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Hegemony, Politics and Ideology: the Role of Legislation in NGO–Government Relations in Asia

SUSANNAH H. MAYHEW

In the wake of debate on the 'New Policy Agenda' of good governance and the increasing prominence of Non-Government Organisations (NGOs) in public service delivery, serious questions are being asked about the role of NGOs in development, their accountability, their relationships with donors, with the state and with their beneficiaries. As southern NGOs receive increasing amounts of funding from donors and northern NGOs, their profile is being raised, prompting government response. The nature of legislative responses of governments to increasingly high profile NGO communities range from open hostility and suspicion, to indifference. National legislative frameworks are neglected in the literature, yet they may profoundly influence the accountability, legitimacy, organisation and vision of local NGOs as well as the way northern NGOs can operate in a country. The article illustrates the potential for conflict over legislation on NGOs but also important opportunities and benefits, maintaining that legislation is necessary, because it can act as a catalyst to spark and focus debate on the role of NGOs, the extent to which they legitimately represent civil society, to whom they are accountable and how they can be protected. Open, balanced negotiation between stakeholders is necessary to avoid conflict and focus discourse on NGO and government roles and accountability. Governments, donors and NGOs each have a role to play in shaping NGO legitimacy, ensuring their upwards and downwards accountability.

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I. HEALTH NGOS AND THE STATE: CONFLICTING HEGEMONIES?

Over the past two decades a 'new policy agenda' emerged in the health and development sector favouring donor support for non-government organisations (NGOs) over centralised government powers and public sector hegemony for implementing health services in developing countries [Gilson *et al.*, 1994; Edwards and Hulme, 1996]. As experiences have been documented and the literature has evolved, however, controversy and lack of consensus has emerged over the efficacy and accountability of NGOs' accomplishment *vis-à-vis* the public sector [Edwards and Hulme, 1996; Green and Matthias, 1995, 1997]. On one hand NGOs are deemed to have a number of comparative advantages over government sectors such as reaching the hardest-to-reach populations, providing services in areas of government weakness or apathy and being more accountable and efficient than the government sector [Fowler, 1990; Semboja and Therkildsen, 1995]. Moreover, in their roles as advocates NGOs are seen to provide a counterbalance to public sector power and an 'independent' voice to challenge policy issues [Salamon and Anheier, 1997]. On the other hand, there appears to be little evidence that NGOs are in fact more accountable than the public sector and there are claims that international support for NGOs has been fuelled, at least in part, simply by disillusionment at governments' failure to meet donor objectives [Green and Matthias, 1995, 1997].

The matter of NGO accountability has been brought to the fore in recent years partly as a result of their more prominent role in the 'new policy agenda' [Edwards and Hulme, 2002]. As donors increasingly fund NGOs rather than governments, and pressurise governments to build 'partnerships' with NGOs to deliver basic services and become a third partner in development, the state legislature in many countries has begun to pay more attention to this emerging phenomenon. Inevitably this has led to a certain amount of competition between NGOs and the state for external funding and legitimacy to act on behalf of 'the people'. This tension is often crystallised around the highly contentious issue of legislation to regulate NGO activities.

Governments claim, often legitimately, to have concerns about NGO accountability and quality *vis-à-vis* their implementation of public sector health policies. Governments may wish to enforce registration and monitoring mechanisms in order to keep track of NGO activities to avoid duplication and establishment of false organisations and to ensure quality and accountability [Gilson *et al.*, 1994; Green and Matthias, 1997]. Governments may also desire to regulate, or even restrict, NGOs when they feel that NGOs siphon off resources which might otherwise have come to the state or where they are afraid that NGO activities could challenge state ideology [Hulme and

Edwards, 1997]. NGOs on the other hand, may consequently be wary of state intervention for fear that their freedoms and independence will be undermined, although they may also acknowledge benefits in legislation to protect their activities, offer them incentives and maintain their reputation [*Edwards and Hulme, 1996, Hulme and Edwards, 1997; ICNL, 1998*].

In what might be termed a 'post-New Policy Agenda' discourse, authors more recently have been concerned with analysing the changing roles of NGOs *vis-à-vis* the state, donors and their beneficiaries and examining issues of legitimacy and accountability with regard to this (see, for example, the collections in *Lewis and Wallace, 2000; Edwards and Fowler, 2002*). This article maintains that analysing and understanding the policy response to NGO activities can enrich the debate on what 'legitimacy' and 'accountability' mean and suggest ways to enhance NGO-state collaboration within local contexts.

Most obviously, state legislation defines the environments in which NGOs operate, restricting or enabling NGO activities. Legislation evolves from particular political and economic contexts and therefore is a function of local historical development. It is also a function of local definitions and perceptions of 'civil society' and the nature and role of local non-government organisations within this. The tensions that arise when NGOs and government sectors hold different ideas about regulation and control and about what type of legislation threatens or preserves their respective hegemonies, are indicative of vibrant political and social debate. Despite the increasingly recognised importance of developing clear policies relating to NGOs [*Green and Matthias, 1997: 91*] legislation has been little studied.

This article draws on four qualitative, policy case studies (Bangladesh, Cambodia, Nepal and Vietnam) that illustrate a spectrum of legislative responses to diverse NGO sectors in Asia ranging from ideological control to state apathy. Through comparison of these, the perceived benefits or constraints of legislation and the tensions between NGOs and governments, are explored. First this article considers how international and national contexts have shaped current NGO legislation; then the debates around the definition of 'civil society' and 'NGOs' are considered in relation to how governments define the NGO sector. The subsequent discussion analyses key areas of policy and legislation highlighting the benefits and concerns to both governments and NGOs. The article concludes with consideration of the role of legislative debate in enhancing notions of democratic legitimacy and accountability, the nature of the interplay between NGO, donor and government relations and their roles in shaping and defining the legislative environment that confers NGO legitimacy and accountability.

II. METHODS

The NGOs interviewed for this research were organisations involved in a major multilateral donor initiative on reproductive health funded by the European Commission and coordinated by UNFPA: the 'Reproductive Health Initiative for Asia'. This Initiative is a programme of work aiming at supporting the development of southern NGOs through funding northern NGOs to partner them. Under this initiative, a study of the different policy contexts was undertaken. That study forms the basis of this article; other findings have been presented elsewhere [*Mayhew and Ambegaokar, 2002; Venema et al., 2002*].

The research was primarily qualitative. In-depth interviews were conducted with over 90 key informants in the four study countries between August and December 2001. These included donors, staff of international and local NGOs, government officials from relevant Ministries and government bodies dealing with NGOs, independent consultants, members of judiciary and other related sectors. In addition, detailed primary documentary analysis was undertaken of existing policies and legislative instruments as well as secondary analysis of independent national and international consultation and research reports and publications.

Although NGOs involved in this study are all working in reproductive and sexual health, many originally came from non-health backgrounds (development, agriculture). The findings are not likely to differ for NGOs in other sectors since 'NGO legislation' is not sector specific although it may include sector specific requirements and health sector NGOs do sometimes have closer relations with government than other sectors. This is highlighted at appropriate points.

III. CONTEXTUAL ORIGINS OF LEGISLATIVE RESPONSE TO NGOS

The nature of NGO legislation, and subsequent contention, is partly influenced by its historical origins. NGO legislation is essentially determined at two levels: through international and regional conventions and through national policies. International conventions guarantee freedoms of association through international declarations like the 1948 UN Declaration of Human Rights and the International Covenant on Civil and Political Rights adopted by the UN General Assembly (1966, ratified 1976). The Covenant on Civil and Political Rights is now internationally binding therefore their governments are expected to guarantee the right to 'freedom of peaceful assembly and association'.

Nationally, most countries enshrine freedoms of expression, association and assembly within a constitution or equivalent statement. Although there is wide variation, the basic principle of freedom of association is almost

universally recognised [*ICNL 1998*]. Two different types of legal systems influence specific national legislation on NGOs: civil law and common law-. Many countries in South Asia show combinations of the two [*ICNL 1998*]. The contextual origins of each of our study countries are summarised in Table 1 (Bangladesh and Nepal which show contextual similarities) and Table 2 (Cambodia and Vietnam whose historical development was intertwined) as background to the subsequent discussion.

The countries show a spectrum of legislative development influenced by political environments which in turn influence the relative strengths of government and NGO sectors and affect state-NGO relations. By way of a summary the key legislative instruments developed and national NGO-government link bodies are shown in Table 3.

At one extreme, Vietnam's strong, socialist government defends its supremacy through a sophisticated framework of substantial structure and breadth – the government seeks to control rather than regulate and enable the NGO sector which remains weak. At the other extreme, Cambodia has weak government capacity with no formal policies toward the NGO sector, which is therefore dissipated and uncoordinated. In contrast, both Bangladesh and Nepal lie mid-spectrum with strong and long-established local NGO sectors born out of oppressive political and social contexts (Table 1). The wide variation between the government capacities and degrees of legislative detail in the two countries reflects their differential exposure to western principles of governance. The difference in the relative strengths of government *vis-à-vis* the NGO sector provokes very different government reactions. In Nepal where government and legislative frameworks are weak, NGOs are extremely active and are perceived as providing a critical input into development activities: 'At this moment you can't imagine the situation without NGOs because there is so much development activity being conducted by NGOs' (local NGO staff, Nepal). By contrast, the much stronger government framework in Bangladesh reacts very differently to the strength of its NGO sector which it sees as a threat to its own hegemony: 'Government is annoyed . . . they see NGO signs everywhere saying NGOs have done this and that, so Government says they should have government signs up, that NGOs get the credit and they are lying about how much they do' (donor, local staff, Bangladesh).

IV. NGOS AND CIVIL SOCIETY: DEFINITIONS, IDEOLOGY AND IDENTITY

At the core of the debate about the importance and legitimacy of NGOs in development is the extent to which NGOs are seen as bastions of 'civil society'. Contemporary commentators challenge traditional concepts,

TABLE 1
LOCAL CONTEXTS OF NGO LEGISLATION IN BANGLADESH AND NEPAL

Country	Political and social history and events	NGO environment and legislative developments
Bangladesh	<ul style="list-style-type: none"> ● Pre-1860s: long tradition of social philanthropy and public involvement in local political bodies. ● Pre-1971: East Pakistan martial law. University students and opposition leaders spearheaded political ideas around 'liberation' of the country and the poor. ● 1972: Independence and institution of constitutional monarchy. ● 1970s/1980s: ongoing political unrest, suppression of NGOs and civil freedoms; suspension of democracy (1982–86). ● 1990 on: Government increasingly accepting of NGOs, though remains cautious. Continuously growing NGO sector. ● 2000 on: continuing concerns over government corruption. Donors and INGOs put increasing pressure on government to clarify mechanisms for formal government–NGO cooperation, especially in health. 	<ul style="list-style-type: none"> ● 1860: Societies Registration Act No. XXI passed (remains legally binding). ● 1971 on: restrictive NGO legislation imposed. ● 1970s: emergence of tangible NGO sector fuelled by local intellectuals, returnees and foreign relief and aid inputs. ● 1970s–80s: NGOs increasingly foreign funded and play growing role in meeting basic development needs. ● 1978: NGO Affairs Bureau established as NGO coordination body. ● late 1970s/1980s: Legislation developed to regulate foreign aid. ● 1990s: Older, restrictive NGO legislation remains in place. ● 2002: Ministry of Health, NGO Affairs Bureau and donors/INGOs are drafting mechanism for NGO–government collaboration in the health sector.
Nepal	<ul style="list-style-type: none"> ● Pre-1900s: long tradition of social organisation and grass roots initiatives based on indigenous and religious customs. ● Pre-1960s: Political isolation of Nepal; little influence from the West (including INGOs). ● 1960s on: Continuing isolation; monarchical system of rule with few, but increasing, diplomatic ties with the West. ● 1990s on: more open political climate. Expansion of political space and facilitation of foreign aid. ● Ongoing political instability with repeated Maoist guerrilla insurgencies and small left-wing anti-monarchist groups. Ongoing concerns about government weakness and corruption. ● 2005: cessation of democracy and imposition of monarchy/military rule 	<ul style="list-style-type: none"> ● 1960s: early attempts to define operations of 'social organisations' ● 1977: Need to coordinate and support social organisations recognised; body established, headed by the Queen, to 'associate' social organisations. ● 1970s/1980s: Legislation remains within restrictive 'Panchayat' system and does not progress. ● 1990s on: influx of INGOs and international donor aid. Legislative attempts made to encourage growth of NGOs in social welfare and development. ● 1992: Social Welfare Council established by Parliamentary Act as NGO focal and coordination body. ● 1990s on: LNGO sector continues to grow, headed by intellectual elites and, notably, women's rights groups. Relatively good linkage between NGOs through ad hoc but dynamic networks.

Sources: Wood 1994; Chowdhury 1996; ICNL 1997, 1999; CIA World Factbook 2000; Vartola *et al.* 2000.

suggesting that NGOs by definition have evolved into something beyond their original grass-roots or philanthropic origins and thus may no longer speak for the disempowered [Lewis and Wallace, 2000; Edwards and Fowler, 2002]. Without getting drawn into the definitional quagmire, a brief analysis of the different national definitions of 'NGOs' is important to highlight the combination of international classifications and local notions of what it means to be a non-governmental, or civil society, organisation.

There is a large literature attempting to define and classify 'NGOs'. A consensus exists around the basic characteristic that a 'non-government organisation' should operate 'outside government'. Within this there is huge diversity and classifications range from the NGOs' activities (service delivery, advocacy, research etc.), the operational level of activities (global, national, local), to their type of fund-raising or their organisational type (philanthropic, membership etc.). Salamon and Anheier (1997) and Green and Matthias (1997) suggest that the most useful way to define an NGO is in terms of its basic operational structure: formally organised, usually by legal charter; not a division of government; non-profit sharing; self-governing; and involving some voluntary aspect of operations. The UN organisations emphasise that 'Civil society is the sphere in which social movements become organised.' [Bebbington and Riddell 1995: 881]. National legislation recognises non-indigenous NGOs working in the country as 'International NGOs' (INGOs) as distinct from 'Local NGOs' (LNGOs) and the two are generally dealt with under separate legislation; this article is primarily concerned with local NGOs.

In all the study countries, except Vietnam, legislation defining 'NGOs' tends to enshrine internationally accepted notions of NGOs as some kind of legally legitimised 'group', 'association' or 'organisation' set up at the initiative of 'citizens' or 'persons' for the purpose of undertaking 'voluntary activities' in areas of 'humanitarian', 'charity' or 'welfare' assistance. This type of language reflects colonial ideas of welfare and humanitarian assistance by local groups for local beneficiaries. In such legislative definitions no distinction is made between the 'old-style' humanitarian groups and the influx of a new breed of donor-funded 'non-government organisation' which implement hard-currency funded projects and are also moving increasingly towards advocacy roles [Edwards, Hulme and Wallace, 2000; Hudson, 2000; Edwards and Fowler, 2002].

Bangladesh's legislation reflects the political environment in which the legislation developed when NGOs emerged from what can be seen as a series of social movements challenging the political status quo (Table 1). These were considered as a threat to government hegemony and the legislative response was explicitly regulatory, specifying precise areas which their activities may (and by implication may not) cover: service provision is

TABLE 2
LOCAL CONTEXTS OF NGO LEGISLATION IN CAMBODIA AND VIETNAM

Country	Political and social history and events	NGO environment and legislative developments
Cambodia	<ul style="list-style-type: none"> ● 1953: independence from French colonial rule. ● 1960s on: country decimated by series of conflicts: US actions in Vietnam War, Khmer Rouge, Vietnamese occupation. ● 1989: Vietnam withdraws from Cambodia. ● 1991: Paris Peace Treaty heralds massive influx of international aid. ● 1993: first multi-party elections under UNTAC. Increasing donor support direct to government. ● 2001: UN withdraws support for development of judicial reconstruction and Khmer Rouge-related impunity legislative framework. ● 2001 on: Constitutional monarchy fragile; ongoing public administration reforms (led by Ministry of Health) but widespread lack of legislation. 	<ul style="list-style-type: none"> ● pre-1953: French colonial charities operate. ● 1979: handful of INGOs come in, mostly working with refugees and returnees. ● 1980s: LNGOs not recognised under Vietnamese occupation; most INGOs find it too difficult to operate. ● 1991 on: hundreds of INGOs and relief organisations in. ● 1992: local NGO sector can legally operate. ● 2001 on: legislative context remains. dominated by Khmer Rouge Legacy. All NGO-related legislation in draft and not seen as government priority. NGO sector dominated by c.200 INGOs; LNGO environment highly politicised.
Vietnam	<ul style="list-style-type: none"> ● 1945 on: independence from France; partition of North and South of the country. ● 1954: Ceasefire. ● 1950s–60s: American assistance followed by Vietnam War. ● 1973: Peace agreement ● 1976: Reunification and Socialist Republic of Vietnam declared. ● 1978–79: invasion of Cambodia and Chinese border war. ● 1970s–1980s: Political isolation of Vietnam ● 1989: Withdrawal of troops from Cambodia eases international relations. 	<ul style="list-style-type: none"> ● 1945 on: North Vietnam – local grass-roots organisations do not exist. South – local groups (begun under French government) continued to thrive. ● 1957: Law on Right to Establish Associations. ● 1970s–1980s: Isolation from multi-laterals and INGOs. Sophisticated Socialist legislative framework developed. ● 1989: First international agencies enter Vietnam. ● 1992: new constitution upholds 1957 law on establishment of associations; later licensing and operational legislation heavily regulates and controls NGO activities. ● Early 1990s: Soviet support in decline; new constitution in 1992 following by increasing economic and political ties with the West, including donor aid.

(continued)

TABLE 2 (cont'd)

Country	Political and social history and events	NGO environment and legislative developments
		<ul style="list-style-type: none">● 1990s on: INGO community growing but heavily monitored and regulated; LNGOs do not technically exist: 'civil society groups' or 'mass organisations' are government defined and associated. LNGO links with non-Vietnamese organisations are tightly controlled.

Sources: INTRAC 1996; ICNL 1997, 1998, 1999; Cambodia Development Research Institute 2000; CIA World Factbook 2000.

named, advocacy is not. Nepali legislation, under little threat from its weaker NGO community, reflects international norms more closely, specifying a wider range of activities which encompass both service provision and advocacy [*Nepal Government, 1992a, 1992b*]. In both Bangladesh and Nepal there was a sense among the NGOs interviewed that they were part of a network of organisations that somehow represented ‘communities’, as distinct from government, and had grown out of ‘social movements’ (for political change in Bangladesh; for rights and empowerment of the poor in Nepal) [*Wood, 1994; Chowdhury, 1996; Dhakal, 2000; Gyawali, 2000; Pokahrel, 2000*].

Cambodia’s legal definitions are characterised by ambiguities and contradictions, reflecting the fact that ‘in Cambodia civil society is very young’ (INGO interview). The Draft Law of 1998 contradicts the constitutional right to association by making registration mandatory for all groups or individuals wishing to ‘associate’. Associations are defined vaguely, as working for the ‘public’ and ‘national interests’ which are not themselves specified in legislation but may be defined by the Ministry of Interior when it so chooses (Draft Law, 1998). The reaction of the INGO community to such language was widespread concern that the Law could be used by unaccountable governments to clamp down on NGOs regarded as opposing their political powers [*Licadho, 1999; interviews, INGOs*]. The LNGO response was in some ways more pragmatic – to ensure their acceptance by government they aligned themselves with political parties and personalities. This has had serious repercussions for government expectations of NGOs (as political allies) and has damaged their perceived legitimacy and accountability to the community:

TABLE 3
KEY NGO LEGISLATION AND GOVERNMENT-NGO LINKAGE BODIES IN
BANGLADESH, CAMBODIA, NEPAL AND VIETNAM

Country & NGO-government linkage	Key legislation
<p>Bangladesh</p> <ul style="list-style-type: none"> Government NGO Coordinating Committee (GNCC) Voluntary Health and Social Services (VHSS) NGO Affairs Bureau. 	<ul style="list-style-type: none"> Societies Registration Act, 1860. Voluntary Social Welfare Agencies (Regulation and Control) VSW Ordinance, 1961, Ministry of Labour and Social Welfare, People's Republic of Bangladesh. Constitution of the People's Republic of Bangladesh, 1972, Government of the People's Republic of Bangladesh. The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978, Ministry of Law and Parliamentary Affairs. The Foreign Donations (Voluntary Activities) Regulation Rules, 1978, Ministry of Home Affairs. The Foreign Contributions (Regulation) Ordinance 1982 (Amendment of 1978), Ministry of Law and Land Reforms.
<p>Cambodia</p> <ul style="list-style-type: none"> No official body 	<p>Constitution of the Kingdom of Cambodia, 1993. Signed by the President for the Kingdom of Cambodia, Phnom Penh.</p> <ul style="list-style-type: none"> Draft law on Associations and Non-Governmental Organisations, Draft 3, 1998, Ministry of Interior, Kingdom of Cambodia. Guidelines for completing the [NGO] Agreement with the Ministry of Health, 2000, Ministry of Health, Kingdom of Cambodia.
<p>Nepal</p> <ul style="list-style-type: none"> Social Welfare Council (SWC) 	<p>1992 constitution.</p> <ul style="list-style-type: none"> Association Act, 1997. Social Welfare Act 2049 (1992).
<p>Vietnam</p> <ul style="list-style-type: none"> PACCOM (the People's Committee). (for foreign NGOs) 	<ul style="list-style-type: none"> Law 102 1957 (and Decree 258, 1957, on implementation) – right of establishing Associations. This is the highest legal document. Directive 01 1989 (and Circular 07, 1989, on implementation) on management of organisation and activities of mass organisations. Directive 202, 1990 on implementation of State regulations concerning establishment of associations. 1992 Constitution of Socialist Republic of Viet Nam enshrines the right of citizens to association, freedom of speech and access to free press. 1996 Civil Code of the Socialist Republic of Viet Nam: gives legal right to establish Associations.

(continued)

TABLE 3 (cont'd)

Country & NGO–government linkage	Key legislation
	<ul style="list-style-type: none">• Decision 340/TTg, 1996 (and accompanying Regulations) on the operation of foreign non-governmental groups in Vietnam.• Decree 177 1999 – operation, organisation of social and charity funds, Socialist Republic of Viet Nam.• Law 21/2000/QH10, 2000 – governs the establishment, organisation and management of science and technology institutions and services, Socialist Republic of Viet Nam.• Decision 64, 2001 – On the issuance of the Regulation on the Management and Utilization of Aid from International Non-Governmental Organisations, Socialist Republic of Viet Nam.

... different factions within government set up or support particular NGOs and then consider them to be part of their constituency. ...Some locals view NGOs as belonging, inevitably, to political parties – they are aware of the need for NGO impartiality but it is not part of the reality of life. (INGO key informant).

Vietnam defies classical definitions of ‘local NGOs’ since all ‘civil society’ groups or ‘mass organisations’ are associated with the ruling Socialist Party, established for government defined political and social goals [Kelly *et al.*, 2000]. Technically, ‘non-government’ organisations are not recognised and are essentially ‘private business organisation[s] financially functioning outside government support, be it for social goals, profit or personal endeavours. It has nothing to do with “grass roots”, or “community based” organisations in the Western model’ [Kelly *et al.*, 2000: 10]. The closest to the Western NGO are the ‘Social and Charity Funds’ which may operate ‘for humanitarian and charity purposes’ [Vietnam Government, 1999: Article 3]. Others are termed ‘scientific’ or ‘technological organisations’ or ‘research and development institutions’. Most are headed by Communist Party members and all are required to have a government counterpart.

Thus, in the blanket term ‘NGO’ is hidden a multitude of understandings of what this means in terms of ‘civil society’ representation. In Bangladesh and to some extent Nepal where strong NGO movements exist there is pressure from within to preserve an ‘independent’ image. In Cambodia NGOs have felt pressure to align themselves politically while in Vietnam such alignment is mandatory. The nature of the NGO community, its relationship to government and the extent to which it represents civil society, is further

shaped and defined by government legislation governing NGO registration, activities and financial dealings – to which we now turn.

V. REGISTRATION, ESTABLISHMENT AND APPROVAL OF ACTIVITIES: THE LOCUS OF LEGITIMACY

Once governments have defined ‘NGOs’ or other types of social organisations, they are then in a position to confer legal identity to those groups and define the extent to which they can act legitimately and independently from government. Legislation on the establishment of NGOs and approval of their activities can create an environment conducive to NGO growth by ensuring they are allowed the political space to operate and are subject to checks on quality and accountability. On the other hand, legislation can be a vehicle for restricting freedoms of civil association and make non-government activity difficult, for example through unnecessary bureaucracy, high fees, restrictions on and naming of members, and limiting access to judicial review or to the media [ICNL, 1998]. Consequently, government regulation of NGOs is often highly contested. NGO sectors burgeoned over the past decade in all study countries with over 100 INGOs in each country. Numbers of LNGOs are problematic, but government estimates suggest there are 250 registered LNGOs in Cambodia [CDC, 1999], more than 1,800 in Bangladesh (NGO Affairs Bureau, Interview) and an astonishing 5,978 in Nepal [NPC, 1998].

Registration and Establishment

In all study countries both local and international NGOs have to register with some kind of government body (Table 4) in order to gain legal identity which offers access to foreign aid and tax exemptions. Tax exemptions are only explicitly specified in NGO legislation in Vietnam, although *de facto* they are granted also in Bangladesh and Nepal. Cambodia’s first draft law included tax exemptions and deductions, but these were removed in the current draft.

Bangladesh and Nepal are the only countries to have established central bodies explicitly to deal with NGO affairs (Tables 1 and 3). These bodies confer legal identity through registration and are intended to streamline bureaucracy for NGOs (which only have to deal with one body), although in practice NGOs must also gain prior approval for applications from other bodies (Table 4). Nepal’s Social Welfare Council undertakes to respond within three months for INGOs and 45 days for LNGOs. Bangladesh’s NGO Affairs Bureau makes no specification. These bodies are essentially government parastatals with independent authority to grant or refuse registration according to specified criteria. Both international and local NGOs (with few exceptions) are required to register with these bodies, although in Nepal LNGOs only have to register at national level if they wish

to receive foreign funds. In both countries the procedures are virtually identical for INGOs and LNGOs with differences only in fee scales (Table 4). The NGO affairs bodies also have authority to facilitate fast-tracking of foreign donation imports and NGO personnel visas. In practice limited resources and government personnel impede the capacity (and legitimacy) of these bodies to carry out their mandates. As an independent local consultant says of Nepal: 'presently the government doesn't have the capacity to channel support for LNGOs ... unless you address governance issues of accountability, transparency... that will not be done'.

Cambodia has only a draft framework on NGO registration which is not enforceable, although in the health sector draft agreements drawn up by the Ministry of Health are used by INGOs and LNGOs. Cambodia is the only country with no designated body for NGO affairs. The Ministry of Interior is responsible for registration and the procedures contain a number of elements of concern. While approval criteria ostensibly relate to organisational capacity, founding members must submit 'a personal history' [*Cambodia, Kingdom 1998: Article 6*]. Furthermore there is a mandatory requirement that associations function on the basis of membership and organise in assemblies, thus excluding a significant number of small and middle-sized NGOs [*Licadho, 1999*]. Since the draft law cannot be enforced, many local NGOs operate without basic capacities and accountability [*CMSN, 1997*] and, as noted earlier, many have become politicised for their own survival and often serve interests of middle class profiteers with links to government, succumbing to the 'very strong, personalised, patronage system' (INGO interview).

Vietnam's registration rules for local NGOs are diverse, reflecting its breadth of 'NGO' definitions and the types of activities such organisations may undertake. Many choose to register as 'Science and Technology' organisations since 'scientific' research covers medical, social science and service delivery. Others register as 'funds' or as local 'mass organisations' or 'Unions'. Each has a different legal status and permitted operational boundaries, creating frustration among INGOs and donors working with local partners, who feel that 'there should be a single law to cover all civil society organisations' (donor local staff, interview, 2001). The criteria for establishment of LNGOs incorporate a significant degree of control. The law states that personnel must be 'professional', thus excluding true 'grass roots' organisations. Permitted tasks and responsibilities are specified in detail for the Social and Charity Funds which must fulfil detailed information requirements including State ratification of the organisation's Charter and approval of founding members' CVs [*Vietnam Government 1996b; Vietnam Government 1999: Articles 5 and 6*]. It therefore comes as no surprise that many health sector 'Funds' have respected former government officials at

TABLE 4
LEGISLATION ON NGO REGISTRATION AND ESTABLISHMENT

Country	Legislation: procedures and principles
Bangladesh (a)	<ul style="list-style-type: none"> ● LNGOs register with Ministry of Social Welfare Director and with the NGO Affairs Bureau (in PM's Office) if receiving funds from foreign sources. ● NGO Affairs Bureau and Home Affairs Ministry permit the organisation to operate. ● Ministry of Home Affairs can screen for 'anti-state' activities and deny registration or re-registration. ● INGOs are not required to register but in practice most do so with NGO Affairs Bureau.
Cambodia (b)	<ul style="list-style-type: none"> ● LNGOs must gain approval first from Ministry of Foreign Affairs and International Cooperation and then from MoInterior; an 'agreement' (an MOU) from the relevant line Ministry and 'permission' (but no formal agreement) from any other relevant link Ministries are also required.
Nepal (c)	<ul style="list-style-type: none"> ● INGO registration procedures are the same except for fee scales. ● LNGOs must register with District Administration Office. ● LNGOs wishing to receive foreign or government funding should 'affiliate' with Social Welfare Council.
Vietnam (d)	<ul style="list-style-type: none"> ● All INGOs must register with Social Welfare Council. ● LNGOs can register as 'Funds', 'research centres/institutions' (with Ministry of Science and Technology); detailed criteria and forms must be submitted. ● Establishment: at least two-thirds staff must hold a university degree or medical qualification. ● INGOs register with PACCOM (the People's Committee – a standing body of the Governmental Committee for INGOs under the Viet Nam Friendship Organisation responsible for issues of international collaboration.)

Sources:

(a) Bangladesh Government 1961: Articles 4, 5, 6; 1978b: Articles 3, 4.

(b) Cambodia Kingdom 1998: Chapter II, and Article 21.

(c) Nepal Government 1992a: Articles 12, 16; 1997.

(d) Viet Nam, Government of the Socialist Republic of, 1996: Chapter I; 1999: Articles 5, 6, 15, 16, 17; 2000: Articles 10, 14, 2001: Articles 6, 9–10.

their helm. Scientific and technological organisations are closely vetted to an extent which ensures that even their 'objectives and operation *orientations* conform to the provisions of law' [italics added] [*Vietnam Government 2000: Article 14*]. Moreover, 'all local organisations come under a Government or semi-government umbrella attached to People's Committees, Technical Associations and Institutions'. [*Kelly et al. 2000: 10*].

International NGOs are recognised in Vietnam and follow a complex registration procedure (Table 4); they must obtain one of three types of permits to operate and to set up offices [*Vietnam Government, 1996a*]. Permission to work must also be gained from national and provincial authorities. Technically, in all countries where it is a legal requirement to

register, failure to do so could involve the risk of government intervention, closure of the organisation and even, in extreme cases (as implied in Cambodia's draft), incarceration of the leaders. Nevertheless, government capacities are often stretched and powerful international organisations can often effectively bypass the legislation – in Vietnam one project office in the study was not officially registered for the entire duration of the project, although this caused considerable tensions with government authorities and raised questions of accountability of donors and INGOs (Interviews INGOs).

Project and Programme Approval

Once political legitimacy has been established, the approval of activities can play a critical role in shaping NGO accountability both to their funders and their recipient communities. All countries except Cambodia try to make some assessment of the competence of applicant INGOs and LNGOs to carry out projects and require details of partners, activity plans, funding arrangements and so on (Table 5). Bangladesh, Nepal and Vietnam all have formal project and programme approval procedures involving various government bodies, while Cambodia appears to have no explicit approval procedure other than the initial approval of the activity field of NGOs at registration and the requirement to submit annual reports. Limited government resources and capacities preclude detailed screening in all countries, though government officials are often reluctant to admit this and a Bangladeshi official remarked 'capacity is a relative term'.

Tensions between governments and NGOs are seen particularly clearly at this stage. Governments in Bangladesh, Cambodia and Nepal all faced the dilemma of wishing to maintain supremacy over the public sector, but recognising that government alone was not sufficient to provide adequate health services and NGOs were needed to help fill the gap. Cambodia's Ministry of Health has developed agreement procedures which request that NGOs implement 'in cooperation with the ... Provincial Health Directorate...' and that NGOs should 'regularly attend the monthly Provincial Coordinating Committee' [*Cambodia Government, 2000: Articles 1.2 and 2.9*], but has little authority to enforce this. Government officials in many countries felt frustrated at their comparative weakness and perceived some threat to their hegemony. This was most obvious in Bangladesh where government officials clearly felt sidelined by the strength of the NGO sector (interviews NGOs, donors).

It was again in Vietnam where the government took greatest steps to retain dominance over NGO activities through complex and tightly controlled approval procedures. All international organisations must have a government counterpart organisation if they intend to work with local partners. Moreover, government agencies expect to be consulted in the development of proposed

TABLE 5
LEGISLATION ON NGO PROJECT/PROGRAMME APPROVAL

Country	Legislation: procedures and principles
Bangladesh (a)	<ul style="list-style-type: none"> ● Project-specific approval from NGO Affairs Bureau (NGOAB), the Council Ministry and relevant line Ministries, on basis of funding levels and assessment of NGO capacity to implement. ● Project approval needed from Ministry of Finance, Economic Relations Division.
Cambodia (b)	<ul style="list-style-type: none"> ● No explicit formal approvals procedure.
Nepal (c)	<ul style="list-style-type: none"> ● LNGO Project approvals are granted by the specific line ministry and the National Planning Commission; these are forwarded to the Ministry of Finance and copied to the Social Welfare Council. ● INGOs require a project agreement from Social Welfare Council, based on details of partners, funding, project methods and plan and linkage with district line agencies. <p>'no permission may be given to the work or project which is against the national interest' (1992a:Article 16.2)</p>
Viet Nam (d)	<ul style="list-style-type: none"> ● Prime Minister approves aid programmes/projects of US\$500 000 or more and non-project aid of US\$200 000 or more, also '<i>[a]ll aid programmes/projects concerning institutions, policies, laws public administration reform, culture and information, religions, national defence and security.</i>' (2001:Article 6). ● Approved government bodies or personnel approve smaller projects/programmes ● Detailed submission of project content, funding and workplan required. ● LNGOs may only set up relations with domestic and foreign organisations and individuals in order to 'mobilise financial supports for the funds or their specified projects according to the provisions of law.' (1999a: Article 17)

Sources:

(a) Bangladesh Government 1978b: Article 4.

(c) Nepal Government 1992a: Article 12, 16.

(d) Viet Nam, Government of the Socialist Republic of, 1996: Chapter II; 1999:Articles 17; 2001: Article 6.

NGO activities and this can create tension (interviews, INGOs and government officials). Large international aid programmes are closely vetted and subjected to laborious approval procedures [*Vietnam Government, 2001*] (Table 4). Suspicion of challenges to state ideology is reflected in the tight structural control imposed on NGOs. Although government capacity to screen all 'NGO' groups and activities is doubtful, they can nevertheless be closely monitored and organisations undertaking new and foreign-partnered areas of activity are closely investigated. An INGO key informant commented 'there is suspicion of some emerging organisations ... Therefore

at the time of [project] approval the government spent a lot of time looking at the [partner] organisations to see if they were subversive and so on’.

VI. FINANCIAL RESOURCES, MONITORING AND DISSOLUTION: ACCOUNTABILITY AND CONTROL

OECD figures suggest that between 15 per cent and 20 per cent of total overseas development aid is now channelled through NGOs [Greensmith, 2001]. The largest INGOs attract multimillion dollar turnovers while direct funding to LNGOs is also growing rapidly [INTRAC, 1998; Greensmith, 2001]. Accurate country data are virtually impossible to obtain. In 1998 Cambodian NGOs received an estimated US\$7.2 million while INGOs received a further US\$75.6 million [CDC, 1999]. In Bangladesh, in excess of US\$62 million was promised to just the five largest LNGOs in 2001 [Samad, 2002] while in Nepal INGOs working with local counterparts had pledged around US\$52 million [Social Welfare Council, 2002]. Inevitably funding, its sources, management and use, strike at the heart of political power and accountability both of governments and NGOs, and so particular attention is paid to financial regulation and accountability mechanisms. None of the study countries had independent regulatory bodies although in Cambodia and Nepal there are umbrella NGO membership organisations which could play a role in this. Interviews showed that concerns in all countries were widespread over the weakness of government monitoring mechanisms and the transparency of dissolution criteria.

Financial Regulation and Accountability

Neither Nepal nor Bangladesh restrict access to foreign aid providing the LNGOs have properly registered with the appropriate authorities. Vietnam imposes tight regulations and monitoring of foreign aid while Cambodia’s 1998 draft Law is contradictory, restricting LNGO access to foreign aid but requiring their programmes to be funded externally [Cambodia Kingdom, 1998: Articles 11, 23]. Legislation on internal fund raising was not explicit in any country and specifications on funding sources often assumed that LNGOs would receive funds from either foreign sources (INGOs or donors) or donations from wealthy local individuals or groups.

Some governments were concerned that inadequate government control of foreign aid flows could lead to unaccountable NGO activities, thus ‘the government must know why these funds are coming from outside and how they are accountable’ (Government official, Bangladesh). This concern was also a function of perceived threat to political hegemony, seen especially in

Bangladesh and Vietnam where governments felt NGOs were competing with them for finances:

[G]overnment sees a chunk of money going to NGOs so it fights over the pocket book – the pie is only so much and NGOs are taking more and more, so government feels squeezed. NGOs get money and they are getting the credit. (donor, local staff, Bangladesh)

Government agencies are expected to raise international funds. International funds are considered in law as Government property – the contract commits funds to the government ... This is one reason why they don't like [International] NGOs because they [INGOs] bristle at this. (INGO staff, Vietnam).

In response, Bangladesh and Vietnam have the most explicit and developed legislation to regulate foreign funding (Table 6). In both countries, tight legislation increases potential for government interference and there have been recent reports from Bangladesh about government withholding millions of dollars from LNGOs it accuses of supporting the main opposition party [*Samad, 2002; Tear Australia, 2002*]. Since financial regulation requires governmental capacity, Nepal and Cambodia, with the weakest public sectors, impose few controls (Table 6), but this can also lead to problems. The negative effects of lack of financial accountability are particularly evident in Cambodia. In just one example, a high-profile local human rights NGO is currently under investigation for fraud and misuse of donor funds, prompting allegations of widespread abuse within the local NGO sector [*Carmichael, 2002; Feldon, 2002*].

Monitoring Mechanisms

Monitoring mechanisms are summarised in Table 7. All study countries attempt to monitor the activities of NGOs through review of their annual reports and audited financial accounts. In all countries, however, government officials felt they lacked capacity to carry out sufficient monitoring – whether because of the scale of the NGO sector (Bangladesh), the lack of resources and weakness of government structures (all countries except Vietnam) or the plethora and complexity of regulations (Vietnam). Even in Vietnam, which enlists the widest variety of government agencies, officials were cognisant of the limitations of 'only know[ing] through reports, not by going to the field' (Government official, Vietnam).

Monitoring of technical quality is to some extent ensured through sector-specific legislation. Thus the Ministries of Health in all study countries were responsible for checking compliance with government policy and standards,

TABLE 6
LEGISLATION ON NGO FUNDING, AUDITING AND ACCOUNTABILITY

Country	Legislation: procedures and principles
Bangladesh (a)	<ul style="list-style-type: none">● Foreign donation covers ‘a donation, contribution or grant of any kind made for any voluntary activity in Bangladesh by any foreign Government or organisation or a citizen of a foreign State’ (1982: Article 3)● Accounts to be kept according to detailed Government specifications and inspected by government approved agencies.
Cambodia (b)	<ul style="list-style-type: none">● Limitations on resources coming to foreign associations and of foreign funding coming to LNGOs● Financial expenditure and origins of funding to be submitted annually to the Ministry of Foreign Affairs and International Cooperation and the Ministry of Interior.
Nepal (c)	<ul style="list-style-type: none">● Foreign finances to go through commercial banks operating within the kingdom of Nepal.● Annual Audit Reports to be submitted at the end of each fiscal year, including description of the physical property of the Organisation.
Viet Nam (d)	<ul style="list-style-type: none">● ‘ NGO aid’ is defined as non-profitable grant and assistance provided by international NGOs as well as by other foreign organisations and individuals● 2 types NGO aid recognised: Programme/project aid and Non-project aid (including emergency relief).● NGO aid to be used for ‘humanitarian objectives as well as to support the attainment of Viet Nam’s priority socio-economic development goals’.● Social and Charity Funds’ accounts and statistical work must abide by government specifications and ‘shall be subject to the State financial management by the finance agencies of the levels competent to permit their establishment [Ministry of Planning and Investment and Ministry of Finance].’ (1999a:Article 15)

Sources:

- (a) Bangladesh Government 1978a: Articles 4, 5; 1978b: Articles 5, 6, 8; 1982: Articles 3, 5.
(b) Cambodia Kingdom 1998: Articles 11, 18, 23.
(c) Nepal Government 1992a: Articles 16; 1992b: Article 21.
(d) Viet Nam, Government of the Socialist Republic of, 1999: Articles 15, 16; 2001: Articles 9, 10.

but again financial and human resource limitations often precluded this in practice.

Dissolution

In the most extreme type of control, governments may intervene to close down an Organisation. All study countries reserve the right to intervene in organisations deemed to be operating outside the law (Table 7).

In all study countries, laws include subjective criteria for dissolution, including ‘anti-state or anti social activities’ (Bangladesh), activities ‘detrimental to the national interest’ (Nepal) that harm ‘national security’, or ‘degrade Khmer social values’ (Cambodia) or ‘operate against the

TABLE 7
LEGISLATION ON NGO MONITORING AND DISSOLUTION

Country	Legislation: procedures and principles
Bangladesh (a)	<ul style="list-style-type: none"> ● NGOAB monitors through Annual Reports and audits and has powers of inspection. ● Council Ministry and Line Ministries have assigned NGO officers who assess compatibility with government policies. ● Government authorities have powers of 'inspection' and 'seizure' of 'books of accounts and other documents' if an agency is deemed to be 'acting in contravention of its constitution,... or in a manner prejudicial to the interest of the public' (1961: article 10)
Cambodia (b)	<ul style="list-style-type: none"> ● Line Ministries and the Ministries of Interior and Foreign Affairs, monitor through review of Annual Report and financial statements. ● Dissolution may take place 'if the association has committed any activity in violation of a law, which caused harm to public order or national security or good Khmer tradition, or which has abused the by-laws and internal rules of the association' (1998:article 16)
Nepal (c)	<ul style="list-style-type: none"> ● Social Welfare Council monitors through review of annual reports and audits. ● Line Ministries and National Planning Commission (NPC) check project compatibility with government policies. ● Dissolution may occur if an NGO is deemed to 'do their business against prevailing laws or their own constitutions' (1992: Article 20.1).
Viet Nam (d)	<ul style="list-style-type: none"> ● Monitoring through partnership (government counterparts, especially Ministry of Planning and Investment and Ministry of Finance and Public Security, may attend NGO project meetings etc.), checking of annual reports and audits and powers of inspection. ● Dissolution criteria unclear – can occur if an NGO '<i>operates against the national solidarity and independence of the country</i>' (interview, Government official)

Sources:

- (a) Bangladesh Government 1961: Articles 9, 10; 1978a: Article 3, 5; 1978b: Article 5A, 5b (1982 amendments).
 (b) Cambodia Kingdom 1998: Articles 15, 16, 19, 25; 2000: Article 2.11
 (c) Nepal Government 1992a: Articles 20, 23; 1992b: Article 21; 1997
 (d) Viet Nam, Government of the Socialist Republic of, 1999: Articles 19, 20; 2001: Chapter III and Article 21.

national solidarity or independence of the country' (Vietnam). In Bangladesh, the existing Ordinances (dating from regimes characterised by government control – Table 1) give considerable powers to government of inspection and seizure. Government can intervene in the internal affairs of NGOs and dissolve them [*Bangladesh Colonial Government, 1898: Section 98; Bangladesh Government, 1982*], although there are ambiguities between the various legislative instruments [*World Bank, 1996: 25*]. In practice the legislation is rarely used: Bangladeshi officials denied they had closed down any NGOs in recent years, a fact corroborated by NGOs interviewed.

Nevertheless, the continuation of such clauses, which confer significant powers on government agents, perpetuates wariness among NGOs, making them nervous of engagement with government and contributing to a reluctance to be transparent (interviews, INGOs and LNGOs). Only in Nepal was there a legally enshrined right to independent judicial appeal against dissolution. In Vietnam explicit criteria to 'de-establish' NGOs is unclear (according to a government official, a clarification is currently in draft). The latest PM Decision on foreign aid, however, is unequivocal: 'All organisations and individuals that violate this Regulation shall be punished according to laws [unspecified]' [*Vietnam Government, 2001: Article 21.3*]. When asked, officials in several government departments said they had closed organisations down:

We can stop activities of an NGO if they are against government law or are not effective ... we have stopped many because their functions were different from their statement, or because of corruption issues. (Vietnam Government Official)

Generally any NGO which operates against the national solidarity and independence of the country, this NGO's licence will be withdrawn. (Vietnam Government Official)

VII. LEGISLATION: A CATALYST FOR CONFLICT OR COLLABORATION?

Whether or not one believes that the expansion of NGO sectors in size and mandate is 'a good thing', it seems likely it will continue. It is also clear that tensions between NGOs and governments over political and ideological supremacy, may result. Legislation is often seen as the locus of this conflict and contested power, with NGOs concerned to safeguard their independence and autonomy and governments keen to limit the 'competition' NGOs may represent. The article acknowledges that legislation can play a key role in exacerbating or alleviating these tensions, but I maintain that legislation is a necessary catalyst bringing governments and NGOs together to debate the nature of civil society, its role in development and protection of freedoms to achieve this. This final section considers two questions. To what extent can legislation contribute to enhancing NGO accountability and legitimacy? Can legislation achieve a balance of hegemony and political interests and what are the necessary conditions for this?

Can Legislation Enhance NGO Legitimacy and Accountability?

Hudson (2000) maintains that 'legitimacy' implies the right of organisations to represent and speak for their beneficiaries, the poor and marginalised.

Legislation can play a key role in shaping 'legitimacy' both intentionally and unintentionally. Legislation can create and protect the right of civil groups to organise and to advocate for the needs and rights of the poor; it can put in place mechanisms to prevent corruption of the NGO sector. Conversely, it can restrict or ignore all of these. Table 8 summarises key indicators of the most significant restrictions on or inhibitors of NGO freedoms and activities.

Notably, in all countries legal recognition of the role of NGOs as advocates is limited, curtailing what is arguably the most important role of NGOs as representatives of a healthy civil society, but also the role most threatening to government. In no country was there an explicit right for LNGOs to have unrestricted access to media and media itself is often suppressed. In Bangladesh the journalist who reported on political interference with LNGOs [Samad, 2000] was subsequently arrested and continues to be illegally detained [Amnesty International, 2003]. These actions constitute violations of freedom of expression by international standards [ICNL, 1998; Amnesty International, 2003] inhibiting NGOs' ability to give voice to the poor and marginalised and provide a counter-balance to government.

Although the rights to individual freedom of expression and of association are enshrined in constitutional legislation in all countries, this is not necessarily upheld in practice. In Vietnam 'freedoms' remain tightly legislated [Amnesty International, 2001]. In Cambodia the 1998 draft NGO law is in direct conflict with the country's constitutional right to association [Cambodia Kingdom, 1993: Article 42] by making registration mandatory and seeking to impose a prison sentence on any individual creating an association or NGO without political sanction. Moreover, political turbulence in any country can threaten freedoms that are ambiguously expressed. As a result, it was felt in all the study countries that INGOs were in a better position to act as advocates both for LNGOs and local communities: 'In advocacy INGOs are better because Cambodians have not much influence on the Cambodian Government in reality' (LNGO, Cambodia).

Legislation does have the potential to provide an important quality check on the NGO sector by allowing approval only of those organisations deemed to have sufficient capacity and accountability. However, where the state commandeered NGOs through *de facto* pressures (Cambodia) or *de jure* regulations (Vietnam) then NGO legitimacy to act as independent representatives of 'civil society' was lost.

'Accountability' is a subjective, complex and changing notion [Hudson, 2000; Edwards and Hulme, 2002]. Many commentators have noted that NGOs tend to be accountable primarily to donors, more so now they are seen as development partners; Edwards and Hulme (2002) make a useful distinction between 'functional' accountability (for resources and their use) and 'strategic' accountability (for impact in the wider environment).

Regulations on accountability and financial monitoring in the study countries invariably concerned the functional accountability of NGOs to government. While in all countries monitoring, accountability and dissolution regulations are intended – at some level – to prevent fraud and personal gain and ensure quality (indirectly measures of strategic accountability), no country had a legal requirement for NGOs to be directly accountable downwards to their beneficiaries. Furthermore, regulations offer little protection in reality because governments have little capacity to implement them and ‘accountability’ is not defined. This does lead to a real fear that government’s accountability requirements are a guise for arbitrary control and closure, especially where there are ambiguous or unclear criteria (in all countries) governing government intervention to withhold funding or close NGOs and seize assets. Together, these weaknesses mean that NGOs are primarily accountable upwardly to donors (including INGOs) who impose stringent functional accountability measures, but are accountable neither to national governments nor beneficiary communities.

This analysis indicates that while legislation does have a contribution to make to ensure legitimacy and enhance the accountability of LNGOs, this depends on the capacity and accountability of the state itself and the nature of relations between the state and NGOs. These factors will determine whether legislation can provide harmony between different interests, both preserving the innovative and radical nature of grass roots organisations which represent civil society, as well as regulating their quality and accountability. If NGOs are truly to be seen as development ‘partners’ rather than alternatives to government, the nature of linkage and balance between NGOs and state players will be critical.

Balancing Hegemony and Political Interests: from Conflict to Collaboration

This article has highlighted the very real potential for conflict over government legislation on NGOs but also important opportunities and benefits of legislation for enhancing NGO legitimacy and accountability. A number of NGO commentators note the importance of negotiation between stakeholders to improve NGO accountability [Edwards and Hulme, 2002]. As NGO–state tensions increase (as in Bangladesh), the need for negotiation between stakeholders becomes more urgent and it is particularly important for donors and INGOs also to be involved.

I suggest that three criteria are important if legislation–negotiation is to be effective. These are illustrated in Figure 1: first, government accountability and capacity to develop and enforce policies to regulate NGO quality and accountability; second, a competent and independent NGO sector able legitimately to represent civil society; and third, pervading each of these, political will to engage in an open and constructive manner. It is suggested

TABLE 8
INDICATORS OF RESTRICTIONS ON NGO OPERATIONS IN FOUR ASIAN COUNTRIES

Restriction indicators on LNGOs	Bangladesh (a)		Cambodia (b)		Nepal (c)		Vietnam (d)	
	Registration	Project	Registration	Project	Registration	Project	Registration	Project
Are approval procedures streamlined to avoid unnecessary bureaucracy? (i.e., no multiple approval bodies)	INGOs – Yes LNGOs – No	No	No	No	Yes	No. Except for emergency relief	No	No
Is application approval time specified?	No	No	90 days	No	INGOs – 3months LNGO – 45 days	INGOs – No LNGOs – 45days	No	No
Is access to judicial review for application refusal permitted?	No. Appeal to government only	No. Appeal to government only	Yes. To court at any time	Not specified	Not specified	Not specified	Not specified	Not specified
Are there restrictions on membership (qualifications, political allegiances etc.)?	Not specified.		‘Personal’ data of at least 3 founder members required.		Not specified.		‘Professional’ qualifications required for founder members. CVs must be government approved.	No.
Is unrestricted media access permitted?	Not specified.		Yes (draft).		Not specified.			
Do changes in NGO legislation have to be presented in the national press?	Yes In official Gazette		Not specified		Not specified		Yes In Government legal journal	

(continued)

TABLE 8 (*cont'd*)

Restriction indicators on LNGOs	Bangladesh (a)		Cambodia (b)		Nepal (c)		Vietnam (d)	
	Registration	Project	Registration	Project	Registration	Project	Registration	Project
Are criteria for government intervention and dissolution clear?	No.		No (draft).					
	Ambiguities between legislation; open to interpretation.		Open to subjective					
					Yes. Based on contravention of national laws and NGO constitution.		No.	
Is access to judicial appeal against dissolution permitted?	No. Appeal to government only within 30 days of notification		Yes (draft). To Court (unspecified) within 15 days of notification.		Yes. To Appellate Court within 35 days of notification		Not specified.	

Sources:

(a) Bangladesh Government 1961, 1978a, 1978b, 1982.

(b) Cambodia Kingdom 1998, 2000

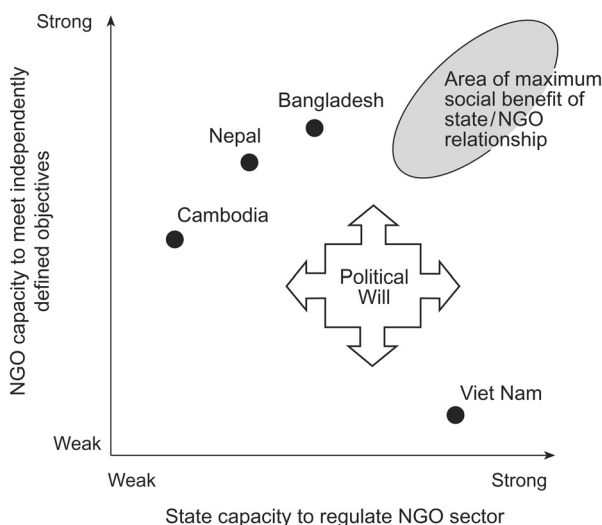
(c) Nepal Government 1992, 1997.

(d) Viet Nam, Government of the Socialist Republic of 1999, 2000, 2001.

that where each of these criteria are met to a significant degree, there will be an environment conducive to the development of mutually enhancing policies – indicated by the shaded area. Donors and INGOs have critical roles to play in strengthening both sectors and supporting mechanisms for negotiation; as Bebbington and Riddell note ‘... donors would provide more effective support to S[outhern]NGOs if they combined funding support to these NGOs with continued efforts to strengthen the state system at the same time, and if they worked to foster more constructive relationships between NGOs and the state’ [*Bebbington and Riddell, 1995: 885*].

It was notably in Bangladesh and Nepal, where NGOs are strongest, that NGOs themselves were most vocal in calling for dialogue and clarified linkage with government in order to protect themselves, and they saw strengthening of collaboration mechanisms and government capacities as necessary to facilitate this. This final discussion summarises what initiatives are currently being undertaken in the study countries to foster supportive links between governments and NGOs and considers where future aid and support could be focused in order to move towards a workable policy environment in which NGOs and governments can strengthen legitimacy and accountability and work towards a common development goal.

FIGURE 1
CAPACITIES AND BALANCE IN STATE AND NGO SECTORS



At mid-spectrum in terms of relative capacities, Bangladesh has strong government and NGO sectors but lacks a clear framework for government-NGO linkage so perpetuating government-NGO tension. Although political will has been lacking on both sides, as NGOs are increasingly incorporated into national government health strategies and delivery plans there is mounting pressure from INGOs and donors to define linkage mechanisms in concrete terms [*Kabir, 1998; BPHC, 2000*; Interviews government and NGO officials] and 'for government to be clear what they want these NGOs to do and what they want out of them and what really is their own role.' (INGO local staff). Various seminars have been held on strengthening government-NGO linkage and DFID has explicitly mandated the Bangladesh Population and Health Consortium (BPHC) to build collaboration as part of its government support programme. A draft NGO-government link strategy for the health sector has been developed, although there are concerns that '[t]he government hasn't actually said what its view is. They've actually avoided quite nicely the questions of will they actually sub-contract NGOs to deliver health services when [the government] cannot.' (INGO staff). Sustained and coordinated commitment to consolidating linkage mechanisms is now required from all parties.

In Nepal, where the NGO sector is exploding, the strongest NGOs seem to be able to network effectively to form issue-specific lobby groups to engage with government. The key issue here is imbalance of government and NGO capacities. Nepal was notable in that the local NGO and private sectors themselves recognise that they need a strong government if they are to contribute effectively to development: 'you can't quite forget government. ...there are a whole lot of issues in the civil service that haven't been addressed - incentives, salaries...' (interview, independent local consultant). International donors are increasingly active in this respect, the UN and bilateral agencies, for example, do support strengthening government, for example World Bank, DFID and GTZ through their human resource development strategy. This notwithstanding, significant ongoing support is still needed if the government is to be strengthened sufficiently to liaise effectively on issues like policy advocacy and service linkages.

Cambodia lies at the lower end of the spectrum, being in need of both government and NGO sector strengthening. The government cannot build its own capacity sufficiently quickly to address the scale of need in the country while NGOs - particularly local - go unchecked and stories of corruption are rife. Some externally supported local health sector NGOs have the close ear of government and formal links between NGOs and government are being forged ad hoc through recent district contracting schemes (interviews, government officers). The international community supported the development of two (expatriate headed) NGO coordination networks, MEDICAM

and CCC which play important roles in information sharing and government liaison [*MEDICAM et al.*, 2000, *MEDICAM*, 2001], but few direct attempts have been made to strengthen government capacity in the health sector or *vis-à-vis* NGOs. Without explicit and committed help from donors and INGOs to develop both an independent, regulated local NGO sector and a public sector capable of designing appropriate legislation, the current ineffective piecemeal approach to health and development in the country will be perpetuated.

Vietnam lies at the other extreme of the spectrum with its sophisticated, highly regulatory legislative environment and virtually non-existent LNGO sector. Until a tangible LNGO sector develops, there can, by definition, be no linkage with government, but INGOs and donors could enhance *their* current linkage with government and in that way support the growth of concepts about independent 'LNGOs'. As in Cambodia, some local organisations have a close government ear (generally those headed by people with respected government credentials – such as retired ministers). These could provide an entry point for linkage and advocacy, although their continuing links with party ideology can make this a slow and sometimes difficult process. Some INGOs and donors (notably American) reject support of local groups because they do not conform to international NGO definitions. If the trust necessary for equal dialogue with government is to be gained, however, the international community must engage with the mass organisations, as well as supporting the younger, more independent 'centres'. As one INGO official said pragmatically: 'I don't care about the title but what they do with development ... and the quality of the workforce. In terms of development, government groups do excellent work...'.

This article has charted and analysed a spectrum of NGO policy and legislative environments in Asia. As NGO sectors continue to grow and attract foreign funding, states will increasingly mount a legislative response which is often a source of tension and conflict. This article maintains that legislation is nevertheless necessary because it can act as a catalyst to spark and focus discourse on the role of NGOs, the extent to which they legitimately represent civil society, to whom they are accountable and how they can be protected. Donors and INGOs should seize the opportunity to strengthen both LNGOs and governments by supporting them to engage in balanced dialogue about what kind of legislation is most beneficial to preserving the freedoms, as well as the accountability and quality of non-governmental organisations. NGO legislation is a neglected area but it is a policy issue that deserves serious attention. Negotiation is not easy, but if all players are willing to engage, legislation has the potential to institutionalise the core values associated with NGOs, shape their legitimacy, enhance their upwards and downwards accountability and consolidate their role as indigenous development partners.

NOTE

- 1 Civil law (derived from Roman Law and prevalent in continental Europe and its colonies, including Vietnam) traditionally distinguishes between legal forms of 'foundations' (which must have a capital sum or property and act essentially as grant-making institutions) and 'associations' (which are governed by their members whose interests are pursued). Typically legal identity is acquired through registration involving presentation of organisational documents to a court, ministry or local administrative agency. Common law (an English-derived system also prevalent in South Asia) allows the incorporation of different types of companies, societies and associations, but expects that 'charities' will take the form of a 'trust' (whose trustees are liable for the assets). Trusts must obtain permission to incorporate from a Charity Commission. Today many countries incorporate civic organisations under other legislation, usually a ministerial act with articles of incorporation drawn up by the applicant and submitted to the relevant agency [ICNL, 1998].

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