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## ***Letter from the Editor***

This issue of the *International Journal of Not-for-Profit Law* opens with a special section on civil society, the law, and the media in the Middle East. **Kareem Elbayar** provides a comprehensive overview of NGO laws in ten major Middle Eastern countries. **Negar Katirai** follows with a specific look at Iran's NGO regulations – both the laws as written and the procedures as practiced, which often differ. Finally, a report from the **United States Institute of Peace** explores the complicated and sometimes conflicting roles of media based in the Middle East.

Our other articles begin with a painstaking study of NGO-government cooperation in selected European countries, written by **Nilda Bullain** and **Radost Toftisova** of the European Center for Not-for-Profit Law. Next, **Robert C. Lowry** of the University of Iowa summarizes empirical research he undertook, examining how civil society in particular American states is influenced by religion, education, and regulation. **Wilton Dillon** of the Smithsonian Institution – a self-styled "philanthropoid" who was both follower and friend of Margaret Mead's – offers a reflective appreciation of Richard B. Gunderman's essay in our previous issue. We close, finally, with incisive book reviews by **Al Lyons** of Indiana University and **Yuko Kawato** of the University of Washington.

We gratefully acknowledge the generous assistance of the U.S. Institute of Peace, HTML wizards Kareem Elbayar and Erin Means, and our expert authors.

Stephen Bates  
Editor  
*International Journal of Not-for-Profit Law*  
[sbates@icnl.org](mailto:sbates@icnl.org)

## SPECIAL SECTION: THE MIDDLE EAST

# NGO Laws in Selected Arab States

By Kareem Elbayar<sup>1</sup>

### I. Civil Society Organizations in the Arab World

In the last two decades, much has been written about the emergence of civil society organizations and the important role that they can play in a country's economic and political development. Broadly speaking, civil society organizations are the charitable foundations, civic associations, non-governmental organizations, volunteer groups, trade unions, professional organizations, and social movements—everything from medical charities, sports clubs, and environmental groups to women's and human rights groups—that make up the “third sector” of modern life, separate from both the government and the marketplace.<sup>2</sup> Civil society organizations work on an array of causes and issues and appear in many different forms, but they all share the attributes of being private, non-profit, self-governing organizations that individuals are free to join or support voluntarily.<sup>3</sup>

#### *Civil Society in the Arab World*

Although a great deal of work has analyzed the impact and nature of civil society in Eastern Europe and Latin America, comparable analysis covering the Middle East has been lacking. In the West we often tend to think of the Middle East as a monolithic block of ruthless, repressive, and authoritarian governments. But though the modern Middle East has been cursed by awful governance and hereditary autocrats, this “Orientalist” point of view obscures both the Arab-Islamic past and the many recent reforms and developments that give reason to feel optimistic about the future. The Middle East is not monolithic: there are a wide variety of laws and practices throughout the region, and there is an enormous difference between a country such as Egypt, with 16,000 registered NGOs, and a country such as Saudi Arabia, which bans almost all forms of private association.<sup>4</sup>

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<sup>1</sup> International Center for Not-for-Profit Law Fellow; J.D. / M.A., International Affairs Candidate, 2008, The George Washington University, Washington, D.C. (kelbayar@law.gwu.edu). This study is made possible by the generous support of the International Center for Not-for-Profit Law (ICNL). The opinions expressed herein are those of the author and do not necessarily reflect the views of ICNL. The author wishes to thank Douglas Rutzen at ICNL for providing invaluable help, guidance, and knowledge; Professor Nathan Brown at the Carnegie Endowment for International Peace for his comments and advice; Dr. Amani Kandil at the Arab Network for NGOs for her expertise and encouragement; and finally Stephen Bates for his incomparable and essential editing work.

<sup>2</sup> For more information on civil society organizations and civil society generally, see Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY.

<sup>3</sup> Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, pp. xxi - xxii

<sup>4</sup> “Saudi Reformers: Seeking Rights, Paying a Price,” Neil MacFarquhar, *The New York Times*, June 9, 2005.

This article briefly introduces the contours of civil society organizations and the laws that affect them in the Middle East. It profiles ten major Middle Eastern countries, whose laws span the gamut from extremely repressive to excessively liberal. Though the term “civil society organization” ordinarily includes professional organizations, trade unions, and religious trusts, in the Middle East these groups are by and large controlled by the government or subject to substantial governmental interference. Because of their deep association with the government, these groups cannot be considered part of the private, non-governmental “third sector.” This article will therefore be limited to an examination of secular non-governmental organizations, associations, and foundations. For simplicity, these are referred to throughout the article as “NGOs.”

Each country profile briefly examines the state of the domestic civil society sector and then identifies the applicable NGO legal structure and analyzes it in terms of global “best practices.”<sup>5</sup> Particular attention throughout has been paid to licensing and registration requirements, legal rights and obligations, and government supervision and enforcement; other important or oppressive clauses have been highlighted as well. It is my hope that this survey provides an introductory resource for those studying civil society in the Middle East, those working on the task of Middle Eastern legal reform, and donors and international NGOs interested in expanding their activities in or to the region.

## II. Country Profiles

### Algeria

Algeria has only recently emerged from a long history of occupation, military dictatorship, and bloody civil war. Although first elected in April 1999 amidst widespread electoral fraud, President Abdelaziz Bouteflika has embarked on a somewhat successful program of national reconciliation and political modernization. Parliamentary elections held in 2002 were judged “free of systemic fraud and vote rigging,” but they were nonetheless criticized by Freedom House because of the government’s refusal to allow candidates from Islamist parties to seek offices.<sup>6</sup> In 2004, President Bouteflika was reelected with almost 85 percent of the vote, in what the U.S. State Department said was Algeria’s first presidential race since independence that “was democratically contested to the end.”<sup>7</sup> Since then, Bouteflika’s government has continued a program of modernization and liberalization.

Algeria today enjoys a print media that Freedom House judges “among the most vibrant in the Arab world”<sup>8</sup> and a reenergized and increasingly active civil society sector. Unfortunately, the main law governing NGOs in Algeria is the **Associations Act of 1990**

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<sup>5</sup> Many of the laws referred to in this survey are available in Arabic and English in the Online Library section of the International Center for Not-for-Profit Law’s website (<http://www.icnl.org>). For a more comprehensive treatment of NGO law “best practices,” see *Guidelines for Laws Affecting Civic Organizations* (Open Society Institute, 2004).

<sup>6</sup> Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

<sup>7</sup> U.S. State Dept. Background Note: Algeria. <http://www.state.gov/r/pa/ei/bgn/8005.htm>

<sup>8</sup> Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

(Act 90-31), a highly restrictive law adopted shortly before the military coup and Algeria's long decade of violence and terrorism. Although the Bouteflika government has not indicated any intention to include the Associations Act in its campaign of legislative modernization, Act 90-31 is a prime candidate for reform and liberalization.

### *Licensing*

Act 90-31 defines associations as "individuals or legal entities" that "form a group on a contractual basis for non-profit purposes," and requires them to obtain a license from the government prior to formation.<sup>9</sup> This type of mandatory licensing is an unnecessary and discouraging burden for NGOs, the vast majority of which are informal organizations with no need for legal personality or government supervision. Mandatory licensing is common in the Middle East, typically justified by government fear of Islamic fundamentalist and terrorist groups. However, such groups will operate underground with or without mandatory licensing requirements, so the practical effect of such laws is to discourage the establishment of peaceful and moderate organizations while doing little to prevent the spread of more radical groups.

Fortunately, Algeria's actual process of licensing is not overly burdensome or expensive, at least in comparison to regional standards. NGOs need only file a "Declaration of Incorporation" that includes the names, professions, and addresses of each founding member; two certified copies of the NGO's statutes; and the minutes from the NGO's founding meeting. This "declaration" must be filed with the governor of the province in which the NGO is headquartered (the "*wali*" of the "*wilaya*"), and in the case of associations that operate in more than one *wilaya*, with the Ministry of the Interior as well.<sup>10</sup> The local agency (and, if applicable, the Interior Ministry) has 60 days to approve or deny the application, and if no answer is received within that time period, the application is considered approved.<sup>11</sup> Upon approval, the NGO must publish a notice of its incorporation in a nationally distributed daily newspaper at its own expense.<sup>12</sup>

If the government agency rejects the application, the matter is automatically referred to an Administrative Court, which must affirm or reverse the agency's decision within 30 days of referral.<sup>13</sup> In theory, automatic referral to court offers protection against unjust or arbitrary decisions, but in Algeria the agency enjoys so much discretion that the judicial role is limited. The law gives government agencies the right to deny a license if any founder has "demonstrated conduct contrary to the interests of the fight for national liberation," or if the association was "founded for a purpose contrary to the established institutional system," "public order," or "public decency."<sup>14</sup> These terms, further undefined in the law, are so vague that in practice the courts are unlikely to reverse an agency decision. The government has not hesitated to use its broad powers to deny licenses to NGOs that it finds embarrassing or otherwise irritating, most recently the Association of

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<sup>9</sup> Act 90-31 (Algeria): Art. 1.

<sup>10</sup> *Id.*, Art. 45.

<sup>11</sup> *Id.*, Arts. 7-8.

<sup>12</sup> *Id.*, Art. 8.

<sup>13</sup> *Id.*, Art. 8.

<sup>14</sup> *Id.*, Arts. 4-5.

Families of the Disappeared of the *Wilaya* of Constantine, a group focusing on human rights abuses committed by Algerian security forces.<sup>15</sup>

Foreign NGOs that wish to establish offices in Algeria are not subject to any explicit extra requirements, but their licenses must be approved by the Ministry of the Interior regardless of the geographic scope of their operation.<sup>16</sup>

### *Legal Rights and Obligations*

Once an Algerian NGO obtains a license, it acquires judicial personality and legal capacity, meaning the right to bring suit as a plaintiff, enter into contracts, and acquire real property.<sup>17</sup> No practical restraints are placed on the NGO's ability to raise funds domestically, but any foreign donations must be pre-approved by the Ministry of the Interior.<sup>18</sup> The criteria under which the Interior Ministry can deny approval are not specified, and an NGO that wishes to appeal an adverse decision has no recourse to the courts. This clause essentially allows the Interior Ministry to starve NGOs of a major source of funding (in some cases the only source) at will. Similarly restrictive is the law's requirement that the Interior Ministry give approval before any NGO can join an international association or federation, a provision that does nothing but prevent NGOs from meeting with their peers in the international community to compare ideas and learn from groups with more expertise and experience.<sup>19</sup>

In contrast to the laws of most Middle Eastern states, Algerian law does not impose a specific governing structure on NGOs, though it does require compliance with certain minimum guidelines.<sup>20</sup> However, NGOs must report basic information regarding their workforce, source of funds, and financial position to their local *wali* on a regular basis.<sup>21</sup> NGOs are also prohibited from having any "institutional or structural relations" with political associations, but the rights of NGOs to participate in public policy debates, comment on political developments, and endorse candidates are not abridged.<sup>22</sup>

Notably, 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. Even in the Middle East, most states now recognize the importance of civil society and seek to expand NGO operations by providing such incentives – but not Algeria.

### *Supervision and Enforcement*

Act 90-31 allows the government to dissolve or suspend any NGO, but in order to do so the Interior Ministry must first obtain a court order stating that the NGO has vio-

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<sup>15</sup> Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

<sup>16</sup> Act 90-31 (Algeria): Arts. 39-44.

<sup>17</sup> *Id.*, Art. 16.

<sup>18</sup> *Id.*, Art. 28.

<sup>19</sup> *Id.*, Art. 21.

<sup>20</sup> *Id.*, Art. 23.

<sup>21</sup> *Id.*, Art. 18.

<sup>22</sup> *Id.*, Art. 11.



lated a major provision of the law.<sup>23</sup> The fact that the Interior Ministry cannot simply dissolve an NGO on its own may appear positive, but again the law is so broad that the Interior Ministry can ordinarily obtain the necessary court order with ease. In any case, the Algerian judiciary is not quite an independent branch of government; it is largely dependent on the Ministry of Justice, which can remove judges at any time.<sup>24</sup> Algerian judges are thus unlikely to challenge the assertions of the executive branch. Even worse, Act 90-31 provides for between three months' and two years' imprisonment and a fine for any individual who "directs, administers, or promotes" or "encourage[s] the meeting of members" in "a non-accredited, suspended, or dissolved association."<sup>25</sup> Rather than encourage the formation of NGOs, provisions such as these seem specifically designed to discourage NGOs and the civil society sector in general.

### *A Continuing Process*

Although Algeria has made progress since the end of its civil war, there is still much to be done. NGOs can play an important role in the continuing modernization and development of the country, but they cannot do so without a regulatory and legal environment that encourages their formation.

### **Egypt**

Egypt is the most populous country in the Middle East, a major United States ally, and regional power whose laws, courts, and social norms often serve as models for emulation by other Arab states. Cairo's decisions influence those taken in capitals throughout the Arab region, and it is no coincidence that the Arab League is headquartered in Egypt's capital city. Although several other Arab states provide a more liberal environment for the operation of civil society groups, Egypt's influence and status as a trendsetter for the Arab mainstream suggests the particular importance of its civil society sector, laws and practices.

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)**, which implements and clarifies the provisions of the parliamentary law. Despite the highly restrictive nature of its civil society laws, Egypt has one of the largest and most vibrant civil society sectors in the entire developing world. A 1999 survey undertaken by the Arab NGO Network for Development found that Egypt's civil society sector employed the equivalent of 629,223 full-time workers, accounting for \$1.5 billion in expenditures (approximately 2 percent of Egypt's GDP)—and this survey did not take into

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<sup>23</sup> *Id.*, Arts. 32-38.

<sup>24</sup> Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

<sup>25</sup> Act 90-31 (Algeria): Art. 45.

account the substantial impact of religious-based groups.<sup>26</sup> *Al-Ahram*, Egypt's official newspaper of record, estimated that in 2003 more than 16,000 NGOs were registered.<sup>27</sup>

It may seem incongruous that so many NGOs and civil society groups can exist in a country whose NGO law has been called "one of the most restrictive in the world,"<sup>28</sup> but Law 84 / 2002 is not so much restrictive as it is discretionary. Law 84 / 2002 gives enormous discretionary powers to the Ministry of Insurance and Social Affairs (MOSA). In practice, however, the full weight of this authority is brought to bear only against organizations and individuals that cross the government's "red lines" in pushing for social reform and political liberalization. The vast majority of Egyptian NGOs, consciously apolitical and primarily concerned with issues such as the environment, education, and welfare, are generally left to operate without substantial government interference.

### *Licensing*

As with most Middle Eastern states, licensing of NGOs in Egypt is mandatory. Law 84 / 2002 requires any "group whose purpose includes or that carries out any of the activities of associations and institutions, even if it assumes a legal form other than that of associations and institutions" to operate with a permit from MOSA.<sup>29</sup> This provision effectively precludes informal, unlicensed groups. Its emphasis on activities rather than legal forms similarly precludes NGOs from incorporating as civil companies or law firms (as many did before the law's enactment) in an attempt to avoid the more onerous provisions of the NGO law. The licensing process itself is time-consuming and tedious, requiring NGOs to submit to MOSA two copies of the society's bylaws; two copies of a list of the founders, including their names, ages, nationalities, professions, and addresses; a declaration from each founding member that no criminal judgment has ever been made against him or her; a document listing the founding member who will represent the founders in any administrative or legal matter; an occupancy deed demonstrating that the NGO has a physical headquarters; and finally a £E 100 deposit into the account of the government-run "Fund for Support of Non-Governmental Societies and Associations." The mandatory deposit and occupancy deed requirements can pose major obstacles to licensing new NGOs, many of which start out in a founder's home and lack the resources to obtain real estate for separate headquarters.

Foreign NGOs are not allowed to operate in Egypt without securing the permission of the Ministry of Foreign Affairs. The Ministry's decision is based on unspecified factors and not subject to any court appeal.<sup>30</sup>

Once all of the necessary paperwork has been submitted, MOSA is required to accept or reject the application within 60 days; otherwise, the application is considered ac-

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<sup>26</sup> Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, p. 217.

<sup>27</sup> "Judges rule out compliance," Mariz Tadros, *Al-Ahram Weekly Online*, 12-18 June 2003 (Issue No. 642), <http://weekly.ahram.org.eg/2003/642/eg12.htm>.

<sup>28</sup> "The Impact of NGOs on the State & Non-State Relations in the Middle East," Peter Gubser, *Middle East Policy*, March. 2002, Volume 9, Issue 1, p. 141.

<sup>29</sup> Law 84 / 2002 (Egypt): Preamble, Art. 4

<sup>30</sup> *Id.*, Art. 1

cepted. This is a substantial improvement over the previous associations and foundations law (Law 32 of 1964), which set no limit on how long MOSA could take in considering an application, thus enabling MOSA to “process” an application for years. If MOSA rejects an application, it must do so in writing and provide substantiated reasons for its decision. Associations have the right to appeal a rejection in court.

All of these positive aspects of Law 84 / 2002, unfortunately, do not herald a new attitude on the part of the Egyptian government toward civil society groups. Although Law 84 requires MOSA to respond to an application for a license within 60 days, even the state-run press has reported both MOSA’s tendency to return applications as incomplete rather than accept them and be bound by the 60-day time limit; and instances of groups having to wait “more than three months” without receiving an acknowledgment that an application has been filed, in contravention of Law 84’s clear instructions otherwise.<sup>31</sup> In any case, Law 84 / 2002 gives MOSA so much discretionary leeway that it can reject applications arbitrarily while technically complying with the law. MOSA has the right to refuse the application of an NGO that is threatening to “national unity” or might violate “public order or morals.”<sup>32</sup> Nowhere are these vague terms clarified, and so, as with the Algerian case, Egyptian courts are unlikely to reverse Ministry decisions. MOSA thus effectively has the authority to prevent the licensing of any group it perceives as a threat to the government, simply by grounding its decision in the language of morality or security.

### *Legal Rights and Obligations*

If an NGO does obtain a license under Law 84 / 2002—and at least 10,000 groups have done so<sup>33</sup>—its legal rights remain constrained. Law 84 / 2002 repeatedly takes the sort of narrow, focused restrictions most countries put in place to prevent fraud or corruption and converts them into standards that are broad, vague, and sometimes virtually incomprehensible. For example, the law prohibits “unionist activity,” which seems sensible given that unions are regulated by a separate law. But the actual language of the prohibition – NGOs are banned from “claiming specific professionals’ rights vis-à-vis employers”<sup>34</sup> – is difficult to parse. Nasser Amin of the Arab Centre for Independence of the Judiciary and the Legal Profession puts it succinctly: “Our center concerns itself with violations committed against lawyers and judges. [What happens when] a low-level civil servant interprets that as taking the side of the legal profession, causing obstacles to our registration?”<sup>35</sup> Similarly, the Egyptian law prohibits NGOs from engaging in any “political activity,” including “advocating the program of one of the parties,” contributing money to support an electoral campaign, spending money in support of party activity or a

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<sup>31</sup> See “Matters of permission,” Mariz Tadros, *Al-Ahram Weekly Online*, 5-11 June 2003 (Issue No. 641), <http://weekly.ahram.org.eg/2003/641/fr2.htm>.

<sup>32</sup> Law 84 / 2002 (Egypt): Art. 11(2), Art. 6, Art. 42.

<sup>33</sup> See “Matters of permission,” Mariz Tadros, *Al-Ahram Weekly Online*, 5-11 June 2003 (Issue No. 641), <http://weekly.ahram.org.eg/2003/641/fr2.htm>.

<sup>34</sup> Ministry of Insurance and Social Affairs Decree 178 / 2002 (Egypt): Art. 25.

<sup>35</sup> “Regulating or restraining?” Mariz Tadros, *Al-Ahram Weekly Online*, 7-13 November 2002 (Issue No. 611), <http://weekly.ahram.org.eg/2002/611/eg4.htm>.

candidate, or endorsing or “putting forward candidates in the name of the society.”<sup>36</sup> NGOs have an important role to play in public policy debates, and they should not be so thoroughly silenced.

In addition to these restrictions on the outside activities of NGOs, 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.<sup>37</sup> 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 MOSA permission.<sup>38</sup>

Law 84 / 2002 does, however, confer many benefits on the NGOs that manage to obtain a license and comply with its regulations, including a reduction in telephone, water, electricity, and gas charges; a 25 percent discount on railway shipments; and an exemption from stamp taxes, customs duties, and contract registration fees.

### *Supervision and Enforcement*

As with much of Law 84 / 2002, the provisions dealing with supervision of NGOs and enforcement of the law are vague, arbitrary, and unnecessarily severe. MOSA has the authority to dissolve any NGO at any time if finds that the organization is “threatening national unity” or “violating public order or morals.”<sup>39</sup> And although any MOSA dissolution order is appealable to the administrative courts, an appeal can take several years in Egypt’s backlogged court system. As an example, the Egyptian Organization for Human Rights fought MOSA in court for more than *ten years*.<sup>40</sup> Although it ultimately prevailed, the well-respected human rights group wasted enormous amounts of time and money in its decade-long fight for legal recognition.

More worrisome, from the standpoint of encouraging civil society, Law 84 / 2002 imposes severe *individual* penalties for non-compliance with the law.<sup>41</sup> These penalties include up to one year in prison and a fine of up to 10,000 Egyptian pounds for establishing an association that threatens “national unity” or violates “public order or morals”; up to six months in prison and a fine of up to £E 2,000 for conducting NGO activity “without following the provisions prescribed” by the law, conducting activity despite a court ruling dissolving or suspending an association, or collecting or sending funds abroad without MOSA permission; and up to three months in prison and a fine of up to £E 1,000 for conducting NGO activity without a license from MOSA, affiliating with a foreign

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<sup>36</sup> Ministry of Insurance and Social Affairs Decree 178 / 2002 (Egypt): Art. 25.

<sup>37</sup> *Id.*, Chapter 9.

<sup>38</sup> Ministry of Insurance and Social Affairs Decree 178 / 2002 (Egypt): Art. 48; Law 84 / 2002 (Egypt): Arts. 16-17.

<sup>39</sup> Law 84 / 2002 (Egypt): Art. 11(2), Art. 6, Art. 42.

<sup>40</sup> “Braced for new challenges,” Gihan Shahine, *Al-Ahram Weekly Online*, 10-16 July 2003 (Issue No. 646), <http://weekly.ahram.org.eg/2003/646/eg2.htm>.

<sup>41</sup> Law 84 / 2002 (Egypt): Art. 76.

NGO network or association without MOSA permission, or merging with another association without MOSA approval.

Restrictions such as these throw cold water on the entire concept of civil society. Laws should, of course, be enforced, but violations of civil society laws are best punished with fines and administrative penalties. Criminal sanctions should be used only in the most exceptional cases. Making prison terms the standard punishment discourages individuals from forming NGOs, lest they risk their personal freedom and livelihood—in marked contrast to the Egyptian government's self-proclaimed "commitment to supporting voluntary civic work."<sup>42</sup>

### *The Role of the Judiciary*

Egypt's judiciary is admired and well-respected as one of the most independent and fair institutions in the entire Middle East. 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 (and more importantly, the executive branch has complied with its rulings). Perhaps with this history in mind, Law 84 / 2002 gives MOSA the power to dissolve civil society groups, refuse their applications, and imprison their members, all without first making a case in court. Only after MOSA has acted and the damage has been done can an NGO lodge an appeal—and, as discussed above, appeals can take months or even years. But unless and until Law 84 / 2002 is revised, the Egyptian judiciary, overwhelmed as it is, will remain the only protection for NGOs against the abuses of the Ministry of Social Affairs.

### **Iraq**

It goes without saying that Iraq is a country in a major state of flux, struggling to leave behind instability and insecurity and transform itself into what the world hopes will be a secure, modern, and democratic state. Because of ongoing military operations and a general lack of security, it is difficult to measure the size and scale of NGO operations in Iraq today. What is clear is that in the immediate wake of the war, many international NGOs set up operations in Iraq, but as security conditions continued to deteriorate, a significant proportion of them ceased operations and left the country. Nevertheless, a significant foreign and domestic NGO presence remains. The importance of these groups cannot be overstated: not only are they helping to alleviate the major humanitarian crisis that looms over the country, they are also laying the groundwork for Iraq's eventual democratic transition.

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, perhaps surprisingly, comparable to the more restrictive NGO laws of the Middle East. Government officials justify **Coalition Provisional Authority Order Number 45**'s restrictions as necessary to establish a safe and secure Iraq, but in practice the law inhibits the groups that have been

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<sup>42</sup> Statement of Minister of Social Affairs Amina El-Guindy, as quoted in "Regulating or restraining?" Mariz Tadros, *Al-Ahram Weekly Online*, 7-13 November 2002 (Issue No. 611), <http://weekly.ahram.org.eg/2002/611/eg4.htm>.

called “among the most important contributors to reconstruction” while doing little to stop illegitimate groups, which operate underground in any case.<sup>43</sup>

### *Licensing*

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 (soon to be the Ministry of State for Civil Society). Licensing is mandatory and informal groups are explicitly prohibited from operating any “programs.”<sup>44</sup> The law is unclear on the status of foreign NGOs, with some provisions indicating that they need only be accredited by the Minister of Foreign Affairs and others indicating that they are also subject to the requirements placed on domestic NGOs.<sup>45</sup> What is clear is that domestic NGOs must provide the NGO Office with a mass of information: a “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 and projected budget for the next two years”; a list of the names and addresses of any donors or non-bank lenders of funds to the NGO; and “a report on [the] proposed program [of the NGO] prepared in consultation with the Relevant Ministry and budget for the first year of its activities.”<sup>46</sup> These requirements impose a major burden on new NGOs, most of which lack the operating experience necessary to provide this type of information.

Once all of the required documents are submitted, the NGO Office has 45 business days to grant or deny the license. However, if the NGO Office requires more information, the 45-day period starts anew from the date that it receives the additional information. Unlike some other Arab countries, Iraq does not provide for automatic licensing if the responsible office fails to respond by the deadline – so if the NGO Office takes longer than the statutory 45-day period, there are no practical consequences and the NGO has little recourse. In any case, the NGO Office can deny licensing to any NGO that would “constitute a threat to the public order, safety, stability, or security of Iraq,” a provision that, though perhaps understandable, is nonetheless open to abuse—especially given that the law provides no opportunity to appeal a refusal to any court or higher administrative authority.<sup>47</sup>

### *Legal Rights and Benefits*

The legal rights of NGOs in Iraq are not as severely limited as they are in other Middle Eastern countries. 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.<sup>48</sup> Although NGOs have the explicit right to raise funds within Iraq, the statute

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<sup>43</sup> “Comments on the Regulation of Non-Governmental Organizations Issued by the Coalition Provisional Authority, Order Number 45,” Cathy Shea, ICNL, p. 1.

<sup>44</sup> CPA Order 45 (Iraq): Section 2(3).

<sup>45</sup> Compare CPA Order 45 (Iraq), Section 2.2 (“International Organization shall be accredited by the Minister of Foreign Affairs, or his or her designee, and are not required to register as NGOs.”) with, for example, Section 2.4(b)(ix) (“Foreign NGOs must provide the name of the head of mission in Iraq....”).

<sup>46</sup> CPA Order 45 (Iraq): Section 2.

<sup>47</sup> *Id.*, Sec. 3.

<sup>48</sup> *Id.*, Secs. 8, 4.

is silent about foreign donations.<sup>49</sup> Iraqi NGOs are free to establish their own governing structures, though perhaps here CPA Order 45 falls a bit short by failing to set minimum standards of good governance.

A major shortcoming of the law is the requirement that all NGOs be “non-political.”<sup>50</sup> It is often sensible to restrict NGOs from directly funding candidates or political parties; if that is all that is meant, this clause should be made more specific. As written, the prohibition is too broad. Similarly, though NGOs have the right to appeal most administrative actions taken against them by the NGO Office, this appeal is not to an independent court but the NGO Office itself, which again increases the likelihood of abuse of government discretion.

### *Supervision and Enforcement*

CPA Order 45 gives the government the right to “suspend or revoke a registration of an NGO if the NGO violates any provision” of the Order.<sup>51</sup> If an NGO continues to operate after suspension or revocation of its license, the government can confiscate all of its property.<sup>52</sup> In other words, the government has the authority to impose drastic sanctions on NGOs regardless of how minor the violation may be. The law would be much improved if it imposed sanctions tailored to the severity of violations. Another shortcoming is that the law does not provide for judicial supervision of executive actions—NGOs cannot appeal adverse decisions made by the government, and they generally have no recourse if they feel that a decision has been taken in error. Although the Iraqi judicial system is not yet operating at full capacity, neither are any other Iraqi institutions, so that fact cannot justify the failure to provide for judicial oversight. Even the most highly restrictive laws generally provide for appeal to a judicial authority.

### *Transition to Democracy*

As Iraq continues its democratic transition, NGOs will no doubt play a major role. NGOs help to build a pluralistic society from the ground up, and many serve as watchdogs of efficient, transparent government. The new Iraq should encourage the formation of a wide variety of NGOs, rather than imposing a difficult licensing process and providing little incentive to form NGOs. Encouragingly, the new transitional Iraqi government has indicated that review of the NGO law is among its top legislative priorities.

## **Jordan**

The outbreak of the Palestinian intifada in 2000 led to massive instability in Jordan, where Palestinian refugees constitute the majority of the population. Faced with a stagnating economy and mass demonstrations protesting Jordan’s peace treaty with Israel, King Abdullah dissolved parliament and began to rule by decree, reversing what had been a positive trend toward political liberalization begun by his father, King Hussein, almost a decade earlier. In 2003 the King allowed parliamentary and municipal elections, which according to Freedom House were “reasonably free and transparent, though not

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<sup>49</sup> *Id.*, Sec. 7.

<sup>50</sup> *Id.*, Sec. 2.3(e)(iii).

<sup>51</sup> *Id.*, Sec. 3.6.

<sup>52</sup> *Id.*, Sect/ 1(6).

fair,” and abolished many of the restrictions on personal liberties instituted during the previous two years.<sup>53</sup> King Abdullah has since made a concerted public effort to guide Jordan to a new era of political and civil liberty, and 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 and, counter-intuitively, 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 the Middle East, but the government generally does not enforce the more unreasonable provisions, choosing instead to “routinely license” NGOs, “dozens of [which] address numerous political and social issues.”<sup>54</sup> A 2001 survey counted at least 2,000 civil society groups working on issues ranging from women’s rights and the environment to health and political reform.<sup>55</sup> 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 Law 33 / 1966.

### *Licensing*

No NGO can form or conduct operations in the Kingdom of Jordan without express written permission from the Minister of Social Development.<sup>56</sup> The process of obtaining this permission is excessively long and complicated. First, an NGO must submit ten copies of an application for registration to the Director of the regional Office of Social Development in the district in which the NGO will be located.<sup>57</sup> The application itself must include a substantial amount of information, including articles of association, financial procedures, principal objectives, and the names, professions, ages, and addresses of the founding members (all of whom must be at least 21 years old).<sup>58</sup> The District Office Director must then send the application, along with his comments, to the National Director General of Social Development within 30 days. The Director General must then attach his comments to the proposal before forwarding the entire package, within 15 days, to the Minister of Social Development. Finally, the Minister of Social Development has the power to “issue the decision which he sees proper in respect from the application within a period not exceeding three months from the date of sending to him.”<sup>59</sup> If each official takes the maximum amount of time allotted by statute, an NGO can wait up to 135 days for a decision on its application. Worse still, the law gives the Minister of Social Development the right to reject an application for any reason the Min-

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<sup>53</sup> Freedom House, *Freedom in the World 2004* (Jordan Country Report), <http://freedomhouse.org/research/freeworld/2004/countryratings/jordan.htm>.

<sup>54</sup> *Id.*

<sup>55</sup> *Directory of Civil Society Organizations in Jordan*, Hani Hourani, Edited by Ica Wahbeh, Sinbad Publishing House, Amman, Jordan, 2001 (Al-Urdun Al-Jadid Research Center), p. 10.

<sup>56</sup> Law No. 33 / 1966 (Jordan): Article 5.

<sup>57</sup> *Id.*, Art. 7(1).

<sup>58</sup> *Id.*, Art. 6.

<sup>59</sup> *Id.*, Art. 7.



ister sees fit, and there is no mechanism for judicial review of the Minister's decision, or indeed appeal of any sort whatsoever against an adverse decision.

There is a default registration provision, whereby if no response is received from the Minister of Social Development within 30 days from the date that the application has been forwarded to that office, an NGO can "start working as if [it has] been duly registered."<sup>60</sup> However, this is not quite an automatic licensing provision, because it does not extend to NGOs a presumptive license. Instead, it allows them to commence work until further notice from the Minister; but if the Minister decides to deny the application six months or six years down the line, the NGO has no recourse.

Foreign NGOs may be authorized under the same licensing procedures, but they face the added imposition of any "conditions and restrictions which [the Minister of Social Development] imposes."<sup>61</sup> Again, the Minister's decisions in this realm are unrestrained; he or she can "refuse to allow any foreign body or society to work in the Kingdom [or] impose on it any conditions which he sees proper."<sup>62</sup>

### *Legal Rights and Obligations*

Short of a ban on "fulfilling any political objectives,"<sup>63</sup> the law provides no explicit list of the types of activities that a licensed NGO can engage in. This may appear to be a positive aspect of Law 33 / 1966, but that is not necessarily the case. The unrestrained powers granted to the Minister of Social Development throughout the licensing process do not disappear once an NGO has been licensed. The Minister of Social Development can order the dissolution of any licensed NGO essentially at whim—without judicial oversight and without an appeals process. Technically, the Minister of Social Development must first become "satisfied" that the NGO has violated any of a long list of conditions, including "not achiev[ing] the purposes provided for in its articles of association"; "refus[ing] to allow [government representatives] to attend its meetings, examine its premises, registers, or documents"; "deal[ing] with its funds in a way other than the way specified for it"; or "generally contraven[ing] any of the provisions of this law."<sup>64</sup> The Minister must notify the NGO in writing of his or her intention at least one month before actually dissolving the organization.<sup>65</sup> But when the decision is left to the Minister of Social Development's personal discretionary judgment, and when no mechanism allows an NGO to appeal a dissolution order, a notification requirement provides limited procedural protection.

Reflecting a similar disregard for the autonomy of NGOs, the Ministry of Social Development is free to send representatives to observe any meeting or election, and to inspect any and all records kept at the NGO at any time.<sup>66</sup> The Ministry of Social Devel-

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<sup>60</sup> *Id.*, Art. 12.

<sup>61</sup> *Id.*, Art. 19(a).

<sup>62</sup> *Id.*, Art. 19(3).

<sup>63</sup> *Id.*, Art. 2.

<sup>64</sup> *Id.*, Art. 16(1).

<sup>65</sup> *Id.*, Art. 16(2).

<sup>66</sup> *Id.*, Art. 16(1)(c).

opment also takes an active role in NGO internal governance and organization, requiring NGOs to notify the Ministry of any election at least 15 days in advance and reserving the right of Ministry officials to attend the election “to be certain that [it] goes on in compliance with the [NGO’s] Articles of Association.”<sup>67</sup> If quorum is not met at the election meeting, or if the Minister of Social Development believes that the board of directors has violated any provision of the law, the Minister is free to appoint a temporary board of directors to run the NGO and call a new board election within 60 days.<sup>68</sup>

Licensed NGOs can merge or dissolve without seeking official permission, but no NGO can affiliate with any foreign or international body without the express permission of the Minister of Social Development.<sup>69</sup> There are no explicit limitations on the right of NGOs to raise funds, but the ban on foreign affiliations presumably implies a ban on foreign funding.

### *Supervision and Enforcement*

As discussed above, Law 33 / 1966 is a highly draconian statute that empowers the Ministry of Social Development to license and de-license NGOs based on the arbitrary and subjective personal judgments of ministry officials. Law 33 / 1966 also provides for individual criminal punishments for any “person who contravenes, alone or together with any other person or persons, any of the provisions” of the law. The punishment is a fine of 50 Jordanian dinars, up to three months in prison, or both, for any violation of Law 33 / 1966 – no matter how small.

### *Jordan’s Continuing Reform*

Jordan’s process of reform has, for the most part, been ably led, first by King Hussein and now by his son, King Abdullah. However, the fact remains that the NGO law, like many other laws in Jordan, gives the executive branch the power to act as it pleases without interference from the legislative or judicial branches. And though the Ministry of Social Development does not often use its powers under Law 33 / 1966, the fact remains that it *can*. A reminder of this reality came recently, when, amidst strong international criticism, the Ministry moved to shut down the Jordanian Society for Citizen’s Rights for an alleged violation of Law 33 / 1966. It was the first NGO to be closed by the government since 1989.<sup>70</sup>

This unfortunate trend has continued, with the introduction in March 2005 of a draft law that would severely restrict the rights of professional associations, requiring these groups to “obtain prior written approval from the Interior Ministry to hold a public gathering or meeting,” and further “limit[ing] topics of discussion at any of their professional meetings, councils, and committee meetings exclusively to ‘professional mat-

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<sup>67</sup> *Id.*, Art. 17.

<sup>68</sup> *Id.*, Art. 18.

<sup>69</sup> *Id.*, Arts. 8, 16, 9(2).

<sup>70</sup> See Amnesty International Press Release, <http://web.amnesty.org/library/Index/ENGMDE160202002?open&of=ENG-JOR>.

ters’.”<sup>71</sup> The Jordanian parliament has not yet voted on the law, but the vote will be an excellent barometer of the Jordanian government’s commitment to continuing political liberalization.

### **Lebanon**

Lebanon’s early 2005 “Cedar Revolution” has provoked enormous global interest and attention. The tens of thousands of Lebanese who took to the streets in the wake of Rafik Hariri’s assassination have given hope to many that democratization and government reform are possible in the Middle East. But though a new parliament dominated by reform and anti-Syrian parties has now been seated, serious obstacles remain before the Lebanese democratic movement is consolidated and reinforced. 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. Lebanon’s 15-year-long civil war ended only in 1990, and the years of relative stability that followed were due in large part to the domination of the Syrian military and security apparatus. It is an open question today whether, in the absence of Syrian control, Lebanon will be able to maintain calm, stability, and a functioning political system.

Although exact information about the size and scope of Lebanon’s NGO sector is lacking, it is clear that Lebanon enjoys one of the largest, most active, and least restrained civil societies in the Middle East. More than 1,000 NGOs are registered in Beirut alone, and the Ministry of Health estimates that 60 percent of all Lebanese health centers are run by non-profit groups.<sup>72</sup>

The strength of Lebanon’s NGO sector stems from the major role NGOs played during the 1975-90 civil war, as organizations fulfilled what are typically state responsibilities such as education, healthcare, and emergency relief. Reflecting the sectarian nature of Lebanese society, most NGOs are organized by religious affiliation, but they often reach across these lines to provide services for many outside their confessional communities.

#### *NGO Law in Lebanon*

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.<sup>73</sup> The law is highly anachronistic, with repeated references to imperial authorities and ministries that no longer exist. In reality the Lebanese

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<sup>71</sup> “Jordan: Draft Bill Would Muzzle Civil Society,” *Human Rights News*, Human Rights Watch, New York, April 7, 2005, <http://hrw.org/english/docs/2005/04/06/jordan10430.htm>.

<sup>72</sup> United Nations Development Program – Program on Governance in the Arab Region. “State-Civil Society Relations: Lebanon,” <http://www.pogar.org/countries/civil.asp?cid=9>; Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, p. 227

<sup>73</sup> United Nations Development Program – Program on Governance in the Arab Region. “State-Civil Society Relations: Lebanon,” <http://www.pogar.org/countries/civil.asp?cid=9>.

government takes a *laissez-faire* approach to NGO regulation and ignores most provisions of the 1909 Law.<sup>74</sup>

The 1909 Ottoman Law requires only that any “association” (defined as “a group composed of several individuals who unite their information and efforts in a permanent fashion and the goal of which is not to divide profit”) inform the Ministry of the Interior of its existence. No permits or licenses are needed to form the association.<sup>75</sup> Associations for the “promotion of Arab nationalism” are illegal, but this provision, like many others, is clearly a holdover from the imperial (Turkish) Ottoman Empire, and it is not enforced by any Lebanese authority.<sup>76</sup> Police are given the right to attend the meetings of any association so long as they have an official order from the Ministry of Police in Istanbul; this provision may sound problematic, but Lebanese authorities never use it and, indeed, the imperial Ministry of Police no longer exists.<sup>77</sup>

Lebanon’s hands-off approach is preferable to that of the vast majority of Arab states, which interfere with and deny full rights to the NGOs that operate within their borders. Some have argued, however, that NGOs need “active state intervention in providing clear legislation and institutional mechanisms which provide the framework of rights and obligations for these spheres.”<sup>78</sup> If so, the Lebanese approach, while an improvement on regional standards, is nonetheless open to improvement.

### **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.<sup>79</sup> Any NGO or otherwise independent organization is “contrary to the revolution” and therefore illegal; members are subject to extreme criminal punishments, including execution.<sup>80</sup> 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.

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<sup>74</sup> Email to author from Lebanese Embassy in Washington, D.C., 3 June 2005.

<sup>75</sup> Ottoman Law (Lebanon): Arts.1-2.

<sup>76</sup> *Id.*, Art. 6.

<sup>77</sup> *Id.*, Art. 18.

<sup>78</sup> “Islam, the State, and Democracy: Contrasting Conceptions of Society in Egypt,” Sami Zubaida, *Middle East Report*, No. 179, Nov.-Dec. 1992, p. 3.

<sup>79</sup> United Nations Development Program – Program on Governance in the Arab Region. “State-Civil Society Relations: Libya,” <http://www.pogar.org/countries/civil.asp?cid=10>.

<sup>80</sup> “Libya: Military – Opposition” GlobalSecurity.org, <http://www.globalsecurity.org/military/world/libya/opposition.htm>; United Nations Development Program – Program on Governance in the Arab Region, “State-Civil Society Relations: Libya,” <http://www.pogar.org/countries/civil.asp?cid=10>.

## **Morocco**

King Mohammed VI came to power in Morocco in July 1999. Much like King Abdullah of Jordan, King Mohammed took control of a country that had been led by his father through several years of slow political and social liberalization, yet one that also faced major economic and social problems. Mohammed has since taken many steps to further the development of Morocco, embarking on a major anti-corruption drive and overseeing parliamentary elections in 2002 and 2003 “that were widely considered to be the most representative in the country’s history.”<sup>81</sup> Unfortunately, Morocco’s moves toward wider political participation and social liberalization were interrupted by a series of five suicide bombings in May 2003, which precipitated a tightening of laws and a major crackdown on Islamist elements in the country.

The NGO law in Morocco is **Decree No. 1-58-376**, promulgated as part of the 1958 Code of Public Liberties, but subsequently amended by a 1973 decree. At the time, the Code of Public Liberties was one of the most liberal statutes in the Middle East; today the Code would be considered somewhat harsh, and the 1973 amendment was designed to restrict NGOs even further.

### *Licensing*

It is not clear from the language of the statute whether registration is mandatory. Decree No. 1-58-376 begins by proclaiming “the right to establish associations,” and goes on to identify an association as any “agreement for achieving ongoing collaboration between two or more persons in order to use their information and activity for a goal other than the distribution of profits amongst themselves”—what we would call an NGO.<sup>82</sup> The law then indicates that the act of “founding associations of persons is allowed with complete freedom and without prior permission on the condition that the requirements of Section 5 are heeded.” But Section 5 states that “every association must submit a prior declaration to the headquarters of the local administrative authorities ... and the agent of His Majesty the King.” Sections 4 and 5 thus seem to contradict each other as to whether prior permission is required. Vague as the statute may be, in practice the Moroccan government requires all NGOs to obtain government permission before beginning their activities.<sup>83</sup>

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.<sup>84</sup> 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. However, as discussed below, Decree No. 1-58-376

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<sup>81</sup> Freedom House, *Freedom in the World 2004*, (Morocco Country Report), <http://freedomhouse.org/research/freeworld/2004/countryratings/morocco.htm>.

<sup>82</sup> Decree No. 1-58-376 of 1958 (Morocco): Preamble, Sec. 2.

<sup>83</sup> Freedom House, *Freedom in the World 2004*, (Morocco Country Report), <http://freedomhouse.org/research/freeworld/2004/countryratings/morocco.htm>; CEIP [http://www.carnegieendowment.org/files/Morocco\\_APS.doc](http://www.carnegieendowment.org/files/Morocco_APS.doc).

<sup>84</sup> Decree No. 1-58-376 of 1958 (Morocco): Preamble, Sec. 5.

makes it so easy for the Interior Ministry to dissolve associations that in practical terms the ministry can prevent any unwanted organization from operating as an NGO. The law does not provide for any right of appeal to the courts, and the Interior Ministry's decision is not required to be made in writing. Notably, any NGOs that "are incompatible with the law or good morals or which might aim to tamper with the unity of the national soil or the royal system of government are null and void."<sup>85</sup>

### *Legal Rights and Obligations*

Moroccan NGOs have somewhat limited rights. For example, while NGOs can comment on public policy, "associations ... which in any way pursue a political activity" are subject to special requirements, including being composed of only Moroccan citizens and being run only with domestically earned assets.<sup>86</sup> There are no restrictions on the sources of income for Moroccan NGOs, but foreign NGOs (defined as any NGO in which half the members, or any of the officers, are non-Moroccan) are subject to several additional rules and regulations, and "the government is allowed to object to the founding of [any] foreign association."<sup>87</sup> NGOs can merge without government permission, but must seek permission to divide.<sup>88</sup> An adverse decision made by the Interior Ministry cannot be appealed.

### *Supervision and Enforcement*

Decree No. 1-58-376 is notable for the sheer number and severity of the criminal punishments it provides. Almost every section contains a criminal punishment. Any founders, managers, or treasurers who change the NGO charter without informing the Interior Ministry can be imprisoned for from three months to two years and fined 10,000 to 50,000 Moroccan dirhams,<sup>89</sup> for example; any participant in an NGO that provokes armed demonstrations in public faces from one to five years in prison and a fine of MD 20,000 to 100,000.<sup>90</sup> Further, the government has almost unchecked power to dissolve any NGO at will.<sup>91</sup>

### *Morocco at a Crossroads*

Morocco has been in the news lately as the kingdom has made several stymied attempts at reform. The regime cannot seem to make up its mind about whether to encourage a fully pluralistic, democratic system or to crack down on dissent and religious elements. The Moroccan government thus has been sending a mixed message, and though

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<sup>85</sup> *Id.*, Sec. 3.

<sup>86</sup> *Id.*, Section 17.

<sup>87</sup> *Id.*, Part 5 (Sections 21-28).

<sup>88</sup> *Id.*, Section 14, 7.

<sup>89</sup> *Id.*, Section 8.

<sup>90</sup> *Id.*, Section 30.

<sup>91</sup> *Id.*, Section 7.

“the Moroccan civil society sector is rich and complex,” it “remains institutionally weak.”<sup>92</sup>

### **Palestine**

In any comparative study of Arab governments and laws, Palestine represents an exceptional case for a host of reasons. But Palestine’s unique history has in many ways proved conducive to the development of a vibrant and active civil society, by both regional and global standards.

The earliest Palestinian NGOs formed during the British mandate and focused generally on grassroots promotion of the nationalist struggle.<sup>93</sup> 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.

But the PNA immediately attempted to assert the heavy-handed control over NGOs that was common in most Arab states, especially the neighboring states of Egypt and Jordan. Relations between the PNA and Palestinian NGOs declined precipitously.<sup>94</sup> 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 states 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 what has been termed “a near total victory.”<sup>95</sup>

The NGO law, finally passed in 2000, was and 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 states.

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<sup>92</sup> Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, p. 233.

<sup>93</sup> *Palestinian Civil Society in Theory and In Practice*, Nathan J. Brown, Paper for the Annual Meeting of the Structure of Government Section, International Political Science Association, May 2003, p. 4.

<sup>94</sup> *Id.*, p. 5.

<sup>95</sup> *Id.*, pp. 9-10.

### *Licensing*

Even the liberal Law 1 / 2000 cannot escape what appears to be a regional propensity to require the licensing of all groups, formal and informal. 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.”<sup>96</sup> 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. If no decision is made within that period, the association is considered licensed by law.<sup>97</sup>

By contrast to most Middle Eastern countries, the MOI does not have the explicit right to reject associations for being contrary to vague principles such as “public morals” or the “national interest.” Rejections of a license application must be made in writing and must specify the reasons. However, the statute does not stipulate the grounds on which an application can be rejected, which is a shortcoming. An applicant has the right to contest a rejection before a court, but it is unclear under what grounds a court would reverse a rejection on the part of the MOI.<sup>98</sup> Nonetheless, because the law requires the MOI to keep a public log of rejected applications, including the reasons for their rejection, it appears unlikely that the MOI would act in a totally arbitrary manner without eliciting a major outcry from the ever-vigilant Palestinian NGO sector.

### *Legal Rights and Obligations*

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, and 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.<sup>99</sup> The law also encourages the formation of NGOs by providing several economic incentives, including an exemption from tax and customs duties.<sup>100</sup> Finally, any actions taken against an association by the MOI can be appealed in court.<sup>101</sup>

### *Supervision and Enforcement*

In keeping with the liberal nature of the Palestinian law, the MOI is prohibited from unilaterally dissolving an association or seizing its assets. Instead, the MOI must first secure a court order before taking action against an NGO.<sup>102</sup>

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<sup>96</sup> Law 1 / 2000 (Palestine): Art. 7.

<sup>97</sup> *Id.*, Art. 4.

<sup>98</sup> *Id.*, Art. 4.

<sup>99</sup> *Id.*, Ch. 7, Ch. 6, Ch. 8, Art. 28.

<sup>100</sup> *Id.*, Art. 14.

<sup>101</sup> *Id.*, Art. 38.

<sup>102</sup> *Id.*, Art. 41, Art. 38(2).



Law 1 / 2000 provides no individual criminal sanctions – the norm in most states, of course, but not in the Middle East. In Palestine, violations of the NGO law are punished through administrative mechanisms, as they should be.

### *Palestine in Perspective*

In many ways, Law 1 / 2000 is an ideal NGO law. But as Nathan Brown of the Carnegie Endowment for International Peace puts it, “Palestine is, in short, a model democracy. Its most significant flaw is that it does not exist.”<sup>103</sup> 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 intifida, crippling unemployment and insecurity, and Israeli occupation. Palestine is almost a photographic negative of its Arab neighbors: whereas most Arab states have overwhelmingly dominant state institutions but no democracy, Palestinians are well-versed in the methods and procedures of democracy, but their institutions have not been able to take root “in the midst of one of the world’s most intractable conflicts.”<sup>104</sup> 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 of life in the highly unstable, occupied country make it difficult to ascertain just how relevant the law actually is.

Encouragingly, the evidence indicates that both the PNA and most Palestinian NGOs comply with Law 1 / 2000. The Palestinian NGO Network, one of the oldest and most well-respected NGOs in Palestine, is licensed and complies with the law, and requires each of its 92 affiliated NGOs to do the same.<sup>105</sup>

### *A Major Setback*

In May 2005, the Palestinian Legislative Council introduced a bill to amend Law No. 1 / 2000. Passage of this amendment would represent a major blow to the Palestinian NGO movement by converting the Middle East’s most liberal NGO law into one of its most restrictive. The amendment would insert a new article into Law 1 / 2000, banning NGOs from “engaging in any political activity.” Most Arab NGO laws contain similar provisions, which have been criticized several times throughout this article as both unnecessarily vague and susceptible to major abuse by enforcement authorities. Furthermore, in the context of the Palestinian-Israeli conflict, it is difficult to envision an NGO whose work would not constitute *some* kind of political activity or statement. Nonetheless, the amended law would impose severe criminal punishments on any violation of the ban on political activity. The proposed amendment would also create a government “Commission for Non-Governmental Organizations and Human Rights” with the power to supervise, monitor, and direct all NGO activity, which could entail increased government interference in the daily affairs of NGOs.

Needless to say, this amendment has been greeted by vociferous condemnation and resistance from the Palestinian NGO community. Thanks to the work of groups such

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<sup>103</sup> Nathan Brown, *Evaluating Palestinian Reform*, Carnegie Endowment for International Peace Democracy and Rule of Law Project, Number 59, June 2005, p. 3, <http://www.carnegieendowment.org/files/CP59.brown.FINAL.pdf>.

<sup>104</sup> *Id.*

<sup>105</sup> Email to author from Palestinian NGO Network, 26 May 2005. See also [www.pngo.net](http://www.pngo.net).

as the Palestinian NGO Network, the amendment has currently been placed on hold, but not, as of this writing, totally rejected by the Palestinian Legislative Council. Just as it did when the PNA first attempted to impose a restrictive NGO law in 1994, the international community should work with domestic Palestinian NGOs to oppose this amendment.<sup>106</sup>

### **Saudi Arabia**

As a result of international (to a large degree, American) pressure, Saudi Arabia has lately begun to enact a series of political and social reforms. Modified provincial elections were held in 2005, but women were not allowed to vote, and at least half the seats on each provincial council were to be appointed by the royal court. Many analysts, both inside and outside the Middle East, have criticized these reforms as superficial at best. The king, though nominally required by *Shari'a* law to seek the consensus of senior princes and religious officials on decisions, nonetheless remains the sole and absolute source of authority in Saudi Arabia. Saudi Arabia remains at the bottom of the Freedom House survey of Political Rights and Civil Liberties for the eleventh consecutive year.<sup>107</sup>

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. The 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.<sup>108</sup> The recent death of King Fahd has given hope to many that his successor, King Abdullah, will embark upon more ambitious political liberalization, but the pace of reform in Saudi Arabia is likely to remain slow.

### **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 Yemenis 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, and as of 2004 the World Bank operated more than 22 active projects ranging from water purification to education and civil service reform.<sup>109</sup> 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 over

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<sup>106</sup> Palestinian NGO Network, "Letter by Palestinian civil society organizations to Palestinian Legislative Council members," 28 May 2005, [http://www.pngo.net/NGOlaw\\_en\\_Letter\\_PLC\\_28\\_05\\_05.htm](http://www.pngo.net/NGOlaw_en_Letter_PLC_28_05_05.htm); "Memorandum to the Palestinian Legislative Council Members from Palestinian Non-Governmental Organizations," 9 June 2005, [http://www.pngo.net/NGOlaw\\_en\\_memorandum.htm](http://www.pngo.net/NGOlaw_en_memorandum.htm).

<sup>107</sup> Freedom House, *Freedom in the World 2004* (Saudi Arabia Country Report) <http://freedomhouse.org/research/freeworld/2004/countryratings/saudi-arabia.htm>.

<sup>108</sup> Carnegie Endowment for International Peace, "Arab Political Systems: Baseline Information and Reforms: Saudi Arabia," <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16918>.

<sup>109</sup> U.S. State Dept. Background Note: Yemen, <http://www.state.gov/r/pa/ei/bgn/35836.htm>.

its predecessor; indeed, in many ways, it is among the most progressive 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.<sup>110</sup>

### *Licensing*

In a refreshing departure from the norm among Middle Eastern states, Law 1 / 2001 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.<sup>111</sup> 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.<sup>112</sup> MPSA then has one month to rule on the application. If no action is taken by the end of the month, the application is considered accepted.<sup>113</sup> Rejections must be made in writing, and all rejections must be posted by MPSA on a public bulletin board.<sup>114</sup> Rejected NGOs are entitled to appeal the decision to an independent court within 60 days.<sup>115</sup>

### *Legal Rights and Obligations*

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.”<sup>116</sup> 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.”

Other than this restriction, Yemeni NGOs are generally allowed to operate freely. They can merge, dissolve, and divide without government approval.<sup>117</sup> 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 “based on a request or assignment from an external [foreign] entity,” an NGO must obtain approval of MPSA.<sup>118</sup> Internal governance of NGOs is sub-

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<sup>110</sup> Mohammed bin Sallam, “The Future of NGOs in Yemen – More NGO Accountability Needed,” *Yemeni Times*, Vol. 784, Issue 13, 25-27 October 2004, <http://www.yementimes.com/article.shtml?i=784&p=community&a=2>.

<sup>111</sup> Law 1 / 2001 (Yemen): Art. 2.

<sup>112</sup> *Id.*, Art. 8.

<sup>113</sup> *Id.*, Art. 9.

<sup>114</sup> *Id.*, Art. 10.

<sup>115</sup> *Id.*, Art. 11.

<sup>116</sup> *Id.*, Art. 19.

<sup>117</sup> *Id.*, Art. 47, Art. 44(4), Art. 48.

<sup>118</sup> *Id.*, Art. 23.

ject to many requirements, but these seem intended to ensure good governance and lack of corruption. They do not impose overly onerous conditions on NGOs.<sup>119</sup>

Foreign NGOs can be formed so long as they do not violate “Islamic values” or the Yemeni Constitution.<sup>120</sup> 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.<sup>121</sup>

### *Supervision and Enforcement*

In keeping with the protections against government interference built into Law 1 / 2001, no NGO can be terminated by MPSA without a court order. MPSA has only the right to “sue for the dissolution” of an NGO in court, and then only if the NGO has committed “a serious breach of the provisions of this Law.”<sup>122</sup> In addition, MPSA cannot file suit unless it has given the NGO notice at least “three times within six months to remedy the violation” and the NGO has still not complied.<sup>123</sup>

Even so, Law 1 / 2001 does contain a handful of draconian punishments, which seem out of place given the law’s overall liberal thrust. For example, individuals who are not members of an NGO but participate in the management or discussions of an NGO’s General Assembly without express approval of the NGO’s Board of Directors are subject to up to six months in prison and a fine of 50,000 Yemeni rials.<sup>124</sup> Further, any violation of Law 1 / 2001, no matter how small, can be punished by three months in prison and a fine of YR 30,000.<sup>125</sup> Such severe penalties can do nothing but discourage the formation of NGOs and the participation of individuals in NGO activities.

Aside from its overly severe criminal sanctions, Yemen’s NGO law is basically a well-written example for other Middle Eastern states, 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.

### **III. The Importance of Continuing Reform**

While there is much variation among the ten countries surveyed in this article, several underlying themes emerge. Most important, Middle Eastern NGO laws tend to suffer from over-breadth. The laws are often vague and unclear, especially the sections specifying the circumstances under which the government can dissolve or ban an NGO. Many of the laws surveyed are very old and do not reflect a modern understanding of the

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<sup>119</sup> *Id.*, Arts. 24-43.

<sup>120</sup> *Id.*, Art. 79.

<sup>121</sup> *Id.*, Art. 40.

<sup>122</sup> *Id.*, Art. 44.

<sup>123</sup> *Id.*, Art. 44.

<sup>124</sup> *Id.*, Art. 69(1).

<sup>125</sup> *Id.*, Art. 70.

importance of NGOs as partners for the development of society. And generally speaking, the NGO laws surveyed here tend to reflect government's desire to control rather than regulate the NGO sector. But as Middle Eastern governments liberalize and modernize, there is reason to believe that the NGO laws will be among the first to change.

It is noteworthy that the two most liberal and generally admirable NGO laws, those 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 (the former from the World Bank, the latter from most of the international community). Such pressure can often backfire in the Middle East, where sensitivity to perceived interference from former colonial powers is always high, even more so in the wake of the Iraq war. In other words, although the international community can play an important role in strengthening civil society in the Middle East, any actions must be taken with a keen awareness of regional sensitivities, strengths, and weaknesses.

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, in countries with liberal NGO laws and even in countries with very repressive laws, is a testament to the strength and power of the domestic "third sector." The Middle East is not so different from other areas of the world that have undergone recent major change, and if history is any guide, we should not underestimate the power of the domestic civil society sector to help produce positive and lasting change in the region.

## **SPECIAL SECTION: THE MIDDLE EAST**

# **NGO Regulations in Iran**

**By Negar Katirai\***

### **I. Introduction**

With respect to the development of civil society, Iran's political landscape has provided cause for optimism in recent years. The initial harbinger of this optimism was the election of President Mohammad Khatami in 1997 on a platform of greater freedoms, respect for human rights, political pluralism and citizen participation.<sup>1</sup> The subsequent elections of reformists to parliament in 2000 provided further cause to rejoice. Although the balance of power has since shifted back into the hands of conservatives, the reformist movement remains active in advocating for social and political change.<sup>2</sup>

Current laws within the Islamic Republic of Iran have enabled NGOs to form and pursue a variety of non-profit and non-political objectives. Charity and relief aid organizations have been especially successful in achieving their humanitarian goals.

In several respects, however, the laws governing the registration and operation of NGOs in Iran have been criticized as over-complicated and cumbersome. First, the legal structure involves multiple and uncoordinated decision-making centers. Second, the process of registering and regulating NGOs often differs in practice from what is provided in the law, adding unnecessary burdens to the administration of permits and financial grants as well as the annual and periodic regulation of NGOs. Third, judicial review of administrative decisions pertaining to NGOs has been inadequate. In addition, NGOs could benefit from greater government programs and subsidies to build capacity, provide resources, and generally facilitate their endeavors. These shortcomings have led NGOs to concentrate in Tehran, where proximity to the locus of power makes abiding by the bureaucracy of NGO registration and supervision less complicated.

Recognizing the need for law reform, the Ministry of Interior and the NGO community in Iran gathered in November 2003 to draft a new law on the establishment and

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\* Associate, Steptoe & Johnson LLP; B.A. Wesleyan University, 1999; J.D. University of Pennsylvania Law School, 2005.

<sup>1</sup> Baquer Namazi, *Iran NGO Situation Analysis*, January 2000, available at [www.iranngos.org](http://www.iranngos.org).

<sup>2</sup> Since 2003, the Guardian's Council, a twelve-member body capable of vetoing parliament's enactments, has taken advantage of the sweeping powers granted to it by Iranian election laws and disqualified most reformist and moderate candidates for both Parliamentary and Presidential elections. Due to these disqualifications as well resulting public dissatisfaction with the political process, conservatives won control of parliament in February 2004. More recently, ultra-conservative Tehran mayor Mahmoud Ahmadinejad was elected President on June 25, 2005. The consolidation of conservative power in all three branches of government could spell the downfall of Iran's fragile social reforms, though many Iran-watchers believe that even the most hardline conservatives would not dare take such an unpopular step. Human Rights Watch, *Access Denied: Iran's Exclusionary Elections*, available at [www.hrw.org](http://www.hrw.org).

activities of NGOs. A group of NGO, civil society groups, and governmental delegates met at the Ministry of Interior's civil society office and drafted a comprehensive law to provide greater clarity and support to NGOs.<sup>3</sup>

The proposed law suggested several important reforms. First, it envisioned the establishment of a supervisory committee to oversee the activities of local NGOs operating in the provinces. Second, the draft opened the way for NGOs to gain access to additional resources, including financial aid and assistance from government organizations and a subsidy service with the Islamic Republic's broadcasting organization. Third, the law improved upon current procedures for appealing decisions regarding NGOs permits and other administrative matters.

After two attempts at passage, the Iranian Parliament has approved numerous aspects of the draft law, improving the legal framework governing NGOs in several ways.<sup>4</sup> The new regulations create a more streamlined and representative body to oversee the activities of NGOs, and improve procedures for appealing decisions regarding permit applications. Most remarkable, the new law grants standing to NGOs to pursue legal remedies on behalf of the public interest. Thus, not only do the new regulations address long-standing problems in NGO oversight and supervision, but they also empower NGOs to take on a new role in advancing public causes.

## **II. Provisions of the General Laws**

### **A. Consistency and Clarity of the Laws**

Iranian laws governing NGOs are complex and difficult to understand and follow. The laws and regulations that affect the NGO sector are numerous, unclear, and contradictory. In addition, current practice often diverges from the law. As this article will explain, the new regulations address many but not all of the current legal structure's shortcomings in regard to NGO law.

Iran does not have a federal system, so NGOs must abide only by national laws and regulations. Then again, the Iranian government is organized as a hierarchy. The central government has the power of legislation, administrative oversight, and theoretical power over how laws are to be enforced. In practice, however, local authorities often diverge from the central government's advisements and enforce laws in a different manner. This disconnect can prove confusing and wearisome for NGOs trying to abide by the law.

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<sup>3</sup> The (Draft) Law on Establishment and Activities of Non-Government Organizations (NGOs). This draft law was rejected by parliament in 2004, but numerous aspects of the draft have been incorporated into recent executive regulations.

<sup>4</sup> Although the draft law was rejected by parliament in 2004, many of its provisions have been passed into law by the Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted June 19, 2005. ("Executive Regulations 2005".)

## B. Constitution

The Constitution of the Islamic Republic of Iran, which was approved by the Assembly of Experts in November 1979 and ratified by a referendum in early December 1979 (the “Constitution”), recognizes the rights of NGOs to assemble and associate. Article 26 of the Constitution specifically allows parties, conventions, trade associations, Islamic associations, and associations of recognized religious minorities. This Article provides:

Political parties, groups and associations, as well as guilds and Islamic associations or associations of recognized religious minorities, are permissible, provided that they do not violate the principles of independence, freedom, national unity, Islamic standards and the basis of the Islamic Republic. No one can be forbidden to participate in them, or be forced to participate in one of them.

Thus, Article 26 qualifies the rights of NGOs and other organizations by stating that these groups may operate only as long as “they do not violate the principles of independence, freedom, national unity, Islamic standards and the basis of the Islamic Republic.” There are no restrictions on who may join such organizations or associations, except that only Zoroastrians, Jews, and Christians are recognized as religious minorities under Article 13 of the Constitution.<sup>5</sup>

## C. Types of Organizations

In Iran, NGOs fall under the general definition of non-commercial organizations.<sup>6</sup> The Iranian legislature has recognized non-commercial organizations as including, but not limited to, NGOs as of the date they are registered with the appropriate authorities.<sup>7</sup> Such entities may choose to be called associations, clubs, institutions, or similar terms, but not titles that are allocated to government or state organizations.<sup>8</sup> Non-commercial organizations are in turn divided into profit-making organizations and non-profit-making organizations.<sup>9</sup> Thus, Iran has non-commercial, non-profit organizations such as chari-

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<sup>5</sup> See also the Constitution, Articles 6, 7, 56, 58, 59, 62, 100, 107, 114.

<sup>6</sup> Commercial organizations are in turn defined as organizations that have been formed in order to engage in commercial activities, such as trade, industrial activities, and distributing profit among members. *See* Commercial Act of Iran, Article 2.

<sup>7</sup> The Commercial Act of Iran, Article 584 provides: “Concerns and establishments which have been or shall be created for non-commercial purposes acquire juridical personality from the day they are registered in a special register established by the Ministry of Justice.”

<sup>8</sup> The Regulations Concerning the Registration of Non-Commercial Organizations and Concerns, enacted on May 3, 1958, provide further definition of non-commercial organizations. Article 1 of these regulations provides: “Non-commercial organizations and concerns set forth in Article 584 of the Commercial Act refer to all organizations and concerns that are formed for non-commercial purposes such as scientific or literature matters or charity affairs and the like, whether or not their founders intend to make profits.”

<sup>9</sup> Amended Regulations for Registration of Non-Commercial Organizations and Entities, enacted in the year 1337 [March 21, 1958- March 20, 1959], Article 2.



ties, as well as non-commercial organizations formed to engage in non-commercial activities in order to earn and distribute profits among their members.

Generally, NGOs fall into two broad categories: public interest organizations and professional organizations. Public interest NGOs are those whose members conduct activities in pursuit of the public interest, such as non-profit and charity organizations. Professional organizations are those formed in order to pursue activities for the mutual benefit of the organization's members. This category includes guild organizations, such as the teacher's guild, and specialists' associations, such as the sociologist's association. Both public interest NGOs and professional organizations are subject to the Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted June 19, 2005 ("Executive Regulations").

More specifically, the Law Concerning the Activities of Parties, Associations, Political Associations and Guild Associations, Islamic Associations or the Associations of Recognized Religious Minorities, enacted on August 29, 1981 (7 Sharivar, 1360) ("Law Concerning the Activities of Political Parties"), defines several types of non-governmental organizations:

1. Political Parties, Associations, and Organizations. Political parties, associations, and organizations are defined as those that have been formed by a group of persons who believe in a certain ideal and political policy. The law requires that the purpose, plans, and activities of the entity are related to the rules of administration and general policy of the Islamic Republic of Iran. (See *Law Concerning the Activities of Political Parties, Article 1*.)
2. Guild Associations. Guild associations are defined as organizations that have been formed by the members of a trade, profession, or occupation. The law requires that their purposes, plans and activities are geared to achieve benefits for the trade, profession, or occupation. (See *Law Concerning the Activities of Political Parties, Article 2, Executive Regulations Concerning Guild Units Referred to in the Law Concerning the Activities of Parties, enacted on 13 Farvardin 1368 (April 3, 1989) ("Guild Regulations"), Article 1*.)
3. Islamic Associations. Islamic associations are defined as organizations that consist of volunteers and whose purposes consist of understanding and educating others about Islam and advancing the goals of the Islamic revolution. These associations can engage in any type of activity as long as their purposes fall within those listed above. Administrative, educational, guild, industrial, or agricultural activities are all permitted. (See *Law Concerning the Activities of Political Parties, Article 3*.)
4. Associations of Religious Minorities. Associations of religious minorities are defined as organizations that consist of volunteers from Iran's recognized minorities, and whose purposes consist of addressing the religious, cultural, and social issues facing the minority. (See *Law Concerning the Activities of Political Parties, Article 4*.) Article 13 of the Iranian Constitution recognizes Christians, Jews, and Zoroastrians as religious minorities.

#### D. Purposes

Iranian law allows an NGO to define its purpose in its articles of association and to take any action necessary to pursue that stated purpose. (See *Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted June 19, 2005*, (“*Executive Regulations*”), *Article 1*.) NGOs can provide assistance, consultation, or advice to other NGOs or governmental organizations, and publish papers. (*Id.*, *Article 4*.) Furthermore, an NGO can arrange gatherings and demonstrations in order to advance the organization’s stated purposes. (*Id.*, *Article 4*.)

By definition though, NGOs are not permitted to engage in profit-making or political activities, and guild organizations are specifically prohibited from engaging in political activities or from being affiliated with political parties or groups. (See *Executive Regulations, Article 1*<sup>10</sup> ; see also *Guild Regulations, Article 5*.) The newly passed Executive Regulations clarify that NGOs are permitted to engage only in the political activities identified in Political Party Act.<sup>11</sup> (See *Executive Regulations, Article 1, Note 3*.) In addition, as mentioned above, the Constitution prohibits NGOs from engaging in any activity that violates “the principles of independence, freedom, national unity, Islamic standards or the basis of the Islamic Republic.” (Constitution, *Article 26*.) Furthermore, the legislature has reiterated the Constitution’s prohibition of these activities and added that NGOs may not engage in any activity that breaches the freedom of others or creates or increases divisions among various members of society. (See *Law Concerning the Activities of Political Parties, Article 16*.<sup>12</sup>) An NGO’s articles of association and activities may not be inconsistent with the Constitution. (See *Executive Regulations, Article 8*.) Thus NGO activities generally have been limited to charitable works, with the support of reformist candidates marking the boundaries of what is considered acceptable political activity.

However, the new regulations may significantly change the role of NGOs in Iranian society by providing NGOs with the standing to pursue legal action on behalf of the public interest. The new law provides that an NGO may pursue legal action to advance the NGO’s stated purpose and protect the public interest. (See *Executive Regulations, Article 16*.) This provision not only provides NGOs with a new venue through which to pursue their goals, but it also stands to transform the role of NGOs in Iran.

#### E. Registration or Incorporation Requirements

In submitting an application, an NGO must include its policy letter (*maram-nameh*) as well as the articles of association. (See *Executive Regulations, Art. 20*.)

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<sup>10</sup> Article 1 of the Executive Regulations defines NGOs as those organizations formed on a voluntary basis for “non-profit and non-political purposes.”

<sup>11</sup> Article 1 of the Law Concerning the Activities of Political Parties requires that the purpose, plans, and activities of the political parties must be related to the rules of administration and general policy of the Islamic Republic of Iran

<sup>12</sup> This law restates the prohibitions of the Constitution by prohibiting any actions that violate Iran’s independence; jeopardize the freedom, independence, national unity, or interests of Iran; or violate Islamic standards or the basis of the Islamic Republic of Iran.

NGOs can be formed by either natural persons or legal entities. Legal entities are defined as those included in a special register established by the Ministry of Justice. (See *the Commercial Act of Iran, enacted on April 2, 2000 (13 Farvardin 1368)* (“*Commercial Act*”), *Articles 584 & 585*.) Government employees are qualified to join NGOs as long as the NGO’s activities are not related to the employee’s official duties. (See *Executive Regulations, Article 1*.) There is no minimum of base capital required to form an NGO, but the NGO’s declared capital determines the organization’s registration fee.

Two founders of each NGO must be specialists in the field in which the NGO is to engage. (See *id.*, *Article 18*.) NGOs may organize into networks, including international organizations, subject to some regulations. (See *Executive Regulations, Article 19*.) First, the NGOs that form the network must have been registered for at least two years. Second, there must be five founding NGOs to form a network. And third, the network of NGOs must obtain a permit from the appropriate supervisory board.

#### F. Registration or Incorporation Procedures

The old regulation process has been criticized as disorderly and unclear. The new regulations simplify and improve upon it in two ways: creating a streamlined supervisory board to oversee the activities of NGOs, and improving procedures for appealing the rejection of permit applications.

Previous laws required that those desiring to form an NGO apply for a permit with either the Ministry of the Interior or the governor’s office within their province. (See *Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted January 15, 2003*, (“*Previous Executive Regulations*”) *Article 12*.) In contrast, individuals working with NGOs in Iran have reported that in practice, both the Ministry of Labor and the Chamber of Commerce also issued permits to NGOs, though nowhere in the old laws were these ministries given this authority.

The new regulations do away with the previous confusion and create a three-tiered supervisory board, made up of government officials and NGO representatives, to review applications for permits. (See *Executive Regulations, Article 5, Para. d*.) At the province level, the supervisory board consists of the governor of the province, a representative of the Islamic Council, and a representative from the NGOs in that province. At the state level, the supervisory board consists of the state governor, a member of the Islamic Council, and a representative from the NGOs in that state. At the national level, the supervisory board consists of a deputy from the ministry of interior affairs, a representative of the high council of states, and a representative from the NGO community. Which supervisory board an NGO must apply to is determined by the proposed region and scope of the NGO’s activities. Local NGOs apply with the province or state supervisory board, whereas NGOs that wish to operate on a national basis must apply with the national supervisory board.

The procedures for appealing the rejection of permit applications also rely on this three-tiered system. If an application is denied by the supervisory board of the province, the NGO can appeal first to the state and then to the national supervisory board. (See *Executive Regulations, Article 22, Note 4*.) If the state supervisory board first denies the application, the NGO can appeal to the national supervisory board. (*Id.*) And finally, if the national supervisory board is the first to deny the application, the NGO may appeal to the

administrative justice tribunal. (*Id.*) In all cases, the NGO has one month to file an appeal. (*Id.*)

This hierarchical structure is an improvement upon the old system, in which NGOs were permitted to apply to the governor general or to the Ministry of Interior Affairs. (See *Previous Executive Regulations, Article 16.*) By instituting regional supervisory boards that include an NGO representative from that region, the new law makes it more likely that NGOs will receive prompt and fair review of their applications for permits.

Though the improvements outlined above are commendable, the new regulations do not solve all the problems of the current system. Despite attempts to expedite the overall process of applying for a permit, the law fails to address the unnecessary and time-consuming involvement of multiple agencies in reviewing permit applications. The new regulations provide that the supervisory board must approve or reject an application within two weeks after receipt. (See *Executive Regulations 2005, Article 22.*) If the application is rejected, the issuing body has two weeks to state its reasons. (See *id., Article 22, Para. 1.*) This is a shorter time period than that provided by the previous Executive Regulations, which allowed the issuing body one month to review applications for permits. (See *Previous Executive Regulations, Article 6.*)

By reducing the time limit, the new Executive Regulations seem designed to accelerate the process of applying for NGO permits. Still, if the NGO's purpose coincides with the activities of any government agencies or ministries, the approval of those agencies must also be obtained. (See *Executive Regulations, Article 22, Note 3.*) The issuing body must seek the approval of pertinent government agencies within one week of receipt of an application, and the government agency must issue an opinion within one month. (*Id.*) This process of external review exists currently and has resulted in complications and delays in the review of NGO applications for permits; the new regulations do not improve on the old law in this regard. More troublesome is the provision that special authority may be provided to authorities other than the supervisory board to review applications by certain NGOs, thus creating an additional loophole in the otherwise straightforward new structure. (See *id., Article 17.*)

In conclusion, despite the improvements made by the introduction of a tiered supervisory board, procedural inefficiencies may still hamper the process of registration. First, there still exists the problem of redundancy and uncertainty, due to the ability of multiple agencies to involve themselves in the process of reviewing NGO applications for permits. Second, provisions detailing the specific reasons on which an application may be rejected or the standard of review for appealing rejections remain lacking.

#### G. NGOs Register

All NGOs, after obtaining the necessary permit from the appropriate supervisory board, must register with the Registration Office of Companies and Industrial Units, Bureau of Non-Commercial Organizations (See *id., Article 25.*) This bureau is a department of the Ministry of Justice and maintains the NGO registry, which provides the name, purpose, founders, and addresses of all registered NGOs. Defunct organizations are purged from the registry, but the registry does not list organizations which have been denied the right to register or which have been sanctioned or disciplined. This, in part, is due to the

fact that the bureau that maintains the registry differs from the authorities responsible for issuing permits (previously the Ministry of Interior Affairs and provincial governor's offices and now the three-tiered supervisory board.)

Although the registry is considered accurate and up to date, it is difficult if not impossible for the public to access it. The law requires records of private and public corporations to be available to the public (see *Regulations Concerning the Enforcement of the Companies Registration Act, Article 26*); it should follow that NGO records are made available as well. However, the government in practice does not make the records of either private and public corporations or NGOs accessible.<sup>13</sup>

#### H. General Powers

NGOs can exercise the general rights and powers of juridical entities, such as owning real property and entering into contracts.<sup>14</sup> Iran's Commercial Act defines the rights of juridical entities as follows:

A juridical person may have all the rights and assume all the obligations granted by law to natural persons, except rights and obligations peculiar to man by his very nature, such as rights and obligations resulting from paternity, affiliation and other similar rights or obligations.<sup>15</sup>

Any interested party may raise issues about the failure of NGOs to comply with the legal requirements. Such issues may be raised by filing legal action with the public courts. A possible or intended beneficiary of an NGO, for example, has the right to go to court and seek action against an NGO if the beneficiary is considered to have a direct interest in the outcome of the case.

#### I. Membership Organizations

There must be at least five founders to form a membership organization, and at least two of the founders must be specialists in the field of the activities of the NGO. (See *Executive Regulations, Article 18*.) In addition, the founders must be of Iranian nationality, at least 18 years old, and without criminal records (including violations against the strict social code enforced by the morality police). Furthermore, founders may not belong to an organization that has been recognized as a hostile group by court.<sup>16</sup> (See *id.*, *Article 18, Para. D*.) Beyond these restrictions, the law is silent as to whether membership organizations may exclude or remove members. Thus, the procedures for a member to resign from an organization are established by the NGO itself.

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<sup>13</sup> Information gathered through Iranians active with NGOs in Iran.

<sup>14</sup> See *Commercial Act, Article 588*.

<sup>15</sup> *Id.* See Sabi, *Commercial Code of Iran*, English translation, at 89-90.

<sup>16</sup> The law does not specify which courts have this authority.

### **III. Governance**

The law does not provide detailed guidance regarding the governance of NGOs. Article 589 of the Commercial Act provides that “[j]uridical persons take decisions by means of such authorities as are competent, in conformity with the law or their articles of association, to do so.”<sup>17</sup> Similarly, Article 23 of the Executive Regulations provides that the board of directors or the board of trustees, as the case may be, is the highest organ of the organization, and must meet the qualifications set forth in Article 18.<sup>18</sup> Thus, NGOs are normally managed according to their articles of association by a board of directors or a board of trustees elected by the general assembly of the members.

The governance rules for NGOs do not differ. The rules allow assembly of members in the form of a board of directors or board of trustees, as well as executive committees and officers such as president, vice chairman, etc. The powers of these assemblies and officers, as well as the rules for voting, are determined by the NGO’s charter, articles of association and bylaws. The law is silent as to the duties and responsibilities of governing bodies in terms of budget review and signatory powers. Practically speaking, however, major decisions, such as approving the budgets or financial statements of the NGO, are left to the assembly of members. The board of directors, subject to the articles of association or bylaws, may delegate signing powers to a manager or management committee. Foundations are normally managed according to the deed of endowment by a board of directors or trustees elected by the donors or their appointees.

Because an NGO has juridical personality, the members of its governing bodies may not be held personally liable for harm caused by third parties unless they have committed fraud or wanton action. But NGO members can be held liable to NGOs in cases of contractual liability, for example by breaching an agreement to pay membership fees, and to third parties in case of fraud. The law is silent as to conflicts of interest and self-dealing; such issues may be resolved by referring to provisions in the Commercial Act and its 1969 Amendment concerning joint stock companies, though it is not clear how the provisions would be enforced in the context of NGOs.

### **IV. Dissolution, Winding Up, and Liquidation of Assets**

The law is silent as to who is permitted to initiate the voluntary or involuntary dissolution of an NGO. Thus, dissolution is subject to the provisions of the articles of association or bylaws. The general assembly of members may vote to dissolve the NGO, either on their own initiative or at the request of the board of directors or board of trustees. Based on principles of Iranian commercial law, involuntary dissolution may occur in the following instances:

- (1) when the NGO’s term of existence has expired;
- (2) when the NGO has achieved its purposes;

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<sup>17</sup> Sabi, *Commercial Code of Iran*, English translation, at 90.

<sup>18</sup> Article 18 of the Executive Regulations provides that the founders must be of Iranian nationality, at least 18 years old, agree to be bound by the Constitution, have no criminal records, and not belong to a group declared hostile to the government.

- (3) when it becomes impossible for the NGO to pursue the purposes it was formed to pursue, or when the purposes of the NGO become illegal;
- (4) when a court judgment has been entered for the dissolution of the NGO; or
- (5) when the NGO becomes bankrupt.<sup>19</sup>

The procedures for dissolution are determined by the articles of association or bylaws of the NGO. Ordinarily, the board of trustees or the board of directors proposes the dissolution to the general assembly of members, who approve the proposal and appoint a liquidator or a board of liquidators. The law specifies that upon dissolution, assets may not be divided among the founders, members, board of directors, board of trustees, or employees. (See *Executive Regulations, Article 7.*) Beyond that prohibition, the NGO's articles of association and bylaws determine how assets are disassembled. Creditors of an NGO have the same claims as the creditors of a commercial company, such that the NGO must pay creditor claims before its assets are allocated to others. (See *Commercial Act, Article 584.*) Any interested party may file action with the courts seeking the reversal of either the voluntary or involuntary dissolution of an NGO.

## V. Regulations

Every NGO is required to file an annual report of its activities and financial operations to the appropriate supervising board.<sup>20</sup> (See *Executive Regulations 2005, Article 5.*) If the supervising board requires, the NGO may be required to submit periodic reports as well. (*Id.*, *Article 26.*) NGOs are also required to make their records available at the supervisory board's request for inspection at the NGO's office. (See *id.*, *Article 9.*) The law requires that submitted reports must include information on operations as well as financial statements, but does not provide further detail. The law is also silent as to whether these reports become a matter of public record, but it does provide that NGOs are entitled to access the records of public organizations as long as they are not classified. (See *id.*, *Article 12.*)

If an NGO fails to file its annual or periodic reports, it can suffer severe penalties. The supervising board can revoke the NGO's permit or seek the NGO's dissolution from the judicial authorities. (See *Executive Regulations, Article 28.*) These penalties are regularly enforced.<sup>21</sup>

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<sup>19</sup> This list is based on principles of Iranian law codified in the Commercial Act and reflected in current practice regarding commercial organizations in Iran.

<sup>20</sup> As mentioned above, NGOs that operate on a national level should report to the national supervisory board, whereas local NGOs should report to the supervisory board for their state or province, depending on the regional scope of their activities.

<sup>21</sup> Those familiar with NGOs in Iran have indicated that government officials are diligent about enforcing regulations. In the words of one attorney consulted, officials are quite zealous about enforcing laws, even when there is no law to enforce.

## VI. Foreign Organizations

### A. Registration, etc.

The new regulations establish a special board for granting permits to international NGOs that wish to work in Iran. (See *Executive Regulations, Article 29.*) The board is to consist of representatives from the Ministry of Foreign Affairs, Ministry of Internal Affairs, the Ministry of Intelligence, and when relevant, representatives of pertinent government agencies. This is an improvement over the old system, where international NGOs wishing to formally register within Iran were to sign a Memorandum of Understanding (MOU) with the Ministry of Foreign Affairs, without which they had to sign a Letter of Agreement for each project they planned to implement. The time and energy required to obtain the MOUs and Letters of Agreement has been criticized for discouraging international NGOs from beginning projects in Iran and impeded international NGOs currently operating in Iran from expanding their projects.<sup>22</sup> Other problems reported by international NGOs include difficulties funding their projects, as they are not provided a clear set of rules for setting up bank accounts.<sup>23</sup>

### B. Foreign Grants

If an NGO wishes to receive funds from a foreign organization, the NGO must notify the appropriate tier of the supervisory board. The supervising board must in turn report that information to relevant government ministries for their opinion. The new regulations shorten the time limits. (See *Executive Regulations, Article 6, Note 1.*) The supervisory board has one week to approve the funding and one week to seek information from relevant government ministries. But the relevant ministries have up to one month to declare their opinion, and the new regulations do not clarify what impact this would have on the grant application.

Even so, the new regulations do provide that grants from United Nations organizations as well as certain other international organizations will not require pre-approval. The Ministry of Finance is to publish a list of the other international organizations exempt from approval procedures. (*Id.*, Note 2)

NGOs wishing to partake in international gatherings and trainings must notify the appropriate supervisory board in writing. (See *id.*, Article 10.)

## VII. Miscellaneous

- A. Mergers and Divisions. The law is silent as to rules and procedures for the mergers and split-ups of NGOs. Generally speaking, mergers of legal entities have not been provided for in Iranian laws.
- B. Investment and Endowment. There are no special rules for investing the property or endowment (patrimony) of an NGO. In addition, the law is silent as to whether NGOs may invest abroad. Thus, NGOs can legally undertake legal investments, subject to any limitations provided in their articles of association.

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<sup>22</sup> Baquer Namazi, *Iran NGO Situation Analysis*, January 2000, available at [www.iranngos.org](http://www.iranngos.org).

<sup>23</sup> *Id.*



- C. Political and Legislative Activities. As mentioned above, NGOs are by definition prohibited from engaging in political activities. (See *Executive Regulations, Article 1*.<sup>24</sup>) In addition, guilds are specifically prohibited from engaging in political activities or from being affiliated with political parties or groups. (See *Guild Regulations, Article 5*.)

### VIII. Tax Laws

Registered public interest NGOs enjoy tax-exemption with respect to the financial aids and gifts (cash or in kind), membership dues, and other contributions, provided that such sources are used for the various purposes set forth in the Direct Taxation Act. These purposes must be in accord with "Islamic standards"; they include culture, research, science, invention, exploration, training, and health. (See *Direct Taxation Act of Iran ("Direct Taxation Act")*, Article 139, para. G, as amended by Article 64 of the Law Concerning Certain Articles of the Direct Taxation Act, enacted on February 16, 2002 (27 Bahman 1380).)<sup>25</sup> Contributions by estates or under a last will and testament are also deductible. (See *Direct Taxation Act, Article 24, para. 3*.) There are no special laws on endowments, and gifts in the form of endowments are treated as tax-deductible contributions. The Direct Taxation Act provides no limits on contributions by either businesses or individuals to NGOs. There are no special state or local tax laws. Any ambiguity in the Direct Taxation Act is resolved by the High Taxation Council or the Just Administrative Tribunal, which are the highest authorities on tax issues.

Iran has no consumption tax, so NGOs need not file for exemption from VAT. NGOs importing products must pay duties, custom exercises, and the like.

#### A. Commercial/Business/Economic Activities

NGOs are explicitly permitted to conduct business activities directly, though the law is silent as to the extent to which they may engage in commercial, business, and/or economic activities. Any such activities undertaken by an NGO are subject to taxes. The profits an NGO earns through establishing educational seminars, publication of books and periodicals, etc., are exempt from taxation, provided such activities are aimed at achieving the NGO's purposes.<sup>26</sup> Iranian tax law does not distinguish between "related" and "unrelated" commercial/business/economic activities.

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<sup>24</sup> Article 1 of the Executive Regulations defines NGOs as those organizations formed on a voluntary basis for "non-profit and non-political purposes."

<sup>25</sup> Before the 2001 amendment to the Direct Taxation Act, professional NGOs formed under certain designated laws, such as the bar association, were also granted tax exemption with the approval of the Council of Ministers. See Direct Taxation Act, enacted on April 27, 1992 (Ordibehesht 7, 1371), published in the Collection of the Laws of the Year 1380 (March 21, 2001- March 20, 2002), vol. 2, at 1719.

<sup>26</sup> See the Direct Taxation Act, Article 139, Note 1, as amended by Article 64 of the Law Concerning Certain Articles of the Direct Taxation Act, enacted on February 16, 2002 (27 Bahman 1380).

### B. Reporting

Annual tax returns must be filed with respect to profit-making activities of NGOs. There are no substantiation rules for contributions, but any donation must be supported by a receipt issued by the NGO.

### C. Miscellaneous

The law places no limits on NGOs' administrative expenses or salaries, and there are no special accounting rules for NGOs.

## **IX. Compliance**

### A. General

In general, the rules applicable to NGOs are considered complex and difficult to understand. As a result, NGOs find it difficult to comply, though no studies have been done on compliance specifically. Enforcement of the rules is not considered knowledgeable, fair, or effective.

### B. Specific

There is a perception that some of the NGOs in Iran are under the Government's control and are used for improper economic as well as political purposes. In addition, the perception exists that government officials use NGOs to extract money and resources from private businesses, individuals, and international sources, either for their own purposes or for those of the government.

### C. Sanctions

If an NGO has violated the law, there are provisions for suspending its operations, freezing its bank accounts, and appointing officers or directors to act for it. In some instances, these sanctions are not self-executing and the supervising agency must apply to court for them to take effect.

## **X. Government Funding**

NGOs are permitted to compete for government funds in free and open competitions for which there are set bidding rules, and they can gain access to government funds through unsolicited proposals for grants and contracts. The government permits NGOs to bid and become the recipients of certain assets it is seeking to privatize, but does not recognize the need to continue to support privatized services. There have been reports that government assets and funding disproportionately go to NGOs formed or controlled by the government or particular officials.

## **XI. Privatization**

The legislature has declared its support for the privatization of government duties and services to the NGO sector. (See *The Third Economic, Social, and Cultural Development Plan, enacted on 18 Farvardin 1379 (April 6, 2000.)*) Special legal forms and procedures have been created to shift state assets or programs, such as cultural, educational, or health programs, to NGOs. But to date the government has not made a serious effort to privatize state activities by outsourcing to NGOs.

The new regulations, however, provide several further specifics on how the government can involve, cooperate with, and outsource duties and services to NGOs. community, providing encouragement that some privatization may in fact take place. First, the new regulations require government and public organizations to take relevant NGO reports into consideration in their decision making, as well as to invite NGOs to meetings when necessary. (See *Executive Regulations, Article 13.*) Second, the government is required to identify functions and activities that could be assigned to NGOs and take the necessary action to assign them. (See *id.*, *Article 14.*) And third, NGOs are entitled to report to the appropriate government and public organizations regarding what activities and functions they have the capacity to accomplish.

## **XII. Conclusions**

The most important legal problems that have faced NGOs in Iran have been, first, the absence of comprehensive, accurate, and effective laws on NGOs, and, second, the lack of support for NGO activities on the part of the government. Present laws have been criticized as both inconsistent and outdated in terms of diverging from current practice. Consider the present process for obtaining a permit to operate an NGO. Whereas the *Law Concerning the Activities of Political Parties* stipulates that only natural persons can obtain a permit to form a political organization, the previous *Executive Regulations* allowed natural persons *and* legal entities to form an NGO. And whereas the previous *Executive Regulations* required that the application be submitted to either the Ministry of Interior or the governor's office of the province, applicants were able to obtain permits from the Ministry of Labor and the Chamber of Commerce as well.

The *Executive Regulations* recently passed by parliament make numerous improvements on the current legal structure. First, they create a three-tiered supervisory board featuring representatives of the NGO community, with the capacity to facilitate and oversee the activities of local NGOs operating in the provinces and larger states, thereby demystifying and to some extent democratizing the permit application process. The supervisory board system also provides a meaningful structure for appealing the judgments of the supervisory boards. Second, the new law makes it easier for NGOs to take advantage of international resources. Third, the regulations provide for greater cooperation between the government and NGOs. Finally and most notably, the new law grants NGOs the standing to pursue legal remedies on behalf of the public interest.

Conversely, certain problems with the legal framework governing NGOs remain unaddressed. Most unfortunately, the new structure, despite probable intent to the contrary, perpetuates the problem of multiple supervisory bodies. The three-tiered supervisory board was conceivably created to streamline procedures. But other government institutions will continue to possess overlapping authority when an NGO's work coincides with that of a government agency, or when special authority is provided to authorities other than the supervisory board. In addition, the Bureau of Non-Commercial Organizations will continue to have responsibility for maintaining the NGO register, and nothing in the new law suggests that coordination between the supervisory board and this body will improve on the status quo. Also troubling is the fact that the new law does not provide the criteria upon which NGO applications will be approved and disapproved, and thus the threat that NGO applications will be decided in an arbitrary manner remains.

Nevertheless, the new law is an improvement upon existing practice, and the NGO community in Iran remains active in its efforts to improve the legal atmosphere governing NGOs. Those at the forefront of the NGO movement in Iran have called for independent action from the NGO community in the form of an “NGO Code of Ethics” that embodies the principles of accountability, transparency, and good faith necessary for the execution of their mandate.<sup>27</sup> Groups such as the Iranian NGO Initiative and Hamyaran are working to analyze and build the capacity of NGOs active in Iran. Furthermore, organizations such as the Peyvand Institute are developing ways to connect to the Iranian Diaspora community, which is one of the most educated and financially successful in the world.<sup>28</sup> The new regulations will undoubtedly contribute to the development of a vibrant civil society within Iran. But the future success of Iran’s growing civil society will most likely continue to rest on the shoulders of Iranians who work within the boundaries of an ever-changing and less-than-perfect legal structure.

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<sup>27</sup> Golzar Kheiltash, *The Rule and Role of Law in Iranian Civil Society*, December 2003, available at [www.hamyaran.org](http://www.hamyaran.org).

<sup>28</sup> The Iranian-American community in the United States ranks second highest among 67 ancestry groups in educational attainment. Per capita income among Iranian-Americans is 45 percent above the national average in America. Ali Mostashari, Fact Sheet on the Iranian-American Community, Iranian Studies Group Research Series, updated February 2004.

**SPECIAL SECTION: THE MIDDLE EAST**

**Arab Media:  
Tools of the Governments, Tools for the People?**

**By The United States Institute of Peace<sup>1</sup>**

**Introduction**

In the aftermath of 9/11, a shocked U.S. government and public asked, “Why do they hate us?” bewildered that the so-called Arab street views them—us—with extreme antipathy. Since that day in September, an urgent desire to quench this seething regional hostility has seized the government, hoping to mitigate or at least deflect any future terrorist attacks. A flurry of studies regarding the need for more effective U.S. public diplomacy appeared on Washington desks. Yet, no study seemed to start at the heart of the matter, with the minds and attitudes of the Arab people who were supposedly so angry at the United States. Believing that the Arab media played a critical role in shaping the information environment that was fomenting the “culture of death” that ennobled suicide bombers and the cult of terrorism, the United States Institute of Peace launched a systematic investigation into how the Arab media was informing and shaping the hearts and minds of Arab publics. With the aid of in-house expert 2004 Jennings Randolph Senior Fellow Mamoun Fandy, participants in the Arab Media working group met from March to August 2004 to examine such charged questions as who and what do the Arab media speak for; what opportunities exist to reform or blunt their incitement; and what is their role in forestalling or fostering a desire for a free press?

The workshop series aimed at understanding the full range of the Arab information environment through its media. During the six-month series, *al-Hurra*, the U.S. gov-

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<sup>1</sup> This August 2005 report is reprinted with permission from the United States Institute of Peace, <http://www.usip.org/>.

In March 2004, the United States Institute of Peace organized a six-month workshop series, as part of its Muslim World Initiative, to analyze the role of Arab media in shaping the information environment that encourages popular hostility in the region toward the West, particularly the United States. Senior Fellow Mamoun Fandy (2004-2005) chaired and Sheryl Brown, director of the Institute’s Virtual Diplomacy Initiative, co-chaired the series. The overarching objective was to complement the many U.S. public diplomacy projects directed toward defusing Muslim, particularly Arab, resentment toward the United States. The series examined the primary media sources of information, perceptions, and opinions among Arab populations—ostensibly the most hostile, perhaps the most misunderstood, and certainly the most oppressed populations in the Muslim world.

The Institute is grateful to Mamoun Fandy for his leadership of the series during his fellowship residence; to Dan Consolatore, Fandy’s research assistant, for his written briefs of each workshop meeting; and to Virginia Bouvier of the fellowship staff for her organizational and editorial support of the series and the final report.

The views expressed in this report do not necessarily reflect those of the United States Institute of Peace, which does not advocate specific policies.

ernment funded television project for Arab publics, was launched; the U.S. scandal around Abu Ghraib prison erupted; and the *9/11 Commission Report* was published.<sup>2</sup> All of these events informed and complicated the sessions' efforts. More groundbreaking events have occurred since the completion of the workshop series. All of them affect the troubled relationship between the United States and the region. Although activities in Iraq remain the centerpiece of today's attitudes about the United States in the region, recent shifts in the heretofore-entrenched power relationships seem to be taking place. Libya, Palestine, Lebanon, Syria, and Egypt, even Saudi Arabia—all have demonstrated vulnerability to the engines of international opinion and their populations' appetite for such globally televised political transformations as the Ukraine's "Orange Revolution." Even so, it would be too much to say that a single shared perspective among these regional populations exists, except perhaps suspicion about U.S. motives for being in Iraq and belief that the United States supports Israel against all Arabs, everywhere, at all times.

In the United States, the *9/11 Commission Report* and the even more critical *Defense Science Board Review* (DSBR)—both published in summer 2004, but the latter not made public until November 24, 2004—were inhaled in a single public breath, demonstrating an astonishing national desire for the "truth" about the government's mistakes leading to 9/11 and about the subsequent tide of hatred engulfing the nation from Western to Eastern hemispheres. Both reports serve the public by elaborating the many contradictions that their commissioners believe have become the locus of misunderstanding, failed vision, and misdirected U.S. policies, which over the course of years have fueled Arab hostility—its own often vitriolic media notwithstanding. Although the current administration has recently launched a new diplomatic approach to the region, including tasking yet another high-level administration official to lead its public diplomacy initiative, the government's effectiveness in changing hostile attitudes among Arab publics will depend on how sustained and deep its policy reformulation is. And to measure that, only time will tell.

### **The Immediate Problem**

Americans and the U.S. government, in particular, have an increasingly dangerous image problem in the Arab world, and not just since 9/11. According to polling by Zogby International, numbers show a drastic downward slide of Arab attitudes about the United States from April 2002 to June 2004. Hostility toward the United States among Moroccans, who have a seemingly less ferocious perception about U.S. intrigues, has risen from a disapproving 61 percent in 2002 to 88 percent in 2004; Egypt, a more predictable ful-

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<sup>2</sup> Besides the edifying *9/11 Report*, other illuminating publications about the Arab predicament and the U.S. response include *Terror's Mask: Insurgency Within Islam* by Michael Vlahos (Johns Hopkins, 2002); "The Kingdom of Silence," by Lawrence Wright (*The New Yorker*, January 5, 2004); "War of Ideology" by David Brooks (*New York Times*, July 24, 2004); "Bush's Lost Year," by James Fallows (*The Atlantic*, October 2004); and "After Grief, the Fear We Won't Admit," by Robin Wright (*The Washington Post*, "Outlook," September 12, 2004). Yet, the sine qua non among resources on the new Arab media is Jon Alterman's "New Media, New Politics? From Satellite Television to the Internet in the Arab World" (Washington, DC: Washington Institute for Near East Policy, 1998). During the preparation of this report, these extremely insightful articles were published: "The War Inside the Arab Newsroom," by Samantha M. Shapiro (*New York Times Magazine*, January 2, 2005), and "Success Without Victory," by James Fallows (*The Atlantic*, January/ February 2005). The devastatingly critical *Defense Science Board Report on Strategic Communication* was published in November 2004.

minator, from 76 percent to 98 percent—almost the same percentage that votes for Mubarak.<sup>3</sup> Arab hostility is due in part to U.S. activities and policies in the region that date to the first Gulf War and perceived U.S. championing of the Israeli cause against the Palestinians. Added to this is disinformation about American schemes to humiliate and subject Arab peoples promoted by Arab media, Arab intellectuals, Western-schooled expatriates, and religious figures. For their part, Arab regimes in the region today weave a web of dissembling that aggravates this situation. Regional governments play a double game through their control of the media. The first of these games involves regimes pandering to the ideological positions of their own threatening insurgency movements in order to remove themselves as targets of jihads. The second involves focusing public ire on external factors rather than their own oppression.

Nevertheless, there is sufficient grist to feed suspicion about U.S. good faith toward the region. To the question, “Why do they hate us?” James Fallows dismisses the all-too-easy retort, “They hate us for who we are,” as dangerous, self-justifying, and self-deluding “claptrap.”<sup>4</sup> He cites Michael Scheurer, a career Central Intelligence Agency officer who was head of the agency’s anti-bin Laden team during the 1990s: “There are very few people in the world who are going to kill themselves so we can’t vote in the Iowa caucuses, but there’s a lot of them who are willing to die because we’re helping the Israelis, or because we’re helping Putin against the Chechens, or because we keep oil prices low so Muslims lose money.” Quoting an unnamed civilian adviser to the Pentagon, Fallows tells us the stakes are high: “Osama bin Laden could never have done it without us. We have continued to play to his political advantage and to confirm, in the eyes of his constituency, the very claims he made about us.” His claims are, “The United States will travel far to suppress Muslims, that it will occupy their holy sites, that it will oppose the rise of Islamic governments and that it will take their resources.” One need only point to Iraq to give Arab populations evidence of bin Laden’s claims. Historical U.S. support for Arab governments has left the U.S. government without much of a leg to stand on as it hears how their oppressed populations hate us for that support. As the *Economist* puts it:

Scandals at Abu Ghraib and Guantanamo have made it difficult to maintain that there exist universal notions of human rights, rather than particularist and discriminatory ones. America’s record in Iraq is not pretty. The past week’s imagery alone has included a bombed ambulance, a dead infant being removed from a shelled building and the on-camera killing of an Arab television journalist.<sup>5</sup>

Without doubt, the contradiction between U.S. policies and American values is more complicated than it appears. When U.S. security needs come up against the prospect of political transformation toward more democratic governance in the region—newly minted democratic regimes that could very well eschew liberal principles and values—how should U.S. policy position itself? As Richard Haass reminds us,

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<sup>3</sup> *Defense Science Board Review*, 2004 Summer Study, p. 54.

<sup>4</sup> *Atlantic*, October 2004, pp. 68-84.

<sup>5</sup> “The War for Islam’s Heart,” Sept. 18-24, 2004.

Prospects for the democratic improvement of a society can prove even worse absent occupation. Those who rejoiced 25 years ago in the overthrow of the shah of Iran should reflect on the fact that unattractive regimes can be replaced by something far worse. We thus need to be measured in what pressures we place on such countries as Saudi Arabia and Egypt. Here as elsewhere it is important to observe the Hippocratic oath and first do no harm. Time is a factor in another sense. There is no realistic way that democracy will arrive in either North Korea or Iran before nuclear weapons do. And even if “freedom” were somehow to come to Tehran, it is almost certain that free Iranians would be as enthusiastic as the mullahs are about possessing nuclear weapons owing to the political popularity of these weapons and their strategic rationale given Iran’s neighborhood.<sup>6</sup>

Most people agree that democratization in the region is regime change by another name. Authoritarian and dictatorial Arab regimes, whether U.S. allies or not, could not survive actual exposure to the will of their populations. Many U.S. policymakers and influential opinion makers openly worry that democracy would actually “destabilize” the region.

Those who worry about regional security note that revolution often leads to “one vote, one time,” such as when Iran’s population opted for rule under the Ayatollah Khomeini or when the Algerians elected the Islamic fundamentalist Front de Liberation Nationale (FLN) government in a “one man, one vote, one time” election. Too, there is the suspicion that in the aftermath of U.S. disengagement and support for Israel and regional allies, popular antipathy will not only continue, but, fueled by a perception of U.S. weakness, become even more strident.

There is no easy answer to this dilemma, except perhaps from the vantage of the oppressed populations, who must take responsibility for their own destinies. In the meantime, nuanced assessment and understanding and action are not characteristic of general populations anywhere, anytime. The desire for easy answers, which point blame and responsibility to others, *is*, however. As a consequence, stereotyping U.S. intentions by dint of simplistic assessments, qua allegations, of its policies from the conspiracy-mongering Arab media, expatriate intellectuals, and radical religious leaders is not surprising. Arab populations, for their part, are most influenced by how they perceive the effect of U.S. policy on their immediate livelihood and their national identity. Most commonly, they characterize the United States as one of seven Cs: (1) cowboy and lawless; (2) colonialist, referring to the U.S.-Israeli relationship; (3) conspirator, targeting Arabs and Muslims; (4) crusader, reminiscent of the last great religious assault on Islam; (5) client of Israel; (6) capitalist; or (7) coward, referring to U.S. military and political history in Vietnam, Lebanon, and Somalia.

As for media’s role in exacerbating these perspectives, low-cost access to satellite technology in recent years has resulted in both an explosion of Arab satellite television channels and aggressive competition among them for market share, which in turn has translated into more Arabs having access to real-time information. Although the drive to capture market share mimics commercial, independent media, these channels, like the conventional Arab press, remain predominantly instruments of their governments, such as

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<sup>6</sup> “Freedom is not a Doctrine,” *Washington Post*, January 24, 2005, p. A15.



al-Jazeera by Qatar; of their patrons, such as al-Arabiya by investors from Saudi Arabia, Kuwait and the Gulf States; or of movements, such as *al-Manar*, the Hezbollah-owned and -run newspaper in the Palestinian territories and television station in Lebanon. As a general rule, media in the Arab world (including expatriate media, mostly located in the United Kingdom) operate in collusion with a reigning regional power to maintain the appearance of domestic social concord and the illusion of solidarity among Arab states' points of view. Meanwhile, they fuel calumny toward the perpetrators of their common "victimization," typically identified as Israel and the United States. Although cracks are beginning to show in the tight state monopoly over media because of an inability to control access to 24/7 global electronic media, including the Internet, censorship remains a fact of life. For journalists to raise objections to the picture of regime rectitude and regional solidarity is to risk censorship, jail, or worse. Strict self-censorship reigns as the *modus operandi* among media professionals; some might say that it takes the place of the journalistic ethics practiced where a free press exists.

What can we, the United States, do about this? Both the *9/11 Report* and the DSBR exhort the government and the public to confront the reality of how our policies appear to those who are on the other side of them:

Muslims do not "hate our freedom," but rather, they hate our policies. The overwhelming majority voice their objections to what they see as one-sided support in favor of Israel and against Palestinian rights, and the long-standing, even increasing support for what Muslims collectively see as tyrannies, most notably Egypt, Saudi Arabia, Jordan, Pakistan, and the Gulf states.<sup>7</sup>

Right or wrong, it is simply a fact that American policy regarding the Israeli-Palestinian conflict and American actions in Iraq are dominant staples of popular commentary across the Arab and Muslim world. That does not mean U.S. choices have been wrong. It means those choices must be integrated with America's message of opportunity to the Arab and Muslim world.<sup>8</sup>

It also means that the U.S. government needs to do a better job of explaining its policies within the context of America's democratic values of freedom of choice and opportunity, respect for individual rights and diversity, and staunch defense of those rights for all of its citizens. There should be no apparent inconsistency between its policies and its core values. As unpragmatic as that may seem at the time, consistency pays off: First, because where moderate Arab populations exist, such practice provides them an example of the good governance that reason, transparency, and accountability afford, and acts as a foil against the ever-growing grounds for recruitment of their youth to the ranks of radical Islam. Second, the rest of the world is watching and taking note.

### **The Arab Media Context**

Broadly defined, Arab media include all media written or produced in the Arabic language. Media exist in a cultural context, which must be understood before they can be accurately evaluated. Arab culture is no more static than any other culture. As elsewhere,

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<sup>7</sup> DSBR, p. 40.

<sup>8</sup> *9/11 Report*, p. 376.

political factors shape the media context in the Arab and Muslim world. Given the absence of citizen-based politics on the ground, regional observers and media commentators say, a caricature of it is acted out on the television screen. Media talk shows, especially call-in shows, substitute for authentic public debate in representative governments. The most highly acclaimed, watched, and emulated news outlet in the region today does not see its primary mission as news-gathering and delivering, but as providing compelling, often provocative, editorials on international events. The motto of al-Jazeera is “opinion and counteropinion.”

A few voices, mostly but not all governments, dominate in the region. The Muslim Brotherhood has inordinate influence over Qatari-subsidized al-Jazeera television, for example. These voices are predictably unfriendly to the United States. That said, Arab media are in the midst of a highly dynamic transition, fueled by the emergence of low-cost, accessible satellite broadcast technology. The proliferation of satellite channels has resulted in the emergence of a genuine transnational electronic media environment, including both regionally located and diaspora media. Most of these new media organizations target as their market Arab audiences, versus a specific national audience (e.g., Egypt or Saudi Arabia), creating the so-called pan-Arab market. This de facto media reality provides an ironic twist to the nonaligned pan-Arab political rhetoric of the 1950s and '60s. Ushered in by Gamel Abdul Nasser, a nationalized Egyptian media purported to speak for all Arabs. Later, pan-Arab rhetoric removed to journals and newspapers located in London or Paris, where Western-educated intelligentsia debated post-Marxist or -modern constructs rather than pushing for individual rights and freedom in the region. Today, however, it is the truly pan-Arabic satellite channels that compete for, speak to, and shape the attitudes of the Arab “street.”

Ownership by a particular Arab government does not preclude its desire for a pan-Arab media vehicle to project a regional presence. A shrewd calculation reckons that the cost of such an outlet buys continued political legitimacy among its own and regional populations. The cost of maintaining that legitimacy is high, however. Despite attempts to commercialize media activity with advertising revenues, the shortfall is formidable. Advertising revenue in the whole of the Arab world totals a mere \$1.5 billion a year. This includes print, television, radio, and other media. Annual operating costs, however, are around \$16 billion, which means a \$14.5 billion net loss each year. It is unlikely that increasingly impoverished Arab states can continue to subsidize this kind of loss. Other patrons, such as Hezbollah or Muslim charities, may have the financial resources to claim these powerful political instruments.

Although illiteracy is high and television is by far the most popular source for news, print remains influential throughout the Arab world. *Al-Hayat* has a relatively small worldwide readership of less than half a million, but the readership tends to be opinion makers. Newspapers and magazines are associated with the West and are pretty much dismissed by the general public. At the same time, the Palestinian newspaper, *al-Manar*, which speaks for and is owned by Hezbollah, uses American market publishing techniques to deliver its virulently anti-American message.

Regarding new online media in the Arab world, a wider range of perspectives and messages exists than is available through conventional media. Although individual online access in the region does not compare with Western access, it is nevertheless a growing

phenomenon, which is gorily apparent by the choice of the Internet as the preferred outlet for the public spectacle of beheadings by terrorist groups. Major Western networks such as MSNBC and NBC have Arabic-language Web sites, which are easily accessible to the growing (though still small) number of Internet users in the Arab world. Islamist organizations also have their own Web sites, as do major print and broadcast sources, such as al-Ahram and al-Jazeera. Unlike the satellite stations, many Web sites rely on Western news wires like Agence France Presse, the Associated Press, and Reuters. The electronic media are also subject to censorship once a site becomes popular or “noticed.” A visit by the Egyptian state security forces to the offices of Islamonline.net, for example, resulted in the site toning down its rhetoric.

Gabriel Weimann, a 2004 Jennings Randolph senior fellow at the U.S. Institute of Peace, has tracked the use of the Internet by terrorist groups. In an Institute Special Report, *Terrorism on the Internet* (2004), he lists the following among groups linked to terrorism in the Middle East: Hamas (the Islamic Resistance Movement), the Lebanese Hezbollah (Party of God), the al Aqsa Martyrs Brigades, Fatah Tanzim, the Popular Front for the Liberation of Palestine (PFLP), the Palestinian Islamic Jihad, the Kahane Lives movement, the People’s Mujahedin of Iran (PMOI—Mujahedin-e Khalq), the Kurdish Workers’ Party (PKK), the Turkish-based Popular Democratic Liberation Front Party (DHKP/C), and Great East Islamic Raiders Front (IBDA-C).

According to Weimann, the target audiences for these sites include current and potential supporters, international and enemy publics (i.e., citizens of the states against which the terrorists are fighting). To attract locals, the Web sites use slogans and offer items for sale, including tee shirts, badges, flags, and videotapes and audiocassettes in their own languages. The sites provide detailed information about the activities and internal politics of the organization, its allies, and its competitors. International visitors who may have some interest in the issues but are not directly involved can often find the site in their native tongue. Weimann notes that foreign journalists may be the ultimate targets for these sites, because press releases and historical synopses are readily available on them. As for enemy public targets, he speculates that although not an explicit audience, it is surely an implicit one. He argues that efforts to demoralize the enemy by threatening attacks and by fostering feelings of guilt about the enemy’s conduct and motives point to that end. A secondary objective is to stimulate public debate in order to change public opinion and to weaken public support for the governing regime. Other Internet terrorism experts concur that a primary audience may in fact be foreigners, both expatriates in the region and foreign press. In an online article, Jeffrey Donovan of Radio Free Europe/Radio Liberty cites Thomas Hegghammer, a researcher at the Norwegian Defense Research Establishment in Oslo.<sup>9</sup> Hegghammer believes that the Internet will play an increasingly important role for militants as they intensify their campaign in Saudi Arabia, which hosts several Muslim holy sites. “I think [Internet videos are] most certainly aimed at the Americans or the Westerners in general. It’s supposed to create fear in the expatriate community in Saudi Arabia and to cause some kind of exodus from Saudi Arabia.”

A perspective on the role of the Internet less sinister than Weimann’s is presented by the Brookings report on public diplomacy, *The Need to Communicate: How to Im-*

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<sup>9</sup> <http://terrorisme.net/> (June 16, 2004).

*prove U.S. Public Diplomacy with the Islamic World* (January 2004). The report points out that polls show that among the rapidly growing youth population in the Middle East, those who have access to the Internet are more likely to have an affinity for American values. The report argues that Internet access is a “cornerstone” for public diplomacy expansion. As usual, Internet access is a two-edged sword. Even so, the opportunities it affords should be acknowledged and pursued with vigor. Most important, the Brookings report singles out youth as a new consumer of this medium, a reality that terrorist groups have long and actively recognized.

Another area of growth presented by the report is the incredible rise of bloggers from the region. “Big Pharaoh,” from Egypt, is a classic example of a committed, hopeful, and educated youth from the region. The names and numbers of these free-spirited youth are too many to list, but the fact is that they are on the rise and they communicate across religious and political borders.

The most novel and interesting aspect of the Internet phenomenon in the Arab world is the prevalence and impact of listservs, which allow direct contact with otherwise hard-to-reach sources. Listservs also deliver potentially valuable information to reporters and others; the Iraqi resistance, for example, has published detailed descriptions of attacks on Americans on its listserv.

Finally, some online media reviews are making a credible showing in the region. Among them are the Institute for Professional Journalists (IPJ) at Lebanese American University and Transnational Broadcasting Studies (TBS) at American University in Cairo.

As influential as all of these new forms of media are becoming, it is the satellite channels that show the greatest potential for ushering in political change. Whether these changes will ever be realized and whether they will be for the good of Arab populations in general depends on many factors. The first question is, what role will the current media patrons play in accepting, directing, and managing this change? Will they manage the power shift by establishing the legal and commercial means to share ownership with self-realizing media organizations over their publics’ “hearts and minds”? Will they cleave to their hold over media “truth,” increasingly dictated to them by the insurgencies’ grip over the public imagination? Or will violent revolution ruthlessly wrench power from them?

### ***Journalists***

Although media technology has advanced at breakneck speed, the profession of journalism among new stations remains high-centered on the question of their professional legitimacy. Absent a tradition of a genuine press culture, which would have established and enforced professional and ethical standards, professionalism is a rarity among pan-Arab stations. Among practitioners, there is no perceptible difference between journalists and columnists—that is to say, between reporters and advocates. In news production, for example, stations round up a few “talking heads” and put them on the air to muckrake, expiate, or generally spout off. The result is opinion-based analysis, without ever reporting the news. Arguably, this is a trend in all media today, the United States included. As Dana Milbank specified in a recent article,

Partisans on the left and right have formed cottage industries devoted to discrediting what they dismissively call the “Mainstream media”—the networks, daily newspapers and news magazines. Their goal: to steer readers and viewers toward ideologically driven outlets that will confirm their own views and protect them from disagreeable facts. In an increasingly fragmented media world, ideologues have already devolved into parallel universes, in which liberals and conservatives can select talk radio hosts, cable new pundits and blogs that share their prejudices.<sup>10</sup>

For whatever comfort it gives, the decisive difference is that media in democracies are free to decide their own news agenda. In a *New York Times Magazine* article on al-Arabiya, an Arab 24-hour satellite-news channel broadcasting from Dubai, Samantha Shapiro cites Nabil Khatib, Al Arabiya’s executive editor for news, as observing that “the central problem is that, although Arab journalists have access to state-of-the-art technology, the government and civic structures needed to support a free modern press don’t exist in the Middle East”: “Basic information like demographic statistics is treated as if it were a state secret, and it is almost impossible for the channel to report on the inner working of Arab governments—how budgets are drawn up or how leaders are chosen.”<sup>11</sup>

Also, the common claim that Arab journalists and reporters lack professional training is not necessarily true. Many carry American, British, or European passports and were trained in Western communications schools or media organizations. How is it that they have abandoned such professionalism as they possessed? Three factors explain this phenomenon. First, Arab regimes brutally enforce censorship, resulting in assiduous self-censorship in the newsroom.

In the same *New York Times Magazine* article, Khatib acknowledged as much:

If in Libya or Egypt I push someone to tell a story that will get him in conflict with the authorities, I can’t tell them, “We need it.” Because it goes without saying that this subject is dangerous. This applies to most of the issues that matter—all the things related to corruption and political conflicts.

Second, journalists typically compete with other media organizations not by introducing more objectivity to their reports, for which they are not rewarded, but by exciting their audiences through advocacy and opinion about international events, for which they are not punished. Third, unlike in the West, Arab populations do not look to the press to act as the fourth estate watchdog on the government. Rather, they dismiss journalists as political hacks or stooges. This low status is also reflected in their low salaries. As one Arab journalist quipped, all Arab editors together make less than the late Peter Jennings.

Regime fierceness in suppressing dissent, matched by an international neglect as well as a national disregard for their dissent, understandably discourages media professionals from maintaining their professional integrity. During the Cold War, the underground press and dissenting journalists in the Soviet bloc had the backing of the United

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<sup>10</sup> “My Bias for Mainstream News,” *Washington Post*, March 20, 2005, p. B1.

<sup>11</sup> “The War Inside the Arab Newsroom,” January 2, 2005, section 6, p. 26.

States and other pro-democracy governments during their years of protest; they also had a thriving literary subculture that disseminated antigovernment publications within the bloc. A lively *samizdat* kept the values of free speech alive during that dark period behind the Iron Curtain. Radio Free Europe and Voice of America also served as models and sources of encouragement for these oppressed populations, promulgating values connected to freedom of speech.

Unfortunately, in the Arab context, most of the authoritarian regimes are allies of the United States, putting U.S. foreign policy at odds with its national values. Arab populations, and journalists among them, tend to see themselves as victims of two forms of colonialism: one imposed by their own national governments and the second by the United States and its allies. Unlike the oppressed populations during the Cold War, they see their national and international oppressors working hand in hand to threaten their livelihood and to humiliate them. The Arab people resent their own governments and their foreign allies. Partly as a result of that political alignment and the lack of a space for legitimate political expression, the underground voices of dissent tend to be channeled into and through radical Islamist movements. When the regimes jail, torture, and oppress dissenters, they and their supporters often become radicalized. Al-Zawaheri, the second-ranking man in al Qaeda, for instance, became radicalized while jailed in Egypt.

There are brave journalists such as Fahd al-Rimawi, editor of *al-Majd* newspaper, currently imprisoned in Jordan because he ran a story critical of Saudi Arabia. His colleagues in Jordan, apologist Arab journalists, parrot the Jordanian government's rationale that al-Rimawi was arrested because he was "harming relations with a brotherly Arab country." Using clever maneuvers, a daring few get their stories out under authoritarian rule. An illustration shows the length to which they will go: in an interview for a Kuwaiti publication, President Hosni Mubarek of Egypt, believing the interview was off the record, was especially candid in his opinions about other Arab leaders. The Kuwaiti newspaper published the interview. Egyptian journalists, wanting to report the damning interview in their own press, framed it this way: "Those vicious Kuwaitis—published total lies about our president ... and here are the lies . . . [proceeding to quote Mubarek]." They ran the story about Mubarek while protecting themselves under the guise of outing the Kuwaitis. This kind of reporting would be ethically questionable in an open society where a free press shuns libel. In this context, however, it seems an act of bravery, if not adroitness, in confronting a totalitarian government.

Historically Arabs and Arab media in particular have viewed the Western press deferentially not only because of its technical superiority but because of its breadth and depth of accurate coverage. The British Broadcasting Corporation's (BBC) Arab news service has been the gold standard throughout Arab national movements following the end of colonialism in the region. Western coverage of the 1967 Six-Day War between Israel, Egypt, and Syria, and again of the 1991 Gulf War demonstrated to Arab audiences the reliability of Voice of America, Radio Monte Carlo, and the BBC news coverage, especially compared with their own national media coverage. At the same time, however, although war coverage accentuated the dominance of Western media, it also revealed a fundamental hypocrisy to Arab audiences about Western interest in—thus sympathy toward—oil-soaked birds over Iraqi civilian casualties.

The competition between Western and Arab coverage was again dramatically highlighted during the 2003 Iraq War. But this time, Arab satellite channels surged ahead of the 1991 media star, CNN. Their newly won status became clear when Western media began to use Arab media feeds. Almost a Rocky Balboa phenomenon, nothing in the Arab world today parallels the effect on Arab populations of al-Jazeera's one-upmanship over Western media, illustrated by its sensational war coverage and subsequent international notoriety.

In an article on *Guardian Unlimited*, Alastair Campbell, director of communications and strategy for U.K. Prime Minister Tony Blair prior to and during the recent Iraq war, describes a recent visit to the station. The article is provocatively entitled "I was wrong about al-Jazeera."

I thought they would be cocky and brash because they had made themselves into the media story of the last decade. In fact, I found them worried about the way they were perceived, and genuinely perplexed by what they saw as a one-dimensional American view of their output. They see themselves as agents of change, but condemned as part of a dangerous status quo. They report anti-Americanism, but deny anti-Americanism is part of their ethos. There is widespread coverage of anti-Americanism in South America and Asia, even in Japan. But it goes unnoticed: "We are unfairly treated in the way we are singled out."<sup>12</sup>

Admittedly, production values, use of the equipment, and competitiveness among these new satellite stations, particularly al-Jazeera and al-Arabiya, are as good as any media in the world. Production quality is not the issue, critics of Arab media maintain. It is the lying and inciting against Western governments that strip these media organs of credibility and professional standing. Arab media counter that they do exactly what the American media do: mirror and pander to the emotional and political sentiments of their audience in order to maximize their market share.

Programming in any highly saturated media market tends to reflect consumer preferences. And, like all media with a popular consumer base, Arab media is heavily entertainment-oriented. Not surprisingly, news has become part of that orientation. Nor are Western media exempt. Arab media, however, although they adopt the populist posture of responding to audience demands, do not accept the corollary role of watchdog over the government on behalf of their respective constituencies. More often, they are the pawns of their owner governments. Nevertheless, it is difficult to distinguish whether governments deliberately incite their regional audiences through a pan-Arab agenda or whether the "Arab" consumer is now demanding a more violent and emotive news programming as part of the daily entertainment media fare.

Still, all these new satellite channels do tend to reduce coverage to imagery, a more powerful and cheaper way of conveying the news. Because complexity and nuance are not visually adaptive, scenes of carnage are used to emotionalize rather than to analyze the causes. Regional media prize the most visually titillating footage because it draws the largest viewership among all Arab audiences. Moreover, Arab media organizations respond, "War is war. It produces carnage and death. Part of our job is to show

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<sup>12</sup> *Guardian Unlimited*, September 15, 2004,.

that.”<sup>13</sup> They point to the U.S. media outlets showing the images of the corpses of Uday and Qusay Hussein, which by all counts was a violation of journalistic ethics and norms. To be sure, a tension between the propriety of showing gruesome images and protecting freedom of speech and a right to know will always exist within news organizations’ missions. To most, however, incitement, like pornography, is a case of “you know it when you see it.”

And, increasingly, Arab audiences, journalists among them, are calling it for what it is. Appropriately, satellite channel broadcasts of terrorist atrocities such as abductions and hostage beheadings have begun to spark outrage. In the days following the abduction of French journalists in Iraq, al-Sharq al-Awsat (London) columnist Samir ‘Attallah grappled with the implications for all Arabs and Islam:

What would happen if the journalists were not French or a country expressing solidarity with the Arabs? Would it then be permissible to abduct them? Is it permissible to abduct Koreans, Italians, and Americans and to slaughter them before the camera...? It saddens me to say that the responsibility for this lies not only with several wild barbarians...

And, laying the climate that tolerates these actions at the door of Arab governments, he concluded:

It is the doing of the government parties, authors, and elected officials who feared and were silent, as if giving legitimacy to a culture of abduction, murder, and beheading and keeping [the heads] in the refrigerator alongside the mangos and the morning milk.<sup>14</sup>

Abd Al-Hamid Al-Ansari, former dean of the faculty of Shari’a at the University of Qatar, noted the double standards that reveal a moral duplicity in the London Arabic-language daily *Al-Hayat*:

Why have we not seen an expression of solidarity in similar instances of abduction of innocent journalists, workers, and drivers? Where was our moral conscience sleeping when our satellite channels aired before our eyes and ears the pictures of slaughter and mutilation of bodies? Why have we heard no similar condemnation of these terror operations? Why this duplicity...?<sup>15</sup>

Numbering among these occasions for self-examination was Secretary Rumsfeld’s testimony to Congress about the Abu Ghraib prison scandal. It was carried live on al-Jazeera and al-Arabiya, two of the region’s most popular satellite channels. Apparently, the testimony affected Arab journalists in unexpected ways. One print reporter suggested that the speaker of the Egyptian parliament should use the event as a training session for members of parliament on how to interrogate their own executives. What was notable to those who spoke out was that the scandal was an American problem, exposed and reported on by the American media, which made the debate public and accessible not only to Congress but to U.S. citizens at large. Why, one journalist wondered, shouldn’t

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<sup>13</sup> *Guardian Unlimited*, September 15, 2004.

<sup>14</sup> <http://www.asharqalawsat.com/>, September 1, 2004.

<sup>15</sup> September 9, 2004.



we have a similar debate about torture and human rights abuses in Egyptian prisons? Other journalists focused on the robust functioning of a serious parliament—how American elected officials held the Secretary of Defense’s feet to the fire. American culture has demonstrated an irresistible appeal, which historically has exacted a powerful pull by way of example.

### ***Media Markets***

Scholars have tried to track audience profiles and content preferences among Arab populations, but good data are limited and resources are not plentiful for these studies. Those that have been conducted tend to reflect the survey sponsor’s values. There are a few things that can be said about this still mostly unexplored area. In "New Media, New Politics? From Satellite Television to the Internet in the Arab World," a Policy paper published by the Washington Institute for Near East Policy in 1998, Jon Alterman observed:

The rise of regional information organs has reinvigorated a sense of common destiny among many in the Arab world. The regional media market is notable for several reasons. It is, in fact a market. Relying on supply and demand, programming does not simply meet the needs of government broadcasters, but rather actively seeks viewers who enjoy a variety of news and entertainment options. The consequence is an enormous empowerment of the viewership and a dramatic improvement in viewer satisfaction with programming.

The imperative is to produce programming that enlarges and unites rather than fractures the regional market. This has resulted in a media focus on international rather than domestic affairs, with the unifying slant of “Arab-world-versus-the-rest” rather than the potentially divisive examination of their national and cultural distinctions and differences. As a consequence, the issues around which Arabs tend to unite and which also elicit “anti-American” feelings are strong and ubiquitous.

Given “the Arab” as the prototype consumer, marketing to that consumer has tended to affect media content—the reverse of conventional assumptions that media content shapes popular attitudes. Tracking historical media preferences among Arabs living in Israel shows a fairly clear picture of consumers selecting the outlet that best coincides with their political point of view. When the credibility of the Arab press died with the Arab defeat in the 1967 war, a younger Arab generation began listening to the more informative, less polarized Hebrew-language press. During the 1970s and '80s, Arab elites in Israel got their news largely through the Hebrew-language media. Fueled by a sense that an Arab-Israeli peace was imminent and responding to Arab populations that wanted information about Israel, a new upstart satellite station, al-Jazeera, captured large audiences with its unique coverage. Originally, it was regarded as “Zionist” by other Arab media because it criticized the various Arab governments of the region and covered Israel. Yet in fall 2000, with the collapse of peace negotiations, the rise of the Intifada, and increasing Israeli incursions into Gaza and the West Bank, public opinion shifted, and so did al-Jazeera’s coverage.

During the past five years, its approach to regional issues has reflected the shift in Arab popular sentiment, backing the Intifada and opposing the U.S. invasion of Iraq. State Department surveys over the past four years also record this dramatic shift in confi-

dence in the good offices of the United States in the peace process. In spring 2000, 63 percent of Arabs had confidence that the United States was mediating in good faith. By fall 2003, that percentage had dropped to 40, then in March 2004, to 30 percent. It is no wonder, then, that Arabs watch al-Arabiya and al-Jazeera, which align with their view of facts on the ground and which, accordingly, they trust.

Although “the Arab” is the consumer profile for regional and diaspora Arab media, it would be a mistake to conceive of that audience as homogenous. Arab audiences are a rich demographic mixture. The vacuum created by media neglecting national and ethnic focus, per se, has left Arabs ignorant about “others” included within the pan-Arab profile. Syrians are likely to know more about the United States than about their fellow Arab states. That said, personal loyalty to a pan-Arab identity is conflicted. Until recently, national cultural identity has represented a key source of individual dignity. This fact shows up when discussing language on these pan-Arab stations. Lebanese do not necessarily admire Egyptian or Saudi dialects or vice versa. Yet, despite a generally felt abhorrence toward their respective governments, today, reclaiming their “greater” Arab destiny through the stature of such stations as al-Jazeera offers these disparate populations a more meaningful international presence.

### ***Content***

As a general rule, the minister of information in each Arab regime makes it his business to shape the content of Arab media by enforcing harsh laws backed up by imprisonment and physical violence. Nevertheless, the explosion of media voices in the region has complicated his traditional control over content. Not only must the regime monitor the messages of a mushrooming media scene, it must also gauge its effect on an expanding population of a predominately poor, illiterate youth—also the target audience of radical Islamist groups.

The prominence of the pan-Arab market affects content in at least three overlapping and reinforcing ways. First, with the increased accessibility of satellite television, broadcasters compete for audiences in a highly saturated market. Second, high viewership coupled with low literacy means that programming aims at the lowest common denominator, usually entertainment. Third, Arab governments use their media to maintain their hold on their populations.

Regarding competition and entertainment, the extraordinary regional popularity of Future Television’s Superstar underlines this dynamic. Within a saturated market that prefers entertainment as its daily fare, news must titillate in order to compete. Again, this situation is not unique to Arab media.

Media in free markets also pander to their audiences in order to capture ratings and advertising revenues. Yet, add the Arab government-owned and -run factor and you have a different brew: the similarities between the Arab and Western media environments collapse. Because Arab media organizations are owned by and scripted under the watchful eye of their oppressive governments, they are instruments of the government’s agenda rather than authentic news vehicles. The *Economist* has reported how on September 1, 2004, Egypt’s leading newspaper, the government-owned daily al-Ahram, buried deep inside its pages the brutal massacre of twelve Nepalese kitchen workers by Iraqi guerrillas, who claimed to be doing God’s work by executing Buddhist invaders. A day later, on

its front page, al-Ahram featured rioters in Katmandu, the Nepalese capital, attacking a mosque, without any cause-and-effect explanation.<sup>16</sup>

Moreover, the pan-Arab market offers irresistible opportunities for regional collusion among governments. They own the means to construct a fabricated reality, presenting an international environment in which Israel and the United States victimize Arabs everywhere. And in so doing, they rationalize their own iron-handed legitimacy as a “pan-Arab” necessity. To reinforce their solidarity, Arab governments have never allowed their respective media to evaluate critically national domestic policies or those of friendly (other Arab) governments. The media do not delve into national or local issues because these are the issues that most threaten their governments’ authority and legitimacy. Coverage of specific problems in individual Arab countries is absent. The justification offered is that people in one country—Oman, for example—would not be interested in Morocco’s national issues. Today, little or no coverage is given to the crisis in Darfur, Sudan. Al-Jazeera, which is financed and run by Qatar, a close ally of the United States and the staging area for U.S. Iraq deployment, features speakers who are hostile not only to the United States but to all moderate Arabs, in effect repudiating any diplomatic understanding between the two states about forestalling radical incitement. Nor does al-Jazeera’s posture as a renegade and daring media organization extend to its investigation of well-known succession issues within the Qatari ruling family.

This situation raises the question about the Arab media coverage of terrorist proclamations and acts. Notably, al Qaeda has primarily used al-Jazeera to make global statements about its activities. Other terrorist groups have also used well-known and not-so-well-known media, including Internet sites, to announce having taken hostages in Iraq and to portray their deaths in real time. As outrageous as this is, Western observers still find it difficult to determine where to come down on censorship of the press. Although the argument that portraying such gruesome images fulfills terrorist agendas to frighten and intimidate Western publics, it also has a reverse effect of “putting off” regional audiences and deglamorizing this sort of jihad.

An impressive outpouring of disgust among regional media over the Beslan, Russia, terrorist act includes such reactions as Mundiir Badr Haloum, a lecturer at a Syrian university, in the Lebanese daily al-Safir:

The Islamic press searches for something that will absolve “Islam” of the crimes of the Shahada [martyrdom]... It is Islam that adorns television screens with body parts.... Islam—whether those who praise its mercies like it or not—is the foul odor of the putrefaction of Islamic history and its stench.... Indeed, we as Muslims produce terrorism, succor it, and praise it. We condemn it only when forced to. Motivated by considerations of power, interests, and diplomacy, we wear a pained expression on our faces but in our hearts we rejoice at the brilliant success—a large number of casualties.<sup>17</sup>

There have been some promising, unanticipated effects of the intense media competition in the region. Despite the tight hold patrons have over media scripts and pro-

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<sup>16</sup> September 18-24, 2004.

<sup>17</sup> September 13, 2004.

gramming, the scramble for market share has introduced an incentive for a few more daring media outlets to strive for more credibility in the market. The distinction between pan-Arab and national media has begun to divide along these lines: pan-Arab media clinging to the tried-and-true topics that excite Arab passions, and the national media beginning to search for niche markets and authenticity within them. How independently these daring few can function depends on the culture as well as the ruling regime. Despite occasional arrests of journalists for attacking fellow Arab governments, Jordan is relatively open. Looking for a niche in a saturated market, Jordan Television has recognized that media outlets must compete with each other for credibility among their audiences. If stations are not credible in a saturated market, audiences change the channel. Credibility versus authority is a painful choice for these governments, which they may be facing all too soon.

This recognition may explain why some Arab governments appear to be taking steps toward cultivating more professional media organizations. United Arab Emirates Sheikh Abdullah bin Zaid, the son of the president and minister of information, was not disappointed when, with a little loosening of the reins, Abu Dhabi television's audience market share increased. When Syria's Bashar al-Asad first ascended to the presidency, he began to liberalize the media before backing away and reasserting strong state control because of political pressure from within the government. In Saudi Arabia as well, the leadership sees itself caught between religious conservatives and reformers, creating a context in which the media have recently been allowed to publish reformist views that were not allowed in the past.

### ***Impact and Media Reform***

The relationship that binds media, patrons, and publics in oppressive political regimes is a curious dependence. This dependence appears to be loosening in the Arab world. No matter how they try, regimes can no longer control the information environment. Both the intense regional competition that satellite channels represent and the newfound confidence in their media power demonstrated by scooping most Western media during the Iraq war have fueled this dynamic. The Arab satellite channels, like the genie let out of the bottle, leave us knowing more about what we do not know than what we do know about the degree and nature of their impact.

The glass-half-empty view: Radical voices use the media effectively because their message is simple and easily transmitted in visuals. Accurate reporting requires a thoughtful viewer to sort out and assess its meaning. Comprehensive analysis, as opposed to commentary, also puts the burden of final judgment on the viewer. Neither is favored by popular audiences, whether they live in a democracy or not.

The glass-half-full view: Increased competition for regional audiences has made clear that electronic media can influence popular attitudes, and, conversely, media-empowered audiences demand and get the programming they want. The result is that media patrons have begun to vie with their outlets and with each other for their traditional authoritarian influence over programming content and thus, the public's point of view. This is occurring in the context of a flourishing trans-border media market that has not yet recognized itself as a social force. Moreover, these same patrons must contend with

the availability of 24/7 global broadcasting from Western media, which is outside their control.

Reality: Although Arab media can put a modicum of pressure on governments regarding issues, they do not yet have the power to set the political agenda as the media do in the West. The fact that representatives of Arab governments call in to television programs to defend their human rights records indicates some advancement, however. Without question, topics besides Iraq and Palestine are important to Arab audiences. Like people everywhere, Arabs care most about their own personal and local concerns, such as their schools and their neighborhoods. Arab media should focus on these issues if they seriously intend to cater to their markets. But going off the regional “message” invites accusations of breaking ranks, selling out. In the “Jordan First” campaign (the government’s program that emphasizes the preeminence of Jordan’s interests), focus is on national issues; yet Jordan Television has become a target of regional attack for having abandoned Palestine for its own local interests.

Reform in the media will happen as a process, not a decision by fiat; and with the tradition of governmental control, it will not occur easily. The King of Jordan wants credibility, but bureaucrats and practitioners are not willing to change their familiar “safe” practices. As an illustration, an editor of Jordan Television described assigning a reporter to cover a somewhat controversial story. The reporter delivered a report with absolutely no substance. The editor insisted that he redo it and had to insist twice, whereupon the reporter asked, “Are you sure you want me to do this? ... We never did this before.” It is a cultural process—it will take time for journalists to redefine their role. Nor is the political environment sufficiently developed for meaningful reform. Governments always prefer to do their work behind closed doors, and the media’s position in the culture is not yet strong enough to challenge their governments.

Despite more talk among Arab media about human rights violations, it would be too much to say that they are encouraging government accountability and democratization. Some say such talk merely serves as a safety valve, rendering issues such as women, Islam, and ethnicity into entertainment. At this juncture, what can be said is that serious critical discussion of public policy issues is occurring more frequently than before the advent of the satellite era. Arab citizens have become accustomed to criticizing their own governments and to discussing issues more openly. Arabs are also learning more about one another, becoming familiar with dialects other than their own. The new satellite channels and other media are a pivotal emergent factor in the Arab world. Inadvertently or not, they offer a forum for the Arab street to vent, formulate, and discuss public affairs. They bring Arabs closer together, breaking taboos and generally competing with each other and their respective governments for the news agenda. All in all, Arab satellite stations have pushed ajar the door of democracy and flanked state monopolies on media. However qualified this assertion is, it does amount to a significant latitude when we say that al-Jazeera can talk about any topic except Qatar. Yet, we would be reminded by an editorial in *Rose al-Yusef*, the Egyptian weekly: “Our fear of speaking out has become the terrorists’ fifth column.”

## **Conclusions**

Like most of today's media, Arab satellite stations cater to and compete for their audiences' hearts and minds. Accordingly, regional history and its absence of democracy accounts for pan-Arab media's content and their success among Arab populations. Arab audiences watch the news through a prism of individual and collective humiliation and resentment. To cater to those audiences, media portray the distorted reality created by this prism; and to compete with each other, they exaggerate the distortion. The pictures out of Fallujah do not in themselves necessarily incite Arab viewers against the United States, but reportage claiming that Americans intentionally target civilians does. It confirms an already distorted view of reality. The stations play to a popularly held belief in order to up the ante in their competitive media environment. Such claims spur others to even more spurious allegations. This pernicious cycle ensures that moderation, much less reasoned truth, cannot be voiced.

Although the new satellite channels are technical improvements over what preceded them, their lack of professionalism—accountability regarding objectivity and fourth estate responsibilities to the public—renders them suspect if not a genuine danger to the West. To ignore or somehow justify their lies and inflammatory reporting as incidental to doing business in their political environment amounts to gross relativism. If al-Jazeera and its peers are not held accountable to the highest standards, they will never become genuinely professional media outlets. Countering their arguments that U.S. media are just as biased, one need only point to the speed and transparency with which the American media self-corrects. The public flaps over the *New York Times*' Jayson Blair, *USA Today*'s Jack Kelley, and *60 Minutes* airing fake documents about President George W. Bush's National Guard records demonstrate the punishments for those who do not meet the professional standards of reporting.

Despite their shortcomings, these new satellite stations should be encouraged. They should be criticized when they broadcast lies, and they should be applauded when they merit credit. Again, quoting Alastair Campbell:

Western politicians should feel free to attack it [al-Jazeera] if they think it deserves it. But there is a case for a more engaged approach. It is no good just complaining that your policy is constantly misrepresented. You have to engage in the task of putting your case, whatever you think of the medium, and you will probably do the job better if you try to understand where the medium is coming from.<sup>18</sup>

The workshop series finished its investigation of the current Arab media environment with a fundamental question about which factor was responsible for the incendiary tone and violent attacks on the West in general and the United States in particular. Was it the governments that owned the media organs, or was it the public who, in the media-saturated market, demanded confirmation of their own perceptions, and the media pandering to either or both? Clearly, the question points to the dynamic media transition underway in the region. Workshop participants recognized that media reform was an internal question that the U.S. government could encourage through a number of mechanisms. Such efforts were viewed as having only marginal value if they were not accom-

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<sup>18</sup> *Guardian Unlimited*, September 15, 2004.

panied by policy change toward the Arab governments and an insistence of the “rule of law” as a political condition.

Regime reform that institutionalizes a rule of law, that protects individual rights and concurrently freedom of speech, is the necessary precursor for media reform. Increasingly, calls by the public for political reform are appearing in and being disseminated by regional media. Partly in outrage over recent terrorist events, the public seems no longer able to remain silent about what is happening to its religion as well as its self-identity. If publicly recognizing that the “problem is within us” is a sign, root-level introspection may be occurring in the region. In answer to the incendiary fatwa by the Muslim Brotherhood urging attacks on American soldiers in Iraq, Arabs have stepped forward to renounce the call in the severest and most self-reflective terms. Kifaya may be a genuine clarion call, but to what destiny?

### **Possible Destinies**

The June 30, 2004, move to recognize Iraqi autonomy in the form of a U.S.-appointed government and the January 30, 2005, elections—which happened on schedule and in a mostly free and fair way—have gone far to release the insurgents’ psychological grip on the region’s blind acceptance of U.S. malevolence. Add to this the mostly free and fair election of Abu Mazen in Palestine and the however-limited local elections recently conducted in Saudi Arabia, and we begin to sense a tectonic political shift in the region. It is still too much to hope that Western-style democracy is around the corner, but something fundamentally new is emerging in Arab politics. However tenuous the tie, it seems to have something to do with the awakening of the Arab public to its own power. Could it be that Arab media, for all their warts, have played a part in that awakening?

Despite emergent signs that regime reform may indeed be gaining ground in the region, regnant regimes have much to lose in power and wealth, threat of bloody insurgencies by jihadists, and retribution from those who replace them. What regional institution would be capable of midwifing this transformation? Will it be left to foreigners or insurgents? Is it plausible to hope that the public will find its voice and challenge the regimes to transform into a just rule of law? Not until the public recognizes itself as an institution and a change agent. Only the media can provide a reflection of the public’s values, which, once recognized, could empower citizens to claim their rights and obligations. Can these hobbled media, perceived lackeys of their governments, perform this role?

Notwithstanding the deeply moving images of throngs of Lebanese youth attempting to usher in the “Cedar Revolution,” or Hosni Mubarak’s recent gestures toward expanding human and civil rights to other candidates in the upcoming Egyptian election, it is prudent to remain merely cautiously optimistic. Whatever shifts are afoot, they will take a while to become anchored in the civic understanding of citizen responsibility and the political accountability of just governance. The regional press has a critical role to play in this transformation. It is not at all clear whether this press has the wherewithal to transform itself, much less the citizenry of its respective countries.

Yet regime transition is occurring in the region. To some degree it is occurring in spite of recent U.S. encouragement, but to some degree because of it, too. One of Egypt’s most prominent human rights activists, Saad Eddin Ibrahim, just released from three

years of imprisonment for having questioned Egyptian electoral procedures, observed that President Bush midwived a process that was already in formation. Despite breathless attempts by U.S. pundits to recast the direction of regional politics from tyranny to democracy since January, more prudent observers will still query the volatility of these publics' political affiliations. It is not plausible that widespread suspicion and hatred associated with the U.S. government's occupation of Iraq and historical support of Israel have evaporated in the sunlight of purple fingers, Mubarak's election promises, or Syria's agreement to withdraw, however gradually, from Lebanon. Too, as Richard Haass argues, "Democracies are not always peaceful. Immature democracies—those that hold elections but lack many of the checks and balances characteristic of a true democracy—are particularly vulnerable to being hijacked by popular passions. Post-communist Serbia is but one illustration of the reality that such countries do go to war."<sup>19</sup> Islamists have not lost their influence in the region, especially among the mostly illiterate, poor, unemployed youth who compose one-third of the region's population.

Consequently, as change in the region advances, it is likely to become bloodier and even more confusing. Bloody because so much is at stake for the regional actors, confusing because no one is quite sure who the actors are and what they represent. In an analysis of the political dynamic of insurgency movements, Michael Vlahos wrote in *Terror's Mask: Insurgency Within Islam*, "The [radical Islamist] insurgency is an authentic Islamic renewal movement and central to change." Accordingly, "a successful Islamist revolution today is possibly the best way to defuse 'radical' Islam—because of necessity it will do the defusing itself."<sup>20</sup> In other words, reform may not come through liberal democracy ushered in by moderate Islamists. It may have to come through the turbulence of a French Revolution that turns what exists for a political space in on itself and comes out the other side. That, of course, is a truly scary prospect.

Robin Wright explored this argument in the *Washington Post* "Outlook" article "After Grief, the Fear We Won't Admit."<sup>21</sup> She quotes Ellen Laipson, president of the Stimson Center, as saying that the reality parameters are such that "it's hard to imagine political evolution in the next twenty years that does not include the Islamists. They have established legitimacy and a following and you won't make them disappear overnight by supporting the activities of a small elite of secular modernists ... you have to image a political space that has both." How, then, would that political space become less threatening for the West? To answer this question, Wright turns to regional expert Olivier Roy, who responded, "Conservative and even fundamentalist views of religion are manageable in a plural environment, as shown by a host of Protestant, Catholic, and Jewish cases. A pluralist approach allows civil society to reach the cadres of youth who could be ideal targets for radicals and neo-fundamentalist groups."

How do we get there from here? Wright points to Chairman of the National Intelligence Council Robert Hutchings's reasoning in a recent issue of *Foreign Policy*, "Even as it wages a resolute campaign against international terrorism, America should not believe that it is engaged in a fight to the finish with radical Islam. This conflict is not a

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<sup>19</sup> *Washington Post*, January 24, 2005, A15.

<sup>20</sup> (Johns Hopkins, 2002), pp. 28; 26.

<sup>21</sup> September 12, 2004.



clash of civilizations, but rather a defense of our shared humanity and a search for common ground, however implausible that may seem now.”

Without doubt, until political reform toward classical liberal values occurs in the region, the media will never become an objective fourth estate to ensure good governance. To a greater extent than we would like to acknowledge, most of the work toward that end is for the people in the region to do themselves. Fouad Ajami observed, “For at heart, this war for Islam is one for Muslims to fight. It is for them to recover their faith from the purveyors of terror.”<sup>22</sup>

In some respects, such reflections remove the burden of having to answer the question about why they hate us by saying that all of this boils down to an internal struggle over ascendancy in the region. Yes and no. Whether or not revolution is inevitable, the United States could ease the path to regime reform and a freer life for the Arab peoples by pursuing policies that these populations do not see as a threat to their lives and identity and that encourage their efforts to work for legitimate, responsible, accountable, and representative governments of their own. David Brooks provided a tough reality check for Americans as we ready ourselves to take on this newest burden:

We now need a commission to analyze our intellectual failures. . . . We need to see that the landscape of reality is altered. In the past, we’ve fought ideological movements that took control of states. Our foreign policy apparatus is geared toward relations with states: negotiating with states, confronting states. Now we are faced with a belief system that is inimical to the state system, and aims at theological rule and the restoration of the caliphate. We’ll need a new set of institutions to grapple with this reality, and a new training method to understand people who are uninterested in national self-interest, traditionally defined.

Although through the years, U.S. policies toward the region have exacerbated a festering indignation among diverse Arab populations, who are only broadly unified by their common language, it is their shared religion that represents their greatest political challenge. Arabs, who inhabit the heartland of Islam’s sacred sites and who must show appropriate stewardship of this divine providence to the rest of Islam, are politically conflicted. They are quite naturally drawn to the defiant hope of the radical and violent resurgence of the religious and cultural hegemony of a “restored” Islam offered by the ideological movement of al Qaeda. Yet, their own rich history as handed down through the writings of such thinkers as Al Farabi, Averroes, and Ibn Khaldun could guide them to governance based on toleration, rule of law, reverence for truth, as well as piety—a much sounder reclamation of a golden age of Islam.

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<sup>22</sup> “Facing up to unholy terror,” USNews.com, September 20, 2004, <http://www.usnews.com/usnews/news/articles/040920/20fouad.htm>.

ARTICLE

# A Comparative Analysis of European Policies and Practices of NGO-Government Cooperation

By Nilda Bullain and Radost Toftisova<sup>1</sup>

## Introduction

This article offers a European perspective on policies and practices regarding government-NGO cooperation in current EU member states, accession countries, and other Central and Eastern European countries. Specifically, it provides a comparative overview of three areas considered significant to the development of stronger NGO-government relations:

1. Policy documents and institutional mechanisms within government to facilitate civil society in different countries (best examples in Europe).
2. Government funding mechanisms at the national level and the local level for NGOs and public initiatives – including direct and indirect funding methods, grant-giving systems, subsidies, and financing of delegated public functions – with particular attention to the distinction between service organizations and advocacy organizations.
3. Government policies in Eastern Europe to involve NGOs in the EU at two levels: *EU policy making* (e.g., by giving NGOs a voice in formulating national positions, or by enabling domestic NGOs to work with other European organizations on influencing EU policy directly), and *EU projects* (by offering NGOs co-financing and pre-financing opportunities).

The article is structured in four chapters, which address (i) the overall policy framework of cooperation, (ii) the institutional framework, (iii) financing, and (iv) EU accession. It looks at best practices as well as instructive failures, innovative approaches as well as common ones. We generally include more information rather than less, so that the reader can cherry-pick within a subject of interest.

## I. Policy Framework: Policy Documents on Cooperation (PDCs)

Civil society's capacity to help establish a stable welfare democracy has gained widespread official recognition during the past decade. As a formal expression of this recognition, public authorities in several European countries have adopted documents that set forth the mutual benefits of a more institutionalized relationship between the “first” and the “third” sectors.

### I.1. What are policy documents on NGO-Government cooperation?

Policy documents on cooperation (PDCs) reflect an early developmental stage in the relationship between government and civil society organizations. They express the views of the public authority (government, Parliament, EU institution) on the role

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<sup>1</sup> Nilda Bullain is the Executive Director of the European Center for Not-for-Profit Law. Radost Toftisova is a consultant to the International Center for Not-for-Profit Law with expertise in the laws governing NGO-government partnerships.

of civil society, and create a basis for constructive interaction with third-sector organizations. PDCs pursue two primary objectives: encourage public participation in political life, and establish mechanisms for cooperation that will ease the government's burden in delivering public services.

To achieve these objectives, PDCs include general principles as well as specific plans.<sup>2</sup> They typically recognize the nonprofit sector's important role in societal development, articulate the principles of cooperation, and set forth broad intentions and then specific steps to be taken by the government and the civic organizations.

PDCs are usually the result of mutual efforts and negotiations. They include bilateral documents of the "agreement" type (U.K. Compacts), de facto agreements adopted as official programs by government (Croatian Program for Cooperation<sup>3</sup>) or Parliament (Estonian Civil Society Development Concept<sup>4</sup>), and unilateral statements expressing commitments by one side only (Hungarian Government Strategy towards the Civil Sector<sup>5</sup>).

## **I.2. Why are PDCs important?**

These agreements or statements offer tangible benefits to third sector and public sector alike. PDCs give civic organizations a means to increase support for their work and thereby expand their activity in the interest of society. For the government, the agreements can help ensure more complete performance of governmental tasks.

A cooperation policy cannot succeed unless each side understands, respects, and trusts "the other's roles and missions."<sup>6</sup> NGOs typically take the initiative to propose negotiations, but public authorities can also initiate the process and bring it to a successful conclusion, as was the case in Croatia and Hungary. Experts should be involved in drafting the text, and the discussion and consolidation stage should feature wide public participation.

Success, of course, requires much more than just a policy paper. Point 15 of the English Compact calls the document "a starting point not a conclusion."<sup>7</sup> As experience in the U.K. shows, indeed, the volunteer sector's inadequate comprehension can impede implementation and effective observance by both sides.<sup>8</sup>

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<sup>2</sup> See Daimar Liiv, *Guidelines for the Preparation of Compacts*, *IJNL*, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.

<sup>3</sup> [http://www.uzuvrh.hr/pdf/program\\_suradnje.pdf](http://www.uzuvrh.hr/pdf/program_suradnje.pdf) (in Croatian only)

<sup>4</sup> *Decision of Estonian Parliament Approval of Estonian Civil Society Development Concept*, 2002, <http://www.ngo.ee/orb.aw/class=file/action=preview/id=3356/EKAK-eng.pdf>.

<sup>5</sup> <http://www.nonprofit.hu>.

<sup>6</sup> *Danish Charter for interaction between Volunteer Denmark / Associations Denmark and the public sector*, December 2001, <[http://www.frivillighed.dk/filecache/2716/1079696504/charter\\_for\\_interaction\\_between\\_volunteer\\_denmark.doc.doc](http://www.frivillighed.dk/filecache/2716/1079696504/charter_for_interaction_between_volunteer_denmark.doc.doc)>.

<sup>7</sup> Compact on Relations between Government and the Voluntary and Community Sector in England, <http://www.homeoffice.gov.uk/docs4/COMPACTcommandpaper.pdf> (1998).

<sup>8</sup> See Daimler Liiv, *Guidelines for the Preparation of Compacts*, *IJNL*, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.

By the same token, we may emphasize “a process not a paper,” meaning that both sides can benefit even if negotiations do not produce a mutually agreeable text.<sup>9</sup> Government and NGOs can achieve a stronger relationship and better communications through the negotiation process, with its frequent contacts, constructive discussions, active cooperation, compromises, and mutual concessions and understanding. Even when no policy paper is adopted (as in the Hungarian case, discussed below), the process can also exemplify public participation in political decision-making.

### **I.3. What is the scope of a PDC?**

The title of such a document usually reflects its character as either unilateral or bilateral, and indicates the extent to which it is legally binding. The Agreement in Wales binds the government to fulfill particular commitments, whereas the English Compact represents only a “memorandum” on relations.<sup>10</sup> The Estonian Concept for the Development of Civil Society, adopted by Parliament, sets forth values, principles, and procedures designed to increase citizens’ participation in state life.<sup>11</sup> The Croatian Program expressly states that it is not legally binding but simply a framework for future cooperation.<sup>12</sup>

The EU Commission’s White Paper on European Governance, adopted on July 25, 2001, focuses on “the way in which the Union uses the powers given by its citizens.”<sup>13</sup> In order to promote stronger interaction between civil society and both central and local governments, the White Paper sets forth five underlying principles (openness, participation, accountability, effectiveness, and coherence) as well as general intentions based on those principles (including dialogue, consultations, and partnerships).<sup>14</sup> Significantly, the Commission also commits itself to undertake concrete measures: improving and clarifying European legislation, publishing guidelines, developing standards and criteria, organizing public debates, and developing a code of conduct on dialogue and consultations.<sup>15</sup>

The Danish Charter for interaction, which Volunteer Denmark / Associations Denmark and the public sector concluded with the Danish government in 2001, emphasizes the importance of partnership between the two sectors for “the development of Danish democracy and the Danish welfare state.”<sup>16</sup> The Charter recognizes the vol-

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<sup>9</sup> “The Paradox of Compacts: Monitoring the Impact of Compacts,” Home Office Online Report, February 2005, <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0205.pdf>.

<sup>10</sup> See Daimler Liiv, *Guidelines for the Preparation of Compacts*, IJNL, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.

<sup>11</sup> *Decision of Estonian Parliament Approval of Estonian Civil Society Development Concept*, 2002, <<http://www.ngo.ee/orb.aw/class=file/action=preview/id=3356/EKAK-eng.pdf>>.

<sup>12</sup> See Daimler Liiv, *Guidelines for the Preparation of Compacts*, IJNL, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.

<sup>13</sup> *EU Commission’s White Paper on European Governance*, Brussels, 2001, <[http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf)>.

<sup>14</sup> *EU Commission’s White Paper on European Governance*, Brussels, 2001, p. 10, <[http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf)>.

<sup>15</sup> *EU Commission’s White Paper on European Governance*, Brussels, 2001, p. 19, <[http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf)>.

<sup>16</sup> *Danish Charter for interaction between Volunteer Denmark / Associations Denmark and the public sector*, December 2001, <[http://www.frivillighed.dk/filecache/2716/1079696504/charter\\_for\\_interaction\\_between\\_volunteer\\_denmark.doc.doc](http://www.frivillighed.dk/filecache/2716/1079696504/charter_for_interaction_between_volunteer_denmark.doc.doc)>.

unteer sector's role, functions, and independence, and states the aim of serving as a "starting point for continuing dialogue on values, parameters and concrete opportunities for interaction."<sup>17</sup> The document envisages future measures – including the development of legislation – to ensure continuing support for NGOs' activity without impinging on their autonomy and to provide resources "for the promotion and implementation of common initiatives."<sup>18</sup> The Charter, then, represents a framework that establishes a basis for concrete steps in the future. Although the Charter has no legal force, both government and the third sector have recognized its role in strengthening the volunteer sector and increasing citizens' participation in public life.

Most Western European countries have adopted policy documents on NGOs' participation in development aid. Although they concern only a part of the nonprofit sector, those NGOs involved in international development, these documents indirectly acknowledge the importance of civil society more broadly. For example, the Danish Strategy for Support to Civil Society in Developing Countries, adopted by the Ministry of Foreign Affairs, describes methods of cooperation with Danish NGOs and expressly recognizes their contributions to "the promotion of human rights and democracy."<sup>19</sup> The German government has adopted similar documents, based on the notion that promoting civil society represents a vital part of the country's foreign development policy.<sup>20</sup> In addition to outlining government policy, these documents can influence the funding of domestic NGOs active in international development aid.

#### **I.4. What does a PDC cover?**

Cooperation policy documents follow two main approaches. Some PDCs outline a general framework for future cooperation but leave details to be worked out in implementation (as in the U.K. and Denmark), whereas others specify both the particular aspects of future cooperation and the details of implementation (as in the Estonian Civil Society Development Concept).

Experience shows that the approach adopted does not affect the chances for effective implementation. Rather, ultimate success depends on the good will of both sides, the legislative and political mechanisms for fulfilling contractual obligations

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<sup>17</sup> *Danish Charter for interaction between Volunteer Denmark / Associations Denmark and the public sector*, December 2001, <[http://www.frivillighed.dk/filecache/2716/1079696504/charter\\_for\\_interaction\\_between\\_volunteer\\_denmark.doc.doc](http://www.frivillighed.dk/filecache/2716/1079696504/charter_for_interaction_between_volunteer_denmark.doc.doc)>.

<sup>18</sup> *Danish Charter for interaction between Volunteer Denmark / Associations Denmark and the public sector*, December 2001, <[http://www.frivillighed.dk/filecache/2716/1079696504/charter\\_for\\_interaction\\_between\\_volunteer\\_denmark.doc.doc](http://www.frivillighed.dk/filecache/2716/1079696504/charter_for_interaction_between_volunteer_denmark.doc.doc)>.

<sup>19</sup> *Strategy for Danish Support to Civil Society in Developing Countries – including cooperation with Danish NGOs*, October 2000, <[http://www.una.dk/ffd/Godk\\_Nord\\_Regeringer/Strategy\\_for\\_Danish\\_Support.htm](http://www.una.dk/ffd/Godk_Nord_Regeringer/Strategy_for_Danish_Support.htm)>.

<sup>20</sup> The Federal Ministry for Cooperation and Development (BMZ) administers the funding for international development through a program called *Development Projects in Developing Countries*. See <http://www.globenet.org/preceup/pages/fr/chapitre/etatlieu/acteurs/f/h.htm>. The Ministry's close work with German development NGOs in the early 1990s resulted in an initial policy paper, "Fighting poverty by promoting self-help," which emphasized participation and self-help as fundamental principles. See <http://www.euforic.org/projects/povcasde.htm>. Four more policy papers on poverty reduction were elaborated and adopted during the 1990s, and "Conception of development policy of BMZ," published in October 1996, confirmed poverty reduction as the principal goal.

and political commitments, and the state of relations between governmental and non-governmental sectors.

Whether in great detail or only in general terms, the document should set forth a few elements essential to forging a successful partnership. Almost all agreements, statements, charters, and strategies of this kind include the following sections:

- A **statement of representation** concerning the bodies that represent the two sectors in adopting and implementing the PDC, including the mechanisms for their nomination and their mandates, responsibilities, and duties.
- A **statement of principles** addressing the roles and functions of the two parties in developing democratic society, including recognition of their autonomy (see the Danish Charter), their basic rights and obligations, the legal and logical constraints they may face in fulfilling these obligations,<sup>21</sup> and their commitments to mutually respected values defined in the document. These values might include public participation in decision-making and flexibility in governance tools (EU White Paper on European Governance<sup>22</sup>); and, for the volunteer sector, diversity (U.K. Compact, p. 8.2), accountability, openness, promotion of non-violence and the equality of people, coherence, transparency, and liability for utilizing public resources (the Croatian Program for Cooperation).
- A general outline of the **areas of cooperation**, such as delivery of services, legislation and other decision-making processes, the environment, international development aid, access to information, national policy formulation in various areas, decentralization, and development of social enterprise; and specific **instruments of cooperation**, including public debates, consultations, joint consultative and decision-making bodies, partnership agreements for the joint delivery of services, exchange of information, and right to legislative initiative.
- **Funding-related issues** can include obligations to develop codes of good funding practices (U.K. Compact), descriptions of funding mechanisms to support the voluntary sector (long-term or short-term), commitments to establish a tax system that directly and indirectly encourages third-sector activities (as in the Estonian Concept for Civil Society Development), and commitments to develop legislation supporting the self-sustainability of the third sector and the financing of organizations of disadvantaged persons (Croatian Program for Cooperation and Hungarian Government Strategy).

Given their general and mostly non-binding nature, cooperation policy documents do not establish specific funding obligations. Rather, they envisage the development of funding policies and mechanisms that will ensure public support for the voluntary sector. The document should provide clear models of funding policies, including both the various types of funding mechanisms (in-

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<sup>21</sup> *Danish Charter for interaction between Volunteer Denmark / Associations Denmark and the public sector*, December 2001, <[http://www.frivillighed.dk/filecache/2716/1079696504/charter\\_for\\_interaction\\_between\\_volunteer\\_denmark.doc.doc](http://www.frivillighed.dk/filecache/2716/1079696504/charter_for_interaction_between_volunteer_denmark.doc.doc)>.

<sup>22</sup> *EU Commission's White Paper on European Governance*, Brussels, 2001, <[http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf)>.

kind support should not be overlooked) and the third sector's obligations to establish accountability standards for the use of public money.

- **Implementation** elements include a timeline covering short-term and long-term objectives,<sup>23</sup> allocation of responsibilities to public institutions involved in implementation, and potentially such elements as a proposed monitoring and evaluation tool, provisions for review and revision, and a mechanism for settling disputes.

This section reflects the government's level of commitment to the principles recognized in the policy document, and specificity here is crucial. The general nature of the document may not allow for a detailed schedule of implementation; however, in order to avoid creating a dead-letter agreement, this section should be as concrete as possible, and it should provide for a constructive relationship between timetables, institutional network for implementation, mutual responsibilities, and overall coordination. Under the section "Further enhancement of the Program" of the Croatian Program for Cooperation, for example, representatives of the government and the third sector meet annually "to revise and analyze actions within the Program," after which they publish a report on the meeting and submit it to Parliament. The U.K. Compact authorizes a special ministerial group to oversee implementation of the Compact, to "encourage its adoption by other public agencies ... and to promote communication between the Government and the voluntary and community sector" (p. 2 of the Annex).

The specific content varies, depending on the legal nature of the document; the existing level of cooperation between the two sectors; the legislative, political, and social traditions in the country; and the public institution that adopts the agreement. A document may contain only cursory discussions of some topics, or even omit them altogether. Exhaustive detail is not essential. Even so, the chances for success increase when some aspects are addressed in detail, particularly the mechanisms for implementation.

### **I.5. How and by whom are PDCs "ratified"?**

EU White Paper on Good Governance: By the EU Commission.<sup>24</sup> In light of the pending enlargement of the EU, the Commission decided that the methods of EU governance require modernization, so that EU institutions can better use their powers, and so that EU citizens can better monitor these institutions, gain a fuller understanding of how they handle their responsibilities, and grant them a broader endorsement. The Paper also emphasizes the responsibilities of civil society.

To undertake preparatory work, 12 working groups were organized, covering six areas. Each group carried out external consultations, including public hearings and on-line public debates, and developed recommendations for proposals to be formulated in the Paper. In consultations, the NGOs demanded greater participation in the decision-making process *before* decisions are made, rather than mere announcements made afterward; reorganization of the consultation procedures to make them more ef-

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<sup>23</sup> See Daimar Liiv, *Guidelines for the Preparation of Compacts*, IJNL, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.

<sup>24</sup> *EU Commission's White Paper on European Governance*, Brussels, 2001, <[http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf)>.



fective; administrative focus on the importance of NGOs' input by targeting all concerned sectors and institutions; and recognition of all relevant players instead of a limited number of organizations. The NGOs also urged the inclusion of a specific article in the EC Treaty on the civil society organizations' involvement in the Commission's consultative practices.

U.K. Compacts<sup>25</sup>: By representatives of both government and NGOs. The U.K. Compacts grew out of two documents: the Deakin Commission Report "The future of the Voluntary Sector" (July 1996), calling for a formal agreement between the government and the voluntary sector; and the Labour Party document "Building a Future Together – Labour's Policies for Partnership between Government and the Voluntary Sector" (February 1997). In July 1997, a conference of the biggest NGO umbrella organizations confirmed the need for such an agreement. Participants at the conference established the Compact working group, which featured outstanding NGO experts and academics. In October and November 1998, after several months' consultations, four National Compacts were signed with the governments of England, Wales, Scotland, and Northern Ireland – the first such documents ever signed. The National Compacts were followed by local agreements signed between the voluntary sector at the local level and local councils or other public bodies.

Estonian Concept (EKAK)<sup>26</sup>: Adopted by Parliament on December 22, 2002. The process began with the efforts of the Estonian Center for Non-profit Associations and Foundations, through a project financed by the United Nations Development Program (UNDP). Representatives of Estonian umbrella organizations met with politicians and discussed possible strategies for launching the Concept. In December 1999, shortly after this meeting, a "Memorandum of Cooperation Between Estonian Political Parties and Third Sector Umbrella Organizations" was signed, establishing an outline for developing the Concept.<sup>27</sup> Academics as well as NGO experts and politicians developed a draft, followed by public discussions that were both intensive and extensive. More than 3,000 organizations were invited to participate in preparing the final draft.

Croatian Program for Cooperation: Adopted by the government in December 2000 on the initiative of the Government Office for Cooperation with NGOs, whose officials believed strongly in the potential of the voluntary sector. The Program outlines principles and models for cooperation. It was based on the results of one national and four regional seminars on "Development of Civil Society in Croatia – Models of Cooperation between the State, Local Authorities and NGOs." More than 16,000 NGOs were invited to participate in the preparation process. The working group involved NGO representatives, state officials, representatives of the local government, and representatives of international organizations in Croatia.

Hungarian Government Strategy: This document was not actually adopted by the government, though it is being implemented. It was submitted for adoption in June 2003, as the result of a process begun in August 2002, soon after the new government

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<sup>25</sup> *The Compact on relations between government and the voluntary and community sector*, [http://www.thecompact.org.uk/C2B/document\\_tree/ViewACategory.asp?CategoryID=22](http://www.thecompact.org.uk/C2B/document_tree/ViewACategory.asp?CategoryID=22)

<sup>26</sup> *Estonian Civil Society Development Concept*, <<http://www.emy.ee/eng/alusdokumendid/concept.html>>.

<sup>27</sup> See Daimar Liiv, *Guidelines for the Preparation of Compacts*, *IJNL*, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.



was elected. This government made cooperation and communication with civil organizations a principal objective, in what some analysts interpreted as genuine good will and others deemed a mere public-relations effort resulting from popular support of the opposition party. Either way, the elaboration of the policy document and the consequent legislation were put on the fast track. By the end of October, the responsible ministry shared a full-fledged draft of the Government Strategy toward the Civil Sector with NGOs and the public. Comments from NGOs were considered and mostly integrated into the final document.

The government initially envisioned signing a true compact-type agreement with a group of individuals representing the NGO sector, but had to abandon the idea when civil society organizations maintained that no such group could possibly represent all NGOs in Hungary. However, the strategy still contemplates the possibility of a bilateral agreement.

The government did not finally adopt the strategy, proposing instead that the Parliament should adopt it as a resolution endorsed by all political forces. Nevertheless, government agencies have been working to implement it as though it had been adopted and so several elements of the strategy have already been realized.

The German Policy Papers on poverty reduction<sup>28</sup>: Adopted by the Federal Ministry for Cooperation and Development, on the initiative of German NGOs working in the field of international aid, and following discussions with those NGOs.

The Danish Charter for Interaction: Adopted by the government after a public debate. The Charter was initially drafted by a joint working group comprising representatives of the government (five ministers and local authority officers) and the voluntary sector, and then elaborated upon by the Minister of Social Affairs and the Minister of Culture.

### **I.6. What are learning points from the implementation of PDCs?**

Generally, experience in implementing policy papers demonstrates the importance of (1) involving *all* players in the process – all state agencies concerned, a wide range of civil society organizations, and the public in general; (2) bringing in experts during drafting and discussion; (3) focusing on monitoring the implementation process and reporting on its results; (4) providing in the policy document a plan or outline for future activities with allocated responsibilities; (5) taking advantage of the momentum for implementation; and (6) making state agencies, NGOs, and the public more aware of the policy paper, its implementation, and its benefits.

Initial publication of the EC White Paper was followed by vast public consultations and then a report summarizing the conclusions.<sup>29</sup> The processes of preparing, adopting, and implementing the document demonstrated the necessity for meaningful participation by civil society at each stage. The consultations took place before, during, and after adoption of the Paper, which produced a sharper formulation of the

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<sup>28</sup> *Promotion of Civil Society in Developing Countries: the Example of European Development Cooperation*, German Development Institute, Briefing Paper 6/1999, <[http://www.die-gdi.de/DIE\\_Homepage.nsf/0/79299BBD20A0B94AC12569F60065C013](http://www.die-gdi.de/DIE_Homepage.nsf/0/79299BBD20A0B94AC12569F60065C013)>; Eva Weidnitzer, *German Aid for Poverty Reduction*, Berlin: Deutsches Institut für Entwicklungspolitik, <<http://www.euforic.org/projects/povcasde.htm>>.

<sup>29</sup> *Report from the Commission on European Governance*, Office for Official Publications of the European Communities, Luxembourg, 2003, <[http://europa.eu.int/comm/governance/docs/comm\\_rapport\\_en.pdf](http://europa.eu.int/comm/governance/docs/comm_rapport_en.pdf)>.

weak points in EU governance, particularly with regard to civil society involvement, and contributed to a more effective strategy for moving forward on the proposed measures. Although the Commission already had a consultation process, the public response to issues raised by the White Paper revealed the deficiencies of this process and helped improve it. As a result, the Commission developed new general principles and standards for consultation with interested parties.<sup>30</sup>

In the English Compact, specific implementation articles provide for the preparation of Codes of Practice on consultation, the annual review of implementation, and the rights and status of minority groups. The Compact working group drafted the Codes of Practice after consultations with the voluntary sector. The government published the first of these Codes (on funding and consultations) in May 2000, after a meeting between NGO representatives and the ministers. These annual meetings, usually held in April, review the process of implementation, examine the level of Compact awareness in government, and develop an outline of progress to be achieved during the following year.

In government, responsibility for implementing the Compact and coordinating with the voluntary sector lies with the Active Community Unit (ACU) within the Home Office, which works with Voluntary Sector Liaison Officers in each department. David Carrington (ACU)<sup>31</sup> points out that one measure of success of the Compact is the number of local compacts that have been signed. He also cites the following as key factors affecting implementation:

- “The gap between Compact’s enthusiasts and skeptics,” resulting from the insufficient dissemination of positive results, success stories, and lessons learnt;
- Missing the momentum when the principles and values are “hottest”;
- The harms created by acts that undermine the government's credibility, such as terminating or decreasing funding, refusing to cooperate, and clearly breaching Compact principles;
- The competence and commitment of the leadership on both sides;
- The time and resources the government allocates to implementation;
- Inactivity by the voluntary sector itself; and
- A reluctance to collaborate stemming from old antagonisms.

Carrington advises creating a joint strategy that would take advantage of the strengths of both sides in working toward successful implementation of the Compact.

As for Central and Eastern Europe, the implementation of the Estonian Concept has already generated some learning points.<sup>32</sup> The implementation process has proved slow and difficult to develop. But, on the plus side, politicians, ministries, and local governments refer to EKAK as the guidelines for civil society, and the govern-

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<sup>30</sup> *Communication from the Commission of the European Communities*, Brussels, November 12, 2002, p. 5, <[http://europa.eu.int/comm/governance/docs/comm\\_standards\\_en.pdf](http://europa.eu.int/comm/governance/docs/comm_standards_en.pdf)>.

<sup>31</sup> David Carrington, *The Compact – the Challenge of Implementation*, April 2002, <<http://www.davidcarrington.net/articles/docs/ACU-Compact%20Summary.doc>>.

<sup>32</sup> Based on input from Kristina Mand, Director, Network of Estonian Nonprofit Organizations.

ment and the private sector alike recognize a greater potential role for the nonprofit sector than ever before.

Among the most significant lessons of the Estonian experience is that creating a working relationship takes time, effort, and commitment. The diversity of the third sector means that expectations varied greatly; different organizations saw the practical value of the Concept differently. In addition, many smaller NGOs were not fully familiar with the content, objectives, and importance of the Concept. All in all, the third sector in Estonia is not yet completely ready for open consultation on public policy matters; more capacity-building activities are needed to achieve sector-wide competence.

### **1.7. The importance of local policy documents**

If the goal is to adopt a PDC with an eye toward future implementation at the local level, local government officials must participate from the very beginning. Along with influencing the content of the national PDC, they will gain experience that can prove valuable when they seek to establish local PDCs.

#### ***1.7.1. Adoption of local policy documents on the basis of national PDCs***

The more traditional approach envisages transferring a central compact to the local level, as provided for by the English Compact. Indeed, “the localization of compacts” – that is, local implementation of a central PDC – can serve as a measure of the success of the national document.<sup>33</sup> The statements, principles, and objectives of a national PDC are more easily interpreted and applied by partners at the local level. The local participants know one another better and generally communicate better; problems are clearer and easier to address when seen locally; and local negotiations and compacts tend to be more practical and less political than national ones.

Local compacts have had the following beneficial effects: (1) developing services tailored to community needs; (2) advancing a given organization's cause and objectives; (3) improving partnerships by working closely with local authorities; (4) using external funding more effectively; and (5) involving local groups in best-value social services delivery and community planning. These benefits have been demonstrated in England and Estonia.<sup>34</sup>

In England, special Local Compact Guidelines were published in July 2000 to assist local partners in their negotiations.<sup>35</sup> As of the end of 2002, progress in developing local compacts in England had been registered in most of the 388 local-authority areas.<sup>36</sup>

In Estonia, we can observe signs of a similar tendency. Although local EKAKs have not been created, nonprofits and local governments in several of Estonia's 15

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<sup>33</sup> See Daimar Liiv, *Guidelines for the Preparation of Compacts*, *IJNL*, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.

<sup>34</sup> See Daimar Liiv, *Guidelines for the Preparation of Compacts*, *IJNL*, Volume 3, Issue 4, June 2001 <<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompactsprint.htm>>.

<sup>35</sup> *Local Compact Guidelines: Getting Local Relationships Right Together*, published by NCVO on behalf of Working Group on Government Relations Secretariat and the Local Government Association, July 2000, <[http://www.thecompact.org.uk/module\\_images/LocalCompactGuidelines.pdf](http://www.thecompact.org.uk/module_images/LocalCompactGuidelines.pdf)>.

<sup>36</sup> [http://www.thecompact.org.uk/C2B/document\\_tree/viewAcategory.asp?categoryID=163](http://www.thecompact.org.uk/C2B/document_tree/viewAcategory.asp?categoryID=163).

counties have formed roundtables to develop face-to-face working relationships, and six local councils and local NGOs in the northeast of the country have prepared a “compact” implementing the principles of the national Concept. The European Union accession process is playing a role as well. For the use of structural funds, the Estonia Enterprise Fund has created local county development centers based on its earlier business advisory centers. These development centers work with the Network of Estonian Nonprofit Organizations (NENO) and its resource and support centers, which provide assistance, counseling, and information for the joint activities of local governments, local nonprofits, and local businesses. In sum, several initiatives are fostering joint undertakings and common goal-setting in Estonia.

### ***1.7.2. Adoption of local policy documents as a starting initiative***

The city of Gdynia in Poland demonstrates another approach. The local process there started on its own, rather than following a national partnership effort. City authorities initiated the creation of a working group made up of representatives of local government and of NGOs operating in the area. The working group exchanged information about each sector’s activities, the major problems in the region, and potential ways to address those problems. Cooperation between local government and NGOs was considered one of the most effective ways to improve the community.

The working group went on to draft a Cooperation Program, which was approved by the City Council. The Program established an institutional structure for cooperation and set up funding forms and mechanisms. Cooperation is financed from the local budget, under competitive procedures and in compliance with requirements set forth in the Program.<sup>37</sup>

Whether a local PDC follows a national one or arises on its own, its content is generally similar to that of the national document. However, local PDCs tend to be more specific and practice-oriented. They may condense the sort of opening sections found in national documents, and focus instead on concrete funding mechanisms, institutional support for cooperation, and supervision and reporting mechanisms.

## **II. Analysis of the institutional framework regarding cooperation between NGOs and government**

Here we consider the structures, agencies, and mechanisms that perform tasks related to the cooperation agreement, both centrally and locally. These institutional frameworks vary widely. Indeed, they are even more diverse, and more country- and context-specific, than the policy documents analyzed in the previous section.

Even the use of the word “framework” may be misleading, because a given country’s institutions of cooperation rarely reflect any single plan or scheme. Instead, they have evolved over time – for decades, sometimes centuries, in the Western part of Europe, and for the past 10 to 15 years in the Eastern part.

In Western Europe, “sector consciousness” – that is, recognition of the thousands of nonprofit and nongovernmental organizations as elements of a single sector – is a relatively new phenomenon, one that has not yet taken root in some countries. The institutions of cooperation have typically developed in specific areas where the need was particularly evident, often social services, the environment, and international development aid. Now, though, some principles and practices emerging from

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<sup>37</sup> Miuchal Guć, “*Egyedül nem megy*” (It is not possible alone), 1999, CSDF Hungary. Summary in English prepared for ICNL by Istvan Csoka.

specific fields have been elevated to a more general level and extended to include the whole NGO sector and even the wider civil society, as reflected in the policy documents described above. The overarching basic principles include "subsidiarity," access to information, and consultation with interest groups through social dialogue.

In general, an institutional framework can be assessed from two perspectives. A *functional* perspective considers the tasks that must be performed, such as registering and monitoring NGOs, ensuring that NGOs participate in relevant decision-making, financing NGOs, and maintaining a flow of information between the two sectors. A *structural* perspective, by contrast, concentrates on the entities of public administration with responsibility or authority, such as a parliament, the central government administration, ministries, councils and joint committees, agencies, "quangos," specific bodies, and local governments. In this section, we focus on the structural rather than the functional perspective.

### II.1. Parliament

In parliaments, **special committees** dealing with NGO-related issues are typical. In Germany, for example, a subcommittee of the Committee for Family Affairs, Senior Citizens, Women and Youth (Subcommittee of Civil Engagement) was established in May 2003. It is assigned to help realize the recommendations of a major study of German civil society<sup>38</sup> and to discuss related bills and initiatives.

In Hungary, a Parliamentary Committee for the Support of Civil Organizations has existed since the early 1990s. Originally, it granted budget subsidies to national associations. More recently, it has assumed responsibility for legislative policy concerning the sector. (Its grant-giving role will be transferred to the newly established National Civil Fund, as will be discussed below.)

Hungary also has a **Civil Office of the Parliament** that performs informational tasks. It maintains a database of NGOs, sends the Parliament's legislative agenda on a particular topic to interested NGOs (for example, an NGO can sign up to receive legislative plans concerning the environment), answers inquiries from NGOs, and coordinates and arranges NGO participation in Committee meetings.

### II.2. Central government

The government may assign responsibility for NGOs to a **central department**, independent from line ministries. Hungary in 1998 established the Department for Civil Relations in the Prime Minister's Office, with responsibility for developing and coordinating policies affecting the nonprofit sector as a whole. The Department developed the Government Strategy towards the Civil Sector, a comprehensive strategy for supporting and developing the nonprofit sector (see Section I, above). The Department became part of the newly established Government Office for Equal Opportunities on January 1, 2004.

Croatia established the Government Office for Cooperation with NGOs in 1998 to foster cooperation. It coordinated working groups on legislative initiatives affecting NGOs and provided grant support to NGOs in all areas of work. More recently, the role of the Office has been modified. Now, in addition to earlier responsi-

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<sup>38</sup> *Civic Activities: Towards a Civil Society with a Future*, Summary of the Bundestag Study Commission's Report, June 2002, <[http://www.bundestag.de/parlament/kommissionen/archiv/enga/enga\\_stu.htm](http://www.bundestag.de/parlament/kommissionen/archiv/enga/enga_stu.htm)>.

bilities, it also assists the Council for Civil Society, a governmental advisory body (to be discussed below).

Slovenia appointed a National Coordinator for Cooperation with NGOs under the Government Office for European Affairs. This appointment was part of an effort to develop a more coordinated, systematic governmental approach to working with NGOs (similar to what Latvia is currently considering).

We should also note the relationship between EU accession and the creation of these centralized offices. In both Hungary and Slovenia, the departments were created to help manage the required NGO involvement in the National Development Plan and to help ensure ministry-level implementation of the consultation principle (see Section IV, below).

### **II.3. Ministries**

Line ministries represent the most common form of institutional cooperation with NGOs in both Western Europe and Central and Eastern Europe. An NGO whose mission corresponds to that of a given ministry naturally wants to ensure that policy and legislation reflect its views and the views of its constituents. It may also seek funding from the ministry. The ministry often finds cooperation useful as well – for example, NGOs may help implement national policies. As a result, many forms of cooperation have evolved between ministries and NGOs.

The different forms of cooperation reflect **the multiple functions** of ministries, including financing NGOs, ensuring their participation in policy development, and sometimes providing other type of support or services – the Hungarian Ministry of Children, Youth and Sports, for example, permits NGOs to introduce themselves and communicate on its website, so as to encourage cooperation among organizations working in the same areas. In many instances, the different departments of a ministry will each have someone assigned to deal with NGOs, with no coordination among them. Intra-ministerial coordination may prove necessary, and certain responsibilities, such as maintaining a database of NGOs whose work is relevant to the ministry, may need to be addressed at a higher level.

Furthermore, sometimes **one ministry can be responsible for a task or program that affects the whole NGO sector**. This is the case in Slovakia, where all NGOs are registered at the Ministry of Interior, and in Poland, where the Ministry of Labor and Social Affairs is responsible for implementing the Law on Public Benefit Organizations and Volunteerism adopted in June 2003.

### **II.4. Councils or joint committees**

Another typical form of cooperation is a formal advisory body comprising government representatives and NGO representatives. Such councils or joint committees are usually formed at the ministry level, but **governmental councils** exist in the Czech Republic and Slovakia as well as Croatia.

Slovakia formed the Council of the Government of the Slovak Republic for Non-Governmental Non-Profit Organizations in 1999. This Council is a governmental advisory body to support the activities of nongovernmental nonprofit organizations. It can initiate and advise on policy and legislation affecting NGOs. It also cooperates with the bodies of public administration at all levels in devising methods of financing NGOs and forms of cooperation with them, and it maintains a public database of Slovak NGOs.



Croatia established a governmental advisory body, the Council for the Development of Civil Society, in 2002. It is composed of 10 representatives from ministries and 14 representatives from civil society, elected by civil society organizations. The Council concentrates on implementing the Program of Cooperation (see Section I, above), creating a Strategy for the Development of Civil Society, and harmonizing support from the State budget for financing NGO programs and projects.

More common are **councils working with a line ministry**, which provide strategic advice on a specific field of policy such as health or employment. A typical example is the Danish Committee on Volunteer Effort, set up by the Minister for Social Affairs in 1983. This is a political committee made up of representatives from public authorities and voluntary social organizations. Its aim is to bolster the opportunities for individuals, groups of citizens, and private associations and organizations to address problems in the social field. Alongside its principal function, advising the Minister for Social Affairs, the Committee compiles information about the field and submits proposals to both the public sector and the voluntary organizations.

By contrast to the longstanding councils in Western Europe, the relevance and effectiveness of such committees in CEE often depend on the political weight accorded the issues they represent. For example, when the Prime Minister of Hungary became honorary chair of the Council of Elderly Issues during the UN Year of the Elderly, the Council was able to push through a change in legislation. When issues affecting the elderly slipped off the political agenda, though, the Council lost its critical influence.

An interesting example is the Polish Council on Public Benefit Activities, established by the law on public benefit activities adopted in 2003. This Council which became operational in 2004, advises the Minister of Economy, Labor and Social Care, who is responsible for implementing the Law on public benefit activities. The Council will comprise 20 members, with half representing the government and local government administration, and half representing nongovernmental organizations and church charity institutions. The Council will monitor implementation of the public benefit law by, for example, commenting on issues that emerge in its application, commenting on legislative projects relevant to public benefit activity and volunteerism, and collecting and analyzing information about inspections of public benefit organizations. The Council will also mediate between organizations and public administration bodies should conflicts arise during implementation of the law.

## II.5. Agencies and authorities

Agencies or authorities working under the aegis of a **ministry** are often important players in inter-sectoral cooperation. After reform in the National Health Service of the U.K., an assessment showed that where recommendations regarding community involvement in health care were implemented, the quality of service and user satisfaction both increased. The researchers point out, "It appears essential to recognize that community, voluntary and patient organizations are stakeholders in the formulation of community participation strategies, rather than just passive beneficiaries of statutory sector 'inclusiveness.'"<sup>39</sup> To foster community and user involvement in welfare services, it is indispensable for state agencies to cooperate actively with NGOs at the local level.

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<sup>39</sup> Timothy Milewa, Stephen Harrison, George Dowswell, *Partnerships and Public Accountability in British Health Care*, <<http://www.publicnet.co.uk/publicnet/fe031209.htm>>.

Among the few CEE examples in this field, the **Hungarian Employment Centers** in certain regions cooperate with NGOs that help people seeking employment, including those that concentrate on disabled people and others with special needs.

Agencies, of course, can also finance nonprofit organizations through grant programs. In Germany, for example, the **Federal Bureau of Environment** is providing support to environmental organizations, while the Federal Center for Political Education finances NGO youth-education programs.

## **II.6. Quangos**

A nonprofit organization set up or funded by the government is often known as a quasi-NGO, or quango. Despite government “ownership,” these organizations are autonomously governed and, at least in principle, professionally independent of the political establishment. Their forms range widely, including fundraising and grant-making foundations (public foundations in Hungary and France), advocacy and service-providing organizations (associations of municipalities), and project-implementing nonprofit companies (public benefit companies in Hungary).

Quangos straddle the line between the state and organized civil society. If they are to succeed in promoting social development and cooperation between the two sectors, they must be truly independent of the state.

An example of a quango is the **Volunteer Centre** in Denmark. The Centre was established in 1992 as a self-governing, independent unit with its own supervisory board under the Ministry of Social Affairs. The Volunteer Centre provides services to voluntary social organizations and associations, including advisory and counseling services, courses, consultancy, and help in developing voluntary social work; disseminates knowledge to the Ministry of Social Affairs and other public authorities and cooperation partners; and serves as secretariat to the Committee on Volunteer Effort (discussed above).

CEE quangos include the so-called **public foundations**, which are usually foundations set up by law or government order. In Hungary, the Civil Code stipulates that Parliament and state authorities can set up only public foundations; they cannot be founders of private foundations. This distinction may sound obvious, but between 1989 and 1993, many state agencies set up foundations under the liberal rules then in force and “donated” the property of former so-called “social organizations” to them. In this way, public property that belonged to the state but was in the possession of party-governed social organizations (such as the National Women’s Council, the Pioneers, and the National Federation of Pensioners) became the private property of smart founders.

Public foundations were introduced in 1993, in part to end this abusive practice and in part to encourage additional inflow of capital into the public sector. It was hoped that companies and individuals would contribute to public foundations undertaking important social tasks, such as those supporting disabled children, disadvantaged women, the unemployed, and the homeless. Recent studies by the State Audit Office, however, reveal that this objective has not been achieved; further, the studies



find that public foundations continue to lack transparency and accountability, even though they are subject to stricter regulations than private foundations.<sup>40</sup>

Another example is the **Croatian National Foundation for the Development of Civil Society**. Established in 2003, the Foundation is a public, not-for-profit entity to serve and strengthen civil society in Croatia.<sup>41</sup> It supports innovative programs developed by NGOs as well as informal, community-based initiatives. For funding, it receives half of the moneys collected through lottery games in Croatia.

The National Foundation is seen as a vital step toward improving the system of public financing for NGOs in Croatia. It marks a shift from a highly centralized system, in which the Office for NGOs played the critical role, to a more decentralized system. Through regional offices, the Foundation works to promote the sustainability of the sector, cross-sectoral cooperation, civic initiatives, philanthropy, and voluntarism. Its core activities include education and publications, grant-giving, public awareness campaigns, evaluation services, research, and regional development. The Foundation is governed by a Management Board composed of three representatives from the government, one from local governments, and five from NGOs.

## **II.7. Specific bodies**

Some institutional forms are so distinct as to resist categorization.

One such body is the **Charity Commission** in the U.K., established by law to register and regulate charities in England and Wales. Charities represent an essential part of societal life in the U.K., but they need to be regulated in order to ensure that they continue to meet the legal requirements for charitable status; are equipped to operate properly and within the law; are run for public benefit and not for private advantage; are independent, with trustees making decisions free of outside control or undue influence; and avoid serious mismanagement and abuse.

More specifically, the Commission secures compliance with charity law; helps charities develop more effective legal, accounting, and governance frameworks; keeps pace with pertinent developments in society, the economy, and the law; and promotes sound governance and accountability. It also provides information and advice on law and good practice, and on dealing with abuses; assists charities in registration; investigates potential violations of the law; cooperates with other regulators, such as police and prosecutors; and, when appropriate, intervenes to protect a charity's assets. The CC is accountable: it reports annually to Parliament and the Home Secretary and publishes annual reports. However, it remains an independent body, acting in the public interest.

Another hybrid is a recently established entity in Hungary called the **National Civil Fund Program**. It is not a true quango, as it is not registered as a public foundation. Nevertheless, the Fund is overseen by an autonomous governing body, with a majority of members (12 of 17) elected by nonprofit organizations.

The Hungarian government finances the Fund with an annual appropriation dependent on taxpayer designations under the 1% Law. The 1% Law permits every

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<sup>40</sup> Állami Számvevőszék: Jelentés a társadalmi szervezeteknek és köztestületeknek juttatott költségvetési támogatások ellenőrzéséről (State Audit Bureau, *Report on the Control of Budget Support to Social Organizations and Public Societies*), September 2002.

<sup>41</sup> *Croatia Enacts National Foundation for Civil Society Development Law*, ICNL News Release, October 27, 2003, <<http://www.icnl.org/PRESS/Articles/2003/20031027.htm>>.

Hungarian taxpayer to designate 1% of his or her tax liability to a qualified NGO. Under the Civil Fund Law, the government will finance the Fund in an annual amount matching the year's actual tax designations, or 0.5% of personal income taxes collected, whichever is greater. Thus, the more money that taxpayers designate to NGOs, the more money that the government will contribute to the Fund.

At least 60 percent of the Fund's resources each year must be dedicated to providing institutional support (core costs) to NGOs in Hungary. This is an important provision, as most government funds for NGOs have been dedicated to project financing. Fund money not devoted to institutional support and administrative costs can be used to foster development of the NGO sector, including through sector-wide events, festivals, international representation, research, education, and publications.

### **II.8. Local forms of cooperation**

The Study Commission recommends that public authorities be made more citizen-oriented and that citizens no longer be looked upon merely as customers. They are also co-designers and co-producers of services.<sup>42</sup>

The above quotation could have come from any CEE country, but it is actually a recommendation of a special committee of the German Federal Parliament (Bundestag), issued in 2002. This report underscores the importance of active cooperation between the public and nongovernmental sectors at all levels, but – in keeping with the subsidiarity principle – especially at the local level. (As will be discussed further below, the subsidiarity principle establishes a hierarchy based on proximity. Basically, it holds that a community's problems ought to be addressed by the community itself whenever possible.) The Report outlines the importance of two-sided efforts towards good cooperation. It recommends, on the one hand, that the local authorities acquire special skills in order to be more efficient in working with citizens, and on the other hand, that civic organizations should increase their participation in the decision-making process. Instruments like mediation and monitoring are also strongly encouraged.

The forms and practices of local cooperation generally reflect those at the national level. A committee or subcommittee in the Local Council may deal with local NGO issues. The tasks of communicating with NGOs may also be assigned to a special department in the mayor's office, or to a single person in the PR department who also bears other responsibilities.

For example, the municipality of Szczecin in Poland created an Office for NGOs in July 1997. Although it had only one employee until 1998, it became a clearinghouse for information about NGOs as well as an ombudsman for NGOs dealing with city authorities. For the first time, NGOs had a partner in the city government. One of the Office's true successes was the launch in 1997 of Small Subsidies, a program supporting short-term NGO initiatives. While continuing to support cooperation with NGOs, the Office currently handles various other tasks, including creating a database of NGOs operating in Szczecin, collecting publications and other information about grants and funds for NGOs, representing the city at NGO meetings, providing opinions on applications submitted by the organizations, supplying financial assis-

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<sup>42</sup> *Civic Activities: Towards a Civil Society with a Future*, Summary of the Bundestag Study Commission's Report, June 2002, p. 9.

tance under the Small Subsidy fund, and assisting NGOs in registering with the District Court.<sup>43</sup>

### ***II.8.1. Innovative examples of local cooperation***

Active in several European countries, **Citizens Advice Bureaus** represent a creative model for local governments and NGOs together to help people solve their problems.

In the U.K., the Citizens Advice Bureau Service offers free, confidential, impartial, and independent advice on any topic. First launched in 1939, it has evolved from an emergency wartime service into a professional national agency. CAB advice is available at more than 2,800 locations in England, Wales, and Northern Ireland.

Each Citizens Advice Bureau is an independent charity (NGO), with funding from statutory grants, local government, local businesses, charitable trusts, and individual donors. Relying mostly on volunteers, Citizens Advice Bureaus annually help solve nearly six million problems central to people's lives, including debt and consumer issues, legal matters, and problems related to benefits, housing, employment, and immigration. Advisers help fill out forms, write letters, negotiate with creditors, and represent clients in court or tribunal.

Each bureau belongs to the national organization Citizens Advice, which sets standards for advice, training, equal opportunities, and accessibility; coordinates national social policy, media, publicity, and parliamentary work; promotes the service through a national Advice Week campaign each September; and uses its data on clients' problems to recommend changes in local and national services and policies. Citizens Advice has built a strong reputation for independent analysis.

The model has proved **adaptable to Central and Eastern European countries**. Citizens Advice Bureaus based on the U.K. model now operate in the Czech Republic, Lithuania, and elsewhere

Experts from the nonprofit Czech Association of Citizens Advice Bureaus help people understand their rights and duties as well as how to defend their interests. The system relies primarily on volunteers, as in Britain. Active since 1997, the Association now unites more than 20 bureaus.<sup>44</sup>

Citizens Advice Bureaus are also active in Lithuania. The Lithuanian CAB Union established a network of Bureaus by offering training and counseling; providing information on legal, social, and other relevant issues; and developing feedback on social policy. The Lithuanian government recognized that citizens today require more high-quality services and information than the state and local authorities can supply. Accordingly, the government has also provided support to this initiative.

The **telecottage** is an "infotheque" that aims to link rural communities with the rest of the world. By bringing IT equipment and skills to small communities, it offers a range of engagement and development opportunities to people who are otherwise isolated.

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<sup>43</sup> Material based on *Szczecin Local Initiative Program*, report prepared by John Driscoll (Unit for Housing and Urbanization, Harvard University Graduate School of Design), Pawel Szczyrski (Unit of Cooperation with Nongovernmental Organizations, City of Szczecin), and Janusz Szewczuk, 2001.

<sup>44</sup> Alena Skodova, *Association of Citizen Advice Bureaus celebrates five years of existence*, report, May 30, 2001, <<http://www.radio.cz/en/article/28493>>.

Telecottages first originated in Sweden about twenty years ago.<sup>45</sup> The first telecottage was opened in a remote northern part of the country, and was credited with increasing employment by facilitating access to jobs and offering vocational training.<sup>46</sup> The telecottage made modern telecommunications more widely available and improved skills of users. The benefits of the new institution were quickly appreciated and a few years later telecottages became well-known and widespread in Scandinavia.<sup>47</sup> They even founded their own association – the Association of Nordic Telecottages – which fosters cooperation among them.<sup>48</sup>

In Sweden and other Nordic and Western European countries, the telecottage “combines the functions of a training center, library, post office, telecom shop, and communications centre.”<sup>49</sup> It offers courses on using computers and telecommunications equipment as well as advice on buying computers and software. As a service unit, the telecottage is able to assist local firms with such tasks as letter writing, book-keeping, and translations; it can even function as an office for small businesses.<sup>50</sup>

The model was also **successfully introduced in several CEE countries**. For example, the Rapla County village movement created the first telecottage in Estonia in 1993.<sup>51</sup> Two years later, in 1995 the number of telecottages throughout the country increased substantially, and the first Association of Rural Telecottages was formed. The number of its members continued to grow steadily – from 3 in 1993 to more than 30 in 1997. Similar to the Swedish model, the role of the Association was mainly to provide coordination and to foster cooperation among rural telecottages in Estonia -- the association supports “the movement of telecottages in Estonian villages by offering consultancy, research and exchange of know-how and information.”<sup>52</sup>

The primary successes of telecottages in Estonia have been the following<sup>53</sup>:

- Advancing democracy and participation – telecottages have been an important factor in widening the village movement;
- Enhancing the involvement of local inhabitants in village economic and social life;

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<sup>45</sup> *Rural Telecottages in Sweden*, <<http://www.globalideasbank.org/site/bank/idea.php?ideaId=225>>

<sup>46</sup> *Rural Telecottages in Sweden*, <<http://www.globalideasbank.org/site/bank/idea.php?ideaId=225>>

<sup>47</sup> *Rural Telecottages in Sweden*, <<http://www.globalideasbank.org/site/bank/idea.php?ideaId=225>>.

<sup>48</sup> *Rural Telecottages in Sweden*, <<http://www.globalideasbank.org/site/bank/idea.php?ideaId=225>>.

<sup>49</sup> *Rural Telecottages in Sweden*, <<http://www.globalideasbank.org/site/bank/idea.php?ideaId=225>>.

<sup>50</sup> *Rural Telecottages in Sweden*, <<http://www.globalideasbank.org/site/bank/idea.php?ideaId=225>>.

<sup>51</sup> *Telecottages in Estonia*, Center for Tele-information, Technical University of Denmark, 2001, <[http://www.itu.int/ITU-D/univ\\_access/casestudies/estonia.html](http://www.itu.int/ITU-D/univ_access/casestudies/estonia.html)>.

<sup>52</sup> *Telecottages in Estonia*, Center for Tele-information, Technical University of Denmark, 2001, <[http://www.itu.int/ITU-D/univ\\_access/casestudies/estonia.html](http://www.itu.int/ITU-D/univ_access/casestudies/estonia.html)>.

<sup>53</sup> *Telecottages in Estonia*, Center for Tele-information, Technical University of Denmark, 2001, <[http://www.itu.int/ITU-D/univ\\_access/casestudies/estonia.html](http://www.itu.int/ITU-D/univ_access/casestudies/estonia.html)>.

- Improving access to services;
- Improving working and living conditions;
- Meeting local development needs; and
- Disseminating information that helps build the community.

The first Hungarian telecottage was established in 1993 as part of a community development program in the mountain community of Csákberény.<sup>54</sup> By 2001, Hungary had more than 150 telecottages, with plans for the creation of about 50 more.<sup>55</sup>

Hungarian telecottages are founded as independent entities; however, they operate on the basis of the cooperation between the civil sector and local governments. Their assets are usually owned by a local NGO, or sometimes another private entity, and the local authorities provide office space, personnel, and financial resources, mainly through contracting out public services.<sup>56</sup> “In some cases, the telecottage is based in a local library, school, or community centre... and the telecottage operator can be the NGO, a private company or an individual taking out a contract with the owner.”<sup>57</sup>

The Hungarian telecottage movement has been funded by the central government, domestic companies (both state and private), foreign companies, embassies, international organizations, and foundations.<sup>58</sup> “The telecottages cover a portion of their operating expenses by contracting with government agencies and serving as micro-regional programme management centres, initiating development proposals and collecting regional development information.”<sup>59</sup> Many centers also seek grants to support their work.

The close partnership between telecottages and NGOs has speeded the development of the facilities in Hungary. So, too, has the grassroots nature of the movement, with its emphasis on local needs and initiatives. But the Hungarian experience also demonstrates that without a local staff skilled in community outreach and development, a telecottage will remain unused and resources will be wasted.

National governments have played an important supporting role in both the Nordic and the CEE models. Though the Swedish telecottages generally can cover their operating costs through service fees, initial financing for the first ones came from the government, Swedish Telecom, and the local councils. In Hungary, the government has provided on-going support to the Hungarian Telecottage Association.

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<sup>54</sup> Bill Murray, *The Hungarian Telecottage Movement*, Small World Connections, U.K., <<http://www.col.org/Telecentres/chapter%2005.pdf>>.

<sup>55</sup> Bill Murray, *The Hungarian Telecottage Movement*, Small World Connections, U.K., p. 1, <<http://www.col.org/Telecentres/chapter%2005.pdf>>.

<sup>56</sup> Bill Murray, *The Hungarian Telecottage Movement*, Small World Connections, U.K., p. 3, <<http://www.col.org/Telecentres/chapter%2005.pdf>>.

<sup>57</sup> Bill Murray, *The Hungarian Telecottage Movement*, Small World Connections, U.K., p. 3, <<http://www.col.org/Telecentres/chapter%2005.pdf>>.

<sup>58</sup> Bill Murray, *The Hungarian Telecottage Movement*, Small World Connections, U.K., p. 3, <<http://www.col.org/Telecentres/chapter%2005.pdf>>.

<sup>59</sup> Bill Murray, *The Hungarian Telecottage Movement*, Small World Connections, U.K., p. 4, <<http://www.col.org/Telecentres/chapter%2005.pdf>>.

Telecottages have become an integral part of the Hungarian approach to giving rural communities access to government information and services as well as opportunities for economic revitalization.

## **II.9. The question of NGO representation**

How do NGOs elect representatives to a given body? The requirement that bodies include “representatives of the NGO sector elected by the NGOs themselves” is incorporated in law or policy in at least four CEE countries (Hungary, Poland, Slovakia, and Croatia), as well as in draft legislation (for example, in Latvia). However, the actual electoral process has been legislated only in Hungary. The Hungarian National Civil Fund represents the first attempt in CEE to implement a legally prescribed mechanism for electing NGO representatives.

A **theoretical problem** with NGO representation is that it is often confused with representation of the public as a whole. NGOs sometimes contend that their views should be given extra weight because they “represent the people,” in light of their wide membership base or their expertise in the problems of the disadvantaged. In reality, however, an NGO always represents a particular interest in society, even if that interest is very important, and oftentimes that interest is competing with the interests of other NGOs. For example, one NGO interested in youth may endorse the prohibition of recreational drug use, whereas another youth-focused NGO may advocate legalization.

NGOs are not elected bodies, and their legitimacy does not stem from their claim to represent the public interest. Rather, their legitimacy stems from their mission to address a genuine need in the community or society.<sup>60</sup> Therefore, an NGO will be considered (morally) legitimate so long as it makes a true difference and achieves meaningful change.

With their capacity to effect social change, NGOs exemplify participatory democracy, but they do not exemplify representative democracy.<sup>61</sup> Unfortunately, though, some who are dissatisfied with the workings of the political establishment view participation as a potential substitute for representation. In Hungary, for example, it has been suggested that NGOs should be guaranteed representation in the Parliament, through a second chamber or a similar mechanism. NGOs in Macedonia are going so far as to establish an NGO Parliament and even a shadow government.

**Practical problems** also arise in developing a mechanism for NGOs to select representatives. First, who should have the right to vote? All registered NGOs? Public benefit organizations only, or also informal networks and unregistered associations? What about autonomous branches of national organizations?

In the Slovak Council for Non-Governmental Organizations (see section II.4, above), 22 members represent “platforms” of NGOs. These “platforms” are formal or informal groupings of NGOs in certain areas of activity. However, official documents

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<sup>60</sup> See Miklos Marschall, *Legitimacy and Effectiveness: NGOs in Comparative Perspective*, SEAL, Spring 2001.

<sup>61</sup> “Civil society is about participation, while parliamentary democracy is about representation. The civic politics of citizen participation and the parliamentary ‘party politics’ of representation have a healthy dynamic of both complementarity and tension. It is important to understand that civil society is complementary, not a rival, to representative democracy, and participatory democracy goes hand in hand with representative democracy.” *Id.*

say nothing about what factors determine whether a given grouping constitutes a platform, and nothing about who decides such questions. In practice, platforms are whatever groupings the government and the existing group view as platforms; they were self-elected at the launch of the Council – which shows the difficulty of achieving consistency in applying the democratic procedures of a representative system to NGO participation.

Another practical problem is that an electoral process is, by its nature, a matter of procedure rather than substance. The distinction can hinder the effectiveness of the elected bodies. For example, the Hungarian National Civil Fund Law requires that the majority membership of regional grant-making bodies (the so-called colleges) be elected by NGOs at the local level. Of the more than 50 members elected members recently, only a handful have any experience in grant-making – and their main responsibility will be to distribute over 6 billion Hungarian forints during the coming year.

Despite these problems, NGO representation is increasingly common in Europe. Most governments expect some kind of grouping of NGO representatives as the “partner” to talk to. Even though many believe that a unified or centralized representation conflicts with the principle of diversity – one of the fundamentals of civil society – NGOs often find that networks, coalitions, or federations enable them to exert greater influence on decisions that affect them and their constituencies. These federations or umbrella groups are mostly organized by sector or policy area, such as women’s issues, the environment, and human rights.

In the **European Commission**, only federations, umbrella groups, or other recognized “representatives” are eligible to consult on policy documents or, in many cases, to receive funding. The Commission has acknowledged the challenges of setting criteria for choosing among NGOs at the European level: “Difficulties begin with the selection of participants. Given the large number and diversity of European NGOs in the EU alone, criteria for selection such as legitimacy or representative character are of vital importance.”<sup>62</sup>

In a background paper, the Commission articulates a three-pronged approach for determining the level of legitimacy of a potential NGO partner:

- To encourage NGOs to organize themselves, the Commission will favor umbrella groups with more members from several countries, and those with structures and mechanisms that are more democratic.
- “Verifiable criteria” regarding the NGO's management, especially resource management, will be considered; these criteria are usually outlined in co-financing guidelines or similar documents.
- Finally, the preceding criteria could be complemented by “a pragmatic approach based on the EU's existing relationships with, and knowledge of, [European NGOs].”<sup>63</sup>

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<sup>62</sup> EU Development Ministers Seminar: The Role of European Nongovernmental Organizations in Promoting Civil Society in Developing Countries (Berlin, March 1999).

<sup>63</sup> *Id.*



### III. Government funding of NGOs and public initiatives

In almost all countries in Europe, the various forms of government funding represent a considerable portion of total NGO revenue. As of 2003, the percentage of the NGO sector's income received from government ranged from about 30 (Sweden, Norway) to over 70 (Belgium, Ireland) in Western Europe, and, in CEE countries, from about 20 (Slovakia) to 40 (Czech Republic).<sup>64</sup>

The European Commission provides direct funding of over 1 billion euros per year to NGO projects.<sup>65</sup> The larger portion of the funding is paid to support NGO activities in the area of external relations (development cooperation, democracy programs, human rights, and humanitarian aid--400 million euros).<sup>66</sup> The social, educational, and environmental sectors within the EU also receive substantial allocations (about 50-70 million euros each).<sup>67</sup> NGOs in Europe and world-wide benefiting from EU funds number several hundreds. The Commission has noted that the financial support that it provides, supplemented by the EU public support to NGOs, highlights "the continued importance of high levels of public support for the role of NGOs."<sup>68</sup>

Government policies and attitudes toward financial relationships with NGOs are mainly determined by the role in the development of society and the implementation of government objectives that is attributed to the third sector. Financial support to NGOs may be a **part of governmental policy** reflecting the government's position that NGOs are partners in achieving important political and social tasks. Normally, this policy is accompanied by a well-developed system for providing public support to the third sector determined either at a central political level by legislation, by a government policy document or a compact-type bilateral document (U.K.), or by acts of other public authorities, including government (Croatia) or ministry (Germany), or other institution.

Public funding support may take the form of payment for goods and services that fall within the competence of the public sector or the form of programmatic support for NGOs' activities. It may also be delegated to local authorities (Hungary). The financial relationships with NGOs may be controlled directly by the government (Germany) or its agencies (the Swedish International Cooperation Agency, which administers bilateral development assistance programs and the country's support to

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<sup>64</sup> The difference is even more impressive when expressed in absolute figures. See data from the *Comparative Nonprofit Sector Project* the Center for Civil Society at the John Hopkins University, <<http://www.jhu.edu/~cnp/pdf/comptable4.pdf>>.

<sup>65</sup> *The Commission and Non-Governmental Organisations: Building a Stronger Partnership*, Commission Discussion Paper, presented by President Prodi and Vice-President Kinnock, Brussels, January 18, 2000, p. 2, <[http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000\\_0011en01.pdf](http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000_0011en01.pdf)>.

<sup>66</sup> *The Commission and Non-Governmental Organisations: Building a Stronger Partnership*, Commission Discussion Paper, presented by President Prodi and Vice-President Kinnock, Brussels, January 18, 2000, p. 2, <[http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000\\_0011en01.pdf](http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000_0011en01.pdf)>.

<sup>67</sup> *The Commission and Non-Governmental Organisations: Building a Stronger Partnership*, Commission Discussion Paper, presented by President Prodi and Vice-President Kinnock, Brussels, January 18, 2000, p. 2, <[http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000\\_0011en01.pdf](http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000_0011en01.pdf)>.

<sup>68</sup> *The Commission and Non-Governmental Organisations: Building a Stronger Partnership*, Commission Discussion Paper, presented by President Prodi and Vice-President Kinnock, Brussels, January 18, 2000, p. 2, <[http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000\\_0011en01.pdf](http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000_0011en01.pdf)>.



NGOs<sup>69</sup>) or through a specific institution (the newly established Croatian Foundation for Civil Society Development) established to coordinate the various aspects of the relations between organized civil society and the state.

### **III.1. General policy considerations in support to NGOs**

There are two main types of government funding for NGOs:

**Direct funding** – Financial support assigned from the public budget at the central or local level to an NGO directly--i.e., it will represent a budget expense in the given financial year. This does not mean that the funding will go directly from the State Treasury bank account to the NGO's bank account; usually the funds go through various governmental agencies, such as ministries, public foundations, and funds.

**Indirect support** – Indirect financial support does not include the direct transfer of money or property; rather, it represents a benefit granted to NGOs that lets them use assets to accomplish statutory goals rather than to cover other financial obligations. Such support will not appear in the public budget as a direct expense; rather, it represents foregone revenue. In the case of tax benefits, for instance, tax revenue that will not be collected, because of special treatment of NGOs, is considered indirect support.

The key criterion that governments use in order to determine whether and to what extent any NGO is qualified to receive public support is the “public good” served by the activity of the organization, rather than the type of activity conducted, e.g., service or advocacy activities. The degree to which NGOs support the public good, as reflected in “**public benefit**” legislation (or its functional equivalent in, for example, tax law), may entitle both service and advocacy organizations to receive direct and indirect public financing. Both service and advocacy NGOs can engage in public benefit activities that deserve government support, but in general, service-delivery is more likely to qualify as “public benefit activity” and to make the provider NGO eligible for financial support.

According to the public benefit criteria, there are generally two main types of NGOs:

- Public benefit organizations (PBOs), and
- Mutual benefit organizations (MBOs).

The PBO/MBO distinction is generally the basis for determining the appropriate level of indirect support (e.g., tax benefits). In the case of direct support, the primary question is whether there is a **legal basis prescribing** what type of NGOs should receive what type of direct support. Lacking legal prescription, the state may decide on its own; it will often determine direct support based not on the NGO's function (e.g., service, advocacy, self-help), but rather based on whether the NGO activities **help to implement a state policy**. With a view to such policy, the state may decide that an NGO is providing some activity worthy of support – for example, even self-help organizations such as Alcoholics Anonymous receive public funding in Hungary because they contribute to a more healthy society.

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<sup>69</sup> See more on the website of the Swedish International Development Cooperation Agency, <<http://www.sida.se/Sida/jsp/polopoly.jsp?d=107>>.

## **III.2. Policy considerations in providing direct support to NGOs**

### ***III.2.1. Service provision***

From the funding policy perspective, there is a principal difference between public service functions that the **state has a legal obligation to provide**, and those for which the state has no such legal obligation. For example, in every European country, the state must ensure the primary education of children. By contrast, the state generally will not have an obligation to ensure that every child with a spine disease has access to horse therapy, one of the most effective ways to treat such diseases.

In many realms, however, the distinction is not so clear. For example, home-care for the elderly may be a legal obligation for local governments in one country but not in another. The extent of state obligations evolves over time, and in most CEE countries it changes even from year to year, as society develops.

For example, at the change of the system in Hungary (1989), companies closed their state-run workers' hostels and thousands of people suddenly became homeless. As the state was not prepared to deal with so many homeless, hundreds froze to death during the first winter of the new democracy, and several NGOs were set up to shelter and help people on the streets. Because the problem was so visible and received media attention, Parliament reacted by making it obligatory for the local governments to provide shelters for the homeless. Since many NGOs, however, already ran such shelters, the local governments simply passed the budget money to the NGOs. Even today, practically all the homeless shelters in Hungary are run by NGOs and financed by the local governments.

Often a task becomes a state obligation because NGOs lobby for its inclusion in state legislation. For example, the social service NGOs that introduced meals-on-wheels service to the elderly in several districts of Budapest argued successfully that by solely providing lunch to the elderly in day-care centers, the local government was discriminating against those elderly unable to reach day-care centers. As a result, local legislation included the meals-on-wheels among the services entitled to state support.

Hospice care for the terminally ill, especially last-stage cancer patients, is still not part of the state-financed services in Hungary, despite repeated efforts by NGOs to demonstrate the value of the service in fulfilling the constitutional right of the ill person to human dignity. Therefore, if a hospital maintains a hospice department, it is usually run by a foundation that raises funds from elsewhere (e.g., from church or private donations).

The importance of the distinction between legally prescribed government tasks and those for which the government has no obligation is reflected in direct financing policies for NGOs. The fact that an NGO provides a state service does not in itself entitle it to receive state support. However, most European states have accepted legislative policies that assume the obligation of the state to finance such a service whether provided by government or a private entity. It is also becoming more common for governments in CEE to fund private providers for obligatory services for which the governments would have to pay anyway. This direct financing can take several forms, described below.

On the other hand, financing for services **not included among the legal obligations** depends entirely on the policies of the central or local government. In most European countries, certain policies related to social and economic development are determined as priorities for each ministry for a given year (e.g., for a ministry of la-

bor, these may include the reduction in the number of Roma unemployed in a certain region, the increase of companies employing disabled persons, or the increase in part-time employment of women). Among other measures, such as legislation and supported employment, the ministry may decide to use a grant program for those NGOs that run programs addressing these state policies.

It is generally difficult in Europe to find services funded that are not considered priorities by the government on the central or local level. For example, if an NGO operating in a small town in Hungary identified a pressing need to address domestic violence issues in the early 1990s, the organization would not have been able to obtain government funding for such a program; domestic violence was not a priority at the national or local level. But the world is changing. Due in part to advocacy by women's organizations and – mainly – to the pressures of European Union policies on gender equality, the Hungarian Ministry of Interior is currently headed by a woman and has launched a nation-wide program to train police forces on dealing with domestic violence. Today the same NGO in the same small town would have a range of government grant opportunities to finance its outreach to abused women. Meanwhile, though, NGOs providing shelters for stray dogs may continue to struggle for financing.

In summary, in many European countries that adopt the principle of subsidiarity (see below), the main criterion for receiving direct state support for service provision is whether the state is legally obligated to ensure the provision of pertinent services. Beyond legally required services, government policies on the national and local levels establish grant-making priorities. For NGOs seeking state funding for additional services, the outcome will depend substantially on the organizations' abilities to lobby, and thereby to raise the importance of the issues on the government's agenda.

### ***III.2.2. Principles and mechanisms for direct financing of services that the state should ensure***

Governments have a range of principles and mechanisms available to determine exactly how to finance NGOs providing state services.

- An important question is whether the government would like to give a **preference to service-providing NGOs** that compete with other entities. NGOs are eligible to bid for the delivery of social and/or other services assigned to governments; however, in most European countries they do not enjoy *exclusivity* of such eligibility. They are eligible for funding on equal terms and conditions as the other bidders, with no official preference for the third sector in the service-providing area. (See the U.K., Poland, and Hungary examples below.)
- According to the **subsidiarity principle** (typical of Germany), a need that emerges in a community must be addressed by those closest to the need.<sup>70</sup> As a basis for social policy, this principle has determined the system of financing social welfare services in Germany for the last century.<sup>71</sup> According to this

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<sup>70</sup> The subsidiarity principle is also a generally adopted principle of the European Union, intended to ensure that decisions are made as closely as possible to the affected citizens. This means that the Union does not take action (except in the areas that fall within its exclusive competence) unless its action will be more effective than action taken at national, regional, or local level.  
<[http://europa.eu.int/scadplus/glossary/subsidiarity\\_en.htm](http://europa.eu.int/scadplus/glossary/subsidiarity_en.htm)>

<sup>71</sup> The principle, as understood in the social policy context, originates in the Encyclicals of Pope Leo XIII (1891) and Pope Pius XI (1931), who first explained and elaborated upon the division of

system, the need should be addressed by the (informal) community of those affected (e.g., family, neighbors); if they are unable or unqualified to do so, then by the formal organizations of the same community (NGOs). The local government may set up a service for a need only if no organized community effort addresses it already. For those needs not addressed at the local level, a regional and ultimately a federal system has to be established. In this case, the government usually chooses to finance all of the service, with budgets negotiated on an annual basis.

- In a **normative system** (introduced in Hungary), any entity providing a service that would be the government's task (including education, health, and social and other welfare services), if the entity satisfies certain criteria, will receive government support based on the number of clients it serves. Because this government support is provided on a per capita basis, it is called "normative support." The service provider will receive the support regardless of whether it is a local government institution, an NGO, or a private company. (Private companies will not make profit based on this support, as it covers only a portion of the service-related expenses, and any fees received from clients must be reinvested in the service.) Local governments usually cover only operational costs, meaning that NGOs must fundraise in order to remain competitive. This system may accompany the subsidiarity principle as well.
- A **competitive system** (typical of the U.K., introduced also in Poland) begins with a list of public benefit activities. Whenever the government wants to provide a service on that list, it issues a tender. NGOs and local government institutions (as well as private companies, in case of the U.K.) compete to win the contract by offering the best-value service. In this case, the types of costs the government covers may vary – more often than not, applicants must raise additional funds to win the bid.

In CEE, a general problem is that the government has traditionally provided all public services. Existing government institutions want to ensure a stable income for their employees, and they find it threatening to consider NGOs "coming from nowhere" suddenly taking over "government" roles. Unfortunately, therefore, local governments often view NGOs more as competitors than partners in achieving community goals.

### *III.2.3. Advocacy organizations*

In the case of advocacy organizations, their effectiveness depends chiefly on whether they can remain independent from state influence if they receive state funding. We may make two basic assumptions here:

- In contrast to service provision, the state usually has no legal obligation to finance advocacy organizations because of what they do.<sup>72</sup>

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tasks between state and church, as well as communities, in improving social conditions.  
<[http://www.ucc.ie/academic/appsoc/hdsp/Pius%20XI,%20Quadragesimo%20Anno%20\(15-05-1931\).htm](http://www.ucc.ie/academic/appsoc/hdsp/Pius%20XI,%20Quadragesimo%20Anno%20(15-05-1931).htm)>

<sup>72</sup> With the exception that such organizations are sometimes included in the state budget on an annual basis, see Subsidies, Section III.3.1.

- Nothing prohibits the state from financing advocacy organizations; it is ultimately up to the organization itself to decide whether it wants state funding and the resultant association with the government.

Advocacy organizations ordinarily seek to protect or further the interests of a certain societal group. In order to do so, the organizations often challenge state policies, oppose planned legislation, or mobilize against a government action. Why, then, would the government support “its own enemies,” or in a more positive light, “its own challengers”?

The most important reason is the “enlightened self-interest” of the state to ensure that the electorate will be satisfied with policies that affect them. By ensuring means for participation and an opportunity to influence the decision-making process, the state can preempt potential dissatisfaction and unrest in society. In the case of the EU, “consultation with the interest groups” is considered an integral part of good governance, and legislative efforts by member states to implement the *acquis communautaire* have to be based on “social dialogue.”

Furthermore, governments gain access to inexpensive but high-quality policy expertise by ensuring avenues for participation. Advocacy NGOs that consider it their mission to achieve progressive change in legislation and state policy often have extensive experience in the field; their personnel are sometimes more knowledgeable than public sector or for-profit experts. For example, NGOs often have access to cutting-edge expertise through their international networks. By supporting them, governments can ensure that policy actions reflect a high professional quality that is consistent with international standards or best practices.

A constructive relationship between government and advocacy NGOs presupposes mutual respect and some degree of trust on the part of both parties, which is often still lacking in CEE countries. Unfortunately, in some cases a government has supported advocacy NGOs in order to gain control over a policy area or to create its own clientele. In such cases, political considerations override professional ones.

One helpful criterion that governments apply to determine advocacy organizations' entitlement to public support is whether they pursue **public benefit or mutual benefit interests**. This may relate to the kind of activity they engage in (e.g., sports or environmental protection), or the target group they serve. For example,

- professional interest groups – whose primary purpose is lobbying – may not be entitled to government support (and usually rely on membership fees), while
- federations of disabled people – which pursue, in essence, the same goal – may still receive government support on the theory that their efforts contribute to the public good.

Once the government decides to support such organizations, it may be good practice to ensure that the **decision-making mechanism remains independent** from the political establishment. How to achieve this? One solution is to create a semi-autonomous decision-making body, which can be within the central administration system (e.g., a ministry establishes a grant-making advisory body), or in the form of a quango. Such bodies will usually consist of independent experts and representatives of all the parliamentary parties. (These kind of independent, multi-party bodies are also common in ministries giving grants to service-providing NGOs.)

As in the case of service provision, government policy development and implementation are a sound basis for supporting advocacy organizations, which can usually benefit from (programmatic) public support of their activities, mainly through subsidies and grants mechanisms (see below). However, certain limitations are possible – activities deemed to obstruct governmental policies, for example, may be considered as failing to contribute to the public good and therefore, as eligible for state financing.

### **III.3. Forms of direct government support**

#### ***III.3.1. Subsidies***

Subsidies are government funding providing general support to NGOs' activities, not linked to a specific project.<sup>73</sup> They can be used to cover overall operating expenses as well as specific project implementation and therefore serve as general support for NGOs that make considerable contributions to governmental policy implementation. Such funding may also serve to symbolize the public sector's respect for civil society and its merits.

This form of financial support is most typical in the CEE countries, and its use is currently declining. There, direct budget subsidies are considered a remnant of the communist period: those organizations that lobbied successfully during the change of the system received a special position in the budget and became entitled to subsidies, such as the Red Cross (in almost every country), or the National Federations of Pensioners, the Pioneers, or the Blind. In Hungary, the Annual Budget Act allocates central subsidies to about 25 organizations listed in the annex to the Act, but only a few of them are involved in actual service-providing or other forms of activities to the benefit of the public.

However, this can still be a good solution for organizations that have not yet achieved financial sustainability, especially as foreign aid support is declining. Funding through subsidies is not open to all NGOs; potential beneficiaries usually include interest representation groups (see the examples above), service-providing organizations, and few if any advocacy organizations. Subsidies distributed through ministries or other governmental institutions normally go to NGOs working in the area of activity of the line ministry (e.g., the Ministry of Youth and Sports in Romania is authorized to allocate funds to organizations related to sports and youth), which could include advocacy organizations as well.

As a form of budgetary support, subsidies can be provided from central and local budgets, usually on the basis of a law. They can also be provided by the administrative decisions of public authorities. In Hungary, for example, the Parliament used to determine, upon the recommendations of the Parliamentary Commission on Civic Organizations, which NGO-applicants would receive a subsidy. The Slovak Parliament has adopted a special law setting guidelines for subsidizing NGOs<sup>74</sup>; the allocation of funds is executed through the separate ministries. Subsidies may also be di-

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<sup>73</sup> *Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia*, IJNL, Volume 3, Issue 4, June 2001, <<http://www.icnl.org/journal/vol3iss4/prelimstudyprint.htm>>.

<sup>74</sup> *Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia*, IJNL, Volume 3, Issue 4, June 2001, <<http://www.icnl.org/journal/vol3iss4/prelimstudyprint.htm>>.



rectly distributed by a parliament in the Annual Budget Act (as in Bulgaria and Hungary).

Funds distributed as subsidies may also originate from other sources than the budget, such as privatization funds (Czech Republic, though this is a source of limited duration) or lottery proceeds (Croatia).

Subsidies are usually determined through a centralized process but can be allocated and distributed by the separate ministries (Romania, Bulgaria, Croatia, Hungary). The body that distributes the subsidies ordinarily supervises their expenditure as well.

### **III.3.2.Grants**

According to the USAID Glossary of ADS Terms, a grant is “a legal instrument used where the principal purpose is the transfer of money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by statute and where substantial involvement by [the state] is not anticipated.”<sup>75</sup>

Grants are generally not used to cover operating expenses, but rather devoted to implementing particular projects that reflect the government’s programmatic objectives and therefore are considered to be of public value.<sup>76</sup> However, core costs may also be supported via grants – as in Hungary, where the new National Civil Fund gives grants for operational costs, with the explicit aim of strengthening the NGO sector.

In Denmark, volunteer organizations may receive so-called “basic grants,” not destined to fund a specific project but rather distributed on the basis of objective criteria such as purpose, turnover, and self-generated funds.<sup>77</sup> “The intention is to stimulate the voluntary organization’s autonomy and freedom to determine its own activities and to be capable of promoting the interests of others.”<sup>78</sup> The other type of grant available to Danish NGOs active in the social field – the “project grant” – is awarded directly to specific projects or activities.<sup>79</sup>

Grants, unlike subsidies, are awarded through an open tender-type grant application process and not by the individual administrative decision of a central or local government officer or by a parliament. They may fund the delivery of social services (Germany, Croatia, the U.K.) or the implementation of programs from the country’s international development aid obligations (Sweden, Denmark, Germany). Funding to NGOs provided in the form of grants also demonstrates the government’s recognition of the third sector’s public role; often it is essentially compensation for their perform-

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<sup>75</sup> *Glossary of ADS Terms*, United States Agency for International Development, Washington, DC: USAID, 2001, p. 93, <<http://www.usaid.gov/policy/ads/glossary.pdf>>.

<sup>76</sup> *Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia*, IJNL, Volume 3, Issue 4, June 2001, <<http://www.icnl.org/journal/vol3iss4/prelimstudyprint.htm>>.

<sup>77</sup> *The Voluntary Social Sector in Denmark*, Ministry of Social Affairs, Denmark, 2001, p. 15. <<http://www.frivillighed.dk/filecache/3484/1095353806/voluntarysocialwork.pdf>>.

<sup>78</sup> *The Voluntary Social Sector in Denmark*, Ministry of Social Affairs, Denmark, 2001, p. 15. <<http://www.frivillighed.dk/filecache/3484/1095353806/voluntarysocialwork.pdf>>.

<sup>79</sup> *The Voluntary Social Sector in Denmark*, Ministry of Social Affairs, Denmark, 2001, p. 16. <<http://www.frivillighed.dk/filecache/3484/1095353806/voluntarysocialwork.pdf>>.

ance of tasks or pursuit of objectives that would otherwise have to be addressed by public authorities.

Grants may originate from the budget (central or local) or from special funds formed by income from alternative revenue sources: lottery proceeds, taxes, etc. For example, the “basic grants” fund in Denmark is formed from the so-called “Danish Football Pools and Lotto” funds in addition to budget sources. The “project grants” are distributed from the Grant Programme for Development of Voluntary Social Work, which is a central government budget source.

In Hungary, a range of central funds support NGOs financed by some sort of tax mechanism, e.g., the Cultural Fund from the tax on *kitsch* and pornography; the Employment Fund from contributions paid by employers and employees; the Environmental Fund from tax on gas, fines paid by polluters; and the Civil Fund (the newest), from 1% contributions (see Section III.5.4). These funds usually provide grants and loans not only to NGOs, but also to local governments as well as entrepreneurs in the given field.

Grants are often distributed either directly by the government or by a governmental agency. In the U.K., this function is assigned to the local offices of various government authorities (e.g., those for health, employment, education). This role can also be assigned to a special entity, as with the public foundations in Hungary or the single public foundation created for that purpose in Croatia. In Germany, the government provides support to the national umbrella organizations of NGOs, which in turn distributes the funds to their membership. In Poland, the local government is envisioned as the main body responsible for tendering and contracting out local services. The Danish Ministry of Social Affairs is responsible for distributing the “basic grants” to voluntary organizations working in the social field.<sup>80</sup> Grant-making in the EU can also be channeled through the national or local authorities of the individual Member States, or be provided by the Commission or by special funds. The projects funded through this form should always be directed at achieving a precise objective in pursuit of a common EU policy.

Limitations on the eligibility of NGOs for access to grant competition procedures are possible – for example, only NGOs with public benefit status may be admitted to apply for funding. The organization’s area of activity may also impose a limitation on its access to contracts: for example, only NGOs operating in the area of health services may be permitted to bid for a grant for the delivery of such services. NGOs are mostly eligible for grants for social (human) services provision (health, social care, education, culture, etc.) and development aid. However, grant-making is in principle possible in all areas of government operation – e.g., the Ministry of Interior in Hungary provides grants to volunteer civic police forces, and the Ministry of Justice provides grants to NGOs that educate judges on domestic violence.

Grants are usually distributed on a competitive basis and after a selection process. Among the selection criteria are typically past activity of the organization, history of partnership, references, political and other activity unrelated to the competition but troubling the funder, technical quality of the proposal, professionalism of the staff, “package projects” (if the applicant has already won some related projects), reliability, managerial and financial competence, possibility of receiving cost-share fund-

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<sup>80</sup> *The Voluntary Social Sector in Denmark*, Ministry of Social Affairs, Denmark, 2001, p. 16. <<http://www.frivillighed.dk/filecache/3484/1095353806/voluntarysocialwork.pdf>>.



ing, possibilities for establishing a mutually beneficial future partnership, time limits for implementation if they are not strictly specified in the announcement, etc.

The selection process involves – or should involve – several crucial safeguards to ensure appropriate levels of transparency and openness. Thus, there should be appropriate procedures to announce and advertise the available grants and specific criteria for awarding them. For example, all EU grants are posted on the Internet and categorized according to the area of activity and eligible recipients. The requirements for a fair and open selection process also include publicizing the award, the possibility for review of the decision, and the remedies available after a challenge of the award decision.

Funding through grants may be occasional, short-term, or long-term. Preference is usually for occasional or short-term funding, in part because the state administration may not commit itself to multi-year funding without knowing budget objectives for subsequent years, and also to prevent NGOs from becoming dependent on the grants. However, this short-term view often limits a developmental approach to public grantmaking.

Funding through grants is effectuated by signing a contract between the grant-making authority and the NGO recipient. Some provisions in the contract may be mandatory, as provided for by legislation or by the competition announcement. In terms of legal nature, content, and consequences, this contract should not be confused with a procurement contract to enable the funded NGO to provide works or services falling within the domain of the public authorities. The former provides terms and conditions for the use of the public funds, reporting, and supervision, while the latter also regulates specific conditions regarding service-delivery.

### ***III.3.3. Procurement***

Procurement is the public authorities' purchase of goods and services delivered by NGOs. Usually the legislative mechanism for procurement is established for all potential participants, including business entities and NGOs. The latter are most likely to be funded by the government for the delivery of social services. In Germany, indeed, NGOs are the default providers of social services. In the U.K., the second stage of the process of restructuring the welfare state (1980s-1990s) has resulted in the break-up of the previous public administration system, the introduction of management of social welfare, and “quasi-markets.”<sup>81</sup> Under the new system, public services must be assigned as if by “economic markets,” so NGOs must compete on equal footing with for-profit institutions and public-sector institutions.<sup>82</sup> In Croatia, local authorities have the authority to assign “public utility” services to natural and legal persons based on a written agreement.<sup>83</sup> In Poland, NGOs have been given a chance to compete with public providers in the newly adopted Law on Public Benefit Activities.

In Sweden, volunteer organizations have access to competitive contracting for the delivery of social services (childcare, education, home-help). The municipality of Täby has introduced innovative and flexible models of contracting out services, by

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<sup>81</sup> *Social Policy in the U.K.*, <<http://www2.rgu.ac.uk/publicpolicy/introduction/uk.htm>>.

<sup>82</sup> *Social Policy in the U.K.*, <<http://www2.rgu.ac.uk/publicpolicy/introduction/uk.htm>>.

<sup>83</sup> *Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia*, IJNL, Volume 3, Issue 4, June 2001, <<http://www.icnl.org/journal/vol3iss4/prelimstudyprint.htm>>.

taking into account various aspects of this “privatization.” For example, they provide an “employment guarantee when it comes to a competitive tender. When a private provider is [awarded the contract], the employee has the right to choose if he or she wants to remain employed by the municipality or join the entrepreneur. But he or she also has a one-year option to return to the municipality.”<sup>84</sup>

The main problems that NGOs encounter in accessing this form of government funding is that the majority of projects open to procurement are high-value ones, and it is often difficult for NGOs to comply with the requirements placed on bidders. In addition, procurement is often considered inconsistent with the not-for-profit nature of NGOs. Indeed, very few procurement procedures allow for access and successful bids by nonprofits (essentially only smaller projects in the area of social services or local public benefit services). The Slovak Public Procurement Act of 1999 expressly excludes NGOs from the tenders for public services.

A potential solution is the Hungarian example – that is, a special form of contract called a **public benefit contract**. This may be executed with “outstanding public benefit organizations” for the provision of state services. Hungary has two categories, or two levels, of public benefit status: the “normal” public benefit organization and the outstanding public benefit organization. This second category describes organizations that have a special contract with a state agency commissioning them to provide public services. Such a contract entitles them to special public benefit status and additional tax and other benefits that accompany it. Though only 6 percent of NGOs possess such status, it represents an important development in the state/civil society relationship, because it provides a transparent legal form for NGOs to provide state services, when otherwise NGOs would have difficulty obtaining contracts under the procurement laws.

### *III.3.4. Normative support*

The normative financial support to NGOs bears certain similarities to the system of procurement of social services. It is a reimbursement to NGOs that deliver services in areas such as healthcare or education, and the funding is determined on the basis of the services actually provided. Under this system, physical persons have the right to choose their service-provider, possibly an NGO, which then seeks reimbursement from the government.

Ordinarily, the normative funding is preceded by a contract with a public authority, and/or permission to operate issued by a public authority, which authorizes an NGO’s access to the funding mechanism.<sup>85</sup> Such a system is established in Hungary, whereby an NGO may set up a social service institution on the basis of a contract with the respective ministry. The funding to which such an NGO may be entitled is limited to the amount of support granted to a state-run institution operating in the same area

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<sup>84</sup> Arne Svensson, *Redefining Public Services Through Market-oriented Mechanisms: Scandinavian Experiences & Best Practice*, Professional Management AB Presentation at the International Workshop on Guarantor Government in Täby, Sweden, May 31-June 1, 2001, arranged by Bertelsmann Foundation/ Cities of Tomorrow, p. 10, <<http://www.cities-of-tomorrow.net/Svensson.doc>>.

<sup>85</sup> *Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia*, IJNL, Volume 3, Issue 4, June 2001, <<http://www.icnl.org/journal/vol3iss4/prelimstudyprint.htm>>.

of activity, which is set in the Annual State Budget Act. A similar system functions in Croatia.<sup>86</sup>

### III.3.5. Vouchers

The use of vouchers reflects the tendency toward modernization and market-oriented mechanisms in public services delivery. It has been particularly successful in the Scandinavian countries. Under this system, a municipality gives all citizens vouchers for the services that fall within the municipality's responsibilities, and the citizens then choose their provider. Such vouchers eliminate the dispute over which is the best service-provider by strengthening the role of citizens and by giving them the responsibility to select the service-provider.

Therefore, the process pursues two purposes: expanding the freedom of choice of the service-user, and raising the quality of the service through competition. Vouchers are an instrument to develop demand-driven service provision, in which the market rather than the state develops and offers services. The individual citizen, entitled by the state or the municipality to a subsidized service, is able to use this subsidy by means of a service voucher, which serves as the means of payment. Recipients of service vouchers can be all citizens or groups with particular needs.

In some municipalities, the predominant service-providers are private contractors, whereas in others they are voluntary organizations. Remuneration to the provider can be regulated by agreement between the provider and the public authority overseeing the operation, or directly between the customer and the provider. The system requires a certain degree of control by fixing or limiting the fees for the provided services.

Voucher systems are relevant – and have been introduced – in education, social welfare, and other individual services in Sweden. An example of good practice is found in the municipality of Täby in the Stockholm area, where a successful combination of competitive contracting and a voucher system under the motto “The best service is the one, one gets to choose by oneself” seems to be producing excellent results.<sup>87</sup> Vouchers cover childcare, education, and home services for the elderly. This means, for example, that a day-care center or a school receives a fixed sum for every child enrolled (similar to the normative system).

Service-providers that have succeeded in attracting customers are thus primarily funded by revenues through the voucher system. The municipality exercises control over the providers by, among other means, establishing quality standards for the service delivery, requiring various proofs for the quality of the service, admission rules, taxes charged.<sup>88</sup> The process starts with an application by the potential service-

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<sup>86</sup> Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia, IJNL, Volume 3, Issue 4, June 2001, <<http://www.icnl.org/journal/vol3iss4/prelimstudyprint.htm>>.

<sup>87</sup> Arne Svensson, *Redefining Public Services Through Market-oriented Mechanisms: Scandinavian Experiences & Best Practice*, Professional Management AB Presentation at the International Workshop on Guarantor Government in Täby, Sweden, May 31-June 1, 2001, arranged by Bertelsmann Foundation/ Cities of Tomorrow, p. 10, <<http://www.cities-of-tomorrow.net/Svensson.doc>>.

<sup>88</sup> Arne Svensson, *Redefining Public Services Through Market-oriented Mechanisms: Scandinavian Experiences & Best Practice*, Professional Management AB Presentation at the International Workshop on Guarantor Government in Täby, Sweden, May 31-June 1, 2001, arranged by Bertelsmann Foundation/ Cities of Tomorrow, p. 14, <<http://www.cities-of-tomorrow.net/Svensson.doc>>.

user to the social board. In response, the applicant is given a voucher that indicates the range of services to which the person is entitled. These services have been identified through an individual assessment conducted by the social board and a home help service secretary. The list may include various types of home personal help – nursing, purchases, cleaning, etc. Vouchers are provided monthly and cover a month of services. The person in need is entitled to the right to choose the service-provider from a list of providers accompanying the voucher. He or she can also choose to use the services provided by the municipality.<sup>89</sup>

### III.4. Policy considerations in indirect support

#### III.4.1. Public benefit activities

The conceptual difference between the “public benefit” versus “mutual benefit” nature of NGOs exists across Europe. The legal and financial consequences of engaging in public benefit activities and eventually being granted **public benefit status** have proved considerable and justified the recent enactment of public benefit laws in a number of CEE countries (Hungary, Bulgaria – as part of the NGO law – and Poland, among others). These laws prescribe and determine when an NGO can qualify for public benefit status and thereby gain access to a wider range of tax benefits.

Public benefit recognition usually indicates (1) that an NGO provides services and activities that benefit the public at large or a special group in need; and (2) that the state provides special recognition for these activities through direct or indirect support.<sup>90</sup>

What activities qualify as public benefit is defined differently in every country where such legislation exists; usually there is a list of activities (e.g., in Hungary, a list of 22 types of activities including, among others, education, social services provision, preservation of cultural heritage or protection of the environment). The type of government support available to NGOs with public benefit status also varies. In Hungary, for example only PBOs may receive tax deductible donations; Poland is contemplating limiting the corporate income tax exemption to PBOs only. The entitlement to the 1% support (see below under *Indirect funding*) is another benefit that can be made available to PBOs only or to a wider circle of NGOs, depending on the government policy.

NGOs that aspire to obtain public benefit status and the resulting tax advantages must satisfy additional criteria. Most significantly, they have to comply with higher levels of transparency and accountability so as to ensure proper spending of public money. For example, they may have to prepare a yearly report or establish a supervisory board.

#### III.4.2. Tax benefits

Governments can provide indirect financial support to civic organizations in the form of tax benefits or exemptions, thus encouraging and supporting their general

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<sup>89</sup> Arne Svensson, *Redefining Public Services Through Market-oriented Mechanisms: Scandinavian Experiences & Best Practice*, Professional Management AB Presentation at the International Workshop on Guarantor Government in Täby, Sweden, May 31-June 1, 2001, arranged by Bertelsmann Foundation/ Cities of Tomorrow, p. 17, <<http://www.cities-of-tomorrow.net/Svensson.doc>>.

<sup>90</sup> See more on this in the *Guidelines for Laws Affecting Civic Organizations*, prepared for the Open Society Institute in cooperation with the International Center for Not-for-Profit Law (ICNL), New York, 2004, pp. 103-104.

activities. Most legal systems acknowledge the contribution of nonprofit organizations to the public good and recognize this contribution by providing a range of tax benefits related to their activities.<sup>91</sup> The main examples of such benefits include:

- Tax exemption or benefit for the income of the organization (related to income from its statutory or economic activity); for example, an NGO may not have to pay property or corporate income tax on all or a portion of its income.
- A tax benefit provided to the donor for a contribution to a recognized organization. For example, such a contribution may be deducted, in whole or in part, from the donor's tax base.
- Tax exemption or benefit of the income that the nonprofit organization provides to others; for example, if an NGO provides a scholarship to a person, the person will not have to pay an income tax on the scholarship.

Because of the loss of tax revenue that could be collected, these forms of tax benefits are traditionally viewed as indirect government subsidies to the organizations and their donors.<sup>92</sup> Tax revenue foregone constitutes an indirect means of support from the state, by contrast with direct government support to NGOs involving transfer of funds from the state to an NGO.

The level of indirect support through tax benefits can vary depending on the public benefit status of the organization or whether its activities are considered beneficial to the public. Public benefit NGOs naturally enjoy a wider range of exemptions and tax benefits. They are granted such benefits as the following:

- exemption from profit tax (Estonia, Slovenia, Hungary, Slovakia);
- exemptions from or benefits on VAT (Slovakia, Czech Republic for certain public benefit activities, Estonia for some activities and a reduced rate for others, Hungary for some activities and a zero-rate for others);
- tax benefits on income from business activities (Slovakia up to a certain amount, Poland if such income is used for public benefit activities, Hungary as long as the activity pursues the organization's statutory purpose);
- exemptions from taxes on grants, membership dues, investments, real estate, customs, court fees, and others.

NGOs that engage in public benefit activities may also be granted additional exemptions, including, for example, tax exemptions on the support they provide to individuals (e.g., scholarships) and benefits on the donations made to such organizations, which encourages private and corporate contributions to public benefit organizations. Such benefits are provided for in Estonia, Hungary (at a higher level for "prominent" public benefit NGOs), Poland, and Slovakia.

For mutual benefit organizations, tax benefits are usually limited. As a general encouragement to the development of democracy, governments may provide some minimum level of support to mutual benefit organizations (MBOs) as well.

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<sup>91</sup> Tax benefits or tax incentives are means provided by the state to ease the tax burden on the taxpayer and/or possibly to create an incentive to achieve a state goal by encouraging the taxpayer to use the funds in a certain way.

<sup>92</sup> Fishman and Schwarz: *Nonprofit Organizations: Cases and Materials*, Second Edition (2000), p. 332.

### III.5. Forms of indirect support

#### III.5.1. Use of public property at no cost or at reduced rates

Use of public property as a form of indirect support is widely used in CEE countries. Governments allow NGOs to use state or more often municipal property for their statutory activities, including, for example, as office space, meeting halls, and sports facilities. Usually this is done on the basis of a law and upon certain conditions.

For example, the Hungarian Act CXLII of 1997 authorizes the free use of state-owned property by civil society organizations, which may also acquire the right to own this property, with some restrictions, after a period of 15 years. To receive this form of support, an NGO cannot have outstanding public debts and cannot sell the property or establish a mortgage on it during the 15-year period. The law or the contract may impose certain limitations on the activities that can be conducted in the leased property, e.g., the organization can only engage in its statutory activities, or cannot use the property for political activities. In Croatia, the Social Care Act provides for the free use of state or municipal property only if the organization will use it to provide social welfare services. The lease on the public property is concluded either by the public institution that exercises the ownership rights (e.g., the municipality), or by a special body, such as the State Property Administrator in Slovakia.

#### III.5.2. Tax exemptions on income

In considering the tax treatment of NGOs in the CEE region, we find two approaches taken in most tax legislation: determining taxation and exemption based on (1) types of organizations and (2) categories of income. We consider each below.

*Types of Organizations.* The laws of some countries allow tax exemptions for not only foundations and associations but also any other legal form of not-for-profit legal entities. The only preconditions are prior registration and observance of the non-distribution constraint. Other countries provide such exemptions only to organizations that engage predominantly or exclusively in public benefit activities. As an extreme example, in a few countries tax exemptions on income are not granted to any type of NGOs and only limited tax benefits are available to organizations engaged in activities on behalf of the disabled.<sup>93</sup>

Tax exemption on income is granted to NGOs in general and not exclusively to public benefit organizations in a number of countries, for example, Czech Republic, Hungary, Latvia, Lithuania, Slovakia. In some of them, including Slovakia, this approach reflects the concept that NGOs are not public business entities, and therefore are not proper subjects of taxation, at least with respect to certain types of income.<sup>94</sup> “More frequently, the laws treat NGOs as taxable legal entities, but permit them to claim exemption from the corporate income or profits tax” (Czech Republic).<sup>95</sup>

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<sup>93</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 10, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>94</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 12, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>95</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 12, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.



Elsewhere, including Bulgaria and Slovenia, only public benefit organizations are exempt, and the laws list the activities that benefit the public and entitle the organization to claim the exemption.

*“Sources of tax exempt income.* Most countries treat income from grants, donations, fees and dues as tax exempt.”<sup>96</sup> The income from economic activities (sales of goods or services) is treated differently. Economic activities are defined as “regularly pursued trade or business involving the sale of goods or services and not involving activities excluded under some distinct tradition.”<sup>97</sup> Generally, this definition is understood to exclude the receipt of gifts and donations, certain passive investment income, occasional activities such as fundraising events, activities carried out using volunteer labor, and fees that are “intrinsically connected to the public benefit purposes of the organization” (e.g., tuition for an educational organization.)

Provided that NGOs are permitted to engage in economic activities (which is not always the case, e.g., certain types of NGOs in Lithuania must not do so), the following approaches are possible:

- all income is taxed (Slovenia);
- only income from activities related to the organization’s public benefit purpose are exempt (Estonia, Latvia);
- only income that serves to further the organization’s public benefit purpose is exempt (Germany, Poland);
- income above a certain threshold is taxed;
- exemptions granted under a mixed (hybrid) tax system (Czech Republic, Hungary).<sup>98</sup>

Lithuania exempts all nonprofit entities from profit tax; however, not all such entities may engage in economic activities.

Income from investment provides an essential source of revenue for NGOs. Many countries impose additional requirements and limitations on the distribution of income and the accumulation of capital by NGOs to ensure that such income is spent in pursuance of their public benefit objectives. The tax treatment of passive investment income varies according to the type of income and the type of NGO.<sup>99</sup> Slovakia and Slovenia treat almost all investment income as taxable, although there are special reduced rates for taxes on certain investments.<sup>100</sup> Hungary generally taxes all income but provides exemptions for public benefit organizations as long as they do not en-

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<sup>96</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 10, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>97</sup> *Economic Activities of Not-for-Profit Organizations*, in *Regulating Civil Society*, conference report, ICNL, (Budapest: May 1996), pp. 6-7, available at <http://www.icnl.org>.

<sup>98</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, pp. 18-22, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>99</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 23, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>100</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 23, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

gage in business activities.<sup>101</sup> In Poland, all investment income used for public benefit purposes is tax exempt.

### **III.5.3. Tax incentives for philanthropy**

Indirect support provided through tax advantages to donors is frequently seen as an incentive to encourage NGO activity and private philanthropy. Traditionally, two main forms of tax benefits are seen as incentives for philanthropic behavior:

- tax deductions; and
- tax credits.

With tax deductions on charitable donations, the donor can deduct all or part of the money contributed to an NGO from the *tax base* upon which tax will be calculated. With tax credits for charitable donations, by contrast, the donor will be able to deduct part of the donated amount from *tax liability* (i.e., the tax due). In other words, a tax credit reduces the amount of tax owed, whereas a deduction reduces the amount of income subject to tax.<sup>102</sup>

Tax deductions may be claimed by business and individual donors; in some countries, the maximum deductible amount differs for the two categories (e.g., in Estonia it is 5% for individual donors and 3% for business donors). The limitation is usually a percentage of the taxable income. Hungary grants a tax credit and not a tax deduction on individual donations.<sup>103</sup>

However, the recipients of tax-benefited contributions are usually limited to organizations engaged in public benefit activities. For example, in Hungary as well as Estonia, charitable contributions entitle the donor to a tax deduction (up to a certain limit) only if it is made to a public benefit NGO on the list published by the government.<sup>104</sup>

### **III.5.4. The so-called “1%” tax designation mechanism**

The central idea of percentage mechanism is that taxpayers may decide to designate a certain percentage of their income tax paid to a specific nonprofit, nongovernmental organization (NGO), and in some cases, other organizations, mainly churches.

The “percentage mechanism” was introduced in Central Europe, primarily with the purpose of supporting nonprofit organizations.<sup>105</sup> The first such law was adopted in Hungary in 1996 and allowed taxpayers to designate 1% of their tax due to the civil society organization of their choice.<sup>106</sup> Slovakia (2001), Lithuania (2002),

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<sup>101</sup> *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 23, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>102</sup> *Section 9.2: Income tax deductions or credits for donations*, in *OSI Guidelines for Laws Affecting Civic Organizations*, ICNL, 1997, pp. 78-79.

<sup>103</sup> *Survey of Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 36, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>104</sup> *Survey of Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 35, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>105</sup> Nilda Bullain, *Percentage philanthropy and law*, NIOK and ECNL, 2004, pp. 3-4, <[http://www.onepercent.hu/Dokumentumok/Chapter\\_2\\_ECNL.doc](http://www.onepercent.hu/Dokumentumok/Chapter_2_ECNL.doc)>.

<sup>106</sup> *Survey of Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 37, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.



and most recently Poland and Romania (2003) followed the Hungarian example and adopted similar legislation.<sup>107</sup> “Taxpayers” includes natural persons in all four countries and also corporate taxpayers in Slovakia. Possible beneficiaries are nonprofit organizations that engage in public benefit activities plus trade unions (Lithuania), public institutions (Hungary and Lithuania), and churches (Hungary – designations for churches form another 1% of the tax). Certain additional conditions may also be imposed, such as the existence of the organization for a given period of time (Hungary), as well as reporting requirements.

The percentage legislation is based on the concept of “*advancement of civil society through support of its organizations*” as a part of government policy.<sup>108</sup> Other rationales that justified and led to this policy include strengthening civil society through financial support and capacity-building, awareness-raising, development of philanthropic culture, and the provision of decentralized and depoliticized government support to civil society.<sup>109</sup>

Despite some disputes over the precise legal nature of “percentage philanthropy,” its impact has been fascinating. Apart from its contribution to increased citizen participation and taxpayer control over public funds, it has significantly augmented the financial resources made available to NGOs. In 2003, the Hungarian “1% law” resulted in 6.1 billion HUF (approximately 23.5 million EUR) worth of 1% designations by 1.4 million taxpayers.<sup>110</sup> By comparison, in 1999 the amount was 3 billion HUF. Unfortunately, the percentage legislation has had a negative impact as well. Governments have wrongly perceived that percentage laws satisfy the needs for both public and private support of the third sector and have undertaken to eliminate other tax benefits for NGOs. Thus, tax-deductible donations have been abolished in Lithuania and in Slovakia, and similar measures are under consideration in Poland.<sup>111</sup> Such tax reforms have proved (and will prove) to be quite detrimental to NGOs and are highly undesirable from a financial and moral point of view.

### **III.6. Summary recommendations on an “NGO funding guide”: What shall we consider in setting up a system for government financing of NGOs?**

When developing a system for NGO financing, it is necessary to think through the underlying rationale and principles or assumptions on the part of the government. What is the role of NGOs in society? How is this role envisaged from the point of view of government? What roles and functions should government support and why?

Below is a chart reflecting one potential classification, based on the principles and approaches generally described in Section III. It needs to be understood that (a) this is a generalized model and should be applied to fit the specifics of the country; and (b) this is an idealized model, and roles of NGOs and types of support can in real-

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<sup>107</sup> *Survey of Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 37, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

<sup>108</sup> Nilda Bullain, *Percentage philanthropy and law*, NIOK and ECNL, 2004, p. 6, <[http://www.onepercent.hu/Dokumentumok/Chapter\\_2\\_ECNL.doc](http://www.onepercent.hu/Dokumentumok/Chapter_2_ECNL.doc)>.

<sup>109</sup> Nilda Bullain, *Percentage philanthropy and law*, NIOK and ECNL, 2004, p. 14, <[http://www.onepercent.hu/Dokumentumok/Chapter\\_2\\_ECNL.doc](http://www.onepercent.hu/Dokumentumok/Chapter_2_ECNL.doc)>.

<sup>110</sup> The Percentage Philanthropy Project, <<http://www.onepercent.hu/news.htm#10bill>>.

<sup>111</sup> *Survey of Tax Laws Affecting NGOs in Central and Eastern Europe*, ICNL, Second edition, 2003, p. 10, <<http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>>.

ity never be so clear. Nonetheless, such a chart is helpful to think through the foundations and the framework of the financing system.

TYPE OF ORGANIZATION	TYPE OF SUPPORT
<b><i>SERVICE-PROVIDING ORGANIZATIONS</i></b>	
NGOs undertaking governmental tasks (e.g., those that are explicitly assigned to central or local government in laws)	Government should provide direct support to finance the service through the NGO (as well as ensure indirect support generally available for NGOs)
NGOs complementing governmental tasks (e.g., tasks not explicitly assigned to government but considered of public benefit by law or otherwise answering community needs)	Government should consider financing the service itself or provide indirect support
<b><i>“SOCIAL CHANGE” ORGANIZATIONS</i></b>	
NGOs advocating for certain issues and interests (e.g., through influencing policy making and legislation)	Government may choose to offer direct financing to some activities; it should, however, ensure the independence of such NGOs; government should provide indirect support
NGOs enhancing citizen participation and social responsibility (e.g., any mutual benefit society, club, etc., as well as NGOs advocating with businesses, schools, and other institutions)	Government should encourage such NGOs through indirect support
<b><i>GRANTMAKING ORGANIZATIONS</i></b>	
NGOs raising/generating resources and contributing to the redistribution of private wealth	Government may consider supporting the creation of independent grantmakers in order to help the sector become more self-sustaining

### ***What principles will the government apply?***

Let's take the first box: NGOs undertaking governmental tasks (e.g., those explicitly assigned to central or local government in laws). Let's say the government believes that if an NGO undertakes a given task, it should be supported from the public budget because it is helping the government to do its job. How will it provide the support?

The government may here choose from a range of principle-based mechanisms described above, such as the subsidiarity principle (preferring NGOs) or the competitive principle (looking for best value) as well as the normative or the voucher system.

The questions of *what types of costs and to what extent they will be covered* are important, because if the government actually pays the whole cost to the NGO, it may not be worth privatizing the service in the first place. Experience in the U.K. and Germany shows that NGOs fully subsidized by the government for a longer period (5 to 10 years) essentially became too expensive, like government agencies.

Similarly, principles for each box should be well thought through. For NGOs in the second and third boxes, for example, the general principle may be that they will have the opportunity only to receive direct government funding if their current activities are in line with some specific government objective, and therefore supporting them will contribute to advance a government program.

However, *indirect support* can be envisaged for all categories of NGOs at varying levels. Usually, mutual benefit ones may enjoy only minimal support in recognition of their contribution to a democratic social model. This minimum could be the exemption on the corporate income tax for their statutory activities; it could, however, also include exemptions on duties and fees as well as property and other taxes (as in Hungary).

NGOs that are considered public benefit would then enjoy a wider scale of benefits, such as the ability to receive tax-deductible donations, tax benefits regarding the income from economic activities, customs exemptions, ability to provide tax-exempt scholarships/aid to individuals, etc.

In Hungary, two levels of PBOs enjoy additional benefits as "outstanding" PBOs; by contrast, in Bulgaria, MBOs do not even receive full exemption on the basic income tax (however, they do receive some tax exemptions – on grants and membership dues, for example).

Another issue is the 1% type tax allocation, which could be a benefit for all NGOs or just PBOs.

The issue of ***encouraging independent grantmaking*** has also proved to be an important one in CEE countries, because as foreign donors withdraw and the culture of philanthropic giving has not yet developed, NGOs are left in a funding vacuum, where the only major source of support becomes the government. In light of this threat to financial sustainability, the establishment of local grantmakers is one potential solution. In the Czech Republic, the state actually supported endowing such grantmakers, but if such direct support is not an option, there are still instruments to help develop this potential (e.g., through regulating endowments and investments).

### **III. Analysis of Eastern European government policies and practices to assist NGOs in the accession process**

Eastern European nonprofits have demonstrated extraordinary achievements during the past 10 to 15 years. Starting “from scratch” – a legal framework that either prohibited their existence or turned them into government satellites – they have played a remarkable role in the democratic processes that followed the fall of communism in this part of the world. Moreover, their participation in civil society development was a major contribution to the achievements in the economic, political, social, and cultural changes that brought about the accession of the new Eastern European members to the European Union.

This, on the one hand, justified a “reward” on behalf of governments. It called for government to support NGOs in each country for a better participation in the Union civil societal life, in political decision-making, and in the access to new financial sources. NGO expectations were naturally directed toward their more active role in formulating national positions on EU matters. For that, NGOs needed to develop additional capacity and to acquire new skills appropriate to the new political circumstances, new funding requirements, and new partnership opportunities.

On the other hand, a continued and intensified involvement of the Third Sector in the various aspects of the accession process seemed only logical, because governments could benefit even further from civil society participation input. In addition to governments’ interest in such involvement, such an approach would be fully in line with the most recent European tendencies for expanding the mechanisms for social dialogue and public participation in EU decision-making.

NGOs had much to offer during the accession process; however, they had much to ask for as well, and their cooperation with national governments was challenged in new ways. These challenges did not always lead to improved cooperation. Certain positive actions were taken – for example, NGO representatives were invited to participate in consultative meetings with EU institutions (Estonia), or received training on EU funding access (Czech Republic). But not all available means were used to prepare national NGOs for EU public life and to support them in the new aspects of their struggle for a more active role or, in some cases, for existence and sustainability.

This section outlines the various possible aspects of governmental positions regarding NGO participation in the accession process. It examines government policies and practices to support NGOs during the accession process in three ways: involving NGOs in EU decision-making, helping NGOs access EU funds (and co-financing), and providing direct (financial and institutional) help to NGOs to increase their viability and wider participation in EU life.

#### **IV.1. Was NGO empowerment part of policy development during the accession?**

The government's general attitude toward the importance of NGOs in the accession process varies greatly from country to country. For example, the Estonian government was strongly aware of the need to enhance civil society development. In

April 2002, the government formed the Estonian Joint Consultative Committee,<sup>112</sup> whose primary responsibility was to assist the accession process and prepare civil society organizations to enter the European Union. The Committee had wide representation – its members were designated by trade and industry sectors (the Estonian Chamber of Commerce and Industry), employers (the Estonian Confederation of Employers (ETTK), trade unions (the Estonian Employees' Unions' Association (TALO), the Confederation of Estonian Trade Unions (EAKL)), farmers (the Estonian Farmers Federation), and the NGO sector (Network of Estonian Nonprofit Organizations (NENO)). The Joint Committee fosters dialogue and cooperation on the economic and social aspects of implementation of the European Agreement.

Significantly less governmental assistance was extended to Polish nonprofits. Polish NGOs were disappointed to witness the government's passive attitude in accessing funds that could later be distributed to organized civil society. It is the government's responsibility to negotiate, apply for, and manage such funds, although the total amount will also depend on the third sector's capacity as estimated by the EU fund-allocating institutions. Polish NGOs need to learn how to access these funds and how to identify partners for participation in major projects. This is even more urgent given the fact that EU funds will be less available for Polish NGOs after the accession. While NGOs did receive substantial help from EU institutions and from European nonprofit networks, they did not benefit significantly from their government's support in capacity-building, learning, partner-search, and available funds.

Only in a few countries did the government actually document its commitment to involve NGOs in the preparation for accession in any substantial way. The Czech Republic offers a concrete and outstanding example.<sup>113</sup> The accession process has given the Czech government an opportunity to develop a specific form of partnership as one of its policies. It is part of the national development program and sectoral operational programs for using the Structural Funds.<sup>114</sup> Although the government does not co-finance the projects submitted under these funds and does not give advance grants, it has established an efficient political and institutional system which assists NGOs as beneficiaries of EU funds.

The NGO sector is involved in the process of economic and social cohesion through their representative in the Steering and Coordinating Committee – the leading coordinating body in that field. The NGO representative is nominated by the Governmental Council for Non-governmental Nonprofit Organizations. *The National Development Plan* is the fundamental document for all operational programs. The plan is developed under the auspices of the Ministry for Regional Development. The public participation in the drafting process is ensured through public discussions and work-

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<sup>112</sup> *Estonia on the road to accession: challenges and opportunities for civil society*, speech by Liina Carr, EU Coordinator, at the seminar on Organized Civil Society in the Candidate Countries and the Future of Europe, Brussels, January 30-31, 2003.

<sup>113</sup> *Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union*, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>114</sup> Prepared on the basis of underlying documents provided by the Ministry of the Environment, the Ministry of Agriculture, the Ministry of Labour and Social Affairs, the Ministry for Regional Development, and representatives of NGOs on the working bodies related to the sectoral operational programs being drafted by these Ministries.

shops held on the separate chapters. The NGO sector is actively represented in and contributes to these discussions.<sup>115</sup>

On that basis, several operational programs have been drafted and implemented under the competence of the separate ministries. They permitted NGOs operating in a given area to participate in the preparation of the ministry's "action plans" for the development of that area and to have improved access to EU funding provided for the same purpose.

For example, the *Joint Regional Operational Programme ("JROP")* was drafted as a multi-fund program for the European Regional Development Fund and for the European Social Fund within the remit of the Ministry for Regional Development. The Commission for Regional Development was constituted as a basic coordinating body responsible for the preparation of measures concerning regional policies. The nonprofit sector has been represented in the Commission as well as in six of the eight working groups established by the Ministry that drafted the Program. The Program identifies several priority areas in which support should be provided to NGOs. These include "Local development of human resources; Improving the environment in municipalities and regions; Revival of rural areas; and Development of tourism in municipalities and regions."<sup>116</sup>

Another operational Program, *Objective 2 for the Prague Cohesion Region*, was drafted under the competence of the Ministry for Regional Development for purposes of utilization of the European Regional Development Fund by the City of Prague. Under that document, support from the European Regional Development Fund is allocated to NGOs. At the same time, the cooperation principle is ensured through the participation of the civil sector in the Commission of the Prague Cohesion Region Council, following a mechanism similar to that applied under JROP.<sup>117</sup>

Following a similar pattern, NGOs have also been involved in preparing several other programs, which allow them to benefit from EU funds. Among these programs are the following:

- *The Human Resources Development Operational Programme and Single Programming Document for Objective 3 of the Prague cohesion region* drafted within the Ministry of Labour and Social Affairs and offering NGOs an access to the European Social Fund;
- *The Development of Rural Areas and multifunctional agriculture* prepared and implemented by the Ministry of Agriculture and assisting NGOs to utilize the financial resources of the European Agriculture Guidance and Guarantee

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<sup>115</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 2, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>116</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 3, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>117</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 4, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

Fund.<sup>118</sup> According to that program, a local strategy group must be established, with the purpose of drafting a strategy for local development. The group should also take responsibility for implementing that strategy. In order to accomplish their task successfully, the strategy groups must reflect a well-balanced representation of all stakeholders in the given area; therefore, NGOs are envisaged as partners in that process.<sup>119</sup>

- *The Operational Programme Environment* prepared by the Ministry of Environment, including NGOs as beneficiaries of the financing from the European Regional Development Fund. The partnership principle for this program is being pursued by having representatives of NGOs included in the implementation structure, in particular as members of the monitoring committee. NGOs also participate in preparing the strategic environmental assessment.<sup>120</sup>

During the preparation of the programmatic documents concerning the access to the Structural Fund, representatives of Czech NGOs drafted and submitted their comments. Fourteen regional roundtables were organized and NGOs working in the respective regions had the opportunity to comment on the documents. The roundtables served as an excellent potential source of feedback that reached the authors of the programming documents.<sup>121</sup> However, the lack of a well-established, working mechanism for submitting comments and remarks posed a barrier that prevented the proper delivery and use of the comments.<sup>122</sup> If such a system had been applied at the national level, it would have ensured that the necessary space for participation and consultation was provided to representatives of NGOs.<sup>123</sup>

## IV.2. Government Support to NGOs

### IV.2.1. Capacity building

It was widely recognized in accession countries that NGOs needed to strengthen their organizational capacities in order to be able to access pre-accession

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<sup>118</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 7, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>119</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 7, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>120</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 7, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>121</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 10, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>122</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 10, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>.

<sup>123</sup> Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union, p. 10, <[http://wtd.vlada.cz/files/rvk/rnno/nno\\_a\\_eu.pdf](http://wtd.vlada.cz/files/rvk/rnno/nno_a_eu.pdf)>. Similar systems are in place in EU member states (e.g., Finland) and recently also in Slovakia (pursuant to a governmental resolution), [www.rokovania.sk](http://www.rokovania.sk). It is worth mentioning among the specific problems the issue of a more precise definition of applicants for a grant, final beneficiaries, and target groups (in the programming documents for the Structural Funds).



and especially post-accession financing sources. Strengthening organizational capacity may include training sessions on project planning and proposal writing as well as educating NGOs on how the EU works and how they can participate in EU-wide networks for policy advocacy. Moreover, government support for general organizational development, e.g., helping to introduce quality assurance systems for service-providing NGOs, was also a demonstrated need.

However, apart from the inclusion of such activities in the PHARE and other pre-accession grant mechanisms, governments have done little to increase the capacity of the NGO sector in comparison to the investment made in developing the capacity of enterprises. Where there have been such examples, they occurred as a result of the initiative of the individual government agencies or public officials and not as a consequence of a coordinated public policy. For example, NGOs in the Czech Republic have been trained on the procedures for application for EU funding; however, this effort was not part of the government's global policy on EU accession or on civil society support and was realized through separate state agencies.

A more positive example could be cited from Hungary, where the government launched a so-called *Proposal Preparation Fund*, which provides technical assistance specifically to local governments, small-region associations, and nonprofit organizations. Those organizations that aim to apply to the EU Structural Funds were given the opportunity to send an idea to the Fund. The Fund then provided the necessary means to develop the awarded ideas into full-fledged project proposals, which stood greater chances of securing EU funding. In 2003, the Proposal Preparation Fund awarded close to 500 applicants, including local governments and civil organizations, technical assistance worth a total of 27 million Euros. For the 2003 round, the government and the PHARE program both contributed 50% to the Fund; based on the success of this initiative (they received more than 2,800 ideas), the government decided to launch the program again in 2004 at the same level of support, even without the PHARE contribution.

#### **IV.2.2. Financial means**

Not only are national financing and co-financing mechanisms essential for NGOs' sustainability in general; they may also be a requirement for access to EU funds. The structure of these mechanisms has been used for the distribution of external funding. For example, in the Czech Republic, the pre-accession assistance provided by the EU under the Accession Partnerships and pre-accession financial mechanisms were administered under a separate Program of Civil Society Development and through the Foundation for Development of Civil Society. The Foundation was based in Prague and was established for this purpose on the initiative of the Czechoslovak Federal Government in 1992. A total of EUR 16,770,000 was distributed under the Program by the end of 2001.

The Estonian Joint Consultative Committee created in 2002 (see above) had concluded that Estonia needed to develop such financing mechanisms. They were necessary not only to improve the level of information regarding pre-accession issues and access to Structural Funds but also to establish a national co-financing system and to ensure NGO involvement in the discussion and adoption of funding solutions.

The Hungarian government chose another way of addressing the need to strengthen NGOs financially at the doorstep of the EU. While the role or importance of NGOs was not explicitly mentioned in the National Development Plan and the con-



sequent policy papers, the Hungarian government emphasized the importance of supporting NGOs in the accession process in its Governmental Strategy Towards the Civil Sector (see Section I). The National Civil Fund, set up to strengthen the NGO sector (see Section II.7) has established a special college (grant-giving body) to support NGOs in positioning themselves and the sector in the accession process.

In addition, national efforts should be backed up by EU preparatory work. The European Commission should help not only civil servants but also civil society organizations to acquire knowledge of the Structural Funds. Civil society organizations should, for their part, make efficient use of Structural Funds resources in the future and carry out effective preparatory work so as to be ready for the co-financing and management of the projects concerned. The Commission provides support to a number of European-wide NGO networks in order to promote this function, which in turn reach out and educate NGOs in accession countries in European matters. Among these organizations are the European Citizen Action Service (ECAS, [www.ecas.org](http://www.ecas.org)), the European Council for Voluntary Organisations (CEDAG, [www.cedag.net](http://www.cedag.net)), and the TRIALOG project ([www.trialog.or.at](http://www.trialog.or.at), which helps development NGOs from accession countries gain inclusion in CONCORD, the European NGO confederation for relief and development).

### **IV.3. Government efforts to apply EU principles on consultation and social dialogue**

An important area of government action and an indication of meaningful recognition of the NGO sector is the extent to which governments apply the principles of public participation, consultation, and social dialogue in their legislation.

#### ***IV.3.1. Involving NGOs in decision-making***

In that regard, there have been good initiatives in several accession countries. For example, the Hungarian government introduced the Open Legislation Program to improve the quality of legislation through increasing public participation. In the draft of a new Law on Legislation, several elements are reflected that represent cutting-edge practices in European legislative procedures, and often concern NGO participation as well (for example, prior and post-enactment impact assessments, publication of draft legislation, etc.). Recent legal initiatives affecting the NGO sector, such as the Law on the National Civil Fund Program and the Draft Law on Volunteering, have been widely circulated and discussed among the NGOs in Hungary and, perhaps more importantly, reflect the comments and considerations NGOs raised in the discussions.

In Poland, the government adopted a Regulation on Social Dialogue in October 2002. The preamble of this document acknowledges and emphasizes the importance of civil society and the organizations formed within civil society. The document defines three main categories of social partners: collective labor representatives, e.g., trade unions and employers' organizations; organized citizens' initiatives, e.g., public benefit associations and foundations; and self-interest representation groups, e.g., professional and commercial associations, local government federations.

The regulation outlines the basic rules for cooperation between government and the named social partners, and it also prescribes rules for the conduct of government and public administration in their relationship with social partners. The regulation contains important and innovative procedures; for example, it obliges the ministries responsible for submitting a legal draft to Parliament not only to consult social

partners on the draft, but also to summarize their comments and provide justification if the comments were rejected when submitting the draft to the Parliament.

#### ***IV.3.2. Assisting NGO representation in EU bodies***

The efforts of NGOs have been directed at partnership on two levels: one, with EU institutions, and two, with EU nonprofit networks. Both have provided invaluable assistance in the preparation of the Accession countries' third sectors for joining the Union. As the Polish NGOs declared at the conference on Building Partnerships between the Polish and the EU NGOs, "Polish non-governmental organizations are involved only partially in the activities at the EU level. They do not have the influence on the Community law regulations, which already affects their activities in different fields... The Polish non-governmental sector is not visible among the NGOs in the EU... The crucial barrier is the lack of funds as well as the lack of the Polish NGOs' representation..."<sup>124</sup>

The importance of representation is not only in being "close to the source," i.e., having fuller access to funding and other relevant information, but also in the possibilities for participation in decision-making, discussion, and consultation.

The Polish NGO Office in Brussels was founded with these considerations in mind. It is an initiative of more than a dozen major Polish nongovernmental organizations, foundations, and NGO networks working in a variety of sectors. Its aim is to prepare Polish NGOs for Poland's membership in the EU. Part of the Office's work consists of easing the entry of Polish NGOs into the various European networks of NGOs. The NGO Office in Brussels and Warsaw spends much of its time providing information on EU policies to Polish NGOs. The work of the Convention on the Future of Europe is one of the areas covered by the Office in its various news items and bulletins. The Polish NGO Office is currently the only NGO representation from a candidate country in Brussels.

Czech NGOs get involved in the European Union's concrete policies (structural, regional, agricultural) by participating in formulating the policies (by making comments) based on the partnership policies elaborated above, and also by being the final beneficiaries or partners of grants and projects under these policies (mostly delivery of social services). Examples of such active NGOs include CpKP (Centre for Communitarian Work), Omega Liberec, SKOK (Standing Commission of the Sectoral Conference), Hnutí Duha (Rainbow Movement). Czech NGOs are also active in local branches of EU networks of NGOs, and some address issues linked to EU integration – however, they do so with their own financial resources.

Czech NGOs also monitor the Czech Republic's compliance with its obligations based on the introduction of the *acquis communautaire* into the Czech law. They do that primarily by monitoring the current status, issuing reports, engaging in advocacy campaigns and awareness raising, and cooperating in drafting implementing regulations. At present, several organizations engaged in such activities (such as the Czech Consumer Protection Association, the Rainbow Movement, Earth's Children) are relatively weak and are often refused by state and public institutions. From the perspective of incorporation of the applicable *acquis communautaire* and further monitoring, however, their "watchdog" role is irreplaceable.

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<sup>124</sup> See materials of the Conference on Building Partnerships between the Polish and the EU NGOs, April 5-6, 2001, <<http://www.fip.ngo.pl/fipeng/html/partnership.html>>.

ARTICLE

## Assessing the Effects of Church and State on Organized Civil Society

By Robert C. Lowry\*

What explains the variation in the size of organized civil society across political jurisdictions and time? More specifically, how important are differences in laws and public policies compared to differences in the traits of individuals or other private institutions? Recently, I sought to answer this question with a statistical analysis of tax-exempt organizations in the United States.<sup>1</sup> The analysis sought to identify the factors that explain the variation in the numbers of civic organizations and citizen groups across American states, circa 1990 and 1998; to determine whether the same factors explain variations in all kinds of organizations, or only particular kinds; and to measure the relative importance of different factors. These are my principal findings.

**1. Different types of organizations rise and fall together.** My evidence shows that civic organizations providing "club goods" – cultural, historical, or other educational activities, or sports, athletic, recreational, or other social activities – and citizen groups that seek to influence public policy on civil rights or the environment are affected in similar ways by the variables in my models. Thus, states that have more cultural organizations and sports clubs relative to population also tend to have more civil rights and environmental organizations. Critics who embrace some kinds of civic organizations but worry that other kinds (often labeled "single-issue groups") may enable small numbers of extremists to mobilize and dominate public debates have little choice but to take the bad with the good.

**2. Religion makes a substantial difference.** I find that the religious make-up of the population has a particularly large impact on the number of nonreligious civic organizations that form. Civic organizations tend to be more numerous in states with a high percentage of mainline Protestants, and less numerous in states with a high percentage of evangelical Protestants. A high percentage of Catholics has an insignificant effect on most types of civic organizations. These findings are consistent with survey research showing that individuals who attend evangelical Protestant churches in the United States are less likely to join nonreligious membership organizations than are individuals who attend Catholic or mainline Protestant churches.<sup>2</sup> This does not mean that certain denomi-

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\* Robert C. Lowry is a professor of political science and director of the public policy and administration program at the University of Iowa.

<sup>1</sup> Robert C. Lowry, "Explaining the Variation in Organized Civil Society Across States and Time," *The Journal of Politics*, 67(May 2005), 574-594.

<sup>2</sup> Robert Wuthnow, "Mobilizing Civic Engagement: The Changing Impact of Religious Involvement." In Theda Skocpol and Morris Fiorina (eds.), *Civic Engagement and American Democracy* (Washington, DC: Brookings Institution Press, 1999), 331-363.

nations are anti-civic. Rather, some churches tend to keep civic engagement within their own organizations rather than encouraging engagement in the wider community.

**3. Education makes a smaller difference.** Civic organizations of all types are more prevalent in states where more of the population is college educated. The effect is greatest for groups that seek to influence public policy, and more modest for groups that provide club goods. In general, however, the effects of education are less dramatic than the effects of religion. Other socioeconomic factors including age composition, urbanization, political preferences, and per capita income have little independent effect.

**4. Public policy makes little difference.** Regarding the public sector, my findings echo those of other scholars that the ability of governments to promote or discourage organized civil society is slight.<sup>3</sup> States vary in public sector spending on related activities, regulation of fundraising, and provisions for direct democracy, but the effects of these variables on the kinds of organizations I studied are often statistically insignificant and swamped by other factors even when they are significant. In the long run, the most effective policies for promoting civil society are likely to be those that promote education. Even then, states have little ability to affect the *kinds* of organizations that form. Higher levels of education attainment should lead to more civic organizations of all kinds, including the single-issue citizen groups that some scholars bemoan.

**Caveats and Conclusions.** Three caveats must be kept in mind before applying my results to other countries or earlier time periods in the United States. First, analyzing the effects of laws and public spending on civil society is not a simple statistical exercise. One issue concerns measurement: How do we quantify differences in laws so that we may use statistical models to estimate their effects? Another issue concerns the question of causation: Do high levels of state spending on natural resources programs, for example, stimulate the formation of more environmental groups, or do environmental groups influence policymakers to spend more on natural resources programs? Although I address these issues by using appropriate statistical techniques, other studies that use different techniques might come to somewhat different conclusions.

Second, the study did not include all kinds of civic organizations. In particular, I did not study social services organizations that work in partnership with government agencies to provide services to targeted populations. Many of these organizations rely heavily on government grants and contracts for funding, and they obviously have a strong interest in the programs they help to implement. I expect that differences in public policy would be more important for explaining variation in the numbers of these kinds of organizations.

Third, the range of permissible legal restrictions on civil society in the United States today is quite narrow. A series of Supreme Court decisions during the 1980s culminating in *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988), held that a state's ability to regulate fundraising is limited by the First Amendment. Regulations must be narrowly drawn to prevent fraud, and must not dis-

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<sup>3</sup> See Stephen Knack, "Social Capital and the Quality of Government: Evidence from the States," *American Journal of Political Science* 46(October 2002), 772-785; Robert D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, NJ: Princeton University Press, 1993).

criminate between different kinds of organizations based on their purpose or popularity. The Court applied this principle in cases striking down restrictions on the hours during which organizations may solicit door-to-door, limitations on fundraising fees as a percentage of contributions, requirements that fundraising appeals disclose certain information, and licensing procedures that permit an unlimited delay before an application is granted or denied. Regulations that meet the constitutional standard and were included in my analysis essentially require that nonprofit organizations or people involved in raising money for them must register with a state agency, post a bond, and provide copies of contracts with professional solicitors or agreements for co-ventures. Not all states have all of these requirements, and some rely only on *ex post* actions for fraud. If the necessary data were available, we might find that the effects of fundraising regulations in effect prior to the Supreme Court's rulings were much greater than those I found. Similarly, laws in other countries that impose greater burdens or discriminate among different kinds of organizations or allow government officials to exercise substantial discretion in their application<sup>4</sup> may have major impacts.

In sum, my findings imply that in a society where freedom of expression and association enjoy strong legal protections, differences in the religious composition of the population tend to be more important than differences in public spending and regulations for explaining variation in the numbers of civic organizations that operate independent of the state. Religious composition is also more important than socioeconomic factors such as education attainment. Thus, shifts in the popularity of different religious denominations should have important secondary effects on other aspects of civil society. In addition, any attempt to explain cross-*national* variation in civil society must take account of differences in religious freedom and practices between countries, as well as differences in laws that apply directly to nonreligious civic organizations.

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<sup>4</sup> See, e.g., Stephen Larrabee, "Draconian Proposals in Kazakhstan," *The International Journal of Not-for-Profit Law*, 7(June, 2005). <http://www.icnl.org/JOURNAL/vol7iss3/articles.htm>.

ARTICLE

## Imagining Philanthropy: A Personal Commentary from a Part-Time Philanthropoid

*Everything is stuff to be given away and repaid.*  
– Marcel Mauss

*In the great jungle of American democracy and capitalism, there is no  
more strange or improbable creature than the private foundation.*  
– Waldemar A. Nielsen

By Wilton S. Dillon<sup>1</sup>

Dr. Richard Gunderman's masterpiece of an essay in the previous issue of the *International Journal of Not-for-Profit Law*, "Imagining Philanthropy," implicitly reflects Hippocrates' admonition to "do no harm."<sup>2</sup> In this Non-Zen Western culture that favors opposites and dichotomies, Gunderman, the physician and philosopher of philanthropy, naturally favors the positive: doing good is better than "just" avoiding harm. He even goes so far as to mention love and caring.

Favoring *philanthropic excellence*, Gunderman poses six questions that evoke images of how philanthropy can enhance the lives of both givers and recipients. The opposite is *poor philanthropic strategies* that may impoverish human lives. I recommend readers to reexamine his questions as part of his whole ideal of philanthropy in our domestic and international life today. In view of our tax structure, I include voluntary non-profit organizations and foundations – both grant-making and operating – in my understanding of philanthropy. All of them are social inventions with a long history in world civilizations, granted the uniqueness of the American experience with tax exemption and tax deductibility, and our tradition of voluntary associations.

My commentary will touch on only a few of Gunderman's questions, but they are all linked to a single principle: *reciprocity*, how people who give relate to those who receive. (Key words or links might include: *quid pro quo*, "you scratch my back, I'll scratch yours," *leadership through leverage*, *getting a return on the investment*, *the multiplier effect*, *giving back*, and *attaching benign strings*. Not explored here are American laws of conflict of interest and our suspicion that gifts, to some, may seem like bribes.

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<sup>1</sup> Wilton S. Dillon, Senior Scholar Emeritus at the Smithsonian Institution, is identified in *Who's Who in America* as an anthropologist and foundation administrator. He has been practicing anthropology while serving as staff trustee of 15 or more non-profit organizations and foundations. He is trustee emeritus of the Phelps-Stokes Fund of New York and Washington.

<sup>2</sup> *The International Journal of Not-for-Profit Law (IJNL hereafter)*, vol. 7, issue 3, June 2005.

Also ignored here are revenge and violence as forms of reciprocity.)<sup>3</sup> If nothing else, these anecdotal, random responses should demonstrate that Gunderman has made me think and test some of his provocative questions. I offer them as my return gift to him. They do not presume to approach the wise personal narrative of Alan Pifer's "Speaking Out—Reflections on Thirty Years of Foundation Work."<sup>4</sup>

Some readers of this journal may recall Bill Landsberg's extensive essay on my little book, *Gifts and Nations: The Obligation to Give, Receive and Repay* (Transaction, 2003).<sup>5</sup> It is based on the gift exchange ideas of the French anthropologist, Marcel Mauss (1872-1950), nephew of the classic sociologist Emile Durkheim. It contains some resonance with Gunderman's questions: "Does motive matter?" "Who benefits?" and "Do important aspects of philanthropy resist appraisal in dollars and cents?" In a new translation of Mauss's *Essai sur le don*, Mary Douglas's foreword is entitled "No Free Gift," and opens, "Charity is meant to be a free gift, a voluntary, unrequited surrender of resources."<sup>6</sup> She adds that foundations should not regard their contributions as gifts. Yet, my remarks will run the risk of reductionism by using gift exchange as a metaphor illuminating all kinds of transactions between persons engaged in philanthropy, real and imagined.

### International Philanthropy

My book's case study of French reactions to the Marshall Plan during the Gaullist epoch revealed that some French industrialists thought they were being "killed by our generosity." I was asked, "Why does the U.S. give away what we would call industrial secrets?" and paradoxically, "Why does the U.S. not confess to its self-interest?" Our confession of self-interest would have reduced French feelings of indebtedness to one of the giants between which they felt caught in the Cold War – America and the Soviet Union.

In return for massive transfers of money and technology to help rebuild France (and other European nations), the French resented what we implicitly wanted back: 1) gratitude, 2) permission to station troops, and 3) anti-communist votes. They were surprised by our indifference to what they had invented (DuPont's chemistry, aspects of aviation and photography, etc.) We rarely asked questions that might help us, for we seemed much more comfortable in our latter-day donor-teacher role than as a pupil-recipient. Our inadequate sense of history produced amnesia over the French gift of our independence from Britain, e.g., the Battle of Yorktown, a form of *strategic philanthropy*. The French motives and strategy were to defeat their own enemy, the British, but they were happy to be seen as liberators, even if their expenditure eventually cost them their monarchy. (Many Americans today enjoy our self-image as *liberators* of Iraq and

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<sup>3</sup> That point is developed in my two essays, "Anthropological Perspective on Violence," in Usdin, Gene, ed., *Perspective on Violence*. Bruner/Mazel Publishers. New York, 1972; and "On Gifts and Violence," in Adenira, T., and Alexander, Y., eds., *International Violence*. Praeger Publishers. New York, 1983.

<sup>4</sup> See *Foundation News and Commentary*, July/August 1997.

<sup>5</sup> *IJNL*, vol. 6, issue 4, September, 2004.

<sup>6</sup> Mauss, Marcel, *The Gift*, translated by W.D. Halls. Foreword by Mary Douglas. W.W. Norton: New York and London, 1990.

Afghanistan rather than occupiers intent on protecting oil and pipelines from future Chinese control.)

Again, to further extrapolate from the Franco-American case of asymmetry in gift exchange, I have found some Americans aware of their debts to the French industrialists for helping us to codify the idea of *productivity*. Our managers were less articulate than they liked when asked, “What are your first principles of productivity?” The thousands of pages of Cartesian writing on what the French experienced here in the 1950s serve as an unwitting curriculum for future sharing of our technology and work ethic. To make our explanations more intelligible to themselves, the French went way beyond statistical definitions of *units of work per man hour* and incorporated their understanding of the Westward Movement of American history with John Dewey’s ideas of pragmatism to try to figure out what makes Americans tick. They became the Tocquevilles of the 20th century. The French capacity to combine deductive and inductive reasoning – abstract generalizing and illustrating with particulars – enriched our capacity to understand ourselves and explain our economy to others. Here was a French gift of intelligence based on perceptions of a philanthropic American culture – the benefits of discovering how others see us. *Philanthropic excellence* on our part would be to recognize that gift. European nations, especially France, found no way to discharge obligations they felt, and we did not ask for their help.

(The Germans helped us in 1972 by creating the German Marshall Fund aimed at strengthening transatlantic cooperation, a thank-you gift that keeps on giving. The GMF president, Craig Kennedy, is now addressing ways of reducing rampant anti-Americanism in Europe generated by the Iraq war and resistance to perceived American superpower hegemony.)

A more recent example, not of philanthropy *per se* but of unrequited reciprocity in international relations, can be found in a statement by President Assad of Syria. Reported by former U.S. Ambassador to Syria, Theodore Kattouf, Assad said, “Syria is a state, not a charity....When we give something, we expect something in return.” A seminar at the Nixon Center on “Syria, Lebanon and U.S. Interests,” revealed a lack of clarity concerning possible bartering chips, if any, that the United States would be willing to offer Syria in exchange for carrying out a long list of policy changes. Syrians expected some relief in implied U.S. threats of “regime change” for having cooperated (however ineffectively) in trying to slow the stream of insurgents entering Iraq and sharing intelligence on other matters.<sup>7</sup>

I agree with Gunderman that philanthropic motives do matter. It is useful to know what lies behind the interplay of the giver and the receiver, whether in the context of international foreign aid, technical assistance, or the foundation officer and the grant applicant. Both benefit if the partners in these exchanges recognize that each is doing the other a favor. In some religious traditions, the alms beggar is perceived as helping the donor by enhancing his spiritual growth. Intangible, unquantified gifts need to be a part of these exchanges; dollars and cents are not all that matter.

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<sup>7</sup> See *Program Brief*, Nixon Center, Vol. 12, No. 3, Washington, D.C., July 21, 2005.



“Can we use taxes or shame to compel giving?” Gunderman asks. Tax-exemption is a powerful incentive. These provisions in tax laws indeed drive many to give and set up foundations. If you are a tax-exempt organization (501(c)(3) or other variations) in need of outside support, your status can serve as a way of attracting help. Tax deductibility is a useful swap. There should be no shame in participating in such trade-offs. Government makes such voluntarism possible. That is why I, having operated on both sides of the philanthropic community, as donor and supplicant, have been careful not to use the word *private* to refer to tax-exempt funds provided by non-government foundations or corporations.

As a petitioner for money for the Smithsonian’s international symposia programs, for which there was no institutional or congressional budgeting, I raised hundreds of thousands of dollars from foundations, individuals, and corporations to support integrating the sciences and humanities. Intensive courtship was required to produce multiple patrons for single programs. We published books about the experiment, giving much public attention to our donors, and often asking them to participate as moderators. Some felt public relations advantages for being associated with America’s proto-UNESCO, not known to many as also the progenitor of grant-making in the United States – e.g., financing Goddard’s rocketry. For our 1969 symposium, *Man and Beast: Comparative Social Behavior*, I was pleased that Aristotle Onassis sent a check from Olympic Airlines after I wrote him that we were asking questions first raised by the ancient Greeks and still in need of “answers.”<sup>8</sup>

We approached donors as a civic duty. I think donors can benefit by the opportunities one can offer them to be good stewards of *public* money. It would not be *public* without our tax laws. Such *chutzpah* on my part may not be universally appreciated by some foundation officers. I know some who become possessive of these public funds, and regard their grants as though they were their own money.

My inspiration for this proponent of reciprocity in philanthropy was Kenneth Boulding (1910-93), the late economist, peace advocate, and ethicist, a brilliant contributor to our 1983 Smithsonian symposium, *How Humans Adapt: A Bio-cultural Odyssey*.<sup>9</sup> He told me that he was having trouble with a junior program officer of a major foundation who was advancing impossible-to-answer questions, surely in the interest of *accountability*. An outspoken English Quaker, Boulding chided him with this warning, “Young man, if you continue likes this, I just might wind up not asking anything from you at all.” Boulding regarded his proposal as a superb contribution to the public good. Petitioners for money have to be persuasive advocates with foundation officers who, equally, must judiciously allocate scarce resources, also for the public good.

The Smithsonian started out as a bequest of an English scientist and became one of the first American foundations, providing money for such historic technological advances as Goddard’s rocketry. Then, the tables were turned. We became increasingly dependent on Congressional appropriations and gifts, contracts, and donations as a tax-

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<sup>8</sup> Eisenberg, J.F., and Dillon, Wilton S., eds. *Man and Beast: Comparative Social Behavior*. Smithsonian Press: Washington, D.C., 1971.

<sup>9</sup> Ortner, Donald J., ed. Smithsonian Press, Washington, D.C., 1983.

exempt, Congressionally chartered institution, like the Red Cross and National Academy of Sciences.

To help attract funds from foundations and corporations, I offered a *gift* in the form of a public forum in which philanthropists could perform a “show and tell.” The Internal Revenue Service, the Congressional Joint Committee on Taxation, the media, and a variety of grant-makers were invited as participants in a seminar series I organized, “Voluntarism and the Public Interest in American Society.” These dialogues in the Smithsonian castle, symbol of the country’s “intellectual free trade zone,” took place before the Council on Foundations, under early leadership of Landrum Bolling and Robert Goheen, became the force for philanthropy it is today. One practical result for the Smithsonian was a generous grant from the Kellogg Foundation to support greater educational uses of museums. We are the quintessential hybrid, reversing our roles, giving and receiving.

Margaret Mead (1901-1978), my mentor and friend for the last 30 years of her illustrious life, also combined the donor and recipient roles. She established her own foundation, the Institute for Intercultural Studies, with most of her earnings from books and lectures. When I was elected its president, Mead impressed me by her super-responsible adherence to every detail of the right and duty to *earn* tax exemption. We made small grants to young anthropologists doing fieldwork for their graduate studies. The money was often only a small part of her gifts of time and caring for the nurture of new generations. Her reward for the expenditures included monitoring the careers of those she helped, and often trying to place them in jobs where their talents could flourish. Mead was interested in “biological time,” counting in 25-year units, with an eye on the future.<sup>10</sup>

(That experience with making small grants to individuals helped me to give my support to a similar program as a trustee of the Cosmos Club Foundation. Graduate students at universities in Greater Washington annually seek stipends averaging \$2,000 to support completion of research for their degrees. The idea was generated by Rita Colwell, a trustee who also headed the National Science Foundation. Our small grants program illustrates one point of Gunderman’s essay, “reliable measures of philanthropic need”: “when a deficiency is identified, the remedy is simple—we ‘top them up’ to the critical threshold.”)

### **A Model for Grantor-Grantee Cooperation**

It was Margaret Mead who introduced me to the W.T. Grant Foundation and its executive secretary, Adele Morrison, who had become a foundation executive after serving as personal secretary to Mr. Grant himself. Mead regarded her as a true professional. Adele took a keen personal interest in the recipients of grants. My work as director of the Clearinghouse for Research in Human Organization, Society for Applied Anthropology, made me one of her “clients.” From her, I learned the importance of leadership of grant-makers. So eager was I to reciprocate, in appreciation for the Grant grants, that I quickly followed Adele’s suggestions to get in touch with other grantees whose research ought to be published in our journal about human interactions. Money, time and talent were conflated. Grantee “indebtedness” can be used creatively to “get more for the buck.” (Doing

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<sup>10</sup> See her posthumous book, *The World Ahead: An Anthropologist Anticipates the Future*. Berghahn Books: New York and Oxford, 2005.

fieldwork in Paris in 1956 for *Gifts and Nations*, I was delighted to serve Adele a dinner, prepared by my bride, when she came to France on a vacation. Our reunion was not a site visit, but a genuine curiosity on her part about my inquiries into Marshall Plan philanthropy.)

### **Foundations as Sources of Knowledge**

As a keen student of American culture and its institutions (see her 1942 wartime book *And Keep Your Powder Dry*), Mead was fascinated by the evolution of foundations, big and small.<sup>11</sup> She often used the term *social inventions* to refer to organizations created to provide leadership in solving problems. When the Ford Foundation was new and operating out of its rented space at 477 Madison Avenue, Mead told one of its officers handling behavioral science grants that “Ford should learn to behave like the Rockefeller Foundation.” She used Rockefeller as a standard. Whether in agriculture or medicine or urban planning, its officers were sought out for their *knowledge*, regardless of whether it was coupled with a grant. I remembered that when, at the National Academy of Sciences, I sought out Dr. John McKelvey and Dr. John Weir to serve as members of the brain-trust I organized as the Africa Science Board to study land and water use in Africa.

Yet, I never had complaints about Ford, especially in 1958 when I was among guests at the Waldorf Astoria celebrating the first anniversary of the independence of Ghana. The late fine steward of public funds, Melvin J. Fox, approached me over a tray of oysters Rockefeller and congratulated me for becoming executive secretary of the Phelps-Stokes Fund. (We were founded in 1911 by Caroline Phelps Stokes to improve education of blacks in the United States and in Africa, among other charter mandates). “When were you last in Africa?” Mel asked me. “Never, I regret to say,” I replied.

Without bureaucratic niceties, Fox said that it was a scandal that I should start duties without fieldwork, and that I should be thinking about taking a six-week study mission to West Africa courtesy of Ford. He knew that we had limited cash resources, but reminded me that “Phelps-Stokes is a *foundation’s foundation*.” He knew of our two education missions to Africa in the early 1920's when the Phelps-Stokes Commissions recommended policies that were later incorporated in schooling in several British colonies. He was also aware that the South African Institute of Race Relations, inspired by the Southern Regional Council in Atlanta, grew out of a Phelps-Stokes initiative. He knew, too, that the Fund functioned *vis-à-vis* impoverished and homesick African students in the United States as a “home away from home.” Our vice president, Ida Wood, as a “den mother,” was engaged often in a version of psychiatric social work. Gunderman might find this an example of intangible resources exceeding the tangibles of money, and an illustration of *genuine care*. (He also distinguishes between *payment* and *donation*: “A payment implies no concern for the welfare of the person to whom it is given.”)

Margaret E. Mahoney represents a striking example of the foundation leader-executive who actively shows concern for the welfare of recipients and their potentials. Her presidential pastorals in annual reports of the Commonwealth Fund ought to be collected as inspirational literature, especially on the mutual benefits of mentoring. She continues her ministries today through her consulting group, MEM Associates.

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<sup>11</sup> Berghahn Books: New York and Oxford, 2003.

Anson Phelps Stokes, Sr., canon of the Washington Cathedral and secretary of Yale, while serving as an earlier president of the Fund, often shared with the early Rockefellers the phrase, “working *with*, not *for*, people.” Eschewing “lordly benefactions” became a part of the ethos of early-20th-century philanthropy.

Another example of foundations as both caring and serving as a source of knowledge is the work of the Harry Frank Guggenheim Foundation, in the way that (among many others) sponsors research. Reading its list of research grants and Ph.D. dissertation fellowships, I can't help but be impressed with Guggenheim as a smart contributor to the knowledge industry. Its recent symposium on the robust role of the military in super-power American life was a valuable contribution to our self-knowledge. Do intellectuals have any hope for influencing government policies, say, in coping with violence? The 2005 report of the foundation is a gift to the public at large to encourage an intelligent debate on how scholarship is communicated and used. This is a form of leadership beyond grant-making.

Kettering Foundation under David Mathews is a fountainhead of public education about civics. His inspiration to help citizens grow increasingly engaged and responsible is now more focused, with Kettering's assets, than what he was able to accomplish as Secretary of Health, Education, and Welfare in the Ford administration.

### **Foundation Partnerships**

Two years after my Ford-financed visits to Liberia (a country whose flag was designed in the Phelps-Stokes family house in New York, as a project of the New York Colonization Society), Sierra Leone, Ghana and Nigeria, I found myself back in Africa with the help of another foundation. The Edward W. Hazen foundation, then of New Haven, was headed by the late Paul J. Braisted, former chaplain at the University of Rangoon, and a Quaker devoted to promoting “values in higher education.” Braisted proposed a partnership between Hazen and Phelps-Stokes to create a fellowship program to hasten the Africanization of African university faculties. Hazen would provide the money and we would use our history and staff to seek out intellectuals respectful of tradition and modernity for the process of nation building. Hazen also financed my work at the University of Ghana to gather life histories of African brainpower. All this predisposes me to write, again with reciprocity in mind, an article for *The Bulletin of the Atomic Scientists*, on “The Flow of Ideas between Africa and America.”<sup>12</sup> (In reprint, the article is now being brought back to life as the United States, U.K., and other G-8 members focus on all kinds of aid to Africa.) Foundations can help foundations. Rockefeller and Ford teamed up to create several agricultural research stations in Africa. Carnegie Corporation teamed up internationally to increase attention to the existing and potential knowledge coming out of African universities, science academies and research institutions.

To dramatize the return gifts Africans can make in exchange for external philanthropy –from governments, the United Nations, or foundations – I organized in 1962 a banquet at the Roosevelt Hotel to celebrate the 50th anniversary of the Phelps-Stokes Fund. Our president, the late Frederick Douglass Patterson, former president of Tuskegee and founder of the United Negro College Fund, turned the banquet into a kind of “donor

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<sup>12</sup> April 1966, vol. 22, no. 4, pp. 223-36.

conference.” In this case, African universities were to become donors – providing scholarships for American and other foreign students to study in Africa. Role reversal was the aim. A few scholarships were announced that night. One was a scholarship from a Veterinary Institute in Somalia offering American students of animal husbandry the opportunity to do research on the ovulation cycle of the camel, mainstay of the nomadic economy of the Horn of Africa. Peace Corps alumni were to become the most likely source of American students wishing to study in Africa.

### **Individual or Institutional Grants?**

The debate within the Congress and the foundation community over grants to individuals versus grants to institutions or organizations happily is no longer as hot an issue as in the 1970s. (Historians of philanthropy in that period could take a refresher course by reading Waldemar Nielson’s 1972 book *The Big Foundations*, commissioned by the Twentieth Century Fund, especially his first chapter, “Philanthropy Under Fire.”<sup>13</sup>) My experience suggests that philanthropy should not be either/or, but both/and. Gunderman’s question about targets of philanthropy could be answered in part by realizing that investments in individuals, including free-lance independent scholars, can pay off for the *public good*.

I advocate a mixture of the two targets without taking any sides identified with *conservative* or *liberal* orientations of donors. I am aware that the conservative Philanthropic Roundtable describes its work as “motivated by the belief that philanthropy is most likely to succeed when it focuses not on grand social designs, but on *individual* achievement, and where it rewards not dependence, but personal initiative and self-reliance.”

The libertarian and other sources of disdain for big government can also be assuaged by imagining philanthropy that strengthens voluntary associations as a buffer between the state and the individual. Some conservatives, I am told, embrace Tocqueville’s fascination with 19th-century American voluntarism because non-government associations take on some of the functions of governance. (*Democracy in America* still endures as a baseline from which to evaluate, up or down, the condition of our society today.<sup>14</sup>)

During Congressional hearings on foundations in the 1960s, John D. Rockefeller III made a plea for continued tax inducements for private philanthropy. I applauded his arguments, having worked briefly for him as staff anthropologist of the Japan Society of which he was president in 1954. Representative John W. Byrnes, Wisconsin Republican, posed some challenging questions: “The real problem here ... is that certain people have a chance as to how the tax aspects of their income is going to be spent.... The great vast army of the American people do not have this choice.... Should we permit a segment of our society to set up a government of its own to render philanthropic services?” (This exchange is reported in Nielson’s *The Big Foundations*.)

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<sup>13</sup> Nielsen, Waldemar A. Columbia University Press: London and New York, 1972.

<sup>14</sup> In Berkeley in 1950, I enjoyed lectures by Robert Nisbet on the sociology of power, using as a text Bertrand de Jouvenel’s *On Power*. Given the revival of interest now in Lord Acton’s reminder that power corrupts, I welcome also the parallel revival and accessibility of Baron de Jouvenel’s ideas in *The Nature of Politics: Selected Essays by Bertrand de Jouvenel*. Hale, Dennis, and Landy, Marc, eds., Transaction: New Brunswick, 1993.

Responsible philanthropists, of course, must beware of cronyism and the suspicion that some grants may be made to further political aims that might violate rules of tax-exemption. Generations from now, the MacArthur “genius” grants may still be under evaluation. Measurements of success, however, should not be sought by counting intellectual or artistic *outcomes* of a single individual. I believe in taking responsible risks and putting some faith in the serendipitous ripple effects of one individual’s influencing another’s work and development. An investment in one person’s scientific work, film, poem, or painting may have detonating and unanticipated consequences.

### **Philanthropy as a *Kula Ring*?**

In this age of violence, distrust, spin, disinformation, and trends toward centralized “command and control” wartime governance, philanthropy can serve as an important antidote to sheep-like civic behavior by encouraging greater critical thinking and cooperative behavior among the young and old—even at the risk of seeming uncooperative with different political administrations. Welcoming diversity of opinion is essential to protecting the democracy we are now militantly exporting abroad. Foundations need not violate their tax-exempt status by questioning authority and promoting civic engagement as distinct from lobbying. They can encourage, by example, love and generosity among our citizens; that is not the exclusive function of religious institutions.

Is it too old-fashioned to recycle John W. Gardner’s definition of “excellence as doing ordinary things extraordinarily well?”<sup>15</sup> Gardner became a kind of high priest of moral authority as apostle of civic duty through his writings and founding of Common Cause, an extension of his leadership at the Carnegie Corporation.

The United States, lacking a Ministry of Culture, has the benefits of an equivalent ministry through the aggregate of our private foundations. Whether working independently of each other, or sometimes in concert, foundations give us multiple sources of leadership and initiative. With state-sanctioned semi-autonomy, they serve as vital buffers between the individual and the state. Buffering does not preclude working in tandem with the state to experiment with programs that may later be adopted by government. Again, reciprocity provides the dynamic for such collaboration.

We can also value the growing pluralism in our society, and citizens can enjoy the gifts of a wide variety of institutional arrangements. Foundations, religious bodies, universities, museums, think tanks, trade unions, and corporations are among the many sources of extra-governmental bodies useful in an open society. While some may claim that corporations are our *real* government, our country still has enough loose play to give us the freedom to navigate between the different centers of power and influence.

In the wake of Hurricanes Katrina and Rita, corporate social responsibility served as one of the timely themes of the National Conference on Citizenship on September 19, 2005, held in Washington, D.C. Jean Case of the Case Foundation chaired a lively panel that included William McDermott, President and CEO of SAP America, Inc., a major business software company, and Michelle Nunn, founding President and CEO of Hands On Network. Both were persuasive advocates of corporate citizenship based on volunta-

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<sup>15</sup> See Gardner, John W., *Excellence: Can We Be Equal and Excellent Too?* Harper and Row: New York, 1961.

alism. Business leaders can energize the workforce and themselves to "give back to the community" with their pro bono expertise, thereby changing the civic landscape. Mentoring children was noted as one target of opportunity. Corporate citizens are rewarded by "feeling good" while realizing always that for-profit corporations are not designed to work for nothing.

What is unique about foundations as vehicles for philanthropy? It is worth looking again at the fruits of the experience of a former president of the Carnegie Corporation, which advertises itself on National Public Radio as devoted to "diffusion of knowledge and understanding."

I refer to Alan Pifer, a carrier of the Andrew Carnegie promotion of self-reliance. Pifer was aware of the warning of the Senator who said, "You foundations had better be careful." Some religious and other leaders are not reluctant to call people *unpatriotic* if they appear to dissent. The basic nature of foundations has allowed them to resist such intimidation. Foundations are a privileged institution, Pifer wrote, because they do not have to make a profit and do not have to spend time raising money to appeal to donors. As trustees appoint their own successors, foundations are the least constrained of all institutions in our society. They are both public and private. Their funds, he continues, are "a particularly precious resource to the society ... constantly replenishable pools ... that can be freely ... deployed to meet existing or new social needs." These national assets are so important that staff and trustees carry special responsibilities to be good stewards, managing money for the maximum benefit of society."

This is a great opportunity for imagining philanthropy as an American version of the *Kula* ring. When they encounter each other on canoes, Trobriand Islanders of the South Pacific circulate armshells and necklaces in a clockwise and counter-clockwise pattern, so that everybody in the exchange of goods can alternate as donor and receiver. Bronislaw Malinowski (1884-1942), the ethnologist who described the *Kula* in his *Argonauts of the Western Pacific*, observed that the *Kula* articles were "ceremonial gifts" because their practical use was less important than their social use. It may take two to ten years for each *Kula* article to make the full circle of the islands.<sup>16</sup> Foundation grants and intellectual services also may require a generation to be realized.

Circular giving may differ from reciprocal giving, but both forms of exchange provide metaphors for reciprocating foundations in the 21st century. To make the new American *Kula* work, citizens need to rethink civic duty and apply it to foundations' officials as though they were elected or appointed public servants. Citizen responsibility should include providing those I like to call philanthropoids with good ideas about how to share in these scarce assets so that the gifts "keep on giving and moving." Wider participation in philanthropy strengthens both the modesty and the leadership potential of foundation officers and trustees. Gunderman reminds us that leaders avoid coercion and in-

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<sup>16</sup> This classic was first published in 1922 by Routledge and Kegan Paul, London, as part of Studies in Economics and Political Science, and is often quoted in studies of reciprocity: e.g., Godelier, Maurice, *The Enigma of the Gift*. Scott, Nora, tr.: University of Chicago Press, Chicago, 1999, and Hyde, Lewis, *The Gift: Imagination and the Erotic Life of Property*: Vintage Books, New York, 1983. The *Kula* practice is often contrasted with the Potlatch ceremony of the Kwakiutl Indians of British Columbia, whose clan chiefs rival each other to see who can give away the most goods. Flaunting their wealth insures high status while humiliating the less fortunate.

stead seek to inform and persuade. Giving, receiving, and repaying, therefore, become a seamless web in which philanthropy can contribute to a healthy society that respects both individuals and groups and tolerates their differences. And perhaps we might even learn to celebrate those differences.

Such differences and alternative channels can stimulate curiosity about seeking options to realize Gunderman's Aristotelian goal: "By helping ourselves, we become empowered to lend a hand to others. Philanthropy should not foster dependency. It should foster giving, by encouraging recipients to become philanthropists in their own right." Consider the Heifer International Project as one good model of the Kula idea at work, with one of its mottos "Turning a Recipient into a Donor."



## BOOK REVIEW

### *Generations of Giving: Leadership and Continuity in Family Foundation*

By Kelin E. Gersick  
with Deanne Stone, Katherine Grady, Michèle Desjardins, and Howard Muson.  
Lexington Books. 279 pp. \$70

**Reviewed by Al Lyons\***

Family foundations are a major philanthropic force in this country – and are likely to become even more influential in the future. In *Generations of Giving*, Kelin Gersick provides insights on how family foundations function, how they evolve, and how their strengths and weaknesses affect their – and our – future.

In 2004, gifts to private foundations increased by 8 percent, the largest growth for any type of nonprofit group (*Chronicle of Philanthropy*, June 23, 2005). Of the 40,000 private foundations in the United States, an estimated two-thirds are family-managed (National Center on Family Philanthropy, [www.ncfp.org](http://www.ncfp.org)). In *Forbes* (October 30, 2000), William Barnett noted that three-quarters of the wealthiest Americans have their own private foundation. Much of the heralded intergenerational transfer of wealth will find its way into new or existing private foundations, many of them controlled by families. The future philanthropic role of family foundations is significant.

Gersick and his research team investigate the inner workings of these family-managed charitable entities. *Generations of Giving* is not a broad study of family foundations, or a “how-to” book for establishing such an organization. Instead Gersick conducted in-depth interviews with nearly 300 staff and trustees from thirty family foundations that have endured through several generations. He uses these case studies to develop guidelines on how family foundations might best function – with particular attention to how they manage the critical phase of transition.

Family foundations are an integral part of our philanthropic heritage. Their historic roots are found in the Carnegies, the Rockefellers, and the Fords; modern examples include the Gates, the Hewlett, and the Packard families. But only in the past decade has formal attention focused on family foundations. The National Center for Family Philanthropy was founded in 1997; the Council on Foundations provides numerous resources on family foundations; and the Foundation Center distributes a report, “Key Facts on Family Foundations.” *Generations of Giving* adds to these resources.

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\* Al Lyons has been a consultant for nonprofit organizations for more than 30 years. He is currently pursuing a doctorate in Philanthropic Studies through Indiana University in Indianapolis and the Center on Philanthropy.

It should be noted that a “family foundation” does not have a legal definition distinct from any other private foundation. But family foundations are informally defined as being self-identified (such as by including the word “family” in their name), having a living donor whose surname matches the foundation name, and involving at least two trustees whose surname matches a living or deceased donor’s name. The presence and potential conflicts of these family trustees are central to this book.

Many if not most family foundations grew out of family businesses. As the author of a book on family businesses, *Generation to Generation*, Gersick builds on his experiences to identify the unique problems of combining philanthropic interests with a concern for a family’s legacy. He observes that whereas businesses can draw together families into a common cause, family foundations tend to emphasize individuality and can easily drive family members apart. Family involvement provides the potential for succession and a continuation of their legacy, but it also presents an opportunity for family conflicts to play out in the philanthropic arena. Throughout the book, Gersick sets forth guidelines on how to anticipate and manage this process.

*Generations of Giving* is organized into three sections. Part I provides a concise historical and contemporary context for family foundations. Gersick identifies three motivations of founding donors: to support worthy causes, to protect funds from taxes, and to create a family legacy. Balancing these motivations and their potential conflicts forms an ongoing challenge for any family foundation. He also outlines “The Transition Process” – emphasizing how normal pressures can develop until a significant trigger event, such as the death of the founder, prompts the need for a major transition.

Part II further structures these developments and transitions. Gersick outlines three types or stages of family foundations: the Controlling Trustee Foundation, the Collaborative Family Foundation, and the Family-Governed Staff-Managed Foundation. He then investigates the challenges and decisions that family foundations face in shifting from one stage to the next – particularly as generational leadership changes. He notes that evolving from the first stage to the second stage is usually inevitable over time. To evolve from the second stage to the third stage, however, becomes a critical organizational choice. With excerpts from the interviews, Gersick illustrates the varied and at times conflicting dynamics at work within families. In these times of potential conflict, the strength of the foundation’s mission and its organizational stability are critical for its continued survival. The thirty family foundations included in the study have dealt with these transitions in one way or another. Those that have been most successful serve as models.

The third and final section summarizes “Lessons on Governance and Continuity.” These include the importance of a defined mission, the role of family dynamics, options for developing organizational structures, and the need for sound succession planning. An effective board of trustees gives as much attention to mission, succession planning, and effective operations as it does to the grant-making process. Distinguishing between governance and management is critical for effective foundation operation. It is also important to ensure that adequate resources are invested in the operation – a point that Gersick acknowledges can conflict with recent concerns over limiting foundation administrative expenses. An underlying theme is the need to develop true collaboration among the (mostly family) board members rather than settling for mere coexistence.

Two elements of success are repeatedly emphasized here. The first is the need for a focused mission. The original donor or family leader may have defined the foundation’s initial

purpose, although Gersick reports that most founders were not as concerned with defining a mission as they were with supporting their specific interests. But as foundation leadership evolves to a second or third generation, it becomes crucial for succeeding trustees to ensure that the mission reflects their own shared philanthropic dreams. Failure to reexamine the purpose of the foundation continually can lead to a splintering of the operation and of the grant-making process. It also can fracture the various branches of the family.

The second element of success is the advantage of a strong non-family mediator, either as a paid executive director or as a member of the board. A trusted non-family advisor helps family members focus on common interests rather than on differences. The very presence of a non-family mediator or leader can provide needed objectivity as well as expertise.

The strengths of *Generations of Giving* are the clear and practical guidelines that Gersick identifies through his case examples. For trustees or staff of a family foundation, this book provides an opportunity to evaluate their current stage of evolution. It can also help pinpoint specific governance or management issues that may need to be addressed. The organizational stages and solutions are proven approaches found not only in foundation practice but also in the literature on organizational management more broadly. Gersick effectively adopts these approaches to family foundations by incorporating methods to manage conflicting family dynamics.

To be sure, *Generations of Giving* has some weaknesses. Beyond its emphasis on family foundations, it ultimately offers few new organizational insights. Rather, it applies to family foundations approaches similar to those developed by organizational management and recent work on family businesses. A further drawback stems from the anonymity Gersick granted and the limitations of the thirty family foundations studied. The anonymity of the foundations, though a necessary condition for the research, produces little context for the selected quotes and stories. Rather than strengthening an argument, these quotes and stories can become anecdotal and at times distracting. Also, despite the impressive effort involved in conducting and collecting more than 300 detailed interviews, this study represents less than one-tenth of one percent of America's family foundations. This raises a concern about how broadly its conclusions may apply.

But these are minor criticisms of a book that adds a welcome perspective to the family foundation literature. Gersick maintains that despite the small number of foundations studied, valuable lessons still emerge because of the depth of the investigation. Most readers will ultimately agree. *Generations of Giving* provides valuable insights into how family foundations operate and evolve. Trustees, staff, and professionals working with family foundations will find the book can help focus their own family foundation work. Leaders of nonprofit organizations will find it enables them to better understand the dynamics of those family foundations that may be prospective donors to their programs, improving their grant-seeking process. And, as Gersick says in conclusion, the most important audience could be those who are thinking about starting a family foundation. Ultimately, most of us can relate to the family dynamics illustrated by the case examples, allowing us to empathize with the challenges faced by this increasingly important philanthropic entity.

## ***Democracy and Civil Society in Asia***

Edited by Jayant Lele and Fahimul Quadir.  
Palgrave Macmillan, 2004. \$65 per volume.

Vol. 1: *Globalization, Democracy and Civil Society in Asia*  
Vol. 2: *Democratic Transitions and Social Movements in Asia*

**Reviewed by Yuko Kawato<sup>1</sup>**

Jayant Lele and Fahimul Quadir's two edited volumes successfully bring together a variety of issues and case studies on globalization, democracy, and civil society in Asia. The diverse issues addressed in these volumes include economic restructuring, political culture, cultural nationalism, social movement mobilization and impact, poverty reduction, education, empowerment of women, environmental degradation, political parties, and elite pluralism. Though the volumes prove more successful in identifying and presenting a wide range of issues than in specifying and resolving the most prevalent debates in those issues, they offer an excellent overview of the literature on how globalization is affecting democracy, human development, and civil society in Asia.

The authors capably demonstrate that globalization has increased inequality within individual states. Globalization has its winners and losers, and the gaps have grown in wealth as well as in access to healthcare, education, and other social resources. Many of the authors talk about states that have withdrawn welfare and other services, which has increased the insecurity of the poor and other marginalized groups.<sup>2</sup>

Alissa Trotz and Le Thi Quy concentrate on another form of globalization's disparate impact: women and men, they report, have profoundly different experience of global economic restructuring. For example, the dramatic increase in the number of women in the labor force does not necessarily eliminate gendered inequalities. Women are more likely to be employed in labor-intensive industries than men, and women's responsibilities in their households remain stable or even intensify.<sup>3</sup> The sex trade and trafficking in women offer further examples of the gendered experience of globalization.<sup>4</sup> Moreover, as Lawrence Surendra writes, many people have become displaced as destruction and privatization of common lands accelerate for commercial gain.<sup>5</sup>

Globalization has also increased inequalities *between* states. Jayati Ghosh describes how states with greater economic power unevenly distribute foreign direct investment and reduce lending to all developing countries when one recipient state has

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<sup>1</sup> Yuko Kawato, [ykawato@u.washington.edu](mailto:ykawato@u.washington.edu), is a Ph.D. candidate in the Department of Political Science, University of Washington.

<sup>2</sup> Quadir and Lele, v.1, 3; Bagchi, 22; Prasartset, 141; Lin, 40; Co, 45; and Quy, 133, 142.

<sup>3</sup> Trotz, 110, 118.

<sup>4</sup> Ibid, 113; and Quy, 143.

<sup>5</sup> Surendra, 151.

problems with repayment.<sup>6</sup> Surendra also notes the global inequality in environmental issues, focusing on global warming. The North is unwilling to restructure its economic production and consumption patterns to provide the solution for global warming; instead, it shifts the responsibility and burden to the South.<sup>7</sup> Given the overwhelming evidence that the authors muster, it seems undeniable that globalization increases inequality both within and between states.

As authors spotlight these and other negative consequences of globalization, other themes also emerge, including distrust and disappointment in international institutions. Amiya Kumar Bagchi, for example, does not pull punches when he writes:

The security of health and life is further endangered by the global political economy of agriculture under which, on the one hand, the Washington twins (The World Bank and the International Monetary Fund), in combination with their terrible and dictatorial little sister in Geneva (the World Trade Organization) are pushing the total liberalization of trade and finance down the throats of the developing countries, and on the other hand, the G-7 countries continue to subsidize their agriculture at a rate which has not even been approached by all the developing countries taken together.<sup>8</sup>

William Tabb also identifies these institutions as the “global state governance institutions.” In his view, their economic policies toward Asian states may impede the advancement of democracy, as these states proclaim themselves powerless given the constraints imposed by globalization.<sup>9</sup> He continues: “neither existing regimes which use state power to privilege the few and oppress the many nor the neoliberal alternative which covers attempts at increased foreign domination disguised as self-regulating markets and ‘transparency’, the rule of law, and free competition, are motivated by concern for the people of the region.”<sup>10</sup>

Most authors, unfortunately, do not give the institutions’ responses to these charges. Leonora C. Angeles touches on this when she mentions the World Bank’s decision to get involved in initiating, facilitating, and nurturing participatory processes.<sup>11</sup> Is this yet another example of the Bank attempting to protect the donor states’ interests by steering the system in a preferred direction? Or is it an improvement? It is clear that the policies of international institutions have created many problems and they should be

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<sup>6</sup> Ghosh, 34-5.

<sup>7</sup> Surendra, 165.

<sup>8</sup> Bagchi, 18.

<sup>9</sup> Tabb, 76.

<sup>10</sup> *Ibid.* 78.

<sup>11</sup> Angeles, 186, citing Bhatbanagar & Williams 1992 and World Bank 1996.

brought into light. But it is equally important to discuss international institutions' positive contributions – when they exist -- for an overall assessment of the institutions' usefulness. Authors in these volumes neglect the contributions.

Tabb concludes his chapter by calling on democratic movements to develop an alternative to “a globalization governed exclusively by international finance and transnational corporations and their mediating institutions.”<sup>12</sup> Yet he does not tell us what such an alternative might look like. Furthermore, as Surendra says, international civil society has pointed to the undemocratic nature of the international institutions, but it has not “been able to establish agendas for more substantive democratic politics or to demand substantive shifts in domestic formal democratic politics as well as a restructuring of global governance through larger civil society alliances.”<sup>13</sup> Concrete prescriptions for institutional reforms or suggestions for future efforts would have been helpful.

Bagchi, however, is certainly right when he argues that “the fight for democracy in Asia ... is thus to be waged both against the local ruling class and against the global controllers of finance and international economic policy.”<sup>14</sup> Chapters in these volumes explore how a civil society can fight its own country's ruling elites, but do not discuss in detail how the global civil society can wage a comparable fight against the international institutions. For this global perspective, the editors would have greatly benefited from the international relations literature on transnational networks.<sup>15</sup>

As Quadir and Lele point out in their introduction to volume one, many people hoped that the Asian financial crisis of the late 1990s would force states to allow civil society involvement in establishing a more inclusive structure of democratic governance.<sup>16</sup> Although authors in the volumes acknowledge that civil society is the “domain for greater socio-political changes” and that the financial crisis represented a political opportunity for civil society activism, they are also aware of the many difficulties that civil society groups face in achieving changes.<sup>17</sup> For example, Angeles writes that participation by the poor in civil society and governance bodies does not guarantee effective poverty reduction: states often lack the political will and, consequently, provide inadequate resources to poverty reduction programs. She also mentions that participation of the poor in civil society “suffers from poor quality, small scales and susceptibility to manipulation,” although she does not elaborate on why and how these problems have arisen.<sup>18</sup> Furthermore, she writes that many procedural problems and structural obstacles limit people's participation in policy-making and implementation.<sup>19</sup> Joel Rocamora similarly writes that the Philippine state does not impose many formal limits to the organization of marginalized groups, but bureaucratic rules and informal means, including violence, can make or-

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<sup>12</sup> Tabb, 79.

<sup>13</sup> Surendra, 167.

<sup>14</sup> Bagchi, 25.

<sup>15</sup> See for example Klotz 1995; Keck and Sikkink 1998; Price 1998; and Evangelista, 1999.

<sup>16</sup> Quadir and Lele, 1.

<sup>17</sup> *Ibid.* 2.

<sup>18</sup> Angeles, 189.

<sup>19</sup> *Ibid.* 196-7.

ganizing difficult.<sup>20</sup> In discussing the Thai state's response to the movement by the Assembly of the Poor, Suthy Prasartset gives concrete examples of the obstacles civil society groups can face. The counter-movement used delaying tactics by agreeing to set up committees to look into grievances, and launched smear campaigns in the media to delegitimize the movement.<sup>21</sup>

How do civil society groups achieve political change when faced with such obstacles? What provides an opportunity for action, and how can they exploit it? Bagchi writes: "Ordinary people have fought the capital-friendly state and sometimes succeeded in making it change its ways, at times quite radically. The demand for participation in the democratic process has led many countries to decentralize government responsibilities."<sup>22</sup> He does not discuss, however, the conditions under which such changes became possible, or the process through which they were brought about. Quadir and Lele conclude their introductory chapter by saying that the "maintenance of an autonomous space for civil society" is important, so that "societal groups can resist the process of co-optation either by the state or the market."<sup>23</sup> This is quite true, but it is unclear how and by whom this autonomous space can and should be maintained.

Several empirical chapters answer these questions more effectively. For example, Chantana Banpasirichote argues that civil society groups in Thailand did not mobilize spontaneously in the aftermath of the financial crisis. Such a mobilization was "based on the prior construction of social networking resulting from previous social and political actions."<sup>24</sup> Without the previous experience and existing networks, she argues, the civil society groups would have been incapable of taking advantage of the political opportunity after the financial crisis.

David Zweig identifies some other conditions for civil society groups to exert a significant impact. He argues that organizations can mobilize for political change when there are greater levels of democratic consciousness and greater demands for meaningful political participation. Even when formal political means are unavailable, civil society groups may employ informal political means, such as forming legal non-governmental organizations and engaging in social protest or extra-legal political activities.<sup>25</sup> His fascinating chapter addresses how civil society groups can demand political change despite facing formal institutional barriers. Yet cultivating a widely shared democratic con-

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<sup>20</sup> Rocamora, 196.

<sup>21</sup> Prasartset, 155. These findings lend support to Robert Pekkanen's argument that states use various legal, regulatory, and financial instruments to limit some civil society groups' formation, activity, and impact. Pekkanen, whose work is not included in Quadir and Lele's volumes, is an expert on the Japanese civil society and argues that the Japanese state uses such instruments to mold civil society. See Pekkanen 2003, 2004a, 2004b.

<sup>22</sup> Bagchi, 24.

<sup>23</sup> Quadir and Lele, 9.

<sup>24</sup> Banpasirichote, 214.

<sup>25</sup> Zweig, 111-2.

sciousness can prove difficult when democratic education is not available to many in the society, as Jing Lin observes in her chapter on China.<sup>26</sup>

Some of the blame may lie with the civil society organizations themselves. Angeles says that civil society groups need to “re-examine the factors behind the splintering of their ranks, internal ideological differences and other weaknesses that led to poor influence on the legislative agenda.”<sup>27</sup> Civil society groups without cohesion cannot effectively take advantage of political opportunity. Groups must therefore overcome internal obstacles as well as external ones.

One of the most intriguing issues that some authors bring up but do not explore sufficiently is the relationship between civil society groups and the general public. At times the general public perceives popular participation in politics as suspect. For example, Banpasirichote writes that in Thailand, “direct public participation is ... not well received by the general public.... Even civic actions against state policy are suspected, for being masterminded by elites with vested interests.”<sup>28</sup> More discussion of this relationship and how it might be improved would have been very interesting.<sup>29</sup> Banpasirichote also reports that as a result of the Assembly of the Poor’s actions that increased the marginalized group’s visibility in the civil society, “a large number of urban Bangkokians seem to think that the poor are too demanding and too aggressive.”<sup>30</sup> When and how do civil society groups provoke active support, passive support, suspicion, or derision from the general public? I would have appreciated more insight on this.

Quadir and Lele have done an admirable job of introducing a wide range of issues related to globalization, democracy, and civil society. However, at the risk of sounding greedy, some other topics merit more than the brief mentions they receive here. One is the military’s role in democratization and its relationship with civil society groups. Several authors write about militaries and military personnel’s involvement in repressing civil society activities. For example, Prasartset mentions a Thai top-level military officer’s participation in intimidating villagers against dam construction, but does not explain what stakes the military had in this project. In addition, Quadir compares Indonesian and Bangladeshi experience in democratic transition tersely: “Unlike the Indonesian case, the military was not in a position to dictate the transition. Nor was it able to maintain a veto power over the country’s civilian rule.”<sup>31</sup> I was left wondering why. It would have been nice to have a chapter on the (changing) civil-military relations in Asia, which affect people’s experience of democratization in the context of the globalizing world.

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<sup>26</sup> Quy and Edna Co also discuss this challenge in their chapters.

<sup>27</sup> Angeles, 201. Prasartset also writes about some of the problems of the Assembly of the Poor. Prasartset, 157-160.

<sup>28</sup> Banpasirichote, 216, 225.

<sup>29</sup> Prasartset briefly talks about legitimacy when he quotes an advisor of the Assembly of the Poor. The advisor says: “With the concept of the poor, [groups] would be able to explain our reasons why we were impoverished by pointing our fingers to the state and corporate projects. In this way our constant struggles and protest rallies can be understood and gain legitimacy.” Prasartset, 148.

<sup>30</sup> Banpasirichote, 229.

<sup>31</sup> Quadir, 95.



Another issue that merits greater attention is the possibility that widening inequalities may cause violence and conflicts. Ghosh briefly mentions migrant workers who have been attacked and evicted.<sup>32</sup> Surendra also warns, “In Asia, where rapid economic growth is privileged over social justice and ecological and social sustainability,” conflicts pose serious threats to both democracy and nature.<sup>33</sup> Peter Stoett similarly cautions against international conflicts over resources such as “shared waterways, mountains, forests, fisheries, and other sources of both income and subsistence.”<sup>34</sup> Stoett goes on to say that potential conflicts over resources will contribute to the continued militarization of the region.<sup>35</sup> I wonder if this may potentially augment military status and power within states, with implications for democratization. Furthermore, civil society groups’ own use of violence as a means to realize their political goals is a provocative avenue for research. Quadir mentions this about Indonesian civil society.<sup>36</sup>

I also have some comments on the empirical chapters. First, I was somewhat surprised to find no chapters on South Korea and Japan. The question of how globalization affects democracy and civil society seems worth exploring in these countries as well.

Second, the two volumes include well-written empirical chapters that further our understanding of globalization, democracy, and civil society. However, single case studies are not suited to evaluation of hypotheses and theory.<sup>37</sup> Indeed, as Lele and Quadir write, civil society groups’ resistance to states has taken “enormously diverse forms, resulting from their specific socio-political history and the economic and geopolitical context.”<sup>38</sup> It would have been useful to have chapters that systematically and theoretically compare the various cases in Asia. Zweig does a great job of comparing Taiwan, Hong Kong, and the Chinese mainland. However, other authors focus on empirical narratives and neglect the sort of comparison that helps theorization.

Last but not least, Banpasirichote cautions that people in different societies harbor different understandings of civil society. I find this interesting and worthy of exploration. Banpasirichote says that the Thai term for civil society does not signify state, market, and society as separate entities, but instead connotes consensus. She writes: “In most cases, the idea of *pracha sangkom* is used by civil society activists to seek social synergy rather than to mark a political territory distinct from that of the state or the market.”<sup>39</sup> I would be interested in finding out how different people perceive their civil societies, and how their perception affects their strategies for establishing more inclusive democracies.

On a related note, Heryanto says that Indonesians and foreigners harbor different conceptions of democracy. The Indonesian conception of democracy is “a lot more mod-

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<sup>32</sup> Ghosh, 53-4.

<sup>33</sup> Surendra, 162.

<sup>34</sup> Stoett, 187.

<sup>35</sup> Ibid. 188.

<sup>36</sup> Quadir, v.2, 96.

<sup>37</sup> Lijphart 691 and Collier 106.

<sup>38</sup> Lele and Quadir, 4.

<sup>39</sup> Banpasirichote, 221.

est, and they demand a lot less from the process of democratization in comparison to their distant observers.”<sup>40</sup> Such conceptual differences of democracy and their impact on the assessment of the democratization process could also make for an interesting topic of conversation for scholars in this field.

Overall, these are provocative and worthwhile volumes with well-researched chapters. Those new to the literature on globalization, democracy, and civil society will appreciate the wide range of fascinating issues and get off to a good start in exploring this literature. Those already familiar with the literature will still appreciate the authors’ depth of knowledge and recognize opportunities for further research and theorization.

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<sup>40</sup> Heryanto, 69.

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