Regulation of Third Sector Organizations in Israel

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What Distinguishes the Regulation of Nonprofit Organizations?

The regulation of nonprofit organizations (NPOs) has undergone significant institutional changes in recent decades, as part of a global change influenced by modern trends. Among these trends are developments in the state's role, especially in relation to civil society and NPOs. These developments include neoliberal policies that intensify privatization and commercialization strategies; changes in the social, political, economic, and technological domains that spur NPOs to try to influence public policy, especially socioeconomic policies; the blurring of boundaries between the public sector and the third sector, which has affected the state's attitude toward NPOs and how NPOs view themselves and their role; the rapid growth in the provision of social services by NPOs; the rise of nongovernmental organizations, locally and globally; the increase in terrorist activities worldwide; the campaign against money laundering; and the expansion of professionalism in management positions, often encouraged by statutory regulation initiatives.

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Researchers have tried to explain the varied manifestations of modern NPOs. The three dominant theoretical directions are economic, social, and political, but none of them provides an overall explanation of the role of NPOs or the preferable way to regulate them.

Economists have developed theories that attempt to explain NPOs' economic role in terms of supply and demand. Demand-side models see the rise of NPOs as a response to market failures of the public and private sectors. The central theme here is the failure to produce and deliver sufficient public or complex goods and services (Hansmann 1980, 1987; Salamon 1987; Steinberg 2006; Weisbrod 1975). Supply-side models try to understand why entrepreneurs prefer to associate formally as NPOs, rather than as other forms of corporation, to attain their goals (Ben-Ner and Van Hoomissen 1991; James 1987; Rose-Ackerman 1996).

Social science theorists have tried to define the role of NPOs through the social environment and networks within which they operate. These theorists associate various attributes with the activities of NPOs—for example, social capital (Putnam 2000), trust (Fukuyama 1996; Warren 2001), solidarity (Cohen and Arato 1999), and altruism (Kolm and Mercier Ythier 2006; Phelps 1975). Political science researchers base their models on membership and civil participation. Some see NPOs as autonomous entities that evolve from civil society. Such entities are not dependent on the government, and this independence enables them to pursue their goals in accordance with their own agendas (Cohen and Arato 1999; Douglas 1987). The neo-Tocquevillean approach is more normative: It links the democratic government's search for public legitimacy with the support of organized civil society that plays a significant role in the political process (Walzer 1992). Some models view participation itself as a potential political factor that can result in the accumulation of political power in the hands of organizations and threaten the dominant political forces (Warren 2001).

The variety of theoretical approaches and perspectives concerning the roles and objectives of NPOs influences how these organizations are conceptualized, and even how they are termed. Some call them charities, while others use such terms as nonprofit, philanthropic, voluntary, nongovernmental, community, and social economy organizations. Frumkin (2009) surveyed the various definitions of NPOs and found that common to all of them is what they are not: They do not enforce participation, but rather are voluntary; they do not distribute profit among

their members; and they do not have clear boundaries of ownership and accountability (Frumkin 2009).

For many reasons, the various theories regarding NPOs do not form a comprehensive and coherent infrastructure that can underlie a regulatory regime. Among those reasons are the diverse and sometimes confused conceptualizations, primarily because many of the organizations and activities are informal and do not conform to a model of convergence required of formally incorporated organizations. Other reasons include the great variance in NPOs' goals and activities and the constant development and changes in civil society itself, often in response to public policy. As a result, public policymakers have had to develop a regulatory framework that can encompass various political, economic, and social situations.

Regulatory models that try to respond to the dynamic development of NPOs use a variety of approaches. The primary prototype is business market regulation. This model has been applied, for example, in corporate law and tax law and especially in professional regulation of various human services. To render regulation effective, the government has established regulatory agencies with the authority to set rules, monitor, and enforce compliance. A dominant strategy used to implement this kind of regulation is the establishment of unique regulatory regimes for the nonprofit sector. These regimes are different and separate from the regulation of specific industries or fields of operation.

From the institutional perspective, there are three main approaches to the regulation of NPOs. The first approach addresses the design of the regulatory regime. The basis of this regime consists of "objective" elements imported from neoliberal corporate models, including corporate governance, transaction costs, the agency problem, and collective action failure (Brody 1996; Reiser 2011). The second is a dynamic political approach that adapts itself to how NPOs serve public policy and to their social and political position in society (Miller 1984). The third approach, the "natural" one, does not see NPOs as a unique form of corporation; instead, it regards every corporate entity in a similar way and sees no need to distinguish between them on the basis of their aims (Hansmann 1981).

We can extract from the current relevant literature, mentioned above, two elements that characterize the regulation of NPOs. One is the need to regulate the market and the NPOS' areas of activity. The other is the desire or attempt to limit the sociopolitical space in which NPOs

operate. The goal is to achieve some degree of control and to encourage—or discourage—NPOs to promote ideas, agendas, values, and missions, depending on the dominant public policy agenda of the moment.

It is challenging to try to characterize NPOs according to their different elements, missions, and modes of operation; the multiplicity of parameters associated with NPOs makes it hard to define, measure, and evaluate them (Kaldor 2003; Powell 2007). Nevertheless, this effort is important because the mere attempt by an apolitical, public, or academic body to assign substance to the concept of nonprofit organizations, in terms of their agendas, values, or missions, could influence public policy. That is, the manner in which NPOs are seen by their environment can affect how they are regulated. Therefore, public debate—including inter-sectoral deliberations—is needed in order to reach broad agreement regarding the basic definitions and principles constituting the core of the third sector. Such agreement would provide a framework for the regulatory space and shape the appropriate regulatory mechanisms in each country and jurisdiction.

In practice, countries implement combined forms of regulation of NPOs: regulation of governance methods and supervision of the NPO's activities. There is a single regulatory governance framework for both business corporations and NPOs; but the second kind of regulation, which deals with the core activity, is specific to NPOs. It focuses not only on the organization's mission but also on the substance of the activity. Furthermore, taxation policies and other incentives and benefits for NPOs are linked to the adoption of non-distribution constraints and the promotion of specific goals. This complex structure is addressed by a number of regulators and agencies.

Different governments adopt diverse regulatory models, including independent regulatory agencies, government ministries, the Tax Authority, and combinations of these. The regulatory mechanisms are also diverse and can approach organizations in a number of ways, according to the level of the public interest in the organization.

In this chapter, we first review the processes that led to the development and institutionalization of the regulation of NPOs in Israel. We then examine the current regulatory regime in Israel and the leading statutory regulation agencies. Then, we delve into the regulatory mechanism known as "proper management procedures" (PMP) as a test case of Israeli regulation of NPOs. The focus is on how these procedures developed, the unique characteristics of this regulatory tool, and the implications of its

dominance in the shaping and reshaping of the relevant regulatory space. We conclude with recommendations concerning the improvement and adjustment of NPO regulation in Israel and propose a toolbox that will allow for regulation that is more effective and for less regulatory burden on the organizations.

Regulation of NPOs in Israel

Background

The policies regarding NPOs in Israel, including the regulatory regime, have undergone profound changes since the establishment of the state. The government's dominant involvement in all social and economic matters during the early decades did not allow for the development of an active third sector. NPOs were deeply linked to the political institutions and were limited in promoting independent activities and missions that deviated from the declared public agenda (Eisenstadt 1969; Galnoor 1985). Since the second half of the 1960s, however, the state's involvement has declined, enabling the private sectors, including NPOs, to gain ground. Civil society activists started initiating social change, either through political action or attempts to change social policy (Eisenstadt 2004). Israel's Supreme Court recognized social action by NPOs, including protests and demonstrations, as legitimate free speech. The lack of laws and regulations left open a broad gray area for action. In this space, both the government and the courts tried to achieve a balance between public order and freedom of speech (Hofnung 2001).

The rapid development of the third sector came as a result of the loosening grip of the political system on NPOs. After the change of government in 1977, Israeli public policy started to redefine the operational sphere of NPOs and its legitimate boundaries. The lawmakers and regulators focused on three kinds of organizations: those whose primary purpose was to generate political or social change, those representing minority rights, and those on which the government wished to increase its oversight (Hofnung 2001). In 1980, the Knesset (Israel's parliament) enacted the Amutot [nonprofit organizations] Law as the primary corporate law applying to NPOs, replacing the Ottoman Law of Societies, 1909. The Amutot Law aimed to establish an up-to-date legal system for the creation, corporate governance, and dissolution of NPOs. The lawmakers aspired to develop a coherent and organized management

system with proper audits and financial accountability as well as a modern regulatory regime. The leading regulatory agency under this law was the Registrar of Amutot.

The winds of change in the third sector, which began in the 1980s, intensified in the 1990s. Thousands of NPOs were established to meet the increasing demand for public goods and services. Social entrepreneurs were increasingly motivated to become involved in diverse social fields by establishing NPOs. These organizations were mostly independent or in some cases worked in cooperation with government ministries and public and local authorities (Galnoor and Blander 2013, pp. 642–643).

However, public policymakers and the relevant regulators were not quick to respond to the changes. The established regulatory regime was not strongly enforced during the first decade after the enactment of the Amutot Law, and the law itself did not develop despite public scrutiny (State Comptroller's Report 1985, pp. 686–687; 1989, pp. 502–506). The government treated NPOs in a paternalistic manner, regarding them as a policy tool rather than as partners in the advancement of the public interest (Bar and Gidron 2010, p. 182). Moreover, because the Amutot Law continued to be the law under which political parties incorporated, there was little motivation to change the legal circumstances of NPOs' corporate governance for fear of harming the political parties' interests (Yishai 2003, p. 147).

Changes in the regulation of NPOs were first introduced in the first half of the 1990s as a result of increased public scrutiny. The intensified socioeconomic activities directly influenced public expectations of NPOs with regard to their social, economic, and political aspects (Ben-Eliezer 2003; Yishai 1998). Legislators introduced laws that would define the legitimate boundaries of third sector activities and that would include the enactment of regulatory rules. In 1992, the Knesset enacted the Political Parties Law, which removed political parties from the Amutot Law. In the same year, the government introduced an amendment to the Budget Foundations Law that institutionalized state grants to NPOs. In 1996, the Knesset enacted the third and substantial amendment to the Amutot Law, granting the regulator great oversight and enforcement powers and making the regulator a more dominant player in the third sector arena. This amendment and the regulatory tool created in its wake—Proper Management Certification—are discussed in more detail below.

Starting in the beginning of the current millennium, there was a proliferation of legislative and regulatory initiatives regarding NPOs,

both globally and locally. The dominant neoliberal policies encouraged the adoption of new public management values and practices, changing patterns in government activity, the use of other sectors to deliver public services, the advancement of privatization policies, the decrease in the government's share in the market, and lower public expenditure (Galnoor et al. 1998; Geva-May 1999; Vigoda 2000). This growing trend increased the economic role of NPOs in the local economy and their share of the gross domestic product, making them an important factor in carrying out public policies (Benish 2014; Schwartz and Sharkansky 2000). Because of their prominent and growing role, the government enhanced the regulatory mechanisms and intervention strategies applied to them. Institutional pressures also played an important role in shaping the regulation of NPOs in the manners, strategies, and mechanisms of for-profit and mainly publicly traded companies (DiMaggio and Powell 1983; Verbruggen et al. 2011).

At the same time, the public demanded a reevaluation of public policy regarding NPOs. These demands came from groups that included the public sector, the political arena (Hofnung 2001), the third sector (Limor 2004), public criticism after the Second Lebanon War (Gidron Committee 2007), and the State Comptroller (2001, 2005). Consequently, the government started creating a new public policy toward NPOs, and in 2008, it made a historic decision to institutionalize intersectoral relations between the public, the for-profit sector, and the third sector. The discussions among the various sectors enabled some progress in the public policy itself, including reforms in NPOs' taxation practices, amendments to corporate law and the Amutot Law, and some degree of public involvement in the creation of policy.

The Israeli Regulatory Regime Regarding NPOs

The regulatory regime describes the space where regulation occurs. It defines not only the structure and organization of regulation but also the actors that participate in the regulatory processes and their relations (Hood et al. 2001; Levi-Faur 2011; Vogel 1998). To describe the regulatory regime applied to NPOs, we first elaborate on its various actors, their values, the norms underlying their decision-making mechanisms, the nature of their relationships, and the tools they use to promote the regulation's mission.

The regulatory regime in Israel is statutory. Four main agencies handle the statutory regulation of NPOs: the Corporate Authority (including the Registrar of Amutot), the Accountant-General's Office (regarding state funds), the Tax Authority, and the ministry that regulates NPOs in a particular field of operation. Each of these agencies has designated units that deal with the rules and mechanisms of regulation regarding NPOs.

The Corporate Authority (including the Registrar of Amutot) draws its authority from a number of laws related to various forms of corporation (among them, corporations, NPOs, political parties). The statutory regulator's responsibilities include corporate registration, receiving corporate reports, financial and operational inspection, oversight, and dissolution of the regulated organizations. In addition, the Registrar of Amutot has a unique and powerful regulatory tool, "proper management procedures" (PMP), which we elaborate on below.

The Tax Authority receives annual reports from NPOs, inspects their organizational operations, and grants their tax-exempt status. Organizations that wish to enable their donors to receive a tax credit for their donations are under stricter oversight. The Israeli model limits the role of the Tax Authority, and the Corporate Authority handles the bulk of statutory regulation.

The Accountant-General's Office is a regulatory agency that deals only with NPOs that receive funds from the state budget or that supply services to government bodies. By law, the accountant-general is responsible for state funds and for executing the state budget. This regulator (together with the accountants of various ministries) oversees government contracts with third parties, participates in departmental tender commissions, releases payments from public funds, and enforces compliance with government regulatory procedures regarding the state budget.

The government ministries constitute another type of statutory regulator and impose separate and independent regulatory policies on NPOs that receive funds from a ministry budget. Often, each of a ministry's departments and units has its own unique regulatory initiatives. This regulatory spectrum reflects diverse views of NPOs. Some see NPOs as contractors and service suppliers, whereas others see them as partners. Individual ministries, as another type of regulatory agency, have not established systematic regulation of NPOs.

Political, economic, social, and technological processes influence the regulatory regime and its implementation.

They reproduce regulatory policies and mechanisms that are typically used regarding business sector organizations (Levi-Faur 2005). These mechanisms focus on monitoring systems, financial reporting requirements, auditing, legal oversight, and enforcement, but do not deal at all with the substance of the NPOs' activities, their impact, or their outcomes. The regulation of NPOs concentrates on corporate governance, accountability, and transparency by using a "one-size-fits-all" measure. This uniformity makes the regulator treat all the organizations in the same way, no matter their field of operation or distinctive character. As a result, the influence of the statutory regulators in the Corporate Authority and the Accountant-General's Office has become more dominant in the last two decades at the expense of the Tax Authority and the ministries.

Several justifications are given for the shift in regulation of NPOs. Among them is the desire to improve oversight of proper management, defend donors, prevent funds from being transferred to terrorists, prevent money laundering, and limit third countries from intervening in domestic affairs (Sidel 2008). In the last two decades, there have been several legislative initiatives to limit the legitimate space of NPOs' work by supervising the organizations' sources of funding and their funding structure. An example of these initiatives is the attempt at the beginning of the millennium to challenge the legitimacy of foreign funding of Israeli NPOs' activities. As a result of these initiatives and the ensuing public debate, Israel enacted a law that requires Israeli NPOs to declare any funding from foreign countries or nongovernmental organizations that are associated with foreign countries.

The current regulatory regime regarding NPOs consists of a barrage of legislative and regulatory initiatives. Dozens of government decisions deal with oversight, regulation, and enforcement powers, primarily concerning organizations that receive funding, directly or indirectly, from the state budget (Berlinsky and Sofer 2000). Among the initiatives are Tax Authority provisions regarding tax benefits to donors, accounting standards, accountant-general directives, and reporting standards. These are but part of the burgeoning regulatory regime, which includes many additional tools, mechanisms, and initiatives, all aimed at regulating the activities of NPOs.

Consequently, statutory regulators have become the dominant statutory players in the nonprofit field. But the increasing authority of these agencies has not been accompanied by balances or coordination. The

agencies have many parallel powers, and NPOs have found that they are accountable to different regulators with equivalent powers, which makes the regulatory burden on them heavier. As the regulators have become increasingly powerful, they have become agents of legitimacy, and this status has brought with it administrative and political powers, not to mention increased funding. An example is the Registrar of Amutot. After the enactment of the Amutot Law in 1980, this regulatory unit had limited means and a small staff, and consequently little regulatory impact. However, after it was transferred from the Ministry of Interior to the Ministry of Justice in 2004, it grew from a small unit into an independent authority, receiving funds and staff from the ministry's budget and becoming a dominant force in the creation of policy regarding NPOs. In 2007, the process whereby the regulatory regime concerning NPOs was becoming similar to that of the corporate–business organizations intensified, with the gathering of all the corporate regulators—business, nonprofit, and political—under the same roof. The tiny registrar's unit of the 1980s had become the NPO oversight arm of this regulatory agency.

To fund the cost of regulating the NPOs, the government imposed various fees on them as well as a "regulation tax" that was to be deducted from the public funds those organizations received. This increased the compliance burden of NPOs—a burden not visible to the untrained eye, but a heavy one nonetheless (Irvin 2005; Verbruggen et al. 2011). Moreover, the empowered regulatory regime generated intuitional pressures. That is, because NPOs were increasingly dependent on public funds, they were encouraged to adopt the management practices of public administration. Their dependence blurred the boundaries between public administration and NPOs, with the result that the statutory regulator became the provider of legitimacy to NPOs (Mano and Hareven 2007).

Many Israeli scholars criticized these processes because of their negative impact. One critic argued that the increasing dependence on statutory legitimacy destabilized public trust in NPOs (Abu 2007). Another argued that these processes ignored the social capital value that NPOs created through their activities (Zichlinsky 2009). And yet another maintained that these processes undermine the important place and uniqueness of NPOs in the democratic system (Yishai 2008). But the most common criticism in this regard was that state policy that sees NPOs merely as its suppliers of public services erodes their independence, limits their judgment, diverts their missions and activities, and influences their sources of funding (Lee 2015; Weisbrod 2004).

In 2008, the government made a groundbreaking decision to institutionalize relations between the public sector, the for-profit sector, and the third sector, thus creating an opening for cross-sector deliberation. The relationships forged between leaders and activists of the three sectors led to attempts to influence public policy regarding corporations in general and NPOs in particular. One example is the attempt to change and improve the regulatory tools and mechanisms applied to them—a continuing process whose effect is yet to be seen. Thus far, however, there has been no material change in the regulation of NPOs.

Case Study: Proper Management Procedures

The statutory registrar's primary tool for regulating NPOs is proper management procedures (PMP). We chose to focus on PMP because of its unique characteristics and how it was developed by public policy and the regulator. The development process redefined the regulation of NPOs and influenced the interactions and relationships between the regulator, NPOs, and the civil sector itself.

In 1998, the government decided that starting in the 1999 fiscal year every NPO that sought government funding would have to present a proper management certificate from the Registrar of Amutot. This decision was a natural result of the changes in the regulatory regime, which empowered the statutory registrar as the dominant regulator of NPOs. It was also a response to criticism by the public and the state comptroller of the lack of effective regulation of NPOs (State Comptroller's Report 1989, 1997). The comptroller criticized the regulator, inter alia, for failing to utilize the authority granted the regulator by law, for not enforcing the reporting requirements of NPOs, and for not allocating sufficient monetary and human resources for inspecting the NPOs. The comptroller concluded that the regulator needed both authority and funds to regulate and enforce proper management of NPOs.

According to the 1998 government decision, the registrar was authorized, before granting a certificate, to examine whether an NPO met the legal requirements and to check whether it used its assets and resources to promote its goals. In 2001, another government decision added the requirement that an NPO seeking to sell its services to the government presents certification of PMP, even though no such requirement applies to business corporations.

The government decisions extended the regulator's authority but did not specify how the regulation should be conducted or what its aim was. The absence of guidelines and the lack of accountability freed the regulator to create the rules, mechanisms, and tools used to regulate NPOs. This new regulatory regime regarding the third sector aroused increasing concern, particularly as it had no specific legislative foundation: Regulatory decisions and procedures were regarded as administrative provisions and were not made public. This meant that there was no political oversight of the regulator, who had the administrative power to decide on policy and ways to implement it. Thus, the regulator was free to determine policy regarding PMP without having to consult with other government agencies, gatekeepers, stakeholders, or the public. Furthermore, the lack of formalization of the process allowed the regulator flexibility and speed in adapting and changing the PMP (Mizrahi 2013). The outcome was weak political and parliamentary review of this regulatory regime in general and specifically of the PMP.

This new regulatory regime changed the balance of power between the regulator and the NPOs: The registrar gained power and the NPOs were weakened. The NPOs' weakness stemmed from the regulator's ability to deny them proper management certification and thus deny them the opportunity to receive public funds, which constitute more than 50% of their monetary sources.

The Supreme and District Courts have considered the PMP's legal basis several times, especially in cases of insolvency and when the regulator has refused to grant a proper management certificate. Although until now the court has not dealt directly with the regulator's authority to create PMP, it has tried to examine PMP in cases in which the regulator found shortcomings in the NPOs' practices, governance, and behavior. Meanwhile, the regulators keep trying tirelessly to anchor PMP in primary or secondary legislation.

The Evolution of PMP as a Regulatory Tool

In this section, we examine how the regulation of NPOs has evolved since the creation and implementation of PMP as a regulatory tool. Our observations are based on four sources:

- Comparative textual analysis of the four editions of PMP (2002, 2005, 2010, and 2013) and the fifth one (2015), which was called

"Guidelines for the Conduct of Amutot." We use this analysis to examine changes in the regulator's areas of interest, additions to PMP, different levels of detail, the regulator's evolving discretionary power, and the changing interpretation of the law.
- Interviews with officials from the Corporate Authority regarding the internal processes of creating and updating the PMP editions.
- A list of NPOs that underwent an intensive audit by the regulator, with a focus on PMP, between 2009 and 2012.
- Government and other publications and protocols that include information regarding the evolution of PMP, from which one can learn about the regulator's approach to NPOs.

Immediately after the first government decision regarding the PMP (1998), the Registrar of Amutot, then part of the Ministry of Interior, created a department for issuing proper management certificates. But this department was not set up in accordance with a coherent, systematic doctrine. Moreover, there was no public or academic discussion regarding its mission, and the regulator did not consult stakeholders or third sector leaders. Thus, it came as a surprise to NPOs, who suddenly had to meet strict and unexpected requirements. In the first fiscal year (1999), the regulator denied certificates to 1508 NPOs (about 28% of the applicants). One year later (2000), 6253 NPOs (54% of the applicants) were denied certificates. The PMP became, almost overnight, a game-changing tool that the NPOs, many of them on the brink of insolvency, saw as a threat to their existence (Aharony 2007, p. 6).

Reviews of Knesset subcommittee protocols and interviews with regulatory officials reveal that in the 1990s most NPOs did not meet the legal requirements fully. To carry out the government's decision in 1998, the regulator hastily developed a new procedure, conducted an internal reorganization, and started implementing the PMP requirement. Without a systematic doctrine regarding the substance and impact of PMP, both the regulator and the organizations faced uncertainty and sectoral unrest. The NPOs demanded a more explicit definition of the requirements, and subsequently, the regulator issued the first edition of the PMP (2002).

This edition consisted of eight chapters (34 articles) focusing on the core legal demands of the Amutot Law. The interpretation of the law was conservative, and the first edition dealt mainly with the organization's resources and activities to promote its goals. This focus was, in the regulator's opinion, the infrastructure for the development of the PMP, and

the second edition (2005) continued in this vein. The only changes were elaborations of issues that were not clear or detailed enough previously.

The regulator's conservative stance and attempt to stay within the boundaries set by the legislator were apparent in both editions. As a result, the wording was readable and straightforward, and at times, the articles were followed by examples and explanations. These included the correct method for accounting reports, the way to display management and general expenses, and examples of deficiencies and how to correct them.

The third edition (2010) was different from its forerunners. It was more extensive, including new issues and areas of interest. Also, the articles were expanded. Examples of additions are provisions regarding board members' insurance and indemnification, the board's obligation to establish written procedures, a definition of the powers of the NPO's institutions, the right to view documents, reimbursement of expenses, scholarship and grant procedures, maintenance of the organization's assets, conflict of interests—especially with regard to family relationships, and mergers. This edition reflected the initial phase of the regulator's doctrine regarding intervention strategies, tools, and means of oversight.

The expansion continued in the fourth edition (2013) with the addition of new subjects, mainly the policy regarding the limits on NPOs' business activities. This edition contained an explicit policy regarding behaviors not mentioned in the law and it granted authority to the regulator that had no direct legal basis. Among other things, the regulator directed the organizations' boards to undertake specific managerial considerations prior to any business activity.

Unlike the first two editions, which were readable and straightforward, the following two were complicated and vague. The regulator used legal language and left much room for interpretation in the PMP provisions. The fifth edition (2015) was the final phase of the institutionalization process following the emendation of the Amutot Law. The amendment requires the regulator to publish guidelines to assist NPOs in conducting their affairs. The regulator used the amendment to change the PMP title to "Guidelines for the Conduct of NPOs," thus according to the PMP legislative legitimacy. In practice, however, the fifth edition is simply an updated version of the fourth and is almost identical to it.

To conclude, there was a profound change between the first two editions of the PMP and the last three, resulting from the convergence of all the corporate regulatory units—first in the Ministry of Justice

(2004) and then in a single agency, the Corporate Authority (2007). The convergence was not only institutional but also doctrinal. The regulator's doctrine under this developing regime was manifested in various behaviors, including expansion of the regulator's powers, modification of the regulator's decision-making mechanisms, adoption of independent legal approaches to NPOs, and a broadening of the regulator's jurisdiction. Under the 14th Amendment to the Amutot Law, the regulator had an even broader impact on NPOs and the third sector as a whole.

The PMP from the Regulator's Point of View

The regulator's position regarding the regulation of NPOs is complex. On the one hand, the legal terminology regards the regulated entity as an organization, not as a sector. On the other hand, regulatory action has a broad impact on the entire third sector and even on the whole of society.

The review of the five editions of the PMP shows that the changes in them did not result from a coherent policy or systematic regulatory doctrine. Instead, they were adaptations to a changing reality, manifested as responses to specific cases and organizational behaviors, including improper management practices, conflict of interests, changes in legislation, and court rulings. The changes were made on the sole discretion of the regulator, were not reviewed or approved by a Knesset committee, and were not the result of civic participation or consultation.

The impact of the PMP grew over the years. At first, it applied only to NPOs that received funds from the government or contracted with it. Gradually, however, more and more institutions, including local government, government companies, and even civil organizations and donors, sought a proper management certificate. Although the PMP was not defined by law, the regulator promoted PMP as a legitimizing agent to all Israeli NPOs, whether or not they received public government funding.

The lack of a coherent policy was also evident from a review of the list of NPOs that underwent an intensive audit by the regulator between 2009 and 2012. These audits were a crucial tool of the regulator within the framework of PMP, but we could not find any evidence that the audits were used for a systematic learning process or that they contributed to the development of PMP. Despite the extensive use of this tool, the regulator could not use it for reasoning or creating norms.

Moreover, Israel's public administration did not trust nongovernmental organizations. This attitude influenced the regulator's view of NPOs and the evolution of PMP. This mistrust demonstrates the tension between the regulator's concerns regarding wrongdoing, which can affect the organization, its stakeholders, and even society as a whole, and the need to avoid intervention in NPOs' internal affairs and allow them the freedom to make their own decisions.

Another reason for the mistrust of NPOs is the regulator's view of its own mission as being the protector of public funds. The government decisions regarding PMP are derived from this view. However, the regulator expanded the definition of public funds to include all the NPOs' funding sources, assigning points both to the sources and how the NPOs used them. Furthermore, even though the law was silent regarding donations from the public, the regulator's job description came to include the need to protect the donors.

The Consequences of PMP

The consequences of PMP can be examined both on the organizational level and on the sectoral one. From NPO leaders and Knesset committee protocols, we learn that PMP is a cause of regulatory burden and expanding demands for compliance. The developing homogeneous regulatory regime is inconsistent with the NPOs' heterogeneity and their diverse structures and governance mechanisms. The expectation of NPOs that they work "by the book" ignores their unique characteristics and increases regulatory costs. The organizations are becoming increasingly dependent on government ministries, and institutional isomorphism is pushing their managements to speak in an unfamiliar language rooted in business management and legal practices.

Moreover, the increasing regulatory procedures undermine the trust and legitimacy of NPOs. After a new organization registers, it must wait two years for a proper management certificate. Without the certificate, an NPO is not eligible for public funds, cannot sell services to the government, and often cannot get donations from foundations and other private donors (who demand a certificate).

Furthermore, the increasing regulatory burden diminishes the enthusiasm of civil entrepreneurs, volunteers, and stakeholders of NPOs for advancing society with their activities. Such enthusiasm is necessary for making a difference; it is the catalyst that changes the informal into the

formal and binds the spirit of voluntarism to strict organizational and managerial frameworks. The expansion of regulation of NPO, regulatory intervention in the organizations' daily activities, and the diminishing discretion of NPO managers all make regulation a barrier to initiatives, innovation, and the spirit of voluntarism—vital components of a flourishing civil society.

Another consequence is the lack of alternatives to PMP. There is no division of labor between the regulator and the organizations, and the organizations would much prefer softer models of regulation, such as self-regulation. Such models, and especially the participation of the organizations in the regulatory process, could be beneficial. NPOs could take responsibility for sectoral oversight, the statutory regulator could intervene less in the organizations' internal matters, and regulation could become better adapted to the NPOs' unique features. After all, soft regulation does exist in other countries, which use it as a mechanism for coordinating between the regulator and the regulated. In our view, the lack of a division of labor prevents the public and NPOs from participating in the creation of norms and encourages the regulator to skip steps on the regulatory enforcement pyramid.

The current regulatory regime is harsh, inflexible, and intolerant of soft regulation strategies, especially in the PMP era. A division of labor and sectoral oversight are out of the question: The status of PMP as an agent of legitimacy rules out self-regulation.

PMP also affects the interactions of government units. Since this tool's increased dominance in regulation, various ministries, statutory regulators, and agencies have increased their reliance on it. It has become an alternative to other regulatory mechanisms that were in use previously. It was an attractive regulatory process in an age of privatization and commercialization because of its legal and financial orientation, but one of the costs of its use is the lack of oversight of the NPOs' impact and substantial goal achievements.

PMP was, and still is, a robust regulatory tool. But the regulator developed it beyond the government's original intention, and it changed the regulatory regime of NPOs. Nevertheless, its impact has never been assessed, and the political echelon has not expressed its opinion regarding its scope and limitation. There has been no real public debate regarding the policy underlying PMP, and the regulator has been a leading actor in overseeing its improvement and enforcement. Consequently, PMP has

played a key role in how Israel's third sector has developed in the last two decades.

Summary and Recommendations

The rapid expansion of the current regulatory regime raises questions about its necessity and effectiveness in promoting its defined goals. Israel lacks a coherent policy regarding statutory regulation and has no systematic regime for use by all government ministries and entities. Therefore, it is difficult to assess the goals and measure the effectiveness of the existing regime.

The existence of an effective regulatory regime depends on the regulator's ability to adapt the tools and mechanisms to a changing reality. The traditional intervention strategy is based on command and control mechanisms. This regime imposes behavioral standards regarding what is permitted and what is not and thus defines the centers of authority and accountability. It uses rules and sanctions to impose its standards on those regulated. However, this regime has weaknesses, such as a disproportional amount of power in the hands of the regulator, legislation that lags behind changing circumstances, mutual distrust of the regulator and those regulated, and an increased burden of regulatory costs on both sides. Furthermore, when the regulated bodies are NPOs, those disadvantages are even greater because of the dynamic character of the third sector, especially in responding to social needs and changing realities.

There are three accepted strategies for coping with those shortcomings: deregulation and the reduction of regulatory capacity, positive and negative incentives to steer behavior and avoid deviation, and a strategy based on consent and on cooperation between the regulator and the organizations. This strategy allows a division of labor with either self-regulation or cooperative-regulation mechanisms. The Organization for Economic Cooperation and Development (OECD) has developed a systemic approach for critically assessing the effects of regulation and non-regulatory alternatives. This model, regulatory impact analysis (RIA), has been adopted by several OECD members, including Israel (OECD 2008).

Another way to balance the disproportion between regulatory power and regulatory burdens and costs is the enforcement pyramid. A regime based on this pyramid will initiate a gradual enforcement mechanism; it will start with soft regulation, such as guidance and persuasion, continue with warnings and recommendations for correcting deficiencies, and

conclude with hard enforcement and penalties. Due process in regulation is not easy. It requires balanced and proportional regulatory discretion, openness, transparency, adaptation to changing needs, accountability, public participation, and division of labor.

Preserving democratic values and civil rights—including the right of an individual or organization to oppose a government decision—is a challenge for democratic states that affects every regulatory regime and every regulatory decision. The expansion of regulation leads to more legislation and procedures, especially where there is a neoliberal policy of privatization and commercialization. This multiplicity of legislation, standards, regulatory decisions, and reporting duties imposes more and more burdens and costs on NPOs, thus limiting their ability to fulfill their missions.

To promote balanced regulation, every regulatory regime needs to integrate three systems: The first is the parliamentary system, which supervises the administrative bodies of the government, including regulatory agents. The second is the legal system, which uses judicial review of administrative and regulatory decisions and discretion. The third is the public system, which uses public participation and NPOs in developing policy, implementing it, and dividing labor between sectors.

The current regulatory regime in Israel is an inconsistent patchwork, based on the assumption of government supremacy and NPOs' dependence on public funds. This regime suffers from centralization and is oriented toward legal and economic approaches. It reproduces mechanisms of business sector regulation, which are not suited to NPOs' unique features, governance, and activities. To date, there has been no comprehensive public or academic debate regarding the purposes, mechanisms, and impact of the regulation of the organizations, the third sector, and the public.

We believe the following recommendations are necessary for adapting and improving the regulatory regime of NPOs in Israel.

First, a consistent and coordinated policy is needed for use by all government ministries and agencies. This policy must recognize the unique characteristics of NPOs and change the current regulatory intervention strategies accordingly.

Second, policymakers should re-evaluate the current regulatory regime on the basis of the OECD's RIA process, which was adopted by Israel in 2013. This evaluation must consider the needs and limitations of NPOs

and should be conducted in a shared forum of government officials, NPO stakeholders, and representatives of the public.

Third, the current regulation must define the division of labor between government and third sector agents in order to simplify procedures. Self-regulation should be considered as an alternative regulatory mechanism that will be part of the regulatory regime and will allow the use of voluntary mechanisms as an alternative to the statutory ones.

Fourth, to promote more balanced relations between the regulator and those regulated, policymakers must increase the regulator's accountability to the public in several ways, including compulsory reporting, transparency regarding standards, and the establishment of a public council, outside the regulatory agencies, that will be in charge of creating the standards and tools used by the statutory regulator. This council should consist of public representatives, third sector stakeholders, and government officials.

Fifth and last, it is necessary to create readily available and inexpensive dispute resolution procedures so as to simplify the ways that NPOs can challenge regulatory decisions.

We believe that these recommended steps will increase trust between the public and NPOs, encourage civil action and social entrepreneurship, entrench democratic values, and contribute to the advancement of Israeli society.

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