, their objectives, their area of activities, or their governance and membership structure. This would help in deciding which laws; rules and regulations are applicable according to the category they fall in.
10. The functioning of the registration/regulation authorities must be streamlined in relation to their functioning as regulatory authorities. Records and registers are neither maintained or updated, and there is no check on this to ensure maintenance. There is also limited interaction beyond registration in terms of either being informed about the activities of the various NGOs or in terms of providing information or support to them. And there is no coordination between the different agencies, either in terms of information about each other's functioning or in terms of referral. Nor is there any mechanism in place to collate information about registered NGOs from the different agencies.
11. Whatever the actual functioning of the agencies, the laws provide otherwise. There is clearly over-regulation in the case of social welfare agencies, and even in the case of societies, the

government has the right to suspend the governing bodies of the organization. The proposed governmental legislation envisages even more regulation of all types of NGOs, with vast arbitrary powers in the hands of government. Reporting mechanisms need to be simplified and regularized. There is obviously minimal compliance with the requirements by NGOs, who also feel that their obligations end with the process of registration, unless there is any particular reason to maintain contact.

12. Under existing law, social welfare agencies do not have the status of juridical entities and their autonomy and independence is obviously limited in a number of ways. Societies are also subject to the threat of their governing bodies being superseded by government. But the real threat lies with the proposed government legislation which affects the autonomy and independence of other NGOs through limiting their right to existence, over-regulation, and curtailment of their right to independent judicial review.
13. The economic sustainability of NGOs is a key concern to be addressed. A number of options need to be explored: tax benefits and incentives by the government; a percentage of all donor grants to NGOs be allocated for trust/endowment funds; motivation of the private sector; and income generation activities by NGOs.
14. The limitations under article 17 of the constitution should not be allowed to be misused for registration or dissolution without judicial appeal.
15. Laws should clearly differentiate between different types of NGOs. The NGOs we are representing are community based membership organizations for community service and interest, or larger private organizations, which do not distribute profit and deal with public service, public interest and public education/awareness. They should be differentiated from religious organizations, non-financial mutual benefit organizations or from those under other laws like trade unions, political parties, or organizations for promoting professional interests. We do not represent the other categories under the societies registration act 1860 and can neither protect their interests or act in their defense while discussing legislation with government.
16. NGO's role as part of the social capital of Pakistan be recognized and respected. Social capital includes the building of trust in society and its institutions. The active role of citizen's organizations in addressing societal needs and viewing and good government. The role of NGOs is vital in all the three components without which no society can be considered civilized or developed.
17. This implies that NGOs role in relief and public service has a much larger dimension than is visualized by the government or even the public. Relief does not mean just providing succor after a disaster or calamity. It means also providing relief from injustice, violence and violation of human rights. Similarly public service does not just imply the delivery of essential services for health or education or livelihood. Public service also includes making the people aware what is wrong and inimical to their interests, of giving them knowledge of alternatives, of building their capacity to seek those alternatives and make their choices. It means particularly to provide them information and education so that they can exercise their rights in a democratic society to hold their public representatives and the executive arm of their state

accountable to the people. This is particularly in view of the fact that the welfare role of the state is being reduced the world over in the interests of deregulation and privatization. Increasingly the state is feeling freer to represent the interests of those with wealth and power, without the check and balances that had been build into its role as a welfare state. For this the NGOs are playing a key role as a countervailing force through keeping governments in check and responsive to public interests and concerns.

18. For this the public service role of NGOs is expanded to include awareness raising recognition of human rights, monitoring of human rights violations, political education to recognize citizen's rights with reference to the state, and advocacy and lobbying to represent citizen's concerns for law-makers and policy decision-makers.
19. This large voice which is political in nature is very clearly specified as being distinct from that of political parties. The role of NGOs is to provide checks and balances even on the political process in society in the larger public interests. NGOs cannot and should not replace political parties.
20. NGOs can play a non-partisan role in electoral processes by raising issues of political concern to the citizens and encouraging parties to pick up these issues by doing voter education and creating public pressure. the political parties' law should be suitably amended to reflect and accept this difference in the political role of NGOs.
21. NGOs reflect the pluralism in society and its rich diversity. any streamlining or straightjacketing of NGOs in the name of regulation will deprive society of addressing its concerns through decentralization and diversity in action, which is the essence of voluntary action and a vibrant society. this is also the argument for plurality of laws to give the citizen's to choose from what suits their needs. one umbrella legislation will also be practically very difficult to apply.
22. NGOs are concerned about acquiring judicial entity when they register. they are willing to comply with the minimum conditions necessary for this – annual audit, annual elections, annual report, and information on funds received. the social welfare act does not provide them this juridical status which can create problems for them in acquiring assets or representation in a court of law.
23. NGOs are particularly concerns about the expectations by government and by donors about the role they are to lay in society. they are concerned about:
 - The resources for institution building, which implies developing the infrastructure, the staff capabilities, and management capacity to improve/enhance the absorptive capacity of the NGOs
 - Some arrangements that address sustainability concerns of the NGOs like endowment funds of some public trusts that ensure a continuity for the NGOs beyond specific project funds.

- Simple systems to access public funds without involving different conditions or procedural hassles
 - Providing information to the government about the source and use of the funds from abroad or locally without seeking prior government approval as this could add to the delays
 - Tax benefits to ensure that funds collected by NGOs for nonprofit purposes are not whittled away in taxes (The NGOs will deduct at source all the taxes currently applied).
24. The NGOs are particularly concerned about their capacity building so that they can play a larger and more effective role in society and not let down their communities or the public. This requires capacity building in mobilizing funds, writing project proposals, managing projects, developing advocacy and lobbying skills, monitoring and evaluation skills, communication skills, reporting and documentation skills etc.
 25. NGOs are concerned that while there is a lot of lip service to the role of NGOs as partners government has not really internalized this relationship and tends to move on major decisions regarding NGOs without genuine consultation.
 26. NGOs are concerned about their public image because a negative image impacts on the effectiveness of their work. This includes the role of government in its public stance on NGOs, of the media in highlighting mainly the scandalous information since that sells the publications and of the public itself which may have its own biases and lack of information. For this the NGOs are playing a more positive role in presenting their work in the media doing more dialogues with the public and developing a code of conduct for internal regulations.
 27. Trust building between the government and the non-government sectors is not an easy process. But the process can be facilitated through making efforts, particularly from the government side, to maintain linkages through collaboration in areas where there is mutual understanding and keep the channels of communications open where there is serious difference of perception.
 28. Society cannot be bound to follow all laws created by the state but society should be part of all kind of laws making process.
 29. NGOs are the only medium who bring people's opinion - and they have to cover such a wide canvas that if democracy is properly practiced these roles should not have emerged. Now the question of curtailing their voice is negation of democracy – moreover it is a denial of requirement of time.
 30. Any legislation should be preceded by engaging in nation-wide consultation for understanding the role of NGOs/Civil Society organizations (including advocacy organizations) in the context of a vision of a progressive, democratic society and then coming to a mutual agreement on it.

A Framework for a Proposed Framework:

Many of the apparent problems can really be resolved when understanding on the issues is reached through meaningful dialogue between government and NGOs followed by the formulation of appropriate policy. The issue of legislation becomes secondary to and dependent on policy decisions, and any attempt to address it before discussion on governmental policy would be premature and is bound to lead to further confusion.

The way of redressing the concerns can be decided after some basic issues have been resolved through dialogue. Some of the concerns identified can simply be addressed through policy decisions and subsequent administrative measures, requiring no legislation e.g. the establishment of a coordination mechanism or the initiation of public registries. Others may need to be addressed through amendments in other laws e.g. the tax laws, or the creation or extension of law e.g. for public trusts. But if legislation directly relating to NGOs is found to be necessary, it can be discussed whether this should be done through one statute to cover all types of NGOs or through amendments in existing legislation. It might be simpler to make amendments within existing legislation rather than attempt to create an entirely new system e.g. an amendment to ensure minimum uniform standards for financial and operational reporting.

While these are possible solutions to many of the concerns identified, in the light of both the existing situation and international standards, the actual resolution to these issues can only be arrived at through due consultation and dialogue. Thus what this paper proposes is a framework for devising a legal and policy framework for NGOs through intensive and extensive debates and discussions between government and NGOs.

The approach must from the beginning be one of trying to understand each other's concerns and of facilitating resolution, rather than finding technical objections. The principles of trust, confidentiality, transparency and equality of power must be discussed, understood and observed by both Government and NGOs before initiating the dialogue. The process could be initiated by the beginning of 1997 and completed by the end of the year.

The Process through which PNF Formulated its Recommendations on NGO Law:

During 1998-99, the Government launched a campaign against NGOs, initially in the province of Punjab which later spread to other provinces. NGO offices were visited by intelligence and police officials that created hostile atmosphere. Government de-registered about 2500 NGOs in Punjab, Sindh and NWFP. Government used state-controlled media to malign NGOs working on citizens' right. The government claimed that its campaign against NGOs is to ensure accountability and transparency.

NGOs realizing that the accusations on NGOs from government and some sections of the print media are baseless and false, decided respond by launching a strong and collective campaign.

PNF and its coalescing units (Provincial Federations of NGOs in four provinces of Pakistan and a network of NGOs from Rawalpindi and Islamabad) effectively responded to the government hostilities by issuing statements and organising public forums and demonstration in various parts of Pakistan.

On the invitation of Senate Standing Committee Pakistan NGO Forum set-up a committee to formulate recommendations for amendments in the proposed law by the government. The committee held numerous meetings and also consulted some constitutional lawyers and legal experts to draft an alternative bill as PNF's version. The alternative bill was developed through the following process:

1. The PNF executive body set-up a working committee to formulate general rules and principles for developing a comprehensive legal framework for NGOs.
2. A task-group was set-up comprising of 2 members from each coalescing unit to develop the framework.
3. Legal experts and constitutional lawyers were engaged to give expert opinion.
4. PNF executive body thoroughly discussed and approved the framework and shared it with all the coalescing units for their feedback.
5. Each coalescing unit discussed the draft law and shared recommendations with PNF Secretariat.
6. PNF in its two-day general body meeting (November 99) discussed at length the recommendations from the coalescing units and finalized the text of the alternative law.
7. The draft law was then sent to all coalescing units. Each coalescent unit was asked to further discuss it with general membership and seek their recommendations and suggestions to improve the law.
8. After receiving recommendations from all provincial coalescing units the draft was then discussed at a general assembly of PNF members which gave formal approval of the text.
9. The draft bill was then submitted to the Senate secretariat and government ministries as PNF's version.

Recommended Future Process:

1. NGOs should, through their federations and networks develop a list of issues that they want to debate internally. The Government could simultaneously initiate a process of listing the issues, after discussions with their various ministries and agencies.
2. The list should be finalized through discussions between authorized government and NGO representatives.
3. Government and NGOs should discuss these issues intensively and extensively, and come out with a list of viable options relating to: Government Policy and Legislative Reform. The discussions should address possibilities of policy initiatives; reform through existing law; amendments within the existing laws; and the possibility of a new law/laws, to address all the issues discussed.
4. Before dialogue between government and NGOs on the issues is initiated, there must be intensive briefings between government and NGOs on the structure, functioning and constraints of both, so that issues can later be discussed with this basic information and understanding.
5. The dialogue can then be initiated at a provincial or national level, as decided between government and NGOs. The dialogue should first address itself to the social policy of the government, followed by discussions on the policy framework of NGOs. The legislative framework should only be discussed after finalization of the discussion on policy.
6. After each stage of discussion, NGOs and Government representatives should go back to their respective groups/agencies for further discussions on all the points, to ensure that all concerns are being met.
7. At the final discussion, only authorized Government and NGOs representatives should participate, so that the consultations can reach a definite and final conclusion.