

Enabling Environment Initiative

Towards a Policy for the Nonprofit Citizen Sector

Pakistan Centre for Philanthropy

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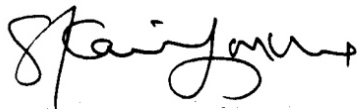
Preface

During the process of the nation-wide Enabling Environment Initiative consultations, it was realized that the chequered history of relations between government and citizen organizations was attributable mainly to the absence of a consistent policy on the role of the sector, the obligations of government as well as the sector and the lack of effective mechanisms for achieving common national objectives. The consequential distrust and disappointment widened the gulf between the government and civil society, and eroded the potential of a natural coalition of public-private partners in the struggle to improve the quality of life of the poor, the disadvantaged and the marginalized.

The Pakistan Centre for Philanthropy (PCP) Board acknowledges the valuable suggestion of citizen organizations, that the enabling environment being created through fiscal, legal and institutional reforms be supported by a policy dialogue leading to the development of a policy for citizen organizations working for public benefit. To facilitate the development of such a policy, the

Pakistan Centre for Philanthropy is pleased to contribute this document '*Towards a Policy for the Nonprofit Citizen Sector*' as a catalyst for a national debate on policy issues. We hope that the government and the citizen sector will find this document to be a useful starting point.

The PCP Board also wishes to record its appreciation for the thoughtful policy perspectives provided by representatives of citizen organizations as well as many eminent citizens known for their contribution to the nonprofit sector. This direction setting policy paper has also benefited from the deliberations of the PCP Board itself and from the work of international social researchers. The Board hopes that the policy framework will facilitate a dynamic policy discourse at the national level and result in the articulation of an effective and enabling government policy towards nonprofit public benefit organizations working to alleviate poverty and protect the rights of people. We also hope that this effort will foster a relationship of mutual trust and confidence between the government and the citizen sector.



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Executive Summary

This policy document has been drafted by the Pakistan Centre for Philanthropy (PCP) to identify key guiding principles to strengthen the development of a vibrant civil society on a sustainable and transparent basis. The document is part of the study on the Enabling Environment undertaken by the Pakistan Centre for Philanthropy at the initiative of the Ministry of Women Development, Social Welfare and Special Education. The objective of the policy document is to endorse the need to create an enabling policy and operating environment for private initiative for public service, outline key elements of a policy framework, and recommend a consultative policy dialogue leading to a compact between government and civil society to build civil society in Pakistan.

The nonprofit private sector is a major global economic force. According to research being conducted by the Johns Hopkins University through its Comparative Nonprofit Sector Project in twenty-two developed and developing countries nonprofit organizations account for:

“19 million full-time equivalent paid employees and 29 million full-time equivalent workers including volunteers. The paid workers in the nonprofit sector thus represent 5 percent of the workforce in these countries or 1 out of every 20 workers as of 1995. If the nonprofit sector in these countries were a national economy it would be the eighth largest in the world, with \$1.1 trillion in expenditures.”

There are forty five thousand active organizations in Pakistan that fit the description of private nonprofit, self-governing and voluntary organizations. These organizations vary a great deal in terms of their size, scope, and effectiveness. They address issues ranging from religious instruction, education, health, agriculture, micro finance, small enterprise and housing to community policing, consumer protection

and civil rights. The government funds comprise only six percent of the total funding for nonprofits in Pakistan. The average for several developed and developing countries is 40 percent.

To improve economic efficiency, expand economic activity and generate employment, the government has been deregulating the economy and seeking greater domestic and foreign private participation. In response to pressure on public finances the government is privatizing State owned enterprises. There is a bold experiment with reinventing government: through privatization and the devolution exercise that is decentralizing government to the local level and increasing democratic participation in the working of government departments. Civil society is relevant to all these momentous changes forming Pakistan's identity, the present state of economic security of its citizens, and its potential as a State and society. Recognizing, harnessing and building private citizen enterprise for public benefit and private commercial gain are a central policy challenge for government.

As Pakistan reinvents governance in the 21st century, it confronts challenging questions. How best does the State encourage and support private citizen action for public benefit? How does the State and society deter or police those who would misuse an enabling public policy for public benefit citizen action? There are a range of policy, legal and institutional instruments available to address these challenges: registration and regulation; auditing, the civil and criminal justice system; law enforcement agencies; contractual agreements; reporting and disclosure requirements; the financial banking system, independent certification and rating; self-regulating standards; and joint regulatory commissions. What is the relevant mix of policy and legal instruments that are both widely acceptable and actionable?

A strong and effective State that enjoys legitimacy and provides political stability, social justice and essential public goods, and that facilitates private capital and entrepreneurship is the Twenty First-Century challenge facing emerging economies. Facilitation requires a shift from exercising direct control to regulating a manner that is enabling and not unduly interventionist. The role of the State is to provide the essential services the private sector will not provide. Beyond that it is to create the right conditions for private participation by establishing rules of play, enforcing them, creating competition, regulating monopoly to curb excessive concentration of private power, setting standards, and creating and encouraging systems of stakeholder accountability that set incentives for self-regulation. The powerful idea behind these self-regulatory mechanisms is that once credible, common standard, easy to access information is generated on citizen organizations, society will create the necessary pressure and mechanisms to drive organizations towards higher levels of performance.

The past record of public policy toward citizen organizations has been marked by a relatively positive orientation towards welfare and service delivery organizations, and unease and hostility towards rights and advocacy organizations. There is an immediate need to: address the policy bias against *bonafide* public interest organisations that build democratic societies; increase direct government funding to citizen organizations to extend public services; move from regulation to facilitation through modernizing laws and regulatory regimes; deepen meaningful public private partnerships and increase incentives and the will to work for common purpose. Harnessing the citizen sector is the central governance challenge in the 21st Century. There is a need for government to articulate a comprehensive policy to face this challenge.

Given the fiscal pressure on public finances, it

is unrealistic to expect the government to significantly increase direct funding for the sector. However, there are other means for the government to increase support: tax exemptions; in-kind support through use of government infrastructure; access to subsidized land and duty-free imports. Government is gearing up support as the recent changes in the Income Tax Ordinance demonstrate. A great deal more is needed to meet comparative standards established and practiced in other countries. Some of these measures will impact the fiscal condition of the government, others will not. The point is that government needs to make explicit its support to develop the citizen sector through direct and indirect financial support.

An enabling system creates the conditions under which society at large and notably social investors are the ultimate arbiters of which citizen organizations merit support as opposed to one that relies on monitoring and evaluation by regulatory officials. This does not mean that the regulatory authority does not have remedial powers. It must. But it does mean that such powers are used as a last resort after advice, capacity building and public disclosure have failed to correct an identified problem with a particular citizen organization.

Here the need for self-regulation is critical: both as a means to deter excessive government regulation and to build public credibility. There are serious issues of credibility for many citizen organizations: demonstration of impact and cost effectiveness amongst the most common ones. The need for self-regulation, essentially setting of standards that are enforced through peer review, or an independent private body are ideas increasingly being discussed by citizen organization leaders and policy makers. Credible, reliable self-regulatory mechanisms can reduce the need or the nature of government regulation, and build public support for the citizen sector.

1. Introduction

This policy document has been drafted by the Pakistan Centre for Philanthropy to identify key guiding principles to strengthen the development of a vibrant civil society on a sustainable and transparent basis. The document is part of the study on the Enabling Environment undertaken by the Pakistan Centre for Philanthropy (PCP) at the initiative of the Ministry of Women development, Social Welfare and Special Education.

The policy document emerged from the consultative process in the Enabling Environment Initiative (EEI). The need for a policy framework was underlined by the representative of the Pakistan NGO Forum (PNF) which represents the largest coalition of NGOs in Pakistan, and the PCP Board as a basis for the new legal framework for NGOs to be drafted by PCP.

The policy document:

- identifies key constituents of a policy;
- recommends principles for policy formulation;
- illustrates relevant examples of policies relating to citizen organizations from other countries;
- assesses the current policy environment;
- recommends a structure for a consultative process that deepens understanding and builds support for policy reform.

In preparing this document, PCP met with selected leaders from civil society, policy makers and senior government officials. The substance and perspectives of these interviews and discussions are reflected in this document. They provide diverse and insightful views on developing public policy for the citizen sector. The policy document has also drawn on prior reports of the EEI and the wider literature on civil society in Pakistan and globally.

2. The New Development Governance Paradigm

At the start of the 21st century Pakistan faces certain exciting challenges. The challenges emanate from the redefinition of the role of the State, and responsiveness to the needs, aspirations and problems of the stakeholders, as well as the nature and extent of participation of Civil Society. How best does the State encourage and support private citizen action for public benefit? How do we deter or police those who would misuse an enabling public policy for public benefit citizen action? There are a range of policy, legal and institutional instruments available to address these challenges: registration and regulation; the civil and criminal justice system; law enforcement agencies; contractual agreements; auditing, reporting and disclosure requirements; the financial banking system, independent certification and rating; self-regulating standards; and joint regulatory commissions. What is the relevant mix of policy and legal instruments that are both widely acceptable and actionable?

The policy document begins with the central question 'why civil society', and discusses the relevance of a mature civil society to the development of a modern society. It then outlines the state of civil society in Pakistan, and the role it is playing in national development. The paper then assesses how the subset of civil society represented by voluntary nonprofit citizen initiative for public benefit needs to be supported. It recommends within a wider policy framework a legal and regulatory structure for citizen organizations that is both enabling as well as attentive to government's responsibility to protect the public interest. The paper concludes by suggesting a consultative policy dialogue process through which government and citizen organizations review the substance of policy reform and agree on a road map. There is expectation at senior levels of the government that such an articulation of policy and consultative process could lead to positive changes in the policy environment for civil society.¹

3. Dimensions of Civil Society in Pakistan

3.1 Why Civil Society? Why is it needed?

The term civil society, much contested in literature, is more readily defined by what it is not than by what it is. Civil society is the array of citizen associations, informal and formal (in that they have a legal persona), which operate outside the direct control of the State. These associations represent a wide range of functions: from youth leagues, literary associations, cultural forums, religious groups, sports clubs, to primary and tertiary education institutions, health services, crime watch groups, credit societies etc. Essentially they comprise any and all form of activity around which private citizens organize that extends and in no way impedes the public benefit. Media organizations independent of the State are an instrumental element for civil society, and so is private commercial activity that creates opportunities for private gain by providing goods and services to the public. Though many experts do not consider business sector to be a part of the civil society *per se*, most recognize the inextricable relationship between the freedom of commerce and freedom of association for public benefit activities in a civil society.

The concern of this paper is with a vital subset of civil society - private nonprofit public benefit organizations. The paper categorizes these institutions as citizen organizations:

“The paper does not use the term ‘NGO’ or ‘non-governmental organization’. This is deliberate. The term is negative and derivative; it tells us nothing about what NGOs are and something trivial about what they are not. The term ‘citizen organization’ is preferred as it comes closest to capturing the essence of the social force in question: citizen self-organization for public benefit. This class of organization is, of course, only a part of the wider civil society, which includes all manners of associations of citizens for all manner of purposes other than those for the

public benefit, such as recreation or worship. But it represents the sub-set of organizations in society outside the government or the market sector that are most relevant to national development. It is for these organizations that we aim to create an enabling environment.”²

Freedom of association, as a fundamental right, is enshrined in the Constitution of Pakistan. The intellectual, political and moral foundations of the Pakistan Movement found expression in this very freedom. The Aligarh Movement and the creation of the Aligarh Muslim College are examples from our national heritage of citizen self-organization. Among the most inspiring examples that comprise the civic core of Pakistan today, the Orangi Pilot Project, the Edhi Trust, the Shaukat Khanum Memorial Trust, the Al-Shifa Trust, Layton Rahmatulla Benevolent Trust, the Citizens Foundation, and the Citizen Police Liaison Committee are demonstrations of this very citizen spirit. There are thousands of smaller, little known examples of citizen action in the public interest that are vital to our society, without which our condition as a State and society would materially be worse.

These impulses are historical, they are present, and they are global. It is a simple fact that the most secure societies today, from the perspective of economic security, social justice, and future political and economic viability, are ones that successfully harness, and encourage private initiative and entrepreneurship among their citizens. The power of the market economy to generate private wealth and employment is evident in the massive sustained rise in economic output in the 20th Century. Inequalities remain, and often increase, but the power of private capital and entrepreneurship to create and capture economic value at a mass scale is uncontested. Absolute poverty declines. This is apparent in the economic and social indicators of the United States and Western European countries that have the most advanced economies in terms of productivity and relative size, and among the highest living standards and civic freedoms in the world.

Moreover, a concert of private, nonprofit

associations working in the public benefit, weave and interlock private enterprise into social capital through an extensive network of associations and institutions that build civic strength in a variety of ways. This includes delivery of essential social services, financial services to support entrepreneurship, advocacy for fundamental rights, development of infrastructure, and pressure to improve governance. Civil society is a mechanism to reduce inequality, manage dislocation affected by economic adjustment, and a means to increase citizen participation in civic life. In addition to tempering the excesses of the market, civil society is an important element that holds governments accountable. It is one pillar of a genuine democracy.

According to research being conducted by the Johns Hopkins University through its Comparative Nonprofit Sector Project, “the nonprofit, or civil society, sector has emerged as a major economic force in addition to being a major contributor to social development and political participation.” In twenty-two countries in which the project has compiled empirical data (including nine Western European countries, four other developing countries, four Central European countries, and five Latin American countries) nonprofit organizations accounted for:³

- “19 million full-time equivalent paid employees - and 29 million full-time equivalent workers including volunteers.
- The paid workers in the nonprofit sector thus represent 5 percent of the workforce in these countries or 1 out of every 20 workers as of 1995.
- Put differently, nonprofit organizations employ 1 out of every 10 workers in the service sector in these countries.
- Six times more people are employed by nonprofit organizations in these countries, than are employed by the largest private firm in each country.
- If the nonprofit sector in these countries were a national economy, it would be the 8th largest in the world, with \$1.1 trillion in expenditures.”

This data suggests that these two streams of the private sector, market and citizen self-

organization in the public interest, supplement the State in creating social and economic security for citizens. Without the other, each is incapable of serving society. This is particularly the case given the scale of the development challenge in Pakistan relative to public resources. Private enterprise, for private or public interest, cannot function without an effective and enabling policy and operating environment created by government. On the other hand, the government today cannot provide social and economic security without a competitive market economy and a vibrant civil society. Moreover, private enterprise alone will not ensure equity nor can it function properly without effective public institutions and a mature civil society. These three sectors, government, business and citizen, are inter-linked and necessary for the creation of a modern economy and polity.

Looking further into the question of why civil society is needed leads to several well recognized social benefits: freedoms of association and speech, pluralism and tolerance, social stability, better social and economic services, addressing market failure, and supporting the market economy.

Freedom of Association: Laws permitting citizens to associate for common purpose and to establish legal personality are crucial in realizing freedom of association. These laws have the protection of international and constitutional law, and provide essential space for civil society. The Constitution of Pakistan recognizes the right of individuals to associate with others in order to pursue common goals. Article 17 of the Constitution of Pakistan states: “Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in interests of sovereignty or integrity of Pakistan, public order or morality.”

It is under such laws that citizens across the globe have organized to provide education, health, consumer protection, and environmental protection. Even the most basic pillar of democracy - political parties - exists under freedom of association laws. Similarly, freedom of speech, a basic precept of democracy, carries little meaning if

separated from freedom of association. It is together that these freedoms give citizens opportunity for a voice and an ability to act to improve society.

Freedom of association is enshrined in international human rights law. The International Covenant of Civil and Political Rights of 1966 is a binding multilateral treaty that has been ratified by over 135 countries. The Covenant guarantees the rights of peaceful assembly and freedom of association. Under the Covenant, states are required to conform their legislation to recognize and protect the rights established in the Covenant. States are permitted to restrict rights like the freedom of association that are protected by the Covenant only when: 1) the restriction is prescribed by law; and 2) then only if the restriction is "necessary in a democratic society" to serve legitimate interests of national security, public safety, public morals or health, or the rights or freedoms of others." One hundred and five countries have signed and ratified the treaty and another four have signed it. Pakistan is not one of either group of countries.

While not a binding treaty, the United Nations Declaration on Human Rights "has had a powerful impact on the development of international human rights." The United Nations Declaration on Human Rights ratified by the UN General Assembly in 1948 states:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers ... Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

Pluralism and Tolerance: Citizen organizations serve a wide range of functions from social services, to media, literary associations, cultural activities, and trade unions, to political parties. These associations also have diverse community, ethnic, and intellectual roots. By advocating and promoting diverse interests, and by

having their roots in different intellectual and ethnic communities, these organizations nurture pluralism and tolerance.

Social Stability, Security and the Rule of Law: Citizen networks provide a range of legal and other services. Examples from Pakistan include the Citizen Police Liaison Committee, the Human Rights Commission of Pakistan, and AGHS that have found ways to extend the outreach of the law to marginalized citizens who otherwise could not access the law. These and other such organizations provide legal aid and intermediate individual cases of major human rights abuses with judicial and law enforcement agencies. These organizations may often be publicly critical of the government but that should not be the important consideration in determining their effectiveness or bonafides. The essential service of extending the outreach of the justice system to marginalised sections of society is the contribution these organizations make to social stability, security and the rule of law.

Service Delivery: Citizen organizations are an important actor in providing vital social services. Either through tapping private philanthropy or as a public contractor, private nonprofit public benefit organizations are a critical provider of social services. The impressive network of private schools, colleges and universities in the United States illustrates the ability of nonprofit private sector to provide quality education at a national scale. The growth in private education in Pakistan, at the primary, secondary and higher education level testifies to the significant role the nonprofit private sector is playing in national development.

The growing role of citizen enterprise extends beyond education and is evident in the fields of health, water supply, sanitation, micro-finance and other services in Pakistan. Even in the United States where there is an effective State structure with relatively significant resources, the nonprofit sector, an informal engine of the economy, employs eight percent of the total labour force and contributes massively to the social sector. Government the world over is partner:- with the citizen

sector to deliver social services. According to the John Hopkins Study for 22 developed and developing countries, an average of forty percent of the resources of the third sector come from government contracting.⁴ In Bangladesh, service delivery citizen organizations in certain sectors like primary education and micro-credit provide services on a scale comparable to that of government. In the Indian State of West Bengal, three quarters of all citizen organization revenues derive from grants and service contracts with government.

There are compelling reasons why many governments are seeking to leverage the efficiency advantages of citizen organizations. They have a volunteer base, so are cheaper. And unlike government they are not a monopoly and have to compete with each other for mobilizing resources, and thereby have to be more efficient and/or effective. This is an important claim that requires further inquiry since at this stage there is no conclusive evidence to either prove or disprove the efficiency argument. What is convincing is the ability of citizen organizations to be more flexible and relevant compared to large bureaucracies that tend to be slow to respond and are not always sensitive, especially to marginalized voices.

Support for a Market Economy: Another economic rationale for a vibrant civil society is that it provides indirect support for the success and growth of a market economy. Markets require social stability, public trust and rule of law to function. Citizen organizations help build social stability and rule of law. By providing social and economic services they also indirectly increase the retail spending power of the poor that helps build markets in low-income areas.

Market Failure: The private commercial sector will only look to invest where it can make a profit and get a return on investment greater than its cost of capital. There are public goods where the for-profit private sector will never invest, as it will not receive a return on investment. Conventional wisdom on where the private sector will not invest is under revision. Earlier the construction and maintenance of roads, revenue collection, and

education institutions for example were considered areas where the private sector would not invest. Today these activities are increasingly being performed by the private sector.

The private sector however will not address social equity. For example the private sector will only provide education services to those who can pay either from their own resources or through subsidy from a third party. It will provide different levels of education services in response to the amount customers are willing to pay. Similarly the private sector will not build roads in remote places where it is not profitable for it to do so. The government must either build such roads itself or pay the private sector to build. To complement the government in addressing social equity, the nonprofit private sector can play an important role. It can mobilize resources and provide targeted services to the poor to resolve issues of market failure.

There is a second issue of 'market failure' in the public sector. It is not possible for the government, particularly with a limited tax base and stretched public finances, to provide all essential services or demands of its citizens. Private nonprofit public benefit organizations can leverage philanthropic resources and generate income from services to fill an important vacuum in the provision of public services.

3.2 Conditions Necessary for Building Civil Society

The new governance paradigm that is emerging around the world, and in Pakistan, is based on a new social compact between government, and the for-profit and the nonprofit private sector. The traditional boundaries between the State, business and citizen sectors are eroding, and there is an increasing contribution that private capital and entrepreneurship, both for-profit and nonprofit, are making in producing public goods. In order to fully harness citizen initiative for public benefit, a set of enabling policy and operating conditions are necessary:

a) First and foremost, civil society is not a substitute for the State, it is a complement to the State. More importantly, civil society cannot flourish in the absence of a strong and effective State. A vibrant and strong civil society requires a strong State.

b) Second, it is critical that the State is facilitative. The single most critical feature of the new governance paradigm is the shift for the State from being the primary producer, controller and owner of public goods, to a fair referee that enables private enterprise to provide economic and social goods.

Facilitation requires a shift from exercising direct control to regulating in a manner that is enabling and not unduly interventionist. The role of the State is to provide the essential services the private sector will not provide. Beyond that it is to create the right conditions for private participation by establishing rules of play, enforcing them, creating competition, regulating monopoly to curb excessive concentration of private power, setting standards, and creating and encouraging systems of stakeholder accountability. This signifies a shift away from the powerful deputy commissioner model that was created to exercise control to a more responsive and accountable framework that sets incentives for self-regulation.

Facilitating the private sector requires that government must establish rule of law. A well-functioning market economy is based on law that protects the right to private property, sanctity of the contract, fair, timely and peaceful resolution of disputes, and law enforcement. In addition, a fair and functioning legal structure is essential to consistently attract foreign investment that brings in needed capital and skills, without which economic growth in a globalized world economy is not possible. This model...

“...calls upon the State to set and administer rules of fair play. It puts the State as the key player in financing public goods and service, but now predominantly through a system of grants and contracts to citizen organizations and businesses. It must also safeguard the quality of privatised social services by establishing effective grievance or

adjudicatory systems for the ‘consumers’ of public goods and services. Government, especially at the implementation level, also has a key role to play in fostering an environment in which different stakeholders communities, citizens’ groups, business ... can work together effectively to solve social problems and deliver development services. The prerequisite for such an enabling setting, of course, is an efficient and credible legal regulatory framework. Finally, it calls upon the State to encourage citizen self-organization and private philanthropy by creating tax and other incentives.”⁵

In addition to an enabling and functioning legal and regulatory framework, and creating funding mechanisms, the government can support civil society by facilitating access to the media. Public broadcasting channels are important for public education. In Pakistan, given the limited range and potential for private channels, the incremental cost of allocating extra bandwidth would be negligible, with no opportunity cost in terms of lost commercial revenues, given the non-commercial character of such public broadcasting channels.

The government can also assist in other ways: subsidized land for social amenities, national recognition awards, contracts and procurement, lower utility tariffs and customs duties. Some of these mechanisms already exist in Pakistan, though some have been subject to abuse by government officials and private citizens. If regulated effectively, these mechanisms are powerful means of official support to the private development effort.

A strong and effective State that enjoys legitimacy and provides political stability, social justice and essential public goods, and that facilitates private capital and entrepreneurship is the Twenty First-Century challenge facing emerging economies.

3.3 International Experience on Enabling Environment Policies

In developing a facilitative approach towards private citizen organization working for public benefit, it is useful to studies

comparative international experience and draw relevant lessons. Policy frameworks for civil society seek to address three core functions:

- Provide public space and legitimacy for citizen organizations to operate for public benefit.
- Strengthen capability and viability of citizen association for public benefit.
- Identify and deal with abuse of the public trust.

Through the array of policy instruments and public institutions available to the governments, they must address all three functions. The Enabling Environment Initiative (EEI) is undertaking a review of international experience on accountability and assurance frameworks for citizen organizations with a view to learning lessons for Pakistan. The EEI is also publishing a set of country profiles of legal frameworks and policy reform dialogues that focus on detailing: i) effective policy reform processes to build trust, confidence and a common vision; ii) relevant institutional structures to administer regulatory and assurance frameworks; and iii) key features of laws, regulations, structures, definitions and policies that constitute the formal legal and regulatory system governing citizen association for public benefit. The policy principal at the core of creating an enabling environment and one that international best practice emphasizes is the shift from performance based assessment measures to those based on objective standards. Defining work is being done on developing accountability and assurance frameworks for nonprofit public interest organizations. These frameworks distil lessons and practices from the 'standards industry' serving the private sector. This work draws heavily from the accounting profession in that it has introduced the idea of assurance standards based on 'generally accepted accounting principles.' Performance measurement methodologies like social audit and reporting standards promote common frameworks, acceptable to multiple stakeholders that commit citizen organizations to voluntary reporting based on common standards on the social, economic and environmental impact of

organizational level work.

The powerful idea behind these self-regulatory mechanisms is that once credible, common standard, easy to access information is generated on citizen organizations, society will create the necessary pressure and mechanisms to drive organizations toward higher levels of performance. A great deal of 'regulation' of commercial corporations is done 'by the market' that has timely access to hard data on the decisions and performance of corporate management. The pioneering work on standard development and assurance mechanisms is a positive by-product of organized philanthropy as investor interest to improve risk management and enhance governance quality is driving the need for self-regulatory accountability and assurance mechanisms. This movement is leveraging the experience, and even the expertise, of professional associations in areas like chartered accountancy, medicine, law and engineering.⁶

In terms of formal mechanisms to support, strengthen and police private nonprofit activity there are essentially four types of models to choose from:

One, the registry and regulator functions are divided across different departments and ministries according to separate and parallel statutes, as is the case in Pakistan.

Two, the registry and regulator functions sit with a single department within a line ministry, as is the case with the Internal Revenue Service in the United States.

Three, the registry and regulator authority is an autonomous, statutory government department that does not report through any ministry but is accountable directly to Parliament, as is the case of the Charity Commission of England and Wales. The Commission is a strong illustration of what an enabling framework should look like. The Commission is a regulator of charities with the responsibility to register, advise, guide, investigate and, as a last resort, impose remedies. The Commission is an independent statutory body in that it is not subjected to ministerial control and reports directly to

Parliament. Registration with the Commission is all that is required to gain the full menu of tax benefits for charities.

The enabling core of the Commission derives from two clauses: 1) Its functions include providing charities an environment in which they can operate freely, improve their governance, and identify and deal with abuse. Its objectives therefore are not restricted to monitoring and control, they extend to guidance and advice, in addition to investigative and remedial authority. 2) It is independent of executive government control. Often problems arise when the perception of a minister or set of ministers is hostile, or when the government of the day is tempted to assail organizations that are critical of its performance.

Four, specific regulatory functions, i.e. certification for tax benefit status, are housed in a private institution or commission recognized by government, but independent and outside the government structure. The Philippine Council for NGO Certification is a private voluntary, non-stock, nonprofit corporation created “as a service organization whose main function is to certify nonprofit organizations that meet established minimum criteria for financial management and accountability in the service to underprivileged Filipinos.”⁷ The Council aims to: “1) Provide a mechanism of certification for NGOs which meet established minimum criteria for greater transparency and accountability. 2) Encourage private sector participation in social development through providing incentives under the Comprehensive Tax Reform Program. 3) Stimulate and integrate the efforts of the nonprofit sector to elevate its standards of service delivery. And 4) Provide a system for greater GO-NGO collaboration and complementation.”⁸

A final lesson from international experience is that successful reform requires a process of relationship-building. There is a need to invest in an environment and policy of trust and confidence to create a common vision of reform.

4. The State of Citizen Organization in Pakistan

In the last two decades there are several powerful influences, positive and negative, that are influencing State and society in Pakistan:

The fiscal pressure on the government has increased significantly, particularly in the 1990s. The tax base has remained narrow, tax evasion rampant. Income transfers to Pakistan in terms of repatriated income from overseas Pakistanis and foreign aid declined in the nineties though some improvement has been witnessed recently. Government expenses on defence and overheads have declined marginally in real terms while debt-servicing costs have increased. Exports have become less competitive, and the rupee continued to devalue till recently. Foreign savings is not compensating for lack of domestic saving, as foreign direct investment has remained low. Elimination of subsidies and the need to control government expenditure has led to a decline in income transfers to the poor and the government is unable to spend what it should on the social sectors. The unstable regional security environment has directly compounded the problem.

The process of democratization that began in the middle of the 1980s has faced disruption, and has borne poor results, both in terms of success of reforms and improvements in governance. The process however has not failed, as the basic commitment to democratic government remains the objective.

The process of democratization has met with success in other ways. There has been a rise in citizen institutions that are an integral element of democracy: a vibrant independent media, rights and advocacy groups, and an array of other public interest organizations.

To improve economic efficiency, expand economic activity and generate employment, the government has been deregulating the economy and seeking greater domestic and foreign private participation. In response to

alleviating pressure on public finances the government is privatizing State-owned enterprises.

There is a bold experiment with reinventing government: through privatization and the devolution exercise that is decentralizing government to the local level and increasing democratic participation in local decision-making and in the working of government departments.

With the declining role of the State in economic activity and in providing public services, there has been a significant rise in the informal sector where a very large part of market-based economic activity lies outside the regulatory control of the government. Pakistan's rapid rate of urbanization is precipitating a shift from a land-based feudal culture to a blue and white collar based urban social and economic structure.

Civil society is relevant to all these momentous changes forming Pakistan's identity, the present state of economic security of its citizens, and its potential as a State and society. Recognizing, harnessing and building private citizen enterprise for public benefit and private commercial gain are a central policy challenge for government.

This section outlines the state of citizen self-organization in Pakistan: the size, sophistication and focus of citizen organizations for public benefit. It turns to the policy and operating environment for citizen organization, and then to the principles of governance that derive from this vision of a society characterized by three dynamic sectors State, business and citizen.

4.1 Dimensions of the Citizen Sector⁹

According to a report completed in May 2002 by the Social Policy Development Centre as part of the Johns Hopkins Comparative Nonprofit Sector Project for Pakistan, there are forty five thousand active organizations in Pakistan that fit the description of private nonprofit, self-governing and voluntary.¹⁰ These organizations vary a great deal in terms

of their size, scope, and effectiveness. They address issues ranging from religious instruction, education, health, agriculture, micro finance, small enterprise and housing to community policing, consumer protection and civil rights. They represent a citizen impulse and a growing organizational infrastructure to solve local and national problems.

In terms of numbers of organizations, 46 percent are primarily education focused, 18 percent are advocacy oriented, 8 percent are providing social services other than education, and another 5 percent are characterized as 'religion'¹¹. In terms of specific activity, religious instruction, represents the single largest category at 30 percent. Lobbying for civil amenities is 14 percent, while primary education is 9 percent and secondary education 5 percent. Province-wise 55 percent are working in Punjab, 35 percent in Sind, 5 percent in NWFP and 5 percent in Balochistan.

The majority of citizen sector organizations are registered under the Societies Registration Act of 1860, 15 percent, are registered under the Voluntary Social Welfare Agencies Ordinance of 1961, and 6 percent under the Trusts Act of 1882. 35 percent have chosen not to register, while 4 percent have applied for registration and have not received it.

The citizen sector employs around 256,000 paid professionals and around 213,000 volunteers contribute their time. This represents 0.45 percent of the adult population. Of the paid employment share, 54 percent are employed in education activities: 25 percent primary, 14 percent higher and secondary respectively, and 1 percent vocational/technical education. The extremely low percentage of vocational education in the private nonprofit sector is mirrored by the poor state of public vocational training schools and the lack of private polytechnics points to a serious weakness in Pakistan's ability to develop manpower in low-technology engineering fields. A significant percentage (17) of people are employed in organizations providing religious instruction.

Registration Status of Nonprofit Organizations	
Ordinance -Acts	Percentage
Voluntary Social Welfare Agencies Ordinance, 1961	15.2
Societies Registration Act, 1860	40.0
The Trust Act, 1882	5.8
The Companies Ordinance (Section 42) 1984	0.3
Registered Under Other Acts	0.1
Unregistered – Applied for Registration	4.0
Unregistered – Not Interested in Registration	34.1

An obvious question is whether so many people would find shelter in the ‘madrasa’ system, that generates people who have very limited employability, if there were better economic prospects elsewhere? What if there were more resources going to vocational education that would employ more people and generate skilled people who could be employable?

The citizen sector spends Rs. 13 billion annually. Of this education and research represents 42 percent and education/research and health combined represents 70 percent. In terms of percent of GDP this amounts to 0.3 percent of GDP.

The revenue structure for the citizen sector provides findings that belie popular assumptions and carry important implications for public policy. 50 percent of revenues are from fees and charges, 37 percent from private indigenous philanthropy, 7 percent from foreign donor support, and 6 percent from government.

- Citizen organizations are far more able to generate resources through membership dues and fees for services than is generally thought. This level is similar to that in very strong nonprofit sectors in countries like the United States, Canada and Britain. It is a sign of the health and financial sustainability of the sector in Pakistan.
- The significant role of indigenous philanthropy is illustrated by the litany of pre-eminent public service institutions that easily come to mind, including: Sir Ganga Ram Hospital, Fatima Jinnah Medical College, Hailey College of Commerce, Nadirshaw Edulji Dinshaw

College, Aga Khan University, Lahore University of Management Sciences, All Pakistan Women Association, Al- Shifa Eye Trust, Shaukat Khanum Memorial Trust, and Pakistan's best known indigenous private welfare institution, the Edhi Welfare Trust.

- A national household survey of individual giving commissioned by the Aga Khan Foundation in 1998 yielded another important facet of indigenous philanthropy in Pakistan. It is predominantly personal. Over half of giving flows directly to needy individuals rather than to nonprofit organizations.¹²
- Foreign donors play a much smaller role than is commonly believed. This perception may stem, as is argued in the SPDC study, from “the fact that a mushroom growth in nonprofit organizations is observed after the Afghan war in 1980”. But whatever its source, it simply does not fit the empirical picture now emerging.
- The government plays a much smaller role in financing the sector than in almost any country for which there is data. Six percent government share in the sector in Pakistan can be counter posed to a 22-country average of 40 percent and the example of the Indian State of West Bengal, where the government share is 75 percent.

There are important insights for policy development in this data. The fact that citizen philanthropy is large in scale, but mainly personal and under-organized, presents a massive opportunity to expand the impact of philanthropy in Pakistan by helping it to “get organized.” This may result in “over-professionalisation,” unwanted bureaucracy

in civil society, or high overheads. It should and could result in effective, lean, high performing citizen organizations that leverage society's altruistic impulses. To ensure this outcome, the government can create an environment in which citizen organizations can be transparent and accountable to their stakeholders.

The fact that government financial inputs to citizen organizations are so low again offers another massive opportunity. The on going tax reforms will create larger fiscal space for social sector development. Consequently, the government can increase its direct investments in the sector, thereby simultaneously getting more influence in the shape of co- programs and helping to ensure their financial sustainability.

The implications of both these weaknesses under-organization and inadequate government financial support become more evident when we look at the challenges citizen organizations face.

4.2 The Challenges Within

The citizen sector comprises organizations with a diverse range of styles, missions, capabilities and effectiveness. While there are important exceptions, the experience of those who have worked intensively with the sector for the past two decades suggests strong needs to improve organizational governance, management, societal credibility, and financial sustainability.

a) Organizational Governance

The quality of governance is often weak in citizen organizations. While 'over-professionalisation' of some large national and international development organizations, and other foreign donor funded organizations is one concern, the lack of 'professionalization' is a major concern for a large part of the sector. Governance is a management function that encourages leadership, ensures discipline of planning, creates performance incentives, sets assessment, measures, monitors and provides oversight and accountability. Among the

resources needed to operate an effective organization two are most critical: quality of people in terms of their skills, motivation and commitment, and how well they are organized. Other than skills, formal structure, organizational culture, clarity of purpose and incentives are essential to build organizational effectiveness. Many citizen organizations lack proper internal planning and assessment systems. They are under-organized.

Private organizations that mobilize funds from the public are exposed to the agency problem.¹⁵ The agency problem is common to for-profit organizations, as well as to nonprofit organizations. The structural way that agency issues are managed is by having a board of directors that is independent of management, and exercises powers to appoint and replace management, and review and approve objectives, strategies, plans and budgets.

Effective independent board oversight is not widely common among citizen organizations. Often founders create weak or pliable boards that lack diversified competence, comprise predominantly of friends and family, and may not be regularly or properly used. This leads to serious problems for organizational development in the long-term as it undermines independent oversight of the management.

b) Management

There is a tremendous variation in the capacity of private nonprofit public benefit organizations. From large private universities to small mohallah-based associations, thousands of citizen organizations in Pakistan are vital to the expression of a community impulse for public service. Many of these lack managerial and functional skills. They lack technological capability. Often they have limited access to resources (people and capital), and to elite networks through which to exercise influence, or improve their operating environment. Consequently, many organizations that have talented and committed leadership with potential for significance find it difficult to develop beyond a point.

The basic deficiencies in Pakistan's education system, and lack of economic mobility mean that the vast majority of citizen organizations will continue to have limited access to people who can be self-trained to run more effective organizations. The constraint of capital to attract, retain and develop people will further compound the objective of building capability.

c) Societal Credibility

Bearing in mind that the citizen sector comprises a set of independent associations and institutions, and that it is always inaccurate to generalize, institutions in the sector do face varying levels of credibility concerns. There are five common criticisms: lack of demonstration of impact; white-collar lifestyles; limited ability to operate and impact on a scale; responsiveness to investors/donors whose interests may not align with the immediate needs of beneficiaries; and inadequate governance and accountability.

There is an immediate and pressing need, widely recognized by citizen organizations and the sector at large, to develop systems of self-regulation to improve internal and peer checks, as well as to better communicate their efforts and contributions to society. The Code of Conduct developed by the Pakistan NGO Forum a few years ago recognized this need. More of this is needed, and it must be convincing to society more widely.

d) Financial Viability

There are public goods that do not pay for themselves otherwise the private sector would produce and distribute them, and do so more efficiently. While, there is a debate and active experimentation on what should and should not be privatized, there are certain functions that are either impossible or undesirable to leave to commercial market solutions. This is especially true where there is inadequate retail power and a potential for abusing monopoly. The government provides services like police, military, justice, education, health, and infrastructure. It meets expenses through taxation revenues. The nonprofit sector must rely on other means.

Characteristically, the approach is to cobble together revenues from diverse sources, including member and service fees, private citizen contributions, private corporate contributions, government funds, international agency funds, and other forms of government support through tax exemptions, and utility tariffs subsidies etc.

Most citizen organizations will always be dependent on external sources of funding to continue their operations: whether it is government subventions, outsourcing, or private individual and corporate philanthropy. Some nonprofits may be able to raise a considerable portion of their funding requirements from fees for services, others may have permanent sources of external support through charitable trust income, and others may operate as private for-profit/non-profit hybrids that are able to cross subsidize. In most cases, the citizen sector will always need to mobilize external resources. The challenge of financial viability is inherent in the nature of the business. To succeed requires management acumen, wide societal appreciation of the functions the sector performs, and an enabling environment from government.

5. Policy and Operating Environment

5.1 Public Policy Bias

The past record of public policy toward citizen organizations has been marked by a relatively positive orientation towards welfare and service delivery organizations, and unease and hostility towards rights and advocacy organizations.

The reasons for this dual approach are apparent. There is a comfortable commonality of interests between government and citizen organizations delivering social and economic services. Such organizations directly complement government efforts; they generally make the government look better or at least they reduce pressure on the

government. Similarly, service delivery efforts appeal intellectually to policy makers. The argument is that the poor need access to essential services, and the first priority of domestic and international public and private resources targeted for social development - should be to address primary needs. Consistent with this view, most if not all government financial support, either in the form of tax breaks or grant funding is directed to service delivery organizations.

The evidence for policy support to welfare and service delivery organizations lies in the direct assistance and recognition the government has lent to ideas of self-help and community participation. The positive policy response to these efforts have two primary reasons: 1) increasing fiscal crises of the State, decreased capacity to meet the needs of a burgeoning population and increased government interest in private participation. 2) Successful models developed by a number of citizen organizations that emerged in the 1980s, prominent among which have been the Aga Khan Rural Support Programme, Orangi Pilot Project, and the Edhi Welfare Trust. Examples of government support to community development include the sponsoring of the National and Provincial Rural Support Programs, allowing significant amounts of bilateral grants to flow to community development efforts, cooperation with AKRSP and OPP at the operational level, and recognition of these and similar models in national policy.

Despite the policy bias government support towards service delivery organizations has wavered. A well-known example was the National Rural Support Program (NRSP) case. Created as a non-government nonprofit institution under the Companies Ordinance of 1984, NRSP was funded by a Rs. 500 million endowment from the government. The next government in 1994, tried to increase government representation on the board. When it was resisted the government became publicly hostile and sought to withdraw its funds and close the organization down. The impregnable integrity of the Companies Ordinance was the only thing that saved NRSP.

Within the ambit of service delivery, there is criticism about the adverse affects of foreign influence. There is a clear perception that foreign-funded organizations have higher salaries and inflated overhead costs. The implication is that this diverts resources away from the poor, and distorts labour markets by displacing talent away from the government and the commercial sector. However, given the need to supplement government funds for social sector budgets, and the imperatives of good working relations with the donors, beyond setting broad categories of support, the government has been unable to control or direct bilateral donor assistance or exercise leverage over donor funded organizations.

Government has in the past been consistently unfriendly or indifferent towards organizations characterized as rights and advocacy organizations: including organizations working on issues like violence against women, child labour, honour killings, blasphemy law, press freedom, official accountability and corruption. In this case there is no convergence of short-term interests. Human rights and advocacy groups expose government's shortcomings, often publicly. The fact that this watchdog and advocacy function is absolutely vital for the effective and efficient operation of government and democratic governance is sometimes lost on government officials on the receiving end of public criticism.

Official attitude towards rights and advocacy organizations prompted two successive governments to initiate legislation that sought to confer on registering authorities be powers to investigate and disband citizen organizations with a limited right of appeal or independent review. These attempts received a strong organized reaction from civil society. Pakistan NGO Forum, a coalition of some 3,000 NGOs, also tabled a bill in the Parliament on its own. In both attempts the governments were dissolved before their terms expired, and the legislation effort lost its impetus.

5.2 Funding and Fiscal Policies

Governments the world-over are a major source of funds to citizen organizations. It appears this is not the case in Pakistan. The Johns Hopkins Comparative Nonprofit Sector Project estimates that government funds comprise a meagre 6 percent of the total funding for nonprofit organizations in Pakistan. This is also reflective of the overall low spending on social services as a result of narrow tax base, high defence and debt-service expenditures and consequential limited fiscal space available. The average, according to previous surveys conducted by the same source, in several developed and developing countries is around 40 percent.

In the 1990s, the government, with multilateral agency encouragement created important windows for directly funding the citizen sector. In addition to policy support for public-private partnerships in the Social Action Program, the government created a window through the Participatory Development Program for funding citizen organizations to provide services in education, health, and water and sanitation. While execution of these projects was often poor, and funds did not consistently reach the most deserving organizations, such windows provide important sources of financial support to the citizen sector. The government also launched the \$100 million Pakistan Poverty Alleviation Fund through a soft loan and technical assistance from the World Bank that provides grants and subsidized working capital loans for infrastructure, capacity building and micro-finance.

The current government Devolution Plan include a reservation of 50 percent of district development funds for 'Citizen Community Boards', a special new category of local citizen organization. This reservation has been successfully resisted by newly elected local elected councillors for the 2001-2 fiscal year. The Federal Government is reiterating its commitment to using this budgetary measure to promote public-private partnership in local social service delivery. While the outcome of this political tussle is uncertain, what can be inferred is a significant

shift in official thinking at the highest levels of government in line with the new development governance, with government outsourcing service provision to the nonprofit private sector. While generally a positive sign, it is imperative that such a system is responsive to standards and the capability of citizen organizations to employ public funds effectively as there is tremendous variation in capacity. Similarly, it should be ensured that the recent dispensation does not degenerate into graft or political patronage as reward for political loyalty.

Other funding mechanisms include small grants given by the Social Welfare Departments, Zakat and Bait-ul-Mal; the Trust for Voluntary Organizations, Provincial education and health foundations, the Khushali Bank, tax exemptions, subsidized land; lower tariffs, and leasing of government facilities in public-private partnerships.

Citizen organizations in Pakistan enjoy three types of tax benefits.

- Registered nonprofit public benefit organizations, certified as such by the Commissioner Income Tax, can receive, tax exemptions from the Central Board of Revenue on specified types of income
- Tax credits for the individual or corporate donor upto specified limits of income are exempt from tax if given to certified nonprofit public benefit organizations
- Exemption is also allowed from duty on imports for specified welfare purposes
- Subsequent to the EEI reforms, comprehensive tax benefit is available to nonprofit organizations with excellent track record on good internal governance and accountability

While the tax benefits in Pakistan are generous by international standards, in the past the class of organizations recognized for the benefits, and the way eligibility was determined was highly restrictive and the procedures were extremely cumbersome. The result was that few organizations, individuals or corporations could actually avail the benefits.

For the 2002-2003 national budget the Government has announced far-reaching reforms in fiscal laws based on the recommendations of the EEL. These reforms underline the serious commitment of the current administration to strengthening private nonprofit initiative for public benefit. The amended Income Tax Ordinance 2001 promulgated on July 1, 2002 has expanded the definition of eligible nonprofit organizations to include specifically those engaged in community welfare and development. A two tier package of tax benefits includes:

- a) Exemption from income tax on income from house property, government securities, profit on investment in financial institutions and grants received from federal or provincial governments, or district government or foreign donors. Previously only the first two were eligible for tax exemption. These exemptions will be available to the bulk of small nonprofits hitherto excluded from access to fiscal support.
- b) Exemption on income from donations, voluntary contributions, subscriptions, house property, profit on deposit, in financial institutions, business income expended in Pakistan for the purpose of social welfare and development for nonprofit organisations that have operated in Pakistan for a period of not less than three years and have complied with minimum acceptable standards of internal governance, accountability, transparency and efficiency prescribed by law.
- c) Procedures for certifying eligibility as donee for tax credit to donors has been simplified as recommended by the PCP.
- d) A shift in responsibility for evaluation and certification of nonprofits from tax authorities to independent certification agencies.
- e) Easing of access to the comprehensive tax benefits by: 1) Eliminating the requirement of all-Pakistan operations. 2) Relaxing requirement of audit by chartered accountants for smaller nonprofits and relating it to the size of the nonprofit. 3) Withdrawing discretionary powers in the access rules to make the procedure easy and transparent.

5.3 Legal and Regulatory Environment

The legal and regulatory regime for voluntary private nonprofit organizations in Pakistan dates back to 1860. At the time the British colonial authority created the Societies Registration Act of 1860 that provided for voluntary registration under a very broadly defined classification of organization types. Today, there are close to a dozen laws that govern various types of nonprofit citizen organizations. There are yet other laws that sanction resource mobilization or provide specific tax or funding privileges from the government.

On one hand, this multiplicity of laws provides an appropriate diversity of legal rights, benefits and compliance requirements. At the same time, these laws are duplicative, set different standards, provide varying degrees of regulatory discretion and ultimately are neither enabling nor do they lend themselves to regulatory assurance. More specifically:

Public policy on nonprofit sector has to invariably focus on two “association” laws, the Voluntary Social Welfare Agencies Ordinance 1961 and the Societies Registration Act 1860, under which most citizen organizations are registered: 90% of all active organizations (25% under the Ordinance of 1961 and 65% under the Act of 1960) are registered under these two laws. While these laws have overlapping scope, they represent two diametrically opposed positions on regulation. The 1961 Law is extremely rigid, strict and control-oriented, while the 1860 Act is lax and has virtually no regulatory regime.

The legal requirements of these laws are different. The Ordinance of 1961 requires organisations depending on any kind of public funds to compulsorily register with the authority designated by the government, prescribes external accountability measures, confers the Registration Authority with arbitrary powers to conduct random audits, inspect premises and books, suspend management, and even dissolve the agency.

Citizen organizations must submit annual reports and audited accounts.

The Act of 1860 on the other hand is based on minimal reporting standards - only a list of governing body members is required for submission. A society may depend on foreign funds, public funds, and member funds large or small, public benefit or member benefit, the reporting requirements remain close to zero. There are no administrative powers in the law to even ensure compliance. In practice external accountability mechanisms of the two laws have rarely been invoked.

These two laws are administered by different government agencies. This adds to the risk of duplication, results in inconsistent regulation, and provides a basis for poor monitoring. Having multiple regulatory agencies creates coordination challenges, for example the government has not created a common information base on organizations registered under the two laws.

“Both laws fall short of legitimate expectations of the stakeholders and international best practice. This means that this problem of duplication also cannot be solved by repealing one of the two and amending the other. The Ordinance of 1961 is too elaborate, control-oriented, overly rigorous, and actually quite unenforceable in its present state. The Act of 1860 is the better of the two but its language is too archaic, it is too lax, and it can be improved to conform with international best practice regarding judicial review.”

In addition to these two major “association” laws, there are ‘foundation’ laws to cover public trusts and *wakfs* which are important organizational forms in the nonprofit sector. A public trust, created through the expression of the will of one or more settlers, can come into existence both through the dedication of property by an individual, a family or a small group as well as through the contribution of assets to a fund by the community in general. At present property dedicated as a public trust can be vested as the property of a society under the Act of 1860, a charitable company under Section 42 of the Companies Ordinance, 1984 or a public trust with one or

more trustees.

However, persons who would rather author a public trust for public benefit reflecting their particular concerns but do not want to associate with others cannot at present rely on a coherent statutory framework within which to embed such a trust. With no specific statutory dispensation, public trusts created as a result of the transfer of any property for the benefit of the public at large are regulated only by dispersed statutory provisions and a body of case law that does not provide for any routine reporting or monitoring and also is not easily accessible to the general public.

Wakf is a traditional form of dedication of property for purposes recognized by the Islamic faith as religious, pious or charitable. While doctrines of classical Islamic law mainly govern the creation and functioning of a *wakf*, the Mussalman Wakf Act of 1923 and the Wakf Properties Ordinance of 1979 promulgated in each of the four provinces provide the statutory framework for the regulation of *wakf* affairs. The relatively loose regulatory oversight established by the Act of 1923 has been drastically supplemented by the Ordinance of 1979 that allows the government to take over and assume the administration, control, management and maintenance of any *wakf* property after the lifetime of the person creating the *wakf*.

Besides the laws that create and regulate associations and foundations as discussed above, another law that can have a major potential impact on the working of nonprofit organisations operating in the public interest is the Charitable Funds (Regulation of Collection) Act 1953 (“Act of 1953”). This law, though largely inactive and not so well-known, is meant to ensure that individuals or organisations do not collect funds from the public for public benefit purposes above a statutory ceiling of Rs. 5,000 without the permission of the relevant authority in the district and that these funds are used transparently for the purposes that they are collected for. In effect, this severe law prescribes yet another regulator for citizen organizations.

Through the 1999 NGO Bill and a previous

version, the government attempted to replace the Ordinance of 1961 with even stricter versions that sought to give regulatory authorities the right to disband organizations without right to judicial appeal but did not succeed.

Some of these existing “nonprofit laws” ostensibly prescribe a strong dose of the State but the ground reality of regulation is very different. Thirty-eight percent of active citizen organizations in Pakistan are not registered. This means that there are over 16,000 citizen organizations active in the country for which there is no available public record. This brings out a fundamental weakness of the legal and regulatory structure where a very large number of citizen associations see no benefit in registering with the government. Their attitude is borne out by the household survey of giving, which found that only 15 per cent of those who make charitable donations care whether the organizations they support are registered with the government. More enabling laws would result in higher levels of voluntary registration, creating better public information. Amongst other benefits, better public information will lead to better regulation.

5.4 Collaboration in Policy Formulation

In developing specific sectoral policies the government has increasingly mentioned the need for public-private partnerships, and drawn a great deal of input from civil society. According to the Interim Poverty Reduction Strategy:

“Since the participation of the target population is critical in formulating the poverty reduction strategy the government had initiated a comprehensive process of consultations at the district, provincial, and national levels. This process was guided by the government's resolve to elicit views, share experiences, and understand expectations of the stakeholders while forming the poverty reduction strategy. The process of dialogue was spread over three stages comprising

district level consultations, civil society consultations, and dialogue with provincial governments ... the process of dialogue is a reality check -planners for too long have remained detached both from people as well as the place where development work was intended. They have been making choices on behalf of the people when they were ready to make their own choices. Lack of participation in the process of decision making has made people wary of the development plans.”

While citizen participation and consultation is being increasingly mentioned there is scant progress in terms of substantive public-private partnership. For example the First Annual Report of the Pakistan National Commission on the Status of Women published in 2002 states:

“Although meetings were held in each province primarily with organizations working for women, there is little clarity both on the part of the Commission and civil society on how to work together ... delay in any solid spectacular performance by the Commission has generated its own cynicism among civil society.”

This lack of substantive collaboration along focused, objective driven, well-conceived lines is a shortcoming of planning, of generating actionable ideas, both on the part of government officials and civil society leaders. It also reflects a general lack of will to act in cooperation. There are however examples and models of constructive cooperation, some documented and others that happen every day in micro local settings, that are not apparent, which demonstrate that partnership is feasible where there is the will and the effort.

There are two widely recognized examples of participative policy development and follow-up: i) the National Conservation Strategy spearheaded by IUCN and the Ministry of the Environment; and ii) the preparation of the National Report for the Fourth World Conference for Women at Beijing in 1995, the National Plan of Action launched for Women's Advancement in 1998, the Pakistan NGO Review for Beijing Plus Five in June

2000 and the national policy for Women and Development. Both these national policy development initiatives were built on an extensive and constructive collaboration between government and concerned citizen organizations, and provide an illustration of successful models for collaboration.

(A review of selected government sectoral policies and how they relate to partnering with citizen organizations is provided in Appendix 2 to illustrate the increasing reference to the sector in national policy but the relative lack of actual partnership).

5.5 Policy versus the Operating Environment

There is in most countries a noticeable gap between official policy and the actual operating environment. This problem has been particularly acute in Pakistan. This problem generally occurs because of four factors: i) systemic weaknesses in implementing policy; ii) gaps in communicating reform message to government functionaries in line departments. iii) intentional efforts to undermine policy mostly at operational level and iv) inconsistent policies that are contradictory.

Systemic Weakness: These can have a variety of causes: a) It is widely understood that the citizen sector is heterogeneous, comprising a diverse set of actors with different objectives and capabilities. It is less commonly considered that neither is government a single, homogenous institution. Pakistan is a federal State, and government is divided by a formal structure into federal, provincial and now district tiers. There are functional divisions of responsibilities and checks and balances between the executive, the legislative and the judicial branches. For instance, if a concern is a federal subject, government policy is set at the federal level at cabinet or ministerial level. The policy is then implemented by the provincial governments, through the civil service operating under the guidance of policy-makers at the provincial levels. Now there are district governments that set their own budget priorities and administer their own funds. Good

implementation requires effective coordination, without which policies are not properly implemented. Lack of coordination results in poor execution. Coordinating between multiple layers of government with in-built checks and balances is a complex task and requires commitment and tact.

Culture is another crucial ingredient of execution: In every organization culture exercises tremendous power on what gets done, and how. An organizational culture that is overly bureaucratic and one that does not encourage or entrepreneurial ethos or initiative can result in poor execution of policy. For example, if the government has a policy of promoting public-private partnerships, a bureaucratic system that is not responsive and imaginative will not be able to create the right operating environment to build effective models of public-private partnerships. A good operating environment for public-private partnerships to deliver social services would require a change in mindset from control to facilitation. This in turn requires a change in culture, in how people think about how public goods are provided and in their role in facilitating private enterprise in producing and delivering them.

Incentives play a critical role in how effectively policies are executed: If people are recognized and rewarded they tend to respond better to tasks. Incentive-based systems are increasingly being recognized as more compelling ways to regulate performance than methods of direct control. Given existing personnel policies it is a challenge to get incentives right in public bureaucracies, especially in environments where political loyalty becomes an overriding factor over merit in awarding rewards.

Undermining Policy: There remains in government, especially in lower tiers and in the intelligence agencies, deep mistrust and suspicion about the role and intentions of citizen organization. This often leads to obstructionist behaviour and in instances to openly hostile conduct by government functionaries.

Contradictory Policies: While the same

government was establishing the Pakistan Poverty Alleviation Fund, decentralizing health and education services, and launching the Punjab Rural Support Program it was harassing citizen organizations critical of the government. The use of intelligence agencies in the Punjab in the late 1990s, to inquire into the affairs of citizen organizations is a dark chapter in State-NGO relations history. The government did not use the existing regulatory framework; it used an apparatus of government that is not designed or created to regulate the affairs of the citizen sector, the intelligence agencies, to identify organizations that were either defunct or not working in the national interest. This process led to de-registration of many organizations in the Punjab.

6. The Architecture of Reform

6.1 Towards a Policy Framework

The paper has described the emerging global governance paradigm from State control to facilitation and the rise of private participation in providing social and economic services. It has highlighted the growing evidence of these trends in Pakistan: the reinvention of government through the Devolution Plan and privatization policy, and the rise of private provision of social services by both for-profits and nonprofits, as well as by the vast informal sector.

This rising tide of organized citizen enterprise for public purpose needs to be harnessed through a more enabling policy and operating environment. There is an immediate need to address the policy bias against bona fide public interest associations that build democratic societies; increase direct government funding to citizen organizations to extend public services; move from regulation to facilitation through modernizing laws and regulatory regimes; deepening meaningful public private partnerships and increase incentives and the will to work for a

common purpose. Harnessing the private sector is the central governance challenge for developing countries in the Twenty First Century. There is a need to articulate a comprehensive policy to face this challenge.

This section outlines a framework for policy reform based on stakeholder consultation. The purpose of the outline is to present an analytical framework aimed at beginning a policy dialogue compact between government, the private sector, and citizens, on a policy framework for civil society. The policy framework set out below is an outline that does not presume to be exhaustive, but aims to illustrate a set of core principles on which to base policy formulation.

6.2 Principles of a Policy Framework

Affirm the Constitution of Pakistan: The Constitution of Pakistan recognizes the right of individuals to associate with others in order to pursue common goals. Article 17 of the Constitution of Pakistan states: “Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in interests of sovereignty or integrity of Pakistan, public order or morality.”

Article 17 of the Constitution is subject to interpretation: What are 'reasonable restrictions' that the government can place on the freedom of association in protection of public order, morality and sovereignty of Pakistan? This also raises the question of what constitutes public benefit and how best it is ensured? Any action that is not undertaken for private financial gain and that benefits and does not harm any section of society can be said to be in the public benefit.

There may be specific legal treatments of what constitutes the public benefit. However, the critical point that lies at the heart of the debate is how should the State deal with citizen action that harms the public interest. Repeatedly, a cross section of representatives of civil society emphasize that there is a justice system, civil and criminal legal code and a law enforcement infrastructure that is

created to address the preserve of public order and to identify, investigate and prosecute criminality.

Accordingly, the government has no justification to qualify on inalienable Constitutional freedom through compulsory and restrictive regulatory laws outside the civil justice system. To the argument that the justice system is not working and there is a need to supplement it with additional regulatory control, the solution presented is to improve the justice system. A policy must affirm the need to provide adequate protection from arbitrary government control and set consistent and common rules of business for all.

The right to freedom of association within bounds set in the law is not a privilege conferred by a government, but an inalienable right of citizenship. There are two fundamental inter-related policy implications of this right: a) Either registration with a government authority is a voluntary act, and not a mandatory requirement of association, where in return for certain legal protection or privileges a citizen association may choose to register with a government authority. Or b) if registration with a government authority is deemed mandatory for creating information in the public domain for certain citizen associations, the government does not have the right to deny all citizen organizations the freedom to register or de-register an organization.

Beyond acknowledging the right of the freedom to associate, a second policy requirement is to define the vision of the kind of society that the State intends to create. Are we striving to be an Islamic Republic that is based on tolerance, respect for sectarian and ethnic differences, and the principle of separating government from a particular, narrowly defined religious tradition? Or are we seeking to create a religious theocracy based on particular Islamic traditions, and in exclusion of others? A clear vision of the kind of State and society Pakistan seeks to create, is necessary for developing an enabling policy. Validating such a vision by democratic legitimacy and political will is also a precondition for meaningful policy reform.

Recognition: A policy framework should acknowledge the new governance paradigm that the government alone cannot deliver all needs of its citizens and the private sector has a central role to play as a producer of goods and services. The acceptance of the role of private enterprise, commercially and socially directed, to build a modern economy and society is the basis of public policy in a market-based economy. The citizen sector is the nonprofit sub-set of the private sphere. There is increasing recognition in government policies on the need for a vibrant citizen sector that supplements government services in the social sectors. This recognition needs to be extended to bona fide organizations working within the law and the Constitution that promote civic participation and democratic governance. Recognizing the role of rights and advocacy organizations and correcting the public policy bias is critical to a policy framework.

From Regulation to Facilitation: There is a fundamental shift from the State being the primary producer, controller and owner of public goods to a fair referee that democratically sets and facilitates the private production of social and economic services. The facilitation function requires a change in mindset, from “command and control” to assisting and enabling private enterprise. The function of being a fair referee requires a new type of regulation through consultative processes and ensuring that the rules are applied consistently without discrimination.

The training of government functionaries to work with citizen organizations and to assess citizen organizations with greater understanding of their role in society is an important step in improving the operating environment for the citizen sector. Incentives for relevant government functionaries to have active and effective citizen organizations in their regions could also be compelling means to promote a better operating environment.

Registration and Compliance: There are several recurring recommendations on the issue of registration and regulation:

- Registration should be voluntary except where an organization is taking

government money or raising money from the general public. As is the case in the private sector, where if a company is raising money from public capital markets it must register with a government authority, have its accounts audited by an independent auditor, and disclose minimum specified financial and operating information. Similarly, private nonprofit organization taking contributions from the general public must be subject to public disclosure. The larger the budget of the organizations, the more detailed its public reporting should be. After a certain threshold, those reports should be subject to independent verification.

- Whether such organizations that raise money from private citizens but not from the government ought to be registered with a government authority, with a self-regulating body or a joint government-civil society body is for a policy framework to consider.
- In the case of organizations receiving foreign funding, above a minimum threshold, there is broad agreement that an organization ought to register with the government. The justification is that the government has the right to information on sources, uses and purpose of foreign funds, in order to track whether funds are applied for legitimate purposes. A particular sensitivity relates to private foreign funding going to militant sectarian organizations. The obvious problem is that whatever formal channels are created, clandestine foreign money may still not be routed through these.
- An interesting view was that registration for all organizations should be compulsory as long as the government is obligated to register all organizations that apply i.e. the government would not have the powers to refuse to register any organization. Whether an organization that seeks organization is harmful to public order is an issue the civil and criminal justice system should address and not the registering authority.
- It may be advisable to draw a distinction between public disclosure for domestic and foreign funded organizations. Proposals suggested include: all income

should be reported by type (grant, earned, etc.). The details of types should be worked out through the compact dialogue. With respect to domestic philanthropic income, there should be no requirement to divulge the identity of the donor. The frequent wish for anonymity is understandable given Islamic ethics on giving and this is borne out strongly by the individual-giving survey. With respect to foreign donors, however, the State has a compelling interest to protect against foreign interference and it is reasonable to require ex post facto reporting of not only amounts but also identity of foreign donations.

- The government has the right to information regardless of the sources of funding. Even if an organization is entirely funded from private sources, but claims to be in the public interest, the government has the right to know what the sources and uses of its funds are. The right to information is not the right to regulate, simply the right to know. Mandatory public disclosure in itself would create peer and societal pressure to self-regulate.
- Those organizations receiving government money or seeking certain privileges awarded by law for legal personalities should have to register with a government authority.
- Lack of government capacity to regulate, the possibility of misuse of government regulatory authority or selected application of it, and unnecessary controls on bona fide citizen organizations, especially on the smaller ones, were reasons cited to minimize government regulatory control.
- While the legal and regulatory system needs to be rationalized and streamlined, the current system seems to be working for most institutions, but this is because the government is not actively enforcing existing laws. Organizations that do face problems and for whom the system should be streamlined are the small community-based organizations. This perspective was also questioned on two grounds: the system is open to abuse, and on occasions the government has used existing laws to harass legitimate

organizations; many organizations face serious problems in registering and dealing with regulators. A system where 38 percent of the organizations are not registered is far from ideal. Lastly, the government has tried to change the system a couple of times, and a policy dialogue and advocacy for an enabling framework is necessary to avoid further deterioration.

- Options afforded by the current set of laws serve the needs of different types of organizations and as such the legal and regulatory structure is essentially enabling.
- Distinguishing government's role as a donor from its need to regulate. A donor-grantee relationship is a contractual relationship, where a donor gives money to an organization with certain conditionality. If the conditionality is not met, the donor can withdraw funds. It is up to the donor to determine conditionalities and for a grantee to accept them if it decides to take money from the donor.
- If the government is a donor, it has a donor-grantee relationship. Being a donor does not *per se* confer regulatory powers. Regulatory powers are conferred in response to granting an organization certain legal privileges.

Government Support: Government funding and in-kind support to the citizen sector is a critical element of a policy framework. The Government of Pakistan only accounts for six percent of the citizen sector's total funding base. This is extremely low relative to international levels.

Given the fiscal pressure on public finances, it is unrealistic to expect the government to significantly increase funding for the sector. However, there are other means for the government to increase support: tax exemptions; in-kind support through use of government infrastructure; access to subsidized land and duty free imports. Some of these measures will impact the fiscal condition of the government, others will not. The point is that government needs to make explicit its support to develop the citizen sector through direct and indirect financial

support. An important point from discussions with government functionaries identified the need for the government to set priorities in public policy on allocating its support: i.e. poverty alleviation is the number one priority of the government.

The priority allocation of government funds is an area that needs wider discussion, but the principle of government support to citizen organizations needs to be defined in a policy framework.

Standards and Assurance Mechanisms: A very strong and across the board reflection was on the need for self-regulation: both as a means to deter excessive government regulation and to build public credibility. There are serious issues of credibility for many citizen organizations: demonstration of impact and cost effectiveness amongst the most common ones. The need for self-regulation, essentially setting of standards that are enforced through peer review, or an independent private body are ideas increasingly being discussed by citizen organization leaders and policy makers. Credible, reliable self-regulatory mechanisms can reduce the need for government regulation and build public support for the citizen sector. The code of conduct developed and being implemented by the Pakistan NGO Forum is one example. Other ideas include standard setting by professional associations, certification and rating systems and other forms of independent evaluation.

The greatest challenge lies in enforcing self-regulation systems for a sector that comprises a very diverse set of organizations, both in terms of function and capabilities. There are few proven international examples of effective self-regulation systems for the sector as a whole. The challenge, however, is there and increasingly voiced.

7. A Road Map to Reform

The Enabling Environment Initiative (EEI) of the Ministry of Women Development, Social

Welfare and Special Education and the Pakistan Centre for Philanthropy has charted a course to review the current legal, regulatory and fiscal framework for private nonprofit work for public benefit. The EEI has already made a land-mark impact: major reforms in fiscal laws governing nonprofit organizations were announced by the government through promulgation of the Finance Ordinance 2002, amending the Income Tax Ordinance, 2001, effective from 1st July, 2002.

The second major piece of the EEI legal and regulatory reform has gone through an extensive stakeholder consultation and the recommendations have been presented to the government. Legal and regulatory reform is a more complex undertaking, as it requires modernizing legal conventions going back more than a century and revisiting policy directions. The framework for legal reform summarized below needs to be embedded in a wider consultative process to design an enabling over-arching policy framework for civil society. The defining elements of the proposed legal and regulatory reforms include:

Develop a system based on accountability and disclosure, as opposed to one that relies on monitoring and evaluation predicated on direct intervention by regulatory officials. In addition, the intended function of regulation will go beyond monitoring, investigative and remedial to supporting the development of governance capacity in citizen organizations:

- a) Monitoring and oversight will be document-based, transparent, fair and user-friendly and supported by reliable information databases placed in regulatory agencies.
- b) Audit and reporting requirements will be calibrated to the size of the organization.
- c) Information will be placed in the public domain to create societal pressure and ensure fair and consistent regulatory practice.
- d) Streamline multiple laws without comprising the enabling features of the current laws in terms of the options they offer. Specifically, merge the Voluntary Social Welfare Agencies Ordinance of 1961 and the Societies Act of 1860, under which over 80 percent of nonprofits are registered, to create a single law with a one-window regulatory framework to improve

coordination, reduce duplication and ensure consistent standards and application.

Important reforms in the nature of regulatory authority are also recommended:

- Following the pattern of institutional reforms already undertaken by the Government, governance, support and regulatory system must be separated from policy consultations and processing
- Governance support and regulatory functions should be predicated on the principles of self-regulation in accordance with the governance requirements prescribed in the law
- There must be a national forum as distinct from federal or provincial, headed by a federal minister for policy consultations and processing as in other areas of the economy, environment, science and technology and higher education
- The institution responsible for governance, support and regulation of nonprofit voluntary organizations sector, must be independent, autonomous and representative of the sector with the presence of all other stakeholders to forge a coordinative approach
- The EEI stakeholder consultations have led to broad-based recommendations on the need for the government to convene a wider policy dialogue compact with civil society. The purpose of the compact would be to develop an enabling policy framework for positive private citizen participation in public service. The recommendations are in line with international best practice on enabling environment reform. The compact process must be:

i) Inclusive: Policy dialogue should be broad-based and involve government and civil society representatives from the federal, provincial and district levels. It is important to include professionals from the private sector who do not have a direct stake and provide an independent perspective. The dialogue process needs to be disseminated widely.

ii) Structured: Prior preparation of a thoughtfully framed policy framework by the

government, circulated in advance, is essential to focus the dialogue. There could be a convening role for independent intermediary organizations like the Pakistan Centre for Philanthropy or the NGO Resource Centre to intermediate a policy dialogue.

iii) Institutionalised: The compact must be

institutionalised through a permanent joint government-civil society council. Such a joint high-level forum should jointly review policy, as well as legal and regulatory issues. The compact process needs to consider whether the forum becomes a consultative body, a policy-setting body or a policy-administering body.

Endnotes

¹The express interest of the Ministry of Women Development, Social Welfare and Special Education in receiving a policy document and engaging in policy dialogue with civil society is to see to improve the policy and operating environment for citizen organizations, while addressing government regulatory concerns.

²Bonbright, David. General Background: The Enabling Environment Initiative. Pakistan Centre for Philanthropy. Islamabad. Page 2.

³Presentation by Lester M. Salamon Johns Hopkins University. Annual Conference Coalition of National Voluntary Organizations Ottawa, Canada September 18, 1999.

⁴Johns Hopkins University. *Global Civil Society At A Glance*. Comparative Nonprofit Sector Project Website. Page 9.

⁵David Bonbright and Asad Azfar. *Enhancing Indigenous Philanthropy for Social Investment*. Islamabad: Aga Khan Development Network. August 2000.

⁶The global resource institution dedicated to the promotion of social, ethical and overall organizational accountability. It is a democratic membership organization, governed by an international multi-stakeholder Council. The Council currently includes representatives from the Association of Chartered Certified Accountants (UK), Business for Social Responsibility (USA), Co-operative Bank (UK), Copenhagen Business School (Denmark), Instituto Ethos (Brazil), KPMG, LearN (South Africa), New Economics Foundation (UK), Novo Nordisk (Denmark) and PricewaterhouseCoopers. See its website at www.accountability.org.

⁷Philippine Council for NGO Certification Website. June 2002.

⁸Philippine Council for NGO Certification Website. June 2002.

⁹This section is based on material from the Johns Hopkins Comparative Nonprofit Sector Study for Pakistan Preliminary Estimates, May 2002 prepared by the Social Policy Development Centre in collaboration with the Aga Khan Foundation (Pakistan).

¹⁰While they meet the definition used for the study, religious worship organizations were not included in the study “due to time, resources, and the country's socio-economic environment”. [cite to SPDC study at page 3]

¹¹The study authors define the “religion” category of organizations as not including religious instruction (covered separately) or religious worship (covered by the sector definition but not reached in this study), but working to “promote religious beliefs and administer religious services (mainly managing religious processions and organizing religious events).”

¹²Arshad Zaman Associates and the Aga Khan Foundation. *Dimensions of Individual Giving in Pakistan*. Philanthropy in Pakistan. Islamabad: 1998.

¹³Johns Hopkins Comparative Nonprofit Sector Study for Pakistan Preliminary Estimates, May 2002 prepared by the Social Policy Development Centre in collaboration with the Aga Khan Foundation (Pakistan). Page 23.

Appendix 1

Interview Structure

Eighteen interviews were conducted with a cross section of government and civil society leaders. The criteria for identifying interviews was to get informed feedback drawing on a diverse range of perspectives on parameters of an effective government policy framework towards civil society, and on the process that would most likely result in a constructive policy dialogue.

The structure of the interviews and the standard questions posed to all respondents are outlined below. The interviews reflecting diverse and valuable views of the key civil society leaders have been published in a separate document titled, 'Perspectives from the Civil Society'.

Interview Structure and Questions

Interviews began with an introduction to the PCP's Enabling Environment Initiative (EEI) and PCP's role: There is on the one hand a need to streamline and overhaul the legal and regulatory framework for private nonprofit public benefit organizations in Pakistan, in order to create an enabling policy and operating environment for civil society. On the other hand there is the tradeoff between governments legitimate needs to regulate aspects of civil society, and a continuing misunderstanding and often mistrust between government and civil society on the intentions or ability of government to regulate civil society beyond legitimate regulatory concerns. The objective of the EEI is to initiate a consultative process between government and civil society in order to build confidence and understanding. There is the need for citizen organizations to enhance their credibility by being more active in their public accountability. Government can enable them to meet this accountability challenge by creating an enabling policy and operating environment. The confidence building consultative process shall feed in to a policy

formulation process that addresses improvements in the policy, legal and fiscal framework governing private nonprofit public benefit organizations in Pakistan.

The following set of questions were used to direct a conversation with respondents:

- What are the major policy and operating issues affecting government-civil society relations, in particular with regards to the legal, regulatory and fiscal policies governing civil society?
- What are the overall principles on which government policy, specifically a legal, regulatory and fiscal framework for civil society rests? For organizations not receiving public funds should registering with a public authority be compulsory or voluntary, and if so, what kind of regulatory requirements should be placed on the functioning of these organizations? How do mandatory regulatory requirements for organizations not receiving public funds or other benefits (such as tax benefits) square with Article 17 of the Pakistan Constitution?
- What specific policy recommendations should be considered in attempting to create a more effective and enabling legal, regulatory and fiscal framework for civil society? How should a policy framework be made actionable?
- How should a confidence-building policy dialogue between government and civil society on improving the legal, regulatory and fiscal framework be structured?
- What are the major policy and operating issues affecting government-civil society relations, in particular with regards to the legal, regulatory and fiscal policies governing civil society?
- What are the general principles that should govern government-civil society relations? Specifically:
 - For organizations not receiving public funds should registering with a public authority be compulsory or voluntary, and if so, what kind of regulatory requirements are placed on the functioning of these organizations?
 - What should be the role of a vibrant

civil society in promoting the public interest? What kinds of organizations should the government support?

- What specific policy recommendations should be considered in promoting funding of citizen organizations?
 - What kind of funding mechanisms should the government create?
 - How should the government encourage private indigenous funding to citizen organizations, in particular with regards to fiscal incentives?
 - Whether and how should the government direct international

donor assistance to the citizen sector? With regards to multilateral funding? Bilateral funding? Non-government institutional and private foreign funding?

- Should policy determine which sectors and organizations should be given priority? If so, what should be the criteria for qualification?
- How should a confidence-building policy dialogue between government and civil society be structured for a more constructive partnership in addressing social issues?

Appendix 2

Review of Selected Sectoral Policies

Current government policies are favorable to the citizen sector, in that the role of civil society organisations in building a more stable, equitable and tolerant society is increasingly acknowledged in sectoral policies (education, health, water supply, social welfare, and women's development). Positive developments include sectoral policy formulation on public-private partnership, institutional role in the devolved district systems, and increased government funding for CSOs, particularly those delivering basic social services. The important government policy documents that set out current government thinking on the role of civil society are outlined in this section.

a) Interim Poverty Reduction Strategy Paper, June 2001: The Government of Pakistan's Interim Poverty Reduction Strategy Paper (I-PRSP) states:

“Pakistan's I-PRSP is a testament to the government's pro-poor policies and an affirmation that poverty reduction is not a battle that can be won by the efforts of any single government agency or department. In fact, it is a war that has to be fought concurrently on all fronts with keen involvement of all government agencies, the civil society, and the private sector.”

One of the key strengths of this strategy lies in its recognition of the fact that the government alone cannot deliver all the social services at the grassroots level. This reality-check led not only to a formal recognition of the role of public benefit civil society organizations in human development, but also a commitment to increasingly involve them as partners and deliverers of social services. The Paper states:

“The Government appreciates the contribution that the NGO sector can play in social development and providing help to the vulnerable. This is reflected by the institutionalized support to NGOs through a range of government ministries including the Ministry of Women Development, Social

Welfare and Special Education that is the focal point for NGOs. It also provides financial support through the National Council for Social Welfare and the National Zakat Foundation and similar bodies in Provincial Governments. The Poverty Reduction Strategy recognizes the significant role that NGOs can play in social service delivery, advocacy, and empowerment.”

In order to directly address the core manifestations of poverty, the PRSP commits to create wholesalers of credit that provide lines of credit to micro finance organizations. The strategy mentions the Pakistan Poverty Alleviation Fund, the Agricultural Development Bank of Pakistan, the First Women Bank and the National Rural Support Program. The PRSP is also committed to creating the Micro Finance Bank and has launched the Khushali Bank with a projected loan portfolio of Rs. 7.6 billion.

b) Education Sector Reforms (ESR) Action Plan 2001-04: The ESR includes Public-Private Partnerships to improve access and quality of education. It recognizes the role of the private sector:

“Recognizing immense contributions of the private sector and NGOs as illustrated in the recent private sector educational survey (FBS: 2001) the ESR is anchored in development of partnerships between the private sector, civil society organizations and the public sector.”

The ESR commits to restructure the Education Foundations that were established with state endowments to provide support to nonprofit private sector initiatives on a formula: one-third government grant, one-third soft loan, and one-third private equity. The foundations were expected to catalyze and fund private sector educational initiatives for the under-served population. The plan is to provide them with greater autonomy from the government. The ESR also proposes to include private education initiatives in the Education Management Information System. It mentions incentives for private enterprise to improve public schools, establishment of secondary level examination boards in the

private sector and improvement in curriculum by use of private publishers and management of public schools by private sector.

c) Health Sector: The Health Policy in the PRSP talks about decentralization of the management of the network of primary healthcare centres. Regarding the role of the citizen sector, it makes a reference to strategy but does not detail the implementation arrangements.

“Instituting public-private partnerships by transferring un-utilized/underutilized health facilities up to the secondary health-care level to NGOs, local bodies, and the private sector.”

d) The Interim Population Sector Perspective Plan (2002-2012): The plan dedicates a chapter to the non-governmental sector, and includes specific initiatives to increase participation of the private sector. The Eighth Five-Year Plan 1993-95 created the National Trust for Population Welfare (NATPOW) in 1995. NATPOW envisioned 20 percent of all population services to be provided through citizen organizations.

“The aims and objects of the Trust shall be to help the Non-Governmental Organizations (NGOs) and the private sector in the fields of population welfare, in particular family planning and mother and child health and in these fields, establishing centres of excellence, activate existing institutions and centres, and build innovative new institutions.”

NATPOW never enjoyed the autonomy it was designed to and fell foul to political influence and mismanagement. The new policy aims to revive NATPOW as an autonomous, funding body. Projects will be vetted and approved by an appraisal committee of the board; there will be an independent private sector audit. NATPOW will comprise members, including from citizen organizations that will select the “NGO directors” on the Board. The policy does not state the full composition of the Board. NATPOW is expected to resume funding of NGOs in the population sector. It is also expected to provide capacity building support and a forum to advocate population issues. While, the revival of NATPOW is a

positive development, it remains a government body, and it is not fully evident in the strategy how it would in effect remain immune from future misuse other than by good intentions.

The population sector perspective also provides a framework for the United Nations Population Fund and through it for other donors, to fund NGOs with a track record in the population sector. The projects would need to fit into the Population Welfare Program of the government, and would require government approval.

e) National Policy for Women Development and Empowerment of Women (2002): The national policy encompasses a range of areas that affect the social, political and economic situation of women in Pakistan. The policy defines the social and economic empowerment of women in education, health, legal aid and justice, the family and community, child labor, poverty and participation in the formal economy.

The means to achieve the objectives are through the Ministry of Women Development to play an effective role as catalyst and for coordinating and monitoring. The Ministry is to be strengthened and structured to ensure effective gender mainstreaming at all levels. Although a comprehensive implementation strategy is yet to be chalked out, the national policy will be implemented through active involvement of the Women Development Departments (WDDs) and the National Council for Social Welfare at the provincial and district levels. The Ministry of Women Development also plans to establish effective linkages with other line ministries, institutions and departments at all levels and will seek to facilitate facilitate implementation through public/private sector coordination mechanism especially with NGOs.

The policy was formulated through a countrywide consultation with key stakeholder groups including federal and provincial government functionaries, women councillors, representatives of NGOs, experts, educationists, intelligentsia, students, representatives of international agencies and

donors, ordinary women at the grassroots level including lady doctors, lady farmers, teachers and paramedics, and women from the minority groups.

Five consultative workshops were held, one each at the four provincial headquarters and Islamabad. These were attended by over 500 representatives of the stakeholders. In addition, focus group discussions were held in selected districts of the North-West Frontier (Swabi and Charsadda) and Sindh (Khairpur and Nawabshah) provinces to ensure the involvement of women at the grassroots level in the consultation process.

The draft policy document was widely circulated among experts, intelligentsia, educationists, women councillors, federal ministries and divisions and international agencies and donors to elicit their comments. It was also posted on the website of Ministry of Women Development and advertised in the newspapers to attract the broadest range of suggestions and feedback. An Editing Committee comprising of eminent professionals in the field analyzed the feedback and revised the draft to impart it a final shape.

f) World Summit for Social Development: Pakistan also has international commitments on building civil society. An important policy commitment was made by the Government of Pakistan when it became signatory to the Copenhagen Declaration on Social Development that emerged from the Social Summit organized by the UN in August 2000. The Declaration plan of action repeatedly emphasizes the need to strengthen civil society and the private sector:

“The ultimate goal of social development is to improve and enhance the quality of life of all people. It requires democratic institutions, respect for all human rights and fundamental freedoms, increased and equal economic opportunities, the rule of law, the promotion of respect for cultural diversity and the rights of persons belonging to minorities, and an active involvement of civil society ... we will promote an enabling environment based on a people-centered approach to sustainable development with broad based participation and involvement of civil society in the formulation and implementation of decisions determining the functioning and well-being of societies.”

The Declaration plan of action also identifies the need to provide an enabling legal framework for civil society:

“We commit ourselves to creating an economic, political, social, cultural and legal environment that will enable people to achieve social development. To this end, at the national level, we will: (a) Provide a stable legal framework, in accordance with our constitutions, laws and procedures, and consistent with international law and obligations, which includes ... encouragement of partnership with free and representative organizations of civil society; (b) ... strengthening the abilities and opportunities of civil society and local communities to develop their own organizations, resources and activities.”

There does not seem to be any formal follow-up on the Social Summit commitments in Pakistan.

Appendix 3

Bibliography

Bonbright, David. General Background: The Enabling Environment Initiative. Pakistan Centre for Philanthropy. Islamabad.

Presentation by Lester M. Salamon Johns Hopkins University. Annual Conference Coalition of National Voluntary Organizations Ottawa, Canada September 18, 1999.

International Centre for Not-For-Profit Law: *Handbook on Good Practices For Laws Relating to Non-Governmental Organizations*, Prepared for the World Bank. September 2000.

United National Declaration on Human Rights Website.

David Bonbright and Asad Azfar. *Enhancing Indigenous Philanthropy for Social Investment*. Islamabad: Aga Khan Development Network. August 2000.

Johns Hopkins Comparative Nonprofit Sector Study for Pakistan Preliminary Estimates, May 2002 prepared by the Social Policy Development Centre in collaboration with the Aga Khan Foundation (Pakistan).

Aisha Ghaus-Pasha, Hafiz Pasha and Muhammed Asif Iqbal. *Nonprofit Sector in Pakistan: Government Policy and Future Direction, Working Paper No. 2*. Karachi: April 2002. Social Policy Development Centre.

Finance Division and Planning Commission. *Pakistan: Interim Poverty Reduction Strategy Paper (I-PRSP)*. Islamabad: November 2001. Government of Pakistan.

Interim Population Sector Perspective Plan 2012. Islamabad: February 2002. Government of Pakistan.

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In recent years, the Aga Khan Development Network through the Aga Khan Foundation has applied itself to strengthening civil society. The Foundation's support to this emerging sector is expressed through its Initiative on Indigenous Philanthropy. The Pakistan Centre for Philanthropy (PCP) has been established as a consequence of the recommendation made by the Initiative on Indigenous Philanthropy.

The PCP is mandated to promote philanthropy in Pakistan through:

- enhancing the efforts of potential social investors;
- encouraging civil society organizations to transparency and performance accountability;
- building capacity of the government and working with government and other stakeholders to promote an enabling legal and fiscal framework for philanthropy; and
- raising awareness in society about the significance of giving and volunteering.

Motivated by the need to reduce dependence on foreign aid and rely instead on indigenous resources, the Centre is working to enhance information and knowledge of effective philanthropic practices, provide support services and convene diverse constituencies of philanthropy to deepen understanding of the potential for effective philanthropy, in particular, for indigenous social investment.

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