

## **UNIT 5. VOLUNTARY SECTOR & ACCOUNTABILITY - INSIGHTS FROM SOME INTERNATIONAL EXPERIENCES**

It is important to note that the ways in which governments relate to and regulate voluntary non-profit voluntary sector, particularly in legal and financial terms, differs from country to country. And those baseline differences and the counter-terrorism laws influence not only civil society but also the emergence and nature of voluntary sector and activities of voluntary organizations in those countries.

In the US, regulation of voluntary sector is primarily carried out through two distinct areas of government. The states regulate the formation, registration and governance of most of the VOs, with the exception of a very small number that are directly registered by the federal (national) government. But for the vast majority of American VOs, large and small, the state is the starting point. So the largest private foundation, the Gates Foundation is registered in the state of Washington D C, for example. The other key point of regulation is the federal (national) government, primarily through the Internal Revenue Service (IRS) (equivalent to Indian Income Tax Department), a branch of the Department of the Treasury (equivalent of Indian Ministry of Finance). The IRS regulates the tax status and tax treatment accorded to VOs based on the provisions of Internal Revenue Code.

While the state governments (for formation, registration, governance, fundraising and many other governance and management issues) and the federal (national) government (through IRS for tax issues) are the primary regulators. Other regulators such as the other divisions of the Treasury Department govern prohibited transactions and foreign assets control (Simon et al 2006; Fremont-Smith 2008).

In the UK, charity law is approached differently, a result of diverse history and governmental structures. The four key types of non-profit VOs are i) companies limited by guarantee, ii) unincorporated associations, trusts and iii) industrial and provident societies. A large number of those are registered as charities, which confer certain tax exemptions and allow donors to deduct certain gifts from income. A national statute (law), the Charities Act 2006 regulates the charitable sector. The Charity Commissioners for England and Wales, focusing on charities' compliance with legal requirements, confirming and investigating that they are operated for charitable purpose and provide a public benefit, as the law requires, and not for private purpose, determining that they are maintaining required independence and that the trustees are exercising property controls, and investigating and mandating solutions for mismanagement or abuse of charities. Similar

organizations exercise such functions for Scotland and Ireland. The other government institutions that regulate charities and other VOs are HM Revenue and Customs and the British tax authority regulate tax exemption and tax relief of certain donors. The Home Office and British security services play a role in the security and terrorist aspects of the charitable regulations (USIG 2008a).

Canada is also complicated, for it is a federal state that includes ten provinces and three territories. VOs are generally formed as 'non-share' membership corporations under federal or provincial law, as trusts under provincial law, or as unincorporated associations. In general most non-profit VOs are formed under provincial law. Beyond these formations and governance issues, Canadian tax legislation at the federal (national) level differentiates between non-profit VOs and charities, each with their own tax exemption benefits. In recent years, security concerns about Canadian charities have been dealt with through the Canada Revenue Agency (CRA) under the auspices of the Charities Registration (Security Information) Act and the common law powers of the Attorneys General are confined largely to certain establishment and governance matters (Phillips et al 2001; USIG 2008).

In India, like the UK, different kinds of VOs can qualify as charitable for the purpose of tax relief. These include societies, trusts, and what are termed the 'Section 25 company', which is a 'company with limited liability that may be formed for "promoting commerce, art, science, religion, charity or any other useful object" (USIG 2008c). Tax exemptions for charitable organizations, and tax benefits to donors, are available for registered and approved groups and donations if they meet the definition of 'religious and charitable purposes'.

Regulatory authority in India is widely dispersed. ".....many state and central government agencies have regulatory authority over these not-for-profit entities.....(N)ot-for profit organizations are required to file annual tax returns and audited statements with various agencies. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for Section 25 Companies). At the national level, the regulatory bodies include the income tax department and the Ministry of Home Affairs (only for not-for-profit VOs receiving foreign contributions)" (N DadrawalaUSIG 2008c). Since 2001, national and state security agencies and police have begun investigating charitable activities more diligently in the wake of the passage of the anti-terrorist legislations.

There are differences in the way in which counter-terrorism laws and policies have affected civil society, voluntary sector and VOs in different countries. The British approach has relied

significantly on charity regulators as statutory-based core partners, often as 'first responders' in situations where charities are allegedly tied to terrorist finance. The American approach to shutting off terrorist finance from largely nonprofits largely sidesteps charity regulators in favour of direct action by prosecutors and assets control officials, a function of both prosecution and home-land security-led counter terrorism measures and the bifurcated nature of regulation under the American federal structure. Canada, India, Australia and other countries combine similarities and differences with the American and British approaches, all overlaid with substantive and specific political, economic and legal history of the respective countries and perception of terrorist threat in those countries.

The basic premise is that measures used to monitor, investigate, restrict, prosecute or otherwise affect charities/VOs with the goal of restricting terrorist financing should also seek to maintain the autonomy and the vibrancy that characterize voluntary sector in democratic societies. Efforts must be made to integrate society's interests in freedom from terrorism with society's interests in a vibrant, autonomous and powerful voluntary sector. These are not only the 'state's' interests distinguished from the voluntary sector's interests; but combating terrorism and preserving and enhancing the vital role of the voluntary sector are interests that states and voluntary sectors share, as do other forces in society.

The impact of counter-terrorism law and policy on civil society and voluntary sector, and the enabling environment for it have been subject of recent work of many scholars. There has always been mistrust of the voluntary sector by governments in many nations. The reason for this mistrust in recent times is significantly due to the perception that the voluntary sector is a link to terrorism through financing, ideology, facilitating meetings and organization. This mistrust is expressed in tightened regulation, stricter governance and financial accountability and transparency requirements, restrictions on foreign funding, limitations on endowment growth and investments, barriers to advocacy and a host of other legal and policy requirements.

For a number of governments, the current suspicion of VOs and voluntary sector goes beyond traditional mistrust and reflects a vision of voluntary sector as a source of insecurity and incivility that has fuelled emergence of terrorism. Even where governments do not make explicit linkages between VOs and terrorism, the sector is generally regarded as easily available for use by terrorists because of their ineffective and porous sources of finances, organization, communication, transfer of goods and services. This has contributed to declining public confidence in the voluntary sector's ability to contribute to the resolution of social problems and advancement of human security. These perceptions have resulted in intangible creation of climates of opinion or shifting attitudes towards VOs and the voluntary sector.

Government responses take many forms, including anti-terrorism laws and regulations that directly affect the voluntary sector (India and other south Asian countries); enhanced restrictions on gatherings and associational activities; limitations on funding and new requirements for funders and VOs (USA); inclusion of VOs in new anti-terrorism laws and enhanced investigations (UK); and a host of other measures. Countries that did not have anti-terrorism laws and policies have adopted many such laws beginning from 2001 (Bangladesh).

Changes in state policies may, depending on the context, contribute to the decline in the size of the voluntary sector; or the VOs may avoid undertaking innovative and controversial work because of the state pressure. New policies of regulating the voluntary sector in a country may result in the reduction in the volume and purposes of funding available to VOs; priorities of foreign aid to VOs in a country may shift to countries of strategic importance and may be channelized to militarization of a nation-state. State monitoring may result in local opposition to advocacy work of the voluntary sector; or state monitoring may get tight due to lack of transparency and accountability of the VOs. These circumstances demand that the voluntary sector do more, do more effectively and regulate itself. In this context it can be mentioned that the Voluntary Action Network India (VANI) has been working as a national platform of VOs in India which has been consistently functioning up Issues related to regulations (See for example, [www.vaniindia.org](http://www.vaniindia.org))

### **International Regulations**

Earlier international attempts to legislate to regulate voluntary sector did not apply broadly to voluntary sector and they were implemented more in breach than with consistency. Recent international attempts to regulate the linkages between terrorism and the voluntary sector have their roots in the 11 September 2001 terrorist attack on New York city in the US. In response, in the same month, the UN Security Council adopted Security Council Resolution 1373. This has become the basis for most of the international, regional, and national law and policy on VOs and their links to terrorism. Resolution 1373 'decided that all states shall':

- a) Prevent and suppress the financing of terrorist acts; b) Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;*
- c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly*

*or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities; and d) Prohibit their nationals or any persons or entities within their territories from making any fund, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled directly or indirectly, by such persons or of persons and entities acting on behalf of or at the direction of such persons. (UN Security Council 2001)*

Resolution 1373 also called upon all states to 'Deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens', 'Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizen', 'Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts'. 'Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts', and 'Cooperate, particularly through bilateral and multilateral

Arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts'.

*b) Finally, the Resolution 1373 noted 'with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, sub regional and international levels in order to strengthen a global response to this serious challenge and threat to international security'. (UN Security Council 2001)*

Action to implement the money laundering aspects of this Resolution, which included the issue of terrorist finance through VOs, then moved into two directions. First, a number of national governments quickly passed legislations or strengthened implementation of existing laws and regulations criminalizing and banning terrorist finance, material support to terrorism(including through charitable organizations), and other measures that might affect the voluntary sector.

Second, the Financial Action Task Force (FATF), an inter-governmental group of 44 member countries (including the US, the UK, Canada and Australia), with several observers (including India) rapidly stepped up its activities to 'develop and promote....policies, both at national and international levels, to combat money laundering, and terrorist financing'. FATF was established originally to deal with money laundering with a focus on organized crime and drug trafficking. In 2001 its mission expanded to include terrorist financing, and it issued 'Eight Special Recommendations' on combating terrorism.

Special Recommendation VIII adopted after the September 11 attacks dealt with non-profit organizations. It urged the countries to review the adequacy of laws and regulations that relate to entities that can potentially abuse the funds because non-profits are particularly vulnerable to misuse by terrorist organizations posing as legitimate entities; to exploit legitimate entities as conduits for financing terrorist activities. The national governments, it urged, should even freeze the NPO's assets, and make sure that funds intended for legitimate purposes are not clandestinely diverted. In 2002, FATF issued a document **Combating the Abuse of Non-profit Organizations: International Best Practices** that reflected a tension between necessary government regulation, investigation, prevention and prosecution of non-profit organizations on the one side; and the dangers to associational freedom and voluntary activity on the other hand that enhanced government regulation would bring. It highlighted these tensions in a sophisticated manner, calling for cautious and proportionate regulation while leaving it up to governments to ascertain how to resolve the very real tension. It stated that robust oversight mechanisms do not preclude shared goals and complementary functions – both non-profit organizations and the government entities seek to promote transparency and accountability, and more broadly, common social welfare and security goals. It recommends that government oversight should be flexible, effective and should reduce the burden of compliance without creating loopholes. Different jurisdictions approach regulation from different constitutional, legal, regulatory and institutional frameworks and international standards must allow for differences while adhering to the goals of transparency and accountability in the way in which non-profit organizations collect and transmit funds. The non-profit sector in many jurisdictions has representational, self-regulatory, watchdog and accreditation organizations that play a role in protecting the sector against abuse in the context of public-private partnership. The Best Practices document suggested measures to strengthen self-regulation as a significant method of decreasing the risk of being misused by terrorist groups. Misuse of non-profit organizations not only undermine donor confidence in the sector but also jeopardizes the very integrity of the sector itself. Therefore, protecting the voluntary sector is a critical component of the global fight against terrorism. In this way, the FATF stood with the governmental action to curb NGO support to terrorist activities. The FATF called for

'effective investigation and information gathering' and 'effective mechanisms for international cooperation'. For supervision and monitoring by government, the VOs are required to maintain information on their purposes and leadership, publish detailed annual financial statements, get licensed or registered, install appropriate financial control systems consistent with the VOs mission and objectives, maintain data on 'know your beneficiaries', maintain records at least for the last five years and be monitored by appropriate domestic authorities. Many governments had begun to act along these recommendations by 2002. In many countries, these accelerated legal and policy developments affected voluntary action and the sector. These measures did not get accepted by voluntary sector unopposed. In countries like Canada, voluntary sector raised the specter that government action was disproportionate and unnecessary knee-jerk panic reaction.

Unlike private business which is accountable to its owners, shareholders, and government, voluntary organizations are accountable to multiple stakeholders such as the state, donors, beneficiaries, regulators, general public and allies. The need to balance multiple claims makes voluntary organizations' accountability complex. Legitimacy, accountability and transparency are closely connected since transparent and accountable behaviour is key and necessary source for the legitimacy and credibility of voluntary sector actors.

### ***5.1. Voluntary Sector in SAARC region***

Relations between the state and civil society underwent considerable changes since the early 1990s in the countries in the SAARC region. Many developments in the five countries reflect what Barnett Baron correctly terms "growing government awareness of and wary cooperation with the nonprofit sector," as well as concerns about terrorism and insurgency that may be acted upon in different ways in different countries. It is argued that the issues of security and development are no longer confronted with only one dominant interlocutor, the state; these issues now face a variety of actors, such as local governments, central government agencies, non-governmental organizations, social movements, citizens' groups, social networks, bilateral and multilateral donors, business community, etc. Though some of the critical concerns of human security such as poverty, human rights, literacy, healthcare, social awareness, social mobilization, and cultural diversity are being addressed by the civil society actors better than the state, threat to human security has tightened the noose around the sector.

The set of concerns that span more than one country in the SAARC region are –

- Governments in the region (particularly India and Bangladesh, but others as well) continue to seek control over transfers of foreign funds for nonprofit and philanthropic use,

especially those with potentially political or advocacy connotations. These conflicts take place when government attempts to strengthen the regulation of foreign donations (as in Bangladesh and India), and when nonprofit organizations attempt to ameliorate the effects of that regulation. Government regulation of foreign donations has significant effects on governance and accountability in the nonprofit and philanthropic sector.

- New initiatives to regulate the burgeoning micro-credit and microfinance sector emerged. In Bangladesh, India and Pakistan, the governments have proposed or enacted major new statutes to regulate this traditionally under-regulated sector. Courts have also given directions to the governments to regulate the sector.
- Debates over the scope of tax exemption for nonprofit and philanthropic entities and tax deductibility for donations continue. In some countries, such as Bangladesh, Pakistan, Sri Lanka, and perhaps in Nepal, the recent tendency is to liberalize tax exemption and deductibility from a relatively restrictive base. In others, such as India, the tendency now appears to restrict tax exemption and deductions, though originally India started from a relatively liberal tax regime for nonprofits. In some cases, additional attention to fiscal policy is related to concern for money laundering and terrorist finance, as in the new restrictions on tax exemption for anonymous donations in India.
- Debates continue over for-profit business activities of nonprofit organizations, even those that directly support the charitable or nonprofit missions of those organizations. In Bangladesh, for example, the government recently sought to limit the business activities of the voluntary sector, withdrawing its proposal in the face of a strong and unified voluntary sector.
- New money laundering legislations, including “know your customer” or “know your payee” rules in several countries of the region including India, Pakistan, and Sri Lanka have been introduced. The impacts of new money laundering legal frameworks have yet to be fully felt by the voluntary sector, but generally apply broadly to nonprofits and can be expected to create additional administrative, inspection, and reporting burdens. The expansion of money laundering legislation and rulemaking is a direct reflection of post-2001 concern over terrorist finance and attempts to implement United Nations’ Financial Action Task Force (FATF) and other resolutions and norms.



- In countries like Nepal, intense, even violent conflict over the role and autonomy of the voluntary sector took place in the context of broader political conflict in society. In Nepal, where the royal government sought to severely constrain the voluntary sector, a people's movement, along with a new Interim Constitution, has sought to guarantee the right of the voluntary sector and civil society to participate in national policy life. In Sri Lanka, in view of the continuing conflict and insurgency that enveloped the voluntary sector, new restrictions were imposed.
- New forms of regulation and regulatory bodies are emerging, including proposals or establishment of a new regulatory body in Sri Lanka, and proposals for a significantly revamped, strengthened (and politicized) regulator in Nepal. Occasionally there are calls for a quasi-independent charity regulator also, sometimes along the lines of the U.K. Charity Commission experience. The World Bank has proposed such a solution for charity regulation in Bangladesh, for example.
- In Sri Lanka, where a new Company Act has come into force, and in Nepal, where company act amendments have been enacted, a company form for nonprofit organizations is now facilitated considerably more than in the past.
- There is continuing interest in self-regulation and accreditation mechanisms, though not region-wide. In Pakistan, the sector-operated certification mechanism has been strengthened, and in India the National Policy on the Voluntary Sector discusses the possibility of establishing a national nonprofit accreditation system. (**Recent Developments in Bangladesh, India, Nepal, Pakistan and Sri Lanka** Prepared by the **Asia Pacific Philanthropy Consortium Philanthropy and Law in South Asia** 2007).

### **5.1.1 Bangladesh**

The emergence of Bangladesh as an independent state in 1971 has special relevance for the role and power of civil society and civil society voluntary organizations. The liberation of Bangladesh was the outcome of a truly mass struggle against military-civil oligarchy of Pakistan (Kabir, 2002; Goon, 2002; Khan and Kabir, 2002). Against this background, the NGOs as the major arm of civil society witnessed a substantive expansion in the late 1980s. According to the Hunger Project, the civil society initiatives including NGOs covered 78% of rural areas engaging 24 million people with their programs in 2002. It is estimated that there are 19,000 NGOs. Bangladesh has also 20,000 local people's groups partly

financially assisted by local and central government. There are many more who do not take support from government and thousands of traditional community organizations. According to a World Bank report, there were 27,000 NGOs registered with Ministry of Social Welfare, Bangladesh in 2004.

In identifying the reasons for the emergence of civil society actors in Bangladesh scholars-thinkers and activists generally argue that there are three key factors - national crisis situation immediately after the liberation war and natural disasters; growing interest of donor community; and state failure in Bangladesh (Lewis, 2004; Korten, 1990; White, 1999; Kabir, 2002; Khan and Kabir, 2002).\_\_The donor community encouraged the participation of civil society particularly NGOs in development process partly as recognition of government failure and partly for the professionalism and efficiency of NGOs in service delivery function. During the autocratic rule of Ershad regime, NGOs and other forms of civil society expanded enormously. There is a strong element of religious duty of giving as it is called *zakat* in Islam. As a matter of fact, both the local conditions and external factors have facilitated the growth of voluntary sector in Bangladesh in the past three or four decades. The local conditions are playing a crucial role compared to the external factors. Colonial exploitation, feudalism, regional disparity, cultural domination in the pre-liberation era and the continuing mass poverty, corruption, governance deficit, political instability and social injustice caused by state and market failure in the post-liberation period and above all, natural calamities such as floods and cyclones continue to provide compelling grounds for strong voluntary sector engagement in Bangladesh. Donor community and global networks of civil society provided further impetus, often critical support, to the rise of social forces.

Along with the increase in the number and prowess of voluntary sector in Bangladesh, several laws also were framed to regulate NGOs and social organizations as part of civil society. These are the Registration Act 1806, the Voluntary Social Welfare Agencies Ordinance 1961, the Foreign Donations (Voluntary Activities) Registration Ordinance and Rules 1978 and the Foreign Contributions (Regulation) Ordinance 1981. The first two deal with the registration of NGOs and social organizations while the last two deal with the inflow of aid. Later on government formed two major institutions to monitor activities of NGOs – the NGO Affairs Bureau and the *Palli Karma Shahayak* Foundation (PKSF) in 1990. Despite the differences among the leadership in the NGO community, government remained committed to frame new laws and to amend existing laws to regulate the

activities of NGOs. One such attempt is the Foreign Donations (Voluntary Activities) Regulation (Amendment) Ordinance, 2004.

Recent World Bank proposals for reform in the regulation of the nonprofit sector focus on the need to streamline and harmonize existing laws. It reaffirms certain key principles to be ensured in the regulatory reform process:

- i) Broad discretion should be given to NGOs to structure themselves in ways that suit their goals and purposes.
- ii) Given the broad spectrum of activities undertaken by NGOs, laws should not be written with a particular group in mind but have room for flexibility in application.
- iii) Regulations should be facilitative in that NGOs can scale up their activities in an innovative manner
- iv) Penalty provisions should be structured to provide gradation of sanctions starting from fines and other intermediate sanctions before settling for board suspension or dissolution.
- v) Judicial appeals should be allowed to contest any adverse ruling or penalty and
- vi) Tax laws for non-profits need to be simplified and compiled separately, with focus on providing greater incentives for local resource mobilization for the NGO sector. (Source: State, Civil Society Empowerment and Human Security: Evidence from Bangladesh Delwar Hossain)

The creation of the NGO Foundation and the endowment granted to it after 2000 with a view to wean the voluntary sector away from foreign funds, demonstrate official acknowledgement of NGO effectiveness and a willingness on the part of the government to work with NGOs. However, there are problems with regard to government contracting NGO services. Some of the key issues identified by the 2006 World Bank report include delays, corruption in selecting NGOs and assigning contracts, and dampening of NGO advocacy efforts. There is also concern that government grant may well involve “greater political demands”, create a “patron-client” relationship between NGOs and the government.

Nonprofits’ financial management systems have always been a key concern in Bangladesh, given the absence of coherent and uniform accounting standards and the fact that accounting systems in the sector have largely been developed to suit donor requirements.

### **5.1.2. India**

Perhaps the most important and far-reaching change has been the approval and announcement of a National Policy on the Voluntary Sector 2007. This policy, drafted and finalized after consultations with the nonprofit sector and various government departments, is intended to provide a framework for partnership between government and the voluntary sector. More specifically, the policy is intended to create an enabling environment for the voluntary sector, to enhance their resource mobilization capacity, and to encourage accountability and transparency in the sector. It must be noted that this new National Policy on the Voluntary Sector is not law, only a statement of intention. It does not bind the government to a specific timeframe or commit it to pass new laws or amend old ones. Much will depend on implementation, both at the central level and in the states. But the National Policy on the Voluntary Sector is a significant step forward. This is the beginning of a process to evolve a new working relationship between the government and the voluntary sector without affecting the autonomy and identity of VOs. The Policy is a commitment to encourage, enable and empower an independent, creative and effective voluntary sector, with diversity in form and function, so that it can contribute to the social, cultural and economic advancement of the people of India.

With a view to provide an enabling environment for the voluntary sector, the policy states, "It is crucial that all laws, policies, rules and regulations relating to VOs categorically safeguard their autonomy, while simultaneously ensuring their accountability." The policy includes a provision that the Planning Commission will encourage state governments to review prevailing laws and rules and simplify, liberalize and rationalize them as far as possible. In order to facilitate registration of non-profit companies, the government promises to examine measures to simplify procedures under section 25 of the Companies Act (1956), including those for license, registration, and remuneration to member-employees. The government also promises to examine the feasibility of enacting a simple and liberal central law that will serve as an alternative all-India statute for registering VOs, particularly those that wish to operate in different parts of the country and even abroad without registering under multiple state laws. Such a law would co-exist with prevailing

central and state laws, allowing a VO the option of registering under one or more laws, depending on the nature and sphere of its activities.

No reliable accreditation system is in place at present. With the number of non-governmental organizations growing in the country, the government is planning to bring them under a regulatory mechanism to make them accountable. A task force, constituted to examine the issues related to the evolution of an independent, national level, self-regulatory agency for the voluntary organizations and develop accreditation methodologies by the Planning Commission, has suggested the creation of a statutory body, the National Accreditation Council of India (NACI), on the lines of the Bar Council and the Press Council of India. The NACI would develop, upgrade and promote norms and practices for the accreditation of voluntary organizations of various sizes and competencies, and assiduously remain on guard against all efforts and developments that might compromise the autonomy of voluntary organizations. The proposed council would be responsible for promotion, facilitation and undertaking of activities to improve the availability of trained and adequate manpower for the sector and promote charity, private philanthropy, and for enhancement of fund-raising competencies in the sector.

There can be little doubt that the most critical change on the horizon affecting Indian NGOs is the proposed new FCRA Act. The Bill makes a significant departure from the original Act, and is now mainly focused on NGOs. Prohibited purposes would include political activity, religious conversions, and activities detrimental to the interest of the state. The definition of foreign source has remained unchanged, but has become untenable in the new deregulated economic environment. The only positive change appears to be that allowing NGOs to open secondary bank accounts to manage their foreign contributions better.

The Finance Act 2006 (introduced with effect from April 1, 2007): introduced a new section, 115BBC, seeking to tax any income comprising anonymous donations received by any university or any hospital or other institutions referred to under various sub-clauses of Section 10(23C), or any trust or institution referred to under Section 11. Religious trusts and institutions are exempt from the provisions of this new section. "Anonymous donation" means any voluntary contribution referred to in the now amended Section 2(24)(iia) where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed. While the object of the new Section 115BBC is to plug laundering of "black money" through anonymous donations made to certain trusts, this new amendment

will have a negative effect on charitable organizations that have installed “donation boxes” near cash counters of various up-market shops, shopping malls and other retail outlets. NGOs issuing expensive “Donor Cards” for various charity events will also have to keep a record of who these cards are issued to against donations, failing which the collections would be liable to tax.

The Micro Financial Sector (Development and Regulation) Bill, 2007 was introduced in the Lok Sabha on March 20, 2007. This Bill seeks to promote the micro-finance sector and regulate micro-finance organizations (MFOs). The draft Bill provides for a number of issues affecting the micro-finance sector. If it is enacted: The National Bank for Agriculture and Rural Development (NABARD) would regulate the micro financial sector. Every MFO that accepts deposits will need to be registered with NABARD. Conditions for registration include (a) net owned funds of at least Rs 5 lakh (approx. US\$12,200); and (b) at least three years in existence as an MFO. All MFOs, whether registered or not, shall submit annual financial statements to NABARD. Every MFO that accepts deposits will be required to establish a reserve fund through transfer of a minimum of 15% of its net profit realized out of its thrift and micro- finance services every year. The central government may also establish a Micro Finance Development Council to advise NABARD on formulation of policies related to the micro financial sector. NABARD shall constitute a Micro Finance Development and Equity Fund to be utilized for the development of the sector.

While the NABARD is designated as the regulator of the micro financial sector, its dual role as a key participant in the sector and the regulator could lead to conflict of interest; Banks and deposit taking non-banking financial companies (NBFCs) have to comply with Reserve Bank of India’s (RBI) prudential norms designed to safeguard depositors’ funds; While the Bill enables NABARD to prescribe norms for MFOs, it specifies some norms which are less stringent than for banks and NBFCs; Unlike banks regulated by RBI, the Bill does not exempt registered MFOs from the Usurious Loans Act, 1918 or state laws which cap interest rates; The Bill defines “micro financial services” to include insurance and pension services without specifying to whom such services are to be provided.

### **5.1.3 Nepal**

Nepalese civil society has played a key role in re-establishing democracy, mobilizing to build trust and in helping to inform people that there is no alternative to a multiparty system. At a time when the government’s presence was negligible in many areas of Nepal due to the ongoing armed conflict, it was primarily civil society that filled the gap,

providing basic support and services to the general public – though civil society organizations have also faced many severe attacks while undertaking that work. The NGO sector in Nepal has been beset by political influence; many politically aligned NGOs have been sheltered and preferences and concessions provided because of such political affiliation.

The Code of Conduct and Amendments to the Social Welfare Council Act 1992 was intended to control civil society and its vibrant activities that were of a political nature. This sought to permit more political appointments and to centralize power and authority so as to enable the Council of Ministers to directly monitor and control the NGOs. This amendment by ordinance was an outcome of Army rule through royal takeover. The amendment ordinance transferred that authority to the government through the Minister in charge of the SWC. The government's intent to substantially tighten control over the sector was further evident from a directive issued in 2005 (BS 2061.11.06) by the Ministry of Defense to the Ministry of Women, Children and Social Welfare to exercise greater control and regulation of NGOs and international NGOs operating in Nepal through enactment of a Code of Conduct. The main statute for nonprofit registration and governance, the Societies Registrations Act, emphasized the importance of internal governance provisions for organizations. There was no provision in the Act that allowed implementation of any Code of Conduct or similar document by the Social Welfare Council or by the registration or regulatory body.

As a result of the peace accord between the CPN(M) and the political parties, an Interim Constitution of Nepal 2007 has been promulgated. Article 12.3(d) of the Interim Constitution 2007 guarantees the freedom to establish "unions and associations" as a fundamental right. The chapter of the Interim Constitution on "responsibilities, directive principles, and policies of the state" provides in the article on "state policies" that "[t]he State shall pursue a special policy to regulate the operation and management of public and non-governmental organizations established in the country." This particular constitutional provision is unclear whether the intention in regulating such nongovernmental groups is for state control, or for the creation of enabling environment; but the provisions appear protective in nature. Other provisions in the Interim Constitution speak to the role of civil society in monitoring the political system (Art. 33(c), and enhancing awareness of human rights (Art. 135(d)).

While a law relating to trusts is still being considered, recent changes made in the Company Law include provisions relating to non-profit-distributing companies.

Though the non-profit-distributing company is allowed to work for social causes, there is no regulatory, reporting or other relationship established between the Social Welfare Council and such companies. In the absence of such a tie, the provisions of the Social Welfare Act are not applicable to these companies.

#### **5.1.4. Pakistan**

Pakistan has about 65,000 registered nonprofits of various kinds, with an additional approximately 30,000 groups not registered, and a total of about 45,000 active organizations. There is extensive diversity within the sector, but also a widening gulf between larger NGOs and smaller community-based organizations. The corporate sector has become considerably more active in social development in recent years



There are a number of laws which deal with the registration and regulation of NGOs, others which recognize the existence of entities which may be NGOs. The types of organizations that can be formed under the laws are (a) **Societies** under the societies, Registration Act of 1860, (b) **Social Welfare Agencies** under the Voluntary **Social Welfare Agencies** (Registration and Control) Ordinance of 1961, (c) **cooperative society** under the Cooperative Societies Act of 1925, (d) **non-profit companies** under the Companies Ordinance of 1984, (e) Public charitable trusts, indirectly under the Trust Act of 1882 and (f) charitable endowment trusts under the Charitable Endowments Act of 1890. Since this study is meant to address itself to a framework for non-government organizations, it will only cover societies, welfare agencies and non-profit companies. There have been no significant changes in the registration laws. The primary tools used to regulate the nonprofit sector in Pakistan are registration laws and income tax statutes. The shifts mandated by the government have occurred primarily in the tax regime, and primarily through a regulatory notification initiated by the Central Board of Revenue in August 2005.

In recent years, the Ministry of Social Welfare initiated the formulation of a Code of Conduct to enhance NGO accountability to government. Civil society networks initiated dialogue with the government. The Pakistan NGO Forum (1996) developed Code of Conduct provides the highest standard of accountability, transparency and governance for Pakistan's NGOs for coordination between NGOs and state institutions. The voluntary sector itself focused on a mechanism for granting recognition and tax exemption to nonprofit sector organizations, through new action proposed and implemented by the Pakistan Centre for Philanthropy. As a result of Enabling Environment Initiative undertaken by the Pakistan Centre for Philanthropy in 2002-2003, an alternate NGO Bill was drafted by lawyers and civil society organizations. The draft is still pending and the Pakistan NGO Forum is pursuing the matter.

Government is attempting to institute a Code of Conduct for the microfinance institutions (Ordinance No. LV of 2001). The Ordinance provides for the establishment of regulated microfinance institutions at three levels – district, provincial, and national – to integrate microfinance into the broader financial system and to create possibilities for institutional diversity. The State Bank of Pakistan was to monitor the microfinance institutions.

#### **5.1.5. Sri Lanka**

Sri Lanka's voluntary sector has existed since ancient times, with strong roots in the island's multiple religious institutions (Orjuela, 2005; Wanigaratne, 1997). Decades of discrimination against Sri Lanka's ethnic Tamil minority by the ethnic Sinhalese majority gave birth to the terrorist organization the Liberation Tigers of Tamil Eelam (LTTE), also called the Tamil Tigers (Reuter, 2002), which began their military offensive aimed at establishing an independent homeland for Sri Lanka's Tamil minority in the early 1980's. Arguably the most innovative terrorist organization in the world, the LTTE is known as the first terrorist group to use suicide bombing (Reuter, 2002), and is particularly infamous for its use of female suicide bombers (Bloom, 2007). Many of Sri Lanka's NGOs work to address the negative effects of the civil war, with numerous local NGOs created specifically as a response to the needs produced by the conflict. In addition to addressing needs created by the civil war, local and international NGOs continue to be heavily involved in relief and rehabilitation following the 2004 Asian tsunami. Since the 1950's, both politicians and the general public

in Sri Lanka often view NGOs as corrupt entities that serve foreign interests and need to be more tightly controlled by the government (Orjuela, 2005; Wanigaratne, 1997). There is strong anti-NGO sentiment present both in political and public discourse. Anti-NGO sentiment in Sri Lanka is fueled in large part by the belief that the NGO community is overly sympathetic to the Tamil minority and biased toward the LTTE in the civil war. In this context of anti-NGO sentiment and a “war on terror”, the Sri Lankan government has used several tactics that intentionally or unintentionally impact the work of the country’s NGO sector. Some of these tactics, such as instituting an economic blockade on transporting goods to the north, are codified by law. Other tactics may not have a legal basis, but have an important influence on NGO behavior. In the context of Sri Lanka’s war on terrorism, the Public Security Ordinance and the Prevention of Terrorism Act (PTA) give the Sri Lankan government far-reaching powers to arrest and interrogate suspicious individuals, and to ban membership in or affiliation with certain violent organizations (Manoharan, 2006). The PTA supersedes all other laws of the country and grants police and security forces broad powers, such as allowing arrest, search of premises, and seizure of property without a warrant. The PTA allows detentions of up to three months at a time (not to exceed 18 months of aggregate detention) without bringing formal charges against an individual, and guarantees immunity to police and security personnel (Parliament of Sri Lanka, 1979). bureaucratic hurdles that had been put in place in order to limit NGOs’ access to the northern and eastern provinces of the country. In particular foreign staff members working for international NGOs were the target of these regulations. However, the legal and operative framework within which philanthropic and nonprofit activity takes place in Sri Lanka has undergone significant change since 2004. These shifts can be traced to three principal developments. First is the legal - in the form of the enactment of a new Companies Act in May 2007 and several other regulatory developments; the second, the responses by the NGO sector in the aftermath of the natural disaster in the form of the Tsunami of December 2004; and thirdly, political developments arising from the defeat of the Liberation Tigers of Tamil Eelam (LTTE) and the increase in military activity in the north and the east of the country. These developments have had a distinctive impact on the operational environment of nonprofit and philanthropic organizations in Sri Lanka. The NGOs are required to be more transparent and accountable.

### ***5.2. Emergence of NGO sector in the Asia-Pacific Region***

An important contributor to the growth of civil society in the Asia Pacific region is the emergence of a favorable political and social environment for the operation of NGOs in the 1970s and the 1980s. The restoration of democratic governments in various nations in the 1990s in the region helped to galvanize public support for civil society organizations, which played a large role in the movement. Once they were free to organize and advocate for causes they believed in, social elites and activists began to fuel the diversity and pluralism within civic society, made possible by the improved political and social conditions. Since then, non-governmental organizations have proliferated.

Society's increasing demand for services other than those provided by governments has spurred the growth of medical, social service, and educational institutions. Nonprofits and nongovernmental organizations serve as private providers of public goods, and the increasing diversity of their sociopolitical and economic perspectives has enabled them to play a bigger role.

Critical roles that civil society leaders, activists, and policy entrepreneurs play, not just in educating the public about social and political issues, but also in actively establishing organizational frameworks under which new services can be performed. Another important factor is government support in the form of implicit and explicit subsidies, and tax exemptions. This is particularly true in Korea, where over two-thirds of nonprofits generate revenue from their association with governments. . It is particularly important for the Asia Pacific civil society because nonprofits are increasingly providing more social, medical, and educational services to the public, while advocacy organizations and their leaders are becoming embedded in the policy networks of central and local governments (Blasi, 2002).

While philanthropies and service organizations seek to provide public service to the socially disadvantaged or to the public in general, advocacy groups represent the collective noncommercial interests of the general public rather than the special interests of particular segments of society. In other words, advocacy organizations are committed to promoting and protecting public interest, which is defined in terms of non-economic, collective interests whose intended beneficiary is the general public. Transparency and internal governance of these organizations has become more important as they became a major social force. As advocacy organizations become a vital component of liberal democracy, and internal democracy, public accountability is of critical importance. However, they have not

been effective as they lack both the participation of members in the decision-making process and internal democracy.

The forces of globalization and the emergence of civil society have brought about a situation where governments in the Asia-Pacific region have started to accept the role of non-governmental organizations (NGOs) in the governance of society. Increased prominence and greater influence exposed NGOs to increased demand for higher standard of accountability from a wide variety of stakeholders—donors, beneficiaries, staffs, and partners among others— to effectively undertake tasks that were once considered an exclusive domain of the state. Because of the success in creating new forms of democratic governance, the non-governmental sector is now, more than ever, required to institutionalize the kind of internal governance that will legitimize their participation in the democratic governance in an accountable and effective manner.

#### **5.2.1.**

There are many factors that have influenced the NGO sector's growth in the region. For those nations that have undergone political regime changes, socio-political democratization enabled many NGOs to take advantage of newly found freedom of association and representation. Political regime changes enabled people to freely express their demand for their rights and demand new public services. The willingness to allow and, in certain instances, accept diversity and heterogeneity in societies necessarily increased the role of NGO sector in the region. Those (NGO) entrepreneurs (Bandyopadhyay:2003) who had been oppressed by past political regimes were now free to associate and form new forms of organizations to provide different services to diverse sets of population.

For those nations that have had stable political regimes, like Australia and Japan, various forms of government failures seem to have played a more prominent role in spurring the growth of NGO sector. Both nations have undergone a series of government and administrative reforms that have reduced the size of the public sector. Having realized that governments alone cannot cope with today's increasingly complex socio-economic, societies around the region have embraced various types of NGOs as policy partners in many public policy areas. The so-called New Public Management (NPM) or New Governance (NG) has forced the state to emphasize efficiency in the provision of various public services; to deliver services efficiently,

contractual approaches have been adopted – NGOs are required to enter into contract with government to deliver services efficiently on behalf of the government. For those service-oriented NGOs, this meant more opportunities to be involved in the delivery of public and collective services.

The government failure argument also applies to those nations that have undergone economic difficulties in the late 1990's which include Hong Kong, Indonesia, Korea, Taiwan, and Thailand as they were forced to reevaluate the role of the public sector. In all twelve nations surveyed, the state has increasingly turned to NGOs to shoulder greater responsibilities in providing various forms of public services. These conditions have created space for numerous voluntary organizations to emerge.

### ***5.2.2. Changing Relationship between NGOs and the State***

The rapid growth of the civil society sector and the growing recognition of civil society players in the policy making and service delivery functions meant that there was a growing need to redefine the relationship between the NGO sector and the state. The (re)emergence of civil society in the region often created uneasiness on the part of the government in terms of the state-NGO sector relationship. Unlike some developed nations that have experienced more evolutionary changes in the state-NGO relationship, many of the Asia Pacific nations, especially those that have witnessed political democratization, have undergone changes that are more revolutionary in nature.

Government bureaucracies in many of the Asian countries had adopted the developmental statist model where strong and centralized governments and top-down decision making process are the norm. In addition, the change from an exclusive bureaucratic network to a more inclusive network in terms of policy making and implementation process occurred in a short period of fifteen to twenty years' time and was forced upon state bureaucracies.

Any changes in (democratic) governance in a short span of time have necessitated shifts in societal players' positions and roles. It is interesting to note that although the increased interaction between government and civil society has placed pressure on governments to change the way they work, particularly in terms of their decision making process; it has also necessitated changes in NGOs. For instance, those

organizations that had relied on state funding or government contracts began to place more emphasis on organizational effectiveness and customer satisfaction as a result of increased interaction with the state.

### ***5.2.3. Strategic Response of the State and Civil Society***

Although the civil society players have established their position as legitimate policy players in the (new) democratic governance, there is a growing concern among Asian NGO leaders that the state will attempt to recapture control over civil society organizations (Yamamoto, 2003) through regulatory and policy actions ostensibly designed to increase accountability and transparency in NGOs. Easy targets for regulatory policies have been those NGOs that receive state subsidies, contracts or funding. Especially those NGOs that have entered into contracts with governments to provide various social welfare, health and educational services to the public have been subject to increasingly strict regulatory standards in the name of securing public accountability. In addition, some countries in the region have also been studying ways to improve internal as well as external (public) accountability through regulatory means.

Rajesh Tandon (1991, p 218), writes that the roles and functions of the government vis-a-vis VOs can be classified into three: 1) the role of a regulator of laws, legislation, constitution etc. 2) the role of determining the national model of development and related policies and 3) the role of financing the work of Voluntary Organizations.

Along with attempts to institute new regulatory policies, governments in certain Asia Pacific nations including China, Korea, and Japan have come up with plans to 'foster' civil society players. This involves direct and indirect state support in terms of tax exemptions, lax registration and other administrative processes because there is deep suspicion about state providing direct subsidies to NGOs.

There are important benefits of institutionalizing strategic partnership between the state and the civil society because the circumstances under which some NGOs in some of the Asia Pacific nations have been operating are often not sustainable; but NGOs in the region should avoid the lure of getting co-opted by the state and double their efforts to strengthen their own support base. Responses of the state in some of

the countries in the Far East to the issue of accountability, transparency, and organizational effectiveness including Korea and Japan have relied on e-governance tools such as the Internet to make public financial and operating information on major NGOs. Hong Kong, Taiwan, and Thailand have resorted to a more hands-on approach by instituting stricter regulation on internal democracy and transparency. India and the Philippines, among other nations, that have attempted to institute self-regulatory rules in terms of codes of ethics and certification of NGOs.

#### ***5.2.4. Status of NGO Internal Governance Mechanisms and Efforts to Improve them***

There is consensus among civil society leaders that many Asian NGOs lack strategic approaches to link the issue of accountability and transparency to management structures and their intervention strategies. In most Asia Pacific nations, the role of governing boards or trustees is ill defined, especially in comparison to those of the for-profit sector; as a result, the boundaries between boards and managements are unclear. Boards often consist of celebrities and social leaders who devote most of their time on fund-raising campaigns or politicking instead of performing fiduciary duties as trustees of institutions. In terms of functionality, the civil society sector in the region has failed to adequately deal with internal governance issues because the emphasis has been placed on growth. Yamamoto (2003) states, that failure on the part of the NGO sector to institute independent and effective boards is a "reflection of the overall level of development of civil society in the region."

Another possible explanation for the weak NGO internal governance relates to the "first generation institution theory" where founders exert disproportionate degree of control and thus making it unrealistic to have autonomous and effective boards. This is again related to the growth theory where the organizational priority has been placed on building dynamic and effective organizations rather than one with checks and balances. It was also found that those corporate philanthropic foundations had better internal governance structures on paper consisting mainly of close friends and like-minded persons as they were able to take advantage of their experience in the corporate sector.



Two intervening events have made the NGO internal governance issue more urgent in the region. One is the financial crisis of the late 1990's that have renewed the importance of instituting good internal governance. Especially those nations that have undergone significant management and governance reforms in the corporate sector also have felt the need to transform the role of non-governmental boards into more active and effective monitoring agents. Another is scandals and misappropriation of funds in the NGO sector that have impacted public trust in these institutions. Because many of these mishaps were related to tax issues, often the tax authorities were brought in, as in the case of the Philippines and Australia.

The Asia Pacific NGO sector, in response to the growing criticism of the ways in which they secure internal and external accountability, has resorted to several reform programs. First is the self-regulation which contains two different approaches. One is making standard operating procedure to have codes of ethics in terms of virtually all aspects of their operations. Australia's ACFOA Code of Conduct, the Philippines' Code-NGO, Indonesia's LP3E, Japan's Codes of Ethics for development NGOs, India's Credibility Alliances and VANI's Code of Conduct and Pakistan's NGO Forum Code of Conduct are some examples. Other efforts center around collective sectoral certification procedures which attempt to institute key components of good governance and management structures. India's self-regulating framework, India's Rehabilitation Council of India in the disability sector, Indonesia's Certification of NGOs, and the Philippines' Council for NGO Certification are prime examples of efforts the Asia Pacific civil society is exerting currently.

In addition, NGO networks or alliances are formed to increasingly take advantage of pooled resources and take collective approaches to common problems of governance. China's Research Center for Volunteering and Welfare, India's GIVE foundation, FMSF's Forum for Ethics, Accountability and Transparency (**FEAT**), Indonesia's YAPPIKA, Taiwan's Development Center and Japan's Center for International Cooperation are examples of collective efforts the sector is making to seek collective measures to solve common problems of governance.

The other major policy tool the NGO sector has been utilizing is the Internet and e-governance mechanism. Korea and Japan are pioneers in this field where websites like GuideStar were opened to provide more financial and operating information to

the public. Indiango.com also belongs to same genre as the GuideStar. In addition, major NGOs that have resources to develop more sophisticated e-governance tools that better facilitate communications between managements and members as well as allowing collective decision making have begun to assist other NGOs to adopt new information and communications technologies. (Source: Accountability, Governance, and Non-governmental Organizations: A Comparative Study of Twelve Asia-Pacific Nations by Junki Kim (Seoul National University)).

#### **5.2.5. China**

It is necessary to briefly review the history of China's private sector since the late 19<sup>th</sup> century and the general background of Deng Xiaoping's modern reforms to understand the substantial changes in official attitudes toward NGOs during the past two decades and the main motivation for the government to promote NGOs.

Associations and organizations that engaged in political, social or cultural activities outside state control had deep roots prior to the establishment of the People's Republic of China in 1949. Modern forms of private association made their debut in China in the late Qing Dynasty (1890s-1911). But long before the Qing period, Chinese people organized themselves through clan or family groups that sometimes supported temples, schools, and other charities, and also through merchants' associations that provided mutual support to merchants who traveled to and from distant cities (Ma, M. & Zhu, 1993, Ma, M. 1995). From Qing period to early Republic, many traditional organizations had gradually transformed into modern civic associations.

The current official governance of nongovernmental organizations in China began in the late 1970s, and governance of nongovernmental organizations has been an integral part of the Chinese Communist Party (CCP) and the government's political agenda ever since. The history of the private sector in the republican period (1911-49) and under the party-state rule of the CCP in the first thirty years of the People's Republic of China has influenced the current government's NGO policies greatly.

Even though in 1999 the Division of Social Organizations was elevated to the Bureau for the Management of Nongovernmental Organizations with four divisions in charge of various NGOs, Ministry of Civil Affairs (MOCA) regulates NGOs mainly through

registration and re-registration. The new policy confers enormous powers to MOCA, far exceeding its capacity. The conditions of Chinese NGOs are highly diverse, complex, and often opaque. NGOs enjoy a wide range of autonomy. The policies of provincial and local governments vary greatly. As long as NGOs do not overtly challenge official rules, the government leaves them alone. As a Chinese saying puts it, the officials keep “one eye open, the other closed.” A huge illegal space has always existed outside state control (Kang, 1999 B, 2). Although, technically, only registered organizations are legal in China, a vast number of “illegal” organizations also exist (Xin and Zhang, 1999, 92-93).

A two-fold system makes up the administrative and regulatory framework for China’s NGOs. Agencies must register with the Ministry of Civil Affairs and must have a separate registration and administrative internal bodies responsible for management. Governing boards exist but their roles are also highly restricted by the government which selects 60% of the members and are required by law to hold regular meetings.

According to Gao, organizations gain social, administrative, and political legitimacy or protection from numerous sources - Chinese traditions, cultural and social needs, relations with governmental institutions and officials, and acting in accordance with political common sense (Gao, 2000). Thus, regardless of the dual approval procedure, the CCP branches, and the frequent re-registrations, the government does not always want to, nor can it control all NGOs. Since the NGOs do not need to register with MOCA, most small independent social organizations prefer non-corporate status to corporate status. Some non-corporate social organizations are well-organized and exhibit managerial structures similar to those of corporate NGOs; but many are informal organizations.

According to the model proffered by the MOCA, the members’ assembly (*huiyuan dahui/ huiyuan daibiao dahui*) holds the ultimate power in a membership-based social organization’s decision-making; and its duties include making and amending organizational charters, electing and recalling members of the board of directors, approving the board’s work and financial reports, and deciding on other important matters of the organization. Despite these regulations, Chinese NGOs have a long way to traverse to attain real autonomy and conduct their business run as per democratic principles.

Many factors still restrict NGOs - both the broader political environment outside NGOs and the leadership within NGOs are not yet ready for democratic governance. The long established prestigious status of mass and people's organizations have suffered due to government's contradictory NGO policy. Slow formulation of NGO laws and policies can be seen as a logical result of a transitional period, and reflect uncertainties in the reform process. It is under such political and social environment that Chinese NGOs survive and grow. The way that the government regulates entities outside the state and the way the NGOs run their organizations cannot go beyond the limitation of China's current political, social and cultural contexts.

The Chinese government's response to the growing role of NGOs in democratic governance has been lukewarm at best. As the government and its state-owned enterprises can no longer bear the full burden of tackling growing societal problems, it began to rely on social service groups to offer services to the needy under the auspices of the Ministry of Civil Affairs. In addition, the transition from a planned economy to a 'pseudo' market economy meant that social welfare services that were plentiful in the old system will be cut back. The government is experimenting with a contractual or delegation approach in terms of allowing community organizations and social organizations to take on more responsibilities in this area.

China seems to be cautious about any form of political activity by NGOs. In urban areas regulations are strictly enforced. In addition, a series of cases of misappropriation of funds have discredited NGOs, prompting the government to put in place fiduciary monitors for government funded NGOs and grassroots organizations. The regulatory framework surrounding NGOs is still in early phase of development; the Chinese government is seeking to secure fiduciary responsibilities and public accountability from the NGO sector.

#### **5.2.6. Indonesia**

As was the case with other developing nations, the fall of Indonesia's authoritarian regime and accompanying prolonged economic upheaval brought with it the growing need for NGO activities along with increased overseas funding. Although the government in the early years of development viewed NGOs as a threat to their

authority, currently the importance of and the role NGOs play in supporting the nation's development, advocating for the rights of the marginalized population and champions of democracy are recognized. With the civil society establishing itself as a legitimate societal player, the government no longer intervenes in the activities of NGOs. NGOs have come a long way in terms of participation in the policy networks and providing policy alternatives as advocates of various (minority) voices in the society.

It should be noted that the term NGO is not generally used in Indonesia; instead these types of organizations are usually referred to as LSMs or LPSMs (self-reliant community associations or self-reliant community development associations). Organizations known as LSMs or LPSMs can be foundations or associations, and it is believed that a large number of these organizations exist in a quasi-legal state, and are not legally established as foundations or associations.

Other types of organizations which make up the sector include *Ormas* (literally 'Mass Organizations', although 'Community Organizations' is considered a more accurate translation), Social Welfare Organizations, Zakat Collection Agencies, religious organizations, health organizations, and International NGOs.

## **Legal Framework**

Indonesia uses a civil law system inherited from the Dutch Colonial administration. There are two primary legal forms of non-governmental organizations in Indonesia: associations and foundations. There are two main legal forms for NGOs in Indonesia: Foundations (*yayasan*) and Associations (*perkumpulan*).

**Foundations** are regulated by Law No 16/2001, as amended by Law No 28/2004. The law defines Foundations as non-profit, non-membership legal entities established for social, religious or humanitarian purposes. The accompanying implementation regulations for this law were issued in 2008.

**Associations:** Incorporated Associations (*Perkumpulan*) are membership organizations recognized as legal entities by the Staatsblad 1870/64 on Associations with Legal Person Status. Stb. 1870/64 governs associations possessing legal entity status and also recognizes those without legal entity status, i.e. Ordinary Associations (*Perhimpunan, Ikatan and Paguyuban*) which are generally membership organizations and not legal entities. They are

regulated under the Indonesian Civil Code (1854) which requires an Association to explain its proposed activities and provide a list of its members, and a copy of its constitution. The law is currently under review.

In addition the following laws may apply, depending on the form that the organization takes: Law No 8/1985 applies to those organizations set up as Ormas. This is implemented in accordance with Government Regulation No. 18 of 1986. This law is currently under review. Article 11 in the Decree of the Directorate General of the Guidance of Islamic Community and Haji Affairs on the Technical Guidelines of Zakat Management applies to Zakat Collection Organizations.

### **International NGOs:**

Provisions in Law No. 37 Year 1999 on International Relations form one of the legal umbrellas for International Non Government Organizations' activities in Indonesia. In addition under Law No. 16/2001 separate regulations relating to the establishment of foundations apply where they are established by foreigners. A recent decree issued by the Ministry of Home Affairs regulates the grants and/or support given by foreign parties to NGOs or CSO. The decree came into effect on 15 August 2008.

### **Regulatory Framework**

Foundations are required to register with the Public Notary and are regulated by the Ministry of Law and Human Rights, the State Courts and the Public Prosecutor's Office. Incorporated Associations are regulated by the Ministry of Law and Human Rights, and they can only become legal entities after receiving acknowledgement from the Ministry. The Ministry can dissolve an Association for a violation against public order. Ordinary Associations are also regulated by the Ministry of Law and Human Rights; the Ministry is able to dissolve Ordinary Associations for a violation against public order.

*Ormas* are regulated by the Ministry of Home Affairs. Social Welfare NGOs are regulated by the Departemen Sosial. Following the adoption of the 2009 the Social Welfare Act, a new regulatory regime for social welfare NGOs is being developed. This is likely to have a significant impact upon the regulatory regime for NGOs in Indonesia. Zakat Collection Organizations are overseen by the Ministry of Religious Affairs. International Non-Government Organizations are regulated by the Department of Foreign Affairs. NGOs are also required to report to the ministry responsible for their area of work i.e. to the Ministry

of Health if it is concerned with Health issues, the Ministry of Religious Affairs if it is a religious organization etc.

### **Reporting Requirements**

Foundations are required to publicly display an abridged annual report prepared according to the Indonesian Standard of Accountancy. Those in receipt of state or overseas funding, or donations in excess of Rp500 million must publish a summary in a newspaper. Foundations with free assets in excess of Rp200 billion or in receipt of government funds must be audited by a professional accountant.

Zakat Collection Agencies are required to prepare reports, including financial reports and submit these to government, and publish financial reports in the mass media. Some ministries require reports from organizations, which they finance. The Ministry of Law and Human Rights holds a public register containing details of 461 organizations. Other ministries also hold records of the organizations which they regulate though these are not usually publicly available.

### **Self-regulation**

There is some evidence of self-regulatory initiatives emerging from the NGO sector in Indonesia. Good practice examples currently come mainly from membership organizations.

In order to become more effective network players, mainstream Indonesian NGOs have formed various 'alliances' or coalitions and this enabled them to pool resources. However, the bureaucracy still has difficulties forming alliances with NGOs. It recognizes a need for umbrella organizations that facilitate communication and accountability to create transparency between itself and the NGOs. In most Indonesian NGOs, the governing board or founders dominate leadership, allowing little or no input from staff. There is also no mechanism for transmitting information about the activities of NGOs to those they are meant to serve. Because they get very little pressure from the private sector or government, Indonesia's NGOs have yet to implement any initiatives towards improving governance.

Only in response to a government call for transparency and accountability did the sector respond by forming a coalition to oppose the government's Yayasan Bill. The bill sought to institutionalize the role of management boards, made detailed

regulations regarding financial disclosure, and dissemination of information when managing NGOs. It is expected that the bill would have a widespread impact on NGOs' management as well as their internal governance structure as ninety five percent of Indonesian NGOs use Yayasan as their legal status.

#### **5.2.7. Japan**

Japanese society has witnessed rapid growth of its NGO sector which is governed by a series of codes and special laws. The Japanese Government's attitude towards NGOs has been ambivalent - control oriented, yet facilitating. Those NGOs classified and registered as 'public interest corporations' are subject to tighter government regulatory control; while the new NPO Law, enacted in late 1990's allows new NGOs to avoid bureaucratic red tape.

The public sees NGOs as government agencies, when in principle at least two thirds operate independent of government scrutiny. A recent study conducted by the Japan Association of Charitable Corporations found that NGO governing boards and their members were ineffective in terms of fulfilling their fiduciary duties. It was found that they were a mere formality.

In an effort to regain the public trust and avoid the burden of excessive regulations, Japanese NGOs have begun to adopt new programmes that seek to provide better governance and organizational transparency. They formed umbrella organizations and launched several programs to enhance governance. Guidelines for governance were adopted in 1994. In addition, the Japan NPO Center created a website - the NPO Forum - in 2001, to offer a database on incorporated NPOs while the Japan Association of Charitable Corporations established a website for information on public interest corporations in 2002 to promote voluntary disclosure of information. In addition, the Japan Center for International Cooperation (JANIC), a networking organization, has established a code of conduct for Japanese NGOs. In order to spread the code to general NGOs, the organization set up a study committee on accountability to create an NGO accountability standard in 2003.

Incorporated NGOs are mandated to report financial and program information via the internet, but government authorities can not compel them to post their reports on the internet. A Ministry of Public Management survey found that the majority of



NGOs disclose designated documents not on the internet, but in hard copy format. A small number of them post the information on the government website and less than half post the information on their own websites. For all intents and purposes, there seems to be no tangible change to facilitate independent internal governance.

#### **5.2.8. Korea**

An important contributor to the growth of Korean civil society is the emergence of a favorable political and social environment for the operation of nonprofits. Civil society played a large role in the mass movement in 1987 and restored democratic government. This galvanized public support for civil society organizations. Once they were free to organize and advocate for causes they believed in, social elites and activists began to encourage diversity and pluralism within civic society. From then on nonprofit organizations proliferated. Data show that 56.5% of all nonprofit organizations were established during the 1990s, while 21% were set up during the 1980s and only 9.0% during the 1970s (Kang, 2001).

The Civil Code provides a legal basis for the incorporation, operation, and liquidation of voluntary nonprofit organizations and individual initiatives. It also lists requirements for organizational charters and governance. The Civil Code deals with the legal incorporation and operation of nonprofits in general terms; the law concerning incorporation and operation of Public Interest Organization (PIO) Act 1975 governs most charitable, research grant making associations and foundations. Aside from general laws governing nonprofits, other laws deal with service organizations such as hospitals, educational institutions, and social welfare agencies. The Medical Act, for instance, outlines broad guidelines under which health care providers and hospitals must operate. Nonprofits established to run medical facilities are closely supervised by the Ministry of Health and Social Welfare and are subject to stringent regulations, including medical ethics rules. Nonprofits that violate the legal provisions are subject to fines or cancellation of their operating permits. Likewise, the Private School Act allows only well-endowed nonprofit foundations to run private schools and allows the Ministry of Education and Human Resources to impose regulations on these institutions.

There is disparity in the degree of control exercised over those NGOs registered under Public Interest Corporation Act and those registered under the Civil Code. Due to excessive government controls, NGOs' moves toward pursuing internal governance are greatly hindered. With the exception of social welfare organizations, boards often function poorly. The influence of founders seems to overshadow the functions of the boards in philanthropic, educational and medical institutions.

The Korean civil society still faces the problem of charismatic founders and trustees of boards who are elites who do not take their fiduciary roles seriously. While systematic self-regulation to ensure transparency is absent, government regulation and supervision seems to be the strongest factor in ensuring financial transparency in these organizations. Overzealous bureaucrats who try to protect the public interest by strictly enforcing the rules and regulations for monitoring often bureaucratize organizations, affecting organizational efficacy and organizational legitimacy. Organizational legitimacy is also affected in other ways - public perceive that organizations are more interested in keeping governments happy than pursuing their goal of serving the needy.

Korean NGOs have been pioneers in utilizing new information and communication technologies that can supplement the traditional decision-making process. The idea behind the innovative practice is simple - it uses Web-based technology to facilitate better communication among its members and to create a forum for discussion and collective decision making. The internet has created a new way of communicating among people and organizations. By utilizing the internet as a communication tool, civil society organizations facilitate better participation of stake holders.

#### **5.2.9 Philippines**

In the Philippines, the late 1980's saw the end of martial law and the beginning of the era of 'people power.' As poverty and inequality worsened, the role of NGOs grew. It grew as a socio-political conscience with international religious organizations providing most of their support. After the political democratization movement that swept the nation in the 1980's, the role of NGOs was recognized as an "extension of people power." Subsequently, the government began to provide support by making various provisions including an amendment to the Philippine Constitution in 1987 to

encourage the state to promote NGOs' participation in social, political and economic agenda. With the civil society enjoying 'high moral legitimacy,' the government appointed several key civil society leaders to ministerial positions. In addition, the implementation of the 1991 Local Government (Autonomy) Code formalized the role of NGOs and increased their legitimacy in the policy making process in municipalities.

However, the 'honeymoon period' with the civil society did not last long. The government began to put pressures on the NGOs to pursue sound management structures, become more transparent and effective social organizations. In addition, the Department of Finance worked with NGO leaders to establish a self-regulatory mechanism which eventually was put in charge of NGO certification process. The result was the creation of the Philippines Council for NGO Certification (PCNC) in 1997 when some of the largest NGO networks joined forces to set up good governance models for NGOs. It was reported that only those certified institutions would receive the status of a "donee institution". NGOs in the Philippines share the same status as the private sector in terms of setting up internal governance structure. However, as the NGO sector continues to grow, the government has encouraged self-regulation of NGOs in terms of audits to check their sustainability and the level of accountability. Although the government basically trusts NGOs to maintain moral legitimacy, it does require registration and accreditation to guard against "pseudo-NGOs" and corruption.

The NGOs and people's organizations (POs) are classified in several levels: true grassroots organizations, network NGOs and associations with NGO networks. In terms of legitimacy and accountability in governance, the NGOs differentiate legitimacy as the legal and moral obligation of NGOs to their stockholders, target beneficiaries, donors, and stakeholders of organizations. Whereas accountability refers to the mechanics of proficient handling of individual NGOs' financial and overall performance, and transparency speaks of issues of governance. Since the scale of most NGOs is small and boards informal, they also see no immediate need for financial accountability nor do they have formal training in book keeping.

NGO boards are nominal and fairly inactive in terms of their oversight of managements. Nevertheless, initiatives such as the 1991 Code of Conduct for Development NGOs, produced by NGO leaders, provide guidelines for governance

and financial accountability. In addition, the Caucus of Development NGO Networks (CODE-NGO) - a commission on internal reform initiatives, and the Philippine Council for NGO Certification where NGOs go through a four-step certification process, provide internal tools to assure accountability and enforcement towards more efficient internal governance. The Code, in particular, is subscribed by close to 3,000 members of the development networks. There are major concerns regarding tax evasion by some NGOs. As a result, the Bureau of Internal Revenue has been brought in the certification process to ascertain NGOs' tax status.

#### **5.2.10. Taiwan**

The Taiwanese government, realizing the benefits of NGOs' work in the society as a whole, basically allows NGOs free reign. Taiwanese NGOs play a major role in providing services to the marginalized population. They are pushing for reforms by raising public awareness. Because of their increasing importance in democratic governance and in service delivery, the government has passed a new law that places emphasis on NGO accountability. Despite its good intentions, it has created bureaucratic red tape and entry barriers for new start-up NGOs. Under the auspices of the National Youth Commission, as well as other government agencies' initiatives, steps to develop capacity and strengthen the NGO sector have been taken. Instead of strict laws, they offer and organize training session for NGO professionals throughout Taiwan.

There is a growing awareness of the importance accountability and better governance. There is a lack of clarity on the concept of accountability in Taiwan. Therefore, many NGOs have translated accountability as financial accountability only. Taiwan's two types of NGOs - endowment-based foundations and membership-led foundations - are required to register with a national, county or municipal agency and a local district agency. Afterwards, it can get approval for its establishment from a district court. Beyond that, there is little requirement for NGO operation except reporting yearly to the National Taxation Bureau and face a non-serious performance evaluation. The 1999 earthquake, however, has served as a catalyst to raise standards of accountability because it left the public wondering if the funds were distributed equitably and effectively.

Since the National Taxation Bureau does not publish its figures and NGOs are free to decide whether they report to the Bureau, financial accountability remains a conundrum. To increase transparency, many NGOs have relied on the internet. Some NGOs publish their figures on their websites. Some have voiced a concern that revealing information on the financial status of NGOs may lead to a reduction in funding. Another obstacle lies in the fact that only a small section of Taiwan's population has access to the internet. However, the NGO Digital Village is expected to put information regarding NGOs in the public domain. Another tool for improving NGO transparency is the 'Directory of Major Taiwan Foundations' which provides information on the operations and financial situation of NGOs in hardcopy.

#### **5.2.11. Thailand**

Historically, NGOs in Thailand were mostly family-based foundations. However, domestic NGOs have become increasingly linked with international NGOs in recent years. This change in the domestic NGO sector has been closely linked to the 2005 Tsunami, which led to a large influx of funds, particularly from abroad, and severely tested the capacity of the sector and its regulators.

In 2006, there were 9,733 foundations and 10,780 associations registered with the Ministry of Interior. It is estimated that Bangkok accounts for approximately half of the registered NGOs. NGOs in Thailand serve a critical function in responding to the community's needs, taking on political and non-political causes, promoting democracy, taking care of the poor and marginalized, acting as watchdogs for the state and private sector, and ultimately acting as service providers. However, NGOs must go through a complex registration process and must operate under a tight regulatory framework. Some choose to avoid the complications and skip the registration process altogether. Those that choose not to register with government agencies are not allowed to take advantages of tax benefits under the tax codes and government subsidies.

Based on mistrust and misconception about the nongovernmental sector in Thailand, state agencies in charge of supervising NGOs have been subjecting them to random reviews and sanctions. Since the state is ambivalent about working with NGOs, the sectoral networks are active in Thailand. They have taken initiatives to raise funds like the Social Investment

Fund, requesting a loan from the World Bank for alleviating poverty, strengthening networks and cooperation.

### **Legal framework**

NGOs in Thailand are usually either an association or a foundation. An association is a group of persons from the private sector who share the same interest to conduct non-profit activities. They are member organizations, which are not required to hold capital. A foundation is a not-for-profit asset set up for the public benefit. Public benefit purposes include charity, religion, art, science, literature, education and other activities in the public interest. It excludes activities harmful to Thai culture, morals, and national stability and political activities. NGOs that provide benefits exclusively to non-Thai nationals may not be registered.

**Section 115 of the Civil and Commercial Code** allows Thai nationals to establish foundations and associations. Additionally, the Social Welfare Promotion Act 2546 provides for the establishment Public Benefit Organizations (PBOs), a foundation or association which has the objectives of social welfare provision or a private organization which has works relating to the provision of social welfare. **The Ministry of Finance** can also designate certain NGOs Public Charitable Institutions (PCIs) under **The Thai Revenue Law**.

There are two main regulations for foreign NGOs. These are: **The Rule of the Ministry of Labor and Social Welfare on the Entry of Foreign Private Organisations to Operate in Thailand (1998)**. And **The Rule of Committee on Consideration of the Entry of Foreign Private Organisation (FPOs)**.

The Rules define “foreign private organizations” as a foreign institution, organization, society, foundation, other juristic person or group of persons, which is a private organization or is supported by a foreign government (which in practice means registered in its home country).

### **Regulatory framework**

All associations and foundations must register with the **Ministry of the Interior**, according to the Act of National Culture B E 2489 and the **Civil and Commercial Code**. Registered organisations receive a certificate of registration with a registered number. In Bangkok, the registering authority is the **Ministry of the Interior**, while initial applications are considered by the Bangkok Metropolitan Officer of the Department of Provincial Administration. In other provinces, the governor of the province is the registering authority, and the district office is the receiver and initial assessor of information about the NGO.

NGOs working in the field of culture or religion also need to register with the relevant Ministry (Office of the National Culture Commission or Ministry of Religious Affairs). PBOs are under the supervision of the **Office of the National Commission on Social Welfare**, under the **Ministry of Social Development and Human Security**. Registration as a PBO is voluntary.

Foreign NGOs must be approved by the **Committee on Consideration of the Entry of Foreign Private Organisations (FPO)**. The Committee is chaired by the Permanent Secretary or Deputy Permanent Secretary for Labour and Social Welfare and includes representatives from a range of government agencies. The Committee grants permits to operate to each foreign NGO as well as permits to stay for foreign employees.

NGOs that operate in more than one province are required to register with the province in which they are most active. Once registered, there is no requirement to inform other provinces of their activities.

#### **Benefits of registration:**

Under the **Revenue Code**, registered NGOs are taxed at 10% and are entitled to tax exemption on income from donations, membership fees and registration fee for members. NGOs that achieve PBO status become eligible for training, advice and financial support from the Social Welfare Promotion Fund. NGOs designated by the **Ministry of Finance** as a **Public Charitable Institution** also benefit from complete exemption from income tax.

#### **Reporting Requirements**

**Foundations:** provincial offices of the **Ministry of Interior** are required to collect information, including number of the members or names of new committee members, copies of the agenda of the committee meeting, copies of the annual report) and undertake regulatory inspections. In their annual report, foundations are required to summarize their work and submit financial balance information, which has been prepared by a registered and authorized auditor. Foundations set their own financial year and are required to hold an AGM within either 90 or 120 days. The report, accounts and minutes from the AGM should be sent to all the relevant authorities.

There appears to be no equivalent obligation for **associations** to provide information to the authorities. Responsibility for oversight has recently passed from the Police to the district authorities. A change to the law to bring them in line with foundations is apparently planned.

**Public Benefit Organisations** are subject to additional scrutiny by the **Provincial Welfare Promotion Councils (PSWPC)**. **Foreign NGOs** must report to the **Department of Employment** every 6 months on projects and/or activities that have been carried out. Failure to comply may result in withdrawal of permission to operate. They are also visited and monitored by the FPO committee.

**Public Charitable Institutions: The Ministry of Finance** designates certain NGOs as a Public Charitable Institution. These organizations are required to submit the following documents to the Revenue Department: 1. Minutes of their general meeting; 2. Balance sheet; 3. Statement of revenues and expenditures; 4. Report on operations for the previous annual accounting period. These must be submitted within 150 days of the organization's financial year end. There are additional requirements for **cultural NGOs**. They must provide the following information to the **National Culture Council** annually: 1. A list of all types of members classified into sex and nationality; 2. Names of all directors within seven days of their appointment; 3. Agendas of meetings within fifteen days, and a report of the meeting if requested; 4. An annual report on their activities; 5. Notification of any general or extraordinary meeting (at least seven days in advance); 6. Any alterations to its regulations (within fourteen days of the resolution being passed); 7. Copies of any speech made at any event organized by the NGO, and copies of any books or magazines published. **The Ministry of Religious Affairs** does no formal monitoring. However, it maintains a close relationship with those NGOs under its remit through information sharing exercises and regular consultation.

### **Government - NGO policy**

Under the **Social Welfare Promotion Act** promotion, support and supervision of **social welfare organizations** is under the direction of the **National Social Welfare Promotion Commission (NSWPC)**. This is a senior body chaired by the Prime Minister and includes representatives from the government and social welfare organizations. It has a strategic and advisory role, which includes laying down rules for and overseeing a Social Welfare Promotion Fund.

The **Social Welfare Promotion Act** requires the **NSWPC** to promote and support the participation of social welfare organizations in the provision of social welfare. The **Department of Social Welfare and Human Security** also facilitates wider capacity building and networking with PBOs, consulting with them, encouraging their inputs into policy development and promoting co-operation on projects. The **Bangkok Metropolitan**



**Office** organizes some events to engage with foundations and associations registered in Bangkok

### **The NGO Sector**

For instance, the Population and Community Development Association along with their family planning and housing programmes, has also formed umbrella organizations to raise the level of professionalism and efficiency. It, along with its partners offer education, research, financial and pursue means for sustainable growth

Though Thai NGOs publish annual reports and other publications which are made available to the general public, attempts to utilize new technology and implement new management techniques to improve their performance and accountability are rare. Boards take responsibility for all matters related to agenda setting, policy formulation, and programme implementation. However, more often than not, high profile board members' prowess prevails. Thai NGOs have yet to take any concrete steps towards overall financial transparency or accountability.

### ***5.3 Voluntary Sector in the Middle East and Mediterranean region***

The state's influence on civil society in the countries in the Middle East is more than the civil society's influence on the state. In the Middle East, oil revenues, expanded militaries, and the growing group of state bureaucrats, technocrats and professionals have increased the state's capabilities. But fluctuating oil revenues have forced states in the Middle East to make structural adjustments through limited privatization (e.g., Jordan, Syria), reduction in government subsidies (e.g., Iran, Iraq), and increased borrowing or aid from abroad (e.g., Lebanon, Jordan, Egypt, Iran). Nonetheless, in the Middle East, state financial and coercive power remains strong and far superior to resources available with social, economic, and political opposition and/or NGOs. The challenge to the state (by the Muslim Brotherhood in Egypt, Jordan, and Syria, or the National Salvation Front (FIS) in Algeria, for example), has failed to change the state's domestic policies.

Recent expectations for the emergence of civil society and democracy in the Middle East must be viewed with caution, though the process intensified in the post-Cold War era. The Iranian revolution, civil wars, the rise of Islamist movements in the 1980s, and declining oil prices are underscored as reasons for optimism about the rise of civil society in the region.

This has led to growing interest in state-society relations and prospects for civil society's emergence. National security and strong state have long been used to constrain bottom-up initiatives aimed at further democratize the political system. Today, most scholars confidently affirm that both intermediate powers and autonomous social groups exist in the Middle East.

Financial power of the state in these countries remains high. Ruling elite in Tunisia, Libya, Morocco, Oman, Egypt, Jordan, Kuwait, and Yemen have strong ties with economic elites; and are resistant to drastic political reforms. Saudi Arabia and the Gulf States continue to rely on traditional sources of legitimacy such as Islam and monarchy, in combination with policies of coercion and co-optation to maintain the political status quo. The Afghan and Sudanese governments have yet to reestablish their monopoly over socioeconomic resources after the end of civil wars. Society remains weak vis-à-vis the state particularly in Morocco, Egypt, the Sudan, Iraq, Iran, Afghanistan, Pakistan, and Yemen.

Arab civil societies encompass all associations or organizations that are private, are voluntary, are not for profit, are at least partly independent or autonomous from the state, are pursuing common interests, and are protecting a common value or advocating a common cause. Civil society organizations found in this region can be categorized into five categories, namely, those that are engaged in leisure and socializing activities, social assistance and social service delivery, knowledge oriented activities, in representing societal interests and in taking up public interest issues.

In Arab countries, the relative weight, the level of autonomy and activity of each category of civil society organizations might determine to what extent civil society is starting to influence public sector and public governance reform in their respective countries.

Countries	No. in 2001-02	No. in 1991-92	Increase in %
Algeria	58,000	-	-
Morocco	30,000	-	-
Egypt	16,000	13,000	23
Tunisia	7,500	5,200	44
Lebanon	3,600	1,300	177
Yemen	2,700	250	980
Jordan	900	587	53
Bahrain	321	66	386

Sudan	246	262	-6
Saudi Arabia	230	125	84
United Emirates	113	89	27
Kuwait	103	55	87
<b>Source: Arab Network of Civil Society Organizations</b>			

Within the Arab region today, there is wide variation in the way states relate to emerging civil societies and forms of associative life. In most of the states of the Arab region, freedom of association remains an exception rather than a rule. At one end of the spectrum, few states like Libya, Syria and most of the Gulf States, still directly suppress and prohibit establishment of independent citizen organizations. Social organizations that exist are run by state or ruling party, or tightly state controlled through direct appointment of their leaderships and boards. Social service organization, professional associations or trade unions, when they exist, are like arms or appendages of the state, extending its reach and control over society. The model is either a corporatist or neo-patriarchal vision of an integrated harmonious ensemble where the state, which knows better, orchestrates and guides the society and its components as one organic whole.

North African Islamic countries, Egypt, Lebanon and Yemen have numerically large and active civil society organizations. The Gulf, Sudan and the rest have limited number and types of civil society organizations. Many factors explain the trends in the emergence, the size and nature of the activities of the voluntary sector in the past decade and a half, including the end of the civil war in Lebanon, the semi-liberalization measures in Yemen and Jordan, the very liberal new regulation on associations in Algeria, and the accelerated expansion of the civil society organizations after the effective opposition to power in Morocco by an association of those opposed to the monarchy. The nineties were undoubtedly a period of horizontal expansion of civil society organizations in North African Islamic countries.

At the middle of the spectrum, states in transition, like Kuwait, Bahrain, Egypt, Yemen or Tunisia, have a diversity of social organizations. Some of them continue to be state run or controlled. Some of them have been for sometime semi-autonomous. Emerging ones are struggling to acquire legitimacy and efficiency as proponents of alternative development

activities, articulators of societal interest or advocates of public interest issues and specific public policies.

At the other end of the spectrum, states like Lebanon, Morocco, Algeria and the Palestinian Authority have accepted traditionally the existence and expansion of a vibrant civil society that they still try to manipulate or co-opt, but also increasingly treat as a partner in development activities or public policy implementation.

State-civil society relationships are crucial determinants of the capacity of voluntary organizations to be self organized and self regulated, to provide public goods and services, to conduct efficient social action or to influence the public sphere and public policy. In several of these societies, the nature of state-civil society relationship and the existing legal and regulatory frameworks have been subjects of vigorous debates and contestation.

In almost all the countries in the region, establishing a civil society association requires a permit from the relevant ministry, and going through a tedious and lengthy administrative and security clearance process. Decisions of the administrative authority remain often discretionary and not open to judicial recourse. For most civil society associations the authority delivering the permit for establishment of voluntary organization is the Ministry of Interior in Jordan, Tunisia and Algeria, the Ministry of Social Affairs in Egypt, Yemen, Palestine and Kuwaiti, and the general secretariat of the Government in Morocco. Other categories of associations are sometimes linked to the ministries of culture, labor or economy.

Inhibiting legal framework is complemented by a tight regulatory control and a battery of legal measures that the administrative authority can use to restrict the autonomy and activities of civil society organizations. In many countries of the region, the controlling ministry can cancel board elections; veto candidates; appoint provisional boards; enforce merger of associations; close headquarters and offices; impose heavy fines for mismanagement; require prior approval for giving/receiving donation; impose control on expenditures; dissolve associations by ministerial decree; requisition assets of dissolved associations and prohibit activities on security grounds.

Severe measures are included in the association laws and reflected in the administrative practices of Egypt, Jordan, Palestine and Tunis. Less severe measures are found in the

recently reformed laws of Algeria, Morocco and Yemen. Lebanon is the only case where no formal administrative permit is required by the old 1909 Ottoman law to form an association. The only requirement is a notification of the act of incorporation to the Ministry of Interior against payment. This practice has been vigorously opposed by Lebanese civil society associations and was recently overturned by a ruling of the court. Current situation is confusing.

In addition to the restrictions imposed by authoritarian or semi-authoritarian states and to the often inhibiting legal and regulatory frameworks, Arab civil society organizations are limited in their autonomy by constitutive and internal factors that affect their development and work. Due to weak civic participation, political culture of fear, apathy, withdrawal from the public sphere and instinctive mistrust; structural dependency on the state, they cannot contest state policies and decisions. Limited constituencies and commitment of members of trade unions, CSOs, chambers of commerce or professional associations; their weak capacities to mobilize members; weak internal governance and organizational structures; lack of accountable and transparent governance; lack of leadership and opaque decision-making; precarious, conditional, or donor-driven funding; local philanthropy limited to traditional support for social welfare organizations; lack of legal framework and fiscal incentives for philanthropic donations; suspicion and even prohibition of private donations to civil society organizations that would increase their financial autonomy and reduce their dependency on the state – all these contribute to weakness of the voluntary sector in this region.

In the last couple of decades, international donors have become a major source of funding in countries like Morocco, Egypt, Jordan or Palestine, for social services, development organizations and the more recently for rise of public interest advocacy groups. The fears of foreign interference in “sensitive” issues, hidden agendas and political manipulation have made of foreign funding for civil society the object of much controversy in the Middle East countries. Sources and sustainability of funding remain a major issue for the development of robust voluntary sector in these countries.

Many civil society organizations in the region do not have the critical size to be able to carry significant or sustainable activities alone and to achieve a meaningful impact. In addition, most of them have difficulties working together, pooling resources, sharing services or building coalitions in order to increase the efficiency of their social interventions. In spite of

the recent emergence of few regional or national or international networks, cooperative work among civil society organizations remains limited to a few engaged in subversive activities.

In the last two decades, a growing ideological polarization and sometimes a rift has developed between faith-based and fundamentalist inspired organizations, on the one side, and secularist and leftist oriented organizations on the other side. In several instances civil society organizations have been embroiled in civil strife. In spite of the constraining role of most states, civil society organizations have significantly diversified their forms of influence. (Source: "Arab Civil Societies and Public Governance Reform - An Analytical Framework and Overview" by Salim Nasr, Dead sea, Hashemite kingdom of Jordan, 6-7 February 2005; Arab NGO Network for Development <http://www.annd.org>)

While there is much variation among the countries, several underlying common features emerge. Most important, Middle Eastern NGO laws tend to be vague and unclear, especially the sections specifying the circumstances under which the government can dissolve or ban an NGO. Many of the laws are old and do not reflect an understanding of the importance of civil society and a thriving voluntary sector as partners in sustainable development. And generally speaking, the NGO laws tend to reflect government's desire to control rather than nurture the sector. But as the governments in the Middle East liberalize and democratize, there is reason to believe that the laws pertaining to voluntary organizations will undergo change. It is noteworthy that the two most liberal and generally admirable NGO laws of Yemen and Palestine are among the most recently enacted NGO statutes. Both Yemen and Palestine wrote their NGO laws amidst substantial international pressure for reform. Such international pressure often backfires. Most encouraging is the sheer number of NGOs currently operating in the Middle East, in all but a small minority of especially authoritarian states. The incredible proliferation and endurance of NGOs is a testament to the strength and power of the domestic civil society and the voluntary sector. If history is any guide, the power of the domestic civil society sector to help produce positive and lasting change in the region is underestimated.

### **5.3.1. Algeria**

Algeria has only recently emerged from a long history of occupation, military dictatorship, and bloody civil war. Since then, government has continued a program of modernization and liberalization. The main law governing NGOs in Algeria is the Associations Act of 1990 (Act 90-31), a highly restrictive law adopted shortly before the military coup and Algeria's long decade of violence and terrorism. The Act 90-31 requires the NGOs to obtain a license from the government prior to formation. The law does not encourage the formation of NGOs by providing any direct or indirect financial benefits, such as tax exemptions or public utility discounts. But the Act 90-31 allows the government to dissolve or suspend any NGO arbitrarily. (*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005*).

### **5.3.2. Egypt**

Civil society in Egypt has long varied history. As in other Muslim countries, the religious obligation to donate (zakat) is a defining feature of Egyptian society. With the French and the British influence, the beginning of the process of modernization commenced. Subsequent reform of education and a continued exchange with the West fostered the development of the Egyptian voluntary sector. Development and growth of civil society organization can be conceptualized in three phases – 1870-1952 phase, 1952 – 1970 phase and 1970 – 1990s phase. Activities of the civil society organizations, particularly among development oriented NGOs expanded in the 1990s, and it coincided with increase in donor interest in NGOs working at the grass roots.

Voluntary organizations and civil society in Egypt is governed by the provisions of the Law on Non-Governmental Societies and Organizations (No. 84 of 2002) and the Executive Statute on Law 84 of 2002 (Ministry of Insurance and Social Affairs Decree No. 178 of 2002). Despite the highly restrictive nature of the laws, Egypt has one of the largest and most vibrant civil society organizations among the North African Islamic countries. The vast majority of Egyptian NGOs, are consciously apolitical and are primarily concerned with issues such as the environment, education, and welfare; they are generally left to operate without substantial government interference.

The regulator for associations, foundations and unions is the Ministry of Social Solidarity , and for Not for Profit companies the Ministry of Industry and Trade. Registration is obligatory; but informal (unregistered) associations are prohibited. The grounds for denial of registration are vague, inviting the exercise of excessive government discretion. Requirements relating to the General Assembly meetings require the Government to be notified in advance and for a Ministry representative to be present. Grounds for dissolution are also unclear, inviting the exercise of excessive government discretion. Sanctions for legal violations include imprisonment.

As with most Middle Eastern states, licensing of NGOs in Egypt is mandatory. Foreign NGOs are not allowed to operate in Egypt without securing the permission of the Ministry of Foreign Affairs. Law 84 / 2002 prohibits NGOs from making many internal decisions without first obtaining government approval. The law mandates the organizational structure of each NGO to a high degree of specificity, and requires all of them to join regional, state-level, and national umbrella organizations. NGOs are not allowed to expand their work into any new “project areas” that were not a part of their original charter, and they are prohibited from collecting funds from abroad or affiliating with foreign or domestic groups or unions without government permission. Although the Egyptian executive branch exerts an inordinate amount of influence over the judiciary, the judiciary has nonetheless protected the rights of NGOs in a noteworthy manner(*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005*).

A 1999 survey undertaken by the Arab NGO Network for Development (ANND) found that Egypt’s civil society sector employed the equivalent of 629,223 full-time workers, accounting for \$1.5 billion in expenditure (approximately 2 percent of Egypt’s GDP). **Research** from the International Center for Not-for-Profit Law [in 2007](#) indicated that there were 24,500 registered NGOs operating in Egypt. Recent events in Egypt, which concluded in the resignation of President Mubarak and the assumption of authority by the Supreme Council of the Armed Forces, will undoubtedly bring about changes in both the regulation of NGOs and in the activities and role of civil society more generally. Civil society organisations, including established and nascent political parties, have been at the forefront of the change process in Egypt.



### **5.3.3. Iraq**

It goes without saying that Iraq is a country in a state of flux, struggling to leave behind instability and transform itself into what the world hopes will be a secure, modern, and democratic state. The NGO law in force in Iraq today, which supersedes the older NGO laws of the Ba'athist regime (No. 34 of 1962 and No. 13 of 2000), is comparable to the more restrictive NGO laws of the countries in the Middle East. Government officials justify restrictions under the Coalition Provisional Authority Order Number 45 as necessary to establish a safe and secure Iraq, but in practice the law inhibits the groups that have been called "among the most important contributors to reconstruction" while doing little to stop illegitimate groups which operate underground.

Under existing Iraqi law, as is the case in most countries of the Middle East and North Africa, CSO registration is mandatory. The government sees the right of association as a gift from the government to the people, when in actuality it is one of the original human rights and is protected as such by international law (as discussed above in Part II). Registration of CSOs is mandatory, and even informal groups are prohibited from operating without first obtaining a license. Furthermore, complicated registration procedures with many requirements make the registration of a new CSO difficult or near impossible. The authority that is responsible for CSO registration now for most of Iraq is the NGO Assistance Office, which is part of the Iraqi Ministry of Planning (in the Kurdistan region it is the KRG Ministry of Interior). Given the history of government control over civil society in this part of the world, as well as the relatively poor relationship that currently exists between the government and civil society in Iraq, opens the way for the government to interfere in CSO internal issues. Current laws make it difficult for foreign and international CSOs to work in Iraq (or more accurately, to be registered in Iraq). Since 2006, attempts are being made to prepare new set of laws which will ensure autonomy to VOs.

All NGOs wishing to operate in Iraq are required to obtain a license from the NGO Assistance Office, a subsidiary of the Ministry of Planning and Development. Licensing is mandatory and informal groups are explicitly prohibited from operating any "programs." The law is unclear on the status of foreign NGOs. What is clear is that domestic NGOs must provide the Ministry of Civil Society Affairs Office with complete statement of revenue and expenses and assets and liabilities for the current year and the previous three years or, if the NGO has existed for less than

four years, financial data for the current year, projected budget for the next two years, list of the names and addresses of donors or non-bank lenders of funds to the NGO, report of their proposed program prepared in consultation with the Relevant Ministry and budget for the first year of its activities. These requirements impose a major burden on new NGOs most of which lack the operating experience necessary to provide required information.

The legal rights of NGOs in Iraq are not as severely limited as they are in some of the other countries in the Middle East. Iraqi NGOs are free to merge, dissolve, and divide without government approval, though they are required to notify the NGO Office of these types of actions. Although NGOs have the explicit right to raise funds within Iraq, the existing statute is silent about foreign donations. Iraqi NGOs are free to establish their own governing structures that comply with a set of minimum standards of prescribed by the extant law. (*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005*)

#### **5.3.4. Israel**

Historically, the Jewish NGOs in the Diaspora provided all the social services for the community. This tradition continued in Palestine, where between 1882 and until 1948, a highly sophisticated network of NGOs created an extremely effective, modern system of civil society acting as a bone fide government, executing all the political, economic and social functions. In 1948, the Zionist NGO operations were taken over by the newly created state that maintained the spirit of the diaspora, and awarded the orthodox NGO network special privileges and benefits not otherwise available to the secular sector. In particular, the ultra orthodox network was approved as a “public system”, eligible for all the financial benefits awarded to the public system.

Efforts to separate “church and state” have failed from the time Israel was formed in 1948. None-the- less, the NGOs succeeded in receiving full and continuous state support for their parochial activities. The need to regulate the state supported

orthodox NGOs has been a thorny issue between the government and the orthodox NGO sector, and it is yet to be resolved.

During the 1960 and 1970s, there was much concern over the increasing power of the state apparatus. Following the 1977 Likud victory, this situation changed in early 1980s.

Following its disenchantment with the lack of reciprocity between the state and the voluntary sector, the Israeli government introduced the first comprehensive NGO law in 1980, establishing the Office of the Registrar of NGOs, as a department of the Ministry of the Interior. The 1980 law was revised in 1996- 1998 to provide the Office of the Registrar important regulatory and administrative mechanisms. In addition to registration procedures and disclosure requirements, the revised law requires NGOs to provide detailed accounts of their programs, financial affairs, and administrative procedures. The focus of the new regulations was accountability and transparency. However, legal and political dilemmas have allowed the NGO community to effectively resist these regulatory mechanisms.

While the 1996-1998 revisions provide the Office of the Registrar with impressive regulatory powers, the 1998 "proper management" regulation acknowledged the difficulty of regulating the NGOs, specifically in ensuring transparency of and accountability for the vast amounts of funds transferred directly and indirectly to NGOs by the various government departments and agencies due to following reasons: (a) Legal weaknesses resulting from unclear and incoherent eligibility criteria; (b) NGOs lack of professional knowledge of the necessary accounting and auditing procedures; (c) exemption of parochial groups from many of the legal restrictions due to political pressure; (d) incorrect documentation of donations and expenditure by NGOs; (e) manipulation of political leverage by NGOs to gain functional autonomy and be free of government control; and (f) The continued practice of simultaneous donations and duplication of financial benefits. While NGOs' autonomy and independence should be strictly observed, the NGOs have failed to maintain transparency and accountability for the benefit of their clients and the civil society at large. In short, both the NGOs and the government share the responsibility of creating circumstances that make the regulation of NGOs difficult.

To correct this gap, in January 2011, Israel's Knesset approved an important transparency measure. It requires NGO and aid providers engaged in human-rights to issue quarterly reports disclosing any foreign funding and to state on their websites and in advertisements that they are foreign-funded. The government stated that in view of the fact that Israel faces challenges different from other democracies because of the intense media and political interest and its geographic isolation, this move was necessitated.

### **5.3.5. Jordan**

The outbreak of the Palestinian intifada in 2000 led to massive instability in Jordan, where Palestinian refugees constitute the majority of the population. Jordan today is unquestionably among the more liberal and modern states of the Middle East region. Much like Egypt, Jordan has both a very large and vibrant NGO sector made up of hundreds of organizations despite a very restrictive NGO law. The **Societies and Social Bodies Law (No. 33 of 1966)** is one of the oldest and most arbitrary NGO laws in Jordan, but the government generally does not enforce unreasonable provisions, choosing instead to routinely license NGOs which address numerous political and social issues. A 2001 survey counted at least 2,000 civil society groups working on issues ranging from women's rights, environment issues, health and political reforms. Many foreign NGOs conduct operations in Jordan, including Caritas, Care International, and Save the Children. The vibrancy of the NGO sector testifies to the restraint of the Jordanian government in generally abstaining from exercising its extensive powers under the above law.

Civil society in Jordan has roots within the tribal system, which is deeply embedded in society and operates alongside the formally established legal system. The tribes in Jordan play a political role, offer an alternative judicial system and provide services to communities. Indeed, the formal legal system, in defining societies, does not eliminate the tribal concept of "families".

Many formal civil society organizations (CSOs) in Jordan initially focused on charitable and aid activities. Once Jordan acceded to international conventions, such as the International Convention on Civil and Political Rights, some CSOs emerged to raise public awareness in relation to human rights, including the rights of assembly and association. At the same time, however, fundamental rights and freedoms are

still subject to governmental interference, due to the Government's claims of fighting terrorism and protecting national security.

Jordan's legal system is based on civil law (French codes) and Sharia law (applied in certain cases). Until recently, civil society organizations (CSOs) were governed by the Law on Societies No. 33 (1966), which allowed for pervasive government interference in the affairs of CSOs. In 2008, the Law on Societies (No. 51 of 2008) ("the 2008 Law") was enacted; this new law, however, was met with a lot of criticism because it also severely restricts civic space. In part, as a response, the 2008 Law was amended by the 2009 Law Amending the Law on Societies (No. 22 of 2009) ("the 2009 Amendments") collectively, "the Law on Societies") (PRIA: 1989).

No NGO can, however, form or conduct operations in the Kingdom of Jordan without express written permission from the Minister of Social Development. The process of obtaining this permission is excessively long and complicated. Foreign NGOs may be authorized under the same licensing procedures, but they face the added imposition of conditions and restrictions which the Minister of Social Development may impose. *(Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Center for Not-for-Profit Law 23 March 2011 & The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005)*

### **5.3.6. Lebanon**

Lebanon is a country with enormous religious diversity that is reflected in the religious institutions and the civil society organizations affiliated to them. Beginning from the mid 19<sup>th</sup> century, under the influence of Western missionaries, several voluntary organizations were founded to care for the disabled, orphaned etc. This led to establishment of Muslim organizations as well. France influenced the development of Lebanese voluntary sector in the early 20<sup>th</sup> century. A number of voluntary organizations were founded. In the absence of social welfare policies by Lebanese government after independence in 1946, this trend continued. The civil war that raged between 1975 and 1990 played a major role in the development of voluntary sector. During this period, when the state institutions broke down completely, religiously affiliated voluntary organizations stepped in to provide crucial humanitarian services. These organizations received foreign assistance. Since the

end of the civil war, foreign assistance has declined. The Lebanese voluntary organizations face the challenge of finding resources from within.

Particularly problematic are the racial, ethnic, and religious fault lines that still run through Lebanese society, and in fact are so central to Lebanese government and politics that they are written into the Constitution and other core governing documents. Technically speaking, NGOs in Lebanon are subject to the **1909 Ottoman Law on Associations**, a statute that predates the emergence of the modern Middle East and even Lebanon's 1926 Constitution.

Political instability, weak state, low observance of rule of law, socioeconomic problems and fragmented social structure has rendered civil society organizations too weak to influence governance. Civil society organizations typically form issue based alliances to exert influence at the local level.

The 1909 Ottoman Law requires only that any "association" which is not for profit inform the Ministry of the Interior of its existence. No permits or licenses are needed to form the association. While registration procedures are generally simple and conducive, they are open to interpretation and therefore at the discretion of the authorities. The government, particularly the Ministry of Interior exerts strong control over voluntary organizations by using its discretionary powers in approving organizational by-laws, dissolving organizations, delaying funds, excluding some from receiving funds, etc. Associations for the promotion of "Arab nationalism" are illegal. The same situation applies to tax issues as well. A 2006 memo by the Ministry assures an end to restrictive government practices. Internal democracy and transparency are not widespread. (Source: Heinrich:2007:219-227)

### **5.3.7. Libya**

While the Libyan government has made some efforts to modernize and reform in recent years, it is still effectively an absolute dictatorship with few civil or political rights. The Libyan Constitution contains no guarantee of a right to association. The sole statutory right of association comes from **Law 71 of 1972**, which grants individuals the right to associate only through institutions run by the government, such as the National Trade Unions' Federation. Any NGO or otherwise independent organization is contrary to "the revolution" and therefore illegal; members are subject to extreme criminal punishments, including execution. Libya, along with

Saudi Arabia, has the dubious distinction of having the most extreme and restrictive NGO law in the Middle East and perhaps in the entire world. (*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005*)

#### **5.3.8. Morocco**

Though a monarchy, tribal and other forms of informal community organization historically dominated the social and political life. They persist in large parts of rural Morocco even today. As a Muslim country, Morocco is under Islamic influence regarding private charity and endowed charity. Under the French influence, highly centralized state administration displaced traditional social organization and erected political and legal barriers to formal voluntary association. Despite restrictions, traditional civil society organizations continued to function. Since 1960s, liberalization has opened avenues for voluntary participation.

The NGO law in Morocco is **Decree No. 1-58-376**, promulgated as part of the 1958 Code of Public Liberties, was subsequently amended by a 1973 decree. Today, the amended Code would be considered somewhat harsh, meant to restrict NGOs. It is not clear whether registration is mandatory. The licensing process itself is relatively easy: an NGO must submit, to the local district attorney as well as the local branch of the Interior Ministry, a declaration with the name and goals of the association, information on its founders and officers, the location of its headquarters, and its internal operating statutes. Once this paperwork has been filed, the NGO technically assumes legal status without having to wait for any kind of response from the Interior Ministry. Moroccan NGOs have somewhat limited rights. There are no restrictions on the sources of income for Moroccan NGOs, but foreign NGOs are subject to several additional restrictions. NGOs can merge without government permission, but must seek permission to divide. An adverse decision made by the Interior Ministry cannot be appealed. Decree No. 1-58-376 is notable for the sheer number and severity of the criminal punishment it provides. Any founders, managers, or treasurers who change the NGO charter without informing the Interior Ministry can be imprisoned for three months to two years and fined 10,000 to 50,000 Moroccan dirhams (*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005; and Salamon et al :1999:233-241*)

### **5.3.9. Palestine**

The earliest Palestinian NGOs formed during the British mandate and focused on grassroots promotion of the nationalist struggle. After 1948, a large variety of organizations were formed on behalf of women, students, doctors, and others. Though formed earlier than the Palestinian Liberation Organization (PLO), many of these organizations worked with it or on its behalf in the project of building the state of Palestine. Because the PLO did not constitute a fully sovereign state, Palestinian NGOs were able to operate with a relatively free hand in seeking funding from regional and international donors, such as the wealthier Arab states and the World Bank. By 1994, when the Palestinian National Authority (PNA) began operation, these NGOs had a long history of providing many essential social services and working in the absence of the kinds of restraints typically imposed on NGOs in the Middle East.

The PNA, immediately after coming into existence, attempted to assert the heavy-handed control over NGOs that was common in most Arab countries, especially the neighboring states of Egypt and Jordan. Relations between the PNA and Palestinian NGOs deteriorated. When the PNA produced a draft NGO law modeled on the highly restrictive Egyptian law, the reaction of Palestinian NGOs was swift and well-organized. Palestinian NGOs mounted a successful campaign domestically and, perhaps most effectively, used the international connections made in their long history to get donor countries and international agencies which provided the bulk of the PNA's funding to pressure the PNA. After a protracted struggle between the PNA, which was rapidly developing a reputation for authoritarian excess, and the highly organized and well-connected Palestinian civil society sector, the NGOs won a near total victory.

The NGO law, finally passed in 2000, remains by a wide margin the most liberal and least restrictive NGO law in the Middle East. Despite certain shortcomings, the **Law of Charitable Associations and Community Organizations (No. 1 of 2000)** could serve as a worthy model for other Arab countries.

NGOs that operate in Palestine, regardless of their need or desire to seek formal legal incorporation, must obtain a license from the Ministry of the Interior (MOI) before they can practice any of their activities. Fortunately, the procedure for



licensing is the easiest in the Middle East, requiring only that the applicant submit three copies of the association's bylaws along with an application form provided by the MOI. The MOI then must issue a decision accepting or denying the application within two months. Unlike the rest of the Middle East, Palestine's NGO law places virtually no limitations on the rights of an NGO. NGOs are free to engage in public policy debates, raise funds from foreign and domestic sources, merge and dissolve without government interference. NGOs can affiliate with foreign or domestic organizations without seeking MOI permission, and foreign NGOs are free to establish branches in Palestine so long as approval is given by both the MOI and the Ministry of Planning and International Cooperation. The law also encourages the formation of NGOs by providing several economic incentives, including exemption from tax and customs duties. Any actions taken against an association by the MOI can be appealed in court.

The tragedy of Palestine is that on paper it has many of the institutions and procedures of a democratic sovereign state, but in reality it remains caught between the intifada, crippling unemployment and insecurity, and Israeli occupation. Thus, as with many Palestinian laws, the civil society statute is on paper very close to a model of good governance; but the practical realities in the highly unstable, occupied country make it difficult to ascertain just how relevant the law actually is. (*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005*)

#### **5.3.10. Saudi Arabia**

As a result of international pressure, to a large degree American pressure, Saudi Arabia had enacted a series of political and social reforms. The 1992 Basic Law (*Nizam*) serves as an informal constitution, but it fails to guarantee any basic human rights; it makes no mention of freedom of expression, religion, or association. Very few NGOs that do exist were established by separate royal decrees; otherwise, no legal framework exists for establishing new NGOs. The government also allows some professional associations to form, but they too are subject to absolute government control. (*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005*)

### **5.3.11. Yemen**

Since the reunification of North and South Yemen in 1990, the Republic of Yemen has made many strides toward modernization and liberalization. But even though the situation of most Yemen has continued to improve, Yemen remains among the least developed and most repressive nations.

Since 1998 Yemen has closely cooperated with the International Monetary Fund and the World Bank to implement economic and political reforms. As part of its ongoing cooperation with the World Bank, the Yemeni government recently passed a new NGO law, the **Law Concerning Associations and Foundations (No. 1 of 2001)**. The law is a definite improvement; aside from its overly severe criminal sanctions, one that both complies with most international standards and exhibits an admirable level of liberality. Yemeni NGOs are lucky to operate within one of the most permissive environments in the Middle East. The Yemeni NGO sector has flourished since its passage. According the Ministry of Foreign Affairs and Labor, 2,941 NGOs were licensed under the law by mid-2004.

The 2001 law does not require NGOs to obtain mandatory licenses. Associations and foundations are free to decide whether they wish to receive the legal benefits and protections that come with formal registration, or whether they prefer to remain an informal, unlicensed group. The registration process is quick and easy, requiring only that the NGO submit to the Ministry of Pensions and Social Affairs (MPSA) a written application, including copies of the articles of association and organizational regulations of the NGO. Yemeni NGOs are prohibited from engaging in “any partisan activity,” including taking part “in any election campaign or [allocating] any ... funds for such purposes directly or indirectly.” This restriction is not as problematic as the restrictions on “political activity” found in many other Middle Eastern NGO laws; “partisan activity” suggests a narrower prohibition, one that permits discussion of public policies and political topics. However, adding a list of restricted acts to the law would represent an improvement over the current ban on “partisan activity.”

Yemeni NGOs are generally allowed to operate freely. They can merge, dissolve, and divide without government approval. NGOs can accept money and assistance from foreign sources without government permission, though they are required to inform the government that such assistance has been given. However, before undertaking an

activity, an NGO must obtain approval of MPSA. Internal governance of NGOs is subject to many requirements, but these seem intended to ensure good governance and curb corruption. They do not impose overly onerous conditions on NGOs. Foreign NGOs can be formed so long as they do not violate “Islamic values” or the Yemeni Constitution. What, exactly, constitutes “Islamic values” is left unspecified. In recognition of the important role that NGOs play in development, the Yemeni government extends substantial benefits to NGOs, including exemption from all taxes on income and imported goods and supplies, exemption from customs duties on overseas gifts and grants, and a 50 percent reduction on electricity and water utility fees. (*Source: NGO Laws in Selected Arab States By Kareem Elbayar, The International Journal of Not-for-Profit Law Volume 7, Issue 4, September 2005*).

#### **5.4. Voluntary Sector in African Countries**

Africa is in the midst of many and complex challenges. These challenges emanate from globalization, civil wars, ethnic conflicts, search for appropriate processes and institutions of governance, increased poverty, devastating impact of HIV/AIDS, declining external aid and investments, cultural and religious revitalization. The ongoing changes in sub-Saharan Africa have witnessed the emergence and multiplication of civil society institutions and in particular the non-governmental organizations (NGOs). The processes, institutions and main actors that are involved in dealing with the dynamics and challenges of change are being closely watched.

In the pre-colonial era, civil society in African countries consisted of community institutions made of self-help and solidarity groups whose primary objective was to cultivate solidarity and promote development among members; The colonial period was characterized by rapid urbanization due to migration and led to development of ethnic groupings that met the needs of the members of the respective ethnic community. The evolution of formal voluntary sector has its roots in this era. Since then, cross-cutting, class based formal organizations whose political mobilization was crucial to the success of nationalist struggles for independence. Post independence years extending to the 1980s were characterized by constriction of political space for autonomous collective action. During this period, voluntary civil society organizations were co-opted into one-party states to create a united front for national development. In some countries, dictatorships emerged and constrained civil society. The period from the 1980s till the 1990s saw ‘NGOization’ of civil society encouraged by increased donor support in response to the African crisis. The political

liberalization of the 1990s contributed to the evolution of civil society organization as a legitimate sphere of public debate and contestation.

Given the history and development of the concept of civil society in Europe and how it was introduced and practiced in colonial Africa, the applicability of the concept 'civil society' to the African reality today has been a subject of intense debate considering the fact that there are 120 countries with their own unique history. Underlying all these debates was the question as to what is authentically African civil society, articulating an African agenda, and not playing to the tunes of the neo-liberal ideology and donor needs. Questioning the 'civil society' in Africa and the debates on the subject are expected to continue, especially as new efforts are being made to revitalize the African economies through the proposed New Partnership for Africa's Development (NEPAD). (Source: Questioning Civil Society in Africa by Kabiru Kinyanjui *The International Society for Third-sector Research (istr) an occasional report the second ISTR Africa Research Network meeting (Nairobi, Kenya, November 2001).*

In many African countries, civil society actors and institutions are viewed as critical players in the process of democratization. Debates highlight the weaknesses and the limitations of the civil society in advancing the democratization agenda especially in Benin, DR Congo, Kenya, Niger, Nigeria, South Africa, and Zambia. Their participation in the democratization process, it is believed, gave the citizens a voice that was not represented in the political and economic spheres of their society till recently. The potential and the possibilities of utilization of civil society and voluntary sector in defining what is fair and free elections, monitoring of elections and in general implementation of democratic reforms is providing citizens and communities with a window of opportunity to participate in the process of governance. It was noted that the civil society is providing a critical organizational channel for inclusion, participation, and contribution in dealing with the challenges of political, social, and economic reforms.

Thus, a critical mechanism for mobilizing citizens into the politics of reform and reshaping the power relationships in society, voluntary sector was expected to strengthen the space, autonomy, and institutional capacities of the civil society. NGOs were required to get involved in democratization process and to link more and more micro development activities with policy advocacy and other basic human rights issues by Northern donors.

With some pressure from the World Bank and IMF, African national governments have started to change their development policies; fight corruption, promote good governance, introduce civil service reforms, decentralize the government structure, encourage devolution of power to the lowest government administration units and community level institutions in order to promote accountability with the help of NGOs. Some national governments have started showing interest in working with the NGOs and have encouraged them to get involved in the democratization process; and some have established Office of the Ombudsman and/or the Human Rights Commission to redress human rights violation issues raised by NGOs.

International NGOs such as Action Aid, Oxfam UK, Christian Aid, Panos Ethiopia, etc., have adopted rights based approach as a better approach to working along side the poor and marginalized communities to enhance their control over development intervention. NGOs are now initiating different projects in the area of human rights promotion, good governance, civic education, etc. Some of the local NGOs are forced to change their conventional development approach to right based approach in order to get continuous financial support from donors.

Evidence shows how donor aid shaped participation of civil society institutions in policy dialogue and policy implementation in Ghana, Namibia, Malawi, Zambia, and South Africa. Donor influences were not limited to the broad issues of decentralization, participation, poverty alleviation, and democratization but also in the way NGOs are developed, professionalized, managed, and systems of accountability, evaluation, and reporting are implemented. In short, the donor relationship with NGOs was critically viewed as a process of incorporation of local organizations into the global agenda and the priorities of Northern NGOs, which are themselves being incorporated into the official development model and priorities.

NGOs continue to be reluctant to get involved. The main reason why NGOs do not want to get involved in such activities is because of the fact that their role in policy advocacy and democratization process is interpreted by the government as an act of opposition. This is partly due to the officials' lack of understanding of poverty and its causes, their lack of understanding of the concept of civil society and their limited vision of the role voluntary civil society organizations play in changing the lives of the poor people by empowering them and involving them in democratization process. Some NGOs, however, are still not comfortable with this approach. They complain that there is no reliable enabling

environment to engage in human rights promotion, rights based approach and democratization activities, and are afraid to face possible challenges, mainly from the government. Even though NGOs complain about the absence of enabling environment to get involved in the democratization process, they themselves have not been able to create strong networking or alliance among themselves. The optimism that characterized the sector initially, about NGOs' contribution to the processes of democratization and development is being replaced by more informed and realistic assessment.

In Ethiopia, for instance, an NGO known as SAHER had to face lengthy bureaucratic processes for about three years between 1992 – 1994 to be registered and obtain a legal certificate. It was difficult for government officials to consider SAHER as a development agency, as they considered it as an opposition political party because it undertook advocacy work. However, after a long bureaucratic process, they were registered but only after including additional development activities in their proposal in order to convince the Ministry of Justice that they were a development agency and not a political party.

Another such example is that of the Ethiopian Free Press Journalists Association (EFPJA) managed to get registered after eight years since its establishment in 1993. When most of its counterparts which are international organizations such as International Journalist Federation, International Press Institute, PEN International, etc. recognize EFPJA as a professional association, the Ethiopian government did not give it recognition until 2001 when EFPJA finally managed to get registered as a non partisan and non political civil society organization. It managed to register only after it filed a law suit against the government.

Some countries have adopted laws to enable voluntary sector's growth. Registration laws involve long bureaucratic procedures. Yet, some of laws these vested discretionary powers with the authorities giving opportunities for corruption. Currently, the legal environment though is not overly hostile, continues to be disabling (Heinrich:2007:79-83).

#### **5.4.1 Ghana**

In 1957, Ghana became the first British colony in sub-Saharan Africa to gain independence. Wide range of voluntary organizations developed in the 17<sup>th</sup> and 18<sup>th</sup> centuries. Inter-war period (1918 -1939) saw an increase in civil society organizations mainly due to urbanization and recurrent mobilization against colonial rule. After independence, government introduced a series of measures aimed as

constraining civil society organizations of students, press and trade unions; but developmental NGOs were permitted to operate as long as they did not stray into political sphere. In the interim period, civil society organizations and state clashed over installing democratic system of governance. The 2000 elections marked the peaceful hand over of power from one regime to another for the first time in the history of Ghana. Thereafter, despite widespread support, government and civil society organizations clashed several times over privatization of water, basic services and government's use of foreign funds to promote development (Heinrich:2007:151-159).

Draft Policy contains significant and detailed recommendations, which, if implemented, would result in a substantially reformed basis of registration, operation, and oversight of the civil society sector. Notable among the Policy's recommendations are:

- The provision of a single registry for all NGOs at the Registrar Generals Department,
- Accreditation from the Ministry of Manpower Development and Employment (MMDE) providing NGO access to various benefits,
- A clear statement of intention to provide tax and customs benefits,
- Government support of funding efforts by NGOs, and
- Accountability on the part of recipient organizations.

Perhaps most significant, and novel, is the inclusion of a recommendation for the establishment of a "National Commission for NGOs (NCNGO). Membership in NCNGO would include both Government and NGO representatives, as well as other "stakeholders." NCNGO would undertake the accreditation of NGOs on behalf of MMDE, and provide various forms of support and encouragement to the sector, as well as advice to the Government on NGO-Government relationships, working closely with MMDE, the Ministry responsible for NGO-government relations.

In sum, the Policy sets forth an ambitious effort to ensure that all stakeholders are engaged in communication, representation, and involvement in development strategies and their implementation throughout the country. It represents a

significant departure, both in strategic emphasis and in legal structure from the largely inherited legal regime that has existed.

#### **5.4.2. Kenya**

The Kenyan civil society owes its origin to three major sources – African communal traditions, early Christian missionaries and British colonization. Most characteristic feature of the early forms of social organizations was their collective nature and the community's responsibility for each individual's well being. They served the native indigenous people mainly. Christian missionaries who came to Kenya in the early 1840s introduced modern institutions such as schools, health care facilities and churches. British colonization in 1895 brought other forms of nonprofit philanthropic organizations including settler associations, social clubs, sporting associations. These served the welfare of the colonial settlers. In response to various forms of exploitation by colonizers, a variety of indigenous resistance organizations emerged. Following World War II, intensification of independence movements led to emergence of militant political groups which were instrumental in liberation from the colonizers in 1950s and 1960s. After Kenya gained independence, traditional solidarity groups known as *harambee* were encouraged. In an effort to consolidate power and undermine opposition, *harambees* were outlawed in the early 1990s. At the same time, with the introduction of liberalization, there was a revival of the indigenous voluntary sector. (Salamon: 1999: 95-109)

Relevant regional and national-level laws and regulations affecting civil society include:

- [The Non-Governmental Organizations Coordination Act](#), Act No. 19 [1990]
- [The Non-Governmental Organizations Coordination Regulations](#) [1992]
- The Non-Governmental Organizations Council Code of Conduct [1995]
- The Revised Draft of the Constitution of Kenya [2010]
- [The Companies Act](#), Chapter 486 of the Laws of Kenya [1959]
- [The Societies Act](#), Chapter 108 of the Laws of Kenya [1968]
- [The Trustees \(Perpetual Succession\) Act](#), Chapter 164 of the Laws of Kenya [1981]
- [The Trustee Act](#), Chapter 167 of the Laws of Kenya [1982]
- [The Value Added Tax Act](#), Chapter 476 of the Laws of Kenya 1990 [2004]
- [The Customs and Excise Act](#), Chapter 472 of the Laws of Kenya 1996 [2000]
- [The Income Tax Act](#), Chapter 470 of the Laws of Kenya 1974 [2004]



- Income Tax (Charitable Donations Regulations) [2007]
- Finance Bill [2009]
- [Sessional Paper No. 1](#) [2006]
- The East Africa Community Treaty
- The East Africa Community Customs Management Act [2004]
- **Non-Governmental Organizations (NGOs)** are registered by the NGO Coordination Board and governed by the NGO Coordination Act of 1990 (Act No. 19, Laws of Kenya) and its Regulations of 1992. Section 2 of the Act defines NGOs as "private voluntary groupings of individuals or associations not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry, and the supply of amenities and services."

(2) **Companies limited by guarantee** and not having share capital are registered by the Registrar of Companies under the Companies Act (Chapter 486, Laws of Kenya). They can exist to promote any legal purpose as long as these are contained in the memorandum of incorporation and articles of incorporation. As but one example, many service delivery institutions – such as schools and healthcare organizations – are registered as companies limited by guarantee and having no share capital.

(3) **Trusts** are established by families, groups or individuals to hold and manage assets for the benefit of others. Trusts may be incorporated under the Trustees (Perpetual Succession) Act (Chapter 164, Laws of Kenya) for religious, educational, literary, scientific, social, athletic, or charitable purposes (Trustees (Perpetual Succession) Act, Section 3(1)).

- (4) Under the Societies Act, a **society** is "any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya" (Societies Act, Section 2). The definition specifically excludes trade unions, cooperatives, corporations, and certain other entities. Societies are registered and regulated by the Registrar of Societies (Societies Act, Section 8). After grassroots organizations,

societies are the second largest category of CSO: there are over 70,000 societies registered in Kenya.

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- (5) **Cooperative societies and unions** are registered at the Department of Cooperatives under the Cooperative Societies Act (Amended) 2004, No. 12 of 1997. They include consumer, producer and marketing cooperative societies in

rural and urban areas and housing development societies found in major urban areas. They are voluntary membership organizations and advance the welfare, economic interests and goals of their members.

(6) **Grassroots organizations** include *harambee* or self-help groups and community-based organizations (CBOs) such as neighborhood associations. Self-help groups and CBOs are formally recognized through registration under the Department of Social Services in the Ministry of Gender and Children Affairs. As the largest group in the CSO sector, they operate primarily at the village and community level.

Since December 2010, there have been concerted efforts by the CSO Leaders Reference Group to consult government institutions including the NGO Coordination Board, the Permanent Secretary in the Ministry of State for National Heritage and Culture, and the Kenya Law Reform Commission. The CSO Reference Group has shared a draft PBO Bill with all the concerned government actors. Meanwhile, the NGO Coordination Board, the Government agency which registers and monitors NGOs, is in the process of drafting a NGO Bill. An initiative aimed at strengthening the Government-CSO relationship is currently underway and has brought together Government and CSO representatives in a working group. The group has developed principles for collaboration and is in the process of developing clear strategies for engagement between the sectors

Under the NGO Coordination Act, NGOs are established for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry, and the supply of amenities and services. Sessional Paper No. 1 of 2006, which is the National Policy for NGOs, describes NGO purposes as the following: "Enhancing the legitimate economic, social and/or cultural development or lobbying or advocating on issues of public

interest or interest of a group of individuals or organizations.”

The other CSO forms are not restricted to public benefit purposes:

- Trusts may be established to promote religious, educational, literary, scientific, social or charitable, or athletic purposes.
- Societies may be established for any purpose or object.
- Cooperative societies and unions can be created for the promotion of the welfare and economic interests of their members.
- Grassroots organizations exist to advance the interests of their members and the immediate needs of the local communities in which they operate.

CSOs in Kenya are subject to a range of potential legal barriers to formation, establishment and registration.

First, the Government may deny registration of NGOs and societies on vague and ambiguous grounds, which invite arbitrary and subjective decision-making. For example, the NGO Coordination Board may refuse registration of an NGO applicant if it is satisfied that its proposed activities or procedures are not “in the national interest”; or if it is satisfied, on the recommendation of the NGO Council, [1] that the applicant should not be registered. While the Board may sometimes furnish the applicant with an explanation for the refusal of registration, the Board is not legally required to do so. In practice, denial on the broad ground of the “national interest” has been used unjustifiably to curtail the rights of NGOs. [2]

Similarly, the Registrar of Societies has wide discretion to refuse to register a society if he has “reasonable cause to believe” that the society has among its objects, or is likely to pursue or be used for, any unlawful purpose or any purpose prejudicial to or incompatible with the peace, welfare or good order in Kenya, or that the interests of peace, welfare or good order in Kenya would otherwise be likely to suffer prejudice by registration of the society. The Registrar may also refuse to register a society where he is satisfied that such society is a branch of, or is affiliated to or connected with, any organization or association of a political nature established outside Kenya. Additional reasons for denial apply where the terms of the constitution or rules of the society or the name of the society is in any respect repugnant to or inconsistent with any law or is otherwise undesirable.

Second, the law is vague and ambiguous on a number of issues where wide discretion is given to the NGO Board and the Minister. For example, the certificate of registration for NGOs may contain such terms and conditions as the NGO Coordination Board may prescribe. [3] There are no guidelines, however, to ensure that the Board uses this prescriptive power in a clear, objective and predictable manner.

Third, the law does not explicitly provide a fixed time period within which the NGO Coordination Board must act on NGO registration applications. In practice, however, applications for NGO registration are often processed within about 90 days.

Finally, NGOs and societies are subject to mandatory registration, at least according to the law as written, although this has not proved problematic in practice. Under the NGO Coordination Act, for example, it is illegal for any person to operate an NGO in Kenya without registration and a certificate under the NGO Coordination Act. In practice, however, many CSOs that fall within the definition of NGO have opted to register under alternative legal forms. The Societies Act provides that every society which is not a registered society or an exempted society is an unlawful society. Hence, where ten or more persons get together, they are expected, according to the law, to have that group registered. There are stiff penalties for operating as a society without a registration certificate. This legal provision is, however, rarely enforced.

The Societies Act includes a number of potentially troubling legal barriers affecting societies:

- The Act gives wide discretion to the Registrar of Societies and sweeping powers to various government officials with respect to investigating, arresting, entering and searching the premises of any society.
- The Act makes it an offence for a society to fail to keep a register of its members, their names, and the date of admission and exit. Where societies fail to comply with requirements to provide membership lists, annual accounts or other information, they are liable to heavy penalties, including fines and imprisonment.
- Where it is alleged that a society is an unlawful society, the burden of proving that it is a registered or exempted society or that it is not a society shall lie with the person charged.

In practice, however, these powers are rarely exercised. Societies generally operate under minimum supervision. Only occasionally, where a group is suspected to be conducting illegal activities, have the provisions in this Act been put into effect.

Generally, Kenyan law provides a conducive framework for CSOs to seek and secure funding. For example:

- CSOs are permitted to engage in economic activities provided that the profits are used to further the CSO's purposes and that the activities are directly related to the CSO's purposes or carried out on behalf of its beneficiaries. CSOs can conduct the business activities either directly or through for-profit subsidiaries.
- Local resource mobilization through harambees (public fund-raisers) is recognized, as long as it adheres to the guidelines in the Public Collections Act, which is generally enabling.
- There are no special rules relating to the receipt of foreign funds by CSOs.
  - CSOs are permitted to compete for government funds in free and open competitions where specific guidelines have been established. (There are, however, very few instances where CSOs receive funding from the Government.)

## ***Nigeria***

Many types of NGOs are allowed under Nigerian law. These include community-based organisations, friendly societies, social clubs, women's groups, youth clubs, religious organisations, cultural associations, professional associations, trade unions, political parties, cooperative societies and specialised professionally-run NGOs, which work in various thematic areas.

NGOs in Nigeria may register as a company limited by guarantee or as an incorporation of trustees (by which the trustees of the NGO, rather than the NGO itself, obtains the status of a body corporate). Both companies limited by guarantee and incorporated trustees are regulated under the [Companies and Allied Matters Act 1990](#) (CAMA).

The primary regulator is the [Corporate Affairs Commission](#) which has responsibility for companies as well as NGOs. Annual returns and accounts are required by the Corporate Affairs Commission. The Corporate Affairs Commission maintains a register of all incorporated trustees and companies it has registered and this may be inspected by a member of the public upon payment of a search fee. In 2005 the Commission had 45,000 NGOs on its register. The [Nigeria Network of NGOs](#) also has a database of NGOs.

There are many NGO umbrella groups and capacity building organizations operating in Nigeria. Some of them are the [Nigerian Association of Chief Executives of Voluntary Organizations](#), the [Nigeria Network of NGOs](#) (NNN). The NNN has developed a Code of Conduct for NGOs. The [Development Information Network](#) is another group which has produced a Code of Conduct.

#### **5.4.3 South Africa**

Race and class divisions gave rise to separate non-government organizations to serve narrowly defined ethnic, cultural and religious interests. The tendency to self-organize to cope with life-threatening circumstances carried over into the modern civil society manifests itself in the proliferation of separatist churches, unions, service and civic organizations, and traditional tribal organizations. Dutch colonization between 1652 and 1810 introduced farming and slavery. British occupation in 1795 created entry for charitable missions and organizations. Rapid economic growth brought a massive influx of immigrants. Each of these ethnic, cultural, and religious groups developed organizations to serve their own interests. Black organizations started to emerge in the late 19<sup>th</sup> century. Formation of Union of South Africa in 1910 and industrialization spurred large scale labour movement and formation of trade unions. Some of the trade unions, especially black trade unions later became political parties. These developments strengthened the resistance of both British and Afrikaners-speaking whites to the growing influence of non-whites. The policy of 'apartheid' initiated in 1948 led to policing of civil society organizations further. Government implemented a systematic separation of community welfare organization along racial and ethnic lines by selectively withholding both local and foreign financial support. These initiatives led to extreme fragmentation of the voluntary sector. In response, two types of organizations emerged in black civil society – 'the organizations of survival' such as informal savings groups, trade unions, nonpolitical professional organizations, sports clubs etc; and 'the organizations of resistance' such as United Democratic Front, National Education Union of South Africa etc. In the post-apartheid era from 1994, the government is actively encouraging voluntary organizations. (Salamon: 1999: 110-125)

**Regulation in South Africa occurs on three levels:**

1. Firstly NGOs might be registered as voluntary associations (universitas. if incorporated), section 21 companies (Companies Registrar, DTI) or trusts (governed by District Master of the Court Office, under Dept for Justice).
2. These three types of organisations can then register as an NPO (Non-profit Organisation) with the NPO Directorate. Donors often require registration as an NPO as a condition of funding.
3. Finally organisations can choose to register as Public Benefit Organisations (PBO) with the Tax Exemption Unit, South African Revenue Service (SARS). Only when an NGO is registered as a PBO does it receive tax breaks. Registration as an NPO (stage 2) is not a legal requirement to register as a PBO (stage 3).

## **Legal Framework**

NPOs are registered under the Non-profit Organizations Act 71 of 1997

Public Benefit organisations can be registered under the Income Tax Act 1996.

Voluntary Associations are a product of the common law.

Section 21 Companies are registered under the Companies Act 1973.

Trusts are registered under the Trust Property Control Act 1957.

There are currently plans underfoot for a new NPO law - draft proposals are with the NGO sector for comments, and a technical committee has been appointed to take this forward (March 09).

## **Regulatory Framework**

### **The primary regulators are as follows:**

- NPO Directorate, Department of Social Development
- Tax Exemption Unit, South African Revenue Service
- Companies Registrar, Department of Trade and Industry
- District Master of Court Office, Department for Justice

## **Self-regulation**

SANGOCO (South African NGO Coalition) developed a Code of Ethics primarily to address issues of good governance.

There are additionally many umbrella bodies and capacity building organizations working regionally and thematically to represent their members and strengthen civil society. Such bodies include:

- The Non-profit Consortium: Consortium of NGOs to improve the capacity of South African NGOs. It also focuses on non-profit legislation.
- SANGONET: This was established by in 1987 to improve communication and information on NGOs working in South Africa.
- CAF South Africa: CAF Southern Africa is an independent non-profit organization that promotes and facilitates effective social investment.

#### **5.4.4 Tanzania**

Tanzania emerged as a nation in 1964 with the unification of the Republic of Tanganyika and the People's Republic of Zanzibar. While the mainland of Tanganyika was inhabited by native African indigenous people, coastal areas were occupied by Arabs engaged in slave trade. The island of Zanzibar was occupied by Omani Arabs. Germans first colonized Tanganyika in the 1880s and the British replaced them at the end of World War I. Pre-colonial societies developed elaborate forms of mutual self-help based on kinship. Indigenous institutions were based on customary rights transferred from generation to generation and were governed by the principles of reciprocity and redistribution of pooled resources. Civil society organizations in the modern sense were introduced by the European missionaries in the mid 19<sup>th</sup> century. After independence and unification, government took steps to establish tight control over civil society organizations. As a result, the relationship between the government and the civil society was tenuous and marked by conflict. Introduction of economic reforms in the last two decades that allowed private enterprise, increased government's reliance on civil society organizations. (Salamon: 1999: 126-139)

The National Council of NGOs (NACONGO) is a body charged with the responsibility of coordinating and self-regulation of NGOs operating in Tanzania. It was set-up by an Act of Parliament and was officially launched in 2003. Although charged with this mammoth



responsibility NACONGO has only met thrice since its inception, because the Act does not prescribe sources of funding for the council, but does so for the NGO Board which is a joint Government and NGO representative body.

The Tanzanian NGO Policy of 2001 and the NGO Act of 2002 provide for the establishment of a National body for NGOs. The main goal of the National body (Council) is to ensure NGOs accountability and self-regulation among the NGOs countrywide. According to Section 25(2) of the Act the national Council of NGOs supposed to be a collective forum of NGOs, which facilitates networking and coordination through annual meetings of the Council. Drawing from the provisions of the Policy and the NGO Act the main task of the Council are the following: -

- Self-regulation under this provision the Council is required under section 27 to develop and cause to be adopted an NGO code of Conduct for NGOs
- Facilitating networking among NGOs. The Council is required to facilitate the sharing of experiences (knowledge and information) among NGOs.
  - Harmonizing and coordinating the NGOs activities in order to avoid misuse resources therefore hence the effectiveness of NGOs in the national development process.

#### ***5.4.5 Uganda***

First modern civil society organizations were created by missionaries in the late 1890s. Along side these missionary and colonial organizations, local people formed their own institutions partly to press reforms on the colonial administration. Muslim organizations also began to emerge in the 1930s as a result of the growing Indian influence in the country. They were able to negotiate with the government for recognition of Islamic law and approval schools, welfare services and development agencies. The period following independence in 1964 witnessed an expansion of state and subjugation of independent civil society organizations by a series of authoritarian regimes. Many of the service providing colonial institutions survived this persecution. The government used the civil society organizations as a platform to mobilize political support. Organizations that resisted were either marginalized or destroyed. After the dust settled following the power struggle and a new regime emerged in 1985, a more tolerant policy towards both domestic and foreign NGOs

was ushered in, resulting in rapid growth of voluntary sector. These NGOs were able to mediate between donor agencies and community-based groups. (Salamon: 1999: 140-152)

Wider civil society in Uganda includes many voluntary organizations including cooperatives, traditional churches and other citizens' organizations. The 1989 Act defines an NGO as an organization established to provide voluntary services, including religious, educational, literary, scientific, social or charitable services to the whole community or any part of it. NGOs in Uganda are governed by the NGO Registration Act 1989 which was amended by the NGO Registration (Amendment) Act 2006. [The NGO Regulations](#) were published in 1990. The [National Board of Non-governmental Organisations](#) is charged under the current legal framework to oversee NGO activity. It meets once a month to consider new applications for registration. The NGO Board sits within the [Ministry of Internal Affairs](#). The [Ministry of Finance, Planning and Economic Development](#) may also have contact with NGOs to approve the work plans when seeking registration. The Government, under the Prime Minister's Office, published a draft [NGO Policy](#) in 2008. The Registration Act does require NGOs to submit annual reports. In 2007 the National NGO Board reported over 5,500 NGOs on its register. This is not currently available online. [ISIS Women's International Cross Cultural Exchange](#) and The [Uganda National NGO Forum](#) have a [code of conduct](#) for its members. The Uganda National Forum has also worked with the [Development Network of Indigenous Voluntary Associations](#) to produce a certification mechanism. NGOs which reach the standard are granted the certification which should help with funding applications – the [NGO Quality Assurance Mechanism](#).

### **5.5. Latin (South) American Countries**

Latin American countries are often portrayed as vibrant, but fragmented civil society where voluntary action peaks during periods of intense and contentious mass mobilization. Evidence confirms that development and health of voluntary sector in the region is affected by political and institutional development of the state, and is strongly embedded in the specific political culture and social environment. In the absence of clear policies and norms for recognizing voluntary organizations and established democratic procedures, both government and the voluntary sector are confronted with the traditional hierarchical power structure. Some still favor traditional structures, which sometimes degenerate into modern forms of patronage. In most Latin American countries, however, the true practice of citizenship has not been achieved. It has been partially reached and coexists with practices

of patronage, populism and particularism in which certain social groups pressure the state to obtain direct benefits.

During the 60's and 70's, the idea of organizing and mobilizing people at community level, independently of the existing political parties was introduced. This work was supported by European non-governmental development agencies linked to progressive Christian catholic and protestant churches. A number of organizations were created to defend political, civil and human rights, threatened by the long-lasting period of military dictatorships in Brazil and Latin America.

Such organizations called themselves "nongovernmental", emphasizing their independence from government actions. The traditional assistentialism thus paved the way for private organizations that defended public interests. These NGOs emerged in the midst of political resistance. Such organizations played a fundamental role in the development of public awareness of the concept of citizenship for the strengthening of civil society.

Schönwälder argues that to avoid cooption in new spaces for participation in local governance, voluntary organizations need to make strategic alliances with each other (1997; see also, Craig et al, 2004). Similarly, Lavalle et al (2005) find in Brazil that the participation of non-governmental actors in local governance spaces is also determined by the organisation's political alliances and networks. Other factors may be their structure, their funding dependencies and the history of relationships with the state.

The NGOs created in the 80's consisted of new model of organization and resource management, having linkages with international financing institutions. However, the political and economical opening of countries in Western Europe and social crises in Africa made international foundations redirect part of their resources to finance programmes of development in those areas of the world. This forced Latin American organizations search for alternative means of sustainability. At the same time, the country government's economic resources became scarcer due to several reasons, including reasons of political instability. In the 1990s, there has been a proliferation of legal frameworks for citizen and community participation in municipal planning, budgeting and provision of local services. The challenge is the need to increase transparency in the use of financial resources and boost productivity in the development of social programs. This means improving the relationship between resources and results, and introducing monitoring instruments to evaluate efficacy and efficiency. Both state and CSOs in Latin American countries must

better their capacity for self-evaluation and seek more effective instruments for promoting transparency and accountability.

#### **5.5.1. Argentina**

Voluntary Organizations (VO) in Argentina are required to be legally constituted in order to enter into funding partnerships. In order to be recognized as legal entities in Argentina, VOs must be officially registered. Moreover, different types of VOs register with different public institutions. The existence of these multiple registries has led to duplicate registration of many VOs. On the other hand, since regulation procedures are so cumbersome, some VOs do not register at all. The lack of widespread information about registration procedures has kept some VOs from registering.

The prevailing types of legal configurations for VOs are associations and foundations, cooperatives, mutual benefit associations, trade unions, and entities of public welfare. The Argentinian Civil Code (*art. 33 inc. 5*) provides for the establishment of several types of legal entities. Two main types of legal structures - foundations and associations are common. Foundations are created through the donation of a specific property which is autonomously administrated. Their by-laws are more rigid than those of associations. Associations are based on membership. Both these types of VOs are officially registered and regulated by the *provincial* governments, which grant them legal status (*juristic person*) through the Provincial Office of Juristic Person. The National Institute of Cooperatives and Mutual Benefit Associations registers, grants legal status to and regulates cooperatives and mutual benefit associations, whereas the Ministry of Labor officially recognizes and regulates trade unions.

There have been many government agencies for regulating different types of VOs. And there have been many changed and new agencies have been created. Entities of public welfare are granted legal status by the national government. Recognition for this type of VOs was established within the Ministry of Foreign Relations in 1937, especially for those institutions dedicated to social assistance. Later, the National Registry of Entities of Public Welfare was transferred to the national Center for Community Organizations (*CENOC*), created in 1995 under the jurisdiction of what was then the National Office (but now the Ministry) of Social Development. Recently,

some municipalities have begun to create *local* registries especially for community associations which provide social assistance in local areas. Generally, there are no restrictions on the ability of civil associations, foundations, or mutual entities to engage in legislative or political activities. In fact, foundations that analyze the political and economic situation are often closely linked to political parties. Likewise, there are no restrictions on lobbying activities by NPOs

From the data gathered for the UNDP-BID research project on *A Development Index of Civil Society in Argentina* (1999), it was estimated that approximately 35% of the Argentinian VOs are not recorded in any official register despite the existence of many government agencies to regulate them; those not registered are not considered to be legal entities by the state. VOs circumvent this situation, and still legally operate because the Argentinian Constitution (*article 14*) guarantees individuals the right of “association with useful objectives”. Nevertheless, these VOs are not eligible to form funding partnerships with the state. In Argentina there are no specific laws concerning funding partnerships between the state and the voluntary sector. Lack of legal constraints allows scope for flexibility – voluntary organizations are able to choose the most convenient way of working together. For furthering the development of voluntary sector, updating the legal framework is one of the most important challenges that VOs and government face in Argentina today. (Source: Public-third sector partnerships: A major innovation in Argentinian social policy by *Mónica Bifarello*, *Universidad Nacional de Rosario, Argentina* Paper Presented at the Fourth Conference of the International Society for Third-Sector Research, July 5-8, 2000— Dublin, Ireland)

### **5.5.2 Brazil**

The work of philanthropic entities in Brazil dates back to the 16th Century with the birth of the “*Santas Casas de Misericórdia*” (hospitals for the needy), which still exist today.

For over three centuries, philanthropy has developed itself under a charity (‘assistentialist’) mode, with the predominance of Christian charity. Organizations such as schools, hospitals, old-age homes and infirmaries were created from the 18th century onwards. At the end of the 19th century and the beginning of the 20th century, the institutions of social assistance and aid to the needy population underwent changes in their organizational form and administrative practices. During

this period the role of the state in the social area expanded, especially in the urban areas and particularly concerning health, hygiene and education. This meant state intervention in the administration and financing of charity ('assistentialist') and philanthropic institutions.

From around the year 1910, social assistance institutions began depending on the government for economic support. The government, in its turn, began to subject such institutions to measures of administrative, practical and normative control. With industrialization and urbanization, which took place in the 20's and 30's, the scenario in the voluntary sector changed. As a result, the number of non-profit organizations connected to the government, searching for solutions to the problems of poverty and social exclusion, increased. At this time, unions, professional associations, federations and confederations were created, linking the private sector to the practice of charity ("assistentialism") and mutual aid to immigrants, workers, employees and the public workforce.

During the 90's, the voluntary sector in Brazil established itself as a strong , vociferous sector. It took up theoretically an intermediate position because it renders public interest services without the limitations of the government, and without the often unacceptable ambitions of the market. This period marked new trends and challenges for non-profit organizations in the country, and was an important historical time for the sector because the old rules had to be revisited and new rules made based on the professionalism. Currently, the regulation of non-profit organizations is outlined in the new Brazilian Civil Code effective from January, 2003 as well as in the law for Civil Society Organizations of Public Interest – CSOPI (*"Lei das Organizações da Sociedade Civil de Interesse Público – OSCIP"*).

In Brazil, the two traditional legal forms voluntary organizations can be found - an **association**, where a group of people come together to pursue certain non-economical objectives; and a **foundation**, when there are assets meant to achieve certain objectives. In the association, the fundamental legal entity is organized around the group. In the foundation, the assets form its chief element. Under Brazilian law, the association is the more common type of civil society organization. The term **non-profit organization** is not defined, and is more of a sociological concept than a technical legal concept.

In Brazil, voluntary organizations have to be certified as legal entities. It works as a kind of legal stamp of moral integrity, acknowledgement of eligibility for receiving donations and for becoming eligible for partnerships with the government, among other advantages. Such organizations are expected to be accountable and transparent. Declaration of Public Utility ("Declaração de Utilidade Pública – DUP"), establishes that voluntary organizations meet the eligibility criteria and are permitted to receive donations from legal entities with specific tax benefits. Another body to grant recognition is the National Council of Social Assistance – (Conselho Nacional de Assistência Social – CNAS) which allows voluntary organizations engaged services to families, children, maternity, adolescence, elders, needy to access public resources by means of agreements. Once the enrolment in the NCSA is done, after a period of three years, the voluntary organization may request the **Certificate of Philanthropic Entities – CPE** ("Certificado de Entidades de Fins Filantrópicos – CEFF), to exempts it from paying social security contribution to its staff. In the Brazilian legal system, tax immunity to NGOs is granted by Constitution. And the tax-exempted entities must perform activities that are directly connected to the institutional objectives.

In Brazil, voluntary work is also governed by a law. Volunteer work does not constitute a formal work relationship; nor does it result in labor or social welfare obligations of any sort. Voluntary work has to be established in a written agreement, containing the correct identification of the organization, the nature of the services and the conditions under the Law of Volunteer Service. The law also provides for the reimbursement of expenses incurred by the volunteers if authorized by the employing entity.

Paid work is ruled by the Consolidation of the Labor Laws – CLL (*Consolidação das Leis do Trabalho – CLT*). It provides rules regarding employee protection and the employment relationship, setting forth the rights and obligations of the employee and the employer. The entities that opt to contract employees shall strictly follow the rules of the CLL and of Collective Labor Agreements and Conventions. In short, voluntary sector in Brazil is governed by labour laws apart from registration, tax laws, etc. (Source: Compendium of third sector legislation -Analysis of the existing laws and regulation in Brazil by Laís Vanessa Carvalho de Figueirêdo Lopes, Paper

presented at the 5<sup>a</sup> *International Conference of the International Society for Third Sector Research – ISTR* held at the University of Cape Town, South África, from July 7-10, 2002)

### **5.6. Voluntary Sector in Europe**

At the end of 1980s, the idea of civil society regained currency due to the emergence of civic movements in **Central and East European countries** after the fall of socialism. While high expectations were attached to civil society and its potential contribution to social and political change, its actual performance in post-communist era has been somewhat disappointing. Civil society and voluntary sector have neither generated vibrant democracy nor reached the sophistication typical of Western Europe. Main challenges for the voluntary sector in the region, albeit country differences, are their shallow rooting in society, an adversarial relationship with the state and weak connection with the private sector.

The origins of voluntary sector in the post-communist **East European countries** lie in the dissident movements, which emerged in the 1970s and the 1980s. The official organizations such as the youth associations, environmental groups were controlled by the communist party. The end of communist rule marked the end of civil society as a purely homegrown phenomenon; civil society organizations (CSOs), after liberalization and good governance, became one of the key priorities of foreign assistance. CSOs were crucial for the success of democratization in the region. Currently, common complaint is that the CSOs lack linkages with society, discourage broad participation, are elitist and exclusive, are not responsive to needs, are donor-driven, lack transparency and accountability.

In the post-communist era, because of the legacy of the past, governments have shown little tolerance to the CSOs criticizing public authorities. Though NGO legislations were introduced to facilitate development of voluntary sector, advocacy groups have difficulty with registration, receiving foreign funds, and their staff is persecuted. Those governments that do not consider CSOs as a threat, often see them as irrelevant. While CSOs' relations with the state vary enormously in the countries across the region, in none of the countries have CSOs succeeded in becoming indispensable part of the governance system (Source: Heinrich:2007: 143-158).

Modern civil society in **southern and west Europe** emanated from the Enlightenment period of the 18<sup>th</sup> century. Three aspects of the Enlightenment had a profound effect on the



development of civil society – the capacity of citizen to organize themselves (self organization) around shared interests outside the market and without being mandated to do so by the state; importance of commerce as a means of transacting business based on equality; the idea of progress – societies were not simply static relationships playing out yesterday's rituals, but were dynamic places to be improved through constant striving for freedom, equality and solidarity; together, these amounted to what the countries in the **southern and western Europe** call 'civil society'. Different forces at work – the church and the mutual aid – resulted in the 'enlightenment'.

Towards the 19<sup>th</sup> century, the shortcomings of mutual aid and philanthropy became evident and people began to press the state to take responsibility for social, education and health reforms toward the end of 19<sup>th</sup> century. Thus, known as the welfare state, the state came to take on responsibility provision of social, health and educational services. And, during this period, the role of civil society typically declined. In the 1970s, new forms of civil society organizations concerned with environment, consumer and human rights emerged. Welfare states increasingly came under pressure. Influenced by New Public Management, an idea pioneered in New Zealand, governments began to privatize and commercialize services, contracting out delivery to a variety of for-profit and non-profit suppliers. The 1970s and the 1980s saw a gradual growth of voluntary organizations. (Source: Heinrich:2007: 163-178).

Reunification of Germany in 1990 was seen as an act of enormous moral significance for Europe as a whole. And, formation of European Union saw a downward devolution of power using the principle of subsidiarity to make decisions closer to the people. European leaders wanted to avoid the mistakes of the past by creating a social, political and economic community that would go beyond the institutional confines of individual nation states. The three overarching goals of the European Union project were social cohesion, single currency and single market. European Economic Community (EEC) was largely concerned with issues of free trade. While the Treaty of Rome explicitly excluded social policy, with the adoption of the Social Charter in October 1989, the European Community (EC) fully entered the field of social policy, and declared "that the social dimension of the Community be given the same importance as the economic dimension" (Kleinmann and Piachaud, 1993, p. 1). The Social Charter aimed to build a broad social consensus among Member States based on three components: (i) generating employment with "equitable" wages and fair working conditions; (ii) maximizing well-being by improving social security, health care, social services, and

education; and (iii) eradicating social discrimination based on factors such as race or sex. The 1997 Treaty of Amsterdam and their attached protocols, referring explicitly to the goal of "*economic and social cohesion*", have made the social dimension more prominent.

As part of the institutionalization of the social agenda, the EU has established a "Social Dialogue" with representatives of employers and trade unions, as well as increasingly consulting sub-national representatives from local and regional tiers of Member State governments. These discussions increasingly paralleled a "Civil Society Dialogue" that aimed at bringing the EU closer to the institutions of civil society.

The principle of subsidiarity in the Maastricht Treaty gave greater autonomy and opened up new spaces for civil society voluntary groups. The old idea of centralized state gave way to new idea of 'governance' from government, where multiple interests helped shape the public sphere.

Across Member States, however, there is a lack of shared understanding as to what the concept 'civil society/voluntary/third sector' actually means, and what it might embrace (see Salamon and Anheier, 1997). This has been reflected in considerable degree of diversity and confusion in the usage and vocabulary at the level of the Community's institutions. Terminology has varied both between different components of the Community, and even within them, so that "private, non-profit institutions serving households", "NGOs", "non-profit sector", "non-profit associations" and "voluntary organisations", "voluntary organisations and foundations" and "third sector" are examples of terminology which are all used in European Union discourse focusing purely or primarily on (a version of) the civil society/voluntary/third sector; while "third system" (European Commission, 1997), "social economy" or *economie sociale* (European Commission, 1987), and most recently CMAFs, i.e., cooperatives, mutuals, associations and foundations (DG XXIII, 1997b), are now used to refer to the sector within a broader universe. To add to the confusion, these terms and groupings are often used without, or with only partial, explanation or qualification. (Defourny and Monzon-Campos; Salamon and Anheier, 1994).

The **European Social Fund (ESF)** is the oldest of four European [Structural Funds](#) that provide grants to support [economic development](#) within the [European Union](#). It was created by the [Treaty of Rome](#) in [1957](#) and became operational in [1960](#). It is the European Union's main financial instrument for investing in people. Its purpose is to increase employment, especially through funding vocational training, and improve job prospects. Member States

and regions are to devise their own ESF Operational Programmes in order to respond to the real needs 'on the ground'.

Operational Programmes of Member States are then implemented through a wide range of organisations, both in the public and private sector. These organisations include national, regional and local authorities, educational and training institutions, non-governmental organisations (NGOs), voluntary organizations, as well as social partners, for example trade unions and works councils, industry and professional associations, and individual companies. These initiatives have given flip to the voluntary sector.

One of the issues in EU third sector policies is the fault line as far as organizing concepts and terminology is concerned. *Economie sociale* as understood and promoted in France, Belgium and perhaps Spain, which deliberately draws together the "economic" and the "social" can be contrasted with the German system which seeks to emphasize and reinforce a sharp distinction between them, and locates the third sector firmly in the "social" pigeon hole on the basis of the logic of subsidiarity. The French focus on the *economie sociale* is congruent with their overall emphasis on *economic* integration, while the German concern with non-economic matters dovetails with their traditional emphasis on the *political* aspect of European integration. The former construct sees the third sector as comprising primarily economic units comparable to social enterprises, while the latter deny the economic character and special unique status they deserve. These concepts have their ideological baggage, which also animates the debate. While *economie sociale* tends to connect the third sector to socialist traditions and "economistic" reasoning, the *subsidiarity* argument as applied to the third sector has a corporatist flavour and seeks to protect special ideologies and interests. As participants are keenly aware, the path chosen can potentially have major implications for how the third sector is ultimately treated in European law. The point is, the relation between state and voluntary sector is currently at an embryonic stage and ad hoc.

### **5.7 Insights from Country Contexts of Voluntary Sector Accountability**

From the above description of different country contexts, it is evident that accountability is crucial for gaining and retaining public trust. Voluntary organizations' self-regulation is much more conducive and it is better to preempt regulation by government. Demands of donors are key drivers of accountability from voluntary organizations. However, prioritizing accountability to powerful stake holders and being less accountable to less powerful can undermine public trust. Because of diversity of contexts, forms, objectives, stakeholders,

and values of voluntary organizations, the issue of accountability needs to be addressed at different levels and through a variety of mechanisms including financial transparency, internal democracy, participatory decision making, stakeholder involvement, donor reporting, quality standards, certification mechanisms and government regulatory frameworks.

While these issues are debated at the level of individual organizations, there is also a growing debate about sector or domain accountability - that is, standards set by community of voluntary organizations within fields of practice such as disability sector, poverty reduction sector, natural resources management sector etc . These collective processes and mechanisms are important in complementing organizational accountability systems since they contribute to mutual accountability, collective learning, common standard setting, and effective communication to stakeholders and the public at large. Such a process generates accountability through the cycle of self-critical and evidence-based assessment, reflection and planning. These debates make stake-holder engagement, participatory performance assessments, public reporting, shared standard setting and organizational learning to enhance both domain and stakeholder understanding of the sector's activities and results. Of course, such forums for critical self-assessment, reflection, dialogue and strategizing have not been used by all voluntary sector stakeholders in many of the countries.

Secondly, the discussion about the interface between the governments and the voluntary sector in different countries brings out the fact that the level of voluntary sector accountability is related to social origins of voluntary sector and the features of the country's extant political system. The countries with an entrenched democracy and rule of law do not see accountability as a key challenge to voluntary sector. Of crucial importance is the country's governance system in providing an enabling environment for establishing high levels of accountability of voluntary sector within civil society. The following factors can be deciphered as determining the nature of the relationship between government and the voluntary sector accountability: government openness to the voluntary sector (repressive, rivalry, competition, cooperation, complementarity, collaboration), inclusion of the voluntary sector's activities in government policy (resistance, acceptance), the sharing and co-construction of the goals, objectives and rules by both parties (favourable, neutral, contingent), the presence of standards guiding interfacing (laws, procedures, defined authority, machinery) between the voluntary sector and the government, the degree of intensity and formalism of relations (formal, informal), methods of financing granted to

voluntary sector by government, the degree of autonomy of mission and management, and the degree of institutionalization of interfacing (Pria:1989).

While self-regulation is most preferred form of accountability, they are not always effective. In contexts where a mutually trusting relationship between government and voluntary organizations exists, voluntary organizations prefer government regulation over self-regulation due to lower costs and higher success rates (Heinrich:2007: 335). This is not the case where governments are suspicious or hostile to voluntary sector. Accountability is a political issue, and determining voluntary organizations' responsibilities has to go hand-in-hand with ensuring its rights in the public sphere. In contexts where voluntary sector's rights are not protected, regulatory systems are easily misused. Where state-civil society relations permit simultaneous strengthening of both, voluntary sector's legitimacy and its role as an important force in public life are likely to be enhanced.

### ***5.8. Regulating Voluntary Sector***

As opposed to the authoritarian structures of a state, regardless of which political system (democracy, monarchy, or dictatorship) is formally operative, the totality of all voluntary, civic and social initiatives and organizations forms the basis of a functioning society apart from commercial institutions. And, civil society is composed of a variety of these voluntary initiatives and civil society organizations.

Governments, civil society and voluntary sector are required to make concerted efforts to adopt and adapt appropriate governance processes and mechanisms in a country and organizational effectiveness of NGOs in that country on the one hand, and improve state-voluntary sector relations on the other to meet the needs of the people. To this end, good governance is important not only for facilitating and maintaining public trust and civic engagement in society but also for the sustainability of the NGO/voluntary sector on the other.

It is important to realize that regulating VO s' internal governance mechanism must be based on long-term perspective of sustainable social development; and that perspective must be linked to both the mission of the voluntary organizations on one hand and sustainable development goals of the country/society on the other. To this end, although securing the strategic partnership between the state and voluntary sector is a key component, self-regulation on the part of the voluntary sector is equally critical for the success of securing internal accountability. Because civil societies are said to be in the early

stages of development in some countries in some regions, instituting an enabling environment without much heavy-handedness on the part of the state is critical to the 'institutionalization' processes of both VO internal governance structures as well as governance of political regime/state.

Laws and regulations governing nonprofit organizations and the requirements for information disclosure are very basic for dynamic healthy state-civil society relationship. Only this mechanism can facilitate achievement of freedom, equality, democracy and social justice goals in a society.

Nonprofit voluntary organizations differ from their for-profit counterparts with respect to legally ordained taxation and governance regimes. Since a nonprofit organization exists to render a public service, its success is generally measured by how well it performs this service and not by its financial performance alone. Laws and regulations governing nonprofit organizations are the accountability mechanisms intended to ensure a minimum level of transparency and enhance their answerability and legitimacy for promoting public trust. These legalities governing non-profits are meant for accomplishing public purpose, to preclude private financial gain from the operations of non-profits and also to permit donors make tax-deductible contributions.

In addition to basic accountability mechanisms, networks of nonprofit organizations are facing an increasing external and internal demand for developing standards or codes of behavior and performance for themselves. It is not surprising that numerous standards and codes of conduct have been developed by various nonprofit organizations all over the world. Primary standards of accountability and measures of performance for nonprofit organizations focus on the mission, and alignment of their activities with the goals and objectives of the nation-state, which typically are non-monetary in nature and sometimes difficult to assess.

Many argue, however, that the major problem with the standardization and certification movement is that there can be no universal approach and no magic framework, or set of mechanisms, that can be used by all voluntary nonprofit organizations to ensure the highest standards of accountability (Naidoo, 2003; Brown, 2004). Indeed, the diversity of the sector makes this difficult. The various accountability demands on nonprofit organizations depend on many factors, including the type of organization (local, national, global, single

organization, association), the sector in which the organization works (needing to meet sector-specific accountability requirements), the number and type of stakeholders involved (founders, constituents, partners etc), their positions, the contextual factors, and the environment in which the nonprofit organization operates (social-technological-economic-political environment, relevant legislation etc.) (Naidoo, 2003). However, the nature of the changes in the nonprofit world, their ever so great visibility and public participation, and the calls for greater responsiveness, accountability, and transparency have created an urge in the sector as a whole to set up benchmark standards and therefore hold the institutions accountable for their commitments.

Accordingly, many national and international nonprofit networks in many countries have undergone thorough participatory processes to articulate standards of excellence and codes of conduct expected of nonprofit organizations, such as transparent governance, open and regular communication (newsletters, updates, briefs, also channels for public access to information), disclosure and public reporting (annual reports, organizational or project evaluations external assessment of strategic plans), hiring practices, meaningful involvement of diverse constituencies in the organization's work, and so on (Owen, 2006). The idea behind such self-regulation and accountability mechanisms is that the sector itself should be actively engaged in promoting certain set of values and norms as part of service delivery and maintaining good public reputation.

The challenge of the voluntary sector is to move from accountability as a spectacle, as it is practiced in most events, useful as they are, to accountability as a norm (Newell and Bellour, 2002). Accountability starts with being aware of the laws and regulations governing voluntary organizations, and carrying out the activities in accordance with these regulations.

From above discussion, it is clear that accountability is not just a financial term, but it is a much broader indicator of the health of voluntary sector. The "nonprofit accountability movement" has also changed the meaning of the term "accountability" from "being held to account" (enforceability) to "giving an account" (answerability) (Bendell, 2004; Ebrahim, 2003). Translating these major changes and challenges into practice resulted in a wave of accountability initiatives. Numerous "codes" and "ethics" have been developed to provide general accounting principles for nonprofit organizations within the context of governance. As Drucker put it (1974, 1990) leaders of nonprofit organizations should concentrate on the mission. Focus on the mission leads to performance through planning, involvement in the

organization, and clear accountability for the organization. Overview of the practices of regulating voluntary sector in different countries is provided to give an idea about how the governments and NGOs view accountability, the importance given to accountability and transparency in the voluntary non-government sector and the circumstances that have warranted more transparency and accountability on the part of the civil society organizations.

Needless to say, however, that accountability standards and norms can be taken to an extreme in some political systems; they can be claustrophobic and intended to curb the voluntary organizations' autonomy depending on whether the political system of a country is conservative, restrictive, open, whether it is a democracy, monarchy, oligarchy, dictatorship, whether the economy is market-friendly capitalistic, socialist welfare state etc.

Voluntary non-governmental organizations from developed countries have approached the civil society debate in an effort to channelise the relative capacity of grassroots organizations to influence the state and bring about changes in their communities, the manner in which people are governed and the nature of state-civil society relationship (Patron, 1998: 187). Considerable portion of external assistance to NGOs comes through the government under various projects that involve both donor funds and the government's own revenues. Stiles (2000) points out that for the international donor and aid organizations, civil society empowerment is an attractive approach as it does not involve many risks. Rather, off-loading responsibility by sub-contracting some functions to NGOs and to ensure cost-effective, human rights and capitalist oriented development policy at the same time they are able to 'influence' a polity. Thus civil society empowerment does not cause the decline in donors' authority. The nature of such engagement is based mostly on the successful international non-government donor agencies and nurtured by local NGOs (Stiles, 2000: 32). According to Stiles, these grassroots organizations have proved capable of significantly improving the living conditions of their members, opening public space for women and the poor, and diminishing the need for constant flows of aid from national and international public agencies.

The civil society empowerment incorporates 'good governance strategy' of the World Bank and 'democratization' agenda of the western powers. Some have embraced the principles of civil society empowerment as a means to achieving widespread social justice. As Tropp points out, during the last two decades, the empowerment of civil society has become a



deliberate and targeted activity of international donor and aid organizations (Tropp, 1999: 116) with the tacit support of the state as a deliberate strategy to contain internal and external social pressures. 'Balanced development' depends on the state's role and policies vis-à-vis civil society.

In short, voluntary organizations are required to work within the parameters of the socio political legal systems and regimes operating in a country.

**In this context the initiatives by CIVICUS is worth mentioning. It can be noted that the CIVICUS Civil Society Index (CSI) is a participatory needs assessment and action planning tool for civil society around the world with the aim of creating a knowledgebase and momentum for Civil Society Organizations straightening initiatives . The CSI is initiated and implemented by and for Civil Society Organizations at the country level and actively involves and disseminates its finding to a broad range of stake holders including: government; donors; academics and to public at large. ( see [www.civicus.org](http://www.civicus.org))**

#### Self Assessment Questions

- 1. What are the promises and perils of government regulations?*
- 2. Why has accountability become an important aspect of the debate about voluntary organizations?*
- 3. What insights can you draw from above discussion regarding voluntary sector accountability and transparency?*
- 4. Legitimacy, accountability and transparency are closely linked. Explain*
- 5. What purpose does domain accountability, i.e. standards set by communities of voluntary organizations within specific sectors serve?*

