Creating an Enabling Legal Framework for Nonprofit Organisations in Pakistan
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Preface

It is an honour and privilege for me to present the first and seminal research publication by the Pakistan Centre for Philanthropy on the reform initiative to create an enabling environment for the growth and development of nonprofit organisations operating for public benefit. This report narrates the journey from the impulse to strengthen civil society and nurture its role in social development to the crafting of a legal, fiscal and institutional framework that enjoys the confidence of the stakeholders, meets the requirements of governance and protects the autonomy and freedom of association.

The Enabling Environment Initiative (EEI) has been the joint labour and passionate commitment of many civil society organisations, government officials, political leaders, development professionals, academia and business community to contribute to the discourse on revisioning the role of the State and its relations with civil society. The EEI has centred this discourse on the template of a modern, Muslim State visioning an active and responsible role for its citizens through associational activities.

In September 2001, the Government of Pakistan commissioned the Pakistan Centre for Philanthropy to undertake a study of all laws that pertain to civil society organisations, in particular, those that operate as nonprofit organisations and work for public benefit. The legal review and analysis was to be paralleled with a country-wide consultation with a broad range of stakeholders to ascertain their views on the prevailing regulatory system and seek suggestions for a new framework that would enable civil society organisations to function without hindrance, while ensuring that governance, transparency and accountability are not compromised.

The Centre embarked on this enormously challenging exercise in November 2001, constituted a team of eminent national and international experts and organised more than 65 consultations and meetings across the country, engaging more than 2200 participants. These forums were held at the federal, provincial and district levels and included community based organisations, media, district councillors, field officials, political leaders, non-governmental organisations, local associations, ministers, governors, senior decision-makers, national and international funding and support service institutions.

This multi-layered and complex canvas of prevailing regulatory systems, implementing machinery, legal diktat, actual practices, compulsions of the State, centrifugal forces of an array of anti and non-governmental interests, the rising aspirations of the people and the undeniable and expanding role of civil society formed the mosaic of the EEI consultative process. Diverse perspectives, rigorous analysis and examination, critical review, reflective deliberations and intense debate characterised the exercise undertaken by PCP to develop a consensus-based legal framework for the growth and development of civil society organisations that operate in the public interest.

Through the entire process that finally culminated in a set of recommendations presented to the government in August 2002, the Board of Pakistan Centre for Philanthropy remained actively engaged, providing guidance, monitoring progress, participating in the consultation forums, and giving serious consideration to all the views of the stakeholders. The Board ensured transparency and openness in the approach, intellectual integrity and rigour in the research and analysis and independence and objectivity in the formulation of
recommendations for an enabling regime.

Learning lessons from the previous experience of government-dictated legal reform, which resulted in adversarial relations, the present government broke from the traditional practice and enabled an independent process to take place. The then Minister for Social Welfare, Dr. Attiya Inayatullah is to be credited for this bold and forthright approach. While she facilitated the process within government, she reposed confidence in the ethos of civil society organisations and in the ability of the PCP to honour the intent and maintain the integrity of the process.

It is my hope that this report will be a substantive contribution to the literature on social development in Pakistan; that it will be of value to the international community as it seeks a better understanding of Pakistan and its societal forces and that it will inform all those who are interested in creating a better environment so that the rich potential of citizen action can be actualised for public benefit. The corollary to this report “Stakeholder Perspectives” captures the voices and opinions of citizens that informed the EEI. I would urge all interested readers to read both volumes to gain a fuller understanding of the nature of the process and the content of the debate.

On behalf of the Board of Directors of the Pakistan Centre for Philanthropy, I would like to acknowledge the generous support of the European Union, which made it possible for the Centre to undertake this vast exercise and the invaluable assistance provided by the Aga Khan Foundation and the Aga Khan Development Network to the Enabling Environment Initiative.

The experience of the Enabling Environment Initiative has been for me personally enriching and exciting, and in my capacity as Chairman of the Board, I feel that I can convey the same sense of deep involvement for each Board member.

Dr. Shamsh Kassim-Lakha, H.I., S.I.
Chairman, Board of Directors, Pakistan Centre for Philanthropy
President, Aga Khan University, Karachi
Acknowledgements

This report is the product of deep and extensive engagement and commitment of many individuals and vital institutions that came together to contribute in significant and diverse ways to the creation of an enabling environment and framework for citizen action. As the convener of the Enabling Environment Initiative (EEI) team, it is my privilege to acknowledge the immense intellectual input, the immeasurable energy, time, effort and unstinting support of all the team members.

The wide and rich experience of seventeen eminent citizens that comprise the Board of Directors of the Pakistan Centre for Philanthropy guided the work of the EEI team and contributed in large measure to ensuring that the process remained transparent and the content relevant and substantive. Led by the Chairman, Dr. Shamsh Kassim-Lakha, the Board devoted numerous meetings to reviewing the progress, debating the issues, providing insight, objectivity and an independent perspective. Board members attended consultations across the country; singly and jointly they brought intellectual rigour to the complex debate, sustained a high level of engagement over the entire ten months period and imbued the whole reform effort with credibility and integrity. The team and I remain indebted to the Board for its vision and invaluable support.

Dr. Attiya Inayatullah, the then Minister for Social Welfare, Special Education and Women's Development and Secretary, Mrs. Parveen Qadir Agha gave unstintingly of their time to facilitate the meetings with federal ministries and provincial governments. Flagging it as a critical part of the government's reform agenda, the Minister successfully garnered the interest and support of senior decision-makers, including Governors and Ministers. Acknowledgement is also due to the Minister and the Secretary for honouring the independence of the process, respecting the diversity of stakeholder perspectives, reflecting upon criticism and dedicating laborious hours and days to read iterations of the draft law and its supporting documents.

Mr. Zubair Bhatti, full-time Enabling Environment Initiative Coordinator, pledged all his time and energies over a ten month period to plan, coordinate, conduct, research and write on the Initiative. Demonstrating inexhaustible commitment, Zubair has been the anchor of a demanding, sensitive and challenging assignment. He has written, refined and edited numerous chapters of this report, demonstrating and demanding exacting standards. Zubair's research skills, probing mind and writing abilities have been invaluable assets in producing this report. He also has authored the accompanying volume on the consultation process, narrating the process and sanitizing the perspectives of a broad spectrum of stakeholders.

From its headquarters in Geneva, AKF generously loaned us its NGO Enhancement Programme Director, Mr. David Bonbright who served as editor-in-chief for this report. David was deeply involved from the earliest stage of conceptualisation of the Enabling Environment Initiative, the drafting of the MoU, through the planning, the working group sessions and consultation forums, to the rigorous and meticulous exercise of report writing and editing. Finally, he coordinated the involvement of international experts, and undertook the survey of international experience.

Mr. Salman Akram Raja served as the principal legal advisor and main legal drafter. He brought to the entire process, not only his par excellence legal expertise, but also the
unique distinction and experience of having authored the 1999 NGO Bill, which was the principal legal statement of the NGO community in reaction to the government's heavy-handed NGO Bill of 1996. Salman gave of his time, legal acumen and intellectual energies unstintingly throughout the process, combining a sharp legal mind and the commitment of a human rights advocate to produce the draft law for nonprofit organisations (NPOs). He remained at the post through successive iterations of the draft and truly earned the honour of being the principal author of the EEI Nonprofit Public Benefit Organisations (Governance and Support) Act 2003, included in this report at Appendix-II. Mr. Zahid Hamid chaired the panel of legal advisors, while Syed Mansoor Ali Shah and his firm identified the legal issues and helped prepare the discussion and working papers for the first round of consultations. Syed Mansoor Ali Shah also made very informative presentations at various forums.

Qazi M. Alimullah came aboard as a consultant to lead our engagement on fiscal issues. His experience, wisdom and drive were the principal reasons for our early success in changes in the “fiscal support regime”, as he referred to it. His passing in the final days of the preparation of this report is an inestimable loss, not only to the Enabling Environment Initiative, but also to our nation, which Qazi Sahib served with unstinting dedication for 40 years.

The Aga Khan Foundation (Pakistan) provided both financial and institutional support for the Enabling Environment Initiative, staying engaged both with the process and the content of the recommendations, and brought to the exercise the value of its rich institutional experience with civil society. Mr. Ahmed Shaikh, AKF (P) Programme Coordinator, informed the dialogue process with the perspectives gleaned from years of PAKSID programs. His participation in the development of the overall strategy for the examination of the framework enabled the Centre to speedily embark on such an extensive assignment. PAKSID sources its funds from AKF Canada and CIDA, both of which engaged with the Enabling Environment Initiative in a way that has been at once substantive and unobtrusive. This is a rare and much-prized donor quality.

The NGO Resource Centre, represented by Mr. Qadeer Baig, Deputy Director, contributed its institutional resources in full measure to the EEI. Of particular value was the participation of Mr. Baig at all the consultation forums and team meetings and his facilitation of focus group discussions. Bringing to the discussions his considerable knowledge and experience, he was also instrumental in bringing into the discourse all the NGO coalitions, networks and the Pakistan NGO Forum. His experience enriched the understanding of the teams about issues and ground realities that affect the operations of civil society organisations. The numerous years of NGORC's institutional experience with the citizen sector, its publications and the knowledge gleaned from its forums and research work proved to be of immense relevance to the initiative in the creation of a new legal framework for CSOs.

The Pakistan Centre for Philanthropy greatly appreciates the support and logistical assistance provided, especially for the district consultations, by the Trust for Voluntary Organizations, Punjab Rural Support Program, Sarhad Rural Support Programme, Pakistan Integrated Development Society, and the Indus Resource Centre. The valuable databases maintained by these institutions, and their intellectual and institutional resources, contributed in significant measure to the success of the consultations.

Mr. Richard Fries, who also made presentations on the Common wealth experience to key stakeholders in Islamabad, Lahore and Karachi, gave seasoned advice on technical regulatory issues and gave generously of his time as the international reviewer of the report. The International Centre for Not-for-Profit Law undertook a
number of short country reports. Ms. Jessica Los Banos and Ms. Carol Lerma provided an analysis of the Philippine experience; Ms. Fely Soledad, who leads the Philippine Council for NGO Certification, provided full details of that trend-setting programme; Professor Mark Sidel shared the ongoing work product notably the research template -- of the Asia Pacific Philanthropy Consortium’s “Philanthropy and Law in South Asia Project”. Mr. Noshir Dadrawala of Indian Centre for the Advancement of Philanthropy was consulted for comparisons of the legal regimes of India and Pakistan; Professor Lester Salmon, Dr. Simon Zadek, Professor Lee Irish and Professor Karla Simon reviewed the analyses of the regulatory issues and former Director-General of the Ministry of Social Welfare in South Africa, Dr. Graeme Bloch, provided insight into the South African regulatory system set up after independence.

PCP acknowledges with great appreciation the critical input provided by the Review Panel, chaired by Mr. M. J. Jaffer and comprising Mr. Saeed A. Qureshi, member PCP Board of Directors, Dr. Tariq Hassan, Special Advisor to the Minister of Finance, Mr. Richard Fries, former Commissioner, Charities Commission of England and Wales and Ms. Shehla Zia, renowned human rights lawyer and activist.

Acknowledgement is also due to individuals who contributed to various chapters; these include Mr. Mohammad Jehanzeb Khan, Mr. Nabil Awan, Mr. Shakeel Ahmed, Mr. Shoaib Ali Syed, Mr. Zafar H. Ismail and Dr. Syed Tauqir Ali Shah. In addition to contributing to the legal analyses, Board member Mr. Mahomed J. Jaffer also reviewed the substantive legal chapter of the report; his sharp legal eye provided a critical lens for examining the substance and quality of the legal research. PCP is also grateful to Dr. Humayun Khan, former foreign secretary, Government of Pakistan and former Director of the Commonwealth Foundation, for meticulously reviewing the report and for his invaluable input.

Without the fulsome and extremely industrious support of the staff of PCP it would not have been possible to coordinate such an extensive exercise and to produce a quality report. Secretarial staff, Mr. Javed Iqbal and Mr. Alie Abbas Jafri worked meticulously for long hours and endless months, weekends included, dealt with massive loads of correspondence and documentation; the Administration and Finance Manager and Officer, Syed Mohammad Ahmed and Mr. Rashid Rafiq dealt with the logistical arrangements for over 2200 participants at more than sixty-five venues, maintained accounts and provided backstopping support. Report formatting and designing was done by Mr. Tanvir Malik, Knowledge Management and Communications Specialist. Ms. Bushra Asif, Research Associate, worked closely with editors, Mr. David Bonbright and Mr. Zubair Bhatti on the final draft. To each staff member, I convey my appreciation for their dedication and commitment well beyond the call of duty.

Finally, the PCP acknowledges the very generous and timely support provided by the European Union for the EEI, which made it possible for PCP to conduct a country-wide consultative exercise, engage experts and produce a consensus-based draft law, along with other recommendations for the governance and support of nonprofit organisations in Pakistan.

To all those who gave their time and contributed their thoughts for the larger interest of strengthening civil society, we dedicate this report and our continuing efforts to work for an enabling environment for citizen action.
Executive Summary

Two things have changed fundamentally since the prevailing regulatory laws for citizen organisations were promulgated in the late nineteenth and mid-twentieth centuries.

First, the size, scope and capacity of citizens' associational activities for public benefit have expanded dramatically. While informal associational activities especially of a self-help and mutual support kind have characterised village life for millennia, formal organisations numbered only in a few hundred at the time of Independence. And these were mostly confined to a narrow range of relief and welfare activities. Today, Pakistan's 45,000 citizen organisations employ about 300,000 persons, utilise 200,000 full time volunteers, and engage in a wide set of activities ranging from traditional welfare functions to sophisticated financial services, technical advice in areas like agricultural extension, water and sanitation, and housing construction. A large proportion (38 percent) is not registered under any law. Those that are registered find very little relevance from the regulatory system for their work.

Second, the roles and functions of government have changed dramatically. In Pakistan, the discernible trend is one in which the State shifts from being the monopoly provider of social services, to creating an enabling environment for a variety of non-State actors to deliver a wide range of important social services. Put another way, the State is moving away from delivery, command and control towards enablement, facilitation, and protection. This is a change of paradigm in the true sense of that overused term, and has profound implications for the regulatory role, which in a certain sense is even more important in the new development governance paradigm.

The Enabling Environment Initiative aims to realign the legal, regulatory, and fiscal framework with these changed realities after building consensus of major stakeholders through a nation-wide consultative process. The animating idea behind the Enabling Environment Initiative is that a more enabling environment for citizen initiative that operate for public benefit could unlock significantly greater contributions to national development than are enjoyed today. It could make it possible for Pakistan's 45,000 citizen organisations to do more and do it better. It could incentivise business and individuals to practice more “social investment” the giving of money, time and in-kind support through organisations of citizens working for public benefit. And it could enable government to concentrate at what it is best at, and be more efficient and more effective in its management of scarce resources.

Pursuing this aim of a consensus-based enabling legal framework, the Centre met with over 2,200 stakeholders in more than 65 consultations across the country over a ten-month period starting November 2001. In all the provincial capitals and in some outlying districts, government, citizen organisations, businesses, research organisations, academia and the media were engaged to solicit their opinions and concerns.

In the Enabling Environment Initiative consultation process, the laws that govern the citizen sector and administrative mechanisms and practices relating to these laws were extensively debated against a backdrop of international trends and new models for “good governance”, including modern approaches to regulation. Highly reputed experts from Pakistan and outside were recruited to provide input on both prevailing systems and emerging best practices. The teams made comprehensive presentations on
various dimensions of the regulatory framework, raised questions, facilitated group discussions, and contributed to the drafting of this report and the proposed new legislation. A Review Panel composed of eminent legal, financial and development sector minds added yet another level of examination and reflection on the proposed reforms, in particular, a new regulatory law and an independent citizen sector regulatory body.

The continuous oversight and deep engagement of the Pakistan Centre for Philanthropy’s Board of Directors lent immense value to the rigorous review and refinement of the Enabling Environment Initiative recommendations. The Board held numerous meetings to deliberate on the wide range of perspectives emanating from the consultations and examined each suggestion through an independent lens, relating it to the overall objective of promoting the growth and development of citizen organisations and the creation of a framework that encompasses the regulatory role of the State without compromising the independence and autonomy of citizen organisations.

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The Aga Khan Foundation and its Karachi-based NGO Resource Centre have been key institutional partners throughout this exercise.

Extensive consultation has yielded a fair representation of opinion and participation from key stakeholder groups. Diverse and at times conflicting views were passionately expressed: there can be no doubt this is a topic of considerable interest across a wide spectrum of stakeholders. While consensus among those consulted could not be achieved on a number of issues that confront the citizen sector, this should be seen as an accurate reflection of the diversity and plurality of Pakistani society. It also points to the need for more dialogue to build common understanding, trust, and mutual respect among all stakeholders. The Enabling Environment Initiative taken as a whole suggests that, given a commitment to such a compact building dialogue, wide and deep agreement about the essential elements of new governance and regulatory regime can in time be forged.

While areas of disagreement are apparent, lessons to guide the way toward broadly shared support for a new regulatory framework require more effort to identify. This summary list of consultation outcomes reflects both the diversity of opinions expressed and seeks to mine the raw precious stones of a nascent consensus that next must be cut and polished into strong and broadly based stakeholder support:

- Senior government decision-makers, recognising the challenges of governance today, unanimously welcome citizen organisations to participate in national development. Government acknowledges that it needs help from all possible sources to alleviate widespread poverty.

- Government, discussing the features of a new framework, however, displays highly diverse attitudes and behaviours toward citizen organisations. Despite a core of enlightened officials, particularly at the most senior levels, the overwhelming approach is one of command and control rather than facilitation and support.

- The two major stakeholders, government and citizen organisations operating for public benefit -- distrust each other. This credibility gap mars all discussion on the subject. Many from both the sectors see each other as corrupt and ineffective. Ongoing structured and extensive policy dialogue toward a new “social compact” is required to redress the credibility gap.

- There is need for the stakeholders to achieve consensus on the exact contours of the role that the citizen sector can play in Pakistan. The special focus of this discussion should be the role of advocacy groups, whose contribution to the nation is widely questioned, especially by government.
The law is an instrument of policy. Legal reform should follow and not precede policy. The State must articulate a policy on the citizen sector; in doing so it must involve civil society and other stakeholders.

Organisations working at the grassroots level are often seen to be willing to engage with government and to seek support for training, patronage and funding. In contrast, larger organisations, almost all urban, want as little government intrusion as possible. Few, urban or rural, experience government as supportive. Some have experienced unfounded persecution.

Most citizen organisations could be more active in demonstrating their own accountability. To some extent, they shield a lax approach to accountability behind the existing weaknesses in the formal regulatory system.

Presence of multiple regulatory laws provides choices with widely differing registration and reporting regimes. At best, choice enables organisations to adopt the legal regime most proximate to their circumstances. At worst and this is the situation in Pakistan today it precludes progress towards the kinds of accountability standards that can raise societal confidence in citizen organisations that hold themselves out as operating for public benefit.

On balance, it is the general sentiment that laws governing nonprofit organisations with public benefit purposes should conserve the choice that is present currently in the legal regime, while making sure that duplication does not take place. The same kind of organisations should be treated similarly with a minimum acceptable standard of accountability, under a common law, but those opting for higher standards should be facilitated.

Stakeholders expressed strident and divergent opinions on whether registration could or should be made compulsory. Pakistan NGO Forum and other citizen activists argue for voluntary registration on the basis of “freedom of association” guaranteed by Article 17 in the Constitution of 1973. Most grassroots organisations are ambivalent. Some support compulsory registration. Almost all recognise that the benefits conferred by registration -- such as increased recognition, increased credibility, and access to government and donor funds are substantial. Government tends to advocate compulsory registration, but when pressed admits that the rationale lies in the recourse to public funds. A point of convergence in the heated discussion may be that registration be voluntary for small organisations and compulsory for organisations that access public (including government) funds on a significant scale. The interests of society can best be served by focusing the State’s limited resources on the regulation of larger organisations that typically rely on funds raised from the public, including from external private and public sources.

The authority and power that is ascribed to government under the Voluntary Social Welfare Agencies Ordinance 1961 does not suit the new development governance paradigm. It is mechanistic and overly rigorous, with provisions that can neither be implemented by the government nor be complied with by registerees. The dominant function of the Ordinance is policing. This is directly contrary to the declared policy of government to engage with citizen organisations as partners. The law should be repealed.

While many citizen organisations are content with the merest of regulatory burdens associated with the Societies Registration Act 1860, this law does not enable citizen organisations to gain wide societal legitimacy. While its provisions are appropriate for associations of persons pursuing activities that are private in nature such as a recreational club societies pursuing public benefit purposes would be better served through a modern regulatory regime.
New modern methods of regulation and monitoring e.g., document-based monitoring and reporting requirements graded according to size should be established. The *sine quo non* for an effective accountability framework is an efficiently run public registry of all citizen organisations operating for public benefit.

Government wants citizen organisations to report information on foreign-sourced funding for reasons of development planning and national security. Citizen organisations are not averse to providing this information on foreign funding, but they only apprehend costly, debilitating delays in government approval mechanisms if foreign funds are routed through government. For this reason, they would support an *ex post facto* reporting regime, which, it is noted, also meets government objectives.

There is agreement that major regulatory functions should be based in every district for better access and increased credibility. The one action of the government that is widely applauded is the delegation of registration powers to district-based officers.

There is agreement that practices and implementation of laws is very poor. Government staffing and financial capacity is limited. Decision-making can be arbitrary, especially at field level. Even well intentioned legislation mutates into an ugly beast in the hands of a malicious regulator.

The access of citizen organisations to state fiscal incentives is time-consuming, frustrating, mired in impossible red tape and arbitrariness. This needs to be rectified. More transparent systems need to be developed for verifying citizen organisations for tax benefit purposes.

Participative approaches relying on serious self-regulation may effectively ameliorate the problem of weak implementation of the formal regulatory regime. Some participants suggested a participative, representative, autonomous regulatory body composed of the various stakeholder categories as one such mechanism. Others opposed such an idea because of a concern that it would inevitably be subject to undue political interference; that its independence and probity would be compromised by the government of the day.

Based on these consultation findings, the Pakistan Centre for Philanthropy formulated a set of recommendations for legal, fiscal and governance reforms for promoting the work of nonprofit organisations working for the public benefit. These recommendations represent a deliberate and bold break from past practice and, if adopted, would enable the kind of “fresh start” that most stakeholders would actively endorse.

The five major recommendations are:

- **Promulgation of a new law, Nonprofit Public Benefit Organisations (Governance and Support) Act 2003,** to provide a positive alternative for citizens establishing and operating nonprofit organisations for public benefit. The Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 should be repealed, and organisations now registered under it would fall under the new law. The Societies Registration Act 1860 would be amended to limit its applications to societies that do not pursue public benefit purposes. Societies pursuing public benefit purposes would come under the new law. Nonprofit organisations currently incorporated under the Companies Ordinance (Section 42) are not affected in any way by the new law;
- **Establishment of statutory autonomous and representative regulatory bodies for public benefit organisations at the federal and provincial levels as the implementers of the new law;**
- **Amendment to fiscal laws and rules to broaden the scope of organisations eligible for fiscal benefits to cover public**
benefit organisations as defined by the new law and provide for possible outsourcing of the independent verification of compliance with the conditions for receiving fiscal benefits (This reform was partially actualised in Finance Ordinance 2002);

- Exclusion of organisations registered under the new nonprofit organisations law from the Charitable Funds (Regulation of Collection) Act 1953;

- Development of a comprehensive national policy on the citizen sector through stakeholder policy dialogue to consolidate and ground legislative reforms in a confidence-building consultation process leading to a “national compact” for citizen participation for public benefit. Separate from this report, Pakistan Centre for Philanthropy has prepared a “policy framework paper” that government and citizen organisations may use to guide ongoing policy development dialogue.

Because of the timing of the annual budget legislation, the first, and most positive, response to the recommendations came from the Central Board of Revenue. In his budget speech on 15 June 2002, the Finance Minister announced a set of reforms that included the Enabling Environment Initiative fiscal recommendations. These were included in the Finance Ordinance 2002. The details of these substantial changes are set out in chapters seven and ten of this report.

The Pakistan Centre for Philanthropy presented its recommendations to the Ministry of Social Welfare, Women Development and Special Education in July 2002. These were subsequently discussed at a high level government meeting held in Islamabad on 1 August 2002 chaired by Dr Attiya Inayatullah, the then Federal Minister for Social Welfare, Women Development and Special Education, and was attended by the then Finance and Law Ministers, Deputy Chairman Planning Commission, Chairman Central Board of Revenue, provincial ministers, and other senior officials of the federal and provincial governments.

In the waning days of that government the decision was taken not to accept the recommendations in full. Instead government expressed a preference for a modified version of the proposed draft law that excluded the proposed autonomous statutory regulatory body. Government also chose to not to extend the new law to the Societies Registration Act. This modified draft “Nonprofit Organisations (Governance and Support) Ordinance 2002” was placed before the Cabinet in September 2002.

The PCP Board of Directors at its meeting on 20 August 2002 deliberated at length on the Enabling Environment Initiative recommendations and the government response. It recognised the practical wisdom of the government's position in favour of a phased and modular reform approach, particularly in light of its short remaining tenure. At the same time, it reaffirmed the Enabling Environment Initiative recommendations and in particular their implicit recognition of the need for a holistic approach. It recognised the piecemeal reform in this instance would leave the vast majority of citizen organisations outside of the new regulatory framework. The draft law prepared by Pakistan Centre for Philanthropy embodies a vision for a regulatory, governance and support framework for all public benefit citizen organisations in Pakistan. The law is based on the premise that the regulatory regime should be facilitative without compromising the requirements of accountability -- transparency, public disclosure and good internal governance.

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1. Towards an Effective Assurance Framework

At an 11 May 2002 seminar, called to address terrorist attacks on doctors in Karachi, retired Sindh Province High Court Judge Mr. Shaiq Usmani put it plainly, “Pakistan has become a soft state. There is no rule of law in this country whatsoever. Anyone can do whatever he wants.”

Under such circumstances, it is highly unlikely that organisations formed by citizens for altruistic purposes will be widely trusted. Rather, they will be viewed with the same suspicion of self-dealing or corruption that characterises a prevailing attitude towards the State.

Thankfully, this pervasive scepticism about institutions operating for public benefit, public and private, is not the whole story. Paradoxically, there is a profound reservoir of willingness to “do good” in Pakistan that is often translated into action, and at an impressive scale. The first household survey on individual giving and volunteering in Pakistan discovered that Pakistanis are one of the most volunteering and giving people in the world. Over half of all Pakistanis make charitable donations and volunteer their time each year. The poor give proportionally more than the rich. The volume of annual financial giving is approximately five times the amount that Pakistan receives in foreign aid grants.  

The Enabling Environment Initiative was conceived by the Government of Pakistan and implemented by the Pakistan Centre for Philanthropy to set government and civil society together, on a path to create a policy, legal and fiscal environment that provides assurance to the public regarding the probity and performance of citizen organisations. From November 2001 to August 2002, PCP staff travelled the length and breadth of Pakistan and spoke with thousands of citizens about how people might contribute to national development, and how government might create an enabling environment for those contributions.

What we found engenders hope, but also gives pause. The hope is grounded in the inexhaustible and inspiring willingness to “do good” for Pakistan that lies waiting in most Pakistani hearts. But it is also grounded in the attitudes and practices of citizen organisations. We learned that the overwhelming majority of Pakistan’s 45,000 active citizen organisations are only too willing to accept moral, legal and operational forms of accountability. For their part, government leaders see the need for a change from the past legal and regulatory regime that has too often been used to persecute rather than enable citizen organisations. Business is ready to do its part to support effective sustainable development programmes. In sum, the ground is ready for the seeds of serious reform.

The Enabling Environment Initiative consultations also contain a dose of caution for reformers. Citizen organisations widely distrust government intentions. Even where good intentions are accepted, there is widespread scepticism about official capacity to get it right. In his closing remarks to the Enabling Environment Initiative Federal consultation in Islamabad on 20 March 2002, Justice (Retd) Shafi-ur-Rehman implicitly affirmed the basis for this when he noted that even the best reform law would fail without “machinery to implement it, finances to back it, and personnel to administer it.” Dr. Hafeez Shaikh, Minister Finance and Planning, Government of Sindh, speaking at the Karachi consultations on 10 January 2002, advised that that there was a need to have a separate body located outside government to regulate citizen organisations. “When the government is in control, the psychology of
total control takes over”, he said. This independent body, he said, should emphasise facilitation. “We should focus on quality and reduce the quantity of regulation,” he said.

Outside an enlightened core of political leadership there is a remarkably limited view of citizen organisations, and almost no grasp of what is described in this report as the new development governance paradigm. Most public officials are far more inclined to view citizen organisations as competitors rather than partners, and as potential self-dealers rather than generators of public benefits. At best, they tend to view citizen organisations narrowly as potential agents of government programmes rather than as equal partners in social development.

This report sets out in considerable detail the history and current dimensions of citizen initiative for public benefit in Pakistan. It analyses the citizen sector against the existing laws and regulatory framework, and within a set of ongoing relationships with the public agencies now charged with administering that regulatory framework. In so doing, it comes to what some may consider being rather stark findings and bold recommendations.

Certainly few can say that the Enabling Environment Initiative recommendations lack boldness. To those who may be taken aback, it may be some comfort to know that we came to embrace a sharp break with past practice with the greatest reluctance. Conservative by nature, we return again and again to the testimony heard across the country and our resulting diagnosis of the complex set of issues that are involved. It was dialogue and diagnosis that combined to inform our recommendations. In sum, we believe that these recommendations represent the minimum set of reforms capable of fulfilling the brief given to us by the Minister of Women Development, Social Welfare and Special Education, “to facilitate policy makers and stakeholders to come up with a consultation-based regulatory mechanism, which helps create an enabling environment for the development of civil society organisations, and provides for a regulatory role of the State without compromising autonomy and independence of civil society organisations.”

The Memorandum of Understanding for the Enabling Environment Initiative

The brief for the Enabling Environment Initiative is contained in a September 2001 Memorandum of Understanding between the Ministry of Women Development, Social Welfare and Special Education and the Pakistan Centre for Philanthropy. As background rationale for the Initiative it notes that:

- The reform of regulations governing Citizen Sector Organisations has been on the agenda of almost all the previous governments in the past decade. However, no positive progress could be made due to the inhibitory factors built in the regulatory system.
- The present regulatory framework for Citizen Sector Organisations, which includes twelve different laws, is not conducive to their growth and development.
- This government is interested in developing an enabling regulatory and fiscal framework and in building confidence and understanding with Citizen Sector Organisations working for development and poverty alleviation.
- Both the process (stakeholder consultation) and the outcome (enabling regulatory and fiscal framework) will promote good governance in Pakistan and may help in the implementation of the Devolution Plan, which aims to enhance the participation of civil society.
- In order to encourage the private sector including businesses and individuals to complement government efforts by making grants to support development and poverty alleviation, the current fiscal
framework needs to be made more enabling.

- A consultation-based reform process, and an outcome resulting in a new regulatory and fiscal framework, will reflect Pakistan's commitment to provide a conducive environment to the growth and development of Citizen Sector Organisations.

- To promote transparency and accountability in the operations of Citizen Sector Organisations, the government has already encouraged NGOs to adopt a code of conduct. In line with “good governance”, a reformed regulatory framework would recognise and strengthen the interrelationships between self-regulation and State regulation.

The Memorandum goes on to describe the objectives of the Enabling Environment Initiative:

- The overall objective is to facilitate policy makers and stakeholders to evolve a consultation-based regulatory mechanism that helps create an enabling environment for the growth and development of civil society organisations and provides for a regulatory role of the State as a facilitator without compromising the autonomy and independence of civil society organisations.

- To produce an enabling regulatory and fiscal framework for Citizen Sector Organisations and philanthropy that is supported broadly across society.

- To build confidence and understanding between government and Citizen Sector Organisations thereby establishing a new foundation for co-operation for sustainable national development and poverty alleviation.

- To enhance and evolve mechanisms for promoting transparency and accountability in the operations of Citizen Sector Organisations to underpin the formal regulatory system.

It calls for several outputs, all of which follow in this report:

- In order to advance this opportunity for policy and legislative reform, it is necessary to undertake a situation analysis, including a review of all relevant legislation, followed by a process of consultation with major stakeholders.

- The main output of the study process will be a report...that will feature recommendations for government and civil society organisations for reforms to the regulatory and fiscal framework. The body of the report will include:

  - A description and analysis of the dimensions (numbers, size, scope of activities, sources of funding, etc.) of Not-for-Profit Citizen Sector Organisations in Pakistan today, as well as the nature and extent of their relationships with government (including extent of compliance with existing registration and reporting requirements), and their potential to contribute to national development;

  - A synopsis and analysis of the various laws, including fiscal, and regulations, affecting Citizen Sector Organisations;

  - A review of all relevant existing proposals and studies pertaining to formal regulatory system as well as wider self-regulatory and confidence or capacity building mechanisms;

  - A review of international models and “best practices” of regulatory frameworks with special focus on developing countries in Asia;

  - Recommendations in the form of draft laws for an improved regulatory and fiscal framework;

- The report will be produced through consultations locally and internationally with relevant stakeholders in civil society, business and government so as to encourage explicit support for its recommendations and to constitute the basis for a new social compact between
Overview of the Report

Following this Introductory Chapter, Chapter Two sets the analytical framework of a new development governance paradigm in Pakistan, in line with ongoing government reforms and policy. It concludes with a statement of the potential contribution of the citizen sector to national development, and the related governance challenge to unleash that potential.

Chapter Three reviews the history of citizen action for public benefit in Pakistan and gives an empirically rigorous description of the dimensions of the nonprofit citizen sector.

Chapter Four sets out the methodology and consultation process of the Enabling Environment Initiative.

Chapter Five reviews and analyses the laws pertaining to nonprofit organisations in Pakistan, focusing on the two main laws under which most citizen organisations are incorporated or registered, the Societies Registration Act of 1860 and the Voluntary Social Welfare Agencies (Registration and Control) Ordinance of 1961.

Chapter Six describes the existing commitments and structures of government that are applied to the regulation of civil society.

Chapter Seven describes the current fiscal support regime for public benefit organisations and overviews other positive forms of government support for citizen participation in national development.

Chapter Eight summarises Enabling Environment Initiative’s survey of international experience for trends and best practices that have meaning for this reform exercise. Enabling Environment Initiative is also publishing a separate reference volume on the surveyed international experience.

Chapters Nine summarises the stakeholder perspectives garnered during over 65 consultations across the length and breadth of Pakistan. Documentary records of Enabling Environment Initiative consultations are published as companion volumes to this report.

Chapter Ten sets out the Enabling Environment Initiative recommendations.

Chapter Eleven concludes the report by locating the challenge of implementation of Enabling Environment Initiative recommendations within the institutional dynamics of ongoing governance reforms, highlighting that in the new development governance paradigm all three sectors—government, business and the citizen sector—have vital roles to play.

Endnotes

1 Aga Khan Foundation, Chapter 4, Philanthropy in Pakistan (AKDN, 2000).
2 The Memorandum of Understanding is included as Appendix I to this report.
2. The New Development Governance

The Enabling Environment Initiative is forward looking and optimistic. It is dedicated to the proposition that it is both possible and necessary to build an enabling and facilitative regulatory framework for the independent citizen sector in Pakistan.

It locates its optimism at the confluence of three major rivers of contemporary history. The first river is massive and in the past fifty years has swollen to dominate the global economic landscape; it is the river of private enterprise. It is a questing river, looking for new domains where profitable market transactions can displace nonprofit or State actors.

The expansion of the market sector has significant implications for the other two rivers, the nonprofit citizen sector and the State. As the State reduces its direct role in the provision of certain services and provides more scope for private enterprise, it requires new ways to meet its obligations to ensure fair access to “public goods”. The new development governance that is gradually emerging in Pakistan and elsewhere recognises that private sector activity does meet some needs, but that others will remain. To address the needs historically unmet by State or business, the new development governance proposes a form of social partnership involving State, citizens and business.

The Enabling Environment Initiative report is premised, then, on each of the three sectors “doing its part”. Given encouragement and support from government, private enterprise reciprocates by expressing its wider social responsibilities through, among other things, the provision of grants, volunteers, and in-kind support to those citizen organisations operating for public benefit. This is a seminal point. When we call upon government to create a more enabling environment, we are implicitly asserting an inextricable relationship between commercial enterprise and social activism. This has been the root equation for democratisation for the past century.

The new development governance relies explicitly upon the second river, which is sourced in the infinitely renewable resource of Pakistan's people. It is the river of citizens-voluntarily organising themselves to address their greatest challenges—poverty, ignorance and disease. It is the river by which Pakistanis form groups to express values, beliefs and culture. It is the river of “citizen participation” in development programmes or what are commonly referred to as “NGOs”. This river sometimes competes with the river of private enterprise, but more importantly it flows mainly to where there are scant prospects for market-based profits. With respect to government, it acts as a partner in the delivery of public services (e.g., education, health, social welfare, and community development) and as an independent auditor of public sector performance.

A short history of the citizen sector in Pakistan follows in chapter three, which, along with later chapters, describes in analytical and empirical terms the rapid growth of citizen organisations over the past two decades, with a focus on the potential for citizen self-organisation to become a lead driver for sustainable development in Pakistan. These chapters set out how citizen organisations can, and do, work with government and business in new social partnerships. They assemble persuasive evidence that, when properly enabled by the State and supported by business, the citizen sector can make a decisive contribution in Pakistan's march to reach its most ambitious
development targets.

This report eschews the familiar term NGO, meaning non-governmental organisation. The term is negative and derivative. It tells us nothing about what NGOs are, and something trivial about what they are not. In any case, in Pakistan the term “NGO” refers to only one sub-set of the larger sector of citizen-based groups, and it would distort our understanding of the sector were it to dominate the vista. The term “citizen organisation” is preferred as it comes closest to capturing the essence of the wider social force in question: citizen self-organisation for public benefit. Citizen organisations constitute a class of organisations that range from the almost informal associations of a few citizens at the local level through to large national institutions with thousands of employees and significant operations. Even defined in this way, the citizen sector is only part of the wider civil society, which includes all manner of associations of citizens for all manner of purposes other than those for public benefit, such as recreation or worship. The citizen sector's essential relevance for us is that it represents the sub-set of organisations in society outside government and the market sector that are directly engaged in national development. It is for these organisations that we aim to create an enabling environment.

This report is both descriptive and technical. While the term 'citizen organisation' is used for descriptive purposes, it is necessary for technical legal reasons to utilise different terminology when it comes to legal definitions. The legal definitions proposed by the Enabling Environment Initiative are set out in chapters five, seven and ten. Following the international trend, when defining a new way for non-commercial organisations to establish themselves in law, we refer to them as “nonprofit organisations”, or NPOs. This domain includes any non-commercial organisation operating for legal purposes, whether those purposes are for the “public benefit” or for some legitimate group benefit, such as recreation or worship. We then define a sub-set of NPOs whose dominant purpose is “public benefit” which is also defined in the law and who become eligible to receive specified benefits such as tax incentives or preference in government contracts. To assure the government and society that organisations receiving such benefits are honest and effective, eligibility for public benefit organisation (PBO) status is conditioned upon more stringent reporting and auditing requirements.

Which brings us to the third river, government. Gradually, over the years since Independence, the role of the State in social development has evolved from one of exclusive service delivery to a far more complex one of delivery, standard-setting, and facilitation of social services provided by commercial and nonprofit actors. This evolution has been, and continues to be, a painful one. In failing to meet service delivery expectations over the decades, the government has frustrated popular expectations to the point where now few, if any, expect the State to deliver social services. At the same time, the State has not yet become skilled in the new role of administrator of standards and facilitator of private citizen initiative. Old habits of “command and control” linger.

The Enabling Environment Initiative consultations have identified public sector capacity-building as a crucial precondition for the formation of new social partnerships for sustainable development. Without realising the significant changes in attitudes and practices called for in this report, government cannot be expected to play its part in a new enabling framework for citizen organisations nor will it be able to maintain productive relationships with citizen groups.

This report, then, may be read as a blueprint for the re-invention of government's interface with civil society in Pakistan as an enabler of citizen initiative for public benefit. It asserts that we need a strong State -- albeit with new
and different strengths. Part of the current challenge is to revalidate the State as an associate and facilitator of the citizen sector. To do this, it is useful to distinguish between two basic functions of government. On the one hand, government has its own programmes to deliver. On the other hand, government is responsible for setting the stage for other societal actors to contribute to social development.

As it executes its own programmes, government engages a range of societal actors, including citizen organisations, as agents of its programmes. Many of these relationships are contractual in form, but others are informal. These relationships are vital to the effective delivery of social programmes and government and citizen organisations both benefit tremendously from them. But precisely because these programme-related engagements with citizen organisations are vital to the day-to-day operations of government, they tend to dominate government’s understanding of its second function as stage-setter, or to be more normative, as an enabling environment provider.

This has three negative consequences, all of which are commonly observed in many countries besides Pakistan. First, government tends to contemplate the legal framework of a regulatory and assurance framework that only in terms of service-oriented citizen organisations. This narrow perspective is at the root of an insidious process of exclusion that is reflected in the attitudes and behaviour of officials at all levels of government. It leads to a situation in which citizen groups that do not fit comfortably within the government’s operational priorities believe that the regulatory framework is yet another attempt by government to push them toward government programmes and priorities as opposed to enabling them to pursue their own objectives. To safeguard the independence of citizen organisations, a number of countries have entered into formal dialogues to produce “compacts” setting out the principles for contracting and for respecting the independence of citizen organisations.

Second, because government sees all of civil society in terms of its operational priorities, it naturally tends to use regulation as a means to enforce those priorities. This is wholly inappropriate. Government can manage its programme-related engagements with citizen organisations directly through the contractual and other instruments of those relationships without subverting the primary purpose of regulation as a framework for societal accountability and probity.

The dismal consequence of this tendency was dramatically highlighted through the Enabling Environment Initiative consultations, which found a deep scepticism towards government’s capacity to perform a neutral regulatory role, despite what might be the best intentions of some government officials at the top. Corroborating evidence may also be inferred from the household survey conducted by the Initiative on Indigenous Philanthropy in late 1998. That survey found that only 15 per cent of Pakistanis who make charitable donations care whether the organisations they support are registered with the government.

The weight of opinions expressed during the EEI consultations favoured the establishment of a regulatory and assurance framework that represents a sharp break with past practice. A fresh start is called for. Accordingly, this report proposes an assurance framework that sets statutory obligations for citizen organisations under a system to be administered by an independent, self-governing agency. Thus, it endorses a leading international trend that comprehends the responsibility for the regulatory and assurance framework as a new public-private partnership. It recommends that the standard regulatory functions of registration, record keeping, investigation and advice be lodged with an autonomous regulatory agency that would be governed by a mix of government officials and elected representatives of registered organisations. Also following
international best practice and noting some promising early steps in Pakistan, it recommends that this formal regulatory agency be supplemented by the initiatives of citizen organisations themselves to establish independent quality assurance mechanisms, such as codes of conducts and certification services.

All too often when government legislates it fails to provide for the resources to implement the legislation and underestimates the need to build capacity to implement. This is a particular danger for the Enabling Environment Initiative. The report calls for an array of educational programmes to empower government officials with new attitudes and skills for their enablement role.

The third negative consequence of government's tendency to understand the citizen sector narrowly, in terms of how it can contribute directly to government programmes, is that it does not appreciate the ways and means that government has at its disposal to promote the financial independence of citizen organisations. Even where the formal legal independence of citizen organisations is conscientiously observed, there remains a challenge for citizen organisations to develop diverse sources of funding so that they are not captured by a single source, private or public, national or international. Chapter seven discusses fiscal and other measures by which government may create an enabling environment for indigenous philanthropy and therefore for the financial independence of citizen organisations.

This report also emphasises the challenge for citizen organisations to become more proactive about their societal accountability. They not only need to be accountable as individual organisations, they must be proactive at the societal level by encouraging society-wide responses. This report highlights the encouraging initiatives now afoot, and sketches out further steps that are required. A larger point was made forcibly at the October 2000 Conference on Indigenous Philanthropy. If citizen organisations could project their good work to society, they would become less dependent on foreign aid and more rooted in terms of financial resources in their own societies. The work leading up to that Conference indicated that there is a significant untapped reservoir of support among ordinary Pakistanis for sustainable development activities undertaken by credible citizen organisations.

The EEI consultations highlighted another significant challenge for citizen organisations along the road to new forms of development governance. Many of them need to learn how to work more effectively with government. Current attitudes of mistrust and suspicion inhibit effective collaboration. While the practical difficulties of partnering with government can hardly be overstated, a number of highly credible and effective organisations have clearly demonstrated that it is not impossible. All concerned need to take this “constructive engagement” approach. The report recommends a number of measures to help address this challenge.

Endnotes

This chapter provides a short history of citizen action for public benefit in Pakistan. It locates Pakistan's associational life within the Islamic impulse and tracks the existence and vibrancy of citizen groups throughout the seismic shifts of expansion and regression of the State in Pakistan. The final part of the chapter profiles the current state of citizen organisations in the country, with a view to informing policy development to enable the citizen sector to fulfill its full potential within the emerging development governance paradigm.

The Islamic Inspiration

Muslims in colonial South Asia found a dynamic creed and a larger vision in the writings of Sir Mohammad Iqbal. Iqbal's theme was the all-embracing sufficiency of Islam as expressing a dynamic spirit of struggle for spiritual freedom. Islam, in this understanding, is living principle of actions that could give purpose and remake worlds. Alienated from the imperial government, the Muslims of India organised themselves in social and religious communes. They set firm foundations in cultural and religious expression. Even though, as it would later appear, there was some secular syncretic association of cultures and religions, the predominant strand in the Muslim organisation in India was Islam. It is, therefore, important to understand the spirit of associational life in Islam.

Islam is steeped in communitarianism. It thrives in civic association and societal solidarity. Ibn-e-Kaldun, the great classical Islamic theorist, elaborated on the relationship between the State and religious society in his well-known book Al-Mugaddima. He suggested three elements that are critical in the creation and institutionalisation of an Islamic State:

- **Asabiyah** (group feeling), the propensity for cohesion;
- The emergence of a ruling structure which assumes leadership functions;
- A large community (**umma**) based on religion.

The State is defined primarily in terms of its capacity to maintain justice and defend Islam. **Asabiyah** provides the substructure for organisation of the State and the need for non-State association. The most vivid form of civil cohesion is the precept of sharing, codified in universal obligation of **zakat**, a periodic gift of a portion of one's wealth to the needy and deserving. Charity towards man, in its widest sense, is laid in the Quran as the second great pillar on which the structure of Islam stands. The Quran states “(Those) who believe in the Unseen and keep up prayer and spend out of what has been given them; and who believe in that which has been revealed to thee and that which was revealed before thee, and of the Hereafter they are sure. These are on the right course from their Lord, and these it is that are successful” (2:3-5). The concept of sharing and giving shapes the contours of the Islamic society.

The most frequently recurring words for charity are **infaq** (which means spending benevolently), **ihsan** (which means the doing of good), **zakat** (which means growth or purification), and **sadaqah** (which has come to signify a charitable deed). The very words used to denote charitable deeds are an indication of the broadness of its conception. The Quran not only stresses such great deeds of charity as the emancipation of slaves, the feeding of the poor, taking care of orphans and doing good to humanity in general, but places equal emphasis on smaller acts of benevolence.

Service to humanity and the amelioration of
the condition of the poor has always been among the principal aims and objectives of all religions. Islam formalises this activity through the institution of zakat. Maulana Mohammad Ali asserts that “[zakat] must be used for the uplift of the community”. Charity in Islam is not only limited to the poor and needy but also extends to developing the capacity of the underprivileged to take charge of their lives. The eight categories on which zakat can be spent are specified in the Quran as, the poor and the destitute, the wayfarer, the bankrupt, the needy, converts, captives, the collectors of zakat, and the cause of God. The last category, in view of Maulana Wahiduddin Khan, is for the general welfare of the community - for the education of the people, for public works, and for any other need of the Muslim community, or other members of society.

He interprets verse 273 of the Quran [charity is for those in need] as a general principle that enjoins us to help people in need, be they good or bad, on the right path or not, Muslims or non-Muslims. We are not supposed to judge in these matters. The principal objective in charity, as reiterated here, should be God's pleasure and our own spiritual good. The concept of charity in Islam is thus linked to justice. It is not limited to the redress of grievances. It implies, apart from the removal of handicaps, the recognition of the right that every human being has to attain the fullness of life.

The Islamic concept of charity is not confined to giving money or alms. It is capacious and can be the bonding and cohesive force in a society. The Quran states:

“A kind word with forgiveness is better than charity followed by injury…O you who believe, make not your charity worthless by reproach and injury, like him who spends his wealth to be seen by people…” (2:263-264)

Having established this ground norm, the Islamic conception of charity furnishes the foundations for a civil order, one that is based on justice and fairness. It combines the autonomy of the market, by sanctioning generation of private wealth, with the sharing of this wealth in a socially responsible manner. The Islamic State assumes responsibility for the disadvantaged and the underprivileged. Since, the objective is the uplift of the community, charity should take the form of development investment that would enhance the inherent ability of the individual to realise his/her fullest potential. These represent a powerful cultural template for re-defining the roles and responsibilities of the three rivers of society State, market, and citizen to meet the challenges of sustainable development in Pakistan today.

### The Historical Legacy

The legacy of citizen action for public benefit in Pakistan is firmly grounded in the cultural ethos of the village community of the Indian subcontinent and the Islamic concept of sharing and giving. Both these inspirational streams require some elucidation before the contemporary scene in Pakistan is surveyed.

Despite the fact that pre-colonial and colonial society in South Asia did not think of itself in terms of three organised sectors State, business and a third nonprofit citizen sector it is clear that the defining features of the third sector were present. Recent scholarship indicates that the “social and political space” we know as the citizen sector may be defined with reference to tradition as well as to modernity. When we look we find antecedent citizen organisations of all kinds think tanks, private nonprofit schools, private research, and all manner of organisations playing intermediary roles between government and society, and between different social groups.

Consider Metcalfe's description of the village society in northern India:

The village communities are little Republics, having nearly everything they want within themselves, and almost independent of any foreign relations. They seem to last where
nothing else lasts. Dynasty after dynasty tumbles down; revolutions succeed to revolutions; Hindu, Pathans, Mughals, Mahrattas, Sikh, English are masters in turn, but the village communities remain the same. In times of trouble they arm and fortify themselves; a hostile army passes through the country; the Village Community collect their cattle within their walls, and let the army pass unprovoked; if plunder and devastation be directed against themselves and the force employed be irresistible, they flee to friendly villages at a distance, but when the storm has passed over they return and resume their occupation. If a country remains for a series of years the scene of continual pillage and massacre, so that the villages cannot be inhabited, the villagers nevertheless return whenever the power of peaceable possession revives. A generation may pass away but the succeeding generation will return. The sons would take the place of their fathers, the same site for the village, the same position for the houses, the same lands will be reoccupied by the descendants of those who were driven out when the village was depopulated; and it is not a trifling matter that will drive them out, for they will often maintain their post through times of disturbance and convulsion, and acquire strength sufficient to resist pillage and oppression with success.  

The Indian communes were also reorganising along religious lines. By that late nineteenth century, strong community ties were, in places, being affected by the political and social developments in India. Citizens were associating in different formations to articulate their concerns. In retrospect, we can say that the reformation and renewal movements of that time signalled the birth of the modern era. Prominent among these was one led by the “synthetic mind of Sir Sayyid Ahmad Khan, who sought to reconcile the spirit of Islam with that of the modern West”. Sir Sayyid Ahmad Khan established “Scientific Society” in 1864 to translate English books to the vernacular language. By 1874, the Society had translated 24 English works into Urdu. Having become convinced of the separate communal interests of the Muslims and the Hindus when efforts were made to supplant Persian language with Hindi, he organised the British India Association in 1866 to create greater understanding between the colonial ruler and subjects. Later, in 1870 he established the “Society for the Educational Progress of Indians”.

The first Muslim organisation of the British period, Anjuman-i-Islamiyah, was founded in 1869. It was set up to take over and maintain the Badshahi mosque, which was converted into a magazine for storage of gunpowder during the Sikh period. The Anjuman extended its charter to the improvement of the social and intellectual conditions of the “Mohammadans” of the Punjab and to further Islam generally. Khan Barkat Ali Khan was the leading light of this organisation, which did pioneering work for education, particularly girl’s education, in Lahore. The Anjuman-i-Himayat-i-Islam, established in 1886, was a more middle class body that represented a spontaneous desire on the part of middle-class Mohammadans of Lahore to cooperate with each other for common good. It actively worked for the education and welfare of the Muslims and established schools and orphanages. Dr. G.W. Leitner, a Hungarian, the first Principal of Government College, Lahore founded the Anjuman-i-Matalib-i-Mufidah-i-Punjab (Society for the Propagation of Useful Knowledge) in 1865. Popularly known as Anjuman-i-Punjab, the organisation worked for the advancement of...
popular knowledge through the vernacular press and the revival of oriental learning. It established a free public library, a reading room and an oriental school at Lahore. Mian Shah Din, subsequently a Judge in the Chief Court, organised the Young Men Mohammadan Association in 1891 at Lahore to provide a forum for Muslim youth.

Concerned citizens in Karachi were engaging in similar endeavours. Mr. Hasan Ali Effendi, a lawyer, was active in fund raising for Sind Madrasah, an educational institution of great repute. Syed Ameer Ali had earlier founded the Central National Mohammadan Association at Calcutta. Mr. Hasan Ali, under his influence, opened its branch at Karachi. He then established the Madrasa-tul-Islam of Karachi, which had on its rolls Mohammad Ali Jinnah, the future Quaid-i-Azam of Pakistan. The Madrasah started in a small building, and apart from an educational institution it had a department of handicrafts and industry. In 1943, the Madrasah Board established the Sind Muslim College. Sahibzada Abdul Qayum established the “garden-town of learning”, the Islamia College in the outskirts of Peshawar in 1913. He mobilised Rs. 1.5 million for its construction and erected a magnificent residential college on 200 acres of land.

Other outstanding examples of this era include: the Dyal Singh Majithia Trust (1895) that furthered the cause of education and established libraries and a college; Nadirshaw, Edulji Dinshaw invested in education and established the N.E.D College and Lady Dufferin Hospital; and Sir Ganga Ram who built schools, hospitals and supported destitute widows. The Ganga Ram Trust established the Sir Ganga Ram Free Hospital, Hailly College of Commerce, Lady Maclagan Girls High School, Ravi Road House of the Disabled, Hindu and Sikh Widows Home, Hindu Student Career Society, Home and School for Hindu and Sikh Widows and the Lady Maynard Industrial School for Sikh and Hindu Women & Girls. Mr. Jamshed Nusserwanjee Mehta was involved in education, peasant welfare and cooperative societies. Rajah Ram Mohan Roy known for his educational and religious reform, created the Brahma Sabha in 1830 -- the first voluntary association of its kind. Originally from West Bengal, he was well known throughout India because of this institution. Mr. Keshub Chunder Sen in Calcutta, and Swami Vivekananda followed in his footsteps. There were many more. These efforts were, often, for the benefit of a specific community by committed individuals.

Along with the growth of private nonprofit organisations (some of an acutely political nature) came enabling (and in some cases controlling) legislation. The colonial government enacted the Societies Act of 1860 to regulate the working of the voluntary bodies. Initially operative only in Madras, Bombay and Calcutta, the scope of the Law was extended across British India and remains to this day the most used registration law for citizen organisations in Pakistan. The Trust Act of 1882 supplied further legislative endorsement for philanthropy. The trust instrument was employed by many philanthropists to bequeath their properties for public purposes, designating requisite legal powers with trustees while leaving flexibility in operations.

The Credit Societies Act was passed in 1904 as a result of the introduction of the concept of cooperative societies. The German model of rural development inspired the British to introduce the plan of cooperative societies. Local Deputy Collectors administered cooperative councils. Credit and saving components were important features of this movement. It was expected that the rural poor would benefit from the institutional arrangement. By 1929, there were 101,150 cooperative societies in India, of which 21,000 with over 650,000 members were in the then Punjab. Eighty percent of these were village banks established to provide an alternate source of credit and to liberate the villager from the clutches of the moneylender.
They were antecedents for a grassroots movement for self-reliance.

The Christian missionaries and social workers in colonial India created another template for voluntarism. They founded hospitals, especially for eyes, leprosy and tuberculosis. The missionary schools set new standards of education at low cost. Missionary interest ranged from care for the destitute to protection of animals. The beneficiaries of missionary interventions were usually the poorest of the poor. Some of the missionary institutions have survived and are still functioning effectively. These are held in high esteem by the beneficiaries and the general public.

Voluntary organisations and activities in the subcontinent were a quiet spirit within the clamour for political independence. While political events were unfolding at a fast pace, social welfare organisations were steadily and often invisibly engaged in social work for the local communities. Many of these were to confront the massive challenges that came unexpectedly with the partition of India.

### Independence: A Watershed for Citizen Organisations

The creation of Pakistan in 1947 precipitated a mass population movement from and to the newly independent State. The rudimentary institutions of the State were ill equipped to meet the enormous demands of resettlement, education, health and other social services for the newly arrived millions. The stream of refugees caused by partition spurred a massive, spontaneous voluntary effort. A generation of social welfare agencies came into being with paternalistic State support.

The overwhelming focus of these formal and informal voluntary organisations was humanitarian assistance. As it became evident that ongoing community development and social participation required strong formal institutions. In 1951 the Government of Pakistan sought advice from United Nations Technical Assistance Administration. A stream of international advisers followed. It marked the change from a charitable or 'Lady Bountiful' approach to a purposeful and dutiful attitude towards the social welfare of the people. The 'Malir Project', started by the students of the first formal educational course on social welfare in 1953, became the forerunner of the Urban Community Development project of Lyari in 1954. The Lyari Citizen Council was established in 1954. It collected Rs. 6500 in 1956 and allocated the money to the area committees responsible for running the adult education centre, for scholarships, and free books. The Khadda Citizens Advisory Council was also formed in 1956. It collected Rs. 3200 for women's social education centres, men's adult literacy centres, sanitation and recreational programmes. New initiatives, like the Village AID programme, were introduced. The voluntary citizen sector was steadily growing.

An analysis of voluntary agencies operative in 1960 revealed the following features:

- 2,200 voluntary agencies were working in East Pakistan and 2,000 in West Pakistan.
- The major concentration was on schools, orphanages and recreational facilities.
- The total membership was 61,423 persons, 96.6 were males.
- 54.4 percent operated on a neighbourhood level; 11.1 percent on a city level; 2.4 percent on a district level; and 3.7 percent on the national level.
- Revenue sources were 21 percent on government grants; 8 percent on fund raising; 24 percent on earning from sales of goods produced; 2 percent on membership fee; 1 percent on aid from foreign agencies and 44 percent on carryover of the previous budgets.

An official publication in 1969 estimated the total investment in the sector in the region of Rs. 600/800 million in cash and kind. The cash component was considered to be Rs. 100/200 million.
The first Coordinating Agency was established in February 1953 under the title of Social Services Coordinating Council. It was a non-government voluntary agency operating at the city level. In 1959, ninety voluntary agencies were registered with the Council of Karachi. The Ida Rieu Poor Welfare Association of Karachi was running a school for the blind and a poor asylum. These were established in 1923 and 1921 respectively. In 1952 the organisation was getting a maintenance grant of Rs. 10,000 from the government. Other similar organisations were the T.B. Patients Welfare Association, The Children's Rehabilitation Association, The Maternal and Child Health Association, The Leprosy Association etc. Special organisations were working for the interest of the youth. The Young Women Christian Association, The Young Men Christian Association, The All Pakistan Youth Movement, The Pakistan Girls Guide Association, and The Pakistan Boys Scout Association were all leading names in this domain.

The number of social welfare agencies grew from 200 in 1955 to over 4,000 in 1965. 91 percent were located in Karachi and Lahore. Their prime objectives included “service to humanity as religious duty,” and “interest and devotion for the cause”. These social welfare agencies were mostly in the urban concentrations.

Private philanthropic giving grew alongside the sector as community oriented individuals operated through existing trusts and foundations. Many business houses created trusts and foundations as the social component of their empires. Registration under the Trust Act gave organisations a tax exempt status. This was a further incentive for businesses. Schools, hospitals, scholarships, institutes of higher learning were created by these privately funded organisations. Some of the largest and most powerful citizen groups, embodying the true spirit of indigenous citizen initiative, steered these drives. The Adamjee and Dawood Foundations, the Lions and Rotary Clubs and the Ismailia Charitable Trust are some of the leading examples of this trend.

Government also realised the usefulness of operating through citizen organisations. The Family Planning Association of Pakistan (FPAP) was formed in 1953 with support from the government. Population, seen by the government as a culturally sensitive issue, was to be handled through alternative and indirect means. FPAP worked closely with the public sector and became one of the largest nonprofit organisations in Pakistan. All Pakistan Women Association's (APWA) activities expanded with government support from emergency relief to education, training and health, and industrial homes for women. The leadership of APWA also tackled women's rights issues, lobbying for the reservation of seats for women in the National and Provincial Assemblies. A Charter for Women's Rights was presented to the Constituent Assembly in 1954, which demanded equal rights for women, equal opportunities for work and remuneration and the reservation of seats for women in the Constituent Assembly. A United Front for Women's Rights was established in 1955,
which raised women’s issues and pleaded for legal and social reforms.

The development agenda of the 1960s was predicated on a guided political and social system. Voluntary organisations were recognised in this era, but the stress was on State leadership and control across all social realms. Against this backdrop, the Voluntary Social Welfare Agencies Ordinance was passed in 1961. It preceded the Basic Democracies scheme. The newly established Social Welfare Departments quickly created a far-reaching and extensive network in the country and actively recruited organisations to register under this Ordinance by channelling grants only to those registered under the new law.

The Social Welfare Organisations got a major boost during the sixties due to the grant-in-aid programme of the government. Social welfare became a provincial subject. The 1965 Indo-Pakistan war also provided a stimulus to citizen sector organisations to engage in relief work and welfare of war affectees. A key feature of this development paradigm was the official support to selected voluntary organisations. Social Welfare Officers led community activism and nurtured community initiatives and organisation. Influential and well-connected women, who were influenced by and worked closely with the government, managed many of these organisations. The emphasis shifted from reconstruction to helping the poor and the needy to become self-reliant. The 1971 war once again highlighted the importance of voluntary organisations in relief work. The numbers of such organisations progressively increased.

The 1970s began with a renewed hope of democracy and human development. Islamic Socialism was expected to usher in a welfare State for the protection of the poor. Nationalisation of the means of production was considered to be the great level. Private schools and colleges of voluntary organisations, philanthropists, communities, foundations and trusts were also taken over by the government in 1972. These included schools of Aga Khan Education Services of Pakistan and Anjuman-i-Himayat-i-Islam but, interestingly, some missio nary institutions were exempted. The government took upon itself the responsibility for the provision of basic education, health and rural infrastructure. This heightened popular expectations from the State. The State expanded and the space and scope for civil society reduced correspondingly.

Nationalisation also adversely impacted on working of the citizen sector organisations. Take over of basic industries diminished funding sources for what voluntary welfare organisations were dependent upon. Later in 1978, the Islamic institution of Zakat was also brought within State control.

By the early 1980s, the government was once again pursuing the economic path of laisser-faire. The political and social realms were still under tight State control. The regional and international environment, however, was changing. The second phase of the development of the citizen sector had commenced.

The Modern Citizen Sector

Since the early 1980s, a host of factors has led to the emergence of a strong citizen movement for public benefit across Pakistan today. These factors relate to both local and global forces, and include the geo-politics of the Cold War in Afghanistan in the 1980s, the decline of the State as a provider of social services, democratisation, the emergence of internationally acclaimed private social institutions, and the international consensus on neo-liberal policies.

In the politics of the Cold War, the Soviet invasion of Afghanistan made Pakistan a “Frontline State”. This resulted in a sharp increase in Western military and economic cooperation with Pakistan. As a consequence, international development aid to Pakistan for social development increased. Citizen
organisations engaged in development became one important target of this aid. It was at this time, that a number of foreign governments, national and international relief and development agencies established programmes to support Afghan refugees.

As a result of this, the government reviewed the regulation of citizen organisations generally against a growing concern for national security. This review risked “throwing the baby out with the bath water”, as it led a security-driven regulatory approach towards all “nonprofits”. This threatened to inhibit the positive impulse of participatory approaches to development. It instilled a degree of mutual suspicion between government and *bona fide* development agencies. Leading citizen groups criticised the government for using genuine national security concerns as a cover to attack credible organisations involved in advocacy and human rights. Government, on the other hand, pointed to a lack of transparency among many NGOs. The debate continues throughout the decade.

On the other hand, the 1980s also saw many reforms introduced by the government that strengthened public-private partnerships for development. A Women's Division with a grants-in-aid programme was established in 1979, and accelerated in 1987. During this decade the government worked intensively with the Family Planning Association of Pakistan and its members. A Non-governmental Organisations Coordinating Council for Population Welfare was set up. Another government initiative was the establishment of the Rural Development Foundation. Social Welfare Councils at the national, provincial, district and sub-divisional levels provide assistance and grants-in-aid to private social welfare organisations registered under the Social Welfare Ordinance. Selected organisations that the government felt were making a significant contribution to social objectives were registered under other laws and given facilities such as tax-breaks and plots. In acknowledgement of the changing structure of citizen organisations, an amendment was made in the Companies Ordinance in 1984, which allowed citizens groups to register as nonprofit companies. Many of the new mid-level NGOs registered themselves under this law.

While the earlier Five Year Plans made little or no mention of NGOs as nonprofit, professional intermediary service organisations, the Seventh Plan took notice of the emerging role of the citizen sector in social service delivery. It expressed the need for NGOs to work closely with the government as implementing bodies. In 1987 the government created the “Standing Committee” within the Economic Affairs Division to regulate the flow of foreign development funding to private groups. In 1988, the Trust for Voluntary Organisations was set up as a novel mechanism for disbursing a large endowment provided by the United States Agency for International Development to the citizen sector in Pakistan. The Trust is registered as a nonprofit corporation, and the government makes its board appointments.

In the mid-1980s, Prime Minister Junejo initiated a Five Point Programme with a focus on education, health and village electrification. As a result of this large-scale project, schools, clinics and hospitals were built at an accelerated pace. Programme delivery remained on developing physical infrastructure, however, and did not resolve the management of the resulting institutions. Implementing agencies were stretched to capacity and major wastage and leakage in the system occurred due to the involvement of elected representatives. Schools were built without adequate attention to the supply of students, teachers or furniture, and health clinics were built without a plan to provide doctors. Despite its ineffectiveness, this programme did create more physical infrastructure for social programmes both in the rural areas and in the *katchi abadis* and low-income areas.
The 1980s was also the time that the public sector came under pressure, both financial and institutional, to meet the social services needs of a burgeoning population. As donor confidence in the public sector declined, donor agencies encouraged the growth of private voluntary citizen organisations through development aid.

The growing fiscal and institutional crises of the public sector led to pressures to decentralise and privatise. With a widening gap between social needs and social provisions, people's confidence in the public sector began to erode. At the same time, international aid agencies also began to pressure government to privatise and to divert an increasing portion of aid to private social institutions - both for-profit and nonprofit.

Arguably the greatest impetus to the growth of private social institutions was provided by a handful of world class organisations conceived in the early 1980s in Pakistan. Notable amongst these were the Orangi Pilot Project working in slum settlements in Karachi and the Aga Khan Rural Support Programme operating in the remote rural hamlets in northern Pakistan. Both projects were pioneering efforts that combined citizen self-help and local knowledge with outside financial and technical support. By the late 1980s these programmes had produced demonstrable benefits to the communities in which they operated.

Another organisation that had a widespread impact was that of the dedicated social worker Abdul Sattar Edhi. The Edhi Foundation, which started work in the 1950s, came into national prominence during this time. Edhi fired public imagination by his philosophy of welfare and relief. His organisation became synonymous with care and support in an era of dysfunctional State provision. It renewed people's hope and faith in their ability to take charge of their lives and communities where the over extended State failed to reach.

As the government reversed a prior decade of education nationalisation in the early 1980s, Pakistan's first private universities were formed as centres of excellence, starting with the Aga Khan University, followed by the Lahore University of Management Sciences. More generally, the role of the private sector in the provision of social services increased.

The 1980s also heralded the advent of a new generation of women's organisations. It is often stated that the citizen movement in Pakistan is closely linked to the women's movement. This came about as a result of two concurrent developments: new government policies that discriminated against women and the increased support for Women in Development programmes in the international development world. The first spurred the growth of advocacy-oriented women's organisations (Shirkat Gah, Women's Action Forum, Aurat Foundation, and Applied Socio-Economic Research), and the second increased the availability of donor funding to Women in Development projects. This 1980s movement also coincided with the International Decade of Women.

The visibility of these organisations -- prototypes of success -- contributed to the emergence of a groundswell in citizen organisations. Young, university-educated Pakistanis began to recognise that it was possible to have a challenging professional career in public service through leading and managing citizen organisations. The Orangi Pilot Project founder, the late Dr. Akhtar Hameed Khan, and the first general manager of the Aga Khan Rural Support Programme, Mr. Shoab Sultan Khan, epitomised this new citizen sector public servant for an entire generation of young Pakistani social entrepreneurs.

Aside from development-oriented organisations, the 1990s also witnessed the growth of public interest lobby groups and associations. These range from individual organisations to networks and coalitions of organisations. From their role as the voice of the people in the absence of political parties in the 1980s, these organisations have evolved
into community mobilisers and critics of the government. This has generated resentment in government circles that has been manifested by attacks throughout the 1990s upon advocacy groups by provincial governments, which have categorised them variously as anti-government, anti-Islam and anti-State.

The best characterisation of the State-citizen sector relationship in the 1990s would probably be uneasy, fragile and dynamic. The State was willing to acquiesce to international donor preference to engage the citizen organisations in service delivery, and set up a number of mechanisms for this purpose. The Social Action Programme was set up to provide opportunities to test innovative approaches in social development. The establishment of Education and Health Foundations in the provinces to provide funding to private small scale private sector initiatives in these two sectors created additional loci for interface with citizen organisations. These institutions worked closely with citizen organisations in their area of interest and developed/funded projects with them.

The success of AKRSP motivated the government to replicate it by creating “Rural Support Programmes” in the four provinces. These were funded from endowment grants from donors. The first to be established was the National Rural Support Programme, which functions as a support organisation and was endowed with the amount of Rs. 500 million. This was followed by State sponsorship of the Sarhad Rural Support Corporation, the Balochistan Rural Support Programme and the Punjab Rural Support Programme. The government encouragement of Rural Support Programmes demonstrates a significant investment in the participatory approach for development at the grassroots level through citizen groups. On a parallel track, the government attitude mellowed toward the growing flow of international donor support directly to citizen organisations. Inconspicuously, an important shift had taken place.

On the other hand, government remains sceptical and awkward about an advocacy and watchdog role by citizen organisations. A relatively small number of citizen organisations cultivated an adversarial relationship with the State through their efforts to safeguard civil liberties and publicly represent societal needs. This small but vocal part of the citizen sector-State relationship has probably had a disproportionate influence on government attitudes. Mutual suspicion and mistrust has festered to this day, despite both sides acknowledging the necessity of an effective State and a vibrant citizen sector.

The Present Moment: On the Cusp of the New Development Governance Paradigm

Despite these obstacles to the creation of a more enabling environment for citizen organisations for public benefit and more efficient and effective partnerships between citizen groups and the State the present moment is profoundly encouraging. More and better-managed citizen groups are emerging steadily, diversifying to tackle critical societal problems such as rule of law, human rights, civic security, pollution, lack of credit, violence against women and sexual abuse, and so on. The seed of self-belief seems to have grown into the sapling of sustained and organised citizen action for public benefit. Pakistanis in every corner of the country are organising themselves and getting on with the tasks of tackling the social problems that most affect them.

In May 2002, the findings of the first empirically rigorous national study of the nonprofit citizen sector in Pakistan underscored the growth, vibrancy and diversity of the sector.13 Initiated by the principles of the Enabling Environment Initiative to inform this policy reform process, the study has established a new and all-important reference point for all further research about, and policy discussion of, the sector. Its findings correct widely held but
unsubstantiated perceptions about the nature of the sector and give us the policy tools to address longstanding analytical errors that hinder positive policy development. The findings include the following:

- There are 45,000 active nonprofit citizen organisations, with over 6 million members, and over a quarter of a million staff.¹⁴
- The largest block of citizen organisations, at over 13,000, are organisations engaged in religious education. Another 2,250 are organisations dedicated to running religious events. The data reinforces that these organisations are distinctive in character and should not be conflated with the rest of the sector.
- The next largest block at some 7,000 are organisations that engage government to improve civic amenities. This group reflects the widespread failure of urban public services and the growing capacity of citizens to “get on with” solving the problem, either by lobbying government to meet its obligations, or by organising the services directly.
- Also very notable, and by far the largest employer (at 53 percent of nonprofit sector employment) are the combined categories of primary, secondary and higher education, at some 6,900 organisations. A separate study of private education in Pakistan found that 20 percent of primary and 13.7 percent secondary education is now being met through private schools.¹⁵ The study notes that 36,096 private educational institutions were operating in the country during the 1999-2000 academic year. Just over 48 percent of these are located in the rural areas. Their share in the total enrolment is around 28 percent. While 80.6 percent of these institutions are essentially small businesses, the balance is nonprofit citizen organisations.
- With 264,000 employees, nonprofits employ 2.3 percent of non-agricultural labour and 10 percent of public sector employment.

- Nonprofits are an important economic force as well. With operating cash revenues of Rs 16,400 million, nonprofits represent half a percent of GDP.
- Nonprofits are overwhelmingly funded from domestic private sources. Contrary to the prevalent myth of foreign financial dominance, the international development agencies contribute only seven percent of the total revenues on nonprofits. At 37 percent, local philanthropic giving is the most important source of revenue. The next two major sources of revenues are membership fees (34 percent) and user charges (16 percent). The balance of 6 percent comes from the government and represents one of the lowest levels of direct public support for nonprofits for any country for which there are statistics. It also appears to be a considerable decline in the government's “market share” of nonprofit funding from the 21 percent indicated in a 1960 study.¹⁶ By contrast, the figure for the Indian State of West Bengal is 74 percent.¹⁷ This relatively low level of direct experience in working with citizen organisations may help explain the generally low level of comprehension of the sector within government.

There are clear structural changes in the nature of the sector that also indicate its rapid growth, vibrancy and state of maturity. Beginning in the 1980s, a growing number of “support organisations” came into being among citizen organisations. These specialist institutions provide technical support and training of various kinds to service and advocacy citizen organisations. The support organisations also help grassroots and smaller citizen organisations by channelling funds to support their projects or institutional development. Strengthening Participatory Organisations, South Asian Partnership, the NGO Resource Centre and the Frontier Resource Centre are prominent examples of such bodies. A directory of “intermediary NGOs” defined as organisations providing
training and other support to grassroots groups identified 145 support organisations. A 2002 directory identified 120 training providers.

Apart from support organisations, a significant number of umbrella bodies evolved to coordinate and represent elements of the sector. The Advocacy Development Network, Coordination Council for Child Welfare, Women in Development Networks, Rural Support Network, Pakistan Reproductive Health Network, Pakistan Education Network, the Microfinance Network, and the Environmental NGOs Network are outstanding illustrations of this trend.

Non-consultative attempts by the State to regulate the citizen sector in the 1990s prompted the sector to see itself as a community. Citizen organisations came together to articulate common positions, despite their diverse backgrounds and activities. Pakistan NGO Forum developed at the national level with four provincial apex bodies as its members. The provincial bodies include Coordination of Rawalpindi and Islamabad, Sarhad Coordinating Council, Sarhad NGO Ittehad, Sindh NGO Forum, Balochistan NGO Forum, and Punjab NGO Coordinating Council.

The growing profile and overall impact of the sector can be gauged from the fact that citizen organisations in Pakistan are now accepted as partners in development. The government regularly consults with and invites citizen sector leaders for input on development issues and projects. There is a growing list of important policy and institutional reforms in environment, women's and children's rights, education, philanthropy, microfinance, health, rural development and many other areas influenced and in many cases directly provoked by citizen organisations.

For its part, the government has recognised and formalised new opportunities for the citizen sector to contribute to national development. It actively sought to co-opt citizen organisations in its efforts to usher in good local governance by means of the creation of “Citizen Community Boards” in the devolved local government setup. Moreover, the government's “Three Year Poverty Reduction Programme”, presented in February 2001, states “In Pakistan, NGOs and CBOs in general, and civil society at large, are playing a very significant role in promoting individual welfare and collective development through a variety of interventions. Recently, some NGOs have played an unprecedented role in imparting political education, encouraging and helping people, particularly women, to participate in the local bodies elections”. The Interim Poverty Reduction Strategy Paper (I-PRSP) issued in November 2001, proclaims unequivocally, “The government appreciates the contribution that the NGOs sector can play in social development and providing help to the vulnerable. This is reflected by the institutionalised support to NGOs through a range of government ministries including the Ministry for 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 the provincial governments. The Poverty Reduction Strategy recognises the significant role that NGOs can play in social service delivery, advocacy, and empowerment.”

The present moment is pregnant with possibility, but challenges remain. The Enabling Environment Initiative represents an important effort to bridge the chasm of misunderstanding. In debating an appropriate framework of accountability for the third sector, all stakeholders may come to understand their responsibilities and capacities in a way that can move us toward a more enabling environment.

The spirit of asabiyah provides the philosophical basis for citizen self-organisation. Sir Mohammad Iqbal
recognised the relationship of the individual with the society and the State. Pakistan's future is inextricably linked with social justice and the fullness of life for its citizens. The State cannot do this alone. Neither can the civil society. The triumvirate of the public, private and nonprofit sectors must find the way to partner and complement each other. This is the history, as well as the destiny of the people of Pakistan.

Endnotes

4 Smith, The Oxford History of India, 1983.
5 Ibid.
6 Ikram, Modern Muslim India and the Birth of Pakistan, 1977.
7 Ibid.
8 Chapter 4, Philanthropy in Pakistan, AKDN, 2000.
14 Ibid. Some 28,000 of the 45,000 active NPOs are registered. Some fifty percent of organisations registered under the two main laws, Societies Registration Act 1860 and Voluntary Social Welfare Agencies Ordinance 1961, were found to be either closed, inactive or untraceable.
16 Khan, Concept and Administration of Social Welfare in Pakistan, 1969.
17 As reported in 2001 in the preliminary findings from PRIA, the Indian affiliate in the Johns Hopkins University Comparative Nonprofit Sector Study.
18 Directory of Intermediary NGOs in Pakistan, NGORC, 2000.
4. EEI Consultative Process

The Memorandum of Understanding framing the Enabling Environment Initiative recognises that there is causal interplay of means and ends for this kind of policy reform. To create an enabling environment for citizens' associational activities for public benefit, it is imperative to create the understanding and relationships that are necessary preconditions for such an environment. Accordingly, the Enabling Environment Initiative (EEI) is grounded in a thoroughgoing consultation of stakeholders: government (national, provincial, and district), citizen organisations, business, media, and research and academic institutions.

Consultations followed three distinct stages. In the first stage, the Enabling Environment Initiative was introduced and located within the larger context of the emergence of the new development governance paradigm in which the State, citizen, and business sectors are assuming new roles and responsibilities. Opinions on these roles and their implications for the existing regulatory framework were solicited. In the second stage, more detailed discussion of existing laws and practices led to an examination of core principles and possible alternative policies and implementation mechanisms. Opinions of leading civil society leaders were also sought in personal interviews across the country. The third stage was used to debate concrete recommendations tabled by the Enabling Environment Initiative. Through all three stages, the EEI team participated as presenters, as catalysts for discussion and as active listeners, seeking to draw out and record the concerns and points of view in a way that was transparent and could therefore build confidence in the integrity of the process. Underpinning the consultations was a body of research based inputs and findings obtained from a rigorous and critical examination of the laws and field based case studies of practices.

There was one major departure in this phased process. EEI team engaged the federal Finance Ministry and Central Board of Revenue officials according to a slightly different schedule because the Income Tax Ordinance 2001 was to be amended in late June 2002, two months before the first EEI report was due. An EEI team held several meetings with Secretary General Economic Affairs, Secretary Finance, Chairman Central Board of Revenue (CBR), and other senior officials of the CBR from February to June 2002. The EEI team member pursuing the fiscal reforms was invited by the Secretary General Economic Affairs to participate in a meeting with an International Monetary Fund and World Bank delegation that was visiting Islamabad to discuss tax reforms. Draft recommendations were presented to the Central Board of Revenue in May. As a result of this engagement, a number of reforms were introduced in the fiscal regime governing nonprofit organisations in the Income Tax Ordinance 2001 through the Finance Ordinance 2002. A number of rules also have since been amended. These tax reforms are discussed in chapter seven.

In total, the EEI team engaged some 2,200 participants in over 65 consultations, large multi-stakeholder forums, smaller meetings with government, business and the PNF, and one-to-one interviews across the country. In addition to consultations in the provincial capitals and in Islamabad, the process also included district forums.

Members of Board of Directors of PCP actively participated in the process along with other eminent citizens of national standing. Members chaired all the provincial consultations except in Quetta. Dr. Shamsh
Kassim-Lakha, Chairman of the Board, presented the opening address in Karachi, Syed Babar Ali in Lahore, and Mr. Saeed A. Qureshi in Peshawar in the first round. Mr. Zaffar A. Khan, Mrs. Munawar H. Khan, Mr. Shoaib Sultan Khan chaired the sessions of the second round in Karachi, Peshawar and Islamabad respectively. In the first round Mr. Mahomed J. Jaffer made the closing comments in Islamabad at the talk delivered by Mr. Richard Fries, and Mr. Arshad Zuberi, CEO Daily Business Recorder and member PCP Board closed the Sindh provincial consultation.

The multi-stakeholder consultations followed a standard pattern. A PCP Board member introduced the historical analytical process that led to the EEI namely, the Initiative on Indigenous Philanthropy, October 2000 international conference, formation of the PCP, and approach from government to the PCP to undertake the Enabling Environment Initiative. Following that, the Executive Director elaborated on the dimensions and scope of the reform initiative and described the consultative process adopted by the PCP to ensure involvement of a broad spectrum of stakeholders. Then the legal team presented the broad features and the critical issues of the current legal regime and the international experience. This was followed by the general discussion and the address of the chief guest.

Following this, participants were asked to break into focus groups where EEI team members facilitated discussions. A group member or the facilitator then presented recommendations of the groups, followed by comments on the presentations and additional discussion in the plenary. This was followed by the closing address. In Quetta and Islamabad, breakout groups were not formed and the participants were invited to discuss the whole range of issues in the plenary sessions.

This methodology ensured that the forums allowed for a broader general discourse, converging on to the specific elements of the legal framework and related issues, provided for inter-provincial sharing of perspectives and encouraged expression of the widest possible range of opinions by participants. The successive rounds of provincial consultations encouraged a continuous dialogue till the culmination of the reform recommendations.

The EEI also conducted field surveys to ascertain regulatory practices at the departmental and district level and to obtain data on categories of registered organisations at district and provincial level. This field survey conducted in Lahore, Karachi, Multan and Sargodha interviewed NGOs pursuing registration, tracked the registration process, identified local practices, documented obstacles and the capacities of regulatory authorities. Field research revealed the constraints on the ground and informed the work of the team as it strived to find suitable legal and institutional mechanisms to address the requirements of the State and citizen organisations. Correspondence was conducted with provincial and federal government departments that deal directly with NGOs. The data gathering exercise continues beyond the submission of the EEI recommendations and the formal completion of the MoU assignment. As there is no single repository of data on NPOs, their registration, categories, distribution and other distinctive features, collection and compilation of data are deemed to be an essential component of the reform initiative.

**Stakeholders Consulted**

**Government**

The process included three rounds of consultations with the government. In the first round of consultations from mid-November to mid-December 2001, introductory meetings with senior provincial and federal government officers were held in each provincial capital and in the federal capital. In these meetings, PCP and EEI were introduced and views of government officials sought regarding the problems faced by both the
citizen sector and the regulatory authorities.

Senior civil servants in-charge of planning and development chaired the meetings in the provincial capitals, which were attended by senior government officers from the departments of Social Welfare, Law, Industries, Planning and Development, and Cooperatives. The Federal Secretary, Social Welfare and Women Development Division, chaired the meeting in Islamabad which was also attended by the Chairman, Central Board of Revenue, and other senior officers from the Interior, Finance, Economic Affairs and Law Divisions.

In the second round of consultations, from mid-January to mid-March 2002, the EEI team met the senior-most policy makers and implementation officers in separate meetings and also through the multi-stakeholder consultations. Meetings focused on detail of the laws, rules and regulations, implementation constraints, and possible reform measures.

The first provincial high-level meeting took place in Karachi. An EEI team of the PCP Board members, staff and legal experts met with the Governor Sindh, on 23 January 2002. Minister Religious Affairs, Chief Secretary Sindh, Additional Chief Secretary (Planning and Development), Secretaries of Departments of Cooperatives, Industries, Auqaf, Additional Secretary Finance and Director Social Welfare attended the meeting. Governor Sindh welcomed the EEI, appreciated the aims of PCP, and promised full support of the Government of Sindh in the process to achieve consensus on a new framework. Acknowledging the role of citizen organisations, he said that his government wanted to reduce government interference in their work, and would welcome reforms in that direction.

The EEI team also met with Governor NWFP and Governor Balochistan on 25 February 2002 in Peshawar and on 7 March 2002 in Quetta respectively. Both Governors expressed support for the EEI and endorsed the need to build a better environment for citizen organisations.

Provincial Ministers, Dr. Hafeez Sheikh, Minister, Finance and Planning, Government of Sindh, and Ms. Shaheen Atiq-ur-Rehman, Minister, Social Welfare and Women Development, Government of Punjab, presided at the consultations held in Karachi and Lahore respectively. Mr. Shakeel Durrani, Chief Secretary, NWFP, presided over the opening session of the Peshawar consultations. Mid-ranking government officials from the registration authorities of the Departments of Social Welfare, Industries, Cooperatives and from the Planning and Development Departments were also invited to the provincial and district consultations where they took active part in focus group discussions.

Separate meetings with government officials were also held in Sialkot and Quetta. In Sialkot, the consultation chaired by the Naib Zila Nazim, included a large number of officials from the newly restructured district departments established under the Devolution Plan. These district level discussions proved to be extremely valuable as they contributed to enlarging the perspectives on legal and fiscal regulatory issues by locating the discussions in the “devolved” local context.

The EEI recognises that the Devolution Plan is an important step towards empowering the communities to take charge of their own affairs and that the new system has fundamentally altered the power and administrative structures at the district level. The National Reconstruction Bureau was consulted on issues pertaining to Citizen Community Boards, in an earlier separate meeting. District government leaders were also engaged in the process. Nawab Rashid Ali Khan, Naib Zila Nazim, Hyderabad, Ms. Nafisa Shah, Zila Nazim, Khairpur, Mr. Shah Mahmood Qureshi, Zila Nazim, Multan, Shehzada Mustajab Khan, Naib Nazim Mansehra, respectively, presided at the
Hyderabad, Khairpur, Multan, and Abbotabad consultations. A large number of councilors also attended, many in their dual role of NGO activists and elected office bearers, thus ensuring that the larger community, the real stakeholders in the process, was represented.

The last meeting of the second round of consultations with government was held in Islamabad. Co-chaired by Mrs. Parveen Qadir Agha, Secretary Social Welfare, and Dr. Shamsh Kassim-Lakha, Chairman of PCP Board, this meeting was attended by Federal Secretaries from the ministries of Planning, Religious Affairs, and Revenue, Chairman National Accountability Bureau, and besides other senior government officials from the ministries of Interior, Economic Affairs and Local Government.

The third round involved two distinct processes. First, consultations were held starting mid-July, 2002 in Islamabad and all the provincial capitals with citizen organisations to discuss the draft law that was circulated to them in advance. Minister Social Welfare, Women Development and Special Education shared the feedback received from them with top decision makers of the federal and provincial governments in a meeting in Islamabad on 01 August 2002. Federal Minister Finance, Federal Minister Law, Deputy Chairman Planning Commission, Provincial Ministers of Social Welfare of Punjab and NWFP, Finance and Planning Minister of Sindh, Secretaries of relevant federal divisions and provincial governments, and several other senior officials attended this high-level penultimate meeting. The second process involved smaller meetings with decision makers on almost a daily basis to keep them informed of the progress towards formulation of a consensus-based law and the issues arising from various proposed provisions of the law.

The third round culminated with a conclusive session hosted by the Ministry of Social Welfare, Special Education and Women Development on 17 August 2002 and attended by key government officials and representatives of the PNF. The outcome of this significant meeting was a consensus on the modified government version of the draft law.

Citizen organisations

In the first round of consultations, the EEI team met with key citizen sector leaders in all the provincial capitals and in Islamabad. The PCP and EEI were introduced and views of civil society leaders were sought regarding the constraints faced by the citizen sector. These meetings also aimed at soliciting views and suggestions on the regulatory system and its implementation to be discussed more extensively in the second phase.

With some 2,500 members across Pakistan, the Pakistan NGO Forum (PNF), a consortium of five provincial bodies, is the biggest coalition of NGOs in Pakistan and has long mounted a strong, organised and vocal resistance to government attempts to “control” NGOs. The EEI team attached great significance to engaging PNF in the dialogue process. Accordingly, the first meeting of the EEI consultative process was held with PNF leaders at the Lahore office of Shirkat Gah in November 2001. PNF coalition representatives were invited to all other provincial and district consultations. A leading PNF activist, Muhammad Tehseen, Director of South Asia Partnership addressed the Lahore consultation. Mrs. Khawar Mumtaz, Coordinator of the Forum, delivered the keynote address at the Islamabad consultation.

Smaller meetings were also held. One such meeting was held in Shirkat Gah Lahore office on February 2002 where the future dialogue process was charted out. As a result, the EEI team was invited to speak about the EEI to a conference of all regional coalition partners of the Forum on 16 March 2002. In all these meetings candid and vigorous debates focused on substantive elements of prevailing laws and systems and identification of the issues and areas for
The Pakistan NGO Forum actively consulted its membership on the initial EEI reform suggestions. For that purpose, the EEI team formulated five key questions for citizen organisations, which were circulated among citizen sector coalitions and networks.

In the second round, the process was expanded to encompass a wide spectrum of stakeholders from all backgrounds and all areas. Consultations were held across the nation, in each provincial capital and key district towns. The EEI team made an effort to reach out to smaller, lesser-known citizen organisations to represent geographical and sectoral diversity, cognizant of the fact that the Pakistan NGO Forum, though the biggest coalition of citizen organisations, does not represent the whole sector. For each consultation invitations were sent out to about 150 - 200 individuals and organisations by name but those who heard about the consultations and were interested in attending were welcomed through an open door policy. This was done to highlight the fact that the implications of issues and proposals under debate were not the domain of a restricted set of stakeholders but related to the entire society.

Seeking collaboration with various institutional partners across the country reinforced the outreach and added depth to the discourse. In this respect, PCP sought and received active help from a number of organisations. The Karachi-based NGO Resource Centre, with its long experience of working with a broad spectrum of citizen organisations in all parts of the country, has been the lead partner in the consultation process. The Trust for Voluntary Organisations, an Islamabad based funding organisation, helped organise district consultations in Multan, Abbotabad, Turbat and Hyderabad. In Lahore, Shirkat Gah hosted the meetings with the Pakistan NGO Forum. Sarhad Rural Support Programme helped organise the consultation in Peshawar.

Participants expressed their views candidly and without any detectable reservations. Whereas the EEI process and programme was often appreciated, it also received some criticism; participants expressed concern about the short time period allotted for the whole exercise. Many felt that at least a full year was required. Others noted that some categories of stakeholders were over represented while others were marginal or absent in the discussions.

Urdu remained the dominant language of discourse. This ensured that the consultative process reached out to the widest possible range of stakeholders, especially in the districts. A strong signal for using the national language came from a community activist
from Lyari when he objected to the use of English in the Karachi consultations and received resounding applause of even the English-speaking participants. In Khairpur and Hyderabad, many participants expressed themselves in Sindhi.

Starting in mid-July 2002, a third round of consultations was held in Islamabad and all the provincial capitals with citizen sector organisations to discuss the draft law that had been circulated to them in advance. Feedback was shared with top decision makers of the federal and provincial governments in a meeting in Islamabad on 01 August 2002. PNF representatives also participated in the final 17 August meeting chaired by the Federal Secretary Social Welfare, where it gave its support to a version of a new law favoured by the government.

The EEI process also responded to the demands voiced by the citizen organisations. One major concern is the emphatic priority of developing a policy for the citizen sector as a founding block for any reform legislation. Responding to this valid citizen concern, the EEI committed additional time and effort for the development of a “policy framework paper” for which eighteen acknowledged civil society and public sector leaders were interviewed to farm their knowledge, insight and vision on issues pertinent to the framing of a policy.

Corporate sector
EEI recognises that the corporate sector is an important stakeholder in the framework governing citizen organisations. For citizen organisations to effectively mobilise and use in diminishing philanthropy to reduce dependence on foreign donors, the views of business must be taken into account. This is the first time that this sector was recognised as an important stakeholder in laws governing citizen organisations.

Separate meetings were held with business leaders in Karachi, Peshawar, Lahore, Sialkot and Multan. Business leaders included corporate heads, leading philanthropists and Presidents of the Chambers of Commerce and Industry. Whereas important issues were raised in all meetings, the proactive corporate philanthropy movement organised by the Sialkot Chamber of Commerce was a revelation.

Other stakeholders
Research and development organisations were engaged in consultations because these organisations are important opinion leaders who bring informed, research based viewpoints to the dialogue and take up issues of public interest for research. Pakistan Institute of Development Economics, Sustainable Development Policy Institute, and the Social Policy Development Centre were consulted; with the latter furnishing its findings from the AKF sponsored empirically rigorous description of the dimensions of the nonprofit sector in Pakistan.

Influential opinion leaders were invited to deliver closing addresses; these included Dr. Humayun Khan, former Foreign Secretary and former Director of the Commonwealth Foundation; Justice (Retd) Shafi-ur-Rehman, former Judge of the Supreme Court, Justice (Retd) Fakhruddin Ibrahim, former Governor Sindh; Justice (Retd) Mahboob Ahmed, Federal Shariat Court; and Mr. Shahid Kardar, former Minister Finance, Government of Punjab. This underlined the importance of the voice of experienced administrators and senior jurists in the process of consultations.

The media was invited to all the consultations. A large number of media representatives, especially from the regional vernacular press, attended the district consultations. Post consultation press conferences were held in Lahore, Karachi, Quetta, Hyderabad and Multan. Apart from routine press coverage of consultation events, an interview with Dr. Shamsh Kassim-Lakha was the lead article in an issue of the NGORC newsletter dedicated to the Enabling Environment Initiative. Ms. Shahnaz Wazir Ali, Executive Director PCP was interviewed by the Associated Press of
Pakistan. The Islamabad edition of all the major newspapers of Pakistan carried this interview.

The composition of the PCP Board also ensured that all-important and diverse voices from various fields of human endeavour were heard. Media, development organisations, citizen organisations, eminent citizens who had also served in government leadership positions, corporate sector, and academia are all represented on the PCP Board. The Board guided the EEI program closely with regular monitoring of progress and oversight provided by the EEI Advisory Sub-Committee.

**Donors**

Representatives of the two EEI funding agencies (European Union and Canadian International Development Agency) were invited to attend all consultations. International NGOs, bilateral donors and international finance and development institutions were also consulted in a special session at Islamabad.

**Review Panel**

An important mechanism for critical review and soliciting independent, experienced expert opinion has been the Review Panel. The five-member panel was chaired by Mr. Mahomed J. Jaffer, Partner Orr Dignam & Company and member Board of Directors of PCP; and included Mr. Saeed A. Qureshi, former Deputy Chairman, Planning Commission of Pakistan and member Board of Directors PCP; Mr. Richard Fries, Chairman of International Center for Not-for-Profit Law and Fellow, Centre for Civil Society Studies, London School of Economics; Ms. Shehla Zia, Joint Director, Aurat Foundation and leading civil rights lawyer; and Dr. Tariq Hassan, Special Advisor to the Finance Minister. The feedback of the first two rounds of multi stakeholder consultations along with the recommendations of the EEI legal team were presented to the Review Panel on 15 and 16 April 2002. The range of recommendations and the draft law that was circulated to all stakeholders in early July 2002 incorporated the recommendations of the Review Panel.

**International Inputs**

One of the pillars that the EEI research stood upon was the ground covered in other countries in their respective efforts to bring about reform for the citizen sector. International experience which constitutes one of the chapters of this report was brought directly to the consultation forums and to the Review Panel by Mr. David Bonbright, Director of NGO Enhancement Programmes for the Aga Khan Foundation, who had led a similar process in South Africa in the early 1990s and Mr. Richard Fries, former Chief Commissioner of the Charity Commission of England and Wales. Seasoned advice on technical regulatory issues from these two leading international experts enriched the analytical work of the team. Leading international resource persons were also consulted; institutional contributions from the International Centre for Not-for-Profit Law and the work-in-progress on the South Asia Law Study sponsored by the Asia Pacific Philanthropy Consortium and coordinated by Professor Mark Sidel also provided resource and reference material. Drafts of the EEI study profited from a review by well-known South Asian and African professionals and civil society leaders.

**Conclusion**

The Enabling Environment Initiative's extensive and purposeful consultation process has yielded a fair representation of opinion among key stakeholder groups. It has surfaced divergent concerns and issues among different role players, as well as clarified the common ground among all Pakistanis with respect to the enabling environment for citizen initiative for public benefit. These stakeholder opinions are
reported in detail in an accompanying volume *Stakeholder Perspectives*.

Inevitably, reservations about the process and its direction have also surfaced. Some challenged the standing of a military government to engage in a major reform programme. PCP's right to undertake the exercise was also questioned a few times. A few participants criticised the presence of government officials at stakeholder consultations, but there was little evidence that the presence of officials inhibited comment! Critics noted the absence of certain well-known activists, while others noted that those participating did not represent all aspects of the sector. Citizen groups often asked about the likelihood of government's acceptance of the recommendations. An important critical view, repeatedly voiced by Pakistan NGO Forum and SAP-PK, was that the cart was before the horse that law reform should follow, and not precede, policy reform. Finally, there was a view from technocratic corners that the study was insufficiently grounded in empirics and too qualitative in nature; too driven by stakeholder voices rather than reflecting cool rational analysis.

The EEI has sought to address these issues given the constraints of resource and time. Ultimately, legitimacy should be judged against the quality and transparency of the dialogue, and by the outcome. It was clear from the consultation process that the vast majority of participants were in favour of seizing the opportunity provided by government to make a strong case for enabling reform measures. While there is no guarantee that this or any government will accept the EEI recommendations in total, it is also true that the EEI report and the consultative process creates a clear benchmark and sets out a reform agenda with a long shelf life. It has filled a gap that existed by providing open and inclusive consultation opportunities to all without prejudice; it has documented for the first time the full range and diversity of views expressed; it has systematically and comprehensively surveyed the total legal regime and produced a carefully reasoned case for a new vision and a new framework for a regulatory regime. Regarding the cart before the horse problem, the EEI makes detailed recommendations not only for policy development but also for the strengthening of relationships among stakeholder groups. The EEI discussion paper, *Towards a Policy for the Citizen Sector*, is now on the table alongside this report as a point of departure for further policy dialogue.

Participants often asked that what good would the laws do if the mindset of public officials and citizen organisation representatives were not to change. The only answer to this extremely challenging query is that laws can only partly address mindsets and behavioural patterns; a great deal more needs to be done to forge better relationships and working practices. Some of the EEI recommendations take up this challenge.

The EEI team maintains that the exercise remains rightly consultative, and therefore qualitative, in its nature. Great effort was taken, however, to enlighten stakeholder discussions with validated data. In fact, in using the findings from the AKDN Initiative on Indigenous Philanthropy and the SPDC-Johns Hopkins study, EEI has done more to educate society about the actual dimensions of the sector than anyone else.

The EEI process has been rigorously transparent. This transparency was evidenced in Islamabad where the participants disagreed with the methodology and the EEI team abandoned some of the questions. The interim report, that included a draft law and which accommodated the main concerns of all the stakeholders, was thoroughly debated by the EEI Advisory Subcommittee and PCP Board before public circulation, and before it was formally made available to a national audience of key opinion leaders and to the media in Islamabad in early July 2002. As discussed above, the first phase of the third round of consultations consisted of open discussion on the text of the law.
Government assumed direct management of the consultative process from 17 August 2002, when Mrs. Parween Qadir Agha, Federal Secretary Social Welfare, chaired the final consultation meeting in Islamabad. Provincial government representatives and representatives of PNF including the National Coordinator of the forum, Mrs. Khawar Mumtaz, participated in this meeting. The EEI team participated in this meeting as technical advisors of the federal government.

The draft Ordinance, which had been circulated to the participants after incorporating decisions taken in a previous meeting on 12 August 2002, was considered and endorsed in this meeting with minor amendments. The Federal Government then recommended the draft nonprofit law, “Nonprofit Organisations (Governance and Support) Ordinance 2002,” to the federal cabinet for promulgation. This Ordinance was based largely on recommendations of the EEI team as well as on the feedback of the federal and provincial governments and civil society leadership.

In concluding this chapter on the EEI process, it bears underlining that the draft ordinance put forward by the Ministry of Social Welfare, the salient features of which are referred to in chapter ten, achieve most of the stated objectives of the EEI by making much needed improvements in the regulatory regime that falls within the purview of the Ministry of Social Welfare. Equally important, the proposed changes are based on the advice and consent of the citizen sector.

It is perceived by all parties as a leap forward in a longer term modular process of (i) building trust and understanding among the parties, (ii) formulating a national policy on citizen initiative for public benefit, (iii) extension of the scope of the Ordinance, (iv) building an effective implementation framework that includes rationalised laws with a larger measure of proactive self-regulation by the citizen organisations themselves. The “EEI Bill” proposed by the Pakistan Centre for Philanthropy (Appendix-II) reflects these comprehensive EEI recommendations. These are also detailed in chapter ten.

Endnotes

1 Zila Nazim is the elected head of the district government, according to the Devolution Plan.
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Laws, regulations and policies provide an excellent medium to understand and reform societal roles including those of government, citizen organisations, and business -- in line with new development governance paradigms. Law reform is a necessary but not sufficient condition for governance reform in the same way that safe driving requires “rules of the road”. Without careful and competent drivers, even the best road rules will not prevent traffic accidents. Accordingly, this legal review is situated within a larger framework of the enabling environment made up of the values, knowledge, attitudes and practices of the various stakeholders, especially of government officials and citizen organisations.

The Enabling Environment Initiative's initial brief from government listed eight laws for review. Investigation undertaken by the Initiative unearthed a growing list of relevant laws and draft laws, now numbering more than 20. This highlights the ad hoc way in which laws affecting the citizen sector have evolved over a very long period of time. New laws regarding madrassahs have been debated that can have important consequences on the overall environment for citizen self-organisation for public benefit. The net result is a confusing, overlapping, often contradicting set of laws that are ripe for a comprehensive review.

In undertaking this review, the Enabling Environment Initiative has taken its overall guidance from its memorandum of understanding with the government: “To facilitate policy makers and stakeholders to come up with consultation-based regulatory mechanism that helps create an enabling environment for the growth and development of civil society organisations, and provides for a regulatory role of the State without compromising autonomy and independence of civil society organisations.”

### Overview of the Chapter

This chapter covers nonprofit law applicable to two broad categories of nonprofit organisations: 'associations' and 'foundations', though the two are not necessarily exclusive. Associations are those nonprofit entities that are formed by the coming together of persons for some common purpose. Acquisition of assets follows this first act of coming together. Foundations are those entities where some person or persons allocate property and set up a scheme, brief or elaborate, under which this property will be managed. Any associational activity follows this first act of allocation of property.

In reviewing the laws given in the MoU (Appendix-I), this chapter follows the classification of NPOs into associations and foundations. This division is important for regulatory purposes as the following analysis shows. Foundations are further divided into two groups: wakfs and trusts.

### The Laws Studied

The list given in the MoU has also been revised. One law, The Religious Endowments Act 1863, was never made applicable to areas that constitute Pakistan today. It has been deleted. A few have been added to cover all major laws that regulate some distinct aspect of the citizen sector. Labour laws and many other laws that regulate citizen organisations in the same manner as for-profit activity are not discussed. Specialised laws that govern hospitals or schools, for example, also are not discussed because these do not directly address the distinguishing legal characteristics of the nonprofit sector.

This revised list, divided into sub-themes and
arranged in chronological order, is:

**Associations**
The Societies Registration Act 1860  
- The Cooperative Societies Act 1925  
- The Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961  
- The Companies Ordinance (Section 42) 1984  
- (Punjab, Sind, NWFP, Balochistan) Local Government Ordinance 2001

**Foundations**

**Trusts**
- Religious Societies Act 1880  
- The Trusts Act 1882  
- The Charitable Endowments Act 1890  
- The Code of Civil Procedure 1902 (Section 92)  
- The Charitable and Religious Trusts Act 1920

**Wakfs**
- The Mussalman Wakf Validating Act 1913  
- The Mussalman Wakf Act 1923  
- The Mussalman Wakf Validating Act 1930  
- (Punjab, Sind, NWFP, Balochistan) Wakf Properties Ordinance 1979

**Other Major Laws**
- Charitable Funds (Regulation of Collections) Act 1953

Registration of NPOs under the Local Government Ordinance as Citizen Community Boards is still small. This chapter thus focuses on the two main association laws, the Societies Registration Act 1860 and the Voluntary Social Welfare Agencies Ordinance 1961, because they cover an overwhelmingly large number (88 percent) of active registered organisations and 55.7 percent of all active NPOs, registered or not.

This chapter also examines the salient features of two groups of foundation laws governing public trusts and *wakfs*. These laws are important because a large number of properties and institutions with substantial revenues and budgets are being managed under their regulatory purview. Besides, these two groups highlight some substantial differences between the common law and Islamic legal concepts governing charity.

Companies Ordinance 1984 is discussed only briefly because the number of nonprofit organisations registered under this law, though significant in term of size and influence, is also small. The Local Government Ordinance 2001, the most recent addition, is also discussed briefly. This law has the potential to significantly alter the character of nonprofit activity in Pakistan with its vision of local communities partnering government in management and building of social assets with elected village, town and district governments.

Cooperatives, an extremely important instrument of social mobilisation for economic development that has worked wonders in many countries, are not covered in any detail. Many, if not all, cooperatives do not strictly fall within the rubric of nonprofit laws. Allowing the distribution of profit to members, they are in effect a special kind of business organisation. Also, the time available for the exercise did not allow for an in-depth look into this subset of citizen organisations that has suffered major scandals in the recent past.\(^7\)
Scheme of the Analysis

The second section of this chapter introduces the history of the laws that regulate some aspect of citizen organisations. The third section reviews the major nonprofit laws from five main aspects: (1) Required/prohibited purposes and activities; (2) Registration; (3) Capital formation and resource mobilisation (funding); (4) Internal governance; (5) and Accountability. (The Income Tax Ordinance 2001 also impacts accountability and internal governance of organisations that voluntarily opt to register under it. These provisions and related procedures are discussed in chapter seven.)

Section three describes the relevant provisions of the two major association laws and the rules and judicial decisions, if any, of superior courts. It analyses these laws as implemented, taking into account the testimony of stakeholders and other material gleaned through the Enabling Environment Initiative consultation process and field research. After separate descriptions, Societies Registration Act 1860 and the Voluntary Social Welfare Agencies Ordinance 1961 are discussed together. These two laws govern largely overlapping subsets of citizen organisations and many analytical issues are common to organisations registered under them.

In the fourth section, trust and wakf laws are discussed together, since these two bodies of foundation laws also have many common features. The main subject areas of purposes, registration, resource mobilisation, internal governance and accountability are described and analysed together unlike the division of description and analysis followed for The Ordinance of 1961 and The Act of 1860. Due to limited time available for the EEI exercise and due to the substantially different character of trusts and wakfs, especially the latter, these stakeholders could not be extensively consulted. This review thus does not reflect the practical concerns of the stakeholders of trust and wakf laws.

The MoU also required that various law reform efforts be reviewed. This refers particularly to government legislative efforts, the alternative NGO Bill presented in the Senate in 1999 and the Code of Conduct developed by the Pakistan NGO Forum. The fifth section of the chapter discusses these reform efforts. Section six concludes the chapter by highlighting the salient features of the nonprofit laws that have emerged from the preceding review.

Legal Context

This section first locates the legal status of the citizen sector in the Constitution of Pakistan and Pakistan's sovereign international commitments. It then describes the history, nature and context of relevant traditional citizen sector principles and the legal regime introduced by the British. The most significant feature of this transplantation of common law onto the customary law, described here, is the clash between imported concepts governing public trusts and indigenous concepts governing wakfs.

The Constitution of Pakistan and International Commitments

The Constitution of Pakistan 1973 recognises the right of individuals to associate with others to pursue common goals as an inalienable fundamental right. Article 17 states: “Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in interests of the sovereignty or integrity of Pakistan, public order or morality.”

The scope of ‘reasonable restrictions' has been narrowly interpreted by the courts. In 1988 the Supreme Court of Pakistan was asked to examine the constitutionality of a law that required political parties to compulsorily register with a designated authority as a condition precedent for participation in the electoral process. In a judgment that now forms the clearest judicial articulation of the
right to associate the Supreme Court held that the requirement to register as a condition precedent to functioning as an association violates the constitutional guarantee contained in Article 17. In effect, it was held that the State could by law only prohibit the formation of associations that announce as their avowed objects damage to the ‘sovereignty or integrity of Pakistan, public order or morality’. Any law that goes beyond would, in practice, require that presumptions be made about the real intentions of individuals seeking to form associations. Such presumptuous screening would fall foul of Article 17 of the Constitution.

Sovereign policy commitments to the growth of nonprofit sector have also been made. Pakistan is signatory to the Copenhagen Declaration on Social Development that emerged from the Social Summit organised by the UN in August 2000. The Declaration's plan of action emphasised the need to strengthen civil society and to provide an enabling legal framework for its sustained growth.

“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 organisations of civil society; (b) … strengthening the abilities and opportunities of civil society and local communities to develop their own organisations, resources and activities.”

The Societies Registration Act 1860

Public welfare and civic education activities largely emanated from religion among Muslim as well as non-Muslim communities in the sub-continent. Wakfs, mosque committees, and madrasahs were all directly connected with Islamic precepts. Maintenance of places of worship and promotion of religious education continues to constitute a substantial portion of nonprofit activity in Pakistan.

With the advent of the British, this reliance on custom and religion for community mobilisation started to change. Faced with new political institutions and great social change, the more aware of the local citizens started organising themselves. It was in this context that the Societies Registration Act 1860 was promulgated as the first, and still the most widely used, nonprofit law in the subcontinent. The timing of its enactment, only three years after the War of Independence of 1857, is significant. Coming so soon after such a cataclysmic event, it is often inferred that the law would have a hidden colonial agenda aimed at control of associational activity that may challenge the imperial writ. But a detailed look at the law and its origin belies that claim.

The Act of 1860 borrows heavily from The Literary and Scientific Institutions Act 1854 of England. The aim is similar. Both laws aim at improving the legal status of the subject bodies and are in essence aimed at enablement. The scope is a little different. The Act of 1860 has a broader ambit since it aims to cover associations set up not only for advancement of science, the sole purpose of the Act of 1854, but also for diffusion of political education and for charitable purposes.

The only real difference is in the reporting requirement of the two laws. Unlike the 1854 Act, the Act of 1860 requires organisations registered under it, referred to as “societies”, to submit annual list of governing body members and their particulars to the government. What does this difference mean? This clause of “compulsory” reporting might be construed to mean that the imperial regime desired “control” through information. That, however, would be an incorrect inference. No punitive measures are
prescribed if this list is not filed. Before Independence, the law did not even prescribe a mechanism for suspension of the governing body or dissolution of the society for any misconduct. Regulation was left entirely to the members as per the mutually agreed memorandum of association and rules and regulations. Besides, registration under the Societies Registration Act 1860 was, and is, voluntary.

The only argument supporting the thesis of 'control' could be that this “compulsory” reporting clause was missing in the 1854 Act and was specially introduced for India. But that also may not be the case. The 1854 Act aims at a variety of institutions, already incorporated as well as unincorporated, including trusts. The 1860 Act on the other hand practically creates the concept of a society and therefore provides some “regulation”.

The thesis of freedom and minimum control also has other evidence to support it. An important addition to the law, that reflects the liberal mindset of the day, was made in 1927 when “diffusion of political education” was inserted as a valid objective. This coincided with introduction of limited representative democracy in the sub-continent. The legislators clearly intended societies to supplement the nascent political process in the subcontinent.

Controls over public benefit associational activities were actually introduced post-1947. In India, The Bombay Public Trust Act 1950, elaborately regulates societies established under the Societies Registration Act 1860. Since 1947, many other Indian states have also amended the 1860 Act to add a number of penal provisions to ensure compliance. In Pakistan, section 16A, the only amendment to the 1860 Act introduced in 1976, prescribes strong doses of State control through a maximum one-year suspension of the governing body over suspicion of misconduct.

The Societies Registration Act 1860 is administered by the Departments of Industries through the Directorate of Industries at the provincial level and by the Executive District Officer (Finance and Planning), at the district level. (The administrative arrangements are discussed in detail in chapter six). Rules have not been promulgated. Abundant case law, mostly dated prior to independence, that fleshes out many key terms and issues is available.

**The Voluntary Social Welfare Agencies Ordinance 1961**

The single most important addition to the corpus of nonprofit law in Pakistan has been the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961. Government appears to have had three main objectives in introducing this Ordinance. A welfare State, responsible for delivery of all social services, needed agents to mobilise the grass root communities to deliver much needed social services and social change. The scope of activities that the Ordinance envisages underlies this focus on provision of basic social services, formalisation and development of the social safety net, and on promotion of certain State sponsored programmes. Government wanted to bring all organisations that were active in the social welfare and dependence on “public subscriptions, donations or government aid” under one umbrella law. These, could then be supported through grants, aid, and training. For this patronage, government would regulate them rigorously and also perhaps keep them on a tight leash.

This double-edged agenda of accelerated social development through social welfare agencies and of increased State presence in civil society affairs was vigorously pursued in the 60s. A large number of agencies were established in the country, which were to become the instruments of the government for development. The 80s however saw the greatest growth in the number of organisations registered under this
Ordinance. The reasons of this growth have been discussed in chapter three.

This law, promulgated by the Federal Government, is administered independently by the provinces through the Directorate of Social Welfare of the Social Welfare Department. No substantial amendment has been undertaken in the forty years since its promulgation. Unfortunately, almost no case law is available, and many of the apparent ambiguities and conflicts remain unexplained.

**The Companies Ordinance 1984**

This law, basically meant to regulate commercial enterprises, has also provided an avenue for registration of nonprofit organisations. Any organisation that aims to promote “commerce, art, science, religion, sports, social services, charity or any other useful object”, and uses all its profits to advance its objectives and prohibits distribution of any dividends to its members, can be registered as a company limited by shares or by guarantee by the Securities and Exchange Commission of Pakistan upon application. Furthermore, upon application, this nonprofit organisation can be exempted from the otherwise obligatory use of word “Ltd” in its name.

This law has not been the most popular choice for registration for most associations because it requires elaborate internal governance and reporting and monitoring standards. The number of organisations licensed under section 42 of the Companies Ordinance is 370. Only those organisations opt for this law that want to submit to much stricter standards of regulation and accountability and can afford the higher costs of registration and substantial recurring costs of auditing and bookkeeping.

**Cooperatives**

The legal category of cooperatives was introduced in the subcontinent as a government measure to tackle the widespread problem of rural indebtedness. Demoralisation and frustration among the rural population due to indebtedness and failure of crops over a number of years led to famine and riots in Southern India in the late 19th century. Government, alarmed by the grave situation, took a number of remedial measures to provide relief to the farming community. One of these was the setting up of village cooperative societies.

Cooperatives gained a distinct legal form and independent regulatory structure over the next few decades. Initially, a few cooperatives started working which, in the absence of an independent law for cooperatives, were registered under the Companies Act 1882. Later on, to meet the requirements of the system, the Cooperative Credit Societies Act was promulgated in 1904. The Cooperative Societies Act, to be administered by the provinces, was promulgated in 1925 and remains broadly unchanged till today.

After partition, the cooperative movement in Pakistan played a useful role in rehabilitating the shattered rural economy and the landless farmers and artisans coming from India. But it could not sustain this initial momentum in the face of the increasingly well-organised business sector and due to mismanagement. Assets were depleted and adversely affected the operations of primary credit cooperatives, particularly in the Punjab.

Government interest revived after the visit of President Ayub Khan to Yugoslavia in 1960 where he was greatly impressed by the working of agricultural cooperatives. A policy declaration pledging support to the cooperative movement was issued in 1962. Since the 90s, however, cooperatives have fallen on hard times again. There have been major scandals in the country especially in banking cooperatives that have devastated the public image of this important vehicle of public mobilisation. Housing cooperatives, however, continued to play a big role in the development of middle and upper-class
housing in major cities into the 90s.

The Local Government Ordinance 2001

The Provincial Local Government Ordinances of 2001 envisage a new kind of nonprofit organisation, the Citizen Community Board (CCB), for mobilising participation of the community in the planning, financing, execution and management of schemes under the development program of various tiers of local government institutions.

The Ordinance provides a special mechanism for registration of CCBs. A group of non-elected citizens may set up a CCB in a local area and get it registered with the, Executive District Officer (Community Development). The registration process has been kept very simple. Existing citizen organisations may also register as CCBs and there can be more than one CCB in one local area.

The Ordinance envisions a wide range of permissible services for the CCBs. These include:

- Improvement of delivery of service by a public facility
- Development and management of a new public facility
- Welfare of the handicapped, destitute, widows and families in extreme poverty
- Establishment of farming, marketing and consumers' cooperatives
- Identification of development and municipal needs and mobilisation of resources
- Formation of stakeholder associations for community involvement in the improvement and maintenance of specific facilities and
- Reinforcing the capacity of a specific monitoring committee at the behest of the concerned council.

Wakfs

The subcontinent had a well-developed jurisprudence governing foundations in the form of wakf that clashed directly with the common law principles of trust introduced by the British. This clash between the indigenous and the imported was in contrast to the laws governing associations where the subcontinent did not possess any formal legal structure till the enactment of the Societies Registration Act in 1860.

The roots of the concept of wakf lie in verses of the Holy Quran, sayings of the Holy Prophet and Islamic history. Literally meaning 'detention,' the concept connotes detention or tying up of property in the ownership of God, extinction of rights of the author of a wakf, handing over of property to trustees to take care of it in the name of God and for the benefit of stipulated beneficiaries. The author of the wakf, the wakif, also appoints a person mutawalli, to manage the property.

“Wakf” is defined for the first time in the Wakf Validating Act of 1913 to mean “permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman Law as religious, pious or charitable”.\(^{14}\) the Wakf Properties Ordinance 1979, the main law that regulates public wakfs, defines “wakf property” as “property of any kind permanently dedicated by a person professing Islam for any purpose recognised by Islam as religious, pious or charitable, but does not include property of any wakf such as is described in section 3 of the Musalman Wakf Validating Act 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any member of his family or descendants.”\(^{15}\)

For the purposes of this discussion, wakfs can be broadly divided into two categories: (i) wakfs meant for the exclusive use and benefit of the public at large; (ii) other wakf properties
that partly benefit the general public and partly some particular and determinable individuals which may include the author himself and his family and descendants.\textsuperscript{16}

The Ordinance of 1979 is restricted to the first type of \textit{wakf}, i.e., the ones which are meant for the exclusive use and benefit of the public at large. If any benefit is claimable by the Wakif himself or by any member of his family or descendants, this Ordinance does not apply. However, explanations to this definition of “public \textit{wakf}” cast a wide net in defining the jurisdiction of this law. Properties “used from time immemorial for any purpose recognised by Islam as religious, pious or charitable, inspite of there being no evidence of express dedication”, “property allotted in lieu of or in exchange of \textit{wakf} property left in India”, “property of any kind acquired with the sale proceeds or in exchange of or from the income arising out of \textit{wakf} property or from subscriptions raised for any purpose recognised by Islam as religious, pious or charitable”, “the income from boxes placed at a shrine and offerings, subscriptions or articles of any kind, description or use, presented to a shrine or to any person at the premises of a shrine, “property permanently dedicated for the purposes of a mosque, takia, khankah, dargah, or other shrine” are all deemed to be \textit{wakf} properties.

This law empowers the State to take over, if it wants, all \textit{wakf} properties that fall under the jurisdiction of the Law. Notwithstanding anything to the contrary contained in “any other law for the time being in force, or in any custom or usage, or in any decree, judgment or order of any Court or other authority, or in proceedings pending before any court or other authority, the Chief Administrator may, by notification, take over and assume the administration, control, management and maintenance of a \textit{wakf} property”.\textsuperscript{17} However, this taking over has to have the consent of the author of the \textit{wakf}, if he is still alive, and according to a mutually agreed scheme.

A substantial body of rules, mainly governing service matters of employees, have also been promulgated. Substantial case law is also available on the subject. The features of this law are discussed in more detail in section four.

**Public Trusts**

Individuals who wish to form a public trust reflecting their particular concern cannot at present rely on a coherent statutory framework within which to embed such a trust. The Trusts Act, enacted in 1882, provided a legal framework to manage the relationship between trustor, trustee and the beneficiaries of only private trusts, as understood in the common law. “Public trusts”, the subject of this study, have not been defined in the Act of 1882 which specifically excludes religious and charitable trusts, endowments and \textit{wakfs} from its operation.\textsuperscript{18} Courts have filled the legal vacuum of absence of definition and regulation of public trusts by developing a number of principles. It has also been held that the general principles enshrined in the Trusts Act 1882 apply.

A numbers of tests have been developed to distinguish between public and private trusts. The documented intentions of the author regarding objectives of the trust are paramount. Other tests only come into operations where there are no express instructions. The nature of the body of beneficiaries determines the type of trust. If benefits of a trust are limited to identifiable, specified individuals, the trust is a ‘private trust’. On the other hand, if the beneficiaries of a trust include a large fluctuating segment of the general population, the trust is called a ‘public trust’.

Public and private trusts differ in the element of ‘perpetuity’. A public trust is permanent. A private trust, on the other hand, can be terminated by the will of the author or trustees if empowered in that behalf. The operational history of the trust is also relevant in case of any confusion regarding the status of a trust as public or private. The main touchstones are
the origin and nature of benefits that traditionally accrued from the trust, the manner of general management and involvement of general public therein, or the question whether the benefits of the trust were used by beneficiaries as a matter of right or as concession only.

Generally speaking, categorising trusts into public or private is independent of their categorisation into charitable or religious. A public or private trust can either be charitable or religious or none or both. For the purposes of this analysis, we use the term “public trusts” to refer only to public charitable and religious trusts.

This distinction between private and public trusts and their charitable nature or lack thereof is important for regulatory purposes. The State has traditionally interfered and superintended public trusts especially of a religious nature since the earliest times. In case of private trusts, on the other hand, courts can interfere only at the instance of at least one of the parties. This principle of the State's right to hold a public trust accountable is significant when regulatory regimes are devised.

In addition to the formidable body of case law that has evolved to govern public trusts, a few scattered laws have also been promulgated that deal with certain specific aspects of public trusts. For example, a subset of public trusts is defined in the Charitable Endowments Act 1890. Under this Act, a system is created whereby the settlor can voluntarily give up the title in favour of government and also entrust its management to the government. Another piece of special legislation, the Religious Societies Act 1880, provides internal administration guidelines -- appointment of new trustees, dissolution of trusts and subsequent management of properties -- for management of property held in trust by religious societies.

Other laws deal with various aspects of governance and accountability. The Charitable and Religious Trusts Act 1920 allows a trustee to seek guidance from the court if the trust is public and religious or charitable. Section 92 of Civil Procedure Code, provides an accountability mechanism for public trusts. These laws are discussed in more detail in the subsequent sections.

**Difference between a Wakf and a Public Trust**

Whereas the general spirit and essence of “public trusts” and “wakfs” is the same, there are some notable differences, important in devising regulatory procedures. First, the principal difference between a trust and a wakf lies in investiture of property. Trust property lies with the trustees while wakf property lies with God. On the basis of common law's definition of a trust, wakfs are not even trusts. A sajjada-nashin or muttawalli of a darbar or dargah is not a trustee, since the property has not been entrusted to him in absolute terms. This property is held in the name of God and is not vested in the muttawalli. Second, in case of trusts, unless proven otherwise, a trust is a private trust. In a wakf, unless shown otherwise, the poor and the wider public are beneficiaries for granted. Third, in a wakf the property cannot be consumed as such. Only the usufruct of the corpus can be used to meet the objectives of a wakf. Fourth, the purposes of a wakf can only be religious (charity, piety etc.), but in case of trusts any lawful purpose can be made an objective. Fifth, only Muslims can be the stipulated beneficiaries of a wakf. Non-Muslims can also benefit from a wakf but only as members of general public. But in case of trusts, anybody can be a stipulated beneficiary. Sixth, only Muslims can create a wakf. Public trusts on the other hand can be created by anybody.

These differences between wakfs and trusts became manifest with the introduction of British common law principles in the subcontinent. In Islam, provision of benefits to children, descendants, or family members is a charitable and pious purpose whereas common law considers only public benefit as charitable purpose. Owing to these differences, initially the supreme British
judicial authorities categorically refused to accept Muslim wakf as valid legal concept. It was only after much furore and debate that Muslim wakfs already created were validated and legally accepted vide Mussalman Wakf Validating Acts of 1913 and 1930.

Two Major Association Laws

Our description and analysis of laws proceeds from public policy objectives that legal framework of NPOs should (a) facilitate all citizens to establish NPOs (b) provide assurance to society at large and to government as to their bona fides (c) serve as a reference point for greater mutual understanding and promoting effective partnerships between NPOs and government. Moreover, any legal framework must not fall afoul of the constitution. Do these two laws that together regulate some 88 percent of all active registered nonprofit organisations measure up?

Purposes and Activities in Furtherance of Purposes

Purposes are what an organisation exists for and activities are what it does to achieve these purposes. An organisation may thus establish a soft drinks factory (an activity) to finance its mission of providing for special children (the purpose). There is considerable debate in Pakistan and elsewhere about what purposes are valid (Should NPOs be involved in political activity? What constitutes political activity?) and under what law and whether some purposes (rights advocacy) do actually promote public interest.

This section describes the permissible purposes and activities of various types of citizen organisations. It also describes limitations or prohibitions, if any, on the purposes and/or activities of the various types of organisations. It then analyses these legal provisions and related administrative practices as implemented keeping in view public policy objectives and international best practice.

The Societies Registration Act 1860

This Act permits a very wide ambit of purposes for organisations. According to section 20, “Charitable societies, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries or paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs” can be registered under this Act. The Act does not directly prescribe any penalty if the stated purposes are not being adhered to and also does not limit the activities that may be undertaken to achieve the stated purpose.

Charitable purposes: The term “charitable” is significant. It is mentioned in the preamble and in section 20 but is not defined anywhere in the Act of 1860. Regarding its meaning and scope, there have been two major legal debates.

The first debate has been whether “charitable purposes” includes religious purposes or not. “Charitable purposes ” were statutorily defined for the first time in section 2 of the Charitable Endowments Act 1890 and included “relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship”.

This formal exclusion of religious teaching or worship from the definition caused considerable legal wrangling over the meaning of “charitable purposes”. To resolve this debate, courts have resorted to the common law from where this term was imported. Common law, on which the Act of 1860 is based, groups "charitable purposes" under four heads: (1) the relief of poverty, (2) advancement of education (3) the advancement of religion (4) other purposes beneficial to the community not falling under
any of the preceding heads.²¹

Keeping in mind the meaning of charity as envisaged in English law, courts have consistently held that religious purposes cannot be excluded and that the restricted definition of Charitable Endowments Act is not judicially applicable to the term charitable as given in Act of 1860. It was held that religious purpose was a charitable purpose.²² Any mode of promoting the welfare of mankind would be a charitable purpose and it does not have to be restricted to giving of alms, the court decided.

It is now established that religious purposes are legitimate charitable purposes unless specifically excluded, as in the Charitable Endowments Act 1890. The legal principles that establish the scope of the term charitable are impliedly recognised in Charitable Funds (Regulation of Collections) Act 1953 where the definition of ‘charitable funds’ lists the purposes that these funds can be put to.²³ These purposes include “relief of poverty, sickness, distress or any other educational, religious, benevolent or philanthropic purpose”. The Provincial Wakf Properties Ordinance 1979 also defines charitable purposes as “relief of the poor and the orphans, education, workshop, medical relief, maintenance of shrines or the advancement of any other object of charitable, religious or pious nature or of general public utility”.

The Income Tax Ordinance 2001 implies exclusion of religious purposes from charitable purposes. It defines charitable purposes as including “relief of the poor, education, medical relief and the advancement of any other object of general public utility”.²⁴ The text of the law, however, always mentions religious and charitable purposes together when detailing various tax exemptions. This necessity of mentioning “religious” separately implies that religious purposes are perhaps not part of charitable purposes. Though it can be argued that this did not necessarily need to be mentioned separately given several court rulings that consistently say that religious purposes are a subset of charitable purposes.

Another major issue revolving around the definition of charity has been conflicting definitions of "charitable purposes" in Islamic law and common law. This means that the definition of “charitable purposes” in the Wakf Properties Ordinance and the meaning of “charitable” as established by the courts in the Societies Registration Act 1860 do not overlap entirely. Common law has established as a universal rule that the law recognises no purposes as charitable unless it is of public character. This means that the purposes must be directed to the benefit of the community or a section of the community. Providing for the welfare of one's children and descendants is not permitted in the definition of “charity” as elaborated by the English law and as understood in the context of “secular” nonprofit laws like the Act of 1860.

This interpretation differs markedly from the Islamic concept of charity where welfare of one's descendants is recognised to be a legitimate charitable purpose. Section 3 of Mussalman Wakf Validating Act 1913 validates the establishment of a wakf by the wakif for “maintenance and support wholly or partially of his family, children or descendants” and “where the person creating Wakf in Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts of the rents and profits of the property dedicated”. In both cases, ultimate benefit must always be “expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.” However, this interpretation of charitable purpose is restricted to interpretation of wakf laws and is not applied to other laws.

The Voluntary Social Welfare Agencies Ordinance 1961
A social welfare agency can be set up for fifteen enumerated purposes.²⁵ These include welfare of children, youth, women, the
handicapped, prisoners, juvenile delinquents, beggars, patients, the aged, and the socially handicapped. The permitted purposes also include family planning, organisation of recreational programmes, and social education of adults to develop civic responsibility. Training for, and coordination of, these activities is also included. The Ordinance does not directly prescribe any penalty if the stated purposes are not adhered to but does prescribe a thorough monitoring mechanism and penalties like suspension, dissolution, and even imprisonment, if the constitution of the agency, the rules or the law is being violated. It does not circumscribe the activities that may be undertaken to achieve the stated purpose.

**Analysis**

Pakistan's nonprofit law accommodate a wide range of legally recognised objectives as valid purposes. Of the two major association laws, the liberally drafted Societies Registration Act 1860 has become even more so as practised. It permits citizen organisations to aim for a wide array of purposes since the term “charitable”, as interpreted over the years, covers a very wide range of modern public benefit nonprofit purposes including establishment of libraries and museums for public use and diffusion of useful scientific and literary knowledge.

It appears that certain member benefit organisations, not legally considered to be “charitable,” are also allowed to be registered under the law. One of the legitimate purposes is “foundation or maintenance of libraries or reading rooms for general use among the members”. In practice, this important legal distinction in the nonprofit law between public benefit “charitable” and member benefit purposes is not observed by many administrators of Act of 1860. A substantial number of such organisations are registered under this law, especially in the large urban areas. In Karachi, for example, most flat owners associations that provide various municipal services to a small defined set of flat owners or tenants are registered under this Act along with many trade bodies - ranging from the powerful All Pakistan Newspaper Society to the local butchers association - that essentially promote members’ (very legitimate) interests and thus would not fall into the classic meaning of charitable purposes.

In contrast to the charitable liberalism of the Societies Act, the list of permissible purposes, under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961, is short and mostly restricted to the old-fashioned concept of community welfare. Member-benefit activities focusing on recreational or narrow civic interests of the members are not included.

The two laws differ markedly in their treatment of organisations if stated purposes are not adhered to. Societies Registration Act 1860 does not prescribe any routine monitoring. However, any major deviation from the stated purpose can be penalised under section 16-A whereby government is empowered to suspend the governing body of the society for a maximum of one year if it is deemed “unable to discharge or persistently fails in discharging its duties”, or “generally acts in a manner contrary to public interest or the interests of the members of the society”. The Ordinance of 1961 also does not directly address the subject but does prescribe routine monitoring and inspections and also empowers the government to suspend the governing body or even dissolve the organisation if the constitution of the organisation, that has to state purposes at the time of registration, is seen to be violated. In practice, government rarely takes any punitive action. And it is commonplace that organisations list purposes in the constitution and the registration application only to fit in with the regulatory purposes of the law and then continue with other public interest work that may not have been approved had it been formally listed.

A major problem with these laws is their
ambiguity on the important issue of advocacy work of NPOs and their role in the political process. This ambiguity regarding possible role in mobilising public opinion on political and legislative issues was attempted to be removed in 1927 when “diffusion of political education” was inserted as a legitimate purpose. This clarification has helped modern human rights and advocacy organisations that are registered under this law, though not without frequent administrative misgivings about their legitimacy. Human rights advocacy activities can also be interpreted to be allowed under the Ordinance of 1961 whereby “Social education, that is, education of adults aimed at developing sense of civic responsibility” is allowed as a legitimate objective. Since conventionally this term has been narrowly construed, advocacy organisations do not register under this law in practice. Community development and poverty alleviation work that many NPOs are increasingly undertaking is also not explicitly covered as a legitimate purpose. This lack of clear language in the law and its interpretation through judicial decisions and well-defined administrative orders causes problems in registration.

Seeking of political office or influencing election in any manner is not clearly prohibited though such activities would quite likely be covered under the wide definition of misbehaviour that the two laws prescribe. Interpretation by the superior judiciary is also not available that could have included or excluded this important purpose. Again, no clear administrative precedent of implementation is available that would clarify the matter.

Both laws are broadly enabling in permitting the widest possible range of activities for achievement of the goals of the organisation. The Act of 1860 does not address this issue and thus indirectly enables all activities, if not prohibited by any other law. The de facto situation is that there is no bar on carrying out commercial or business activities. For example, the Army Welfare Trust and Hamdard Trust, both societies, are large conglomerates with diverse business interests. Almost all private schools in Karachi, which dominate the primary and secondary schooling market, are registered as societies. The SPDC data also reveals that fee-based schools form the single biggest component of the nonprofit sector.

The implementation of the law regarding permissible activities is also largely enabling. Regulatory authorities do not interfere in activities of societies. According to one opinion of the Sind Government Law Department, provincial government is not supposed to inquire into the “profit making activities” of the schools registered as societies. This is the responsibility of the tax authorities and the members of the society. This freedom to engage in any activity to meet the objectives of the organisation is also helped by the lack of a monitoring machinery in the Industries Department.

The Ordinance of 1961 also does not clearly bar any business or commercial activity. However, voluntary social welfare agencies are not often seen to be earning revenues through business income. In particular, the smaller community-based organisations that are usually registered under this Ordinance often do not engage in business activities. However, it seems in practice that some registration officers object to legitimate fund-raising activities of some organisations. This perhaps has to do with the fact that this Ordinance has associated with it a relatively larger government apparatus with its typical rent-seeking behaviour. The fact that such ambiguities have not been clarified through judicial or Social Welfare Department decisions has also exacerbated the problem.

To conclude, it can be said that the provisions governing legitimate purposes and activities are liberal, especially as implemented, since a wide range of purposes and activities is allowed. But there are five major problems that need to be addressed. One, there is considerable overlap of purposes. All the
purposes given in Ordinance of 1961 are a sub-set of those given in the Act of 1860. The laws also do not clearly provide for the reasons of this obviously confusing overlap. This has resulted in two parallel administrative and regulatory machineries. Two, many modern nonprofit purposes like advocacy and poverty alleviation are not clearly enumerated which causes confusion. Three, all lawful activities in pursuit of legitimate purposes are not clearly allowed. This causes problems in the field where registration officials misuse the ambiguity to check activities like fund-raising that are not barred under the two laws. Four, the extent to which participation in the political process is allowed is not defined. All the problems given above have largely arisen because of lack of clear well-defined guidelines and lack of development of the law through judicial decisions.

Registration

Registration refers to a formal legal process that creates a codified relationship between the government and an NPO. This is often the biggest focus of dispute between competing stakeholders. Registration should be compulsory or not? If voluntary, should this voluntariness extend to all organisations? If compulsory, should it extend to all? Should it be a clerical process or should public officials enjoy discretion in deciding application? How long should this take? Should there be any background enquiry or feasibility analysis? What benefits should registration confer? Should legal personality be conferred upon registration or not? Regulatory questions involved in registration are many.

Our public policy objective is to facilitate establishment of NPOs by all citizens. This objective can however clash with the other equally legitimate need of assuring the public at large about the bona fides of the citizen sector. The following discussion measures these two laws against the first objective. The section on reporting and compliance discusses the second objective.

As discussed earlier, there are a number of laws under which NPOs are registered in Pakistan. This section first describes the registration procedures and practices under each one of these laws and then analyses these legal provisions as administered in practice and as seen from the point of view of international best practice. Various issues regarding legal personality are also discussed. This section also introduces the law, rules and procedures that govern working of foreigners and foreign NPOs in Pakistan.

The Societies Registration Act 1860

Registration is voluntary. A minimum of seven persons, associated for purpose covered under the Act, may subscribe their names to a memorandum of association and file an application with the Registrar of Joint Stock Companies. If the purposes are prima facie covered by the law, a certified copy of memorandum of association and rules and regulations is signed by three members and registration fees are paid, the Registrar “shall certify under hand that the society is registered under this Act”. The law does not prescribe any restriction over choice of name. Registration fee varies across the provinces from Rs. 500 in Punjab to Rs. 15,000 in Sind.

Registration automatically confers a number of benefits on the society. It can hold property whereby the movable and immovable property of the society is deemed to be vested in the governing body of a society for all civil and criminal proceedings.

It can sue and be sued in the name of its designated office bearers. It cannot, however, sue or be sued in its own name. It has limited liability. A judgment against the person or officer named on behalf of the society is not enforced against the property or the body of such person or officer but against the property of the society. The application for execution can only be enforced against the property of the society.

It has perpetual existence. Suits by or against a person acting on behalf of the society do not
abate because of this person's death or because of the fact that he is not holding an office in the society but will continue against the person who fills his vacancy.

**The Voluntary Social Welfare Agencies Ordinance 1961**

Registration is mandatory for all organisations that depend for their resources on “public subscriptions, donations or government aid” and that conduct activities that fall within the defined scope of permitted activities under the Ordinance. This provision, if strictly enforced, would cover most non-member benefit organisations, including organisations already registered as societies under the Act of 1860. An application has to be filed on the prescribed form and payment of prescribed fee. A constitution has to be filed which has to state the procedures and rules regarding meetings, governing body, office bearers, membership, and name, address and purposes of the social welfare agency that is to be set up. The registration authority, however, may require the filing of any other specified document. No restrictions are prescribed over choice of name. Registration fee varies across provinces but remains close to a few hundred rupees.

An “agency” cannot function without getting registered with the Registrar. The Ordinance requires all existing agencies to apply within six months of the time of promulgation in 1961. If their registration was rejected, it has to discontinue working within thirty days, or after the dismissal of the appeal. The provincial government is empowered, however, to exempt any agencies or class of agencies from the purview of this Ordinance.

The Registrar can accept or reject an application after conducting an enquiry into the “feasibility and necessity of the programmes of the agency, its financial status, state of affairs and standard of service”. If he rejects the application, he has to record reasons. An appeal can be filed to the provincial government within thirty days. Registration as an agency, however, does not provide for limited liability for its members and does not confer the right to sue or be sued in its name.

**Registration of Foreign NGOs:** The Economic Affairs Division (EAD) of the federal government coordinates all economic interaction of Government of Pakistan with foreign governments and multilateral donors. It has laid down procedures to “register” international NGOs seeking to work in Pakistan. This permission takes the form of a Memorandum of Understanding signed between the GoP and the organisation concerned. On receipt of request from the NGO, EAD provides a specimen of the MoU to the NGO and the NGO is asked to furnish a draft MoU in line with the specimen for consideration by the government. Only those NGOs are considered for signing an MoU, which are cleared by the Ministry of Interior and the Intelligence Bureau. The Kashmir and Northern Areas Division processes the cases of all NGOs that seek to work with Afghan or Kashmiri refugees in a similar fashion.

The draft MoU is examined and circulated among all concerned ministries for their comments. The comments so received from the ministries are incorporated in the draft and the amended MoU is forwarded to the NGO to ascertain its willingness. An agreement is signed if the NGO concurs.

All operations of international NGOs are governed by this MoU. A typical MoU defines the obligation of the government regarding granting permission to expatriate staff, opening of offices and bank accounts, lists various tax exemptions and liabilities, and defines the obligations of the NGO regarding its work.

This foreign NGO is not subject to regular nonprofit laws and is governed by its MoU only. Typically, it is forbidden from engaging in political activities and is required to submit to the government an annual report on its
funds and effectiveness of its programmes. It is also forbidden from providing, directly or indirectly, any assistance, monetary and/or material, to any local or international NGO without the permission of government. It is also required to closely collaborate with Ministry of Social Welfare and any other related ministry for its social welfare activities.

Foreigners are not allowed to form NGOs in Pakistan. The federal government has issued an order that no foreigner shall engage himself in or associate with the activities of charitable institutions of Pakistan, financially or otherwise, nor establish any charitable institution in Pakistan, except with the previous permission in writing of the federal government in the ministry or division concerned with the institution in accordance with the conditions subject to which permission is granted.44

**Analysis**

On paper, Pakistanis, protected by the Constitutional cover given to freedom of association, possess the right to pursue any lawful purpose through the nonprofit medium. A menu of laws, as discussed above, is available and an organisation can register under the law that is most suited to its needs. If its application is rejected, administrative and judicial appeals are usually available. Registration is not a favour afforded by the authorities that can be taken away, once granted, without due process of law.

How does this freedom actually work in reality? There is substantial confusion over the meaning of the term “registration”. According to a well-regarded opinion, “registration” under the Voluntary Social Welfare Agencies Ordinance 1961 is only for the purpose of that Ordinance and is mandatory in respect of organisations that carry out activities listed in the schedule to that Ordinance and, rely on “public subscriptions, donations and government aid. “Registration” under the Societies Registration Act, the Companies Ordinance 1984 or any other law, is for a different purpose. For example “registration” under the Companies Ordinance confers the status of a corporate body whereas “registration” under the Societies Registration Act gives some degree of a legal personality with certain rights and obligations, but not full incorporation.

Laws aside, as long as citizens do not approach the State and continue to associate among themselves for lawful purposes, the freedom is absolute. However, this liberty to associate and to get organised usually receives a rude shock when citizens decide to register to access fiscal benefits, State funds, or to formalise relationships among the members through becoming a legal entity subject to a distinct regulatory regime. There are delays, there is arbitrariness, there is rent seeking. And there is wasteful duplication of regulatory functions.

The mandatory “registration” provision under the Voluntary Social Welfare Agencies Ordinance 1961 is an exception to voluntariness of registration generally offered to NPOs under Societies Registration Act 1860 or the Companies Ordinance 1984. Does this violate the Constitution? A careful reading of the mandatory registration provision of the Ordinance of 1961 show that its focus is on agencies that rely on public funds. If interpreted to mean that registration is compulsory for those NPOs that solicit funds with appeals in the mass media or on thoroughfares, this could be seen as a permissible restriction on freedom of association in the larger public interest of protecting the integrity of such appeals and of NPOs that make such legitimate appeals. On the other hand if the words “public subscriptions” and “donations” are construed to include fund-raising activity even in small communities where every body is personally known to every body else or among friends, then this mandatory registration probably clashes with the Constitution.
Time and events have however overtaken the Ordinance of 1961. The de facto situation is that the provision of mandatory registration is widely ignored. In fact some 38 percent of active organisations are not registered at all.\textsuperscript{45} Similarly, a survey conducted by the Trust for Voluntary Organisations, among the NPOs that it funds reveals that some 27 percent are not registered under the Ordinance of 1961.\textsuperscript{46}

Registration authorities enjoy substantial discretion in deciding registration applications. Either the authority has arrogated to itself that discretion over time or the law empowers discretion. The Act of 1860, for example, does not provide the registration authority with any discretion but events and misinterpretation of law have resulted in a situation where such discretion is widely exercised. The Registrar is only supposed to see that the required documents are present and that the stated purpose falls within the defined purposes of the law. If that is the case, registration has to be granted. Yet police verifications are sought, hearings are held, and site visits are conducted.\textsuperscript{37} In contrast, the Ordinance of 1961 empowers the field officer with undue discretion by allowing an inquiry into the necessity and feasibility of the proposed programme of action in deciding the fate of the application. The grounds of enquiry, that may or may not be conducted depending upon the wishes of the field officers or the provision of transport, are very subjective. Both laws do not prescribe time limits. Registration can take anything from a few hours to a few months or even longer.\textsuperscript{46}

Administrative practices vary widely across the province and even across districts in the same province. Guidelines, provided by some offices, are not widely and freely available. Out of date and sketchy, these guidelines, if available, do not address the entire range of ambiguities and problems. The documents needed for registration are not well defined. For example, the Act of 1860 prescribes provision of a minimum of documents but practices vary widely. Title documents of property are required to be submitted. Absence of instructions on the minimum number of persons required to file application is grossly misapplied and misused. The registration authority can ask for any number of members ranging from 10 to 100 or more. Since both the laws fail to anticipate the need for restrictions on the name of an organisation, various offices have developed their own informal and often conflicting guidelines to deal with the problem of names. Worse, these guidelines are arbitrarily enforced. (Please see chapter six for more detail on procedures of registration as prescribed by various regulators).

The laws and their interpretation through courts have failed to keep up with developments in the field. Hence many ambiguities have arisen that remain unresolved. These ambiguities are compounded by the problem of lack of clear guidelines and near absence of case law. Confusion prevails over basic issues such as the supposed compulsoriness of the registration. It appears that Ordinance of 1961 was promulgated to control and regulate a subset of societies or other NPOs, which fell under its definition. But this rather obvious interpretation is not being practiced. The two main regulatory authorities, the Directorate of Social Welfare and the Directorate of Industries, run parallel administrations over societies and agencies, though that may not be required under the law.

The confusion regarding compulsory or voluntary registration is further compounded by the fact the Ordinance of 1961 does not offer legal personality. This supports the interpretation that the Ordinance presupposes registration under other laws. However, many organisations directly get registered under the Ordinance of 1961. To avail of the much-needed benefit of legal personality, some, albeit a very small number, then get registered under the Act of 1860. This results in a disabling situation where an organisation is subjected to two different regulators. If not managed carefully, the need for the benefit of
government grants, available only to agencies, and the need for the benefit of legal personality, available only to societies, can clash with the constitution of the organisation.

The matter of both natural and legal persons being allowed to become members, for example, also needs to be clarified. Since government can be a member of a society, it appears that juristic persons can be a member of the society. The right of legal persons to establish an agency under Ordinance of 1961 are also not clear. It appears from the wording of section 14 where penalties and procedures are prescribed that a person can be “a company, other body corporate, or an association of persons”. However, in practice this does not seem to be allowed.

Both laws also suffer from some fundamental flaws regarding due process. Appeals against refusal to register are not provided for under the Act of 1860, a major problem with a law that is otherwise permissive to the core. The Ordinance of 1961 does not allow appeal against governments decision to dissolve an organisation. The writ jurisdiction of the High Court can be invoked against such a decision but the grounds for this are narrow.

Naming an organisation becomes a problem at the registration stage. Laws do not prescribe any restrictions but many field officials have devised a few to tackle a genuine problem that the law does not address. Some of these practices genuinely protect the name and the reputation of existing organisations or forbid organisations to have names that incite hatred etc. Others are whimsical. One such restriction practised in some rural Sind districts requires all applicants of registration under the Ordinance of 1961 to have the appendage of “social welfare agency” in the name.

Inter-provincial coordination and regulation is a big problem. The right of organisations registered under one province to work in another organisation is murky. There is much restlessness among provincial governments over the fact that they have no regulatory jurisdiction over some NPOs that have significant activities in the province but are registered in an other province.

This problem of lack of coordination could be solved to some extent by regular information sharing between departments but that is big challenge on its own. Databases of registered organisations are not maintained. There is a national coordination institution, the National Council of Social Welfare, that has published a national directory of agencies in the past. But it is inactive now and proposals are underway to make it more effective. The Societies Registration Act 1860 has no inter-provincial coordination mechanism. No effort has as yet been undertaken that would even collate the information available in respective provincial governments to provide a national database.

The fact that mosque committees and madrasahs account for some 50 percent of societies registered under the Act of 1860 has added complex ramifications to the registration procedure. Some of these rather innocuous sounding mosque committees, set up to manage the routine activities of neighbourhood mosques, have become over time a source of sectarian trouble. Various sectarian groups compete over the possession of mosques by forming rival mosque committees and attempting to get registered at the earliest. To ward off any disputes over the possession of mosques, administrators have instituted site visits and open enquiries before deciding upon registration. This matter of possession of mosques and titles of lands should ideally be sorted out by the courts, but the sensitivity of the situation due to possible law and order problems forces the administrators to take decisions on grounds not envisaged by the law.

Similar precautions are resorted to in the case of registration of madrasahs. With the increase in allegations that some of these organisations were fomenting sectarian trouble through militant training, instructions
were passed in Punjab that madrassahs would not be registered under the Act of 1860. Yet this genuine need for order also tramples upon the equally genuine right to establish a madrasah, which was not going to carry out any objectionable activity.

Another feature of the registration provision in the two major laws is confusion over jurisdiction. Lack of clear administrative guidelines, absence of clarifying case law, and poor implementation are the major reasons.

All is not bad with the registration procedures under these two laws. There are certain aspects of registration, which are facilitating. Fee for registration under the Ordinance of 1961 is minimal. Access to registration officers under this Ordinance is available in almost all districts of the country following the implementation of Devolution Plan. These two features of the Ordinance of 1961 inexpensiveness and wide access of officials - are enabling enough for it to become the most popular choice of NPOs at the grass roots level despite its de jure strictness. The Act of 1860 on the other hand facilitates by offering a comprehensive menu of legal benefits upon registration. In effect, it offers incorporation without actually saying so.

To conclude, it is obvious that registration procedures need to be overhauled. They fail our major public policy objective. Establishing an NPO is not easy. The processes prescribed under the Ordinance of 1961 are especially disabling. The omniscience and omnipresence that the law ascribes to the social welfare officials does not rhyme with the new development governance paradigm that requires small, efficient government with little discretion. Its possible clash with the Constitution on the issue of mandatory registration needs to be carefully addressed. Neither does the government have the resources to implement this rigorous law nor do citizen organisations have the resources to comply with its compulsory and time-consuming registration requirements.

Resource Mobilisation

The issue of funding is of essence to both the NPO and the public. Fund raising is the next big problem faced by NPOs after registration. It is critical for sustainability of the organisation. To the public that supports the NPO with its funds directly or through the tax funds or other State benefits in kind, the assurance that public funds are being properly used is critical. There is great societal interest at stake in the integrity of nonprofit organisations working for public benefit. The greater the credibility the greater the amount of giving. This is not unlike the established public interest in ensuring capital markets work transparently and public solicitation of funds by private entrepreneurs is not unfettered.

Again both these objective compete with each other. This section reviews laws or rules relating to domestic and foreign fund-raising for citizen organisations keeping in view these objectives.

The Societies Act 1860 and the Voluntary Agencies Ordinance 1961

The Act of 1860 does not address this subject. This means that all lawful methods of resource mobilisation are allowed. Ordinance of 1961, on the other hand, indirectly addresses resource mobilisation in defining an agency. An 'agency' has to be relying on, “public subscriptions, donations, or “government aid” or any combination of these to raise funds for its activities. Required to be compulsorily registered under the Ordinance, the agencies become part of the strict regulatory regime that the law prescribes. However, any bar on its activities to raise funds after registration is not prescribed.

Other laws

There are two laws and a few administrative instructions that address these issues. The Charitable Funds (Regulation of Collections) Act 1953 applies to all public fund collection efforts of all agencies and seeks to regulate administration and accounting of collections
of charitable donations and to prevent fraud. The Income Tax Ordinance on the other hand applies only to those organisations, which voluntarily approach the Central Board of Revenue, for grant of certain exemptions. There are no rules, applicable to all NPOs that compel citizen organisations to spend or distribute a minimum percentage of their income or assets, or restrict the types of investments made by an organisation, or specify minimum standards for permissible investments. These and other instructions are prescribed only when an NPO voluntarily approaches the CBR for defined tax benefits. The indirect mobilisation of funds due to savings of taxes and duties under the fiscal regime is discussed in detail in chapter seven.

Charitable Funds (Regulation of Collections) Act 1953
This Act applies to all agencies, associations, organisations, persons or trusts which collect funds from the public for charitable purposes. Applicability of the law broadly depends on four issues: the legal character of the recipient, the mode of solicitation and receipt, the amount of funds involved and the purposes to which these funds will be used.

It applies to all individuals or groups of individuals, that collect charitable funds independent of their registration status. The Act envisages three main actors. A “promoter” is a person “holding himself responsible for the due collection, custody, administration and accounting of the donations”; a “recipient” means an “individual, institution, association, society or undertaking for whose benefit” funds are collected; A “collector” means a person actually engaged in collecting donations for a private or charitable fund. The Act exempts donations given directly to a person for his personal benefit and to mosques, darbars or khanqahs etc. held by the Chief Administrator of Aukaf. “Collection” is defined as “appealing for, receiving, collecting and attempting to collect, whether directly or indirectly, any donations whether in money or in kind and whether from the public in a public manner or from particular individuals or otherwise”.

The applicability of regulation depends on the amount of funds, the use or otherwise of an intermediary for delivery of charitable service, and the purposes for which they are being used. If the amount of funds collected in one year is between two hundred and fifty and five thousand rupees and these funds are given as charity to an individual or a group of persons closely connected with each other, then the fund is called a “private fund”. It is subjected to a lesser degree of regulation.

On the other hand, if the amount collected is greater than five thousand rupees for charitable relief of the same individual or individuals closely connected with each other or if any money is being given to any organisation, registered or not, for “establishment or maintenance or benefit of a mosque, dargah, orphanage, widows' home, educational institution or other similar establishment, or the relief of poverty, sickness or distress or any other educational, religious, benevolent or philanthropic purpose”, the funds collected are called "charitable funds", and are subject to a greater degree of regulation.

The Act prescribes in detail the manner of seeking permission and the reporting and monitoring requirements that follow. The promoter intending to collect funds for charitable purposes has to submit a declaration to the government. This declaration must detail in the prescribed manner the names and addresses of the promoters of the fund, the value of the donations which it is intended to collect, the names and addresses of the collectors of the fund, the names and addresses of the recipients of the fund, the objects and purposes for which the donations are to be utilised, and the names of the banks or the persons in whose custody the collections are to be kept.
No permission is needed for collection of less than Rs. 250 in one year. For a private fund only an application has to be submitted and fund collection can start without formal permission. Permission of the sanctioning authority, presently the District Coordination Officer, is needed for collection of all "charitable funds".

The sanctioning authority can refuse permission on a number of grounds. It can be denied if the object of the collection appears to be immoral or contrary to public policy, or if the bona fides of the persons proposing to make the collection are not satisfactory, or if the authority is not satisfied with regard to the proper custody of the fund or its due administration for the purpose for which it is to be collected. Extra conditions on collection can be imposed. One condition is that the applicant organisation must get itself registered under the Societies Registration Act 1860 before it starts collection of funds or soon after it. An authorising certificate, once issued, can be revoked subsequently by the sanctioning authority if the persons collecting funds are not seen to have satisfactory bona fides.

All persons who collect funds must display the certificate that is issued at the time of collection. Fund-raising expenditures are not clearly asked for. But the promoter, collector, and recipient are all required to maintain complete audited accounts that must be submitted to the sanctioning authority after prescribed intervals and can be checked at any time by the sanctioning authority.

The Act has a number of provisions to check misapplication of funds. It requires that no part of any donations collected for any private or charitable fund shall be used for any purpose other than that for which it was collected. It lays down that no charitable fund in the custody of any person authorised to hold it shall be transferred to any other person except with the permission in writing of the sanctioning authority or under the order of a Court. In case of any misapplication, or misappropriation it holds the promoter or the collector responsible until they prove that this happened despite due diligence. Violations are cognisable crimes, punishable with imprisonment of either description for up to six months fine or both.

**Administrative Instructions of the Federal Government**

The administrative instructions issued by the Economic Affairs Division (EAD), the department charged with interacting with foreign donors under the rules of business of federal government, regulate the receipt and use of foreign funds by nonprofit organisations for developmental purposes. A high-level standing committee chaired by Secretary EAD and consisting of representatives of various federal divisions, has been constituted to consider all proposals on a case-to-case basis for funding of NPOs from foreign aid funds. The approved proposals are then forwarded to donors for their consideration.

**Analysis**

It is widely agreed in Pakistan, as in most other countries, that public fund raising activities of citizen organisations need to be regulated. Actually the Ordinance of 1961 with its emphasis on reliance of public funds as the main factor in determining compulsoriness of registration can be seen as a step in that direction. This need has become more acute due to the omnipresent fund-raising conducted by various militant organisations before the crackdown following 11 September 2001.

The Charitable Funds (Regulation of Collections) Act 1953 is a similar attempt. It includes some features that conform with international best practice. Identities of the donors are not required to be disclosed. This protects the legitimate privacy interests of donors and recipients as well as the protection of confidential information. All actors in the process of collection of funds have to be identified. The law attempts to protect the
confidence of the public in charitable institutions. It guards strictly against misapplication of funds. Records are to be maintained and government can inspect these at any time to prevent misappropriation.

On the other hand the shortcoming of this well-intentioned attempt to regulate collection of charitable funds are many. First, it is too ambitious in its scope. Various ceilings prescribed in law for definitional purposes are ridiculously low and have lost their meaning over time due to inflation. The original intention of the law to monitor large transactions has thus been lost. It also prescribes too thorough and elaborate a regime of permissions, accounting, auditing and reporting to be implemented properly. The powerful office of the District Magistrate, which was supposed to administer this law, slowly lost its teeth and its reach. This law also slowly became obsolete.

Obsolescence aside, the law has many problems. There is undue discretion in the hands of the sanctioning authority. For example the sanctioning authority has wide discretion to refuse permission for collection of charitable funds. It also has wide discretion to impose any extra condition on this collection. The grounds given in the law or the mechanisms are not well defined and therefore create ample chance of abuse.

The biggest problem is that it creates a parallel accounting regime and regulating authority for NPOs that raise funds from the public. Thus there are, two regulators for the same activity. It could be done better through the accountability provisions of regular registration laws. For example, the accounting and record keeping requirements under this law duplicate the ones given in the Ordinance of 1961.

Actually, for all practical purposes, this Act is a dead law. Even well-meaning and law-abiding organisations have fallen on the wrong side of the law because it is just not widely known. EEI field research also reveals that offices that are supposed to be the sanctioning authority under this law are often unaware of it. On the other hand, public appeals for collection are omnipresent on the streets of the country and no recourse to the sanctioning authority is sought. It is only rarely that the law is dusted off to victimise a few organisations. But as seen above, the legitimate organisations that would like to follow the letter of the law are inhibited due to the rigorous regime prescribed. It has failed to achieve the objectives that it was enacted for and needs a thorough overhaul.

The rules and the capacity of the government to regulate the inflow of foreign funds has also similarly failed to keep pace with the times. The reality is that EAD instructions are widely ignored and many international donors and local recipients enter into contracts freely without any reference to the federal government. If any violation is noticed by EAD, it merely writes reprimanding letters.

This situation where government prescribed channels for accessing foreign funds are widely ignored has come to pass because of a number of reasons. There are widespread complaints that EAD scrutiny processes are slow and rigid and cannot meet the needs of the donors and the local recipients, who have both learned to bypass EAD. Donors also pay little heed to EAD recommendations in their funding decisions to the NPOs.

Government's feeble attempt to regulate inflow of foreign funds has to be seen in the broader context of flow of foreign funds. Most experts think that the amount of foreign funds channelled through international donors is a small percentage of the total foreign philanthropic inflow into the nonprofit sector. The overwhelming percentage, takes the form of hundis, a kind of informal banking channel, and goes directly to nonprofit organisations or indirectly through other local recipients.

It is thus seen that this law, enacted to fill the gap in regulation of collection of charitable funds, has remained largely confined to the
statute books because of its ambitious ambit. It cannot possibly be enforced across the board and its application will remain arbitrary and selective. Since the Act of 1860 does not require any record keeping or public accountability and transparency on its own, the regulatory gap over collection of funds remains wide.

**Internal Governance**

Good public policy requires that organisations may be allowed to manage their own affairs. It also requires that public be assured that these organisations are run efficiently and effectively and rights of the members of the organisations are protected. These two public policy objectives again -- compete with each other. This section discusses various issues regarding internal governance and management of an organisation. These include minimum standards regarding election or selection of governing body members, the fiduciary duty of the governing body members, their liability for any wrongdoing, minimum numbers of meetings, joining and resigning procedures for members, accountability of the governing body to members, right to change the constitution etc. It also describes and analyses the procedures that apply to the various types of NPOs that decide voluntarily to end their legal existence or merge with other organisations. This analysis is located in our twin objectives of ease and autonomy of operations and providing assurance to members.

**The Societies Registration Act 1860**

It requires that a minimum of seven persons intending to form an organisation must submit a memorandum of association. This memorandum, at the minimum, must state the name and objectives of the society and list the names and addresses and occupations of the governing body. It must also include a certified copy of the rules and regulations of the society. All organisations are required to submit annually a list of the governing body members. However, no penalty is prescribed if this requirement is not met. In addition, no particular constitution or model constitution is prescribed. In practise, however, most organisations choose the standard template.

The purposes of the society can be amended by the members without seeking recourse to the registration authority. The governing body has to inform all the members in writing and then call a special meeting and get it approved by three fifths of the members present in two successive meetings, with an interval of one month. Proxy voting is allowed.

Voluntary termination is also allowed. A minimum of three fifths of the members can call for dissolution by votes delivered in person or by proxy. The rules of the society will be followed to dispose of the property of the society and to meet any claim. If there are no rules for this purpose, then the governing body may decide as deemed fit. If there is any dispute in the governing body, then the matter has to be referred to the principal court of original civil jurisdiction in which the chief building is situated. If government is a donor, a member, or is otherwise “interested” in any society, then it cannot be dissolved without government’s consent.

**The Voluntary Social Welfare Agencies Ordinance 1961**

In contrast to the Societies Registration Act 1860, this Ordinance prescribes a relatively thorough regime of internal governance to be supervised by government. A constitution is required as per the law to address certain aspects of internal governance. These include procedures for calling different types of meetings, notice period and quorums for different meetings, organisation structure, composition, powers and functions of the General Body, governing body and any other body, designation of the office bearers, the method of their election, selection, or nomination, their terms in office, the powers and functions of each office, members details, name of the agency, area of operation, address of the principal office, aims and objectives of.
agency, financial and general administration. The law does not prescribe any particular way with which these issues will be addressed. Though the provisions of the constitution must not clash with the Ordinance or the rules made there under. An agency cannot change its constitution on its own.  It will have to seek the permission of the registration authority to do so. Voluntary dissolution is allowed provided government permits. Mergers are not directly prohibited but reading section 11 on prohibition of voluntary dissolution would imply that they are. An agency can dissolve itself if three fifth of its members apply to the provincial government for this purpose and satisfy the provincial government that it is proper to do so. The provincial government then appoints an administrator to manage the affairs of the agency, freezes its assets, and decides where these assets are to go. The members do not have any legal say in the matter.

**Analysis**

The Act of 1860 and the Ordinance of 1961 do not prescribe any minimum floor or particular mode of internal governance. This is enabling for the vast majority of NPOs that can choose a constitution to fit their needs. Any particular method or procedure of election or selection of governing body members is not given. The fiduciary duty of the governing body members minimum numbers of meetings, joining and resigning procedures for members, accountability of governing body to members are not provided for. It is up to the organisation to choose what ever it deems desirable.

The Act of 1860, for example, relies heavily on regulation of the governing body by its members according to the rules and regulations they devise for themselves. The only intervention of the State is the requirement of filing of annual list of governing body members as official proof of the composition of the governing body. It is possible for a society to amend its purposes or amalgamate itself fully or partially with any other society by following the prescribed procedure. Similarly, an organisation can decide for itself whether it wants to continue to exist or dissolve itself.

Ordinance of 1961, on the other hand, provides for excessive government intervention once the members agree upon the initial constitution. Government permission has to be sought if an NPO decides to change its constitution, wants to merge with another NPO, or decides to terminate its activities. The left over assets are also to be disposed of by the government. The members do not have any say in the matter.

Some key issues need to be clarified. Rules regarding merger can perhaps be spelt out in the memorandum of association but this is not clear. There should be clear rules allowing, but not compelling, NPOs to merge. Under the Ordinance of 1961 voluntary mergers are not directly prohibited but the prohibition on voluntary dissolution would imply that such voluntary mergers are not allowed without permission of the registration authority. The Act of 1860 is silent on procedure of amendment of any part of the memorandum of association other than 'purposes'. Courts may however intervene under the doctrine of cy pres or can invoke their original jurisdiction.

The lack of restrictive internal governance requirements enable NPOs in many ways. But do these laws provide for assurance for the society? Both the Ordinance of 1961 and Act of 1860 are silent on the extremely important issue of fiduciary duties of the trustees or managing committee. The laws do not provide that officers and directors of an NPO have a duty to exercise loyalty to the organisation, to execute their responsibilities towards the organisation with care and diligence, and to maintain the confidentiality of non-public information regarding the organisation. Penalties in case of any violation of these duties are also not clearly provided for. This laxity is a source of public...
worry and criticism because society has high stakes in large organisations that depend on public funds. This interest needs to be protected with higher standards of internal governance such as a clearer delineation of fiduciary duties.

To conclude, the two major laws rightly leave internal governance to the members of the organisations to be decided by them when agreeing to a constitution. But extension of this principle to the entire universe of NPOs, including large publicly funded organisations, is not advisable in the larger public interest.

**Reporting and Compliance**

Law attempts to ensure transparency among the nonprofits, our second major policy objective, through reporting, monitoring and compliance requirements. How should this be done? And by whom? What should be checked? What should be disclosed and to whom?? What is public interest? How much should State know about an organisations? For what purpose? This data should be accessible to whom and why? Should there be uniform reporting requirements or should the funding arrangements, the purposes and the size of an organisation be a factor in determining reporting requirements? Should State have the right to intervene in the affairs of an organisation that does not receive public funds and does not commit any crime? How should any State intervention be structured? How can complicated issues of conflict of interest and self-dealing be sorted out? What recourse should the organisations have against any action of the State? In short, how can limited public resources be used best to enhance public interest?

These are the questions that a reporting and monitoring regime addresses. And predictably, these issues are, after registration, the biggest point of disagreement between the stakeholders. This section describes the reporting and compliance requirements of the two main laws. It also describes and analyses the procedures that are used to involuntarily terminate or dissolve an organisation.

**The Societies Registration Act 1860**

Reporting and monitoring requirements under this Act are minimal. Once a year only, in January or when the rules of the society prescribe, the list of “governing body” members has to be filed with the Registrar of Joint Stock companies, the registration authority under the law. No penalty for non-compliance is prescribed. Members of the public can inspect any document filed by any organisation and have a certified copy made upon payment of a small fee.69

Government can, however, suspend the governing body for a specified period not exceeding one year if, after such inquiry as may be necessary, the provincial government is of the opinion that the governing body of the society is “unable to discharge or persistently fails in discharging its duties, or is unable to administer its affairs or meet its financial obligations, or generally acts in a manner contrary to public interest or the interests of the members of the society”.70 The provincial government may then hand over the management of the society to another governing body or may appoint an officer for this purpose. After this time, the governing body will have to be reconstituted according to its memorandum of association and rules and regulations of the society.

**The Voluntary Social Welfare Agencies Ordinance 1961**

In great contrast, the Ordinance of 1961 prescribes rigorous reporting and monitoring requirements. Every registered organisation must publish an annual report and submit it to the registration authority immediately upon its publication.71 This report must contain details regarding general management of the agency, details of the nature and extent of service rendered during the year, programme for the next year, and audited accounts. This annual report is required to be published and sent to the registration authority.72 Audited
accounts must be published annually as a part of the annual report in a manner specified by the registration authority. This requirement is uniform for all small and big agencies. All funds have to be kept in approved banks. Registration authority or any authorised officer may, at any reasonable time, inspect the records and accounts of the agency. In addition, nine registers have to be maintained by every agency regardless of its size. These are about cash management, income and expenditure, members, record of minutes of the meeting, and a book to record inspection. In addition, the registration authority may require all agencies to maintain any other kind of record. The registration authority has the authority to audit all the books of the Agency at all reasonable time without any limits.

There are some other mandatory reporting requirements to keep the registration authority updated on the changes within the agency. Any change in the address of the agency has to be communicated to the registration authority within seven days. Any change in office bearers has to be communicated within thirty days. Public disclosure is provided for. Any person can inspect any document filed by any organisation with the Registrar under this Ordinance and can ask for a copy to be made.

Violations can be checked with suspension, criminal penalties, and even suspension. Government action can be initiated because of “any irregularity in respect of funds of the organisation or for any misadministration in the conduct of its affairs or failure to comply with the provisions of the Ordinance or the rules”. This order of suspension has to be in writing and has to be based upon an enquiry. Reasons for interference are wide. These can be: “for any irregularity in respect of its funds or for a misadministration in the conduct of its affairs or has failed to comply with the provisions of the Ordinance or the rules”. Government appoints an administrator or a caretaker body to run the affairs of the organisation during the suspension period. The order of suspension, however, has to be approved by a board of five persons, that must include representatives from NPOs also, to be constituted by the provincial government. This board can overturn the order of the registration authority. The aggrieved governing body may appeal to the provincial government within thirty days from the date of such order, and the decision of the provincial government is final and cannot be called in question in any court.

The registration authority can also start proceeding of dissolution of an agency if it thinks that the agency is violating the provisions of the Ordinance or is contravening its constitution or is acting in a manner “prejudicial to the interests of the public”. But before sending the report to the provincial government, it is obligated to provide the agency the opportunity to explain its point of view. The provincial government can dissolve the agency if it is satisfied with the report of the registration authority. Appeal against this order is not provided.

Violation of the law and the rules can invite penalties including imprisonment of up to six months. Any misrepresentation or false statement given to the registration authority or the general public or published for general information is similarly punishable. Most importantly, all officers of the agency are presumed to be culpable unless proved otherwise in case of conviction. Prosecutions, however, cannot be initiated without a complaint, in writing, of the registration authority.

**Analysis**

The Societies Registration Act 1860 and the Voluntary Social Welfare Agencies Ordinance 1961 offer two completely
different visions of guarding public interest. The Act of 1860 is laissez faire to the extreme with no routine monitoring envisaged. Only one document is required to be filed that can in theory be accessed by any member of the public body upon payment of a small fee. In practice, a very small number of societies even file this document. This deprives the regulator as well as the public from looking at even this bare list of governing body members.

Audit is not provided for. Organisations ranging from annual turnover worth five thousand to those with billions of rupees are not required to report their accounts. It does not matter if an organisation is dependent on public funds or only member funds. The reporting requirements remain close to zero. The question that there should be differentiation of reporting requirement on the basis of size does not arise. It does not prescribe routine intervention by the government.

Section 16-A, inserted in 1976, is the only section in the Act of 1860 that provides for some public accountability. This would have been a positive addition had it provided for basic due process. Show cause notices are not envisioned. Notice for corrective action is not provided. The decision to suspend can come after the briefest of enquiries. Grounds for action are discretionary and vast.

This coercive clause has however been rarely used. This is why the venom of its design has not been felt. The situation has also been helped by the fact that the Industries Department, registration authority under the Act of 1860, does not have the resources to inquire in detail into the work of any organisation. The fact that the Act does not envisage any routine monitoring has also helped.

Predictably the Ordinance of 1961 provides for a strong role of the regulator with a long list of required bookkeeping, a detailed annual report, and permission of random inspections. This extensive record keeping becomes a problem for small NGOs because they do not have the capacity to maintain proper accounts, to have these audited by qualified auditors, and to publish an annual report.

A number of serious issues like self-dealing and conflict of interest are not directly addressed, though violations can perhaps be checked under both laws where grounds for dissolution and suspension are given. However, these important moral principles need to be clarified further.

Both laws provide for public disclosure. As discussed above, a large percentage of organisations fail to comply with the reporting requirements of the law. Equally worse, an application to inspect a document meets tough resistance from the registration authorities. The net effect is that these extremely important transparency provisions have failed to deliver public assurance.

More importantly, the practice of the law is radically different from the letter. Registration is often the first and the last contact between the registration authority and the organisation. Very little monitoring and auditing is done. Even that is often done to victimise or harass rather than to correct mistakes and to improve the quality of management. Government very rarely resorts to suspension or dissolution of an organisation. In effect, laissez faire prevails for a very large majority of organisations registered under these two laws.

In sum, it is counterproductive that two radically different regime of reporting and monitoring operate in Pakistan for broadly the same kinds of organisations. One of these two competing visions of protection of public interest is definitely wide off the mark. Or perhaps both. Public interest could be best protected by new reporting, monitoring and compliance requirements that create a balance between the two regimes, facilitate compliance, decrease government discretion,
and ensure wide and easy public access to all reported documents.

**Foundation Laws**

This section discusses various features purposes, registration, resource mobilisation, internal governance, accountability -- of the public trusts and *wakf*. Unlike the section on the two main laws that regulate associational activity, the description and analysis of the laws is not separated.

**Purposes**

Among foundations, public trusts law recognises the widest possible variety of valid purposes. This wide ambit is in recognition of the principle that the person who allocates his property should be at complete liberty to dedicate this property to any lawful purpose without State interference of any kind.

Any lawful activity can be made an objective of a trust. Thus a wide range of activities ranging from providing for ones children to taking care of hajj-pilgrims to ensuring safety of wild animals can form a valid purpose of a trust. Most significantly, the purposes of the trust are central to the determination, in case of any dispute, whether the trust is a 'private' or a 'public' trust.

In respect of public trusts, an important legal concept is the permissibility of the modification of the purpose and obligation of trust through the doctrine of cy pres. It means application of mind by a court to determine “what would be the nearest or the closest to the intention of the author of a trust” when pursuance of his original intention is no more lawful or practicable. The doctrine of cy pres thus not only perpetuates a public trust but also ensures that the terms of the trust comply with changing times and circumstances.

Though an element of charitable purpose is always shared by the purposes of a public trust and a *wakf*, there are important differences. As discussed above, a major difference of *wakf* and public trusts is that *wakf* law recognises welfare of one's descendants as a charitable purpose. Section 3 of the *Mussalman Wakf* Validating Act 1913 enunciates this Islamic notion of charity, “it shall be lawful for any person professing the *Mussalman* faith to create a *Wakf* which in all other respects is in accordance with the provisions of *Mussalman* Law, for the following among other purposes: (a) for the maintenance and support wholly or partially of his family, children or descendants, and (b) where the person creating *Wakf* in *Hanafi Mussalman*, for his own maintenance and support during his lifetime or for the payment of his from the rents and profits of the property dedicated; provided that ultimate benefit is in such cases is expressly or impliedly reserved for the poor or for any other purpose recognised by the *Mussalman* law as a religious, pious or charitable purpose of a permanent character.” Section 4 of this Act explains that the remoteness of accrual of benefits to the poor will not make the *wakf* invalid, “no such *wakf* shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature, is postponed until after the extinction of the family, children or descendants of the person creating the *wakf*.”

It is also established that a *wakf* can be made by a Muslim and for the benefit of Muslims only.

The *Wakf* Properties Ordinance 1979 departs from the traditional Islamic notion of immutability of purposes. It empowers the government to sell the *wakf* property, if the original dedication of the *wakif* regarding *wakf* is not available, and to employ the proceeds for “maintenance of poor, promotion of education, medical aid, public facilities, extension of services like roads, sewerage, gas and electricity, and to prevent danger to life, property or public health”. In essence, the executive has arrogated to itself the application of doctrine of cy pres, which was the traditional preserve of the courts.
Registration

The Trust Act 1882 requires that the trust deed of every private trust be registered with the Registrar concerned under the Registration Act 1908. This 'registration' is very different from the registration of societies. It is a mere registration of deed with the Registrar appointed under the Registration Act 1908 who registers all kind of documents. No discretion is exercisable by the Registrar. He is supposed to ensure only the veracity of particulars of author, witnesses, trustees and payment of taxes etc. Even on these grounds, if a deed is refused registration, judicial remedy of appeal is available.

Registration requirements are a little different in case of dedication of an immovable property. The Transfer of Property Act 1882 stipulates that immovable property cannot be conveyed from one person to another without registering the transfer deed with the Registrar. There are exceptions to this rule too. A public trust where the author is himself going to be the sole trustee does not require registration any formal documentation. This lack of formal documentation would apply to public trusts that only transfer movable property.

Anybody who is "major and is not of unsound mind can create a trust in respect of lawfully held property". Trusts can also be formed by wills. But, in such cases, the 'will' is required to fulfil the legal criteria laid down by the Succession Act 1925. A 'will' can form a basis of trusts involving any type of property movable or immovable.  

The Charitable Endowments Act of 1890 also does not provide a registration framework for public trusts in general. The Act of 1890 allows for property held or to be applied in trust for a charitable purpose to be vested in the Treasurer of Charitable Endowments. Such vesting of property can be ordered by the government either on an application made by the majority of the persons acting in the administration of a public trust or by the person or persons proposing to settle their property in trust for a charitable purpose. The government may also, with the concurrence of the persons making the application for the vesting of property in the Treasurer of Endowments, settle a scheme for the administration of the property so vested and may appoint, by name or office, one or more persons to administer the property. Section 5(5) of the Act of 1890 provides that the scheme to be settled by the government shall give effect to the wishes of the author of the trust so far as they can be ascertained and in the opinion of the government effect can be reasonably given to them. The scheme settled by the government can also be changed from time to time on application by the person administering the trust property.

Only a Muslim can create a wakf by a written deed, orally or by will. No particular words are required for this purpose. The only requirement is to fulfil all the ingredients of a valid wakf. First of these ingredients is dedication of property in the name of God. After the property has been tied up, the wakif loses all of his rights in the property. Secondly, permanence of such dedication is required. Thirdly, the purposes of wakf should be valid. Finally, the author's claim over the subject matter of wakf should be clear and lawful.

As is the case with trusts, creation of wakf, in strict legal terms, requires fulfilment of its essential ingredients, but registration of a wakf under the Wakf Properties Ordinance is different. Registration means registration of the wakf with the Chief Administrator. No 'conveyance deed' is required to be executed or registered, as a property cannot be conveyed to God. If the purposes of a wakf are purely public, Chief Administrator Auqaf may take over the wakf. The proceedings whereby the Chief Administrator takes over a public wakf are judicially appealable in the District Court or before the High Court.  

A public wakf is required to be registered. "Every person in charge of or exercising
control over the management of any *wakf* property and every person creating a *wakf* after the commencement of this Ordinance shall get such *wakf* property registered in such manner within such time and with such authority as may be prescribed.”

**Resource Mobilisation**

The public trusts law as such is silent on this issue. A trust connotes confidence in the trustees and full leeway is granted to them to devise methods to mobilise resources for the trust. The only applicable consideration, though not explicitly stated in the Act, is that the sources of any assistance or funding should be lawful. For a public trust, if so stipulated in the deed, it can attract funds from public subject to other laws in force.

Funds are generated and collected at many *wakf* sites, especially religious, by the performance of various religious, spiritual or customary rites. These may include charhawas, nazranas, subscriptions etc. The *Wakf* Properties Ordinance includes all proceeds of such rites in the ambit of *wakf* property' that have been taken over and thus these proceeds also vest in Auqaf Department. The produce of the corpus or the proceeds of service, if any, may also constitute the usufruct utilizable for meeting the objects of the *wakf*. The mutawalli is obliged to utilise the usufruct to meet the objectives of the *wakf*. Resources can also be generated, as discussed above, by sale of *wakf* property by the Chief Administrator.

The Charitable Funds (Regulation of The Charitable Endowments Act 1890 also provides a flexible and open mechanism for the trustee to seek guidance on any issue related to management or administration from the concerned District Court or High Court. In such circumstances, the trustee has to submit an application before the court and to establish that his trust is a charitable or religious public trust. The court can also call other concerned parties before it gives its direction, advice or opinion. This court is, however, not obliged to give its direction, advice or opinion in response to an application under this section. It may decline to do so.

The Charitable Endowments Act 1890 provides certain principles of good governance, albeit in a different context. The Act deals with those endowments for charitable purpose that have been vested with the Treasurer of Charitable Endowments. Basically, it lay down certain principles of “good-practices” for the guidance of the Treasurer. These are binding only on the Treasurer and have nothing to do with other public charitable trusts.

**Internal Governance**

The *Trust* Act 1882 is silent on the issue of internal governance. Relying on the good judgement and prudence of the author of the trust, the law assumes that confidence of the author in the trustee's abilities and credibility is sufficient to let the trustee manage the affairs of the trust. It is expected that a person while entrusting his property to a trustee would specify the manner in which the trust is to be run.

Even if such a mechanism is not specified, trustees are lawfully independent in devising a mechanism of their own. Other than the trustees themselves, the law does not provide for any other body or mechanism for effecting any internal check on the functioning of the trust.

In trusts, the only obligation of a trustee is to uphold the terms and conditions of the very trust deed. Towards this end, the trustees' have sole discretion. The law, does not stipulate any mechanism whereby this purpose is to be achieved.

The produce of the corpus or the proceeds of service, if any, may also constitute the usufruct utilizable for meeting the objectives of the *wakf*. However, not obliged to give its direction, advice or opinion in response to an application under this section. It may decline to do so.
According to the Islamic law of wakf, a mutawalli is obliged only by the terms and conditions laid down by the author of the wakf. Under the Wakf Properties Ordinance 1979, the Chief Administrator may design a scheme for management of a wakf keeping the wishes of the wakf in view. The Chief Administrator can also regulate certain activities taking place in the wakf like sermons, khutbahs etc. Non-compliance of Chief Administrator's instructions under the Ordinance has been made a criminal offence.

**Reporting and Compliance**

The Trust Act 1882, a law governing private trusts, does not contemplate any supervision by the general public or government. Section 92 of the Civil Procedure Code does, however, provide some accountability mechanisms in line with the general principle of beneficiaries being able to bring a suit against trustee(s) for enforcement of the trust. In the case of a public trust, two interested persons with permission of the Advocate General, or the Advocate General on his own as representative of the public at large, can invoke a District Court or High Court's jurisdiction if there is an allegation of breach of trust by trustees or guidance of the court is required. The court can issue a decree to remove or appoint a trustee, vest any property in a trustee, order an inquiry, direct accounts, dispose of trust property or grant any other relief. Section 93, broadening the operational scope of section 92, empowers the government to delegate this specific power of the Advocate General (to sue independently or to permit two interested persons) to a Collector or to any other officer.

The courts have also developed a definition of "interested person". It's interest ought to be real, substantial and existing. For a person to be 'interested' in a public trust, his interest may not be direct but may be indirect like that of a beneficiary of a trust. Instances of an interested person include the founder of the trust, residents of the locality benefiting from the trust, lawful possessors of trust property, actual worshipers or relations of the founder. A person who is 'not interested', for example, is the one who is entitled to worship in a given mosque but does not actually worship there.

The Charitable and Religious Trusts Act 1920 also contains some provisions that provide accountability of a public trust of a religious or charitable nature. Under this Act, any 'interested' person may submit a petition to the competent court in respect of a public trust for charitable or religious purposes to obtain an order of the court to make sure that trustees submit detailed accounts and other related information regarding management of the trust. The term 'interested person' is not defined in the Act but the definition developed by courts for the purposes of section 92 of Civil Procedure Code would suffice.

The Act relies heavily on the courts as arbiters of public good. Any failure in compliance with their direction amounts to 'breach of trust' and proceedings under section 92 CPC against the trustee can be started. More importantly, no consent of the Advocate General is required for the initiation of proceedings under section 92 Civil Procedure Code in this case.

The Wakf Act 1923 and the principles enshrined in it also present very useful yardsticks of the accountability of wakfs. This Act requires the managers or mutawallis of a wakf to submit a wide range of information to the District Court about the wakf property, management issues, income, expenditure, salaries, audit reports etc. All the information provided to the District Judge is to become public and is required to be pasted at some conspicuous place in the courthouse. Any member of the public can inspect this information. Similarly, copies of all reports of accounts, audit, etc. about a wakf can be obtained by any person. Unlike other pieces of legislation on wakfs and trusts, all persons have been empowered to inspect and bring to the attention of the court any particular aspect of misconduct by management.
The Wakf Properties Ordinance 1979 has radically overhauled the accountability regime of wakfs with the introduction of rigorous accountability provisions. The main emphasis is on the monitoring of mutawallis who manage the wakf and accountability of the Chief Administrator of Aukaf (plural of wakf) who manages the mutawallis. The Chief Administrator is obliged to maintain proper accounts of all receipts and transfers and to get his accounts audited. The report of audit along with comments of the Chief Administrator is to be statutorily laid before the provincial government annually. On similar lines, in respect of wakfs which have not been taken over by the Chief Administrator, he can call for any document or information from the person in-charge of the wakf. It is extremely significant that the provisions in the Code of Civil Procedure regarding accountability of public trusts apply to public wakfs as well.88

Analysis

The regulatory regimes of public trusts and wakfs have to be different from the law of associations because property is allocated first before any scheme of management is put in place. Since the author of the trust or the wakif has spent his own money, government's right to act on behalf of the wider public is limited. From this principle of limited government interest, ensue two important regulatory principles. These are: complete freedom in setting up internal governance mechanisms and limited right of the State and wider public to hold the trustees accountable.

It is thus important that public interest be watched by preventing excessive litigation against the trustees, who are working in the public interest. Superior courts have held that the real spirit of section 92 is to “regulate” the suits instituted against public trusts. The courts have observed that the essence of the section lies in that not everybody can bring suit against public trusts.89 If it were not so, an indefinite number of suits would be filed against public trustees which may be vexatious, harassing or reckless. So the real object of the section is to regulate the institution of suits against public trusts so that public interest in public trusts is safeguarded.

A register of such public trusts is thus not needed since direct State regulation is not advisable. In line with this principle of limited State interference, it is seen that registration of wakf, and trusts is simple. In fact, it is actually mere formality of registration of a document in offices which are easily accessible and where the govt officials do not enjoy any discretion. Even this registration of deed is not required if immovable property is not involved.

The anonymity of public trusts and wakfs is also a problem. Since there is no dedicated law or even a definition of a “public trust”, this naturally means that there is no separate, not to speak of comprehensive, register of public trusts. This lack of formal identity makes it impossible for charitable public trusts to get fiscal benefits like decreased stamp and registration duties. The regulatory regimes of public trusts and wakfs have to be different from the law of associations because property is allocated first before any scheme of management is put in place. Since the author of the trust or the wakif has spent his own money, government's right to act on behalf of the wider public is limited. From this principle of limited government interest, ensue two important regulatory principles. These are: complete freedom in setting up internal governance mechanisms and limited right of the State and wider public to hold the trustees accountable.

Another important issue arises when public trusts raise public funds or receive State benefits like tax exemptions. In this case, citizens at large develop an interest in the trust whose funds are being used in the running of the organisation. But the law provides no administrative mechanism whereby the management of the trust could be held accountable. In theory, the Charitable Funds (Regulation of Collections) Act 1953 applies to fund raising by public trusts but, as discussed earlier, this law is moribund.

Another problem is poor knowledge of the law. Public trust law is scattered over a large number of enactments and case law. These include trust principles as given in the Trust Act 1882 and scattered enactments exclusively dealing with public trusts -- the Charitable and Religious Trusts Act 1920, the Charitable Endowments Act 1890, section 92 of the Civil Procedure Code 1902, and the Religious Societies Act 1880. Predictably,
these public trust laws, only understood by a small number of experts, are rarely invoked by the average citizen. This is especially true of laws that deal with accountability of public trusts and wakfs.

Implementation is predictably poor. The intrepid citizens that do use the accountability provisions are faced with an over burdened judicial system that finds it difficult to provide relief. The result is that beneficiaries, the legal stakeholders in the public trusts and public wakfs, have a very slim chance of holding the trustees accountable.

Many principles of accountability of trusts are applied mutatis mutandis to the wakfs. However, it is seen that wakfs differ markedly from other public charitable or philanthropic institutions and thus it is impossible to extend all public trust laws to wakf, which are in fact a kind of public trust. One, the State is the biggest stakeholder in wakfs because of their legal character. Two, the public has a peculiar emotional relationship with religious wakfs and matters have to be handled in an extremely sensitive manner. Three, the regulation of rites, rituals and other routine activities have substantial law and order overtones. No agency other than the government can play an effective role in regulating such activities. Four, the large size of proceeds from the wakf properties also obliges the government to monitor wakfs on its own.

Wakf laws, nevertheless, do need reform. They do provide stringent measures to ensure accountability of public wakfs, a situation not dissimilar from other laws. But the ground realities are different. The welfare that could have accrued to the public from the huge resources that are tied up in wakfs has not materialised.30

Wakfs may for example be divided into religious and charitable ones for legal and administrative purposes. A separate regulatory regime, parallel to that of public charitable trusts, may be built to regulate the “secular” charitable wakfs. For the bulk of wakfs, the only practical mechanism of improving management appears to be increased transparency and accountability of government departments and officials.

A Short History of Reform Efforts

The formal citizen sector has grown tremendously over the hundred and forty years of its formal existence. A number of laws have been introduced to keep pace with its changing character over time. The rapid growth of the sector in the '80s and '90s has compelled the stakeholders, especially government, to review the legal structure to meet the changed situation. Since the mid 90s, a number of attempts have been initiated to reform the laws governing the nonprofit sector mainly focusing on the two main association laws.

The Social Welfare Agencies (Registration and Regulation) Bill 1994

The Ministry of Social Welfare tabled a bill titled “Social Welfare Agencies (Registration and Regulation) Act” in 1994. The stated objectives of the Bill, according to government, were to liquidate inactive and fraudulent NPOs, to ensure transparency of all NPOs and to monitor foreign funding to NPOs, especially the Afghan/Arab NPOs operating in the NWFP and the purposes for which it was being used.

The NPO leadership rejected the bill completely. They said that through this bill government wanted to control and intimidate NPOs, especially advocacy NPOs, through increased discretionary powers. Particularly arbitrary were government's powers to refuse registration, to deregister a registered organisation, to approve or reject amendment in the constitution of an NPO, to inspect the record and sources and management of funding, and to dismiss the governing body. NPOs also argued that the bill violated the
freedom of association under the Constitution and that compulsory national registration violated provincial autonomy. Existing legislation sufficed to manage any security problem and government did not need to resort to a draconian NPO bill that seemed to throw the baby out with the bath water to achieve legitimate objectives of national security and law and order.

In 1996, another bill, “Social Welfare Agencies (Registration and Regulation) Act, 1996” was introduced in the Senate. Called the “Sher Afgan Bill,” this effort was also opposed by the NPOs. The criticism voiced against this effort was similar in character to that of the earlier 1994 Bill. A study by the global resource body in its field, the International Centre for Not-for-Profit Law (ICNL), pointed out many major flaws in the proposed legislation.

- That the registration authority should not have power to dissolve/remove the legal status of corporate bodies created under other laws;
- That it places a burden on NGOs by requiring them to deal with several levels of bureaucracy for permission to function or undertake particular activities;
- That the law does not clarify how the general supervision and licensing functions of different agencies will interact;
- That the discretionary power given to the government to terminate NPOs should only be used as the last resort, for very serious offences, and that too after giving an opportunity to correct the behaviour;
- That there should be a right of judicial appeal against a decision of termination;
- That there should be provision of judicial review against the decision of the Standing Appellate Committee;
- That it is too large an intrusion into the internal affairs of an NGO to require it to submit all funding arrangements;
- That the provisions relating to furnishing of information to the authority is too broad, and should be limited to situations where there is a rational reason for the request;
- NGOs should be permitted voluntary dissolution.

The ICNL study concluded that though there had been improvements over current law relating to social welfare agencies, the draft did not adequately address the great need for protection of the NPOs from possible bureaucratic excesses.

**Pakistan NGO Forum Bill**

In reaction to government efforts, the NGOs started organising themselves. The Pakistan NGO Forum was a result of this exercise. After extensive consultations in 1998, PNF proposed a bill in 1999, know as the PNF bill, that was placed before the Senate. Predictably, it had a number of enabling features for NPOs. Registration was voluntary for all organisations. The Bill provided incorporation for all registered organisation with the benefits of limited liability, right to sue and be sued and to hold property in the organisations name. Automatic registration was provided for if the registration authority failed to register within sixty days. An NPO could dissolve itself, amalgamate itself with another organisation and amend its charter without seeking permission from the government.

Equally predictably, this NPO-sponsored effort envisaged minimum government intervention. The registration authority was not allowed to start any investigation against any NPO on its own. Only donors who had given above five percent to a NPOs annual budget, or one-third members and governing body members had a right to lodge a complaint against an NPO. Physical inspections by the registration authority were also not prescribed. It included only the existing agencies of the Voluntary Social Welfare Agencies Ordinance 1961. This Bill meant that the parallel regime of the Societies Registration Act 1860 was to continue.
Government-NPO relationship, increasingly ambivalent, heated up again into an open battle in 1998-99 when the government deregistered some 2500 NPOs in Punjab, Sind and NWFP, which it said were inactive. This house cleaning was necessary to focus the limited resources of government on ensuring accountability of active NPOs, said government. Both these diametrically opposed visions of regulation of the nonprofit sector, PNF and the Sher Afgan Bills, went into cold storage with the dissolution of the assembly.

The Pakistan NGO Forum Code of Conduct

The increased emphasis of government on controlling NPOs and holding them accountable through the official machinery resulted in NPOs making attempts to organise their own governance. The Pakistan NGO Forum (PNF), the major representative-body of Pakistan's NPOs, set up groups to “evolve guidelines for the NGO community so that highest standards of accountability, transparency and good practice can be observed”. This was done to “to demonstrate that NGOs/CBOs not only teach others about principle of sharing, partnership, transparency and accountability but also apply them to their organisational and programmatic domains”.

The PNF Executive Body and representative from the forum's coalescing units came up with a Code of Conduct in July 1999 after a year long consultative process. The Code intends to regulate NPOs “relationship with each other, with the government, international development agencies as well as their own staff (volunteers and paid professionals)”. More specifically, it aims to promote “greater collaboration, information and resource sharing and unity amongst NPOs”, “genuine partnership between NGOs and State institutions based on mutual trust and respect and geared towards the common goal of eradicating poverty and deprivation”, and “transparency and accountability within the NGO sector, encouraging mutual respect and understanding to put an end to narrow differences and unhealthy competition”.

The PNF Code of Conduct then goes on to list forty-four specific methods, all widely accepted all over the world as good practice, through which these objective would be achieved. These range from the bland “organising financial matters on proper lines”, to the more specifically useful instruction of “getting amounts exceeding Rs. 100,000 audited annually by a Chartered Accountant. Amounts less than Rs. 100,000 to be approved by an authorised officer and less than Rs. 10,000 to be verified by the executive body”.

As a statement of moral objectives, the Code of Conduct, like all codes of conduct, cannot be faulted. Its enforceability, even of the few of its parts that are specific enough to have a legal meaning is the problem. PNF does not even represent the entire sector. It prescribes voluntary adherence only. Enforcement is not even attempted. More significantly, the general criticism against this Code of Conduct is that self-regulation in Pakistan, even when backed by law in case of highly developed professions like accountancy, medicine, and law, has failed. Their professional Codes have earned little, if any, credibility among the wider public.

Concluding Analysis

Several salient features emerge from the preceding analysis that help us to make sense of the existing situation and often recommendations. The most important of these features is arbitrary, discriminating and rent-seeking implementation. The intention of the law often fails to get translated into reality. This situation has actively contributed to the accountability issues faced by the citizen sector in the country since this governance gap has attracted not-so-well intentioned people to the sector as well.

These governance problems are exacerbated
by poor understanding of the law. Public friendly guidance is not available that would ease government-NPO interaction. Many ambiguities remain un-clarified that often serve as rent-seeking weapons in the hands of the unscrupulous regulator. Little judicial interpretation has taken place that could effectively address modern nonprofit issues like board responsibilities, the essence of nonprofit character, the range of charitable activities, interaction with political activity, and various other transparency measures.

Poor administration, legal development and understanding of the laws does not mean that the letter of the law can be exonerated. Laws also need modernisation to make sure that an enabling environment is created. Duplication is a problem. Most nascent development organisations have exact alternatives available in the Act of 1860 and the Ordinance of 1961 that offer completely contrasting regimes of registration, internal governance, and accountability.

The body of nonprofit law has enabling features too. By long practice under the Societies Registration Act of 1860, and more importantly under Article 17 of the Constitution and under international law, Pakistanis enjoy the freedom to form and register organisations for public benefit purposes. The menu of registration laws also provide choice. An organisation can choose from the rigorous 514-section Companies Ordinance 1984 or the lenient 20-section Societies Registration Act 1860 with another choice available in between. The same goes for establishment of a public charitable trust or a wakf. 92

Another feature that can perhaps pragmatically be described as enabling is poor enforcement. Almost all stringent provisions of the law have become dormant and are rarely applied. In the absence of laws that can be implemented properly, fairly, and with a vision of promotion of the sector, the existing bad situation of no government is perhaps better than the much worse alternative of too much government.

This laissez faire situation has rankled many a government with reforms attempted many times in the ’90s. But the failure of government has also led to a situation where regulation is often seen as an obstacle and imposed standards are resisted. Without an external stimuli, organisations also do not proactively seek higher standards of governance to win wide public and government support.

To conclude, it is clear that the existing nonprofit legal regime fails to facilitate and to provide wide public legitimacy and support the vast majority of nonprofit organisations. It does not provide easy registration, does not provide effective reporting mechanisms, and does not provide loci that could provide for easy interface of the citizen organisations, the government and the public for transparency and disclosure. Our public policy objectives of a large, healthy, transparent, and effective citizen sector remain defeated.

What should be done? Chapter ten recommends concrete reforms based on the description and analysis of laws (this chapter), the analysis of government regulatory structures and fiscal regime (chapters six and seven, respectively), the international experience (chapter eight) and, most importantly, on the views of the stakeholders in Pakistan (chapter nine).

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*Endnotes*

2 A 1988 report of the Cooperatives Committee of the National Commission of Agriculture estimate the total number of cooperatives...
Societies in Pakistan at more than 60,000 with more than 3 million members.

This report actually focuses on subsets of trusts that are set up for public charitable purposes. This subset is referred to as public trusts. Please see section 2.8 for this distinction.

Registration Authority is another such official. Most of the functions of the provincial government under the law, on the other hand, are performed by the Secretary of the Department.

Register of Joint Stock Companies. Most of the functions of the provincial government under the law are on the other hand performed by the Registrar of Joint Stock Companies.

This scam, still being investigated, has set the cooperative movement back by decades by scandalising the very concept. Housing cooperatives have also been investigated by the National Accountability Bureau in 2000.

There are 370 nonprofit companies licensed under section 42 of Companies Ordinance 1984 (Source: SECP Islamabad; July 2002).

The schedule under section 2(f) of Voluntary Social Welfare Agencies Ordinance 1961. The Registrar is a government official authorised to perform the function of the Registrar of Joint Stock Companies. Most of the functions of the provincial government under the law are on the other hand performed by the Secretary of the Department.

Organisations registered under the Societies Registration Act 1860 may not call themselves societies and may assume any name without any restrictions. As described in later sections, this general license of the law has also not been proscribed in practise. They will however be referred to as societies in this chapter to facilitate distinction.

This chapter refers to organisations registered under the Voluntary Social Welfare Agencies Ordinance 1961 as “agencies”. Though “agency” is the legal term that denotes all organisations registered under the Ordinance of 1961, organisations may carry different names.

The famous cooperative scam of the early 90s resulted in tens of thousands of persons losing their savings. Fraudulent banking societies attracted huge deposits by offering extremely high rates of return. These returns were initially paid by using the capital base. This scam, still being investigated, has set the cooperative movement back by decades by scandalising the very concept. Housing cooperatives have also been investigated by the National Accountability Bureau in 2000.

984 NPOs were registered under the Income Tax Ordinance 2001 for defined tax exemptions in 2001-2.

Organisations registered under the Societies Registration Act 1860 may not call themselves societies and may assume any name without any restrictions. As described in later sections, this general license of the law has also not been proscribed in practise. They will however be referred to as societies in this chapter to facilitate distinction.

This chapter refers to organisations registered under the Voluntary Social Welfare Agencies Ordinance 1961 as “agencies”. Though “agency” is the legal term that denotes all organisations registered under the Ordinance of 1961, organisations may carry different names.


Section 42, Companies Ordinance 1984.

Section 2(1) of Wakf/Validating Act 1913.

Section 2(e) of (Sind) Wakf/Properties Ordinance 1979.

For a discussion of the Islamic concept of charity, please see section three.

Section 6, (Sind) Wakf/Properties Ordinance 1979.

Section 1, Trusts Act 1882.

Few illustrations on this issue would help clarify the matter

i. X creates a trust consisting of a market owned by him, appoints Y and Z as trustees and stipulates A, B and C X’s grandchildren, as beneficiaries. The trust is a private trust.

   ii. X creates a trust consisting of a market owned by him, appoints Y and Z as trustees and directs them to maintain a temple so that all members of X’s family could worship therein. The trust is a private trust of religious nature.

   iii. X creates a trust consisting of a market owned by him, appoints Y and Z as trustees and directs them to take care of all destitute widows of X’s extended family. The trust is a private trust of charitable nature.

   iv. X creates a trust consisting of a market owned by him, appoints Y and Z as trustees and directs them to construct, maintain and manage a public library for all the visitors to a members only club of the richest section of the society. The trust is a public non-charitable trust.

   v. X creates a trust consisting of a market owned by him, appoints Y and Z as trustees and directs them to construct, maintain and manage a mosque / madrasah for general public. The trust is a public trust of religious nature.

   vi. X creates a trust consisting of a market owned by him, appoints Y and Z as trustees and directs them to fund elementary education of all poor children of the town as far as possible. The trust is a public trust of charitable nature.

20 Please see section three for detailed discussion of definition of “charitable purposes”.

21 Income Tax Special Purposes Commissioner v Pemsel. All ER Rep 28 at 55; AC 1891.


23 Section 2(6-ii), Charitable Funds (Regulation of Collections) Act 1953.


27 Income Tax Rules 2002, however, clearly prohibit NPOs that are registered under the Income Tax Ordinance 2001 from advocating the views of any political party.

28 Section 1, Societies Registration Act 1860. The Registrar is a government official authorised to perform the function of the Registrar of Joint Stock Companies. Most of the functions of the provincial government under the law are on the other hand performed by the Secretary of the Department.
Enabling Environment Initiative

Secretary of the Department.

Section 5(2).

Section 5(3).

Section 17.

Section 4 read with Rule 5 of Voluntary Social Welfare Agencies (Registration and Control) Rules, 1962.

Section 6.

Issued vide notification dated March 28, 1970 by the Ministry of Home and Kashmir Affairs and States and Frontier Regions.


This survey, conducted through postal questionnaires, was part of the contribution of TVO to the EEI exercise.

EEI field surveys (April 2002).

Ibid; EEI stakeholder consultations.

According to an official communication of Government of NWFP to PCP, dated 09 October 2002, nearly half of 3000 societies registered with the NWFP Industries Department are madrasahs. According to another communication of Industries department, Government of Punjab to PCP, dated November 9, 2001, 49 percent of 27,700 registered under the Societies Registration Act 1860 were in 1998 either madrasahs or mosques committees or a combination of these.

EEI field survey, 2002.

Ban on registering any religious organisation under Societies Registration Act 1860 has also been enforced in the Islamabad Capital Territory since the early 80s.


Section 2.

Section 3(b).

Section 2(a).

Section 2(c).

Sections 5 and 6.

Section 5(2), Charitable Funds (Regulation of Collections) Act 1953.

Section 5(4).

Section 7.

Section 2, Societies Registration Act 1860.

Section 4.

Section 12.

Section 13.

Proviso to section 13.


Section 11.

Section 19, Societies Registration Act 1860.

Section 16A, Societies Registration Act 1860.


Ibid.


Section 13.

Section 9 (1).

Section 9 (3).

Section 10 (1).

Section 14.

Section 16, (Sind) Wakf/Properties Ordinance.

Chapter I to III, Succession Act 1925.

Section 7 of Wakf/Properties Ordinance read with definition of wakf/property in section 2 (e).

Section 6 of Wakf/Properties Ordinance 1979.

The Religious Societies Act is probably the only exception howsoever narrow it may be.

Section 7, the Charitable and Religious Trusts Act 1920.

Section 15, (Sind) Wakf/Properties Ordinance.

Section 24.

Section 3, Wakf/Act 1923.

PLD 1950 Sind 25; PLR 1950 Sind 15; PLD 1953 Lahore 1; PLR 1952 Lahore 799.

P 1955 L 242; A 1947 B 451; A 1941 S 88.

According to Shrine Wing, Aukaf Department, Islamabad Capital City Administration's office, the income from the shrine of Hazrat Bari Imam, during the year 2000-2001 alone was Rs 121 million. Income of Aukaf department of Government of Punjab in year 2001-2 was Rs. 353.5 million.

This bill is known after Mr. Sher Afgan, the-then federal minister for Social Welfare, who was a prime mover of this government-initiated reform effort.

This is the de facto situation. As discussed earlier, these trusts or societies if active in defined areas of social welfare and if dependent on public funds could be subjected to Voluntary Social Welfare Agencies Ordinance 1961.
Chapter five shows that Pakistan possesses an elaborate legal framework that governs nonprofit organisations. But who administers these laws? What are the actual registration procedures and monitoring mechanisms? What types of training facilities exist? What, if any, training is provided to government officials to fulfil the obligations that the law places on the departments? Are there any coordination mechanisms or institutions? Does the government provide adequate financial, human and management resources to the administration of these laws? What are the problems faced by the citizen organisations during registration and other interactions with government officials? What kinds of support facilities are offered to citizen organisations? Do these government arrangements enable organisations? Is reform underway? How is the public interest actually being promoted and protected in the field?

This chapter discusses in detail the federal, provincial, and district government structures, referred to briefly in the last chapter, that administer this elaborate legal framework. The first section describes the present state of affairs. The second section identifies the major resource and management gaps. The chapter ends with a short summary of the problems and recommendations for action.

Evidence is presented from original government documents, EEI field research conducted in the months of April and May 2002 in district Karachi in Sindh province and in districts Sargodha and Multan in Punjab province, and from the experience of stakeholders. This research supplies us with anecdotal evidence that, in addition to the experience of stakeholders as summarised in chapter nine, can be considered to be representative. Interviews with officials were also conducted in Lahore and Peshawar. Data was obtained through direct correspondence with government departments.

**Description of Government Structures**

This section of the chapter describes the administrative departments, the field offices, their functions, the training facilities, and registration and monitoring procedures under each law separately. The section also refers to the changes in the regulatory mechanisms brought about as a consequence of the Devolution Plan. It mainly discusses the Voluntary Social Welfare Agencies Ordinance 1961 and Societies Registration Act 1860, as is the case in chapter five, because of their greater significance. It only briefly refers to other laws. Table 6.1 disaggregates registered NPOs according to the main laws of registration and the province.

**Voluntary Social Welfare Agencies (Registration & Control) Ordinance 1961**

The federal government, after promulgating the 1961 Ordinance, delegated its administration to the provincial governments. Rules titled “Voluntary Social Welfare Agencies (Registration and Control) Rules” were promulgated in 1962. The federal government also delegated to the provincial governments the power to make rules under the law.

Presently, the Ministry of Social Welfare and Departments of Social Welfare administer the Ordinance in Islamabad and in the provinces, respectively. In Islamabad, the Chief Commissioner Islamabad has been vested with the powers of Registration Authority, the office around which revolve the actual regulatory functions to be performed by the
government. In the provinces, Directors of Social Welfare perform this function. All these registration authorities have, in turn, delegated many of their powers under the Ordinance to subordinate offices. For example, in Punjab, the powers of registering an organisation were delegated to a relatively junior officer, the Deputy Director Social Welfare, who headed the Department at the divisional level. The implementation of the Devolution Plan in August 2001 has, however, radically altered this general practice of delegation of powers to the divisional level. Most powers of the Registration Authority have since been devolved, with minor variations, to the district level office of Executive District Officer (Community Development), who is overall in-charge of community and social development work in the district, or to his subordinate District Officer (Social Welfare) in the provinces of Sindh, Punjab and Balochistan. These powers have not been devolved in NWFP.

Provincial Directorates of Social Welfare perform a number of functions. These can be divided into seven broad headings:

- Registration of agencies and their monitoring;
- Promotion of social welfare through general involvement of the citizens and dissemination activities; research, planning and development;
- Planning and execution of social welfare, community and women's development projects;
- Running of social welfare institutions such as welfare institutions for the vulnerable;
- Management of training institutions;
- Personnel and financial administration;
- Miscellaneous: this includes relief, rehabilitation during calamities and defence planning.

Registration procedures vary. The procedure adopted in Karachi, as described here, is one example. An application for registration of an agency passes through a number of administrative channels before a certificate of registration is issued. After the application is received, the District Officer (Social Welfare) passes it on to the Deputy District Officer (Registration & Voluntary Agencies). After the name of the proposed agency has been cleared, he passes the application on to the concerned field officer i.e. DDO Field-I or Field-II (Karachi has been divided into two zones for the purpose), who forwards the application to the DDO (Social Welfare) of the concerned town for the feasibility report. The officer concerned prepares the feasibility report after checking the following items during a visit to the office of the applicant organisation.

- No Objection Certificate (NOC) from the landlord, if the office premises are rented;
- Overall set-up of the office;
- Correct address;
- Correct declaration of activities and aims and objects;
- Genuineness of members.

After the feasibility report is prepared, it is sent back through the same channel. If all the relevant papers are complete the DDO (Registration & Voluntary Agencies) submits the registration certificate along with the by-laws of the agency through the District Officer (Social Welfare) for the signatures of the EDO (Community Development).

In the federal capital and in two provinces, arrangements exist for training and coordination. There are altogether three government training institutes. One, located in Islamabad, is run by the federal government. The other two are run by Punjab and Sindh. NWFP and Balochistan do not have any training institutions. These run courses for freshly recruited officers as well as for serving officers. Short courses are also offered for NPO workers. Linked with this Ordinance, there are three major institutions that are primarily coordination bodies: National Council for Social Welfare, Punjab
Social Services Board (PSSB), and Sind Council of Social Welfare. NWFP and Balochistan do not have such coordination bodies. A brief description of these institutions follows.

**National Council of Social Welfare**

The Government of Pakistan established National Council of Social Welfare (NCSW) through a resolution in 1956. It has since been reconstituted a couple of times, most recently in July 1993. Presently, it consists of 50 members, nominated by the government, that include senior federal and provincial government officials managing social welfare departments, individuals from other relevant disciplines, academics, and representatives of social welfare agencies. The Federal Minister, Social Welfare, is the president. It is chaired by a full-time senior official.

The Council’s objectives are to advise “the Federal Government on social welfare matters, including social education, social welfare research, and grant of financial assistance to social welfare agencies”. The functions of the Council have varied slightly over the years. Presently, its mandated functions are:

- To render advice to the Federal Government on social welfare matters such as formulation of social welfare policy, social welfare planning, social legislation, social work education and training, youth welfare, family and child welfare;
- To cause a survey with the approval of Special Education and Social Welfare Division to be made of the needs and requirements of the voluntary social welfare agencies and suggest steps for their solution;
- To recommend to the Special Education and Social Welfare Division, financial and technical assistance to deserving registered voluntary social welfare agencies;
- To initiate and promote publication of literature on social welfare in consultation and with the approval of the Special Education and Social Welfare Division;
- To coordinate with the Provincial Social Welfare Councils and the Punjab Social Services Board in the development of the voluntary social welfare programs in the country.

NCSW is based in Islamabad with one office. Its annual budget, Rs 9.1 million in 2000-1, has remained broadly the same since the mid-80s. It gives grants every year (Rs. 1.7 million was given to 172 agencies in 1999-00). The Council has published a national directory of social welfare agencies. No other research activities are being undertaken.

**Punjab Social Services Board (PSSB)**

PSSB came into existence on 12 October 1970 as a result of promulgation of the Punjab Social Services Board Ordinance 1970. The Governor Punjab is the President of the Board. The Minister of Social Welfare serves as the Vice-President. It is chaired by an eminent citizen to be nominated by the Governor at his discretion. The number of members of the Board is not fixed since the president can appoint any secretary of the provincial government as an ex-officio member. The president is also required to nominate up to two persons from the field of industry and commerce, up to six social workers, up to six political workers, up to six representatives of the voluntary social welfare agencies, and up to two representatives of agricultural organisations. Director-General Social Welfare is the ex-officio secretary.

The main objectives of the PSSB are “to promote, expand, integrate, coordinate and intensify social welfare programs and efforts specially to motivate the citizens at large to participate in the social welfare movement”. The Board has the following functions:

- “To formulate policies with regard to the objectives of the Board;
- To plan, coordinate, integrate, evaluate
and intensify social welfare programs in the Province;
- To improve the working of voluntary social welfare agencies by giving them professional and technical assistance and grants-in-aid and to perform such other functions in respect of these agencies as may be entrusted to the Board by or under any law;
- To control the raising and utilisation of funds by voluntary social welfare agencies for social welfare objectives and to arrange for their audit;
- To train social workers in the theory and practice of social welfare;
- To arrange and control study tours abroad of social workers;
- To secure enactment or change of laws relating to social welfare;
- To inculcate in the citizens of the Province, particularly the students and the youth, the spirit of serving the cause of social welfare with dedication.”

There is no separate budget of the secretariat of the Board. Instead, the budget of the Directorate of Social Welfare reflects the salary budget of the staff of the Board as a grant to the PSSB. This grant, Rs 4.4 million in 2000-2001, remained the same in 2001-2002. The management of the Board is provided by the office of the Directorate of Social Welfare. There is a permanent staff of around twenty junior officials

In the last few years, the Board has given grant-in-aid to voluntary social welfare organisations, published a directory of social welfare agencies that are registered in Punjab, and organised a mobile clinic. It publishes a quarterly magazine, *Hayyah Allal Falah* on different aspects of social welfare. In addition, it runs a computer and vocational training centre for girls.

**Sindh Social Welfare Council**

Established in 1971 through a notification, the Sindh Council’s functions are similar to those of the PSSB but its organisational structure is different. It has 31 members that include heads of Departments of Social Work of the Universities of Sindh and Karachi, among others. The representatives of social welfare agencies are nominated by the government keeping in view geographical representation. All these members are nominated by the government.

**The Societies Registration Act 1860**

This legislation, falling within the purview of the provinces, is administered by the provincial governments through the Department of Industries. The Director of Industries performs the function of Registrar of Joint Stock Companies, the registration authority under the law, in all the provinces. In Islamabad, the Deputy Commissioner, Islamabad performs these functions. The Director of Industries, who has a number of other major roles to perform, is assisted in registration functions by a relatively junior officer, the Assistant Registrar of Joint Stock Companies, who looks after the registration function on a regular basis.

Even before Devolution, these powers were delegated to sub-ordinate offices of the Directorate at the divisional level in Punjab and to zonal officials in Sindh. Following the Devolution Plan, the powers of the Registrar have been devolved to the Executive District Officer (Finance and Planning) in the districts in the Punjab. Other province have not followed suit and powers remain concentrated at the capital or in one or two districts, which have been, delegated these powers for specified geographical areas.

No separate budget is provided for registration activity in the provincial capitals or in the districts. The District Officer (Enterprise & Investment Planning), the officer subordinate to the EDO who is directly responsible for the registration function, has two or three junior officials in his office who, besides doing other things, processes cases of registration.

The procedures of registration vary. In
Karachi, for example, an application is submitted to the Provincial Assistant Registrar Joint Stock Companies after payment of the required fee. A junior official examines the application and the relevant papers enclosed with it. If there is any discrepancy or deficiency, the Assistant Registrar returns the papers to the applicant for rectification. Once the papers are complete, the concerned official visits to verify the address. Subsequently, the registration case is again submitted to the Assistant Registrar. After his approval, a summary is submitted to the Director of Industries/Provincial Registrar Joint Stock Companies. Upon approval by the Director, the Assistant Registrar signs the registration certificate and issues it to the concerned society. The Assistant Registrar posted outside Karachi does not seek approval from Director of Industries for registration of a society.

The following documents are required to be filed 'by promoters of the proposed body' in Karachi:

- Memorandum and Articles of Association in accordance with section 2;
- Deposit of required fees;
- Compliance with section 1 of the Act, which requires minimum seven persons for the formation of a proposed body;
- Aims and objectives in accordance with section 20 of the Act.

Certain other auxiliary documentation and formalities not mentioned in the Act, such as a “no objection certificate” (NOC) from the owner of the premises where the office of the proposed Society is to be located, coupled with lease documents, National Identity Cards (NICs) of subscribers, qualification of subscribers in case of an educational society, undertaking, authority letter and inspection report.

In Punjab, an applicant is required to file the Memorandum of Association and bye-laws of the society. He also has to provide the following documents:-

- Copies of National Identity Cards of office bearers of the proposed Society;
- If a trust is to be registered as a society, the value of the original trust.
- Affidavit to the following effect:-
  - That no such Society of the area/locality is already registered;
  - That the contents of the Memorandum and bye-laws are true and correct;
  - That there is no criminal or civil case against the Society and its members in any court of law
- The Memorandum of Association after due verification must contain the following:-
  - Name of Society;
  - Objectives of the Society;
  - Names, addresses and occupation of the governors, council, directors, committee or the governing body to whom the management of its affairs is entrusted;
- A copy of rules and regulations of the Society certified to be correct copy by not less than three members of the governing body;

The procedure of processing the application also varies from the one practiced in Karachi. In NWFP, once the completed documents are received, the case is referred to the District Police Officer or the District Coordination Officer for verification of antecedents of the organisation's members. This usually takes two to three months. In Multan, Punjab, open hearings are held, besides police verification, before registration is granted. In Sargodha, Punjab, applications for establishing mosque committees and Madrassahs are scrutinised by special committees set up for that purpose who take into account the law and order implications before recommending an application.

No institution exists at the federal or provincial level to coordinate or promote the work of societies. There are no training institutions for training or capacity building of officers dealing with the Societies Act.
The Companies Ordinance 1984

The Securities and Exchange Commission of Pakistan (SECP) has been established under the Securities and Exchange Commission of Pakistan Act 1997. Administration of the Companies Ordinance 1984, a federal law, is one of its major functions. Apart from its head office at Islamabad, SECP has eight regional offices (company registration offices); these are located at Islamabad, the four provincial capitals, Multan, Faisalabad and Sukkur. The Registrar at Islamabad, the Additional Registrars at Karachi and Lahore and Joint Registrars at other stations carry out registration work in addition to other assignments. The Director Industries, Registrar Joint Stock Companies under the Societies Registration Act 1860 also registers nonprofit organisations in each of the provincial capitals. Autonomous and free from routine government control, SECP is a relatively modern institution with visibly better service standards.

The Charitable Endowments Act 1890

Under the Charitable Endowments Act 1890 and the Charitable Endowments (Central) Rules 1942, the Joint Secretary, Ministry of Women Development, Social Welfare and Special Education, registers foundations and trusts as charitable endowments if their area of operation extends over more than one province. Provincial governments are empowered to register foundations and trusts as charitable endowments if their area of operation extends over more than one province. Provincial governments are empowered to register foundations and trusts where the endowment is created exclusively for the province. So far, the Federal Ministry has registered nineteen endowments. Eighteen of these are in the public sector, meaning that these endowments are created by the government with funds allocated outside the federal budget.

The Treasurer of Charitable Endowments, a government officer who is the custodian of the properties on behalf of the government, has not been provided with staff exclusively for the purpose because there is not enough regular work.

The Aukaf Properties Ordinance 1979

The Aukaf Department was created in 1959 under the West Pakistan Wakf Properties Ordinance 1959. The Federal government took over the control of this provincial department under the Aukaf Federal Control Act in 1977. The experiment did not work and the control of the department was given back to the provincial governments under the Wakf Properties Ordinance 1979.

In Punjab, the Secretary of the Department of Wakf is vested with the powers of Chief Administrator. Management of Wakf properties is one of the major functions of the department. The department had an annual income of Rs.353.5 million in 2001-2, up 30 percent from 1998-99. This is the only

The Local Government Ordinance 2001

The Local Government Ordinance 2001, the lynchpin of the Devolution Plan, is the omnibus law that has transformed government administrative structures in Pakistan. A part of this law deals with community development through Citizen Community Boards. The EDO (Community Development) at the district level has been empowered to register CCBs. Separate funds or staffs for this function have not been provided.

The Trusts Act 1882

Any specialised department does not administer the Trust Act 1882. However, all trust deeds (like all other documents) that involve immovable property are required to be registered under the Registration Act 1908. Revenue Department of the district governments across Pakistan registers these deeds through the Sub-Registrar, a revenue official. The Sub-Registrar is assisted by a registration clerk. The simple process of registration is well established and is usually completed the day the trust deed is filed.
government organisation dealing with an aspect of charitable organisations that has its own income and is completely self-sufficient.

**The Income Tax Ordinance 2001**

Nonprofit organisations, if they want to seek any preferential tax treatment, also have to seek registration with the Central Board of Revenue, the government division that administers the Income Tax Ordinance. CBR officials look at the financial management and internal governance standards of the organisation besides a few other aspects (for details regarding procedures, please see chapter seven). No special training or manpower is provided for this function. Close to a thousand organisations undergo either fresh registration or renew their registration every year across the country. Consolidated data on the total amount of fiscal support provided under the Income Tax Ordinance or other national tax laws does not exist.

**Analysis**

The administrative structures of government that regulate the nonprofit sector suffer from a number of serious shortcomings. These include lack of financial and human resources, poor management and coordination, and near absence of support facilities. Each of these aspects is analysed here.

**Lack of Financial Resources**

There is serious under-funding to the departments for performing regulation or support functions as required by the law. Analysis of resources allocated directly to nonprofit sector regulation or support activities is hard to come by, since provincial government and even district government budgets do not account separately for activities that deal exclusively with citizen sector regulation or support. The bulk of the budget and the manpower is allocated to the recurrent costs and the operations of existing welfare institutions and of various community and women development projects.

EEI field research has documented situations in districts that, given the experience of stakeholders (as narrated in chapter nine), reflect a correct picture. In Karachi, for example, the District Officer (Social Welfare) has not been provided a separate budget for the performance of his duties. He and his subordinate officers, who conduct physical inspections, do not have any transport. In Multan, the travelling allowance provision in the budget of each office, to carry out all official duties, is a meagre Rs. 10,000 per year. There is no telephone. Multan has 115 registered organisations that, according to law, require field inspections. Besides, new applications are also filed every year. There is very little funding for stationary. Required equipment such as photocopier machines are rarely available in the offices. Most importantly, officials are poorly paid.

**Poor Human Resources**

In contrast with the endemic and serious deficit in financial resources, human resources of the Social Welfare Department are better, though marginally. Most social welfare officers have university degrees with concentrations in social work. However, the curriculum of universities and that of training institutes is out-dated and ill equips them for their roles or an understanding of societal systems and issues. The re-definition of the role of government as practiced at the senior management level is not reflected in the curriculum and most junior officers remain imbued with a paternalistic vision of government. Resources given to these institutions are also limited.

The human resources allocated to the administration of Societies Registration Act 1860 are markedly poor. No special training is provided but the small number of officials responsible for registration work in the provinces have learned on the job through years of experience. In Punjab, registration powers stand devolved to the districts. But no
training has been provided to new officials who have been co-opted from other departments to man these newly created offices. The Registrars are all new to this work. More importantly, there is a lot of rotation among these officers.

This problem of poor human resources is compounded by the fact that there is not enough dedicated staff available for registration and monitoring work of NPOs. Provincial government departments undertake a number of activities other than the Societies Registration Act 1860. For example, of the five officers that report to the Director General, Social Welfare, Punjab, only one is directly tasked for registration and monitoring of social welfare agencies. The Social Welfare Department also runs a number of welfare institutions on its own in the provincial capital and in other major cities.

The situation at the district level is not much different. In Multan it is estimated that the District Officer (Social Welfare), the Registration Authority for the district, spends only 20 percent of his time on this aspect of his duties. The rest of the time is devoted to looking after other social welfare institutions, running of social welfare projects, national and international day celebrations, collecting and processing the applications for Bait-ul-Maal, deciding disability of special people for aid and quota in government employment, polio campaigns, emergency and relief work in disasters.

This problem of lack of dedicated staff is much worse in the Industries Department. In Karachi, for instance, the Assistant Registrar of Joint Stock Companies, the official who directly interfaces with applicant organisations on behalf of the Registrar (the Director Industries), also registers partnerships deeds under the Partnership Act 1932 and nonprofit companies under the Companies Ordinance 1984. (The latter function is performed on behalf of the Securities and Exchange Commission of Pakistan.) This means that even this one officer and his three clerical subordinates are not available full-time for registration work. Given that there was only one other office in Sindh province which performed these registration functions prior to August 2001, it can safely be inferred that in the entire province there is not even one middle manager who exclusively deals with registration of NPOs under the Societies Registration Act 1860.

For the registration functions required under the Societies Registration Act 1860, the understaffing problem has worsened after the Devolution Plan. In Multan, it is estimated that the Executive District Officer (Finance and Planning), the officer who serves as the Registrar Joint Stock Companies, devotes barely 5 percent of his time to this function. Only one junior official in the office is fully dedicated to activities under the Societies Registration Act 1860. District Multan has close to 2200 NPOs registered under the Societies Registration Act 1860.16 This means that the monitoring prescribed under section 16A remains a mere paper ritual with little chance of uniform application. In the five months since 01 November 2002 till April 2002 when this survey was conducted, the Multan office had registered seven new organisations, “renewed” the registration of five others, and denied registration to two.17

Poor Management

The problems mentioned above would make the task of any manager very difficult. In practice, the situation gets compounded by a number of additional problems such as the absence of proper feedback and review, lack of use of information technology, and poor organisational culture.

Administrative procedures across the provinces tend to vary substantially. Many administrative practices pertaining to registration requirements clash with the Societies Act, which only requires submission of an attested Memorandum of Association and rules and regulations signed by three
members. Government officials demand a host of identification and security-related clearances, which are totally beyond the scope of the demands of the Act. Registration renewal fees are charged in some places that are not provided for in the law. Field visits conducted by the registration officials under the Societies Registration Act 1860 prior to registration are also not envisaged under the law. The process of registration of societies, already unpredictable, has been tightened further, especially in NWFP. Recently, the Governor has issued instructions for adopting extreme care in handling new cases due to security concerns. A ban in force since 1996 has been imposed on the registration of “Deeni Madaris” under the Act in the province. In Islamabad, a ban on registration of this category of NPOs under the Act has existed since the early 80s.

The practices under the Voluntary Social Welfare Agencies Ordinance 1961 are a little more streamlined because this Ordinance is relatively elaborate, but the practice in the field nonetheless varies from the Ordinance. In district Multan, Social Welfare registration officials require submission of documents specifying aims and objectives, sources of funding, list and ID cards of members, and an affidavit stating that the motives of the organisation are strictly apolitical. These requirements are above and beyond what the Ordinance requires. (Through an enabling and facilitating clause the law allows the government to require documents that are not specifically prescribed in the Ordinance. This requirement, however, needs to be notified and applied uniformly across the provinces).

This clash of administrative practices and the letter of the law occurs because a formal system of feedback from the field does not exist, which could force a review of the law and the administrative practices. Conflicts and problems arise in the field and the immediate -- and perhaps even legitimate reactions and concerns of the local official evolves slowly into hardened administrative practices. These practices spread because of some informal osmosis of ideas (transfer of officials is one cause) but formal review, revision, and retraining does not happen.

The evolution of special procedures surrounding registration of Madrassahs and mosque committees is one example. This subset of organisations occupies a hefty 49 percent of all organisations registered under the Societies Act. (Please see table 6.2). Faced with increasing incidence of disputes, and law and order problems in the last decade, local officials at the time of registration of mosques, for example, adopt an elaborate screening procedure before registration is finally given.

Archives are all manual. Access to records, despite the legal requirement to the contrary, is erratic depending upon the quality of the record and the mood of the officials present. There is, however, an increased emphasis on use of information technology. The Ministry of Social Welfare, Special Education and Social Welfare has posted some basic information on the web. The Social Welfare Department of Government of Punjab has an informative and attractive website. It has also, taking the lead, posted brief details of 3000 NGOs working in the province on the Department's website.

The lack of standardization, minimal use of information technology, and poor monitoring of junior officials results in inerminable delays. Merely the verification of the antecedents of the members by the police or the intelligence agencies, a practice not required by law but nevertheless widely prevalent takes one to three months.

The result of poor training, inadequate physical and financial resources, and poorly defined procedures is general inefficiency, arbitrariness, unjustified use of discretion and even corruption. Field officers who are responsible for field visits admit that they only go when the applicants arrange for transport. If the applicants do not arrange transport, the application simply keeps on
pending. Citizen activists often allege that officials keep on raising meaningless objections till they are “obliged.” These reasons, interacting with each other in a vicious circle, have resulted in an organisational culture that more often than not does not welcome a citizen who approaches the government for advice or help.

**Poor Coordination**

Coordination is a major problem. Realising the significance of coordination for improved planning and promotional activities, the federal government set up NCSW some forty years ago. But the institution has failed to deliver over the years. It is too big and unwieldy. In addition, it is too tightly controlled by government to have a representative character. It thus enjoys little credibility with the citizen sector. Of its stated functions, only one, giving of grants to NPOs, is conducted yearly. Even that function has diminished over the years. No surveys or other dissemination activities are pursued. The last directory of social welfare agencies was published in 1997. Capacity is limited.

The state of the two provincial coordination bodies, PSSB and SSSC, is not dissimilar. Both are top-heavy. Their list of functions represent a major felt need but unfortunately, for reasons mentioned above, these lists remain far removed from actual delivery of programmes. PSSB, though functioning, has not performed many of its functions. SSSC is moribund for many years. It does not budget anymore for any programme activities.

Even if active and performing, these organisations have no data on organisations registered under the Societies Registration Act 1860, a law under which a great number of NPOs are registered. So too with public trusts or nonprofit companies. A consolidated data bank of NPOs does not exist. Presently there is no organisation that is charged with collecting and researching this data and making it available to the citizens. In sum, the regulation and governance of the nonprofit sector is divided over too many government departments and organisations, creating an inefficient system, which neither fulfils government’s regulatory requirements nor meets the needs of citizen organisations.

**Lack of Support to NPOs**

The scarce resources that are available for the promotion of the citizen sector organisations through institutional mechanisms are mostly allocated either to regulation or to salaries. A number of functions are envisaged in the constitutions of NCSW and other coordination bodies, but little is delivered. The amount disbursed in the form of grants by NCSW has declined to 1.7 million in 1999-00 (provided to 172 organisations grantees at an average of around Rs. 10,000 per grantee) from an all-time high of 5.4 million in 1985 (provided to 1004 organisations at an average of around Rs. 5000 per grantee).

Training is available through the Federal Social Welfare Training Institute and in two provincial government institutions. But the resources allocated to these training institutions are so meagre that only a small fraction of the need can be serviced. The provincial Social Welfare departments also provide very little, if at all, for capacity-building of NPOs through field officials that are present in every district. The Industries Department has no training programme or any budget for it.

**Conclusion**

It is obvious that government does not allocate enough resources to regulating or supporting the citizen sector. This is understandable in some cases. There is just not enough registration and related monitoring work, even in a large district like Multan to fully occupy a middle manager. It would therefore be difficult to argue that a full-time person be allocated. On the other hand, it is also not possible to withdraw this facility since increased access of citizens following the implementation of the
Devolution Plan has been widely welcomed by stakeholders.

The prevailing system that is distributed across too many departments, organisations and officials is clearly dysfunctional. There is wasteful duplication. In the same district, three distinct offices register agencies, societies, and trusts. Registration functions of the two departments, Social Welfare and Industries that deal with overlapping organisations at the district level need to be consolidated. Single registration windows in each district and at the provincial level would reduce the inefficiencies and improve utilization of the budget allocations. Effective training and capacity building programmes could thus be launched.

NPOs get little support. The meagre resources available are all allocated to regulation. Many organisations thus stay away from the pale of regulation because they do not find any formal incentive within the regulatory framework. The fact that as many as 34 percent of the 45,000 active NPOs in the country are not registered (Please see table 6.3) speaks clearly of the status and utility ascribed by NPOs to registration.

Occasional fresh intervals of energetic leadership at the senior management level and even at the middle management level have failed to deliver change at the level of the routine regulator-regulatee interaction. The leadership often is not sustained over long enough intervals of time either due to political changes or administrative reshuffles. The overall culture of governance is poor. The significant potential contribution of citizen self-organisation for public benefit is undervalued in government circles, especially at the field level. The whole system thus needs major overhaul, not minor time-bound interventions.

Table 6.1

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<td>HOSPITAL</td>
<td>128</td>
<td>0.46</td>
</tr>
<tr>
<td>LIBRARY</td>
<td>13</td>
<td>0.05</td>
</tr>
<tr>
<td>MADRASAH</td>
<td>4,227</td>
<td>15.26</td>
</tr>
<tr>
<td>MOSQUE</td>
<td>6,411</td>
<td>23.14</td>
</tr>
<tr>
<td>MOSQUE &amp; MADRASAH</td>
<td>2,928</td>
<td>10.57</td>
</tr>
<tr>
<td>SCHOOL</td>
<td>3,032</td>
<td>10.95</td>
</tr>
<tr>
<td>SCIENCE</td>
<td>52</td>
<td>0.19</td>
</tr>
<tr>
<td>TOTAL</td>
<td>27,702</td>
<td></td>
</tr>
</tbody>
</table>

Source: Directorate of Industries, Industries Department, Government of Punjab, 2002.
### Table 6.3

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Acts</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntary Social Welfare Agencies Ordinance 1961</td>
<td></td>
<td>15.2</td>
</tr>
<tr>
<td>Societies Registration Act 1860</td>
<td></td>
<td>40.5</td>
</tr>
<tr>
<td>The Trust Act 1882</td>
<td></td>
<td>5.8</td>
</tr>
<tr>
<td>The Companies Ordinance (Section 42) 1984</td>
<td></td>
<td>0.3</td>
</tr>
<tr>
<td>Registered under other Acts</td>
<td></td>
<td>0.1</td>
</tr>
<tr>
<td>Unregistered Applied for Registration</td>
<td></td>
<td>4.0</td>
</tr>
<tr>
<td>Unregistered Not interested in Registration</td>
<td></td>
<td>34.1</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100.0</td>
</tr>
</tbody>
</table>


---

### Endnotes

1. For a more detailed account of stakeholders’ views, see *Creating an Enabling Legal Framework for Nonprofit Organisations in Pakistan: Stakeholder Perspectives*, Pakistan Centre for Philanthropy, 2002.


3. Section 18 of the Ordinance empowers the government to “delegate, all or any of its powers under this Ordinance, either generally, or in respect of such agency or class of agencies as may be specified in the notification, to any of its officers”.

4. According to section 1(e) of the Ordinance, “Registration Authority” means an “officer authorised by the Provincial Government, by notification in official Gazette, to exercise all or any of the powers of the Registration Authority under this Ordinance”.

5. The Punjab Directorate of Social Welfare is led by a relatively senior Director General.

6. The administrative unit of division, now abolished by the Devolution Plan, used to consist of three to five districts each.

7. Titles and job descriptions may vary across the provinces.

8. EEI field survey April-May 2002.


15. The extremely serious problem of poor financial remuneration, of course, afflicts the entire public sector. Similarly, problems like lack of clear career paths, poor training, bad morale; poor performance appraisal and complete de-linking of pay to performance are general public sector human resource management problems. Serious human resource management reform is vital for improved governance but a detailed discussion does not fall within the scope of this report.


17. The reason of one denial was evidence of sectarian strife between two rival claimants to formation of a managing committee of a mosque, and for the other was the interpretation of the EDO that the aims and objectives of the applicant organisation did not fall within the purposes given in section 20 of the Act of 1860.


20. A consolidation of sorts has taken place in Islamabad Capital Territory. The 700-plus NPOs registered under the Societies Registration Act 1860 and the Voluntary Social Welfare Agencies Ordinance 1961 in Islamabad are managed from one office (and by one junior official only).
Laws allowing for the operation of citizen organisations create the legal basis for organised citizen social action for public benefit. But the fiscal framework can provide the added stimulus for citizen giving without which citizen organisations would not develop a sustainable resource base. Thus, one of the prime objectives of the PCP is to advocate and lobby for a tax structure that encourages indigenous philanthropy. Put another way, the extent to which the fiscal regime favours citizen organisations is an important indicator of the overall conduciveness of the environment for civil society development. A fiscal support regime and tax incentives are a mechanism for translating the policy commitment of government towards civil society into tangible support. The quality of the fiscal framework reveals whether government's commitment to civil society is mere rhetoric or a reality. Considering the strategic importance of the fiscal support system, this separate chapter is devoted to describing and analysing the fiscal and tax incentives available to nonprofit organisations in Pakistan.

## Financing of Nonprofit Sector

### An Overview

The contribution of the nonprofit organisations to the economy is substantial. About 45,000 active organisations, ranging from the unregistered neighbourhood/village community-based organisations to the large national organisations, are engaged in activities for the public benefit.

The sector engages 476,000 persons, divided between paid employees (264,000), and volunteers (212,0000), accounting for over four percent of non-agricultural employment. Over six million people contributed about Rs. 715 million as membership fees in the fiscal year ending June 2000, which constitutes about 4.4 percent of the total revenue of the sector organisations. This is only marginally lower than what the government gave as grants. However this is only a fraction of the contributions through philanthropy. Table 6.1 sets out the sector's revenue by source for the year ending June 2000.

<table>
<thead>
<tr>
<th>Sources of Cash Revenue</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees and Charges</td>
<td>50.24</td>
</tr>
<tr>
<td>Public Sector Payments</td>
<td>5.87</td>
</tr>
<tr>
<td>Indigenous Philanthropy</td>
<td>37.34</td>
</tr>
<tr>
<td>Individuals</td>
<td>33.73</td>
</tr>
<tr>
<td>Foundations/Trusts/ Donors</td>
<td>2.66</td>
</tr>
<tr>
<td>Businesses</td>
<td>0.95</td>
</tr>
<tr>
<td>External Philanthropy(^1)</td>
<td>6.55</td>
</tr>
<tr>
<td><strong>Total Revenues (Million Rupees)</strong></td>
<td><strong>16400</strong></td>
</tr>
</tbody>
</table>
The total indigenous contributions constitute the bulk of the receipts both in cash (88 percent) and in kind (93 percent) while international aid accounts for only 6 percent in cash and 2 percent in kind (largely vehicles, air conditioners and equipment).

How relevant is the fiscal regime to the financial health of the NPOs and to philanthropy? Government contributes a mere 6 percent of NPO cash funding. Though data on actual use of the income tax law and the quantum of benefits is not available, the actual effect of the tax benefits for the wide universe of NPOs does not appear to be substantial. Most giving does not take place outside the documented economy. There also does not exist a culture of tax compliance, for example, sixty-five percent of all monetary giving in Pakistan went directly to individuals. Giving to individuals is not tax deductible. Of the tax payers surveyed, only 18 percent said that they would react to withdrawal of tax incentives. 74 percent of respondents did not indicate a clear preference to give to organisations that are registered with the Central Board of Revenue (CBR). Most citizens, even taxpayers, are not aware of the benefits provided. Only 2 percent of taxpayers surveyed indicated that they were aware of the tax relief on charitable donations.

This obvious lack of substantial impact of the income tax regime begs the question: why worry about the fiscal regime given that it appears to have no discernible impact on giving? There are several very important answers. First, tax evasion cannot be supported. It is in the public interest of donors and NPOs to contribute to the development of a tax culture in Pakistan. Second, corporations are important givers and they do pay taxes. Third, over time it can be expected that tax-efficient giving will become important to more individuals. Fourth, government may use giving to nonprofits for promotion of taxpayer chosen social causes as an incentive for more tax compliance and as a means for empowering the taxpayer. (61 percent of taxpayers said that they would increase their giving with more incentives).

Fifth, over the long run, the issue of an enabling fiscal framework, which encourages a culture of donation and philanthropy, becomes even more important considering the fact that the major income source of nonprofit organisations is indigenous philanthropy. Finally, the legitimacy that comes from the “stamp of approval” from the CBR may become important someday.

The fiscal regime impacting on the nonprofit sector consists of a diverse body of taxes and fees. At the federal level, these are taxes and fees on income, sales and import of goods. At the provincial level, these are taxes and fees on property. Utility charges, while not strictly part of the fiscal regime, are a significant factor in nonprofit organisations’ operating costs and the historical practice of charging some NPOs “domestic” tariffs is something that NPOs would like to preserve and expand.

It may be mentioned as well that many international NPOs enjoy special benefits granted by individual protocols signed between the organisation and the Government of Pakistan. These protocols typically provide customs and duty exemptions for goods imported for the programme activities of the international NPO.

This chapter focuses on income tax. It is the single most important taxation affecting the financial health of NPOs. Benefits offered by many other laws are dependent on registration as a nonprofit under the income tax regime. This is the only tax applicable to all organisations of any character, commercial or nonprofit, of any corporate form, whether a trust, society, agency, wakf, or company etc. It thus applies to the widest possible range of nonprofits. It is also the only law that ensures minimum standards of internal governance and financial transparency for all nonprofits that voluntarily choose to get registered under it.
The first part of the chapter describes the relevant provisions of the main federal (income tax, customs, sales tax and utility tariffs) and provincial tax laws (property and excise taxes). The second part analyses them. The third part summarises the Enabling Environment Initiative (EEI) reform recommendations. (These recommendations are detailed in chapter ten.) The fourth part summarises the reforms actualised in the Finance Ordinance 2002. The chapter concludes with a brief description of the next steps of the EEI process.

In the first few months of the EEI, the operational income tax law was Income Tax Ordinance 1979 (“Ordinance of 1979”). But it was set to be replaced in July 2002 with a much-overhauled new Income Tax Ordinance 2001 that had been promulgated a year in advance. This chapter thus only describes and analyses the new Income Tax Ordinance 2001 (“Ordinance”) and mentions the provisions of the much more widely understood Ordinance of 1979 when relevant. The rules discussed in this section are, however, the Income Tax Rules 1982 (“Rules”) because at the time of writing this analysis new rules that accompany the new Ordinance had not been notified. The rules of 1982 could be thus seen as draft rules that would accompany the 2001 Ordinance.

The EEI team extensively engaged the Finance Division and the CBR based on the analysis of the Ordinance of 2001 and the Rule of 1982. Government accepted many EEI recommendations. The Finance Ordinance 2002 and the notified Income Tax Rules 2002 contained many provisions that were advocated by the EEI. The fourth part summarises these reforms. The exact actualised reforms are given in Appendix 4. The description and the analysis of the Ordinance and the Rules in the first section may therefore be read in conjunction with the 2002 EEI reforms that have actualised some of the recommendations that emerged out of the analysis.

### Description

#### Income Tax Law

The provisions of the Ordinance and the Rules pertaining to nonprofit organisations and philanthropy may be divided into four areas: the benefits themselves, purposes that qualify an organisation for the benefits, additional qualifying conditions for the benefits (given in the rules), and the process of application for each benefit (given in the rules). The section discusses the two categories of benefits the “exempt donee status” and the “tax exempt status” separately.

#### Exempt Donee Status

There are two kinds of organisations recognised by the CBR to be eligible “donees”. This means that these can receive donations from donors for which the donor can claim tax credit. The first kind are all listed by name in Clause 61 of the Second Schedule. This includes forty funds and organisations that are given a permanent donee status and are not subject to the renewal and monitoring requirements under the law. These range from Presidents Fund for Afghan Refugees, Fund for Retarded and Handicapped Children to NPOs like the Fatimid Foundation, Karachi. The NPOs in the list are hereinafter referred as “Clause 61 NPOs”. The second category is that of eligible donees not listed by name. Section 61 of the Ordinance of 2001 governs this category read with section 2(36) of the Ordinance. The NPOs in this list are hereinafter referred as “Section 61 NPOs”. This section also lays out the benefits that will accrue to the donor upon giving a donation to an organisation registered under it. The donor may be an individual, an association of persons or a company. The donation could be in cash or kind. Services are excluded. For cash donations to be eligible, they must be made through crossed cheque. The fair market value of the property given is to be determined by
The amount of tax credit for the donor depends upon the donor's tax bracket. The higher the relative tax bracket, the greater the tax credit that the donor can claim. However, these exemptions are not unlimited. For the purposes of the tax credit under this section, the individual or association of persons cannot claim tax credit for donations given above 30 percent of their total taxable income for the year. Similarly, the amount of donations that are eligible for tax credit for companies is capped at 15 percent of their total taxable income. (These conditions and caps, though not the procedure of registration and monitoring, also apply to the Clause 61 NPOs).

Section 2(36) of the Income Tax Ordinance provided four categories of purposes that were valid for a Section 61 NPO. These were “religious, charitable or educational purposes or for the promotion of amateur sports.” This all-important section 2(36) also provided that any NPO would be considered to be a nonprofit organisation for the purpose of this Ordinance only if it was “registered under any law as a nonprofit organisation and in respect of which the Commissioner has issued a ruling certifying that the person is a nonprofit organisation.”

Rules set out the process and the conditions for registration. Before the ruling was issued, CBR had to ensure a number of particulars about the organisations. These details emanate from the central condition of the organisation's nonprofit character, given in sub-clause 3 of Section 2(36) that “none of the income or assets of the person confers, or may confer, a private benefit on any other person.”

A number of internal governance measures were compulsory. Preferential tax treatment was denied, for example, if “the quorum of a meeting of the members of the body in which the control of the affairs of the institution is vested, being not less than four or one-third of the total number of the members of such body, whichever is greater.” Unilateral changes in the constitution of an organisation were also disallowed once it availed tax exemptions. Prior approval of the CBR was necessary.

Rules also provided for financial transparency standards. These included the obligations that the constitution of the organisation must provide for the audit of the annual accounts of the organisation every year by a qualified accountant. In the event of dissolution, left over assets could only be given to another organisation registered with the CBR. The applicant organisation must also state in its constitution that funds would be utilised solely for promoting its objectives. The constitution must also prohibit that any “portion of its money, property or income being paid or transferred directly by way of dividend bonus or profit to any of its members or the relative or relatives of a member or members.”

In addition to making sure that the applicant organisation observed the internal governance and financial transparency measures, the CBR might also refuse to approve the application on four important grounds. One, if the organisation was being used for personal gain of any particular person or a group of persons. Two, if it was propagating the view of a particular political party or a religious sect. Three, if it was being managed in a manner calculated to personally benefit its members or their families. Four, if the organisation had been “unable to achieve its declared aims and objectives in view of its set up, administrative or otherwise.” If CBR is not satisfied on the four counts, it may refuse to grant the application. It is, however, empowered to relax or modify any of the requirements or conditions of the rule, in any individual case, if it is satisfied that the applicant could not fulfil the requirements or conditions for reasonable cause.

According to Rules, the applicant organisation had to submit to the CBR an application on a prescribed form. Along with the form the applicant had to provide: a duly
attested copy of the constitution (or the trust deed) and rules of the organisations specifying the aims and objectives for which it is established; a copy of the registration certificate of the organisation under any of the registration laws; the names and addresses of the governing body members and senior officials of the organisation with a clear specification of any family relationship with each other; and a duly attested copy of the balance sheet and revenue accounts of the preceding year.

An organisation that has been approved as a nonprofit organisation had to apply for renewal every year. Renewals involved re-submitting all the documents required with the original application as well as a certificate that the constitution or the trust deed and the rules and regulations previously filed with the CBR have remained unchanged. CBR had to satisfy itself as to the details of the organisation again before renewal is granted. CBR may enforce any condition upon grant of donee status.

CBR might, at any time, withdraw an approval granted earlier. According to the Rules (of 1982) this could be done on a number of grounds, (a) if the organisation had failed to comply with any of the conditions prescribed; (b) the organisation had failed to “fully utilise its income and the donations received by it for achieving the purpose for which it was established;” (c) if it was seen that the reasons for setting apart funds collected during the year or not utilising them during the preceding year were not valid; (d) the unused funds exceeded ten thousand rupees and that these funds were not invested in government securities under intimation to the local CBR officer. However, if CBR wished to withdraw Section 61 status of an organisation, it had to provide reasons in writing and allow the organisation opportunity to defend its case before making its decision.

**Tax-exempt status: Second Schedule NPOs**

Section 53 provides for special exemptions on defined sources of incomes of a wide range of commercial organisations and others including funds, and categories of organisations, some of which are NPOs. Clauses 58 to 71 (and clause 92) of the Second Schedule of the Ordinance list these organisations or classes of organisation (mostly government organised relief funds). The special treatment varies from blanket or selective tax exemptions on various sources of income, different rates of taxation, or reduction in tax liability and is specified in detail for each kind of organisation.

Broadly there are two categories of such organisations. The first category is those organisations that are accorded permanent income exemption status. They do not have to renew their status every year. Clauses 67 to 71 prescribe the widest exemptions possible. It says that all incomes of Liaquat National Hospital Association, Abdul Sattar Edhi Foundation, Bilquis Edhi Foundation, Fatimid Foundation, and Hamdard Laboratories (Wakf) Pakistan shall be exempt from taxation. In addition, clause 92 exempts incomes of universities and educational institutions provided they are established solely for educational purposes and are run on nonprofit basis.

The benefits and procedures for tax exempt status for organisations that are not listed by name are given in clauses 58, 59, 60 and 92 of the Second Schedule. The broadest benefits are for organisations registered under clause 58. Organisations registered under this are hereinafter referred as “Clause 58 NPOs”. Incomes of a trust or welfare institutions approved for the purposes of clause 58 from donations, voluntary contributions, subscriptions, house property, investments in the federal government securities were exempt from taxation. In addition to these revenue streams, business income that is used to carry out welfare activities is partially
exempt. The extent of the income that is exempt is determined by the ratio of the business income of an organisation to its income from non-business sources that are delineated in the section. The exemption on business income is to be restricted to the extent of incomes from all other sources combined.

Clause 59 provided for exemptions, under defined conditions, on the income derived from investment in federal government securities and house property that were held in trust, wholly or partially, for religious or charitable purposes. Pre-approval from CBR was not required for CBR for these benefits. Clause 60 exempted income from voluntary contributions to a religious or charitable institution other than private religious trusts provided that these contributions were applicable solely to the religious or charitable purposes of the institution. Again no approval is required.

Procedures for gaining an entry in the Second Schedule were much tougher than Section 61 NPOs. The process is governed by section 53 of the Ordinance. Amendments to the Second Schedule may begin with notifications from the CBR, but these must be placed before the National Assembly during a certain financial year. Thus, in effect, the notifications under section 53 have the character of an amendment in law.

Rules provided the procedures for tax exempt status of Clause 58 NPOs. These were broadly similar to the procedures and requirements given for Section 61 NPOs with two critical differences. Qualifying purposes were fewer. The institution had to be formed for the purpose of establishing hospitals or providing education or for community welfare. There were extra conditions. It had to have operated and functioned in Pakistan, at the national level, for a period of not less than three years. It had to have acquired “national recognition” by virtue of its services. The area of its operation also had to extend to the whole of Pakistan. It had to be seen that satisfactory arrangements existed for their inspection of the books of the organisation by interested members of the public.

Customs and Sales Tax Law

Customs duties particularly affect organisations in health, education, social welfare, disability and disaster relief as organisations working in these sectors often import expensive high-tech equipment. Customs Act 1969 provides for duty free imports of equipment other than vehicles by charitable institutions and hospitals under defined conditions provided they are registered under Section 61 of the Income Tax Ordinance as a nonprofit organisation.

Sales Tax Act 1990 does not provide any general exemption to NPOs from the Value Added Tax type generalised sales tax regime applicable in Pakistan. Even government agencies and departments have to pay sales tax on their supplies. However, the Sixth Schedule of the Sales Tax Act provides for exemption to imports and supplies for specified purposes. These include disaster relief, gifts received for fighting tuberculosis, leprosy, AIDS and cancer, equipment and apparatus for the rehabilitation of the deaf, the blind, crippled or mentally retarded, and some equipment for hospitals. But these imports are subject to restrictions as are envisaged for the purpose of applying zero rate of custom duty under the Customs Act. This mainly means that these are purchased, or otherwise secured, by a charitable nonprofit making institution solely for the purpose of advancing the declared objectives of such institution.

Concession in Utility Charges

Water and Power Development Authority (WAPDA) allows concessional “domestic” tariff to charitable organisations approved by the Central Board of Revenue, under the income tax law. This is a major facility since “commercial” tariffs are much higher. WAPDA has issued elaborate instructions to
Regulate this facility in its notification dated 2 November 1998. Only orphanages, hospitals, dispensaries, and educational institutions are provided this facility. The organisation must be CBR certified (under Section 61) as a nonprofit, must present a certificate from a chartered accountant that the organisation is nonprofit, and must be registered under the Ordinance of 1961.

Provincial Taxes

A number of provincial taxes -- property tax, tax on transfer of property, and excise tax levied on fund raising activities -- are very important for NPOs since they have considerable impact on financial sustainability of NPOs. These are briefly discussed here.

All provincial governments and local authorities levy a tax on urban immovable property mandated by The Urban Immovable Property Tax Act 1958. The procedure for levy of tax, exemptions and all matters related to it are provided in the Urban Immovable Property Tax Rules 1958. The local councils in Punjab also levy an Urban Immovable Property tax under the Punjab Urban Local Councils (Immovable Property Tax) Rules 1999.

Under the Provincial Property Tax Act of 1958, property tax is exempted on buildings and lands or portions thereof used exclusively for educational purposes, including schools, boarding houses, hostels and libraries and buildings and lands or portions thereof used exclusively for public worship or public charity including mosques, churches, dharamsalas, gurdwaras, hospitals, dispensaries, orphanages, alm houses, drinking water fountains, infirmaries for the treatment and care of animals and public burial or burning grounds or other places for the disposal of the dead.

The law attempts to make sure that the exemptions are properly used. It provides that business is carried out shall not be deemed to be used exclusively for public worship or for public charity unless the rent derived from such buildings or lands is applied exclusively to religious purposes or such public charitable institutions as may be prescribed. If rent is derived from buildings or lands and such rent is not applied exclusively to religious purposes or to public charitable institutions, then these would not be given any exemptions.

Rule 24 of Urban Immovable Property Rules 1958 provides the procedure for granting exemptions from property tax to public charitable institutions. The organisation has to apply to the Deputy Director of Excise and Taxation, who after satisfying himself, issues a certificate of exemption. A property is only given exempt status, if income by way of business or rent is exclusively applied to the charitable institution. Where an institution has been certified by the Deputy Director as a charitable institution with purposes covered within the ones given in the law and the rules, regular accounts of income and expenditure shall be maintained and such accounts shall be open to inspection by the District Excise and Taxation Officer or by such other officer as he may appoint in this behalf to satisfy himself that the income of the property sought to be exempted. The officer will make sure that the income from the property exempted is being spent exclusively for a purpose for which the exemption was allowed.

Analysis

The Ordinance of 2001 introduces many changes (as compared with the Ordinance of 1979) in the treatment of nonprofits. These can be broadly categorised as changes in purposes and procedures. The term nonprofit organisation has been introduced for the first time at section 2(36). It includes the term “charitable”, but this term, despite its wide legal meaning, does not connote inclusiveness of modern development activities like sanitation, urban housing, micro-credit and other areas that are major
features of modern nonprofit activities. The restriction of purposes for Clause 58 eligibility to only education, hospitals or community welfare is also restrictive.

A large number of citizen organisations are excluded from the purview of fiscal support because of a narrow definition of nonprofit organisation. On the other hand, the new development paradigm has widened the scope of partnership with citizen organisations for implementation of the Poverty Reduction and Social Development Programme, as well as with local government under the new Devolution Plan. These new realities argue for a broadening of the definition of nonprofit organisations. As a guideline we can look to the areas set out in the government's "Interim Poverty Reduction Strategy Paper": housing, rural development, irrigation, land reclamation, education, health, water supply and sanitation, nutrition, population planning, protecting the vulnerable and environment.

Section 61 of the Income Tax Ordinance 2001, that replaces Section 47 of Income Tax Ordinance 1979, reduces the range of exemptions. It removes some categories of institutions from its list of donee status. The new section does not refer to government-recognised universities. The permanent donee eligibility of government recognised and aided hospitals and relief funds sponsored by government has also been deleted from this section. Most of these blanket eligibilities for relief funds and for government recognised universities -- have actually been reworded and shifted to Second Schedule.

However, government hospitals are no longer given permanent donee eligibility status. According to the scheme of things, they should have been mentioned in the second schedule but that is not the case. This removal will negatively impact indigenous philanthropy since government hospitals attract substantial amounts of philanthropy.

Tax credit eligibility for the funds and property given by a person as a donation to nonprofit organisations does not include “services”. This is also a restrictive clause. A number of NPOs receive donations in the form of free services from experts, which should be eligible for tax credit.

The extra conditions imposed in Clause 58 NPOs were too onerous, allowing too much discretion to official interpretation. The condition of national recognition was unwarranted as a matter of public policy. It excluded organisations that did excellent work but were not nationally known, or were small. It was difficult to quantify and in practice restricted the benefits to a few elite organisations.

The rules made it mandatory for an organisation applying for tax exempt status to submit copies of audited balance sheets and the audited reports of the last three years certified by a chartered accountant. For small NGOs, audit by chartered accountants is unaffordable and, as is argued in chapter five in the discussion of the regulatory framework, unnecessary. This was another provision that had restricted the benefits of fiscal regime to an “exclusive club.”

The rules require that all exemption granted be notified in the official gazette and that general public should be provided access to the record. This does not happen. Often the CBR is not aware which organisation has been granted exemptions under Section 61 or under Clause 58. This lack of disclosure is an important handicap toward removing arbitrariness of officials and improving governance standards of the sector.

The consequent benefits remained the same in the new Ordinance. It was seen, however, that the exemptions on the streams of revenue to an NPO recognised under Clause 58 were limited to only government securities and house property. This needed to be expanded so that broad investment options were available to an NPO.

The biggest problem with the Ordinance of
2001, as was with Ordinance of 1979, was that the procedures of gaining exemptions under Section 61 or Clause 58, as given in the rules, were very difficult. Take the case of donee status. The rules made the Central Board of Revenue responsible for determining the qualification of an organisation for tax-exempt status. In practice, the papers were sent by the CBR to the Regional Commissioner who transmitted them to the Zonal Commissioner, who in turn forwarded them to the Assistant / Deputy Commissioner in charge of the circle in whose tax jurisdictions the organisations operated. There had been loud complaints in all parts of the country that it took considerable time, effort and informal cost, (no fee is required with the application) before a recommendation went back to the CBR.

Apart from multi-tier processing, often the documents required in verification were demanded piecemeal. Time limit for making decision on the application was not prescribed for both kinds of exemptions. The application usually took many months to a year or even more. All exemptions were subject to yearly renewals. Around the time that one year cycle ended, the new one had to start. The audit requirements for all NPOs were the same. All organisations, large or small, had to submit accounts audited by a Chartered Accountant, even in the case of Section 61 status. This was very difficult for small organisations that could not afford the fees of such specialised auditing.

The application was passed on to the field officials who visited the organisation to ascertain whether the organisations met its objectives or not, and whether it had been or was being used for personal gain or political objectives. The CBR field evaluators were not professionally trained. Benchmarks of good financial management were not used. Arbitrary decision-making was the norm. The process had little credibility. As a result, verification carried out by the CBR held little currency with the individual donor or an institutional donor outside government.

The rules regarding withdrawal of exemption were not well structured and were immune from independent judicial review. The CBR could, at any time, withdraw the approval, if the institution failed to comply with any of the provisions of the Rules. The conditions for approval were open-ended as the Board may impose “other conditions”. In order to make the process transparent, all conditions should have been specified in the Rules so that there was no scope for arbitrary action.

There does not appear to a special need for separate independent processes for clause 58 and section 61 NPOs. This is wasteful. Those that have section 61 status may be given faster access to clause 58 benefits.

Limitations on sources of income that have special benefits also do not contribute to financial sustainability. Government securities do not offer the returns that market based financial institutions do. Endowments with investments market based securities are also not clearly allowed.

Ceilings of donations prescribed in section 61 which will be considered for tax credit are low, especially in case of individuals. This means that tax benefits of section 61 for individuals in the lower tax bracket are minimal. This ceiling of 30 percent, especially for those who do not have high levels of income needs to be raised. Given the poor tax culture in Pakistan, government can easily use the incentive of generous tax benefits for philanthropic contributions to attract more citizens into the tax net.

The net effect of the degree of difficulty of processes is that, of the tens of thousands of NPOs in Pakistan, only close to a thousand organisations, were eligible under Section 61. Only around 20 NPOs were registered under Clause 58. Most organisations prefer not to apply.

Data about these organisations has not been consolidated and is not available for public inspection, despite the intention of the law to
the contrary. It is not known how many apply for benefits and how many are accepted. Data on the quantum of exemption availed by donors or NPOs is also not available. In short, no base line is available to determine the state of use of these exemptions.

The significance of qualification for income tax benefits is amplified as it is relied on to qualify for benefits under the utility tariff regime, customs duty, and sales tax. It is therefore imperative that fiscal incentives available under income tax laws are widened in their applicability and procedures made facilitative and free of arbitrary decision-making.

The measure of standardisation afforded by linking of benefits to NPO status under Income Tax Ordinance does not extend to provincial taxes. For the all-important provincial property tax, an official of Excise and Taxation department certifies the nonprofit character and the eligibility of purposes. No rules or procedures are specified and the decisions are arbitrary.

To summarise, the actual effect of the tax benefits that trickle down to NPOs, especially income tax benefits, do not appear to be substantial.

**Recommendations**

**Purposes:** Eligible purposes of the nonprofit organisations needed to be broadened for tax benefit. In the first phase, incentives be provided to all organisations that work in the areas identified in the governments Interim Poverty Reduction Strategy. This would mean that the eligible purposes for tax exempt status be broadened to include development purposes too. In the second phase, government should provide tax benefits to the widest possible spectrum of nonprofit pubic benefit purposes, including rights advocacy.

In addition, the narrower purposes allowed under the Customs Act, the Provincial Property Tax laws, and the WAPDA tariffs need to be broadened according to modern development priorities.

**Exemptions on sources of income:** Financial sustainability of NPOs is a crucial issue. Increasingly NPOs want to ensure future financing through building of assets, physical or financial, that could be relied upon to provide stable sources of revenues. The sources of income that are tax exempt for Clause (58) NPOs thus needed to be broadened to include not only house property but government grants and other income from investment in government or other State Bank regulated securities. Endowment financing mechanisms need to be allowed.

**Section 61 donations and ceilings:** The ceiling of 30 percent for individual giving to NPOs need to be enhanced, especially for individuals who are in the lower tax bracket. Donations of professional services should also be eligible for tax deductibility in addition to donations in cash and kind.

**Renewals:** Renewal for one year only was inefficient. This needed to be done for three years once two consecutive renewals had taken place.

**Auditing:** The condition of all auditing by charter accountants needed to be removed to enable small organisations to get audited by other qualified accountants.

**All Pakistan operations:** The condition of all Pakistan operation and national recognition for Clause 58 NPOs should be removed.

**Permanent donee status of government hospitals:** The permanent donee status of government hospitals needs to be restored.

**Professional certification agency:** The process of certifying that a nonprofit meets its objectives and maintains nonprofit character needed to be made transparent, credible and efficient. This could be best done by a professional organisation dedicated to evaluating and certifying NPOs. This would
raise the credibility of the process and increase the accountability practices of the nonprofit sector. Independent, professional certification operating under a government license could bring private sector rigour and an entrepreneurial service orientation to a field of great public significance. Among other things, an independent certification agency would be expected to service not only the CBR need for assurance, but also the growing societal demand for information about the integrity and performance of its public benefit organisations that rely on private giving. Over the long run, grant of major federal and provincial government benefits should be linked with certification to ensure transparency in the grant of these benefits.

**Tax on transfer of immovable property:** The tax on transfer of immovable property is a disincentive for NPOs having surplus funds. It discourages NPOs from investing in immovable assets. There is need to provide for an exemption clause in the law for NPOs.

**Utilities:** The provision of special concessionary tariff for natural gas does not exist. There is need to create a similar facility for NPOs. This is especially important for NPOs that operate large physical premises, such as hospitals and schools.

**Recommendations Accepted in 2002**

PCP interacted extensively with the CBR and the Ministry of Finance and succeeded in getting the following major recommendations of EEI incorporated in the Income Tax Ordinance and Rules. The Finance Ordinance 2002, which amended the Income Tax Ordinance 2001, has made the fiscal framework for the nonprofit sector more enabling. The rest of the law (Income Tax Ordinance 2002) and the rules (Income Tax Rules 1982 now notified as Income Tax Rules 2002) remain the same as far as nonprofit organisations are concerned.

**Purposes broadened:** “Development purposes” have been included in the definition of NPO in section 2(36). The definition of “charitable purposes” that was omitted has been re-inserted as section 2(11A). Through, the Finance Ordinance 2002, the term “nonprofit organisation” has been included in section 11 and 59 to widen the purposes for which organisations are eligible for exemptions and other related benefits.

**Utilisation of funds:** The ceiling of maximum Rs 20,000 as unutilised funds for the year have been relaxed in the new tax rules.

**Rules made enabling:** By promulgation of chapter XVII of the Income Tax Rules 2002 the whole fiscal regime has been made very enabling. The discretionary authority of tax officials has been greatly diluted by creating a provision of appeal and making it mandatory for tax officials to follow a mandatory time frame and in case of rejection of tax exemption and to give reasons in writing.

**Mandatory condition of chartered accountant removed:** The new tax rules have also provided for a graduated standard of financial reporting. Small NPOs are no longer compelled to provide accounts audited by the chartered accountants. NPOs with annual receipts of less than Rs 0.5 million can file accounts audited by retired audit officer or a bank manager.

**Principle of independent certification agency accepted.** In Rule 211, the principle of having an independent evaluation and certification agency has been accepted and incorporated in the law.

**Annual renewal changed to three-year renewal:** Previously annual renewals were required. The new Rule 214, has provided for renewals up to three years subject to report of the certification agency and audit results.
Next Steps Towards an Enabling Fiscal Regime

Although a number of enabling provisions have been included in the law, there are equally important additional recommendations yet to be accepted by the government. These include exemption from taxation, market based returns from endowments set up by NPOs for their financial sustainability, tax credit for professional services donated, single procedure for evaluating NPOs for section 61 NPOs and clause 58 NPOs, increase of section 61 ceilings for donor giving, exemptions on property, widening of utility tariff exemptions to gas tariff, linking of provincial government fiscal incentives with certification regime etc. Most importantly, a base line needs to be developed that could determine the “opportunity cost” to the State of tax and other related benefits granted to NPOs. Future policy changes and their implication could thus be compared and analysed properly.

Independent certification regime: The PCP’s role in creating an enabling environment for NPOs involves facilitating their resource mobilisation, access to fiscal incentives, improvement of sector wide standards, as well as providing comfort and confidence to social investors by enhancing NPO credibility as competent and trustworthy executing agents for their programmes with the desirable level of transparency and accountability. The contemporary device for providing this confidence is to prepare a directory of credible nonprofit organisations on the basis of institutionalised evaluation of the quality of programme management, financial management and internal governance.

Through reforms in the fiscal support regime recommended by PCP and included in the Finance Ordinance 2002 and Income Tax Rules 2002, the existing system of evaluation of applicant NPOs by income tax officials has been supplemented by certification by an independent agency approved by Central Board of Revenue or by an authority nominated by the government.

PCP will continue to study fiscal policy issues, engage government for development of an even more enabling fiscal regime for nonprofit organisations and philanthropy, and develop programmes that improve sectoral standards and facilitate access to State benefits.

Endnotes

1 External Philanthropy included grants given by international multilateral organisations like UNDP.
2 Chapter 4, Philanthropy in Pakistan, AKDN, 2000.
3 Ibid.
4 As discussed in the last section of the chapter, rules (211-220 of Income Tax Rules 2002) replacing the old Rule 41 have since been notified. The rules that will replace the old Rule 41A are, however, in the process of notification.
5 It may be kept in mind that the discussion of these complex laws is merely indicative. Readers are requested to refer to the text of the laws for detailed guidance for treatment of individual cases or categories of cases. Readers may also seek tax on tax issues relating to philanthropy at the website of Pakistan Centre for Philanthropy, http://www.pcp.org.pk. The website also provides the relevant text of the Income Tax Ordinance 2001 and the Income Tax Rules 2002.
6 Tax credit under this section essentially means that the amount given will not be counted as part of the taxable income of the tax payer.
Section 2(36): “Non-Profit Organisation” means any person (a) established for religious, charitable or educational purposes or for the promotion of amateur sports; (b) which is registered under any law as a non-profit organisation and in respect of which the Commissioner has issued a ruling certifying that the person is a non-profit organisation for the purpose of this Ordinance; and (c) none of the income or assets of the person confers, or may confer a private benefit on any other person.
7 Rule 41 of the Income Tax Rules 1982 provided the procedure for registration under section 47(1-d) of the Income Tax Ordinance 1979. Since new rules replacing the Rule 41 had not been notified at the time of writing of this chapter, this chapter discusses Rule 41.
8 Prescribed forms and procedures under the Income Tax Ordinance may be downloaded from the PCP website, http://www.pcp.org.pk.
9 Rule 41A governed the procedure for tax-exempt NPOs. Since new rules replacing 41A have not been notified (as of November 2002), this section is based on Rule 41A of the Income Tax Ordinance 2001.
10 After amendment introduced through Finance Ordinance 2002, the clause (a) of Section 2(36) reads: “Non-Profit Organisation” means any person (a) established for established for religious, educational, charitable, welfare or development purposes”.
8. The International Experience

The Enabling Environment Initiative has reviewed the international experience of regulatory and assurance frameworks for citizen organisations with a view to learning lessons for Pakistan. This chapter summarises the principal lessons and findings from our international research.

Surprisingly, there is little published work that probes into the dynamics of creating an enabling environment for the citizen sector, and particularly on the effects of law and public policy on the growth, vitality and contribution of the citizen sector to national development. What is available is almost entirely national, as opposed to comparative, in character. As a result, much of the work undertaken by the Enabling Environment Initiative team was original. In a gesture toward filling part of the gap in the international literature, the PCP plans to publish a separate stand-alone edition of international research.

Our research was organised into three parts. The first part involved conceptualising the issues and opportunities through a “process lens”, namely that of the ongoing relationship between the government and the nonprofit citizen sector. The second part focused on one important and controversial set of institutional regulatory developments—the new assurance frameworks. The third part involved a brief international review of notable features in law, policy, regulation, and institution formation.

There are five distinct elements to the international experience in this area. Because they are often intensely interrelated, they are often confused or conflated. Every effort is made in this chapter to identify and distinguish them appropriately.

- The basic legal framework (at the core, the provision of legal organisational status);
- The regulatory/accountability arrangements necessary to assure integrity (including registration and reporting requirements in law, as well as significant programmes of self-regulation);
- The arrangements to promote and demonstrate effectiveness;
- The arrangements to promote partnership between public service providers and citizen organisations; and
- Positive incentives by government for altruistic citizen initiative for public benefit such as tax benefits.

We have hunted in particular for factors shaping the overall environment and the extent to which it could be considered enabling. Our orientation is practical. What seems to work best? Why? Where are the friction points? What drives change and where have changes proved enabling? Why? What are the discernible causalities between law and the health and efficacy of civil society?

In particular, we also looked for the ways different societies handle issues of legal form (association, society, trust, nonprofit corporation, other)

- Relationship of legal form to nonprofit status
- Definition of “public benefit” (or equivalent concept) and determination of preferred or permitted purposes
- Treatment of "business income" (or equivalent concept)
- Conflict of interest (including for government officials serving on nonprofit boards)
- Operational regulatory structure (distributed among different departments according to statutory form? centralised
in one ministry department? shared among ministries? a cross-cutting independent body? other models?)
- Fiscal policy, the role of tax authorities and the relationship between the fiscal framework and the nonprofit sector regulatory framework
- Extent to which statutory regulation relies upon independent third parties (such as financial auditors or other forms of certification)
- Approaches to dispute resolution

Many authors assert that law or to be more precise, recognition in law -- is a key determinant of the health of civil society. Common sense supports this notion. Regrettably, however, there is virtually no empirical research that supports it. Contrarily, one can point to many societies, such as South Africa under apartheid or in Central and Eastern Europe in the 1980s, in which civil society took a vigorous form in the face of active State repression. In more democratic contexts, particularly within a given field such as education or health, legal recognition is demonstrably pivotal and highly prized. But for the citizen sector as a whole, with respect to conferring credibility from the point of view of mobilising support or engaging with beneficiaries or implementing programmes, research that confirms the point is hard to find.

Along the same lines, those who expect the Enabling Environment Initiative recommendations to be supported by direct international precedents, or to be modelled from countries with a strong affinity in Pakistan, will be disappointed. The circumstances of each country are sufficiently distinct and the subject too complex to ensure that there is no clear “answer” out there.

What we did find, however, is perhaps even more encouraging for Pakistan. One of the major conclusions from the international survey is that, in many ways, Pakistan is in a position to distinguish itself internationally. In the developing world especially, it is increasingly recognised that urgent development targets will only be met if citizen organisations of all types the so-called NGOs and CBOs in particular succeed in mobilising unprecedented levels of domestic support from government and society at large. Pakistan's high levels of giving and volunteering grounded firmly in a religious and personal milieu suggest that society at large would be willing to support organised development as well as religious activity. But it is also clear that this will only occur if the citizen organisations rise to new levels of performance and integrity. The fact that the Enabling Environment Initiative is the first initiative of its kind by a developing country government is indicative of the commitment by government to make the shift from the old paradigm “command and control” approaches to new paradigm ones of partnership, facilitation and support. Our international survey indicates that few would contest the statement that were the Enabling Environment Initiative recommendations to be implemented effectively, Pakistan would be firmly set on a course that would mark it as a pioneer in the global search for effective citizen sector assurance frameworks.

Before reviewing the major lessons from the international experience, we consider elements common across the developing world by reference to a contribution to the Initiative on Indigenous Philanthropy, the direct predecessor to the Enabling Environment Initiative. In 2000 and 2001, the NGO Resource Centre organised a series of “Citizen Sector Self-Regulation and Regulation Workshops” that included a paper on the global context from Kumi Naidoo, the Chief Executive of CIVICUS, a global citizen participation support organisation. In a revised version of that paper, Kumi Naidoo and the EEI team explored ways and means of increasing the citizen sector contribution to national development. It identified nine key factors driving the development of self-regulation by nonprofits in the developing world.  

*Increased influence and responsibility: Over*
the last fifteen years or so, the world has witnessed what some have called a “global associational revolution” and a “power shift”. This describes the large growth in the sheer number of citizen driven organisations that have emerged largely to respond to a wide variety of challenges facing humanity. More than simply a quantitative rise in numbers, is the reality that several citizen inspired organisations have come to play a key, and in some cases, indispensable role in the governance of their societies at the local, regional, and more at the national level. While this has often taken the form of providing critically needed basic services to vulnerable communities, increasingly citizen organisations have also proven their value as policy-makers. In particular, they bring a responsive, two-way dialogue about what people “on the ground” need and do not need, what works and does not work.

This rise in influence and presence has been illustrated by the major growth in the discourse about the role of civil society. From the Secretary Generals of the Commonwealth and the UN, to the President of the World Bank and a range of national political figures, all have conceded, indeed in some cases aggressively argued, that civil society is, or should be, a key player in deepening democracy and promoting social development. While many definitional challenges exist about what civil society is exactly, for our purposes here, we are looking at citizen inspired organisations that seek to work for the common good.

In this context, many citizen organisation leaders have argued that this increased influence, indeed power and presence, brings with it increased responsibilities and public accountability. Consequently, they have invested time and effort in promoting a range of experiments in developing self-regulation frameworks for the citizen organisation community.

**Countering government changes of non-representativeness.** Notwithstanding the much greater acceptance of the role of citizen organisations in the public life of their societies, several government leaders, ironically, especially from countries where there are democratic electoral processes, question the legitimacy of the role of citizen organisations in public life generally and in social advocacy in particular. The argument that these government figures put forward is that, unlike elected governments who derive their legitimacy from the electorate, and business leaders who are at least accountable to their shareholders, citizen organisation workers are largely self-appointed “do-gooders” who are not accountable to anyone other than themselves.

To counter this line of thought it has become necessary for citizen organisations to demonstrate their public support and develop new accountability mechanisms about both their internal practice as well as their external relations with a range of constituencies that they interface with on an ongoing basis.

**The question of public trust and credibility: A pre-emptive strike strategy.** The question about how citizen organisations develop and retain public trust and credibility has plagued many activists over the last two decades. The challenge has been met in some instances by the formation of national coalitions of citizen organisations who develop their own code of ethical practice in an effort to improve transparency and public accountability. We have seen formal initiatives, such as the Philippine model of certification, driven from within the citizen sector with government recognition for the process. In other cases there are independent watchdog bodies created to monitor and assess citizen organisation performance.

In many countries, the ministries or government controlled agencies use registration and reporting regimes as a mechanism for direction and control. Some would view this as public accountability; others might argue that charity or nonprofit legislation is often more limiting than
enabling. In any case, we can work through the “official regulatory” challenge by shifting our thinking from what governments do to what citizen organisations should do in a wider “governance” framework. As a starting point, we should acknowledge that good government is based upon inclusive and equitable governance systems. Civil society organisations can take the lead by fostering greater social inclusion and legitimacy, by promoting the presence of ordinary citizens in their actions and the public sphere, and by leading generally from their own example on inclusivity issues such as gender, age, racial, and religious tolerance.

**Fragility in current citizen organisation practice.** Another major factor driving the need for self-regulation has been the much-publicised cases of financial incompetence and in some cases fraudulence in a few citizen organisations in different parts of the world. While it is worth noting that the scale of these irregularities is probably miniscule compared to governmental and business sector conduct in many parts of the world, the public rightfully expects a much higher standard of conduct from citizen organisations that rely in the main on voluntary contributions. The two areas that have been most problematic are human resources and financial management. In both these areas, however, we should also note that several donors have been unwilling to allocate their funds to develop the financial and managerial capacity of citizen organisations, saying instead that they will only support “programme costs”. Another internal weakness of citizen organisations has been their poor communication and reporting systems. Several advocates of self-regulation approaches have stressed that there should be explicit approaches on communications and reporting enshrined in the appropriate documents.

**Intra-sectoral tensions.** The heterogeneity of the citizen sector with a wide variety of types, sizes, themes, personalities and structures has made it difficult to think about a single framework with which this mosaic of organisations should conform. Many have rightfully argued that one of the greatest strengths of the citizen sector is precisely its diversity and to try and strait-jacket all organisations to conform and perform in a particular manner is ill advised and inappropriate.

What is being advocated, however, does tend to take this into account and in fact part of the driving force has been the need to develop a set of rules that will also deal with several tensions within the sector on such issues as funding, taxation, access to public facilities and so on.

**The growth of diaspora and other cross-border philanthropy.** The last three decades have seen a significant rise of people who have their roots in the poorer regions of the world but have become highly successful in the industrialised world. Even though they have considerable wealth, they are not generally inclined towards setting up big foundation infrastructures. Given that they might sometime, be far away from their historical homeland, they want to be able to rely on a set of public assessments and records that will distinguish bona fide citizen organisations from those that are not. The same also applies more generally to cross-border grant making, which is also on the rise.

**Indigenous resource mobilisation.** With foreign donor funding drying up or reducing significantly in many parts of the world, citizen organisations have to explore local resource mobilisation. This often takes the form of raising resources from individual citizens who are willing to support various good causes. Unlike with distant donor agencies, however, local residents appear to be more critical and questioning about which are good performing entities and which are ineffective. Consequently, the greater need to develop a local fund-raising revenue pool has also spurred some of the work around self-regulation.
Taxation. Perhaps of all the factors influencing self-regulation, the biggest incentive is that of taxation. In several countries, as the number is growing, there are tax-breaks for citizen organisations as well as donors, both institutional and individual. To qualify for these benefits, finance ministries generally set a high threshold of accountability and reporting. A strong self-regulatory regime is virtually a necessary precondition for a successful dialogue with governments regarding the introduction of sector-friendly tax regimes.

Advocacy for benefits for citizen organisations. In several countries, particularly where national umbrella networks exist, citizen organisations have been trying to negotiate with government and business for reduced rates for goods and services consumed by the citizen sector. In some countries, these have included special rates for postal services; in others it has been relief from municipal taxes where citizen organisations own property. South African NGO Coalition, and its ally the Nonprofit Partnership, have pursued reduced rates for medical aid and pension funds for citizen organisation staff, and preferential rates for a broad range of commercial goods and services consumed by the citizen sector. For progress to be made here there needs to be some self-regulation framework to ensure that such schemes are not undermined by bogus institutions and corrupt individuals benefiting from them.

The State-Citizen Sector Relationship and Law and Policy Reform

Earlier chapters point out that the emerging “new development governance paradigm” is reshaping all three sectors of society right across the world. It follows from this, and international research bears it out, that a number of countries have undertaken formal policy and legal reviews in order to recalibrate citizen sector policy and regulatory institutions with the changed realities on the ground. It can be expected that many others will do so over the next few years, and the process in Pakistan which began with the Initiative on Indigenous Philanthropy in 1998 and continued with the Enabling Environment Initiative in 2001 will become an international point of reference.

The survey suggests three distinct clusters of nonprofit sector legal reforms, all of them resulting in more enabling environments. One involves countries going through a major historical transition. A second grouping is defined by an organised response to a threat to the sector. The third cluster involves modernisation efforts among Western liberal democracies. There is an interesting argument that Pakistan may be representative of a variation in which the evolution of the citizen sector is a response to an oscillation between military governments and weak elected governments. In the context of high levels of official corruption, there is an argument that it is especially important for the third citizen sector to exemplify probative and transparent public interest action. It also suggests that regulatory mechanisms dependent on bureaucratic function in g should be minimised.

The historic shifters divide into two groups, those emerging from Soviet communism and those emerging from other forms of dictatorship. Given the absence of an appropriate legal framework in most Soviet bloc countries, those countries have all had to undergo legal reform. Civil society groups in many of the Eastern and Central European States played an important role in the popular resistance that contributed to the collapse of the Soviet system. Over a period of years, through the evolution of constitutional democracies, a number of countries established legal and fiscal environments that were as enabling as any in the world. Notable among these were Hungary, the Czech Republic, Croatia, Estonia and Bulgaria, where the progressive use of fiscal policy to support the sector is an outstanding feature. In
several countries citizen organisations not only benefit from broad income tax exemptions, but they also get generous exemptions from value added or service taxes. In 1995, Hungary passed a novel tax provision that allows any taxpayer the right to designate one percent of her or his tax owing to any public benefit organisation. The “one percent rule” was broadened in 1997 to allow for up to one percent each for two categories of public benefit organisations, religious and secular. Several of these countries have instituted formal dialogue processes with a view to identifying a continuing reform agenda and establishing strong bases for public-private partnerships for national development.

The second group of historical shifters are newly democratic after periods of dictatorship. In defining their hard won democracies after long periods of dictatorship, countries such as the Philippines (after Marcos), South Africa (post-apartheid), Ethiopia (after Mengistu), and Uganda (after Obote) took historically unprecedented steps to recognise the role of the independent citizen sector. The post-Marcos Philippines promulgated a new constitution in 1987 that formally recognised the role of civil society in social, economic and political development, including a formal obligation on the State to create consultation mechanisms.

The Philippine Constitution of 1987

The State shall encourage nongovernmental, community-based, or sectoral organisations that promote the welfare of the nation. (Article II, Sec. 23)

The State shall respect the role of independent people's organisations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means. (Article II, Sec. 23)

The right of the people and their organisations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms. (Article XIII)

This constitutional safeguard proved important in the early 1990s, when the tax authority in the Philippines unilaterally decided to withdraw certain benefits for registered nonprofit organisations. The well-organised Philippines' citizen sector immediately engaged with government, leading to a negotiation that produced the Philippine Council for NGO Certification. This Council, whose initial Board was made up of one representative from the tax authority and the rest of representatives from major civil society groupings, was established to review and certify the bona fides and organisational systems of organisations that wished to obtain what is known in Philippines as “donee status”, meaning that contributors to those organisations would be able to receive a tax reduction in the amount of their donation. The Philippine certification system represents the first time, anywhere in the world, that a government has delegated this function to an independent civil society body. An alternative approach is that of England and Wales, where a determination of charity status by the registration authority, the Charity Commission, is binding on the tax authorities. In other countries, the tax authorities retain the prerogative of making a separate determination. Because it is more productive for both the citizen organisations and the government, it is expected that the Philippine example will spread.

Also at the constitutional level, the Ugandan Constitution of 1995 not only enshrines the right of association the bedrock of an independent citizen sector it goes on to specify that free association includes the right to form and join “associations or unions...and political and other civic organisations” (Article 29.1(e)) The Constitution puts a positive obligation on the government to “...work to encourage efforts to mobilise, organise and empower Ugandan people to
build independent and sustainable foundations for the development of Uganda.” (Article IV (iii). Against a historic backdrop of State manipulation of civil organisations and abuse of human rights, Article V (i) provides explicit protection, directing that “civic organisations shall retain their autonomy in pursuit of their declared objectives. This is reinforced by Article V (ii), which provides that “…the State shall guarantee and respect the independence of NGOs, which protect and promote human rights.” Under Article I (ii), the President is obligated to report once every year to parliament and the nation the steps that have been taken to realise these objectives.

During the formal negotiations for a new constitution in South Africa between 1990 and 1994 a parallel policy review exercise was undertaken entitled the “Independent Study into an Enabling Environment for NGOs”. That exercise, convened by a national citizen organisation and led by a group of eminent citizens, met with hundreds of citizen groups across the country over three years to formulate a set of recommendations for a new legal, regulatory and fiscal framework for civil society. After the first democratic election in 1994, Nelson Mandela’s government took up the recommendations, with the result that two pieces of legislation were passed, one establishing a new registration and reporting system (The Nonprofit Organisations Act of 1997), and the Taxation Laws Amendment Act of 2000, which liberalised fiscal incentives for giving. The Nonprofit Organisations Act was in essence a codification of the recommendations of the Independent Study into an Enabling Environment for NGOs, and, like the new constitutions in Philippines and Uganda, gave new statutory recognition to the role of the sector. In particular, it establishes a positive duty that “…every organ of State must determine and co-ordinate the implementation of its policies and measure in a manner designated to promote, support and enhance the capacity of non-profit organisations to perform their functions.” (Chapter two, article three)

There are a number of well-documented positive legal review exercises in progress among the Western liberal modernisers, including Australia, Canada, England and Wales, Scotland, Ireland, New Zealand and Germany. As this list indicates, there has been a particular tendency within Commonwealth countries to review and renew third sector-government relationships. In addition to formal legal and policy reviews, several countries have made relationship building a formal objective and established processes to realise the objective.

The Canadian government, for example, announced in June 2000 that it would invest $94.6 million over five years in a major partnership between the federal government and the country’s voluntary sector. Called the Voluntary Sector Initiative, it seeks to address six key areas:

- An Accord: developing a framework agreement that will articulate the shared vision and principles for relations between the voluntary sector and the federal government;
- Information Technology and Information Management: improving the sector’s access to the benefits of technology;
- Public Awareness: increasing recognition of the sector among the public and government;
- Capacity: developing new knowledge, skills and means for voluntary organisations to respond to Canadians’ needs;
- Financing: proposing a new approach to financing the voluntary sector that is long-term and sustainable;
- Regulatory Issues: streamlining reporting requirements and regulations that affect the voluntary sector.

The small but growing body of research examining the international phenomena of what have been dubbed “compact” processes has identified four phases: identity and problem setting, direction setting, structuring, and maintenance and monitoring. In a sense,
one could argue that the Enabling Environment Initiative is an example of the first and second phase. The Enabling Environment Initiative recommends that a formal compact process be instituted in Pakistan, noting that the Canadian Centre for Philanthropy is willing and able to share the Canadian Voluntary Sector Initiative for the benefit of Pakistan.

There are a number of conclusions to be drawn from an analytical survey of the international trends in the State-citizen sector relationship. One important one is that the establishment of a more enabling environment for the citizen sector is inevitably a non-linear, sometimes uneven, and at best to be seen as an unfolding process. It is often a question of “two steps forward, one step back”, as in South Africa where dramatic improvement in the registration and reporting regime was successfully negotiated, but then the administration of that regime was captured by a single government department, with the result that much of the citizen sector was distorted, rendered invisible, or alienated.

After his Enabling Environment Initiative-sponsored visit to Pakistan, England and Wales Chief Charity Commissioner (retired) Richard Fries reflected along a similar line when he wrote, “it seems to me that developing the role of citizen engagement in Pakistan cannot indeed should not be a single comprehensive action, but must be a continuing, carefully fostered process encouraging positive developments in ways that will progressively enhance the role civil society plays in the well-being of Pakistani society. What I have in mind, among other things, is that the different strands and traditions of citizen engagement in Pakistan have grown up in different ways in response to a great variety of perceptions, and to seek to bring them under a new legal and institutional framework in one go risks distorting and damaging parts of the sphere in ways which are in principle unpredictable. This points, to me, to the need for an ongoing, permissive evolution of the legal and institutional environment.”

Another important theme that jumps out of the international overview is the emphasis on the relationship between the sectors, rather than on the law or regulatory mechanism by themselves. This points quickly to questions of mutual understanding and capacity. Whatever laws and regulatory structures may be established, it is of paramount important that there be adequate provision for their ongoing institutional development. Compact processes or other mechanisms that allow periodic review and renewal in the relationship between State and civil society can enable the administrators of, for example, registration and reporting regimes and the opportunity to improve. Similarly, through interaction that considers the administration of the regulatory framework, the leadership of the citizen sector gains the experience from which to derive better complementary self-regulatory action.

It is possible to identify a major difference between those countries that have completed legal review exercises successfully and those that have come up to the topic, but have not followed through satisfactorily. In South Africa and Philippines, strong effective national champions drove the processes, provided technical, logistical and financial support, and made sure that permanent structures were put in place to carry the process through to conclusion. Countries that have begun a process, but have not brought it to a satisfactory conclusion such as Ethiopia, Tanzania and Uganda have not yet been able to demonstrate effective citizen sector leadership. The comparative conclusion may be that effective leadership is a condition precedent to success rather than a guarantee of it.

When one delves into any of the reform processes successful and unsuccessful one clearly sees State opposition as a key obstacle in the transition from a control-oriented framework to a framework of facilitation. Nowhere in South Asia and in few places
beyond has the State voluntarily agreed to a truly substantive reduction in the means and indicia of control over the citizen sector through a legal framework. Part of this may be a serious concern about the possible undue influence of foreign agencies in a *laissez faire* regulatory environment. Whether the concern is justified by the actuality (and the data available on Pakistan as set out in chapter three suggests that it is not), the overwhelming view in the literature on the stringent controls over foreign organisations and funding in place in South Asia most notably India and Bangladesh is that the controls are ineffective at controlling foreign actors and effective at adding another medium for rent seeking and corruption by administering officials.

Staying with South Asia, in India a rights-based constitutional framework and the growing influence of voluntary organisations, as well as perhaps other factors, have resulted in somewhat more balance between nonprofits and the State though still entirely within a control-based framework. In Bangladesh, powerful nonprofits have also forced a relationship of somewhat more equality but without substantive alteration in the traditions and statutes of control. In Nepal, politics have allowed nonprofits to begin to flourish, but the State continues to attempt to exercise suzerainty.

One lesson of this experience may be that citizen organisations must assert their value and power in society before the bonds of control begin to loosen and those bonds will loosen only slowly, with the formal, statutory bonds remaining in place, ready to be used, long after a more balanced calculus of power begins to emerge. Another lesson of this experience is that State opposition to the loosening of control-oriented frameworks cannot be underestimated. The State may bend by allowing more operational autonomy, but it gives up control-oriented frameworks through major battles.

It is appropriate to stay focused on South Asia while considering the structural obstacles in the transition from a control-oriented legal framework to a framework of facilitation. Structural obstacles include (1) a plethora of legal frameworks in each country, each administered by different powerful national governmental bodies; (2) a “license raj” system in which rights are not assumed but privileges may only be granted; (3) an enormous and institutionalised gap between the law as written and the law as implemented; (4) the continuing perception of widespread corruption in the nonprofit sector (and the backlash against nonprofits because of corruption) and of extensive, institutionalised, organised corruption in State regulation of the sector; (5) bureaucratic control over foreign currency transfers and uses; and other obstacles.

Structural obstacles to the transition from control mechanisms to those closely related to State opposition to that same transition but even where politics and power begin to influence State opposition, structural obstacles and inertia often create further roadblocks to change.

The set of issues around resistance to change highlights the potential significance of formal processes that work to build mutual understanding and cooperative relationships between citizen organisations and government. Not only is the Enabling Environment Initiative strongly recommending that Pakistan embark on a “compact process” of its own, it has found that in the absence of such a process it is highly unlikely that the preconditions for a new and enabling regulatory and fiscal framework can be realised.

**Beyond Control and into Independent Quality Assurance**

The international survey identified important developments in the private sphere that
change the nature of the official regulatory function, as well as affect the dynamics of the State-citizen sector relationship.

At the level of approach, international best practice emphasises a clear shift from activity-based assessment measures to assurance measures based on objective standards. Defining work is being done on developing accountability and assurance frameworks for nonprofit public benefit organisations. 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”. New performance measurement methodologies like social audit and the reporting standards promote common frameworks acceptable to multiple stakeholders. This is happening on a significant scale among business organisations, including some of the world's largest and most powerful companies. Companies like Shell and British Petroleum are committing themselves to voluntary reporting based on common standards on the social, economic and environmental impact of organisational level work. The wider “corporate social responsibility” movement is a contribution of ideas and methodologies that are being picked up by the nonprofit citizen sector.

The powerful idea behind these self-regulatory mechanisms is that once citizen organisations generate credible, transparent, common standard, easy-to-access information, society will create the necessary pressure and mechanisms to drive organisations toward higher levels of performance. A great deal of “regulation” of commercial corporations is done “by the market” that has timely access to good hard data on the decisions and performance of corporate management. The pioneering work on standards development and assurance mechanisms is a positive by-product of organised philanthropy. In the most highly organised “social investing” marketplaces such as the United States there is an explosion of innovations in impact assessment, risk management, and even rating. When put under the microscope by third parties such as the websites Guidestar (www.guidestar.org) or Charity Navigator (www.charitynavigator.org) citizen organisations have a strong incentive to evolve better 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.

In the developing world, the evolution of assurance mechanisms is less advanced. The most developed example is the aforementioned certification programme of the Philippine Council for NGO Certification. Most other extant examples are in the forms of voluntary codes of conduct, although the common tendency among these is for gradual evolution of enforcement mechanisms.

On balance, with the exception of the Philippines, it is fair to say that citizen sectors in the developing world are now just approaching the threshold of genuine self-regulation. In some cases, such as the push for more and better annual reporting in the voluntary sector in India and the formation of a national effort called the Credibility Alliance to promote rising “norms” of practice, the impetus for self-regulation and self-accountability comes from progressive and highly modern forces within the voluntary sector. These forces face enormous difficulties and obstacles in reaching beyond even a few hundred nonprofits, not to mention the many thousands of faith-based and traditional organisations that play such a large role in South Asian charity, voluntary and philanthropic work.

In other cases, as in the “validation” exercise in India being carried out by Charities Aid Foundation with the strong support of the Federal Planning Commission, self-
regulation results from a compromise between a modernistic wing of the citizen sector intent on reform from within, and a reasonably liberal bureaucracy intent on helping the nonprofit sector retain and expand its role in a modern, liberal India. State support and State intervention (in the form of a sector of the Indian bureaucracy reasonably well-trusted by the modernistic wing of the voluntary sector), helped to kick start this limited experiment in self-regulation.

In each case these are tenuous experiments, as likely to stagnate as they are to progress. They represent attempts to extend and expand the provision of information and the interpretation of that information in order to strengthen citizen sector accountability in the absence of effective government monitoring, not full-fledged attempts to regulate the sector from within.

**Notable Features in Law, Regulations, Structures, Definitions and Policies**

The overall recommendations of the Enabling Environment Initiative including and especially the proposed new law “Nonprofit Public Benefit Organisations (Governance and Support) Act 2003” reflect our understanding of the “best of the best” from around the world as blended with the organic realities of Pakistan. This discussion now seeks to highlight notable features on the global landscape and articulate trends and principles. It does not attempt to sketch a template or model provisions.

**Establishment and legal form.** The clear international trend is one that establishes the special status of citizen organisations operating for public benefit not from legal form (namely whether an organisation is established as a trust, an association of persons, or a corporation) but from a determination of whether it has a dominant public benefit purpose. To determine public benefit status, however, there is a universal requirement that that income may not be distributed to individuals for private benefit hence the increasingly recognised term “nonprofit”. In addition, as discussed below, jurisdictions tend to define categories of recognised public benefit activities and purposes.

**Relationship of legal form to regulatory and fiscal framework.** The gradual formalisation of modern assurance frameworks for citizen organisations operating for public benefit out of the long history of common and statutory law for “charities” inevitably produces overlapping and duplicative requirements, and sometimes conflicts of laws. These occur in most jurisdictions and Pakistan is no exception, as is evidenced in detail in other chapters of this report. It is fruitless to address these questions in specific terms as they are tied into complex local legal technicalities and offer little insight for comparative purposes. It is possible to note, however, that where new frameworks are promulgated it is important to set out transitional arrangements that start from the fact that bodies registered and set up under the new system are covered by the requirements of the new system and are relieved of meeting overlapping requirements under other laws to which they are subject. The Enabling Environment Initiative recommendations include options for such a transitional arrangement.

**Defining public benefit and determining preferred/permitted purposes.** A range of countries mainly in the Commonwealth have recently undertaken formal reviews of the definitional issues at the core of regulating the citizen sector with a view to bringing the definitions of public benefit (or equivalent concept) and determination of permitted purposes and activities into line with the needs and capacities of societies today. The landmark reference point is incontestably the June 2001 Report of the Inquiry into the Definitions of Charities and Related Organisations by a Committee commissioned by the Australian Treasury. Its 427 carefully argued pages include an exhaustive analysis
of international positions and trends covering over two dozen countries.10

**Treating “business income”**. There are two main questions regarding earned income for citizen organisations. To what extent is business income allowed before it threatens the nonprofit public benefit status of the organisation? How is earned income treated for tax purposes? The second question opens into the much larger issue of fiscal policy as a lever for the enabling environment.

The international practice with respect to the first question is fairly consistently supportive. There is very wide variation, however, with respect to tax treatment. One of the issues that often enters the debate here is the concern that nonprofits in the business sphere represent unfair competition to commercial businesses, which do not enjoy the same tax and other benefits of recognised public benefit organisations. There is very little or no research that bears out this common refrain from businesses, particularly in light of the disabilities that nonprofits also carry, such as their inability to raise investment capital. What is clear is that the playing fields for nonprofits and for-profits are different. It remains to be determined whether different means unfair.

There is a clear international commonality of practice that recognises the societal value in allowing nonprofits to earn income without threatening their nonprofit status. The Enabling Environment Initiative report characterises such activities by nonprofits as a “fourth tier of resource mobilisation” for the State, since funds so generated result in programmes that reduce demands on public programmes (and therefore demands on the fiscal).

Some governments, such as that of the United Kingdom, are actively pursuing ways to encourage this trend. In Britain, the Bank of England is to investigate the difficulties that companies and charities have in accessing financial services when they reinvest their profits in local communities. The Bank is reviewing the barriers they meet in finding debt and equity finance, and the government expects to implement remedies.

The review is the centrepiece of the government's strategy, launched by Patricia Hewitt, the trade and industry secretary, to encourage what in Great Britain are referred to as “social enterprises”. These include charities and companies that reinvest their surpluses in local communities. It is worth noting that this approach goes beyond the dominant purpose test of the Australians and could even enable for-profit companies to benefit from tax and other incentives as long as all profits derived are invested in social programmes by registered charities.

Ms Hewitt said, "social enterprises play a vital part in creating a strong, sustainable and inclusive economy. It is central to the government's strategy to encourage social enterprises to move away from grant dependency and towards greater self-financing."

A Department of Trade and Industry strategy document says the overriding concern of social enterprises is their perceived lack of available finance from mainstream banks. It adds that the enterprises often struggle to secure finance because they are poorly understood, have few or no assets and unconventional cashflow patterns, and their risks can be hard to quantify. The Bank will review the provision of debt and equity finance to social enterprises that is offered by banks, business angels, community development finance institutions and venture capitalists.

Sir Edward George, Bank governor, said, "social enterprise is a steadily growing sector and has the potential to make a significant contribution to the UK economy. The availability of appropriate finance is as essential to social enterprise as it is to conventional business. Opening up access to financial services will help to secure a
Prosperous future for a whole host of dynamic, socially driven organisations."

Perhaps most interesting about this example from current UK government policy are two further positive steps under consideration that are very much in line with the approach of the Enabling Environment Initiative. First, the UK government wants to enhance confidence in social enterprises, and is considering an accreditation system to do so. Second, the Department of Trade and Industry has committed to providing a guide on best practice for social enterprises on how to tender for public sector contracts, which will be important if they are to become bigger providers of public services.

On the question of tax treatment on business income, there are basically three positions. The majority practice is to tax it as any other business income. The second, and growing, position is to tax it but at lower levels. The third position, which is most in line with the larger public policy objective of creating an enabling environment for citizen initiative for public benefit, is to exempt the business income of recognised nonprofits from tax. This third position is the one favoured by the Enabling Environment Initiative and it is recommended that State and citizen organisation leaders continue to work together to advance Pakistan's practice in this important arena.

Finally, it could be mentioned that in countries with long experience in “nonprofits for hire”, as one book on the subject calls them, there is a growing literature recording and analysing the practice. This literature provides an instructive exploration of the pluses and minuses when citizen organisations opt to earn income, including the potential for distraction from core mission and even the erosion of core organisational values when income earning is for activities far afield from the organisation’s core purpose.

Fiscal policy and the promotion of citizen organisation sustainability. This chapter will not seek to describe and analyse the range of tax benefits for citizen organisations across the world. As with the treatment of business income, there is considerable variation across countries and legal traditions. The International Center for Not-for-Profit Law has undertaken the most thorough mapping and analysis now in publication, and a summary of its “best practices” is included as an appendix of this report. It should be noted that the fiscal recommendations of the Enabling Environment Initiative closely follow the “best practices” articulated by the Center after a survey of over 100 countries.

Operational regulatory structure. In terms of formal mechanisms to register, support, and police private nonprofit activities, there are essentially four different ways that countries have administered their regulatory regimes.

The historical approach is for the registry and regulation functions to be dispersed across different departments and ministries according to separate and parallel statutes, as has been the case in Pakistan. This common pattern has been a product of ad hoc development over time. All modern reform efforts begin from dissatisfaction with the duplications and inconsistencies inherent in this pattern.

In some countries the registry and regulator centres are within a single department, as is the case with the Internal Revenue Service at the federal level in the United States. Because the tax authorities touch all organisations and individuals, where there is a single department pattern, it usually resides with the tax authorities. This approach carries one of two flaws. If it is a tax authority-based model, tax considerations exert an inappropriate influence over the entire regulatory regime. If the function sits elsewhere, as in the Ministry of Social Welfare in South Africa, a significant proportion of citizen organisations are marginalised due to the particular orientation of the administering department. In virtually all cases, since the tax authorities are not compelled to abide by determinations of the...
designated authority, it runs its own parallel review process.

In the third model, the registry and regulator is an autonomous, statutory government department that does not report through any ministry but is accountable directly to the national legislature, as is the case of the Charity Commission for England and Wales. The Commission is a positive illustration of an enabling regulatory authority in line with the new development governance. The Commission works with what in England and Wales are called “charities” 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 to Parliament via the Home Secretary. Registration with the Commission is all that is required to gain the full menu of tax benefits associated with charitable status.

Its functions include providing charities with an environment in which they can operate freely, improve their governance, and identify and deal with abuse. It is therefore not restricted to monitoring and control, but extends to giving guidance and advice, in addition to investigative and remedial authority. Nor need its posture be reactive; the Charities Act compels the Commission, for example, to issue “good practice” guidance. Problems may arise when a minister or set of ministers is hostile to one or more organisations. In these circumstances the independence and technical professional competence of the Commission can safeguard the disfavoured organisation from arbitrary State behaviour and in so doing protect the principles of independence and integrity for the citizen sector as a whole.

The Charity Commission model is quite old - the English Commission was established in 1853. It has however been modernised in recent years and a 2002 British Government report (which endorses the model) proposes further reforms to convert it into an independent public body (to be called the Charity Regulation Authority) at arms length from government with a widened board reflecting the diversity of the charitable sector.13

The attractions of this model are basically twofold. If properly constituted it combines autonomy from both the public and charitable sectors with credibility to both and indeed to the public at large whose confidence in charity is fundamental. And secondly the model can provide an impartial basis for supervising charities' compliance with legal and governance requirements. A particular feature of the model is that its 'regulatory' function involves preventative advice and guidance functions designed to strengthen the ability of charities to function effectively and command public support. It is also a strength of the model that the determination of public benefit status, and the fiscal and other privileges that go with that status, is the responsibility of a body independent of governmental as well as sector interests, operating in the public interest as a whole. This contrasts with the more common model of determination by the tax authorities themselves, which are inevitably primarily concerned with issues of public finance. It is noteworthy that a number of common law jurisdictions, notably Australia, New Zealand and Ireland, as well as Scotland and Northern Ireland in the United Kingdom itself, are exploring this approach in modernising charity law.

The fourth, emerging, model blends government and private actors in public-private partnerships.14 This approach is commonly used in Pakistan and countries to regulate the professions medicine, accounting, law, or engineering. With respect to the citizen sector, the pioneering case is that of the Philippines. There, the certification for tax beneficial status has been delegated by law to the Philippine Council for NGO Certification, an independent organisation governed by the leading civil society umbrella bodies. The Council is a private voluntary, nonprofit corporation created “as a service organisation whose main function is to certify
nonprofit organisations that meet established minimum criteria for financial management and accountability in the service to underprivileged Filipinos. The Council aims to: “1) Provide a mechanism of certification for NGOs that 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.”

The emerging model is the most consonant with the new development governance paradigm at its very operation embodies the mutually supportive relationship between public and private agencies for public benefit that are the objectives of the framework. Its essential orientation is developmental the assurance framework works to enable organisations to aspire to the highest levels of societal accountability through support services. Even the certification experience (as evidenced in the Philippines) has a strong aim to develop organisational capacity.

**Endnotes**

1. The International Centre for Not-For-Profit Law, chaired by Chief Charity Commissioner England & Wales (retired) Richard Fries, provided, among other things, some excellent country-level analyses. The ICNL’s website has perhaps the best and most accessible collection of comparative material in this field: www.icnl.org. We also benefited greatly from contributions from the Philanthropy and the Law in South Asia (PALISA), a current research project convened by the Asia Pacific Philanthropy Consortium. In particular, the PALISA academic adviser and coordinator, Mark Sidel, has been an extremely thoughtful and frequent contributor to the EEI.

2. A recent survey in the education field in Pakistan found, for example, that the overwhelming proportion of private schools are registered with the Education Department. They do this because it confers credibility among the parents of students and the ease of mainstreaming children back into public schools. (Shahid H. Kardar, “Private Sector in Education”, World Bank, September 2001).

3. Chapter 4, Philanthropy in Pakistan, AKDN 2000.

4. A number of developed countries have undertaken such legal reviews, as have countries undergoing historic transitions from communist or limited franchise regimes (e.g., apartheid South Africa).

5. The original paper by Kumi Naidoo may be found at www.ngorc.org.pk.

6. In South Africa, a citizen sector support organisation called the Development Resources Centre played this role. In the Philippines, an ad hoc committee of the leading citizen sector umbrella bodies came together to engage the government. Ultimately, these organisations formed the original board for the Philippine Council for NGO Certification.

7. In several of the South Asian countries, for example, South Asian commentators point out that significant numbers of citizen organisations have been formed for corrupt or murky purposes, such as giving to government officers for scholarships and income supplements, or spouses have established organisations to obtain government funding for social welfare. The backlash from private and public sectors against the entire citizen sector because of these “bad apple” practices has often been severe.

8. The series of major corporate accounting- and governance-related scandals in corporate American in 2001 and 2002 is arguably as much an argument for this market-based approach as against. Well before new legislation was put in place, the market had driven practice to higher levels.

9. The global resource institution in this area, AccountAbility, is a nonprofit, professional institute dedicated to the promotion of social, ethical and overall organisational accountability. It is a democratic membership organisation, 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.


14. Were the September 2002 UK government report recommendations to be adopted, England and Wales would have the first fully blown example of this model.


16. Ibid.
Blank
This chapter outlines the debate amongst various stakeholders on the relationship between the State and the citizen sector with particular reference to the nonprofit regulatory framework.

The first section presents the findings of the first two rounds of consultations that were held in the provincial capitals and in the districts on the features of the existing regulatory framework and the new proposed law with respect to registration, accountability, resource generation, internal governance, dispute resolution mechanisms, implementation and practices. The second section summarises the feedback from the stakeholders on a proposed alternative law prepared on the basis of the findings of the first two rounds of consultations.

Relationship Between the State and the Citizen Sector

Government decision-makers unanimously welcome citizen organisations to participate in national development. Government cannot deliver all social services on its own and therefore needs help from all possible sources to combat widespread poverty. “The minor challenge is to regulate but the bigger challenge is to encourage NGOs to take up government-like activity”, said Dr. Hafeez Sheikh, Minister of Finance and Planning, Government of Sindh, in his inaugural address at the first consultation in Karachi. Refusing to criticise the “mushroom” growth of NGOs, he lamented the fact that his province was failing to attract development funds from donors because there were very few NGOs in Sindh. Mr. Salman Siddique, Secretary, Finance Department, Government of Punjab, echoed the general view in a meeting with the EEI team in his office in Lahore, “we welcome all assistance, irrespective of where it is coming from, to help achieve the larger goal of poverty alleviation.”

District government leaders, who now occupy a central position in the development management systems of the State in the wake of the landmark Devolution Plan, are equally receptive to opportunities of government-citizen sector cooperation. Zila Nazim Lahore, Mian Amer Mahmood, speaking at the first Lahore consultation, said that the Lahore District Government had embarked upon an ambitious plan to hand over the management of dysfunctional schools to NGOs and concerned community leaders. He was confident that this involvement of the communities and local groups would bring results. Zila Nazim Multan, Shah Mahmood Qureshi, also wanted the citizen sector to come and fill the gaps identified in district financial and management systems.

While appreciating the declarations of government leaders to partner with the citizen sector in the fight against poverty, many civil society activists sound notes of caution. First, government should thoroughly study the causes of its failure to deliver social services. Only then could the future directions of cooperation and partnership between the public sector and the private and nonprofit sector be charted. They especially caution that government must not attempt to abdicate its role as provider of social services in the guise of involvement of the citizen sector in this role. One participant remarked, “if government wants to shift its responsibilities then it must shift its development budget to citizen organisations as well.”

Secondly, some opinion leaders warned against the inequities resulting from privatisation of health and educations services. Mr. Arif Hassan, Director Orangi
Pilot Project (OPP) and Chairman Urban Resource Center, Karachi said that this paradigm shift of seeing citizen organisations as a solution to development challenges was not the answer since their impact was minimal. He cited the example of OPP. Despite being a large organisation, it could not impact more than 5 percent of the population of Karachi. Ms. Shireen Rehmatullah, a veteran social worker who has headed the Directorate of Social Welfare of the Government of Sind in Karachi, was vehemently critical of this trend. “If the government wants to shift the responsibility of development to the NGO sector then they might as well shift the failing judicial system to the private sector too.”

What exact role does the government and civil society want citizen organisations to perform? Some see these organisations working to strengthen the structure of government through management, advice, and even monitoring instead of replacing it. The Citizen Police Liaison Committee (CPLC), a prominent statutory citizen organisation that coordinates between Karachi Police and the communities and SHEHRI, an advocacy organisation that mounts public interest litigation on major urban environment issues, were quoted as models for successful citizen action in this respect. Citizen organisations should be working to support government institutions instead of creating parallel institutions in sectors like health, education, water and sanitation, said Mr. Hassan.

Yet other thinkers see the role of citizen organisations as more than service providers. Justice (Retd) Shafi-ur-Rehman, former Judge of the Supreme Court of Pakistan, lamented the absence of a vigorous civil society in Pakistan in his closing address in the first Islamabad consultation. He cited the failure of citizens to raise a dissenting voice when the Freedom of Information Ordinance lapsed. The watchdog role is seen as critical by Pakistan NGO Forum, though there was an acceptance that the few human rights organisations cannot be in the forefront on every issue. They are constrained by resources and capacity.

Does the government's welcome extend to all these roles that citizen organisations provide? Actual government acceptance of citizen action for public benefit seems restricted to those NGOs that focus on delivery of social services. Take the example of district Sialkot, a major center of export of sports goods and leather products that also happens to border India. “Frankly,” said Mian Asjad Malhi, Naib Zila Nazim of Sialkot, “we welcome anybody who brings money into the district.” Yet this warm welcome did not extend to advocacy rights-based organisations. Officials of Sialkot loudly complained that “in 1995, certain Indian groups had infiltrated the border posing as nongovernmental organisations and had made videos of factories in the area purportedly to highlight the issue of child labour. The real aim of these nongovernmental organisations had been to harm Pakistan's image internationally and to ruin Sialkot's export-oriented industry.”

Other senior officials complained of the harm caused to Pakistan's international image by the extensive press coverage given to the “propaganda” by some women rights advocacy organisation. “NGOs have had a free hand. At times they go against the ideology of Pakistan or promote a culture or values we do not want here,” said Mrs. Parween Qadir Agha, Secretary, Social Welfare Special Education Division, Islamabad.

Even the general consensus on the role of citizen organisations in delivering social services dissipates fast when discussion turns to the daily interaction of the citizen sector with the State. Allegation fly fast and furious in both directions. Government thinks that citizen organisations especially the foreign donor funded ones, are not accountable to any one. Citizen organisations, on the other hand see State machinery as an obstacle and not as an enabler. Their list of grievances is long.
The major criticism is of government arbitrariness and disregard of due process. Decision-making is whimsical and is often based on personal considerations. The ham-fisted way in which the Government of Punjab deregistered hundreds of allegedly inactive organisations in 1998 had contributed much to the souring of the government-citizen sector relationship. More recently, NGO coalition leaders quoted the example of RISE in Kohat, which they alleged was illegally sealed by the Governor's Inspection Team in violation of the letter of the law.

Another major complaint is inefficiency of government officers, lack of a supportive attitude, and corruption. Most problems of citizen organisations relate to registration, the first contact with a government functionary. It could take one day or two years. Many participants also alleged corruption, especially in distribution of grants. It was pointed out that some government officers have set up front NGOs to receive grants.

Another big grievance is the lack of security provided to NGO workers, especially in NWFP. A number of offices were attacked following the September 11 incident, records burnt and office equipment looted. In one instance in Takht-Bhai in Mardan district, active police intervention could have saved the situation but no help was forthcoming, some activists alleged. This led to a situation where the programme had to be suspended and staff withdrawn. Police is seen as a harassment instrument of the State rather than a facilitator. A number of participants narrated stories of harassment by intelligence agencies, especially in interior Sind.

The Devolution Plan also presents new challenges and opportunities for government-citizen sector cooperation. Some participants apprehend that the proposed Citizen Community Boards (CCBs), a new kind of citizen organisation, under the Local Government Ordinance 2001, would starve the local community based organisations of any meaningful role. It was argued that such direct contact between the government and community over the use of funds would undermine the independence of citizen organisations and would make them appendages of the State.

Opinions regarding the role of the State and the quantum of regulation differ widely across government. Most senior leaders sought to address the issues of poor public interface and the credibility gap between the government and citizen organisations. Dr. Attiya Inayatullah, Federal Minster of Social Welfare, a leading social worker, development professional of international stature and the moving spirit behind EEI, acknowledged in the high-level government meeting that “in the past there had been an unnecessary battle between civil society and government and the present reform effort seeks to put this conflict at rest.” She added that the legal reform effort in the shape of the draft Ordinance was truly “reflective of the desire of the government to support the sector and not just regulate it”.

On implementation, many junior officials clung to a literally paternalistic role vis-à-vis citizen organisations, especially community organisations. They claim that government needs to know what is going on in the area and cannot just let any organisation tamper with social norms, create frictions, and disturb communities. In short, government is the “father” of these organisations and therefore has a certain set of responsibilities towards the “child”.

This dichotomy between government intent and government delivery was recognised by senior policy makers. “They use words like registration, supervision, and facilitation, but the truth is that they basically want to control”, said Finance Minister Dr. Hafeez Sheikh.

Many civil society leaders are similarly not convinced about the intentions of the State. They say that government wants to control in
various ways. EEI sounds well-intentioned and government has made an excellent effort to include the widest possible number of stakeholders in the dialogue process, but the need for such a reform was not initiated by the NGO sector. It was initiated by the government and with the motive of control only. Arguing this point, Ms. Asma Jehangir, former Chairperson of the Human Rights Commission of Pakistan and leading civil rights activist of the country, vigorously questioned the legitimacy of the exercise and the intentions behind it.

Citizen organisations are also divided over the exact nature of government regulation. Most of the service delivery organisations, at the national and the grassroots level, accept the government role and see themselves as complementing the government. They also see capacity-building of government officials as a key to their own growth.

In contrast, many urban organisations, especially advocacy groups, reject any role of the State. Some do so on pragmatic grounds. The best thing government could do was to get out of the way, given the abysmal governance standards. Others do so on ideological grounds. Mr. Mohammad Tehseen, chief executive of SAP-Pk, who spoke on behalf of the NGO forum at the first Lahore consultation, summarised the two approaches, “the State has no right to regulate or interfere in the independent voluntary actions of citizens. Any attempt to intervene by the State will hamper development of the society and collective productivity of the people.”

In view of the past history of confrontation, lack of trust, and the conflict between the statements of government leaders and the actual administration of law by field functionaries, Ms. Khawar Mumtaz, Coordinator Pakistan NGO Forum argued for enunciation of a national policy on the citizen sector in her keynote address at the Islamabad National Consultation, “CSOs don’t know what the policy of the government towards them is. We get mixed messages. Government seeks partnership with NGOs in its programmes and plans and talks of NGO involvement in implementation, while at the same time NGOs are under attack, restrictive measures are placed on them, they are threatened, intelligence agencies are set upon them, and no incentives are offered to facilitate their work. We do not think that the government recognises the independence of the sector and if a compact/partnership is to be forged, then the independence of the sector is imperative. It is extremely important therefore, that a policy that defines the role and responsibilities of the sector is developed, and then laws enacted to reflect the policy and not vice versa. So we say recommend a policy first.”

Multiplicity of Laws

Another topic hotly debated during the consultations was suitability of the large number of laws available to NGOs to register themselves. This was a major point of concern of government. Minister, Social Welfare Punjab, Ms. Shaheen Attiq-ur-Rehman, stated that the overlapping of jurisdictions between her department, that administered the Voluntary Social Welfare Agencies Ordinance 1961 and the Industries Department that administered the Societies Registration Act 1860 was causing havoc since no body knew who registered what. She quoted the example of Sipah-e-Sihaba, a banned sectarian militant organisation, which was registered under the Societies Registration Act 1860. She was worried that none of these organisations was accountable to any one.

Other government officers are also of the view that this proliferation of laws be rationalised. For them coordination is a great problem. There is no mechanism or agency within government to ensure coordination among the multiple registration agencies. Two sets of government departments or more run parallel streams of regulation, in some cases for exactly the same subset of citizen
organisations, in the same district. There is no system of information sharing within these agencies or between the federal and provincial governments. Parallel regimes also offer ample chances to evade accountability. Besides, government capacity-building efforts remain ineffective because government regulation is spread across several departments.

Many participants, especially in the districts, liked the idea of one registration authority working under one law that would provide a one-window operation. This consolidation would improve information gathering and development planning, reduce chances of evading accountability, and facilitate registration procedures. Most participants, however, insisted that this must not be a 'one size fit all' kind of consolidation. Categories of reporting and monitoring requirements should be specified for different kinds of NGOs based on size, geographical reach etc.

Some of the sophisticated stakeholders opposed the idea of one umbrella law. They were very happy with the law and saw no need to fix anything, which was not broken to begin with. Many NGO activists that are registered under the Societies Registration Act 1860, a liberal law with minimal reporting requirements, were especially vocal in this respect.

Some argued that choice was enabling. Mr. Shoaib Sultan Khan, the architect of many large Rural Support Programmes in Pakistan and elsewhere in the world, was vocal in favour of choice. He recounted the fact that it was only the impregnability of the legal status acquired through the Companies Ordinance 1984 that saved the Rural Support Programmes from vindictive coercive action by a democratically elected regime that wanted to abolish the organisation.

Yet others pointed out that it would be impossible to consolidate laws of 'associations' and 'foundations' because each has different regulatory needs. For example, why should government bother if somebody sets up a foundation for public welfare with his own money? This philanthropist has the right to choose the management team and does not need any government intervention, unless specifically asked for.

Others opposed consolidation on theoretical grounds. As articulated by Mr. Tahseen of SAP-Pk, “Any streamlining or strait-jacketing of organisations in the name of regulation will deprive society of addressing its concerns through decentralisation and diversity in action. This is also the argument for plurality of laws to give citizens the choice of picking what suits their needs. Therefore, one umbrella law will be counter-productive for the development of the sector.”

Registration

As discussed above, the two major stakeholders in any nonprofit reform, the citizen sector and government, broadly agree on the useful role of citizen organisations in social development. But there is little consensus on the terms of engagement.

The first major issue of this heated debate is whether registration should be compulsory or not. Government officials prefer compulsory registration. Three main reasons were cited in many meetings. Most important was the need to bring within the regulatory fold organisations that were using public money. Minister Social Welfare Punjab, Ms. Shaheen Attiq-ur-Rehman, was resolute that every organisation that used a penny of public funds must be held accountable to the public. Also, it was important for the government to preempt any activity that could harm the public interest through large-scale frauds. The second reason was that government needed information on all organisations engaged in development in the area for better development planning. In a meeting in his office in Quetta with the EEI team, Justice Retd. Amir-ul-Mulk Mengal, Governor Balochistan referred to an incident where it was found out that government had
sanctioned a hospital for a locality where an NGO was about to build a similar hospital. This he said was wasteful and must be avoided. The third reason was security. In border areas like district Sialkot and in the province of NWFP, with its peculiar problems due to its proximity with Afghanistan and also due to a history of militant organisations with foreign agendas that masquerade as NGOs, government needed to keep a close watch.

Many participants, mainly led by the Pakistan NGO Forum in Lahore and its coalescing units, Sarhad NGO Ittehad, Balochistan NGO Federation, Sindh NGO Federation, Coalition of Rawalpindi and Islamabad NGOs and Punjab NGO Coordination Council, differ with this view. It was consistently argued that mandatory registration under the Voluntary Social Welfare Agencies Ordinance 1961 clashed with the fundamental right of free association guaranteed under the Constitution and that any future law must not violate this fundamental right. In any case, government did not have the capacity to enforce compulsory registration and therefore this idea should be abandoned altogether. The ground reality was that the compulsory registration provision was never enforced except in some isolated cases.

Almost all stakeholders from the citizen sector agree that registration procedures, as practiced, are extremely cumbersome. Reform in registration procedures is needed. The English language is a major barrier. Government officials are not trained enough to properly guide the applicants. Background security checks consume months, besides being a source of harassment. The process is costly. Precious funds are spent travelling to the district, divisional or provincial headquarters over the many months needed to complete the process. Registration fee under the Societies Registration Act 1861 was recently raised ten fold to Rs.15,000 from Rs.1500 by the Government of Sindh.

The purposes allowed under the law are narrow. Participants reported that a nonprofit theatre company, a women's rights group and a human rights groups had great difficulty in registration even under the purportedly wide ambit of the Societies Registration Act 1860.

Officials practiced different procedures in different offices and quite often in the same office often raising arbitrary objections. A uniform set of guidelines does not exist. Authorities often require the existence of a bank account before granting registration under the Voluntary Social Welfare Agencies Ordinance 1961. This is impossible when the agency is not in fact formed. Whimsical objections over names are a common complaint. Social Welfare officials insist in Khairpur, for example, that all of the NGOs registered under the Ordinance of 1961 must include “Social Welfare” in their names. Such a provision does not exist in the law or in the rules or in any guidelines. Besides, this is not required in many other districts of the same province. Membership numbers required prior to registration of the NGO range from seven to one hundred. Inflexible officials often reject self-drafted constitutions and impose uniform constitutions though self-drafted constitutions are permissible under the law as long as these do not clash with the letter of law.

Knowledge about the law and the choice available to citizen organisations is limited. Quite often, the participants from grassroots organisations do not even know about the Companies Ordinance 1984 or about the Societies Registration Act 1860. The Voluntary Social Welfare Agencies Ordinance 1961 is the most obvious choice because it is the only law where officers can be reached in the districts and where registration is free.

A number of suggestions were floated to improve the process of registration. Some generated consensus. There should be clear detailed written guidelines dispensed free of charge with each registration form. The minimum number of members required should be clearly stated. There should be
flexibility in the management structure. There should be a register of all registered citizen organisations and the public should be able to inspect this. There should not be any discrimination, especially between those who have the means and the influence to get their non-governmental organisation registered through contacts and those who are without such means. Delegation of powers to the districts was however universally welcomed as a vastly enabling step. Participants welcomed the recent steps of the Governments of Sindh and Punjab to devolve the powers to register NGOs under the Voluntary Social Welfare Agencies Ordinance 1961 to the districts.

Some other suggestions, floated by some grassroots activists to improve the registration procedure, were more controversial. The objectives of the organisation should be clear and limited for registration. At registration, organisations should not be allowed to state in its constitution that it wanted to do two dozen different things. There should be a certain set standards required of prospective nongovernmental organisation workers before they are granted registration. For example, NGOs working in health, education etc should have to meet certain tests before being granted registration. There should be provisional registration for a short period before full registration is granted. Only people who are actually sincere workers should be registered and there should be some check and balance for this.

Despite the fact that registration procedures are a great hassle, it is generally accepted, especially by grassroots organisations, that the benefits of registration far outweigh the initial aggravation. Registration paves the way for recognition by government and donors, provides an identity, eases contractual transactions, helps improve internal governance and external accountability, provides a psychological boost to the members, thus increasing their commitment, ensures eligibility for certain State concessions, and enhances credibility within the community.

### Accountability

Closely linked to registration is the controversial issue of accountability of citizen organisations. Again the opinions of the major stakeholders differ widely.

Government leaders argue that many leading NGOs are elitist and ineffective. Referring to the lack of public and political muscle of many prominent NGOs, Federal Law Minister, Dr. Khalid Ranjha, said in Islamabad, “the sign of people's acceptance is their participation. Therefore, we must promote public confidence and their participation.” It is often said that NGOs are urban-based, focus on meeting foreign diplomats and donors and attending foreign conferences.

NGOs are seen to have low credibility. According to Chief Secretary, Mr. Shakeel Durrani, the NWFP Government wanted to involve NGOs in its development programme but was having a very hard time in identifying credible NGOs. To date it could list only 150 in the entire province. According to one senior government official in Punjab, “Government has lost all its credibility and now NGOs were losing theirs too.” While welcoming NGOs to partner with the Multan government, Zila Nazim Shah Mahmood Qureshi said that NGOs did lack credibility. He wanted to know the output of all the money that has been pumped into NGOs and thought that the results were not good enough.

Another complaint is that some NGOs follow foreign agendas and are not in tune with national priorities. Mr. Tasnim Siddiqui, a senior government official who has pioneered participative approaches to urban low-income housing, said that government was rightfully concerned with advocacy NGOs that receive foreign money and then indulge in political activities. “Often these organisations are not independent and should be subjected to accountability and transparency”.

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This opinion of government policy makers was shared by many across society. Criticism was voiced by corporate leaders in Sialkot, Multan, and Karachi. Even Ms Shaheen Atiq-ur-Rehman, Minister of Social Welfare, Government of Punjab, herself a leading NGO activist, said: “People are still not fair to their work. They take a grant and spend it on themselves and not on charity work.” According to one participant in Karachi, the word NGO had become a disparaging word in society. Mr. Zaffar Khan, chairperson of Engro Chemicals a leading business concern of the country, summarised the desire of the average citizen, “good NGOs need to be supported and promoted but bad ones should also be speedily weeded out”.

Mr. Akbar Zaidi, a leading Karachi-based economist and social critic, was vehemently critical, “NGOs are not accountable; they have weak governance and are as corrupt as government. They are not democratic or participatory and support rich lifestyles. There is a need for evaluation of NGOs by NGOs/academics/government. There is also a need for self-regulation. There are different types of NGOs: corporate NGOs and local ones. There is severe over-inflation because of donor funding; there is indirect fudging of reporting with high salaries being paid, and donors have been very lax. The NGOs are very critical of government, and rightfully so, but they do not criticise themselves.”

Civil society activists reject these allegations. They point out with statistics that the vast bulk of donations to local organisations come from indigenous sources and the allegation of being foreign donor-dependent was incorrect. They also assert that lack of accountability is propaganda of government mainly to malign rights advocacy organisations. There are no proven cases of corruption, fraud or waste, and many conservative lobbies in the country deliberately want to build this perception of foreign agenda-led NGOs and elitism. Even where foreign aid is involved, strict accountability standards and audits ensure that every penny is strictly accounted for.

Nobody denies the importance of accountability. There is disagreement over who shall hold whom accountable and for what. It is generally agreed that members and donors have a right to hold an organisation accountable. Who else? Community based organisations often voiced the idea that beneficiaries should have the right to hold these organisations accountable. They could best judge an NGO’s performance.

There was considerable disagreement over the right of government to hold a citizen organisation accountable. Government officials think that citizen organisations must be accountable to the public through the government and that this role of guarding public interest could not be compromised. A senior government official argued that government did not often want to be involved but situations arise where many stakeholders want government intervention or even hold government accountable after they were swindled. The cooperative and the finance companies scams were often referred to as cases where lax supervision resulted in major scandals that seriously undermined public confidence in the citizen sector as well as in government. Another senior official argued that since individuals could not cost-effectively monitor their small donations, government could substitute on their behalf. Moreover, regulation could be a means to building capacity of the regulated.

Government officials also said that the argument of some NGOs that they submitted detailed reports to donors and thus did not need to report to the government was invalid. They said that any foreign donation or grant was actually a gift to and for the people of Pakistan and they had a right to hold organisations that receive foreign funds accountable.

Leading NGO activists opposed the concept of being accountable to government, arguing that it had no right to ask for information when it did not contribute anything. They said that all donors asked NGOs for rigorous reporting
and auditing and there were no chances of fraud. Government did not have a moral right to hold NGOs accountable. It was argued that it was unfair that the whole focus of the 6-7 year debate on the regulatory mechanism was on citizen organisations. No discussion takes place on the failure of government to provide an enabling environment, the lack of ability of government to fulfil its responsibilities of facilitating CSOs and building their capacity, its lack of understanding of CSOs work and problems, and the rampant corruption within departments. Even if the argument of active government intervention is accepted, the government just does not have the manpower and the financial resources to properly apply the law. The application of law would at best remain selective.

This ideological disagreement over the role of government was, however, consistently seen to be rather irrelevant in the minds of the great bulk of grassroots organisations. They saw being accountable to their communities and even to government as central to their survival. They, in general, did not find the rather exhaustive mandatory reporting and internal management requirements under the Voluntary Social Welfare Agencies Ordinance 1961 to be oppressive. The participants in Khairpur cheered and clapped heartily when one vocal female NGO activist rose to proclaim that “only thieves feared audit.”

Government has the powers to take action on behalf of the public but these powers have atrophied for over time. Social Welfare officers merely file reports submitted to them and almost never scrutinise them properly. Very rarely is any punitive action initiated for non-compliance. Organisations registered under the Trusts Act 1882 are not required to report any of their activities to the government/registration authorities. Societies are required to report annual membership lists under the Societies Registration Act 1860 but this provision is widely ignored.

It is obvious that the current government accountability mechanisms are weak, lack capacity and credibility. Moreover, members, beneficiaries and individual donors also cannot effectively hold NGOs accountable. What should be done then?

It was suggested in many forums, especially outside the provincial capitals, that some district level body that represents the stakeholders should be entrusted with the task of holding NGOs accountable. For example, district committees or boards consisting of local bar president, the press club president, government representative, and NGO leaders, or any combination of these, should be empowered to hold citizen organisations accountable. Some rudimentary steps have already been taken in this direction. Government of Punjab had recently set up district coordination councils, consisting of various categories of NGOs, as a self-regulating mechanism.

Given that government had pretty much lost the moral right to hold citizen organisations accountable and had poor capacity to do so any way, what else could be done? Many NGO leaders argued that accountability of the sector should be left to the sector. The creation of the Pakistan NGO Forum and the development and dissemination of a “code of conduct” were cited as important steps in that direction. Said Dr. Kaiser Bengali, Director Social Policy Development Centre, “the regulatory structure should be based on principles of self-regulation. An NGO network should be responsible for self-regulation and self-monitoring. The government can oversee the NGO network. The nonprofit sector can create its own self-regulation system and the government should give it legal cover. For investigative and remedial functions, normal civil and criminal laws should be used. If needed, special laws can be created (like banking laws) to check forms of fraud that may not be covered by the normal legal structure. But keep these to a minimum.” According to Mr. Qadeer Baig, Deputy Director of NGO Resource Centre, “While there is need for self-regulation, the
capacity of networks to self-regulate needs to be built. Mechanisms such as certification and rating need to be considered. In addition statutory bodies that are not under ministerial control need to be created and we need to look at models of professional associations that promote standards."

Government is also keen on self-regulation. Secretary, Social Welfare, Mrs. Qadir Agha advocating the setting of standards, said, "There should be a code of conduct and an NGO regulatory body. The professional associations, for example the Pakistan Medical Association registers doctors and it is in turn registered with the government. A similar system can be created for NGOs." She argued that "self-regulation however is not a substitute for government control. There should be an independent government statutory body with regulatory powers."

Government officials, however, reject the argument of voluntary compliance with self-regulation standards. Officials said that this experiment had failed even in cases where the self-regulating bodies were given legal teeth, such as in professions of medicine, accounting and engineering. Amid public knowledge of widespread malpractices, these statutory self-regulating bodies consistently failed to take any action.

Even if it is agreed that citizen organisations operating in the public interest should be accountable to somebody, what exactly should be reported and how? It was felt that reporting requirements should vary depending upon budget size, area of operation (district or provincial) and whether it enjoyed any State benefits. For example, auditing procedures of smaller organisations should be simpler and a certificate by a bank manager should suffice. Nature of programme, method of collection of funds, and sources of funds should not determine reporting requirements.

It was observed by participants that regular audits and publication of regular progress reports was a good means of accountability. However, correct paper work did not necessarily mean actual delivery of results. Hence the role of communities was seen to be crucial. One grassroots activist alleged that "monitoring of urban NGOs, which comprise about 70 percent of the sector, was weak". Rural community-based organisations, on the other hand, were subject to customary accountability by their communities. Mere accountability to donors did not suffice. Institutional donors conducted effective audits of their partner organisations but these audits were often time-bound and budget or project-based. When disputes arise, resolution of problems became difficult. Defined forums to redress donors' grievances, as apart from the regular civil and criminal justice machinery did not exist.

When exploring various ideas of holding citizen organisations accountable in a manner that does not throttle their independence, the idea of certification was raised by a number of participants. Mainly from government and the business sector, these participants included senior provincial officials, Senior Member Board of Revenue, Sindh, and the District Coordination Officer, Sialkot. A number of benefits were cited to accrue from a credible verification/certification mechanism. It would help to increase the source base of funds and identify and promote those who were doing good work.

Even government faced problems when distributing Bait-ul-Mal and Zakat funds to organisations. There were some dummy NGOs set up exclusively to receive such handouts, some official complained. District government in Sialkot complained that a credible mechanism to identify the good ones, or even the dead ones, did not exist.

Community-based organisations, however, generally insisted that credibility was a problem of umbrella intermediary organisations and not theirs. Community organisations derived their credibility and their funds from their surroundings and did not really need a verification body. It was also
strongly argued that a rating mechanism would create an unbridgeable gap between the effective and not so effective NGOs whereby all funding would get diverted towards the few very good ones and the rest would not have the chance to grow. Doubts over real independence of the future certification agency and the mechanism were another important reservation.

Pakistan NGO Forum however objects to the idea of certification on the lines of the International Organisation for Standardisation system since this was associated with industry/commodity and thus by implication limited citizen organisations to trade and industry. It was also argued that importing of certification models from other countries was not going to work unless it had wider ownership and had evolved through local experience.

**Internal Governance**

The state of internal governance of citizen organisations was also extensively debated. It was seen that many organisations had weak governance. Constitutions of most organisations under the two major association laws prescribe regular elections and this should have been sufficient for internal accountability. Unfortunately, the widespread practice is that office bearers try to avoid elections.

There are many reasons for this practice. Founders of the organisation do not want to give up control after putting in all the hard work. Existing office bearers do not want to give up the perks, or even “profits”, that accrued. Most importantly, “democratic culture was found lacking”. Elections, if held, were often fought on the basis of personal rivalries. Often, the new office bearers did not commit the required time and energies to the project. Members did not take active interest in elections. Another important reason cited for this widespread dynastic culture within NGOs was the lack of knowledge of the members about their rights under the constitution. All this has led to a highly personalised system of management where it was often seen that activists referred to their organisations as “my NGO.”

What should be done to improve internal governance? It was generally agreed by the CBOs that training of members about their rights under the law, regular general body meetings and elections provided the best possible mechanisms for improvement. It was suggested that the role of the governing body was very important and the new law must provide for a powerful and accountable governing body for every organisation.

Another reason for poor internal governance is the absence of satisfactory dispute resolution mechanisms. The two avenues currently available for this purpose the government departments and civil courts are both seen as non-starters. It was often suggested, especially in the districts that a committee of elders an NGO representative, the bar president, the press club president, the Social Welfare officer be constituted as an arbitration tribunal to solve intra- and inter-NGO disputes. Participants in Khairpur cited an elders committee established by the Social Welfare Department, which solved a number of such disputes. Following the transfer of the well-motivated senior official, this Khairpur committee, however, fell into disuse. Participants in the districts however pointed out that lack of effective dispute resolution mechanisms was a problem mainly faced by urban organisations. The village-based CBOs had the advantage of availability of traditional dispute resolution mechanisms that kept things on course.

**Resource Mobilisation**

Funding of NGOs was predictably a controversial issue. The debate regarding the use of public funds and related accountability issues has already been presented in earlier sections of this chapter. More controversial than the use of public funds was the use of foreign funds. Government stakeholders
think that the unbridled inflow of foreign money to citizen organisations was a serious security concern and had already caused untold problems to the nation in the Afghanistan crisis. Many government leaders wanted this inflow to be closely monitored. It was argued (incorrectly) that no country in the world, including Bangladesh, India and Nepal, allowed civil society organisations to get foreign funds without government knowledge and approval.

Another reason for close monitoring of foreign funds was the need to maintain a proper record of bilateral and even individual foreign assistance and its sectoral implications. Presently, government has limited information on foreign funding to NGOs and the purpose for which it has been received. This inadequacy of data contributes to poor development planning.

Most NGO leaders however rejected these arguments. They said that illegal activity should be tracked under the host of laws that are on the books to deal with criminal acts and that any focus on regulating funding to NGOs would have the unintended effect of debilitating NGOs.

Central to this issue of resources is the issue of State patronage for nonprofit activity. Participants welcomed the principle that organisations delivering services, which the State should be delivering with tax money, ought to be treated as non-commercial and exempt from taxation.

A number of incentives were demanded. Some of these related to income tax. Citizen organisations operating for public benefit (PBOs) shall be allowed to carry out commercial activities broadly within the sphere of their main objectives to sustain their main activity. And this “income generating activity” should not be deemed to clash with their nonprofit status. Income of PBOs should not be taxed provided it was all received back into the organisation's account. Donations in the shape of time should also be monetised and eligible for exemption. Legally available investment choices for income from PBOs should be broadened. This was justified because many institutional investment options are regulated by the State Bank and are not as open to abuse as they used to be in old days. The problem with the existing options was that they did not even keep pace with inflation. Most importantly, there were universal complaints about the procedures for obtaining an income tax exemption certificate. Obtaining renewals was equally difficult. The enervating processes need urgent streamlining and modernising.

Other incentives related to provincial taxation and subsidised provision of land and utilities. Public benefit organisations ought to be charged non-commercial rates for utilities. This issue evoked passionate demand for a rationalised system for nonprofits. It was suggested that a category of consumers be created, based on the public benefit work of these organisations. These organisations should be preferred when providing amenity plots. It was also suggested that public trusts should be specially defined and should be exempted from paying 4.5 percent duty on the value of the property as was levied on private trusts.

The demand for increased incentives immediately led to other contentious issues. Who would define which activity should be considered as supporting State policy? What were the parameters of State policy? How would these be defined and by whom? It was agreed that without an unambiguous State policy, it would be difficult to determine eligibility for State benefits. Once the above issues were settled, it was important that these guidelines be implemented impartially and transparently. Pakistan NGO Forum argued that all NGOs should be given tax benefits upon registration under any one of the laws. Finance Ministry officials however disagreed with this demand saying that State patronage of any sector was not a right but depended on State policy of poverty alleviation. This problem of fiscal incentives was
especially relevant to the businessmen belonging to the Sialkot Chamber of Commerce. They had invested tens of millions of rupees in developing civic facilities of the town, a unique model of philanthropic activity, but were not able to claim any exemptions. They also proposed that they be allowed to pool worker welfare levies, social security and worker welfare fund contributions into an endowment fund to be directly used for welfare of their workers and their communities.

Implementation of Laws

The regulatory and fiscal framework governing civil society organisations suffered from a number of ills, as has been discussed above. Government, the existing implementation agency, had weak capacity and even lower credibility in the public eye. Even well-meaning government policies were often arbitrarily implemented. External accountability mechanisms were weak and poorly enforced. Internal accountability procedures were widely ignored with out fear of any censure.

Participants were not initially directly asked about the need or the desirability of a new institutional mechanism to regulate NGOs. But discussion of the above-mentioned issues, coupled with a desire to self-regulate, often led to the concept of a central, independent, autonomous body, mainly manned by leaders from the NGO sector, which would be charged with the responsibilities of administering any new law for the nonprofit sector.

This body, commission, council or board with its participative character could bridge the credibility gap between the two major stakeholders, government and citizen organisations working for public benefit. It could infuse fresh vigour into the sector. It would have the legitimacy to hold citizen organisations accountable because it would focus on both support and governance. Two strong reservations were, however, voiced in respect of this concept. How would the independence of this body be ensured? And, more importantly, how would the members be nominated/elected to such a body? The two questions were clearly linked. Discretionary nominations by government could jeopardise the autonomy and the credibility of the commission / council. Various solutions were discussed. It was suggested, for example, in Multan, that NGOs with a defined age and size be allowed to take part in elections for a district NGO leader. This process could then lead to election of NGO leaders at the provincial and federal level, who could then represent the sector on the commission / council.

The details of the process of nomination or election remained a central, and perhaps an insoluble, issue. It was felt by many that it would be difficult to build a self- or mainly NGO-manned regulation mechanism like the self-regulating arrangements of professional bodies for accounting, medicine or engineering. Unlike these, the NGO sector does not have an entry gate of minimum qualifications.

A ray of hope did emerge from the consultation process to underpin any new administrative mechanism. Following the Devolution Plan, district government leaders, it appeared, were better aware of the gaps in district financial and management resources and they welcomed participation of civil society organisations. Various other ideas - district monitoring and certification committees, district planning boards, district arbitration/dispute resolution boards all originated from a strong “district” emphasis articulated by most participants. Any new regulatory mechanism has to have a district focus.

Chief guest of the Karachi consultations, Dr. Hafeez Sheikh, endorsed the idea of an independent body on the pattern of State Bank of Pakistan and Pakistan Telecommunication Authority but “requested” the EEI team to ensure that “any new commission should not
Feedback on The Draft Law

This section outlines the feedback on the draft law “Nonprofit Organisation (Governance and Support) Ordinance 2002” that was circulated to all the stakeholders.

Pakistan NGO Forum and leading civil society activists expressed their reservations regarding the new law. Most important was the fact that there was considerable mistrust about the intentions of the government. NGOs asked as to why government wanted to reduce its role in every other sector, but insisted on regulating NGOs. Pakistan NGO Forum leaders frequently stated that they had not initiated the reform process; government had done so itself.

Any new law should be introduced only through legislation and not through ordinances. Therefore legal reform should wait for the Parliament to come into being. In any case, government should not hasten the process of introducing the law. Extensive time should be allowed for consultation with organisations across the country before any reform was introduced. The present consultations should not be considered to be final and should be considered as only the start of the process. PCP’s right to conduct the exercise was challenged by some leading civil rights activists.

It was argued that a policy on the citizen sector should be clearly articulated before any legislative reform was attempted. This method of law preceding the policy was not conducive to good governance or good legislation.

Some nonprofit representatives declared that there was no need for a new consultation process. The 1999 Pakistan NGO Forum bill was the result of a consultative process also and should be introduced as such as an alternative to the Voluntary Social Welfare Agencies Ordinance 1961. There was no need to repeal or consolidate the Societies Registration Act 1860. Organisations registered under it were happy and did not require any reform except that section 16A needed to be repealed. However, the Voluntary Social Welfare Agencies Ordinance 1961 should be repealed.

Though some NGOs were in favour of compulsory registration, most NGOs endorsed the notion that registration should be voluntary. There was no need to emphasise the source of funds. The State should not interfere with CSOs that did not seek government funds. Deregistration process that led to eventual dissolution provided in the draft for violations of charter and provision in regulating NGOs. Pakistan NGO Forum argued. It was not possible for the CBOs, which had limited management and legal capacity to fulfil the requirements of certification and thus access fiscal incentives.

The big debate was about the accountability provisions in the draft Ordinance. It was said that “private gain”, as given in the definition of nonprofit was very hard to define. This was going to cause problems in implementation since its wide ambit could be misused by any ill-intentioned regulator. The Commission should not have the power to initiate action against NGOs. Compulsory dissolution powers of the Commission are draconian. These must be revised. Reporting and audit of foreign funds would be counterproductive and should not be required. Organisations should not be obligated to provide details regarding members. Also, the annual report required to be filed for all registered organisations was too intrusive. It was unjust to propose that an organisation could be dissolved because of the association of its members with criminal activity. It was an individual responsibility and the organisation should not be held responsible for it.

Leading NGO activists often asserted that the
draft law appeared to be control-oriented, specially the proposal of a new regulatory structure, a Commission for all NPOs. Government was trying to muzzle citizen organisations by bringing all NGOs under a body that would be stacked with government nominees. “It is old wine in a new bottle.”

There were general objections too from some of the participants. The draft Ordinance unnecessarily resorted to the judicial system in case of disputes involving CSOs. Arbitration was a better method, suggested some, since Courts were expensive and the judicial process long. The draft law provided for the regulator to reject proposed amendments in the charter of an organisation. This was considered intrusive. The Commission should have no role if an organisation wanted to change its objectives. A certification agency was not required since it would become an unnecessary intermediary between the CBR and public benefit citizen organisations.

Another important part of the debate was about the character and functions of the proposed Commissions. The representative and participative character of the Commission would be illusory, said some. The Commission would be dominated by political appointees since the power to appoint rested with the Prime Minister/ Chief Minister and Federal/ Provincial Minister. The proposed mechanism of a Nominating Committee would not work, as it would also be appointed by the government. The Commission’s relationship with the district level officials and its role at the district level needed to be clearly specified. The Commission would not have the capacity to do all the things that it was set out to do.

Ms. Khawar Mumtaz, Coordinator Pakistan NGO Forum, presented the viewpoint of the NGO coalitions on this important issue, “Pakistan NGO Forum at this stage feels that a Commission may be effective if only assigned the task of removing the mistrust between government and the citizen sector and dealing with grievances of the sector and proposing confidence-building measures so necessary to dispel the misgivings that exist. The Commission could also help in developing a policy for the civil society sector. As it is, CSOs feel threatened. For instance, in the post September 11 scenario when offices of NGOs were physically attacked, no protection was given, no action was taken even where the culprits were identified. Any structure, in this case the Commission (especially if the government nominates its members) that is imposed from above will not have a buy-in.”

Some criticised the focus on law as a policy reform tool. The law would not make any difference. “Implementation is the big issue that needs to be addressed. Nothing will change unless the attitudes of field officials changes,” some participants argued.

Pakistan NGO Forum said that though it had participated fully in the process this should not be construed as endorsement of the draft Ordinance. It considered the draft as an item for discussion and had suggestions regarding various provisions.

The wider sweep of the perspectives of stakeholders have been presented in much greater detail in the accompany volume: Creating an Enabling Legal Framework for Nonprofit Organisations in Pakistan: Stakeholder Perspectives. Readers are encouraged to refer to that for a comprehensive view of the entire EEI process and the full range of comments made and positions taken by CSOs, business, government, media and donors. Every effort has been made to reflect as accurately as possible stakeholders comments. Critical views have been especially included as these were valuable and in some cases were sufficiently justified to be incorporated in the analysis and became the basis of a revision in the relevant provision of the draft law. All substantive critical comments were given serious consideration by the EEI team and the PCP Board of Directors and argued responses have been provided in chapter ten.
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Justification has also been provided for the inclusion of provisions in the draft text of the law, even those provisions which were not fully supported by a CSO consensus, as the professional and moral obligation of the EEI was to provide for a framework which provides for the regulatory role of the State while also protecting the autonomy of the CSOs.
Across all aspects of Pakistani society and all stakeholder groups there lies a fog of scepticism if not cynicism about the probity and effectiveness of governmental and nongovernmental organisations operating for public benefit. Fifty years of frustrated expectations have produced an inevitable outcome: Pakistanis now generally expect the worst from their government and citizen groups that operate in the name of some public benefit. The root challenge for government and public-spirited citizens alike is to revive the faith of the Pakistani people in government and public benefit organisations.

In this light, perhaps the most highly significant finding from the Enabling Environment Initiative underscored by its national consultations, analysis, and international comparative research is a broad agreement about how to address this crisis of governance. While opinions vary considerably between and among stakeholders in government, the citizen sector, and business, they fluctuate around a core consensus about the need for new roles and ways of working in all three sectors.

Government is realising that it must make the shift from delivering services and controlling citizen self-help spirit to enabling and facilitating citizen initiative for public benefit, and providing a credible framework for the accountability of civil society. Citizen organisations and citizens more generally are coming to see that they must play a critical role in Pakistan's progress, and that in accepting that responsibility and leadership they must become more actively transparent and accountable. Business is also gradually awakening to its wider ability to respond to society's most important needs. Together these changes represent a new way of governing Pakistan, a new model of governance, that highlights the interdependence of the three sectors and the opportunity for future progress grounded in effective public-private partnerships.

But if the Enabling Environment Initiative found this important consensus around the fundamental underlying governance dynamics, it also found in all stakeholder groups considerable consternation about how to make the needed changes. The Enabling Environment Initiative has formulated its recommendations to enable all stakeholders to replace the inertia of consternation with the momentum of purpose and direction.

The journey from today's environment of mistrust and mutual despite to an enabling environment will not be easy to accomplish. The first task for the leadership of all three sectors state, citizen and business is to overcome the prejudices, mutual ignorance and mistrust that pervades today.1 The animating idea behind the Enabling Environment Initiative is that a more enabling environment for citizen initiative for public benefit could unlock significantly greater contributions to national development. It could make it possible for citizen organisations to do more and do it better. It could incentivise businesses and individuals to practice more "social investment" the giving of money, time and in-kind support through citizen organisations working for the public benefit. And it could enable government to concentrate on what it is best at, and be more efficient and more effective in its management of scarce resources.

In formulating its recommendations -- in fulfilling its brief to government and its obligations to the citizens of Pakistan -- the
Pakistan Centre for Philanthropy has tried to address these challenges through five clusters of recommendations.

- The Enabling Environment Initiative is conceived in the recognition that the law is the primary expression of and for public policy. Law reflects attitudes and behaviours, but it also shapes them. The first Enabling Environment Initiative recommendation, therefore, proposes a fundamental reform of laws regulating citizen organisation for public benefit to overcome fatal philosophical and technical flaws in current laws. Specifically, it recommends that the Voluntary Social Welfare Agencies Ordinance 1961 and Societies Registration Act 1860 should be consolidated, rationalised, and modernised into one public benefit organisations law, the “Nonprofit Public Benefit Organisations (Governance and Support) Act 2003”. The EEI proposes this new law as a rallying point for a thoroughgoing public policy debate that could, in itself, do much to overcome mistrust and misunderstanding among the key stakeholders.

- The second major recommendation goes to the structure and nature of the regulatory function of government. As contained in the proposed new NPO law, responsibility for regulation should be shifted from the diverse parts of government across which it is now distributed to autonomous statutory bodies, one federal and one for each province, governed by representatives from government, citizen organisations, business, professionals and eminent citizens.

With respect to this third point, government recognised that relatively few organisations avail themselves of tax benefits, and has begun very important steps forward. Specifically, and in line with the Finance Ordinance 2002, the Central Board of Revenue (CBR) has, through negotiations with the Enabling Environment Initiative, agreed to modify its rules. NPOs seeking preferential tax treatment status will not have to go through the cumbersome, restrictive and repetitive procedure of approval by CBR. It is now imperative that interested stakeholders especially citizen organisations and philanthropists engage with the CBR to elaborate an effective and efficient certification system.
Like the proposed new law and its public benefit organisation commissions, proposed further enhancements to the fiscal support regime offer an important focal point for confidence-building policy dialogue among key stakeholders, particularly citizen organisations and government.

- No one who attended any of the consultations of the Enabling Environment Initiative could fail to draw the conclusion that more purposeful dialogue between government and citizen organisations was needed. It is the unequivocal conviction of the EEI that in the absence of such dialogue very little substantive improvements in the operations of nonprofit public benefit organisations will occur. Absent formal dialogue and vigorous efforts to popularise that dialogue, citizens at large will not renew their faith in government and in their own potential to organise for public benefit.

Accordingly, the final and overarching set of recommendations of the EEI present a road map for a formal relationship-building process which must be initiated to give government and a cross-section of citizen sector leadership a means to understand and trust one another. An early milestone in such a “compact processes” would be a national policy on citizen participation for the public benefit.

- A number of other laws touch on aspects of the domain of citizen organisation for public benefit. This final cluster of recommendations sets out a course for reform regarding the most important of these, including the Charitable Funds (Regulation of Collection) Act 1953, the Companies Ordinance 1984 (Section 42), the Trust Act 1882 and scattered enactments exclusively dealing with public trusts (Charitable and Religious Trusts Act 1920, Charitable Endowments Act 1890, Section 92 of the Civil Procedure Code 1902), the Religious Societies Act 1880, the Charitable and Religious Trusts Act 1920, the Cooperative Societies Act 1925 and the Wakf laws -- the Mussalman Wakf Validating Acts, 1913 and 1930, the Mussalman Wakf Act, 1923, and the provincial (Punjab, Sindh, NWFP, Balochistan) Wakf Properties Ordinance.

Before turning to a detailed discussion of these five clusters of recommendations, it is important to pause and contemplate the danger of half measures. The EEI recommendations are woven of many threads but form a single cloth. There is an important sense in which they are indivisible, in which an effort to approach them through incremental reforms courts total failure.

The EEI team and the PCP Board recognise that there is a time and place for small steps, for incremental reforms. Pragmatism and compromise are the principal coin of policy reform.

It is the conviction of the EEI that for government, business and citizen organisations to transform into effective actors in the new development governance paradigm, we must put in place a bold new legal and regulatory framework that can guide us through the arduous journey of transformation. In technical terms, we need a regulatory framework that will ensure that a critical mass of citizen organisations opts into it and that is able through its administration by independent statutory bodies to command the respect of all citizens and government departments. There are clear precedents for this approach in other countries. But more importantly, there is a discernible readiness for it in Pakistani society.

This is a moment, then, for the leaders of Pakistan its politicians, eminent citizens, pre-eminent social activists, and most influential businesspersons to analyse these recommendations objectively. The EEI has sought to articulate recommendations that fairly balance the different public interests at
stake for the overall benefit of Pakistan. It is our hope that the analysis and evidence in this report will enable the key influencers in Pakistan to join hands, take heart, and make a leap of purpose together across the chasm.

Recommendation 1

A new registration, reporting, and monitoring regime should be established for nonprofit organisations in place of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 and the Societies Registration Act, 1860. This new law may be named “Nonprofit Public Benefit Organisations (Governance and Support) Act 2003”.

Four major objectives are realised through this recommendation and subsidiary recommendations. The rationale for each is set out in earlier chapters of this report. The four objects of legal reform are:

- To bring all nonprofit citizen organisations operating for public benefit into a common regulatory framework. This would make it possible for the first time in Pakistani history to have a context in which citizen organisation for public benefit can gain greater societal legitimacy and win greater levels of public support. As it stands today, some 40 percent of active citizen organisations are not registered under any law and operate informally. For reasons detailed exhaustively in chapter five, the two primary existing legal options for citizens wishing to organise for public benefit do not realise public policy objectives. The new law proposed is designed to be so attractive that citizen organisations with public benefit purposes will actively seek to opt into it;
- To usher in a fundamental change in regulatory intent and attitude from the prevailing obsession with control toward support and facilitation;
- To eliminate the current duplication and confusion in the scope and administration of the regulatory framework;
- To bring regulatory requirements with respect to reporting, independent verification (e.g., audit), public registry, and judicial review in line with international best practice.

The EEI consultation process found few complaints and considerable merit in the Companies Ordinance (Section 42), which sets the highest standards in law in Pakistan of transparency for the 370 relatively larger nonprofit organisations that have chosen to incorporate in this law. It should be maintained that for many of the most influential citizen organisations in the country this remains an attractive and appropriate option. Section 42 organisations that wish to avail themselves of the fiscal support regime may apply through the new certification regime just like organisations registered under the proposed new NPO law.

Definitions

The “public benefit purposes” that enable citizen organisations to qualify for the benefits associated with the proposed new NPO law be brought in line with contemporary understandings of areas in which citizen organisations are making important contributions to Pakistan.

Presently, the Ordinance of 1961 restricts the definition of “agencies” to fifteen heads, mainly relating to welfare. The Act of 1860 covers a wider range of “societies” functioning for “promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes”. This scope is broader. But the term “charitable”, despite its wide legal meaning, fails to communicate the development activities of modern citizen organisations, perhaps because it is understood as a translation of Khairat, an Urdu term mostly used for giving alms.

The approach in the new NPO law has drawn
from the current pattern of practice of citizen organisations in Pakistan as well as from international best practice as described in chapter eight. In particular, it recognises that rights organisations play a central role in making democratic government function effectively, efficiently and honestly. They advocate specialised public interest issues. They also provide information to a free and independent press. In short, they are an integral part of modern democratic good governance and must be encouraged and protected.

As set out in the proposed NPO law, public benefit purposes include:

“[T]he promotion of general social welfare, including health and education provision, community mobilisation, prevention and relief of poverty, development, rights advocacy, including rights of women, children and religious minorities, charity, religious instruction and support of activities of a religious nature, promotion of science, literature or the fine arts, the diffusion of useful knowledge, the diffusion of political and civic education, the foundation or maintenance of libraries or reading rooms open to the public or public museums and galleries of paintings and other works of art, collections of natural history, scientific inventions, instruments or designs, or any other purpose deemed to be of public benefit for the purposes for this Act by the Commission.”

The “any other purpose” clause keeps open a window for the addition of new public benefit purposes in light of changing circumstances. This power of addition and interpretation, delegated to the Commissions, will also help remove any ambiguity in the future.

The proposed EEI Bill excludes one class of organisations currently covered by the Act of 1860, associations of persons not pursuing any public benefit purpose. They are a diverse lot. A sizable number, especially in Sindh, are organisations such as flat-owner associations, clubs, and professional groups. Because the new law is deemed to cover all registered societies, there is a provision in the law to enable those societies not pursuing any public benefit purpose (and not raising funds from the public) to apply to register instead under an amended Act of 1860.

It is a specific recommendation of the EEI, and a logical consequence of the creation of a consolidated regulatory framework designed to attract most if not all organisations operating for public benefit, that the government amend the Societies Act of 1860 by narrowing the class of associations to those that do not pursue public benefit purposes as understood in the NPO Act 2003. This will allow such associations, perfectly legal and constitutionally protected, to enjoy legal personality and the concomitant legal benefits of the Societies Act.

As a final plus for this approach, the public benefit organisation regulatory authorities will not be burdened with responsibility for extraneous organisations. The public benefit organisation regulators can concentrate and specialise on the considerable challenges of promoting and regulating the nonprofit public benefit citizen sector.

Nomenclature

Linked with the issue of scope is the issue of name. There is considerable debate among the stakeholders on the relative merits and demerits of various terms like Non-governmental Organisations (NGOs), Nonprofit Organisations (NPOs), Public Benefit Organisations (PBOs) Nonprofit Voluntary Organisations (NPVOs), Citizen Organisations (COs), Civil Society Organisations (CSOs), Private Voluntary Organisations (PVOs), etc.

The terms used in our main laws are not being used. “Social welfare agency” appears to restrict purposes and “society” is too generic to have any meaning at all. The EEI draft uses
the term “public benefit organisation (PBO)”. This is the subset of nonprofit organisations (the other smaller subset is member benefit organisations) that society has the maximum stakes in promoting. This is the group which the EEI bill focuses on. PBO communicates the essential character of the sector which goes to purposes. This focus on purposes is in line with the common law tradition of emphasising “charitable purposes”, irrespective of the form. Preferring to avoid the connotation of the term “charity” (meaning alms giving in Urdu), we use “public benefit organisation”.

Nonprofit status will be clearly defined: The existing laws do not clearly define nonprofit status, a fundamental characteristic of the public benefit citizen sector. The distribution of left over assets to members is prohibited after liquidation but any distribution of surplus to members or any other person during the running of the organisation is not clearly forbidden. References to public benefit are there in the law and violators can be punished with suspension or even dissolution but these are vague and subject to arbitrary interpretation by the government. It is important that “nonprofit” be defined because a broad range of transparency and governance issues, often raised by the stakeholders in the EEI consultations, especially the government, depend on this definition.

According to EEI Bill, nonprofit “means that assets, earnings or profits may not be used to provide special personal benefits, directly or indirectly, to any member of the governing body, member, founder, donor, officer or employee except for bona fide consideration, compensation or salary payable in conformity with the law and the charter of the organisation.”

Actual application of this definition would depend on circumstances. What is a “special personal benefit”? Is a hefty salary for a top manager or a procurement contract for the close relative of the founder a special personal benefit? The only legal answer is that it depends on each situation. For example, the objectionable salary could be the only appropriate remuneration for a good professional or it could be a sly way to avoid the distribution of net earnings bar by including the salary as an expense item. The language may be subject to interpretation but the intent and spirit, to be applied by the Courts according to the merits of the case, should be above reproach.

Juristic persons should be allowed to form organisations: There is considerable ambiguity in the two main laws, partly, due to language and partly due to practice, regarding the eligibility of legal persons to form organisations. This needs to be removed. The EEI Bill removes the ambiguity by mentioning that “persons, natural or juristic” may form nonprofit public benefit organisations.

Minimum number of persons needed to form an organisation should be clarified: A problem with the Voluntary Social Welfare Agencies Ordinance 1961 is that the minimum number of members at the time of registrations is not specified. This causes untold problems to applicants when registration officers enforce their individual interpretations across the country. The EEI Bill removes this ambiguity by proposing that only a minimum of three members is needed at the time of application.

Registration
Registration may be voluntary for most organisations: Citizens organising for public benefit do so expressly to make the world a better place. The regulatory framework for this desirable behaviour should be enabling. It should be a framework that citizens opt into to gain the utility of legal form and the
legitimacy that comes from formal legal accountability. It is therefore recommended that registration be made optional. The proposed approach here is to create a framework that encourages participation through positive services and fiscal and other benefits that may be accessed through the law. In short, registration should be incentivised, not commanded.

Since the public interest in formal accountability is greatest for the accountability of funds raised from government or from the public in the name of some public benefit, the draft EEI bill only requires registration for an organisation that,

“has received government funds during any of the last three financial years or is utilising government funds received in any prior financial year or has applied to receive government funds; or

has received aggregate donations, contributions, and grants, including foreign funds, from non-members in excess of three hundred thousand rupees in any financial year during the last three years.” (Section 6).

Those organisations that have a small annual budget will not be required to register if they only raise modest sums of money from the public. One exception to this, detailed elsewhere, is for organisations that receive foreign funds, which must be registered if the amount of foreign funds received from abroad exceeds Rs 1,00,000.

Organisations that get registered with any one of the Provincial Commissions or the National Commission need not re-register to work anywhere in Pakistan. Information regarding their activities may be exchanged by the Provincial Commissions to ensure that provincial governments remain abreast of their activities for development planning purposes.

Registration facilities be made available in all districts: Powers of registration under the Ordinance of 1961 were, until 2001, concentrated in the provincial and divisional headquarters. These powers have since been devolved, in an extremely welcome move, to various offices in the districts, but not in a uniform way. This difference in the extent of devolution of powers needs harmonisation in the new law where registration will be provided at the districts, in line with the Devolution Plan and the popular demand of all citizen organisations.

The registration authority under the draft EEI bill, the Commissions for Public Benefit Organisations, whose features will be discussed below, will delegate relevant functions to the district level. The Commissions' powers enable it to “delegate any of the functions of the Commission to an officer of the Federal, Provincial or District Governments.”

It is important to make the distinction between the process and place of registration and monitoring. Registration at the district level will be an enabling facility provided by the Commission and will not mean that the organisation will not be free to work outside the district, where it was registered. It should be free to work anywhere in the province. An organisation may get registered using any district window to fill forms and seek advice but it would be monitored by the Commissions from their headquarters. However, it is possible that the Commission may delegate even the monitoring of any particular category of organisations, most likely on the basis of size, to the district officers. The proposed consolidation and reorganisation would enable district level registration and filing of reports, combined with universal access to provincial and national databases comprising information contained in registration and reporting forms.
**Enabling Environment Initiative**

**Registration process should be simplified and the discretion of registration authorities minimised:** Citizen organisations are extremely dissatisfied with the existing registration procedures, where either registration authorities enjoy wide discretion under the laws or they have arrogated such discretion to themselves despite the clear language of the law. Most of the issues raised by the citizen organisations during the EEI consultations were about cumbersome and debilitating registration procedures.

In the proposed law, registration procedures are simplified. A time limit of sixty days is prescribed for the Commission to either communicate any incompleteness or reasons for rejection. There is minimum discretion; a defined set of documents are to be filed. If papers meet the required criteria, the act of registration will be ministerial. This process will not be any different from the original intention, not practiced, of the law-makers of the Societies Registration Act 1860, which requires that, if the documents required are present and the purposes of the organisations falls *prima facie* within the intended purposes of the law, the registrar has no choice but to register.

**Names of the organisations should be scrutinised at the time of registration with well-defined guidelines:** The present laws do not prescribe or proscribe names of the agencies or societies. This consistently poses problems at the registration level. Some proposed names could be offensive, misleading or deceptive. Certain other names may have protected proprietary rights. In the absence of any guidelines, field officials often impose whimsical conditions on applicants. It is therefore recommended that provisions similar to those of the Companies Ordinance be incorporated to guide the acceptance or rejection of the name and to resolve these conflicts.

**All organisations registered under the Societies Registration Act 1860 and the Voluntary Social Welfare Agencies Ordinance 1961 be deemed to be registered under the new Act:** All organisations, whether member or public benefit, registered under the two laws that are proposed to be repealed may be deemed to be registered under the proposed law. This means that these organisations will not be required to seek fresh registration.

Societies that do not solicit funds from the public and do not pursue public benefit activities may choose to opt out of the NPO Act in favour of an amended Societies Registration Act, which would be narrowed to apply only to this class of organisation.

**The NPO Act regulates organisational character, not programme activities:** There are three types of legal regimes that apply to most organisations. First, there are regulatory regimes that set out generic organisational accountability issues, such as matters relating to liability, reporting, and tax obligations. The second type of regulation is activity-based. It is typically imposed by authorities charged with regulating those activities, such as schooling or medical services. The third regime is that of the civil and criminal laws. These govern all juridical persons, and are there to regulate negligent and criminal activity.

The scope of the proposed EEI Bill appropriately addresses the first only. A school may be a nonprofit public benefit organisation according to law, but its teaching practices would be regulated by an education department, and not the NPO regulator. If it preaches violence or negligently endangers its students, this would be a subject for criminal or civil laws.

Another important issue often raised in the consultation is the question of effectiveness of NPOs. Government and many other stakeholders have reservations that NPOs could perform more efficiently or effectively. The EEI team is, however, of the view that this assessment of performance is best done by the donor or an independent certification agency. For example, government has every right to
look into the effectiveness of an organisation if it applies for tax exemptions and its case can be judged on the basis of yardsticks that government finds appropriate. Similarly any individual donor can make its own decision regarding the effective use of funds based on the public reports of the organisation. Government should not be involved in judging the effectiveness or feasibility of an organisation if it is not being provided, directly or indirectly, with public funds.  

Performance evaluation or assessment not directly linked to financial irregularity is not proposed in this report. The EEI bill thus only envisages public oversight of financial management of public benefit organisations, based on annual report filings accessible to all citizens from an efficient public registry. Of course, organisational governance requirements place the primary responsibility for oversight to the governing board of a registered organisation. Board members negligent in these governance duties can be found liable for any resulting damages caused by the organisation under civil law.

**Nonprofit organisations registered under certain other laws should also not be required to register:** EEI recommends consolidation of public benefit organisations registered under the two main laws and recommends compulsory registration for an association of persons that relies on significant sums of public funds. However, government may still enact laws to encompass organisational as well as sectoral regulation of any particular category of organisations that would oust the jurisdiction of the proposed Nonprofit Law. A number of enactments regulating professional associations, such as of lawyers, doctors, accountants, and engineers, are exempted of specialised laws that regulate sectoral and organisational activities. In line with this prerogative, in 2002 the federal government contemplated promulgation of a madaris registration and regulation law to monitor the organisational as well as the activities of madaris.

EEI proposes that government retain the prerogative of excluding organisations from the purview of this Act where the public interest would be better served through special laws. Section 1(4) of the draft EEI bill says that that this Act “shall not apply to organisations created and regulated under the enactments as may be notified by the Federal Government in the official Gazette.” Organisations regulated under a madaris ordinance, for example, may be excluded from the purview of the NPO Act through a notification. This notified list may also include *wakf*, cooperatives, and trade unions laws, Trust Act, Charitable Endowments Act, the Companies Ordinance, enactments that regulate professional bodies, or any other special law.

This exclusion is proposed for two reasons. The enabling opportunity for nonprofit organisations to choose from various legal options should not be reduced. Many citizen organisations demand this. The second reason is that the new law should not be a monopoly law and the new autonomous Commissions are not meant to become the sole regulators of citizen initiative for public benefit. The coverage of the proposed law and regulatory regime must be sufficient, however, to achieve the overall public policy objective of preserving and enhancing the legitimacy of the citizen sector as a whole.

**Reporting and verification requirements**

Reporting and independent verification requirements should be graduated according to the size of the annual budget of the organisation. There are many factors that can help determine the reporting or verification requirements for a public benefit organisation, including the size of the annual budget, sources of funds, methods of fund collection, nature of activities, geographical reach, capacity, and even effectiveness. After careful study of the public benefit organisations in Pakistan and a review of the international experience, the EEI recommends that the most reliable factor and
the one that most accurately correlates across all of these is budget size.

As has been discussed above, activity-based regulation should be done by field-specific regulators unless government wants to enact legislation that covers the organisations character as well as the activities for certain classes of organisations, as has been considered in the case of madaris.

Presently, size is not a factor in determining the reporting, book-keeping, and monitoring requirements under the two laws. Neither takes account of size, but treats all alike. Those prescribed under the Ordinance of 1961 are rigorous for all. The Societies Registration Act 1860, on the other hand, prescribes minimal reporting and verification for all. One over-regulates, the other under-regulates.

Complete disregard of the capacities of the organisation in determining monitoring and reporting requirements should not be the case. While any organisation benefits from independent auditing, it is not possible or necessary for small community-based organisations or even somewhat bigger organisations to prepare sophisticated financial accounts and hire expensive chartered accountants to audit those accounts.

Standards of reporting and level of external review should be determined by the size of operations. There should be a simple, easily intelligible system for grass-root citizen organisations operating at community level and a sophisticated one for those organised on the pattern of large Joint Stock Companies limited by guarantee, with various shades of sophistication for organisations in between.

Accordingly, the proposed NPO law defines three categories. Category A, comprising organisations with annual receipts of over Rs 3 million; Category B, comprising organisations with annual receipts exceeding Rs 0.5 million and up to Rs 3 million; and Category C, comprising organisations with annual receipts of up to Rs 0.5 million.

Every registered citizen organisation in each category shall maintain accounts in the manner laid down in the rules prescribed. It shall get its accounts audited annually, by a qualified auditor in accordance with the procedures prescribed in its bye-laws and by the NPO law. A chartered accountant should audit organisations of Category A. Category B should be audited by a cost and management accountant. A bank manager may audit a Category C, provided its receipts and expenditure pass through the bank account.

Moreover, all organisations shall maintain a register of sanctions to expenditure accorded in accordance with law. Category C organisations or even somewhat bigger organisations, however, may open a savings account with national saving organisation or a financial post office if there is no branch of a scheduled bank within a reasonable distance.

The rigour and standard of financial records maintained by each organisation should also depend on size. It is proposed that Category A organisations must maintain (a) a cash book in which shall be entered in chronological order every amount paid or received, including deposits in and withdrawal from the bank account, on behalf of the organisation and payments shall be supported by necessary vouchers which shall be preserved for at least five years; (b) a ledger which shall contain all personal and impersonal accounts including separate accounts for donations, subscriptions, federal, provincial, district
government and foreign donors grants, property income, income from investment, business income or service charges and “other incomes” and expenditures on operation and maintenance, investment for community welfare or development, financial charges, utilities, acquisition of assets and “other” expenditure under its byelaws, duly classified under the heads wages and salaries, supplies, works and others; (c) a separate account of all its assets and liabilities; (d) an income and expenditure account and a statement of assets and liabilities which shall be compiled at the close of the financial year and duly audited by a chartered accountant.

Category B organisations must maintain: (a) a cash book in which shall be entered in chronological order every amount paid or received including deposits in and withdrawal from a bank account by or on behalf of the organisation and all payments shall be supported by necessary vouchers which shall be preserved for at least three years; (b) a ledger with separate accounts for receipts under the heads: subscriptions, donations, domestic and foreign grants, investment income, business income, services charges, income from property and other income, and separate expenditure accounts for salaries and wages, supplies procured, works undertaken, utilities and other expenditures for operation and maintenance, investment in community welfare or development and acquisition of assets; (c) an income and expenditure account compiled at the close of each financial year and audited by a cost and management accountant.

A Category C organisation must maintain: (a) a cash book in which shall be entered in chronological order every amount paid or received including deposits in and withdrawal from bank accounts on behalf of the organisation and payments shall be supported by necessary vouchers, which shall be preserved for at least three years; (b) separate accounts for receipts classified as donations, subscription, grants, property income, investment income and other incomes and for expenditures classified as salaries and wages, supplies, works, utilities, and other expenditures; (c) an income and expenditure account compiled at the close of each financial year and audited by a retired audit officer or bank manager, provided all receipts and expenditures of the organisation pass through the bank account.

Public benefit organisations should report to government the size, source and purpose of any foreign funds received; prior approval and clearance of the government should not be required: The flow of foreign funds into the country is a highly contentious issue. Government in general wants rigorous regulation because of legitimate security concerns, while citizen organisations are concerned about expected unwarranted intrusions, delays and rent seeking that would arise from any system that required prior permission.

In recognition of both sets of interests, it is proposed that all citizen organisations be obligated to report all of their foreign funding sources after they have received the funds. An ex post facto reporting obligation, meets the security concerns of the State without creating a bureaucratic system prone to inefficiency or worse.

Public benefit organisations may not be required to seek prior permission from any government agency, federal or provincial, to solicit or receive funds from any foreign source or from local representatives or offices of donors that have their main operation or head office situated outside Pakistan. This should also apply to nonprofit organisations registered under the Companies Ordinance. These organisations already provide comprehensive data to the Securities Exchange Commission. Information on foreign funding may be consolidated by the National and Provincial Commissions and then sent to Economic Affairs Division of the Federal Government.
Section 13(1) of the EEI Bill says: “(1) All organisations, including nonprofit organisations registered under the Companies Ordinance, 1984, whether or not required to be registered under the Act, shall file with the Commission at the end of each fiscal year details of foreign funds received in excess of Rs. 100,000/-. The details to be provided shall include the identity of the donor, the amount, and the purposes for which funds were received. (2) Subject to the registration requirement prescribed by the Ordinance, prior permission from any government agency, federal or provincial, will not be needed to solicit or receive funds from any foreign source or from local representatives or offices of donors that have their main operation or head office situated outside Pakistan. (3) The Commission shall consolidate the information received in terms of this section and transmit it to the Federal Government on a quarterly basis.”

It is also recommended that the management of inflow of foreign funds for security reasons could be best handled by an omnibus law on the subject. Best organised through the banking channels, this law could properly address the entire range of security issues. Mere regulation of foreign funds to citizen organisations, which include the innocuous and extremely beneficial zakat or small philanthropic transfers of the Pakistani diaspora, may be unable to comprehensively and successfully address the security concerns of the government regarding foreign funds inflow.

**Support and Compliance**
**Corrective actions against a citizen organisation for failure to comply with the law will be exhausted before imposing punitive measures:** The governing body of an errant organisation can be suspended under the Ordinance of 1961. The organisation can be dissolved too. No warning or time for corrective action is provided for. The same is the case with the suspension powers under the Act of 1860, although generally the 1860 law is far less draconian.

The philosophy of the EEI bill is 180 degrees different. It compels the commissions to engage with errant organisations through corrective and supporting actions, such as advice and technical assistance. The Commissions will offer legal and audit assistance to build capacities of organisations to help them to better comply with the law since, quite often, violations result from lack of capacity rather than an intentional disregard of the law. This is in line with the fundamental principle adopted throughout the recommendations that a vigorous drive to hold citizen organisations accountable will be meaningless without a simultaneous effort to strengthen their capacity.

The EEI bill also provides for warnings to be issued for corrective action within, as set out in Section 16, a time period of six months.

**Public accountability should be provided to increase public trust in nonprofit organisations:** The present regulatory practices under the two main laws -- the 1961 Ordinance and the Act of 1860 -- produces the worst possible result. On the one hand, over-rigorous powers of compliance under the 1961 Ordinance warn off many, which turn by default to the Act of 1860. The 1961 Ordinance empowers the regulatory authority to conduct random audits, inspect premises and books, suspend the management body, and even dissolve the agency. These powers are in addition to compulsory requirement of submission of annual reports and audited accounts. The Act of 1860, on the other hand, prescribes minimal reporting. A mere list of governing body members is required to be submitted. Amendments to the Act of 1860 in the mid 1970s provide for State oversight but in a ham-fisted way. In practice, under both laws, laissez faire prevails, and compliance powers are rarely invoked.

Recognising that public disclosure is the single most effective vehicle of external
accountability, EEI recommends that the primary accountability function should be the operation of the first ever comprehensive and up-to-date registry of citizen organisations operating for public benefit in Pakistan. The public should have complete access to the registry via a network of government and citizen organisation offices across the country. New technologies will facilitate public disclosure. In stages, it will be published on the Internet. The goal is to create an information database where donors and beneficiaries will judge for themselves the performance of an organisation.

The Commissions' own operations should be subject to public disclosure requirements as well in a partial answer to the question, “who monitors the monitors?” Any person may inspect and obtain certified copies of the annual reports of the commissions, the copies of finalised inquiry reports, and any other document deemed to be a public document by the Commissions.

Donors and members of an organisation should be able to initiate inquiries by Commissions into possible transgressions of an organisation. Commissions may also initiate inquiries, audits and corrective actions against any public benefit organisation suspected of engaging in serious financial irregularities. Section 15 of the bill says: “On receipt of a complaint in writing alleging financial irregularities supported by one-third of the members or one-third of the members of the governing body of a registered organisation or from a person or body that had contributed more than five percent of the total funds received by the organisation in the last year for which final accounts are available, the Commission shall, if a prima facie case of serious financial irregularity is made out on the basis of record available and after giving both parties an opportunity of being heard, authorise an external auditor to carry out within sixty days inspection of the books of the organisation complained against and to submit a report with respect to the matters alleged in the complaint.”

Persistent violations of the provisions of the NPO Act should lead to deregistration, which will lead to dissolution and liquidation if an interim period provided for this purpose is not properly used to rectify the violations. Section 16 says: “An organisation that has persistently disregarded obligations imposed on it by this Act or by any other law for the time being in force, its own charter pertaining to maintaining or filing of reports and accounts or governance procedures shall, without prejudice to other penalty or action under this Act or any other law in force, be dissolved in accordance with rules prescribed by the Commission after granting the organisation concerned an opportunity of being heard.”

Appeals to judicial authorities against all executive decisions should be provided: The Ordinance of 1961 provides for appeals against the decisions of administrative authorities. But this is not the case with the Act of 1860. Appeal against a decision to refuse registration is not provided, for example.

The proposed NPO Act provides greater and more efficient recourse to judicial review than is provided under the 1860 and 1961 laws. This is in line with the decision of the Supreme Court to separate executive and judicial functions. It is designed to ensure that all executive decisions of the Commissions are independently reviewed. This is an important demand of the stakeholders that fear government arbitrariness. Moreover, courts may oversee the voluntary amalgamation/dissolution and compulsory dissolution processes, functions previously overseen by the provincial governments.

Due process should be strengthened to decrease possibilities of executive arbitrariness: A major shortcoming of the Voluntary Social Welfare Agencies Ordinance 1961 is that it empowers the government to conduct physical inspections, suspend an organisation, and initiate dissolution proceedings on grounds of unspecified public interest. Such latitude
invites arbitrariness. Complains abound of victimisation carried out by field officials.

EEI recommends major reforms in this process of public oversight of NPOs. First, as has been discussed above, action can be initiated against an NPO only if there is a \textit{prima facie} case of serious financial irregularity. This means that minor financial problems (the severity of the problem may depend on the size of the NPO, its rules, and the amounts involved) cannot be grounds for action.

A Commission may only initiate action according to prescribed procedures. A Commission will detail rules that prescribe the source of authority that has to be consulted before action is taken. For example, a majority vote may be needed before audit is ordered of a large organisation, or permission in writing of the chairperson or a sub-committee, depending upon the regulations laid out by the Commission in this respect.

Once the Commission, or the officer of the Commission duly authorised, initiates action on the permissible grounds, a set procedure has to be followed. Physical inspections of the premises is not allowed. The Commission will first give the organisation the opportunity of being heard. If not satisfied with its explanations, it shall authorise external auditors to inspect the books of the organisation with the report to be submitted in sixty days. If the Commission finds that the books of the accounts must be copied in case they might be tampered with, it can visit the premises of the organisation and take the record away. But this record has to be returned to the organisation within fourteen days.

If the auditors report points out serious financial irregularity, the accused organisations shall be provided a copy of the auditors report and then given the opportunity of defending itself at the inquiry to be conducted by the Commission. Where, on inquiry, it is found that by any wilful action an office-bearer or member of an organisation has caused loss to or has misappropriated assets of the organisation, the Commission may initiate civil as well as criminal proceedings against such office bearer or member, including proceedings for the recovery of the misappropriated assets. It has no power to decide any civil or criminal action on its own.

If the inquiry reveals that a serious financial irregularity has been committed with respect to the affairs of a registered organisation, the Commission may suspend the members of the governing body that appear to be involved, after recording reasons in writing. The Commission is then obliged to refer the matter to the Courts to be decided by them within a period of seven days.

In practice, false corruption allegations are after levelled by disgruntled employees and members. This is a widespread problem and debilitated many organisations besides giving a bad name to the sector. Whereas all serious complaints are to be encouraged in the public interest, false complaints need to be discouraged. EEI recommends that persons who file false and vexatious complaints against an organisation may be fined and removed from the organisation, if they are members or employees of the organisation.

In short, EEI proposes that ample due process safeguards are provided before punitive action takes place.

\textit{Violations may be punished with a fine and not with prison sentences}: The Voluntary Social Welfare Agencies Ordinance 1961 prescribes a maximum jail term of six months and unlimited fine in case of violation of the law. This gives the law, meant to encourage citizen sector activity, a draconian colour that needs to be avoided. EEI recommends that a maximum fine of Rs 50,000 may be imposed in case of any violation of law or its rules.

The bill also does not create any offence on its own. As has been discussed above, criminal
penalties of fines or prison sentences, if any, are to be imposed on wrongdoers by the regular criminal judicial system on the basis of the existing Pakistan Penal Code, on a complaint to be filed by the Commission.

Other corrections and improvements to the status quo ante

Federal and provincial governments enact the law separately: There has been considerable debate about whether there should be five laws or one law. If the current scheme of Voluntary Social Welfare Agencies Ordinance 1961 is adopted then federal government (the subject of social welfare is on the concurrent list) promulgates the law and provincial governments are delegated full powers to implement it. This method saves costs on administrative structures and improves coordination.

EEI however proposes four provincial laws and a federal law largely on account of concerns about provincial autonomy. Apart from being a constitutional issue, focus on provincial autonomy is in line with government thrust on devolution. EEI choice is also about respect for path-dependence in any reform effort.

Legal personality should be provided for all registered organisations: A major flaw of the Voluntary Social Welfare Agencies Ordinance 1961 is that it does not confer legal personality on the agencies. At present the Act of 1860 recognizes "society property" but vests such property in the governing body of a given society. To rectify this problem, EEI recommends that a registered NPO may acquire a distinct legal personality with power to hold property in its own name, to sue and be sued, and limited liability for its members and governing board.

Permissible sources of funds may be broadened to remove ambiguity: The existing legal regime does not clearly mention permissible sources of income of citizen organisations. This results in occasional arbitrary government decisions where some organisations have been barred from conducting fundraising activities.

It is recommended that the law may formally allow NPOs to engage in lawful economic activities to earn funds to sustain the activities of the organisation. The definition of “nonprofit” in the EEI bill bars organisations from distributing the net profits. It does not bar profits. The bill also distinguishes between activities and purposes. All activities, including making of profit, are legitimate as long as the profit earned from investments or business is ploughed back into other activities that promote the purposes of the organisation.

Amalgamation, voluntary dissolution, amendment of charter should be left mostly to members to approve: All NPOs should be able to, as is presently the case under the Societies Registration Act 1860, make fundamental changes in their structure and functions, depending on the decision of its members. The Commission should however, have the prerogative to refuse an amendment in the purposes of an organisation, especially an amendment that would negate public benefit purposes. This is to ensure that government and public funds, if used, continue to be used for public benefit purposes and are not diverted to purposes which were not declared at the time of receipt of funds.

Deregistration may be provided for: Presently, if an organisation wants to voluntarily extinguish itself, the only course open to it is to go to a Court, which then conducts a public dissolution process. Those who have claims against the organisation can come forward and seek a share of the assets according to the legal priority of their claims. This process is lengthy and expensive. This is why most organisations, especially the smaller ones, choose to stay inactive instead of going to the courts to file for voluntary dissolution.

This inactivity creates problems. Thinking that the organisation is failing to comply with
its charter and the law, the regulator starts sending notices to ensure compliance. It also wants to keep its record updated and does not want to have organisations on its books that have died or have been dormant for a long time. The citizens who took an initiative but could not sustain it also find themselves in a situation where they are being threatened with criminal penalties or fines.

The Commissions have been empowered to start deregistration on their own. An option should also be available to the organisation to opt out of the regulatory system in a simple and convenient manner. It is therefore proposed that an organisation should be able to deregister through an administrative mechanism, thus avoiding the length and expenses of the judicial process.

EEI bill provides for deregistration in section 8: “(1) Any registered organisation that is not or that ceases to be subject to the mandatory registration requirements in terms of this Act may apply for deregistration at any time by passing a resolution in a manner required for amending the charter. (2) The Commission may allow deregistration after examination of the charter, accounts and other prescribed constitutional documents of the organisation.”

**Recommendation 2**

The EEI consultations, analyses and research highlighted the problems that arise from having a civil society regulatory framework that does not correspond with the domain of civil society. The present system in Pakistan is fragmented. The overall result is that at no point does the defining element for regulatory purposes operation for public benefit purposes come into view. Following the leading international trend, the Enabling Environment Initiative recommends a shift in the responsibility for public benefit organisation regulation from the diverse parts of government where it now sits to autonomous statutory bodies, the National and Provincial Commissions for Nonprofit Public Benefit Organisations. These commissions should be representative of all major stakeholders: government, the citizen sector, eminent citizens and professionals. These bodies would administer the proposed “Nonprofit Public Benefit Organisations (Governance and Support) Act 2003”.

**Rationale**

*Effective assurance framework: easy to use, gives confidence (especially to public) and fosters understanding and awareness*

There are a number of compelling operational arguments for the creation of autonomous statutory regulatory bodies. First, the implementation of laws through multiple administrative agencies breeds confusion among public benefit organisations and society alike. It ensures a lack of uniformity in treatment and often personalised deviations, causing costs in terms of money and time. A unified structure and procedures for ensuring internal governance would not only be facilitative but would establish the proper basis from which to build broad public awareness of and establish the legitimacy for the citizen sector as a whole. Moreover, differing standards and poor coordination among and between the multiple administrative agencies leads to race to minimum accountability. Third, the capacity of different regulators and administrative machineries cannot be built effectively without consolidation of functions in one organisation. (For detailed discussion of these issues please see chapters five and seven.)

There is also an overarching philosophical explanation: the Commission is needed because governance of citizen organisations is best organised when the regulatory functions vested in a statutory autonomous organisation with fair representation of all the stakeholders, creating a sense of trust, confidence and ownership. The Commissions
themselves will become forums to dispel the prevailing mutual misunderstanding and mistrust between government and citizen organisations and forge a new coalition dedicated to national service. The National Commission will lead manage the dialogue between the citizen sector, the government and the society-at-large and create better understanding. This requires better research and documentation, recognition and dissemination of the contribution of the citizen sector to socio-economic development, and development of reliable and current databases to provide input into planning processes at all levels.

In addition to these philosophical and practical reasons, these reforms may be seen in the larger context of government restructuring. State institutions are being redesigned through devolution, empowerment, and operational and financial autonomy, enabling them to deliver on the objective of creating an efficient, effective and people-friendly functional democracy. Policy and implementation roles are being separated by creation of regulatory institutions -- Media Regulatory Authority, Oil and Gas Regulatory Authority, National Electric Power Regulatory Authority, Pakistan Telecommunication Authority, Securities and Exchange Commission of Pakistan -- that create a supportive environment, enable various operators in the economy to give their best to the people and the country for orderly growth, stability and self-reliance.

This new regulatory approach now being applied widely in Pakistan also guides EEI institutional reforms recommendations. The objective is to enable the citizen sector to perform its crucial role in community welfare and development in furtherance of the objectives of poverty reduction and social development. Accordingly, institutional reforms for citizen organisations are proposed to follow the pattern adopted for the regulation of the business sector, i.e., the regulatory function (e.g., registration, reporting and related compliance) must be separated from the substantive matters of policy or operations of the organisation. For example, a public benefit school registered under the new law would continue to be subject to Education Ministry rules and policy.

Broadly defined, the goal of the regulatory framework is to safeguard the integrity of public benefit organisations and therefore their societal legitimacy. The regulatory framework should provide assurance to all stakeholders that those in compliance with the framework are credible, bona fide public benefit organisations. It is important to note that regulators set a floor; they do not underwrite performance per se. By scrutinising the reports available from organisations, stakeholders would make their own judgments about performance.

The key elements of the regulatory function, on this understanding, are:

- Providing an appropriate legal form;
- Setting and ensuring the minimum standards of internal governance, transparency and accountability;
- Protecting the interests of the community served and financiers of the activities of citizen organisations through an efficient and relevant system of reporting;
- Supporting, facilitating and enabling citizen organisations to comply with the prescribed regulatory requirements.

In addition to a sharp focus on the regulatory function, the EEI recommends that the regulators take on specific complementary features. Firstly, the regulatory system must respect the autonomy of the provinces and local government institutions. Secondly, the arrangements for administration of the law and regulatory functions should be cost effective. As far as possible, administrative facilities available at provincial and district levels should be fully utilised, according to
guidelines framed by and under supervision of the autonomous regulatory institutions. The Commissions may thus farm out some of their functions such as the promotion of performance standards of excellence to one or more independent credible actors. Finally, the institutions created for standards promotion and certification purposes should represent all stakeholders, thus themselves serving as a venue for generating confidence between citizen organisations and the government.

The Charity Commission for England and Wales is one possible model for this new regulatory approach. A government department, set up under statute and answerable only to Parliament, it has a wide range of powers and responsibilities under the Charities Act of 1993. It aims to give the public confidence in the integrity of charities while ensuring that charities are able to operate for their proper purposes within an efficient legal, accounting and governance framework that identifies and effectively deals with abuse and poor practices. Another important function is to provide professional advice and services to strengthen the capacities of citizen organisations.

During EEI consultations the institutional reform proposals were hotly debated. The PCP Board, government policy makers and the Review Panel discussed at length the merits and demerits of setting up autonomous public benefit organisation regulatory bodies at the federal and provincial level. A number of objections were raised:

- It was argued that government should not forsake its policy function. This is the exclusive prerogative of the government and must invariably be retained within a ministry. Ignoring the possibility of savings due to a shifting of functions, it was argued that autonomous regulators would be an additional burden on the finances of already strapped federal and provincial governments. The fad of separating policy and administrative functions was diluting the powers of the government, which, and not the Commission, was answerable to the people. Some stakeholders complained that, “Islamabad was littered with the corpses of dead commissions which did nothing. It would not be advisable to add another white elephant.”

- An important issue raised was how the Commissions would reach out to the districts? If it did not have a district presence, public benefit organisations would still have to interact with ill-trained and ill-motivated government functionaries in the field. This means that there would be no improvement. If the Commissions were to have a district presence, it could be prohibitively expensive.

- The most common objection was that the independence and the autonomy of the Commissions would be difficult to defend. It was argued that as political appointees, members would remain subservient to political masters. The appointments to the Commissions would inevitably, it was argued, be doled out more as patronage than for the intended purpose to govern an autonomous regulatory authority that could command respect as an independent professional arbiter for civil society. So politicised, it would fail in its main purpose to provide assurance and build societal legitimacy for citizen organisations working for public benefit.

The EEI recommendations take these reservations into account. Cost is an issue. It is recommended that the national Commission take over functions of the existing National Council of Social Welfare (NCSW), which is likely to be replaced. The provincial Commissions will replace the provincial counterparts of the NCSW, like the Punjab Social Services Board and similar provincial bodies. In effect, the existing institutions will be reorganised, reformed and strengthened to perform their existing functions effectively and assume new functions associated with the
citizen sector.

Formulation of policy by the Commissions proved a contentious issue. In recognition of the risk of possible dilution of ministerial prerogatives for policy making, it is recommended that the Commissions not function as policy bodies. In discharging its responsibility to promote the role of the public benefit organisation in society, however, it will facilitate improved mutual understanding and collaboration between citizen organisations and government departments.

Other objections regarding utility, autonomy, outreach and capacity of the proposed Commissions are taken up below in the description of their proposed features.

National Commission for Nonprofit Public Benefit Organisations

The main features of the proposed National Commission for public benefit organisations are:

Executive functions: The Commission will administer the Public Benefit Organisations law. The Departments of Social Welfare and Industries will not regulate citizen organisations. The National Council of Social Welfare may be restructured. Policy functions should stay with the Ministry in line with the separation of the policy and registration and reporting function as explained above.

Relationship with the Parliament: It will be answerable to the Parliament through the Minister for Social Welfare, who will present the annual report of the Commission and of the citizen sector in the Parliament. The Minister shall also preside over the session of the Commission that decides its annual budget and work programme. Nominations to the Commission will be by the Prime Minister on the advice of the Minister.

Corporate status: It will be a body corporate with the formal powers normally associated with corporate status: limited liability for directors, capacity to sue and be sued in its corporate name, to own property in its corporate name, power to hire and fire, settle the terms and conditions of its employees, re-appropriate within the approved budget among various heads of expenditure without reference to any authority, and spend its allocated budget.

Funding of the Commission: The Federal Government is responsible for meetings its approved annual operating budget. In addition, there shall be a fund, consisting of funds-in-trust, government grants, endowment funds, and investment incomes that shall be used to finance the activities of the Commission. The Commission may also raise funds on its own to finance its programmes from foreign or domestic sources. Moreover, Commission members will all serve on an honorary and voluntary basis and will not be paid any salaries. Only expenses incurred during the course of Commission work will be paid.

Recurring and nonrecurring annual funds currently allocated for the National Council for Social Welfare should be reallocated to the National Commission from the Federal Government.

Outreach to the provinces and to the districts: The Commission may delegate, with the consent of the provincial governments, all or any of its functions to the officers of the provincial and district governments. Thus it can reach out to the districts without creating a large establishment. The law will be administered most likely through the offices of the EDO (Community Development) and District Officer (Social Welfare), to whom the relevant powers of the Commission may be delegated. However, it will be up to the Commission to delegate or not to delegate any power to institute enquiries against any individual public benefit organisation to any of its officers or to any of the provincial or
district government officers or to any other external auditor.

Moreover, National and Provincial Commissions will develop programmes to enhance the capacity of these officers. This is important to ensure that the outreach of the Commissions has the necessary ability to properly execute the functions that it is tasked to perform.

**Representative character of the Commission members:** The Commission would derive credibility from the independence of the Commission members and their representative character. Citizen sector, government (Secretaries of the Divisions of Economic Affairs, Planning, Social Welfare, and Revenue) and citizens at large will all be represented in the fifteen seats of the Commission. Gender, regional and professional balance should also be ensured.

**Autonomy of the Commission:** The draft law provides for the nomination and selection of Commission members through a transparent process led by an independent Nominating Committee. The Prime Minister will nominate the first committee. After nomination, this committee becomes autonomous, since the majority members of future committees are to consist of Commission members. The nominating Committee would present a short panel of qualified candidate to the Prime Minister, whose decision would be final.

The Bill protects Commission members from arbitrary dismissal before the expiry of a fixed four-year term. The term is proposed to be non-renewable. This condition would also help in increasing autonomy of the Commission members because they will not have to seek the goodwill of the political bosses for renewal of their terms.

**Day to day functioning of the Commission:** The Commission shall consist of the Governing Board, the Executive Officer, and the Secretariat. The Executive Officer, a non-voting member, will run the day-to-day functions according to the guidelines provided and rules prescribed by the Governing Board of the Commission. The National Commission will have only one office in Islamabad, and a small secretariat.

**Powers and Functions of the National Commission**

The powers and functions of the National Commission for Nonprofit Public Benefit Organisations can be broadly divided into administrative, support, administration and general. Commission members and their Secretaries of the Divisions of Economic Affairs, Planning, Social Welfare, and Revenue) and citizens at large will all be represented in the fifteen seats of the Commission. Gender, regional and professional balance should also be ensured.

**Registrar:**
- Administer the NPO law; ensure compliance with minimum standards of internal governance, transparency and accountability;
- Operate an efficient public registry of organisations in the Islamabad Capital Territory and the areas to which this law may be extended, including registration information and all organisational reports filed under the law;
- Exchange information with the federal and provincial governments as well as the provincial Commissions for public benefit organisations, and maintain a consolidated national public registry of public benefit organisations operating in Pakistan, with a summary of the national registry published on the Internet;
- Develop a system of independent verification of public benefit organisations and accredit an appropriate agency or agencies for the conduct of independent verification, including certification for tax benefit eligibility;
- Promote self-regulation through adoption of a code of conduct;
- Ensure compliance with registration and
reporting requirements.

**Support**
- Generally promote socio-economic development by the citizen sector;
- Facilitate access to fiscal support regimes including providing information to organisations about tax incentives and exemptions;
- Publish and disseminate information that assists in building capacity of the nonprofit citizen sector;
- Help conduct an ongoing dialogue between citizen organisations and government;
- Help improve internal governance and management of organisations through provision of management, legal and audit advice. The Commission may engage other agencies and organisations to provide capacity building services to organisations;
- Coordinate between the federal government and the citizen sector for social development planning and policy;
- Publicise the success stories of the citizen sector through the media and publications of the Commission and facilitate other bodies or organisations in doing the same;
- Identify areas of useful research; co-opt and facilitate other bodies or organisations to conduct this research;
- Publish an annual report on the "State of Citizen Sector Activities for Public Benefit". This report, to be presented to the National Assembly by the Federal Minister for Social Welfare, shall be published every year except the first year of operation of the Commission and shall include an analysis of the national registry;
- Take any other step necessary to create an enabling environment for the citizen sector.

**Administration**
- Employ such staff on terms and conditions to be determined by it as is necessary for the carrying out of the functions of the Commission;
- Raise funds in the form of grants, from government as well as from nongovernmental sources, for the activities of the Commission in general as well as for commissioning particular projects;

**General**
- Approve the annual work programme and budget of the Commission;
- Determine the functions to be delegated to provincial and district governments and prescribe procedures for performing these functions;
- Advise on any other matter referred to it by the provincial Commissions;
- Make rules and regulations in respect of all or any of the aforesaid matters.

**Provincial Commissions for Nonprofit Public Benefit Organisations**

Located in each provincial capital, these bodies will have the same financial and administrative powers, structure and functions as the National Commission while not being subordinate to the Commission in any manner. There will however be a few differences with the National Commission:

- For appointments, the Chief Minister and the Provincial Minister for Social Welfare will perform the functions that the Prime Minister and the Federal Minister for Social Welfare perform at the national level;
- Provincial Commissions will not authorise any agency for certification purposes;
- Provincial Commissions will not monitor, or collect information on, foreign funding of any organisation or any foreign organisation which otherwise comes under the purview of this law unless specifically asked to do so by the National Commission. However, the provincial laws will make it obligatory for NPOs registered the provincial laws to report *ex post-facto* to the National Commission all foreign funds received in
excess of Rs. 100,000/- in one fiscal year;

- The four ex-officio members of the provincial Commission will be: Additional Chief Secretary (Development), Secretary Social Welfare Department, Secretary Finance, and Secretary Excise and Taxation Department.

### Recommendation 3

Fiscal laws and rules, chiefly the Income Tax Law, be amended to widen the menu of incentives available, to simplify procedures through which these facilities are accessed, and to increase the transparency of these procedures. These amendments should include the possibility of employing an independent agency to evaluate and certify citizen organisations to enable them to qualify for benefits under the fiscal support regime.

### Rationale

The citizen sector in Pakistan is performing an important role to further the Principles of Policy enshrined in the Constitution of Pakistan relating to reduction of economic inequalities, development of human resources, and provision of socio-economic opportunities to the deprived. This role is recognised not only in Pakistan but also internationally, and is worthy of appreciation and support from all State institutions, in particular, institutions charged with the responsibility for fiscal management and governance.

By the close of the last century it had been recognised that government alone could not meet the challenges of, and avail of all the opportunities for, rapid socio-economic development. To achieve this objective, the government, besides its own targeted investments in socio-economic infrastructure, has to create an enabling environment for the two other sectors, namely the private sector and the nonprofit citizen sector. For the private sector, government fosters a conducive environment for investment, production and distribution. Considerable progress has been made in this behalf through the ongoing progress of deregulation, privatisation and fiscal, financial and capital market reforms. As for citizen sector nonprofit organisations, no significant effort has been made so far. The EEI consultations and the recommendations based thereon chart the road map for such a reform.

It is now internationally recognised that for rapid socio-economic development, the government must build a coalition with the nonprofit citizen sector. In fact, in Pakistan, like other developing countries, the tradition of village and community organisations managing local affairs is much older than in the West. However it remained suspended during colonial rule. Not much was done after independence to harness this tremendous resource for human development. The stark reality of one of the lowest human development indices has put in sharp focus the missed opportunities and possibilities for rapid socio-economic development at grass roots level in partnership with the citizen sector.

The new development governance paradigm emerging across the world has been owned and adopted by the government of Pakistan in its major initiative on Poverty Reduction and Social Development. It has been enshrined as a centrepiece of its Interim Poverty Reduction Strategy Paper (I PRSP). The strategic plan for operation and maintenance of community level economic and social assets is anchored on participative and collaborative roles for the citizen sector.

While the development paradigm has changed, the fiscal and regulatory environment has not. The fiscal review carried out by the EEI team seeks to fill this strategic gap, which is a pre-requisite for the success of this partnership.

The EEI team has discussed the elements of the emerging fiscal support regime with
various stakeholders. While the need for making the laws more supportive has been recognised, some of the stakeholders thought that the country's resources being limited and national savings being very low, the imperative of making effective use of resources by all the players, including citizen organisations, must be fully secured. At the same time, institutional arrangements for securing these objectives should be fair and document-based.

The EEI team, therefore, has developed certain guiding principles that form the basis of the fiscal support regime designed by it in consultation with various stakeholders, in particular, the Ministry of Finance and the Central Board of Revenue. These principles are:

- It will have to be recognised that for rapid and sustained transformation in the quality of life, resource mobilisation efforts have to be made at federal, provincial, local and community levels. Collection of funds by the citizen sector through donations, grants, contributions, subscriptions, membership fees and service charges should therefore be viewed as “Resource Mobilisation for Development.”
- The citizen sector contributions are an addition to social assets financed by government through taxes and other sources. They should, therefore, be treated at par with government in fiscal treatment of receipts and expenditures.

**Proposed Reforms**

The proposed reforms relate to the Income Tax Ordinance 2001, provincial property and excise tax regimes, registration fees, utility tariffs, and the required accountability and disclosure requirements. These are:

- **Reforms in the Income Tax Ordinance and its rules**
- **The scope of the definition of “Nonprofit Organisations” be broadened.** The proposed definition of “Nonprofit Organisations” excludes a majority of citizen organisations engaged in community mobilisation, welfare and development. It is proposed that the definition of Nonprofit Organisations be broadened to include the term “development.” This would include Citizen Community Boards and other citizen organisations engaged in community mobilisation, welfare and development in furtherance of the national objectives envisaged in “Interim Poverty Reduction Strategy Paper”.

It is proposed that the definition of Nonprofit Organisations be broadened to include the term “development.” This would include Citizen Community Boards and other citizen organisations engaged in community mobilisation, welfare and development in furtherance of the national objectives envisaged in “Interim Poverty Reduction Strategy Paper” issued by the federal government.

- **The form of donations recognised for tax credit on contributions be expanded:** Presently, the form of donations recognised for tax credit excludes donations in the form of goods and services (e.g., payroll giving).

It is recommended that donations in the form of goods and services should be included within the purview of the law besides donations in the form of cash and property.

- **The term “Nonprofit Organisation (NPO)” be consistently used in the law:** While the new term “Nonprofit Organisations (NPO)” has been defined in sub-section (36) of Section 2, which will cover all citizen organisations, the term has not been consistently used elsewhere. This is likely to create difficulties in the application of the law.

It is recommended that the term NPO be used consistently throughout the Income Tax law for clarity and uniformity.

- **The menu of types of incomes which are tax-exempt be broadened:** Presently, income tax exemption is limited to two items of income i.e., income from investment in government securities and from house property. All other forms of resources mobilised for community welfare and development are taxed.
All resources mobilised by nonprofit organisations for community welfare and development should be spared from taxation by including all other types of income such as grants, donations, investment income, etc.

**Section 61 ceilings be enhanced:** The ceiling of 30 percent for individual giving to NPOs need to be enhanced, especially for individuals who are in the lower tax bracket. With such restrictive ceilings, the tax benefits for a great number of individuals in the lower tax brackets are close to negligible. On the other hand, this is the bracket of citizens that society should target for increased social investment. Relaxation of these ceilings would be an important way to attract new tax payers.

**Government Hospitals be given permanent donee status:** The permanent donee status of government hospitals needs to be restored. This major incentive to philanthropists was available in Income Tax Ordinance 1979 but has been explicity withdrawn in Income Tax Ordinance 2001. Many government hospitals and other social services outlets need financial support. More importantly, they need to be owned by the communities. Incentivising this process of ownership building through tax credits is very important and needs to be restored.

**The documents required for application be simplified:** It is mandatory that accounts audited by a Chartered Accountant be submitted with the application. However, audit by a Chartered Accountant is unaffordable for most citizen organisations.

It is therefore recommended that audit requirements be modified according to size of the citizen organisations to align it with the requirement of auditors as proposed in recommendations for the NPO Act.

**Performance assessment of an NPO be made more professional and transparent:** Presently, local Income Tax officials report on performance by the NPO. This procedure is time consuming, vexatious and is often used as a lever for corruption and harassment. The judgment whether a NPO has not or will not be able to achieve its objective also lies with the local Income Tax Officials. The fact is that Income Tax officials do not have expertise for such an evaluation.

It is therefore recommended that for improved transparency and fairness certification by an independent specialised and professional agency be made the basis of evaluation for grant of status to receive tax-deductible donations and for exemptions of tax on defined sources of incomes.

**Identifying effective and credible organisations in a transparent manner will have many other benefits.** It will help raise resources from individual and corporate philanthropists. An Aga Khan Foundation study of indigenous philanthropy finds that Pakistanis gave Rs. 70.5 billion in charity in 1998. Of this sum, Rs 40 billion were given in cash and kind. These citizen funds compare favourably with Rs. 84 billion of social sector spending by government in 1998. Two-thirds of this money was however given directly to individuals for relief purposes. It can thus be concluded that this large sum is unfortunately not being used productively for prevention of poverty and capacity building measures.

Similarly, the representatives of corporate philanthropists and diaspora indicated during extensive consultations with EEI team that while they were keen to contribute towards social investment, no reliable system of identifying credible NPOs existed, which could be trusted with their resources. One major cause of this poor targeting of citizen philanthropic impulse is credibility and an information gap between nonprofit organisations and individual givers.

Certification of nonprofit organisations will help bridge that gap. It will provide comfort and confidence to social investors by
enhancing the credibility of nonprofit organisations. It will thus facilitate resource mobilisation from the private sector thus enhancing social investment and social services. Besides providing credible giving alternatives to individual Pakistanis, it will stimulate and facilitate philanthropic transfers from our diaspora communities and corporate sector.

In addition to facilitating access to fiscal incentives and mobilising resource for social investment, certification will have a number of other important benefits. Certification and its allied activities will build the capacity the nonprofit citizen sector and help improve governance standards within the sector. Equally important, certification will help government in identifying credible and effective partners in carrying out its programmes. Over the long run, grant of a range of government benefits at the federal, provincial and district level could be linked with certification.

**Appeal be provided for against the order of the Commissioner to refuse award of status as NPO:** Appeal is not provided for against the order of the Commissioner to refuse status as a nonprofit organisation eligible to receive tax deductible status. This needs to be rectified since the absence of this provision is against the norms of justice.

**The time required for renewals be increased:** The law provides for annual renewals. This is time consuming and inconvenient. It is recommended that the two main fiscal concessions -- tax-exempt donee status and exemption on certain kinds of incomes -- be granted for 3 years after initial approval for one year and evaluation of performance in that year.

**The limit on maximum unutilised balance be enhanced:** Maximum limit of Rs. 10,000 or 25%, which ever is lesser, in case of approved citizen organisations for maximum unutilised balance is very stringent, particularly for large citizen organisations.

It is recommended that the monetary limit of maximum unutilised balance be 25% of the resources with additional funds allowed to be invested in government securities, NIT units, or any other financial institutions.

**The condition of all-Pakistan operation for approval be removed:** The law limits the grant of comprehensive tax-exempt status to only those citizen organisations that operate all over Pakistan. This condition keeps out highly efficient and effective organisations operating at district and provincial levels which is unfair.

It is recommended that this condition be removed.

**Provincial property taxes**

**Public Benefit Nonprofit Organisations be exempted from provincial property taxes**

Public benefit nonprofit organisations (PBOs) established for community welfare or development are not included in the list of exempt institutions. The new development paradigm incorporated in the “Interim Poverty Reduction Strategy Paper I-PRSP” issued by the Government of Pakistan envisages partnership with NPOs for the implementation of the President's Poverty Reduction and Social Development Program. The federal government is including them in the definition of eligible institutions.

It is therefore recommended that PBOs established for community mobilisation, social welfare or development be included in the list of institutions eligible for exemption from property tax.

**Provincial fees for registration under the Societies Act 1860**

**Registration fees under the Societies Act 1860 be reduced**

Fees for registration under the Societies Registration Act and the Trust Act are exorbitant in Sind and NWFP. The principle
should be conceded that resources raised for community welfare and development should not be taxed by the government.

Utility Charges: Certified Public Benefit NPOs be charged “special domestic tariff” for utilities: Presently public benefit nonprofit organisations approved under section 47 of the Income Tax Ordinance are charged special domestic tariffs by WAPDA. With the simplified approval procedure under Section 47, this concession will become easily accessible to all the NPOs. Gas distribution companies charge exorbitant commercial rates from nonprofit organisations for which there is no economic justification. This tariff should also be brought in line with WAPDA’s policies.

Proposed Reforms in Arrangements for Accountability and Disclosure: Article 17 of the Constitution guarantees freedom of association. Freedom is sustained by a system of rights and obligations. While the citizen sector has the freedom of association and choice of public service and operation within the framework of the Constitution and the laws, it must have a level of transparency, disclosure and public access to financial and operational information and an open-house culture. Over-reliance on internal mechanism of accountability and laxity in public scrutiny has occasionally caused colossal losses to the public and brought into sharp focus the deficiencies in the mechanisms of public scrutiny and timely access to information. It has also eroded the credibility of these organisations.

The imperative of putting in place or streamlining the oversight mechanism cannot be brushed aside merely on grounds of inadequate resources. There is a strong public assertion that the State has a responsibility for ensuring transparent, efficient and effective use of resources provided by the people or by others in the name of its people.

A new system of document based arms length monitoring be devised: Now that a legal review is underway, a document-based, transparent, fair and user-friendly regime of disclosure and accountability should be a concomitant part of the fiscal support system. While correction of faltering functionaries is an important aspect, counselling and training for improvement in the standards of internal governance of citizen organisations and an associated system of checks and balance should be an overriding consideration.

Accountability and disclosure be ensured but in a graduated manner: An important aspect that must determine the level of accountability and disclosure, is that these must be related to the size of operations of the PBO: a simple, easily intelligible system for grass-root citizen organisations operating at community level and a sophisticated system of accountability and disclosure for citizen organisations organised on the pattern of a Joint Stock Companies limited by guarantee, with various shades of sophistication for intermediary states of organisation.

Recommendation 4

A comprehensive national policy on the nonprofit public benefit citizen sector be enunciated to integrate, deepen, and strengthen citizen sector regulatory reforms. This will be best done through a dialogue process leading to a National Compact for Citizen Participation for Public Benefit.

Rationale

The heart of the Enabling Environment Initiative brief is to produce recommendations for a “consultation-based regulatory mechanism” for citizen organisations in Pakistan. In the seven-month period before its report was due, the Enabling Environment Initiative has undertaken extensive consultations with a wide range of stakeholders. In its report the Enabling Environment Initiative has complied with its brief and proposed a new autonomous statutory regulatory body law as well as amendments to existing laws. Taken
together, its recommendations constitute a significant overhaul of the formal rules and administrative mechanisms for the regulation of the citizen sector.

It must be highlighted, however, that there has not been sufficient time to arrive at a full consensus among key stakeholders on the Initiative's proposals. The Enabling Environment Initiative has found significant levels of mistrust and misunderstanding between government and citizen sector. Important citizen organisation stakeholders believe that a proper reform of the laws and regulations affecting third sector organisations should be undertaken only after the government has clarified its policy toward the sector. These stakeholders question whether government and citizen organisations mean the same thing when they refer to citizen organisations and the role of citizen organisations in addressing important societal challenges.

A review of other countries has uncovered surprising similarities to Pakistan in this regard, as well as identifying a number of countries in which citizen organisations and government have entered into a formal policy dialogue to reach a “compact” about their mutual roles and responsibilities in the creation of an enabling environment for citizen organisations.

This dialogue would underpin and buttress a new regulatory framework and is important for its success. Specifically the dialogue process would, among other possibilities:

- Build shared vision and principles for relations between the citizen sector and government;
- Build consensus about the value and roles of the citizen sector;
- Having arrived at sufficient consensus on vision, principles, and roles, develop and implement a strategy to raise awareness about the value and performance of the citizen sector with multiple audiences (e.g. government, business, beneficiaries, media, general public, etc.);
- Review government policy statements that affect the third sector and catalogue their implications for government-citizen sector relationships;
- Design and support the implementation of programmes to build capacity within government to work effectively with citizen organisations, including government capacity to play its part in the new regulatory set up;
- Identify policies and procedures to enhance partnerships between government and citizen organisations in the delivery of development services;
- Seek to enable all stakeholders to participate fully in debate, modification and eventually execution of a new regulatory framework;
- Define the critical details for implementation of the regulatory framework proposed in the Enabling Environment Initiative report. Such details would include, for example, the formats for citizen organisation reporting, tax treatment of different types of earned income, the scope and form of the regulator's investigatory and enforcement powers; and grievance resolution procedures;
- Agree in a mechanism to certify public benefit status;
- Promote citizen organisation sustainability through indigenous philanthropy and volunteering;
- Identify policies and procedures to minimise duplication between the regulatory framework (applicable to most citizen organisations) and the licensing requirements applicable to sub-sets of citizen organisations (for example, schools, clinics, hospitals, day care centres, and citizen community boards);
- Identify policies and procedures to reconcile federal, provincial and district government regulatory authority and responsibilities;

The Enabling Environment Initiative recommends that the confidence building
dialogue process be stewarded by the new autonomous statutory regulatory body to be established. Efforts here would continue the process of consultation on the main features of the new framework, and set about articulating agreement among stakeholders with respect to the regulations that would frame the day-to-day regulatory operations.

**Recommendation 5**

There is a clutch of existing laws that touch on aspects of public benefit organisation regulation that are clustered together here. The recommendations here more often point to and define an unfinished agenda rather than offering conclusive solutions.

*A provision be incorporated in the Nonprofit Public Benefit Organisations (Governance and Support) Act 2003 to exclude citizen organisations registered under the proposed law from the purview of the Charitable Funds (Regulation of Collection) Act 1953.*

Charitable Funds (Regulation of Collection) Act 1953, widely ignored, is comatose for all practical purposes. For example, most offices that are supposed to administer the law are unaware that it exists on the statutes books. Since this *de facto* situation is morally unjustifiable, it is recommended that the fundraising activities of citizen organisations registered under any of the defined nonprofit laws be excluded from its purview, for two reasons. One, the fundraising activities of registered PBOs need to be protected from any mischief. This is needed because this moribund has been dusted off to victimise genuine and credible organisations in the near past. Two, duplication will be avoided since their respective regulators will monitor these registered public benefit organisations.

*The two-step process of incorporation and licensing of nonprofit companies under Companies Ordinance 1984 may be amalgamated into one step.*

The Companies Ordinance 1984 is the most elaborate and strict of all the nonprofit laws. Organisations registered under this Ordinance, however, accept the tough regulatory regime because of the enhanced credibility of the rigorous higher standards. It therefore provides a positively enabling choice, a much-voiced demand of the participants of the consultations. Most stakeholders also express satisfaction with the administration of the law.

It is therefore recommended that this law may not be substantially tampered with bar one minor amendment. The Securities and Exchange Commission of Pakistan prescribes a two-step process of incorporation and licensing. This is redundant and could be combined into one step procedure to ease the process.

*The federal government should look into the possibility of consolidating the voluminous case law on public trusts, trust principles as given in the Trust Act 1882 and scattered enactments exclusively dealing with public trusts -- Charitable and Religious Trusts Act 1920, Charitable Endowments Act 1890, Section 92 of the Civil Procedure Code 1902, and the Religious Societies Act 1880 into one law on public trusts to increase access and understanding of the law and to facilitate the grant of benefits.*

Surprisingly, “public trusts” have never been expressly defined in law. Actually, the Trust Act, 1882 formally excludes all non-private trusts from its ambit. The courts, facing a legal vacuum, have however developed the concept of public charitable and religious trusts over the last hundred and twenty years.

Since there is no dedicated law or even a definition of a “public trust”, these trusts are not regulated in any formal sense of the word. This naturally means that there is no separate, not to speak of comprehensive, register of public trusts. This lack of formal identity makes it impossible for charitable public trusts to get fiscal benefits like decreased stamp and registration duties.
Elements for public trusts have been cobbled together by creative lawyering from aspects of century-old laws that otherwise would have glided into well-deserved obscurity long ago. For example, the Charitable Endowments Act 1890, sets out a system whereby any donor, “the settlor”, can voluntarily entrust the running of a trust to the government. The law creates an office of Treasurer of Charitable Endowments to oversee management of such endowments, which may have a public benefit purpose.

The Religious Societies Act 1880, provides internal administration guidelines -- appointment of new trustees, dissolution of trusts and subsequent management of properties -- for management of property held in trust by religious societies. In facilitating the process of appointment of new trustees by doing away with the requirement of proper conveyance deed of trust property in the name of new trustees (when they replace old ones), it establishes an important enabling legal principle for such trusts.

Other laws deal with various aspects of trust governance and transparency. The Charitable and Religious Trusts Act 1920 allows a trustee to seek guidance from the Court if the trust is public and religious or charitable. An interested person can also require the trustee through the Court of the District Judge to provide information regarding the financial and management affairs of a “public charitable trust”.

Section 92 of the Civil Procedure Code provides an accountability mechanism. Two interested persons; by permission of the Advocate General or the Collector, or the Advocate General or the Collector of his own motion as representative of public at large, can invoke a district Court's civil jurisdiction if there is an allegation of breach of trust by trustees or if guidance of the Court is required. The Court can, inter alia, remove or appoint new trustees, order audit of accounts, hold inquiries or pass any appropriate orders. The Court may also dispose of property of the trust or settle a scheme for management of the trust.

As this patchwork of enabling provisions indicates, there is a demand for a public trust instrument in Pakistan. This local demand is validated in most countries in the world, where there is wide confirmation of the utility of a distinct form of public benefit organisation in which the organisation and its “trustees” operate in favour of a public benefit running to third parties. Accordingly, the Enabling Environment Initiative recommends that the existing laws of trusts be reviewed, rationalised and reformed with a view to creating a coherent and enabling law for public benefit trusts.

Cooperative Societies Act 1925 may be reviewed at length at a later stage

Cooperatives have not been studied in depth because of a host of contentious issues associated with the subject. Moreover, cooperatives do not fall within the rubric of nonprofit laws because unlike the Voluntary Social Welfare Agencies Ordinance 1961 and the Societies Registration Act 1860, cooperatives allow the distribution of profit to its members. They are in effect business organisations.

However, the importance of this extremely important self-help instrument cannot be overemphasised. Across the world there are many outstanding examples of successful cooperatives. The potential of cooperatives to function as public benefit organisations, therefore, needs to be explored. It is recommended that the government formally study this subject with a view to increasing the role of the beneficiaries themselves in the regulation of the system.

Wakf laws -- the Mussalman Wakf Validating Acts 1913 and 1930, the Mussalman Wakf Act 1923, and the Provincial (Punjab, Sindh, NWFP, Balochistan) Wakf Properties Ordinance 1979 -- may be examined at length with a view to consolidate the laws and to
improve the governance of the Wakf properties.

The EEI team has been unable to thoroughly research and consult regarding the administration of Wakf laws -- the Mussalman Wakf Validating Acts 1913 and 1930, the Mussalman Wakf Act 1923, and the provincial (Punjab, Sind, NWFP, Balochistan) Wakf/Properties Ordinance 1979 -- because of constraints of time.

A cursory review, however, suggest that a detailed follow through is warranted. *Wakf* laws provide stringent measures to ensure accountability of public *wakfs*. But the ground realities are different. This important resource for human development has been squandered. The resources are huge. The income from the shrine of Hazrat Bari Imam located adjacent to Islamabad during the year 2000-2001 alone was Rs 121 million.\(^1\)

The solution either lies in strengthening governmental regulation of the *Wakfs* and in turn strict accountability of government offices and officers or it may lie in enhanced public involvement in supervision and management of *wakfs*.

However, it is seen that *wakfs* differ markedly from other public charitable or philanthropic institutions. One, the State is the biggest stakeholder in *Wakfs* because of their legal character. Two, the public has a peculiar emotional relationship with religious *wakfs* and matters have to be handled in an extremely sensitive manner. Three, the regulation of rites, rituals and other routine activities have substantial law and order overtones. No agency other than the government can play an effective role in regulating such activities. Four, given the socio-religious nature of the religious *wakfs*, the chances of 'misappropriation' of the nearly-informal-but-huge proceeds are quite high as compared to other charitable organisations. This obliges the government to monitor on its own, notwithstanding the degree of its effectiveness.

Thus it can be made out that the only practical mechanism of improving management of these religious *wakfs* is increased transparency and accountability of government departments and officials.

Moreover, we may differentiate the public *wakfs* into religious and charitable ones for legal, practical and administrative purposes. A separate regulatory regime, parallel to that of Public Charitable Trusts, may be built to regulate the "secular" charitable *wakfs*.

### Endnotes

1. For voluminous testimony to this troubling state of affairs, see *Creating an Enabling Legal Framework for Nonprofit Organisations in Pakistan: Stakeholder Perspectives*, PCP, September 2002.
2. Unless specifically mentioned, references to nonprofit laws, or the two major laws, mean the Voluntary Social Welfare Agencies Ordinance 1961 and the Societies Registration Act 1860.
3. There have been a number of reviews of the definition of public benefit in different countries in recent years, the most recent being from Great Britain: "Private Action, Public Benefit: A Review of Charities and the Wider Not For Profit Sector", Strategy Unit, Cabinet Office, Government of the United Kingdom, September 2002.
4. This definition relies on the recommendation of the International Center For Not-For-Profit Law.
5. Where it provides tax benefits, the Government has now committed itself, in response to dialogue with the EEI, to utilising an independent system for organisational certification, as described later in this chapter and in chapter seven.
6. Pakistan Engineering Council Act, 1975, Legal Practitioners and Bar Councils Act, 1975, Medical and Dental Council Ordinance, 1962, for example.
7. This section is based on Income Tax Ordinance 2001 (that had been promulgated but was set to be implemented in July 2000) and Income Tax Rules 1982. These were the "draft laws and rules" put out by CBR for policy criticism and analysis.
8. This section uses the term Nonprofit Organisation because that is the term used in the Income Tax Ordinance 2001.
10. Sub-Section (1) of Section 61 of the (draft) law [Section 47 of Income Tax Ordinance 1979].
11. Clause (58) of the (draft) Income Tax Ordinance 2001, for example.
13. Sub-clause (iv) of clause (b) of Sub-rule (1) of Rule 41 and Sub-clause (iv) of clause (b) of Sub-rule (1) of Rule 41A of Income Tax Rule 1982.
14. Sub-Clause(a)(iv) of sub-rule(4) of rule 41 and Sub-clause(vi) of clause (b) of sub-rule(1) of Rule 41A of Income Tax Rules 1982.
15. Sub-rule (2) and (5) of Rule 41 and Sub-clause (d) of Sub-rule 4 of Rule 41A.
16. Clause (iii) of sub-rule(6) of Rule 41.
17. Sub-clause (ii) and (iii) of clause (a) of sub-rule (2) of Rule 41A.
19. Shrine Wing, Auqaf Department, Islamabad Capital City Administration's office (2002).
11. Towards a Social Compact

Much of this report is necessarily technical and detailed in nature, exploring the mechanics of an enabling regulatory and fiscal framework. Again and again, however, the Enabling Environment Initiative consultations and international survey highlighted one simple truth: the implementation of policies and laws depends upon the understanding and capabilities of the major role-players. Without a significant and sustained effort to build mutual understanding and confidence between government and the citizen sector, no policy or regulatory regime is likely to meet its objectives. It also recognises that both government and citizen sectors have significant capacity gaps that will need to be addressed.

As was noted in chapter eight's survey of the international experience, it is helpful to recognise that the road to a more enabling environment for the citizen sector is likely to be uneven. As Enabling Environment Initiative international advisor Mr. Richard Fries noted, there is a “need for an ongoing, permissive evolution of the legal and institutional environment.”

Recognising this, the EEI has called for a partnership building process similar to the Canadian Voluntary Sector Initiative, to build a new social compact for sustainable development. The partners in the dialogue and the resulting compact should include business, media and academia, as well as government and the citizen sector. Specifically the dialogue process will, among other possibilities:

- Build shared vision, and principles for relations between the citizen sector and the government;
- Build consensus about the value and role of the citizen sector;
- Having arrived at sufficient consensus on

vision, principles, and roles, develop and implement a strategy to raise awareness about the value and performance of the citizen sector with multiple audiences (e.g. government, business, beneficiaries, media, general public, etc.);

- Review significant government policy statements and catalogue their implications for government-citizen sector relationships;
- Identify policies and procedures to enhance partnerships between government and citizen organisations in the delivery of development services;
- Review and elaborate on the new regulatory framework proposed in the EEI report. The review would seek agreement about the defining feature of the new framework and set about articulating the critical details for implementation;
- Agree on a mechanism to certify public benefit status;
- Promote citizen organisation sustainability through indigenous philanthropy and volunteering;
- Identify policies and procedures to minimise duplication between the regulatory framework, applicable to most citizen organisations, and the licensing requirements applicable to sub-sets of citizen organisations for example, schools, clinics, hospitals, day care centres, Madrasahs, and citizen community boards;
- Identify policies and procedures to reconcile federal, provincial and local government regulatory authority and responsibilities;
- Design and support the implementation of programmes to build capacity within government to work effectively with citizen organisations.

Compact processes or other mechanisms that
allow periodic review and renewal in the relationship between State and civil society can improve registration and reporting regimes. Similarly, through interaction on the regulatory framework, the leadership of the citizen sector gains the experience from which to derive better complementary self-regulatory action.

If the most promising way forward for Pakistan is a formal policy dialogue toward a national social compact on the enabling environment for citizen action for public benefit, it is also important to highlight the complementary activities that can help bring about this process. The following elements are considered to be important drivers for the realisation of the recommendations of this report. The EEI commends this “agenda for action” to Pakistan's social entrepreneurs and the community of donor agencies.

**Education and advocacy:** A change of the magnitude proposed by the EEI, however self-evidently in the interest of the nation, will not come about because of the mere publication of this report. There is a need for vigorous and creative education and advocacy campaigns to communicate the message, especially to the government and leadership in business and civil society. A range of appropriate short publications will be required to support such a campaign. Hundreds of meetings, seminars, workshops and events must be held. As it is not expected that all the elements of the EEI recommendations will be realised at one time, publications and educational activities could also support the implementation of pieces of legislation as they emerge.

**Model new institutions for regulation and assurance:** Two new institutions lie at the heart of the Enabling Environment Initiative's vision for the regulatory framework, an autonomous statutory Commission and an independent certification regime. These two should be kept separate. The vision for the certification is that it should be open to multiple rating agencies, each of which might be licensed jointly by the new regulatory agency and the Central Board of Revenue. There is an important need to study, debate, model and design these two new institutions. Existing building blocks already forming in Pakistan such as the Pakistan NGO Forum's code of conduct -- should be highlighted and enhanced. And teams of enabling environment stakeholders should examine examples from other countries such as the Philippine Council for NGO Certification and the Charity Commission of England and Wales. Through publications and advocacy, it should be possible to put in place some of the building blocks for effective self-regulation to complement the formal regulatory mechanisms.

**Stimulate corporate philanthropy:** The case for the creation of a more enabling environment for citizen action is strengthened immeasurably by active support from the corporate sector. The corporate survey that preceded the EEI indicated that business leaders would provide much higher levels of funding for citizen organisations if they were convinced that their funds would be put to effective use. The proposed certification regime and a credible independent regulatory authority for the third sector are designed, in part, to provide this assurance to corporate philanthropists. There is a range of additional direct ways that corporate philanthropy may be facilitated. Enabling Environment Initiative allies should survey the growing international experience in corporate social responsibility with a view to adapting that experience to Pakistan. One new model that seems particularly appropriate to Pakistan is the organisation of “social investment bazaars” where pre-vetted citizen organisations and social investors can meet and strike up partnerships. Because these bazaars are carefully prepared, they realise a much higher “deal rate” than is customary through normal fundraising.

**Capacity building:** It is not too soon to begin training and other programmes that form the skills, knowledge and attitudes that will be
required to “implement” an enabling environment. This will require new programmes, but also and perhaps more urgently revision of the curricula of existing programmes, particularly those providing training for the civil service. A large “up front” investment in capacity development will realise substantial downstream dividends. All too often these necessary up front investments do not survive the hard choices involved in scarce resource allocations, partly because they do not have a strong constituency behind them. The education and advocacy campaigns associated with the creation of an enabling environment for citizen initiative for public benefit must, therefore, actively promote the need for capacity building and seek to form constituencies of support for it.
Appendices
MEMORANDUM OF UNDERSTANDING

GOVERNMENT OF PAKISTAN
MINISTRY OF WOMEN DEVELOPMENT
SOCIAL WELFARE & SPECIAL EDUCATION

and

PAKISTAN CENTRE FOR PHILANTHROPY

ENABLING ENVIRONMENT INITIATIVE (EEI)

Preamble

1. This Memorandum of Understanding (the MoU) is entered into between the Government of Pakistan, Ministry of Women Development, Social Welfare and Special Education (the Government) and the Pakistan Centre for Philanthropy (the PCP) to facilitate policy makers and stakeholders to come up with consultation-based regulatory mechanism which helps create an enabling environment for the growth and development of Civil Society Organisations, and provides for a regulatory role of the State without compromising autonomy and independence of Civil Society Organisations.

2. A high level Committee will oversee the execution and completion of the activities indicated in order to realise the objectives of the Government, PCP partnership, which shall be referred to as the Enabling Environment Initiative (EEI). This Committee will consist of the Minister of Women Development, Social Welfare and Special Education, the Chairperson of the Steering Committee on Indigenous Philanthropy/PCP, the Chairman, National Council of Social Welfare, the Executive Director of Pakistan Centre for Philanthropy and the Chief Executive Officer of Aga Khan Foundation (Pakistan) or his nominee.

3. The PCP Board includes eminent representatives from government, civil society, business, academia, and international development agencies.

4. The Pakistan Centre for Philanthropy is designated as the lead manager in executing this MoU and may invite the Chairman, National Council of Social Welfare and other knowledgeable entities within and outside Pakistan to assist in this exercise with the prior approval of the Government.

5. Parameters for this MoU are spelled out below, under the headings Background and Rationale, Objectives, Terms of Reference, and Implementation.
Background and Rationale

1. The reform of regulations governing Citizen Sector Organisations (CSOs) has been on the agenda of almost all the previous governments in the past decade. However, no positive progress could be made due to the inhibitory factors built in the regulatory system.

2. The present regulatory framework for Citizen Sector Organisations (CSOs), is not conducive to their growth and development.

3. This Government is interested in developing an enabling regulatory and fiscal framework and in building confidence and understanding with Citizen Sector Organisations (CSOs) working for development and poverty alleviation.

4. Both the process (stakeholder consultation) and the outcome (enabling regulatory and fiscal framework) will promote good governance in Pakistan and may help in the implementation of the Devolution Plan, which aims to enhance the participation of civil society.

5. In order to encourage the private sector including businesses and individuals to complement Government efforts by making grants to support development and poverty alleviation, the current fiscal framework needs to be made more enabling.

6. A consultation-based reform process, and an outcome resulting in a new regulatory and fiscal framework, will reflect Pakistan's commitment to provide conducive environment to the growth and development of Citizen Sector Organisations (CSOs).

7. To promote transparency and accountability in the operations of Citizen Sector Organizations (CSOs), the Government has already encouraged NGOs to adopt a code of conduct. In line with “good governance”, a reformed regulatory framework would recognise and strengthen the interrelationships between self-regulation and state regulation.

Objectives

1. The overall objective is to facilitate policy makers and stakeholders to evolve consultation-based regulatory mechanism that helps create an enabling environment for the growth and development of civil society organizations and provides for a regulatory role of the State and as a facilitator without compromising autonomy and independence of civil society organizations.

2. To produce an enabling regulatory and fiscal framework for Citizen Sector Organizations (CSOs) and philanthropy that is supported broadly across society.
3. To build confidence and understanding between government and Citizen Sector Organizations (CSOs) thereby establishing a new foundation for co-operation for sustainable national development and poverty alleviation.

4. To enhance and evolve mechanisms for promoting transparency and accountability in the operations of Citizen Sector Organisations (CSOs) to underpin the formal regulatory system.

Terms of Reference

1. In order to advance this opportunity for policy and legislative reform, it is necessary to undertake a situation analysis, including a review of all relevant legislation, followed by a process of consultation with major stakeholders.

2. The main output of the study process will be a report by July 2002 that will feature recommendations for Government and civil society organisations for reforms to the regulatory and fiscal framework. The body of the report will include:

   a) A description and analysis of the dimensions (numbers, size, scope of activities, sources of funding, etc.) of Not for profit Citizen Sector Organizations (CSOs) in Pakistan today, as well as the nature and extent of their relationships with government (including extent of compliance with existing registration and reporting requirements), and their potential to contribute to national development;

   b) A synopsis and analysis of the various laws and regulations, including fiscal, affecting Citizen Sector Organisations (CSOs);

   c) A review of all relevant existing proposals and studies pertaining to formal regulatory system (see annex 1 for list of registration laws) as well as wider self-regulatory and confidence or capacity building mechanisms (see annex 2 for references to specific bodies of work);

   d) A review of international models and “best practices” of regulatory framework with special focus on developing countries in Asia;

   e) Recommendations in the form of draft laws for an improved regulatory and fiscal framework;

3. The report will be produced through consultations locally and internationally with relevant stakeholders in civil society, business and government so as to encourage explicit support for its recommendations and to constitute the basis for a new social compact between Government and civil society organisations.

Implementation

1. Due to the success of last year's Conference on Indigenous Philanthropy, in promoting the establishment of the PCP, there is now a credible partner outside government for this effort in the Pakistan Centre for Philanthropy. The PCP would undertake the proposed study and consultative process with additional technical and financial back up from other...
institutions, including the Aga Khan Development Network (AKDN).

2. Amongst others, the Centre's mandate specifically includes the objectives to:
   
a- Work with government to promote an enabling regulatory and fiscal framework for philanthropy and civil society organisations.

   b- Build government capacity to facilitate the contributions of civil society organisations to national development.

3. The PCP will also endeavour to identify additional funding from the private sector and donor agencies for the study and consultative process should this be necessary. The project shall not require Government funding.

4. In undertaking its research and consultations, the PCP will draw on national and international resource persons and institutions including financial and legal experts.

5. The first step for implementation of this MoU will be to develop the Terms of Reference and a Workplan with benchmark dates to be agreed by the Parties.

6. This Memorandum of Understanding is signed at Islamabad on 13 September 2001. It shall enter into force on the date of signing.

Signed:

Dr. Shamsh Kassim-Lakha
Convenor Steering Committee on Indigenous Philanthropy

Mrs. Perveen Qadir Aga
Secretary
Ministry of Women Development
Social Welfare and Special Education

On behalf of Pakistan Centre for Philanthropy
Under Incorporation; to be ratified after incorporation

On behalf of Government of the Islamic Republic of Pakistan
Laws governing civil society organizations that either explicitly require registration or implicitly confer recognition:

1. The Societies Registration Act, 1860
2. The Religious Endowment Act, 1863
3. The Religious Endowment Act, 1863
4. The Trusts Act, 1882
5. The Charitable Endowments Act, 1890
6. The Mussalman Wakf Validating Act, 1913
7. The Charitable and Religious Trusts Act, 1920
8. The Mussalman Wakf Act, 1923
9. The Cooperative Societies Act, 1925
10. The Mussalman Wakf Validating Act, 1930
11. The Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961
12. The Income Tax Ordinance, 1979
13. The Companies Ordinance (Section 42), 1984
Nonprofit Public Benefit Organisations (Governance and Support) Act, 2003

An ACT

to provide for governance and support of nonprofit public benefit organisations

WHEREAS nonprofit public benefit organisations engaged in diverse fields, including social welfare, development, research, rights awareness and advocacy, are making significant contributions to the social and physical capital of the country, it is desirable that an enabling legislative framework be provided that promotes transparency and strengthens the capacity of such organisations while respecting the right of free association in the furtherance of lawful objects.

It is hereby enacted as follows:-

1. **Short title, extent, commencement and application.** (1) This Act may be called the Nonprofit Public Benefit Organisations (Governance and Support) Act, 2003.

   (2) It extends to the whole of Pakistan.

   (3) It shall come into force on such date as the Federal Government may by notification in the official Gazette specify.

   (4) It shall not apply to organisations created and regulated under the enactments as may be notified by the Federal Government in the official Gazette.

2. **Definitions.** In this Act, unless there is anything repugnant in the subject or context,-

   (a) “Board” means the Governing Board of the Commission constituted in terms of section 3(4) of this Act;

   (b) “charter” means a description in writing of the purposes, aims, objectives and the mode of functioning of an organisation;

   (c) “Commission” means the National Commission for Nonprofit Public Benefit Organisations set up under section 3 of this Act;

   (d) “District Court” means the Court of District Judge having jurisdiction over the area in which the main office of the organisation is situated;

   (e) “foreign funds” mean contributions received, in cash or in kind, directly or indirectly, from any individual, whether a national of Pakistan or otherwise, resident overseas, or from any person, entity or body that has its main operations or head office situated...
outside Pakistan even though such person, entity or body also has an office or representative inside Pakistan;

(f) “governing body” means the council, committee or any other body, by whatever name described, in which the control of the affairs of the organisation is vested;

(g) “government funds” mean any grant in cash or in kind or land allotted on concessional rates by any government in Pakistan and includes any funds saved or gained from tax concessions or reduced utility tariffs specific to the public benefit organisations;

(h) “nonprofit” means that assets, earnings or profits may not be used to provide special personal benefits, directly or indirectly, to any member of the governing body, member, founder, donor, officer or employee except for bona fide consideration, compensation or salary payable in conformity with the law and the charter of the organisation;

(i) “organisation” means, unless the context requires otherwise, a public benefit organisation as defined in clause (k);

(j) “prescribed” means prescribed by rules made under this Act;

(k) “public benefit organisation” includes a society, agency or any other association of persons, natural or juristic, not controlled by any government, by whatever name described that is nonprofit, voluntary and is set up for one or more public benefit purposes and includes local branches of foreign organisations but excludes such foreign organisations operating in Pakistan to whose charter Government of Pakistan is a signatory or where a protocol exists between the Government of Pakistan and an organisation;

(l) “public benefit purposes” include the promotion of general social welfare, including health and education provision, community mobilisation, prevention and relief of poverty, development, rights advocacy, including rights of women, children and the religious minorities, charity, religious instruction and support of activities of a religious nature, promotion of science, literature or the fine arts, the diffusion of useful knowledge, the diffusion of political and civic education, the foundation or maintenance of libraries or reading rooms open to the public or public museums and galleries of paintings and other works of art, collections of natural history, scientific inventions, instruments or designs, or any other purpose deemed to be of public benefit for the purposes for this Act by the Commission;

(m) “register” means the register maintained under sub-section (6) of section 6 and “registered” means registered under this Act.

3. **National Commission for Nonprofit Public Benefit Organisations.** (1) There is hereby established a Commission to be called the National Commission for Nonprofit Public Benefit Organisations.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its own name and, subject to and for the purposes of this Act, may enter into contracts, including hiring and firing of employees, and may acquire, purchase, take,
hold and enjoy movable and immovable property of every description and exercise all incidents of ownership with respect to such property.

(3) The Secretariat of the Commission shall be in Islamabad.

(4) The Commission shall have a Governing Board consisting of the following fifteen members:

(a) Five professionals of eminence and integrity, who are not serving government officials, and have achieved national prominence in the fields of Development, Academics, Business, Law, Media, Finance, Economics, Health, Science, Engineering, Education or Accountancy.

(b) Five citizens of national eminence and integrity, who are not serving government officials, with experience as development or social welfare workers or philanthropists or rights advocates and managers associated with public benefit organisations.

(c) Four ex-officio members:

i) Secretary, Planning Division or his nominee not below the rank of Additional Secretary.

ii) Secretary, Social Welfare Division or his nominee not below the rank of Additional Secretary.

iii) Secretary, Revenue Division or his nominee not below the rank of Additional Secretary.

iv) Secretary, Economic Affairs Division, or his nominee not below the rank of Additional Secretary.

(d) One full-time non-voting member, to be designated the Executive Member, shall be the Secretary of the Commission, and shall be selected and appointed by the Board through applications received from the general public on such terms and conditions as the Board may determine. The appointment of the Executive Member may be terminated on grounds of misconduct, financial irregularity or inefficiency upon a resolution in this behalf passed by at least two thirds of the members of the Board.

Provided that the Board may make such interim arrangements as may be deemed necessary for the appointment of a temporary Executive Member, for a period not exceeding six months, prior to the first appointment of the Executive Member and also during any period when the post of the Executive Member is vacant on account of termination or resignation.

(5) The first appointments to the Board shall be made by the Prime Minister within ninety days of the coming into force of this Act.

(6) For the first set of nominations against clauses 4(a) and (b) of this section, there shall be a Nominating Committee, appointed by the Federal Minister for Social Welfare, consisting of three citizens, not in government service, of national eminence and integrity and two
government officers that shall submit a panel of three names for each of the ten places on the Commission to the Federal Minister for Social Welfare. The Federal Minister for Social Welfare shall present the names so submitted to the Prime Minister who shall make appointments from amongst the names presented. Provided that the Federal Minister for Social Welfare may advise the Nominating Committee to review its recommendations twice.

For all subsequent nominations of members described in clauses (4) (a) and (b) of this section, there shall be a Nominating Committee consisting of three members of the Board, other than the _ex officio_ members or the Executive Member, and two other individuals, not in government service, of national eminence and integrity to be appointed by the Federal Minister for Social Welfare. The Nominating Committee shall submit a panel of three names for each of the ten appointments to be made to the Federal Minister for Social Welfare. The Federal Minister for Social Welfare shall present the names so submitted to the Prime Minister who shall make appointments from amongst the names presented. Provided that the Federal Minister for Social Welfare may advise the Nominating Committee to review its recommendations twice.

Provided that the Nominating Committee shall give prior public notice to enable expression of interest by eligible persons and prepare the panels after a transparent process of search from amongst the persons applying in response to the public notice as well as a list of eminent persons compiled by the Committee itself.

(7) Two of the initial appointees described in sub-clause (4) (a) above and three of the initial appointees described in sub-clause (4) (b) above shall be appointed for a term of four years and the rest of the initial appointees shall be appointed for a term of five years. All appointments to the Board shall be for a single non-renewable term.

(8) At least one of the members of the Board shall at all times be a practising lawyer and one a practising chartered accountant. No two members from the categories specified in sub-clause 4 (a) will be from the same profession at one time. At least four of the members described in sub-clauses 4 (a) and 4 (b) shall be women. The Nominating Committee shall strive for balance in its recommendations across the various provinces and regions of Pakistan.

(9) There shall be a Chairperson of the Board to be appointed by the Prime Minister from amongst the members of the Board described in clauses 4 (a) and (b). The first appointment of the Chairperson shall be made for a period of five years. All subsequent appointments shall be for a period of four years.

(10) No member of the Board, except the Executive Member, shall be paid any salary or other remuneration except for reimbursement of permissible expenses in accordance with the rules to be framed by the Board. The Executive Member shall be paid such remuneration as the Board may from time to time decide.

(11) (a) Any member of the Board may resign after giving notice of at least thirty days.

(b) A member of the Board may be removed or suspended by the Prime Minister on grounds of misconduct or corruption or physical or mental incapacity after due process. Provided that the Board may recommend the removal of any member, who fails to attend three consecutive meetings of the Board without providing reasonable explanation of his or her absence.
(c) In the event of a vacancy occurring in the Board on account of death, illness, resignation or removal, the vacancy shall be filled up in the manner provided for regular appointments within a period of sixty days.

4. Powers and Functions of the Commission. (1) The Commission shall have all such powers as may be necessary to perform its functions under this Act. (2) The functions of the Commission shall include, besides the functions mentioned elsewhere in the law, the following:

   i. Operate an efficient public registry of organisations registered in the Islamabad Capital Territory and the areas to which this Act might have been applied including initial registration information and all organisational reports filed under the Act.

   ii. Exchange information with the Federal and Provincial Governments as well as the Provincial Commissions for Nonprofit Public Benefit Organisations, and maintain a consolidated national public registry of public benefit organisations operating in Pakistan, with a summary of the national registry published on the Internet.

   iii. Facilitate dialogue to promote self-regulation activity by registered organisations complementary to the formal legal regulatory framework established through this Act, including the adoption and maintenance of norms of conduct and independent systems of performance verification.

   iv. Facilitate access to fiscal support regime including provision of information to organisations about tax incentives and exemptions.

   v. Foster the publication and dissemination of information that assists in capacity building of the nonprofit sector in association with organisations undertaking such activities.

   vi. Help conduct an ongoing dialogue between citizen organisations and government.

   vii. Help improve internal governance and management of organisations through provision of management, legal and audit advice. The Commission may engage other agencies and organisations to provide capacity building services to organisations.

   viii. Coordinate between the Federal Government and the citizen sector for fiscal support, social development planning and policy.

   ix. Promote broad societal awareness of the success stories of the citizen sector through the media and publications of the Commission and facilitate other bodies or organisations in doing the same.

   x. Identify areas of useful research; co-opt and facilitate other bodies or organisations to conduct this research.

   xi. Publish an annual report on the "State of Citizen Sector Activities for Public Benefit". This report, to be presented to the National Assembly by the Federal Minister for Social Welfare, shall be published every year except the first year of operation of the Commission and shall include an analysis of the national registry.
xii. Take any other step necessary to create an enabling environment for the nonprofit sector.

xiii. Employ such staff on terms and conditions to be determined by it as is necessary for the carrying out of the functions of the Commission.

xiv. Raise funds in the form of grants, from government as well as from non-governmental sources, for the activities of the Commission in general as well as for commissioning particular projects.

xv. Approve the annual work programme and budget of the Commission.

xvi. Delegate any of the functions of the Commission to an officer of the Federal, Provincial or District Governments and prescribe procedures for the performance of such functions.

xvii. Advise on any other matter referred to it by the Provincial Commissions.

xviii. Make rules and regulations in respect of all or any of the aforesaid matters.

(3) Subject to policies laid down by the Board and such directions as the Board may issue, the Executive Member shall have the power to execute the functions of the Commission specified in this section or elsewhere in this Act except the last four functions listed under clause (2) of this section or those specified to be executed pursuant to a decision of the majority of the members of the Board.

Provided that the functions specified in this Act as executable pursuant to a decision of the majority of the Board shall be executed in the manner prescribed.

5. Meetings of the Board. (1) A meeting of the Board shall be held at least thrice in a financial year on such day, at such time and place as the Chairperson may determine. At least six members may also call a meeting of the Board.

(2) For the purposes of a meeting of the Board, nine members shall constitute a quorum.

(3) The Chairperson or, in his absence a member, elected by the members present in the meeting for the purpose, shall preside over a meeting of the Board.

(4) All decisions of the Board shall be expressed in terms of the opinion of the majority of its members present and voting. In the event of an equality of votes, the Chairperson or, as the case may be, the member presiding at the meeting, shall have a casting vote. Provided that decisions of the Board may also be taken through circulation.

(5) All decisions of the Board shall be authenticated by the signature of the Executive Member or of any other member authorised by the Board in this behalf and all other orders or instruments issued or executed by or on behalf of Board shall be authenticated by the signature of an officer of the Board authorised by it.

6. Registration of organisations. (1) Every organisation in existence on, and every organisation that comes into existence after, the commencement date of this Act, and that declares its main office to be an office situated in the Islamabad Capital Territory or in such other
territories to which the Federal Government may have extended the application of this Act may apply for registration by completing and filing with the Commission the prescribed registration forms provided that at least three persons have signed its charter as the sponsoring members.

Subject to the provisions of sub-section (4) of section 1, registration shall be mandatory for every organisation that—

(a) has received government funds during any of the last three financial years or is utilizing government funds received in any prior financial year or has applied to receive government funds; or

(b) has received aggregate donations, contributions, and grants, including foreign funds, from non-members in excess of three hundred thousand rupees in any financial year during the last three years;

(c) the Commission may from time to time, by notification in the official Gazette, increase the figure specified in clause (b).

(2) All societies, agencies, associations or other organisations of whatever kind that had, prior to the commencement date, declared an office situated in the Islamabad Capital Territory and such other territories to which this Act may have been applied to be the main office of the organisation and that were registered, on the commencement date of this Act, under the Societies Registration Act, 1860 (XXI of 1860) or the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961) shall be deemed to have been registered under the Act and shall for all purposes be treated as an organisation registered under the Act.

Provided that any society formerly registered under the Societies Registration Act, 1860 (XXI of 1860) and deemed to have been registered under this Act may, within one year of coming into force of this Act, apply to change its registration back to the Societies Registration Act, 1860 (XXI of 1860) on the ground that it is not subject to the mandatory registration requirement contained in this section and does not pursue a public benefit purpose.

Provided further that any society, agency, association or other organisation deemed to have been registered under this Act may apply for deregistration at any time on the ground that it is not subject to the mandatory registration requirement contained in this section.

(3) The Commission shall, within sixty days from the receipt of the application for registration, issue a certificate of registration or intimate to the organisation applying for registration the deficiency in the application for registration, including any objection over the name of the organisation, submitted by it on account of which the organisation cannot be registered or provide written reasons for rejection of the application. Where intimation of deficiency in its application is provided to an organisation that has applied for registration the organisation may within thirty days redress the deficiency and re-submit its application without payment of fresh registration fee.

(4) If the Commission has not advised an organisation about the deficiency in its application or intimated the rejection of its application, along with reasons recorded in writing, within sixty days the application shall be deemed to have been accepted and the organisation shall be issued a certificate of registration.

(5) In the event of rejection of the application for registration an appeal may be preferred to
the District Court within sixty days of the receipt of the order of rejection and the Court shall decide the matter within ninety days.

(6) The Commission shall, in respect of certificates of registration issued under this Act, maintain a register containing such particulars as may be prescribed.

(7) The Commission may from time to time specify the registration fee payable.

Explanation: An organisation registered under this Act may operate anywhere in Pakistan without having to register itself again under any provincial law for the registration of organisations, subject to the condition that the organisation shall provide the relevant authority under a provincial law an attested copy of its registration certificate.

7. **Name of an organisation.** (1) No organisation shall be registered by a name that in the opinion of the Commission is designed to exploit or offend the religious susceptibilities of the people.

(2) An organisation shall not be registered by a name identical to that of an organisation already in existence, or so nearly resembling that name as to be deceptive, except where the organisation in existence is in the course of being dissolved and has signified its consent in such manner as the Commission may require.

(3) No organisation shall, except for reasons to be recorded in writing by the Commission, be registered after the commencement date by a name that contains any words suggesting –

(a) any connection with the Federal Government or a Provincial Government or District Government or any authority or corporation of such Government; or

(b) the patronage of, or any connection with, any foreign government or any international inter-governmental or multilateral organisation.

(4) An organisation which, through inadvertence or otherwise, is registered by a name in contravention of the provisions of sub-sections (1), (2) and (3)-

(a) may, with the approval of the Commission, change its name; or

(b) shall, if the Commission so directs, within thirty days of the receipt of such direction, change its name with the approval of the Commission:

Provided that the Commission shall, before issuing a direction for the change of name, afford the organisation an opportunity to make representation against the proposed direction;

8. **Deregistration of registered organisations.** (1) Any registered organisation that is not or that ceases to be subject to the mandatory registration requirements in terms of this Act may apply for deregistration at any time:

Provided that it has fulfilled the requirements of its constitution regarding the procedures to be followed when moving an application for deregistration.
(2) The Commission may allow deregistration after examination of the charter, accounts and other prescribed constitutional documents of the organisation.

(3) In the event of a delay of more than one hundred and eighty days in the determination of the application for deregistration moved by an organisation the application shall be deemed to have been accepted unless the Commission records reasons for the delay in writing. Such delay shall in no case be more than ninety days beyond the original period of one hundred and eighty days specified by this clause.

(4) Appeal against an order to deregister or an order refusing to deregister passed by the Commission may be preferred within sixty days of receipt of the order to the District Court.

9. **Charter of organisation.** Every organisation shall, along with the application for registration under this Act, file with the Commission a written document, to be referred to as the charter of the organisation. The charter of an organisation seeking registration shall state,-

(a) the name of the organisation,

(b) the public benefit purposes of the organisation,

(c) the names and addresses of the initial three signatories of the charter as well as the names and addresses of the members of the governing body of the organisation at the time that application for registration is made,

(d) the manner in which membership of the organisation may be acquired and lost,

(e) the manner in which the governing body, by whatever name described, shall come into existence and function, and

(f) the qualifications and disqualifications of any person continuing as a member of the governing body of the organisation.

10. **Procedure of amendment of charter.** (1) The governing body of a registered organisation may amend its charter in accordance with the manner for amendment provided for in the charter itself:

Provided that an amendment that affects any purpose specified in the charter may be established by the governing body through a proposition containing the proposed amendment. A copy of the proposition shall be forwarded to each member of the organisation at least fifteen days prior to a meeting of the members convened to consider the proposition. A proposition that seeks to amend or alter any of the purposes of the organisation shall not be carried into effect unless three-fifths of the members vote for it either in person or by proxy.

(2) A copy of the amendment made under sub-section (1) shall be submitted to the Commission within thirty days of the amendment having been made. If the Commission is of the opinion that any change in the purpose or purposes of the organisation constitutes a breach of representation on the basis of which contribution in any form was obtained from Government or persons other than the present members of the organisation it may seek safeguard for the utilisation of such contribution for the purpose for which it was obtained. In the absence of such safeguard being provided by the organisation the Commission may signify its disapproval of the
amendment to the extent specified.

(3) Any change in the purpose of an organisation will come into effect ninety days after it has been communicated to the Commission if the Commission has not sought safeguards as per sub-section 2 or disapproved the change.

(4) An appeal against an order of the Commission disapproving a change in the purpose or purposes of an organisation may be preferred to the District Court within sixty days of the receipt of the order of the Commission.

11. **Rights of registered organisations.** (1) The property, movable and immovable, belonging to an organisation registered under this Act shall be vested in the governing body in existence from time to time. In all proceedings, civil and criminal, such property may be described as the property of the organisation.

(2) Every organisation registered under this Act may sue or be sued in the name of the person or persons authorised and designated for this purpose by the charter or the rules and regulations of the organisation and in default of such authorisation in the name of such person as shall be appointed by the governing body for the occasion:

Provided that a person having a claim or demand against the organisation may sue the organisation in the name of its chief operating officer or the chairperson of the governing body:

Provided further that no suit or proceeding in any civil court shall abate or discontinue by reason of the death, loss of authorisation or removal from office of the person by or against whom such suit or proceedings shall have been brought or continued but shall continue in the name of and against the successor of such person.

(3) A judgment against a person or officer named on behalf of an organisation shall not be enforced against the property, movable or immovable, or against the body of such person or officer but only against the property of the organisation.

(4) Any member of a registered organisation who may be in arrear of a subscription or other amount, including penalty, which, according to the charter of the organisation or rules, regulations or bye-laws under such charter, is payable to the organisation or against whom the organisation has a claim for return of money or property or payment of damages may be sued for such arrear or for the return of such money or property or for the payment of damages where such member is resident or where the main office of the organisation is situated.

(5) All registered organisations shall be exempt from the purview of the Charitable Funds (Regulation of Collection) Act, 1953 (XXXI of 1953) subject to the rules made by the Commission in this respect.

12. **Obligations of registered organisations.** Every organisation registered under this Act shall,

(a) Maintain true and complete accounts, according to format prescribed by the Commission, and, where its annual receipts are in excess of three million rupees, have its accounts audited annually by a qualified chartered accountant. Accounts of an organisation with annual receipts below three million rupees but in excess of five
hundred thousand rupees may be verified by a cost and management accountant. Accounts of organisations with annual receipts up to five hundred thousand rupees may be verified annually by the branch manager of the bank with which it maintains its major account:

Provided that an organisation may choose to engage auditors prescribed for organisations with higher receipts;

(b) deposit all moneys received by it into a separate account in the name of the organisation with any scheduled bank, post office or national savings centre;

(c) submit to the Commission an annual report along with financial accounts and a statement of assets and liabilities once a year in accordance with the rules prescribed by the Commission.

(d) file, once in every year, within fourteen days of the annual general meeting of the organisation, or, if the charter of an organisation does not provide for an annual general meeting, in the month of January, a list of the names, addresses and occupations of the members of the governing body of the organisation, with the Commission.

13. Rights and obligations of all organisations regarding foreign funds. (1) Notwithstanding the provisions of subsection (4) of section 1 of the Act, all organisations including nonprofit organisations registered under the Companies Ordinance, 1984, whether or not required to be registered under the Act, shall file with the Commission at the end of each fiscal year details of foreign funds received in excess of Rs. 100,000/-. The details to be provided shall include the identity of the donor, the amount, and the purposes for which funds were received.

(2) Subject to the registration requirement prescribed by the Act, prior permission of any government agency, Federal or Provincial, will not be needed to solicit or receive funds from any foreign source or from local representatives or offices of donors that have their main operation or head office situated outside Pakistan.

(3) The Commission shall consolidate the information received in terms of this section and transmit it to the Federal Government on a quarterly basis.

14. Public disclosure. (1) Any person may inspect and obtain certified copies of all documents and applications filed by an organisation.

(2) Any person may inspect and obtain certified copies of finalised inquiry reports and any other document deemed to be a public document by the Commission or by any other law for the time being in force.

(3) The fee for provision of certified copies may be prescribed by the Commission from time to time.

15. Financial irregularity. (1) On receipt of a complaint in writing against a registered organisation alleging financial irregularity supported by one-third of the members in general or one-third of the members of the governing body or from a person or body that had contributed more than five percent of the total funds received by such organisation in the last year for which
final accounts are available, the Commission shall, if a *prima facie* case of serious financial irregularity is made out on the basis of record available and after giving both parties an opportunity of being heard, authorise an external auditor to carry out within sixty days inspection of the books of the organisation complained against and to submit a report with respect to the matters alleged in the complaint.

(2) The Commission shall, if a *prima facie* case of serious financial irregularity is made out against a registered organisation on the basis of record available and after giving the organisation opportunity of being heard, authorise an external auditor to carry out within sixty days an audit of the organisation even though no complaint as envisaged by sub-section (1) has been filed.

(3) Upon authorisation of an external audit in terms of sub-section (1) or (2), the Commission may direct immediate possession of the books of account, ledgers and other relevant specified record by an officer of the Commission in order to allow copies of the relevant record to be made:

Provided that all record taken into possession shall be returned to the organisation within a period of fourteen days.

(4) The external auditor shall, upon authorisation in writing, complete the audit and submit the audit report within sixty days:

Provided that the Commission may extend the period of sixty days on the basis of a request in writing from the external auditor clearly stating the grounds for such request.

(5) In the event of a complaint being found by the Commission to be vexatious or frivolous, the Commission may impose a fine of up to twenty five thousand rupees on each one of the complainants. In the case of a member of the governing body or other member or an official of an organisation being fined under this sub-section, he shall stand removed from the office held by him as well as the membership of the organisation. Appeal against an order imposing a fine in terms of this sub-section may be preferred within sixty days of such order to the District Court having jurisdiction over the area in which the main office of the organisation complained against is situated.

(6) In the event of the external auditor's report indicating serious financial irregularity, the Commission shall initiate an inquiry. The organisation concerned shall be provided with the auditor's report and the issues required to be addressed by the organisation or any of its office bearers or members who shall be provided due opportunity of being heard. Where on inquiry it is found that by any wilful action an office-bearer or member of an organisation has caused loss to or has misappropriated assets of the organisation, the Commission may initiate civil as well as criminal proceedings against such office bearer or member, including proceedings for the recovery of the misappropriated funds or assets.

(7) If upon completion of its inquiry, the Commission is satisfied that a serious financial irregularity has been committed with respect to the affairs of a registered organisation, it may suspend, after recording reasons in writing, one or more members of the governing body or such other members or office bearers thereof as appear to be responsible for the irregularities detected and file a reference within a period of seven working days before the District Court.

(8) Upon a reference made to it under sub-section (7), the District Court shall decide the
matters referred to it within a period of one hundred and twenty days. All persons found to be responsible for financial irregularity with respect to the funds of a registered organisation shall stand removed from the governing body of the organisation, the membership of the organisation or from the office held by them.

(9) The vacancies caused by the removal of the members of the governing body of an organisation in terms of sub-section (8) shall be filled in accordance with the charter of the organisation, but in no case later than sixty days from the date of removal of the members of the governing body found responsible for financial irregularities.

(10) Where a reference has been made to the District Court under sub-section (7) the District Court may make such interim orders confirming or reversing the suspension of the members of the governing body or a member or an office bearer as may be considered appropriate by the Court. The vacancies created as a result of such suspensions shall be filled up in accordance with the charter or bye-laws of the organisation.

(11) Any member of the governing body or any other member or office bearer suspended under sub-section (10) shall not act as office-bearer of the organisation during the period of his suspension.

16. Dissolution on account of failure of registered organisation to comply with its charter or the provisions of this Act. (1) An organisation that has persistently disregarded obligations imposed on it by this Act or by any other law for the time being in force or its own charter pertaining to maintaining or filing of reports and accounts or governance procedures shall, without prejudice to other penalty or action under this Act or any other law in force, be dissolved in accordance with rules prescribed by the Commission after granting the organisation an opportunity of being heard:

Provided that, prior to initiation of dissolution proceedings in terms of this section, the Commission shall allow every organisation failing to comply with the provisions of this Act or its own charter pertaining to the maintaining or filing of reports and accounts or governance procedures a period of six months to comply with the said provisions. The period of six months shall commence from the date of receipt by the organisation concerned of notice issued by the Commission intimating the organisation of such failure.

(2) If upon expiry of the six month compliance period the Commission is not satisfied with the steps taken by the organisation concerned for complying with the provisions of this Act or its charter, as the case may be, the organisation will be allowed an opportunity to show cause in writing and at a duly convened hearing, within a period of thirty days, against the initiation of dissolution proceedings against the organisation. The Commission may thereafter, if considered appropriate, file a petition before the District Court seeking dissolution of the organisation.

(3) The District Court shall pass an order of winding up and appoint a liquidator when it arrives at the conclusion that the organisation has materially and without reasonable cause disregarded its own charter as well as the provisions of this Act. The District Court shall pass an order of dissolution upon being satisfied that the affairs of the organisation have been wound up.

17. Voluntary dissolution of a registered organisation. (1) Registered organisation may be dissolved in accordance with the procedure for dissolution given in its charter subject, however, to the provisions of sub-section (2).
Pursuant to the decision for voluntary dissolution taken in terms of sub-section (1) a registered organisation may file an application for dissolution before the District Court.

The District Court shall issue notice to the Commission and the public-at-large on the first date of hearing of an application for voluntary dissolution.

The District Court may, if satisfied that no liabilities of the organisation are outstanding, order that the organisation concerned shall be wound up and appoint a liquidator for this purpose.

The District Court shall pass an order of dissolution upon being satisfied after the examination of the report of liquidator, that the affairs of the organisation have been wound up.

18. **Consequences of an order to wind up.** Whenever a registered organisation is ordered to be wound up, the Court shall,—

(a) order the bank, post office, national saving centre and all other persons who hold money, securities or other assets on behalf of the organisation not to part with such money, securities or assets without the prior permission in writing of the Court;

(b) appoint a liquidator to wind up the affairs of the organisation with power to institute and defend suits and other legal proceedings on behalf of the organisation and to take such necessary action as may appear to him to be necessary for such purpose with the approval of the Court:

Provided that in the event of voluntary dissolution the liquidator to be appointed shall be nominated by a two third's majority of the governing body of the organisation. If the Court, for reasons to be recorded, deems the person nominated to be inappropriate for appointment as a liquidator it shall reject the nomination made and seek a fresh nomination from the governing body of the organisation concerned. In the event of the governing body failing to nominate a person to be the liquidator the Court shall appoint any person deemed fit to be the liquidator; and

(c) order, after consultation with the Commission, that assets of the organisation remaining after satisfaction of all debts and liabilities of the organisation be transferred to another registered organisation having objects similar to the objects of the organisation dissolved. In no circumstances shall the assets of the dissolved organisation be distributed amongst the members of the organisation:

Provided that every organisation may nominate another organisation having objects similar to its own for the purpose of transfer of assets in the event of dissolution and such nomination shall be taken into account by the Court.

19. **Amalgamation or reconstitution of an organisation.** (1) A proposal to amalgamate, wholly or partially, a registered organisation with another registered organisation may be initiated by the governing body and shall be submitted to the members of an organisation in written or printed form at least ten days prior to a meeting of the members convened to consider the proposal. A proposal to amalgamate or reconstitute shall not be carried into effect unless three-fifths of the members vote for it either in person or by proxy.
Provided that a registered organisation may amalgamate only with another registered organisation.

(2) A copy of the resolutions under sub-section (1) shall be submitted to the Commission within thirty days of the resolution having been made.

20. **Fund of the Commission.** (1) There is hereby established, for the purposes of this Act, a Fund to be administered and controlled by the Commission. The Fund shall consist of-

(a) A Fund-in-Trust as may be set up by the Federal Government or by the Commission for the purposes of this Act. The yearly proceeds from the Fund-in-Trust shall be credited to the account of the Commission to finance expenditures in accordance with its approved budget.

(b) (i) such grants as the Federal Government may make from time to time;

(ii) grants of money and sums borrowed or raised by the Commission from any person, organisation or authority, including foreign donors, for the purposes of meeting any of its obligations or discharging any of its duties;

(iii) income from investments and all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to the exercise of its functions and powers;

(iv) registration fees and fines collected.

(2) The Commission shall approve its annual budget in a special session, to be chaired by the Federal Minister for Social Welfare.

(3) The Commission may re-appropriate within its approved budget of the year without any reference to any authority.

21. **Accounts and Audit.** (1) Commission shall have an account to which shall be credited all grants and contributions made by the Federal Government or by any person, organisation or authority and out of which shall be disbursed the expenditure to be made and incurred by the Commission.

(2) The accounts of the Commission shall be maintained in such form and manner as may be prescribed and shall be audited by an auditor appointed by the Federal Government.

(3) The Commission shall, after the end of every financial year, submit to the Federal Government the audited annual statement of accounts of the Commission, together with the report of the auditor.

22. **Commission to exercise the powers of civil court.** (1) The Commission shall, for the purposes of this Act, have the powers of a Civil Court to:

(a) summon and enforce the attendance of any person and examining him on oath;

(b) compel the production of documents;
(c) receive evidence on affidavits, and
(d) issue commission for the examination of witnesses.

23. **Opportunity of being heard.** No administrative order or action adversely affecting any person or organisation shall be passed or taken under this Act unless such person or organisation is afforded an opportunity of being heard.

24. **Penalties.** Any person who-

(a) contravenes any of the provisions of this Act or any rule made thereunder, or
(b) makes any false statement or false representation in any application or document for registration under this Act, or in any report or statement submitted to the Commission,

shall be punished by the Commission with a fine that may extend up to fifty thousand rupees.

25. **Indemnity.** No suit, prosecution, or other legal proceedings shall be instituted against any person for anything that is done in good faith or intended to be done in good faith under this Act.

26. **Rules.** The Commission may, by notification in the official Gazette, make rules not inconsistent with any provision of this Act.

27. **Removal of difficulties.** In the event of any difficulty in giving effect to the provisions of this Ordinance during the period of transition after the repeal of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961), the Federal Government may, by notification in the official Gazette, make such provisions as may be necessary:

Provided that this power shall not be exercised beyond the period of one year from the commencement date of this Act.

28. **Repeal and savings.** (1) The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961) is hereby repealed.

(2) Notwithstanding the repeal under sub-section (1), all orders made, actions taken, or notifications issued under the repealed enactment shall be deemed always to have been lawfully and validly made, taken, and issued under the provisions of this Ordinance and shall continue to be in force unless amended, varied, withdrawn, rescinded or annulled by an authority competent to do so under this Ordinance.
Fiscal Reforms Actualised

Fiscal Support Regime for NPOs announced in the Budget 2002-2003

The amended Income Tax Ordinance 2001

1. More Extensive Coverage of NPOs.

- Under existing provisions of section 2(36) only non-profit organisations established for religious, charitable or educational purposes or for amateur sport were eligible for tax benefits and approval as “donee” for tax credit to donors. It excluded the bulk of NPOs engaged in community welfare and development.

- Finance Ordinance 2002 has amended the definition has been revised as follows:

(36) “non-profit organisation means any person, other than an individual, which is 
(a) established for religious, educational, charitable, welfare or development 
purposes, or for promotion of an amateur sport; 
(b) formed and registered under any law as a non-profit organisation; 
(c) approved by the Commissioner for specified period, on an application made by such 
person in the prescribed form and manner, accompanied by the prescribed 
documents and on requisition such other documents as may be required by the 
Commissioner; 
and none of the assets of such persons confers, or may confer, a private benefit to any 
other person.”

2. Expanded Coverage of Comprehensive Tax Benefits

- The comprehensive package of tax benefits admissible under clause (58) of Part 1 of Schedule II of the Ordinance was admissible only to a few elite “trust or welfare institutions”.

- Finance Ordinance, 2002 extends this comprehensive tax-benefit to “Nonprofit Organisation” by inserting these words after the word “institution” in sub-clause (1) and (3) of clause (58) of Part 1 of Schedule II.

3. Expanded Basic Tax-Exemption

- The basic tax-exemption for NPOs specified in clause (59) of Part 1 of Schedule II was limited to “income derived from investment in securities of Federal Government and house property” only.

Finance Ordinance 2002 expands the basic exemption as follows:

“An income which is derived from investment in securities of the Federal Government, profit on debt from financial institutions, grant received from Federal Government or Provincial Government or District Governments or foreign grants and house property.”
Amendments in Rules

1. *Easier Access to Tax Benefits*

- Audit requirements are being made easy and affordable by categorising NPOs according to size of annual receipts and easing the auditor qualifications for the medium and small sized NPOs as follows (sub-rule 2(f) of Rule 211 of Income Tax Rules 2002):

  (a) A retired audit officer, or Bank Manager, provided its receipts and expenditures pass through the bank accounts for non-profit organisation with annual receipts upto Rs 0.5 million.
  (b) A cost and management accountant for those nonprofit organisations with annual receipts of more than Rs. 0.5 million and upto Rs 3 million.
  (c) A chartered accountant for nonprofit organisations with annual receipts exceeding Rs 3 million.

- Rules have been amended to bring transparency and fairness in the process of verification, certification and rating (sub-rule 2(g) of rule 211 of Income Tax Rules 2002):

  “A detailed report with regard to the performance of the institution for achieving the aims and objects for the period prior to such an application duly evaluated, certified and rated by an independent agency approved by an authority designated by the Government of Pakistan (i.e. NPO Commission according to draft Ordinance for Nonprofit Organisations 2002) for this purpose or till that authority is established, under arrangements made by the CBR.”

2. *Requirement of Annual Renewal Removed*

- The Income Tax Commissioner will be able to renew the certification of an NPO for 3 years; the cumbersome process and requirement of annual application for tax exemption status has been removed. (Sub-rule 5 of rule 214)

3. *Utilised Balances*

- Rules regarding unutilised balances have being made easier. Amendments in clause (i) of sub-rule (2) of rule 213 seek to provide following facilities:

  - Removal of monetary ceiling of Rs 20,000.
  - Permitting investment of unutilised funds in “financial institutions and financial instruments” in addition to “Government Securities.”

4. *Comprehensive Package of Tax-Exemption*

- The comprehensive package of tax-exemption available under clause (58) of Part 1 of Schedule II of Income Tax Ordinance 2001 will now be admissible to all NPOs who have operated for three years and complied with the prescribed standards of accountability and internal governance. For this purpose CBR is amending the rules as
indicated hereunder.

- Sub-rule (vi) of clause (b) of sub-rule (1) is being amended to provide for verification of performance for last three years by “an independent agency approved by an authority designated by the Government of Pakistan”.

- The condition of operating on all Pakistan basis is being withdrawn. The amended requirement will be as follows.

  "It has operated and functioned anywhere in Pakistan for a period of not less than three years and has complied with minimum standards of internal governance, accountability, transparency and efficiency prescribed by law."

- Sub-clause (v) of clause (a) of sub-rule (3) is being amended to provide for evaluation of capacity to perform on declared aims and objects by an independent agency.

- Instead of annual renewal of approval, future renewals will be for 3 years.
Appendix IV

Taxation: ICNL Best Practices

1. Income Taxation Exemption of Nongovernmental Organizations. Every nongovernmental organization, whether organized for mutual benefit or for public benefit, and whether a membership or nonmembership organization, should be exempt from income taxation on moneys or other items of value received from donors or governmental agencies (by grant or contract), membership dues, if any, and any interest, dividends, rents, royalties or capital gains earned on assets or the sale of assets.

2. Income Tax Deductions or Credits for Donations. Within reasonably generous limits, individuals and business entities should be entitled to an income tax deduction or credit with respect to donations made to PBOs (but not MBOs). As a matter of tax policy, credits are preferable to deductions for individuals under a progressive income tax system, though deductions may attract more and larger gifts from wealthy donors.

3. Taxation of Economic Activities. NGOs should be allowed to engage in economic activities so long as those activities do not constitute the principal purpose or activity of the organization. Any net profit earned by an NGO from the active conduct of a trade or business could be --
   (a) exempted from income taxation,
   (b) subjected to income taxation,
   (c) subjected to income taxation only if the trade or business is not related to and in furtherance of the not-for-profit purposes of the organization, or
   (d) subjected to a mechanical test that allows a modest amount of profits from economic activities to escape taxation, but imposes tax on amounts in excess of the limit.

4. VAT and Customs Duties.
   (a) PBOs should be given preferential treatment under a value added tax (VAT).
   (b) PBOs should be given preferential treatment under or exemption from customs duties on imported goods or services that are used to further their public benefit purposes.

5. Other taxes.
   (a) Depending upon the extent to which a government wishes to encourage NGOs, exemption from or preferential treatment under other tax laws (e.g., taxes on real or personal property, sales taxes, estate or inheritance taxes) should be considered
   (b) No NGO should be exempted or given preferential treatment under generally applicable employment or payroll taxes.
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