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NGO MOVEMENT IN NEPAL

AN ANALYSIS OF LEGAL AND INSTITUTIONAL FRAMEWORK

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Origin and Status of NGOs in Nepal

In Nepal's context, it is impossible to analyze the legal framework governing the non-governmental sector without a discussion of its historical background and attached conceptual issues. It is generally accepted that non-governmental organisations (NGOs) have been in existence in the country since long before they came to assume their current nomenclature. Like many other contemporary developmental ideas and concepts, NGO is a term introduced from external sources - the sources being the international purveyors of development who prefer the non-governmental mode to the inter-state or formal international organisational forms of cooperation for various reasons. In a country where religious, social and charitable organisations with or without formal structures have existed traditionally for community work, collective self-reliance and social service for reasons of philanthropy or faith, the question of the availability and adequacy of enabling institutional and legal framework became important only recently. The traditional forms of non-governmental cooperation that relied on absolute voluntarism, personal or communal resources and legitimacy provided by indigenous cultures and customs or religion did not need sanction from extraneous authorities, including the state. But this does not mean all was well in the past, i.e. the period up to early 1951 when a 104 year-old feudal oligarchy run by the Rana family was thrown out and a more representative form of government installed.

There was no threat to the survival or sustainability of the early initiatives because they did not involve any conflict of interest or threaten the local or national power centres. For this reason, perhaps, the contribution of these NGO-like activities to development in the sense of having a cumulative impact towards socio-economic change for a sustainable humane order was also limited. Some isolated initiatives directed towards a larger social cause surfaced once in a while but they usually suffered the wrath of the government which did not encourage such endeavour. It so appeared then that the society too did not make such demands upon either the individual or the state in a situation where the poor and the oppressed did not have a voice and the minuscule middle-class became only subservient to the ruling interests.

In pre-1951 Nepal when the feudal oligarchy ruled the country in almost total isolation

of the outside world, even a discussion, not to mention actions for socio-economic development, could attract charges of sedition. A well-known case of the time is a book makaiko kheti written by one Krishna Lall in 1920. The author's intention was to provide some valuable technical advice to Nepali farmers on maize production. The rulers had other ideas about the book and, therefore, imprisoned the author. Similarly, on a later occasion, the attempt by some 45 socially conscious citizens to start a public library was disallowed and the 'provocateurs' fined. Collective efforts through the instrument of an association or people's organisation of any kind were illegal.

The traditional forms of cooperation in the non-governmental sector were thus not only apolitical but also unstructured. The existing political and institutional climate was no hindrance to those traditional initiatives that concentrated on charitable, religious and communal activities. But the government did not even offer benign neglect when it came to the question of more comprehensive and substantive social mandate for them.

The first bout of democracy that Nepal enjoyed between 1951 and 1960 contributed to the emergence and growth of non-governmental efforts in an organized form and in the non-traditional fields also, namely, development and community-building and externally-funded social service. This led, to some extent, to the vertical expansion of the role of NGOs from activities with charitable and religious-cultural objectives to what is generally understood as development or social change. This was the period when many international institutions, including country-specific and church-related organisations of the North that are now called International Non-Governmental Organisations (INGOs), entered Nepal for relief-oriented activities (as in the case of the International Red Cross), family welfare and community development (as in the case of the International Planned Parenthood Organisation) or social service (as in the case of The United Mission to Nepal). The last-mentioned INGO, like many others, including the International Red Cross, has now diversified its activities to wide areas of development, including innovative technology and promotion of private enterprise. These organisations triggered the emergence of their counterpart NGOs as their collaborators in the country.

With the reversal of the democratic process following the Royal *coup d'etat* of December 1960 that led to the annulment of the Constitution, dissolution of the Parliament, dismissal of the elected government, abrogation of fundamental human rights and introduction of the partyless Panchayat system, all forms of non-governmental organisational endeavour suffered a setback.

Political parties were banned. Associations of any kind that symbolized cooperative action outside the patronizing influence and guardianship of the state were suspect and often not permitted to exist. Yet, during this period, specially after the 1970s, the NGO sector rapidly grew in a curious manner. Despite severe legal restrictions imposed on people's

organisations of any kind, the apparent NGO sector flourished with members of the Royal Family and other powerful sections in the ruling oligarchy gradually assuming leadership.

The paradoxical situation is largely the result of a lack of clarity in the basic concept of NGOs in Nepal. There has been a tremendous growth of some forms of organisations, but whether they should be called NGOs is problematic. In addition, during this period, the NGO sector became almost synonymous with "social service" supporting the penchant of the elite influencing the evolution of NGOs to be popular as "social workers". The development function or the social activist role which NGOs can and must play in Nepal's socio-economic context was conveniently sidelined in the euphoria of the "rapid growth of the social service under the leadership of the Queen." This culture of elite-led and foreign-financed social service fitted well with the objective of the political regime of the time.

The high point of this period was the enactment of the Social Services National Coordination Council Act in 1977 and the establishment of the Social Services National Coordination Council (SSNCC) with the Queen as the Chairperson. A very elaborate organisational structure was created for SSNCC, with seven committees to oversee and guide the activities of functionally classified NGOs at various levels. As will be explained later, though all NGOs were required to come within the umbrella of SSNCC, not everyone did. Even the INGOs were brought within the jurisdiction of SSNCC. When the role of INGOs became more wide-spread and substantial in terms of resources and scope of work, many indigenous NGOs came into being in Nepal. All of them claimed legitimacy from the potential role they could play in social work or community development and rural development or, as it has become a more prominent proposition in recent years, poverty alleviation. But their non-governmental character was probably diluted by virtue of the overall institutional framework, including the political environment which constrained their freedom and facilitated their subtle co-option into the establishment. Very few of them could be non-governmental when measured in terms of their independence from the government or the degree of autonomy they exercised.

Most of the new NGOs were created to take advantage of the emerging situation that provided easy access to resources and sometimes political power at the level they functioned. So perhaps they were not even interested in autonomy or independence from the state. On the other hand, some of the older NGOs that were functioning well on their own and could manage without the patronage or the control of SSNCC were not permitted to "go it alone".

During this period, the NGO sector became more confusing from yet another conceptual standpoint. At this time, many private sector institutions set up with the objective of providing consulting and research services started, rightly or wrongly, projecting themselves as NGOs. The emergence of the "action research" mode as a functional space of many institutions which otherwise would perform contractual work for the funding agencies and other clients appeared to give them entry to the league of NGOs against the design and

the wish of the political regime. This did not necessarily make all of them what they projected themselves to be. A common perception is that this "peculiarly Nepali phenomenon" (ADB 1989) was motivated, with one or two exceptions, by the opportunity to take advantage of aid money rather than by commitment to the professed mode of social or community interaction.

With the political change in April 1990, the proclamation of a new Constitution and the installation of a democratically elected government in May 1991, Nepal is enjoying its second tryst with democracy. In these two years, however, the policy and institutional environment of the NGO sector has not become any clearer. Political freedom has led to further acceleration in the growth of NGOs. INGO funding for purposes including newer concerns such as strengthening the democratic process, human rights and political education has increased dramatically. New NGOs are being established regularly to fulfil the demands manifested in the increase in the supply of funds. The "boom" visible at present appears to be more an indication of the lack of a government policy than the influence or support of one. Whether necessary or not, the debate as to what is and is not a deprivation, environmental degradation and general disinterestedness in practical policies and their execution, the presence of ubiquitous NGOs has begun to evoke doubts in the minds of the public about the motive of the actors in the NGO sector. The credibility of the NGO as a movement may be under some threat. This threat has not manifested as yet only because a substantial section of opinion-makers is directly involved in the Nepali NGO process and has developed a vested interest in it.

At the moment there is no information on how big is the NGO sector or how significant is its impact on Nepal's development process. Some are playing a very good role in welfare programmes such as for children in the case of Nepal Children's Organisation or relief and increasingly community development in the case of the Nepal Red Cross Society. There are few smaller programmes that are even contributing to community building and poverty alleviation. But a large number of NGOs have yet to prove their relevance for the society. Most of them are urban-based and urban-oriented in management even when their stated concern is rural. It is difficult to give specific information on these aspects when even the total number of NGOs in the country is not known except in the case of certain categories of organisations. This much is known that more than 75 per cent of NGOs registered with SSNCC are located in the Central Development Region with Kathmandu, "the Centre within the Centre" having about 50 per cent. Of the five development regions of the country, the four at the "periphery" have only 25 per cent NGOs operating in their area. This indicates an unfortunate and an unacceptable state of affairs where NGO activities seem to have the same bias against rural areas as in the case of government activities.

Various studies have been made at the initiative of the donors or INGOs which throw some light on their own perceptions of the role and legitimacy of NGOs in Nepal. Some bemoan the fact that the basic orientation of NGOs in Nepal has been social service at the

cost of what one might call developmental activism. Others are happy at the trend of consulting firms and research institutions playing the role of community-oriented NGOs. There are numerous types of organisations in-between. A huge number of informal groups that are extant continue to perform traditional functions and these and others that are emerging as elements of grassroots interaction prompted by the social activism of some NGOs are not even recorded. A positive factor is that a substantial portion of these unrecorded NGOs can be assumed to be operating in the rural areas.

What NGO? Which NGO?

How does one go about analyzing the legal aspect of the existence and operation of an organisational species that is so heterogenous as the ones that claim to be NGOs in Nepal? Or how can the institutional relationship between the NGOs and the government in terms of mutual obligations and support be established when there is no clarity on the social character of an NGO? This problem can be seen in the existence of different legislation from which various NGOs seek to derive legitimacy as it suits them at present, as they did in the past when the government's policy was manifestly restrictive.

A greater problem is the confusion about why there is a social need for NGOs. It is another paradox that while the country claims to have a tradition of non-governmental initiatives from ancient times, it seems to have been pushed into the "NGO mode" of today from external forces in such a way that the concerned people and groups are still struggling to find a *raison d'etre* for themselves. There is as yet no consensus on the "universal" characteristics of a NGO and the support it needs from the government in a democracy so that the broader goals of a democratic state of ensuring participation of and benefits for all citizens and groups in the country are met through appropriate contribution from this sector.

A conference of NGOs held in June 1991 to identify their role in the "changed political context" tried to come up with some "parameters" that would delineate a NGO. According to the conclusion of the conference, the definition of a NGO would have to take into account the following characteristics:

(a) voluntarism, (b) non-profit orientation, (c) secularism in both a religious and political context, (d) objective orientation directed at disadvantaged poor/weak constituencies, (e) lack of aspiration for formal political power, and (f) private, participatory, equity-based, user groups, associations of beneficiary groups." (SEARCH, 1990). There have been several additional seminars and discussions on the subject. But at the moment, the NGO scene continues to appear more like a jungle than a social movement.

The *locus standi* of any non-governmental operation rests upon the argument that not all needs of a society can be met from the three regular socio-economic agents, namely, the individual (or the household), the private sector (or the market forces) and the government. An institution that is apparently non-governmental but that shares many characteristics of a

government or of a player in the market cannot be considered a NGO. This is so if for no other reason than that the principal focus of this study, namely, the legal framework, becomes an interesting issue only when a non-market, non-government enabling mechanism is to be investigated. In such investigation, the important point is not the legal basis of an organisational form *per se*, but the legitimacy of a movement that has a specific social purpose and commands the commitment of its leaders and credibility in the domain of its influence. For this, voluntarism is perhaps the most important criterion. But voluntarism is not necessarily guaranteed by the "non-profit" character alone.

Besides, there is the further need for ensuring that voluntarism must be guided by professionalism. This is necessary for two reasons. One, the volunteers have to compete with otherwise professional bureaucrats and technocrats who may try to usurp or threaten the voluntary sector specially if it becomes too powerful by virtue of the impact it makes or by its degree of success. Two, in interactions with the people who are the "target" for motivation and change, substantive input even by way of advice is of greater value than mere rhetoric in a situation where the people get their full share of rhetoric from the politicians and other operators. Under the circumstances, it is the risk-takers and innovators who can guide and give meaning to the NGO movement in Nepal. NGOs in Nepal are still struggling to find a way of mixing the zeal and enterprising influence of professionalism with the self-sacrificing ethos of voluntarism.

As already stated, the most important impetus to the growth of NGO-like organisations has come from outside Nepal. Unfortunately, the partners from the outside, the INGOs, have also contributed to the confusion in two ways. First, they had generally acquiesced to the government's wishes to control genuine NGO activities at least until the political change of 1990. This led to the growth of quasi government-type organisations called Government-Organized Non-Governmental Organisations (GONGOs). Secondly, some of the donors or funding agencies were too pragmatic to give adequate attention to what is involved in the spirit behind the NGO movement and its special place in the socio-political and economic development of the country. This problem got aggravated when, after the political change of 1990, the resources of the INGOs were supplemented by official donors who were keen to see Nepal develop its NGO sector as an instrument of democratic participation and in raising public awareness. Now that the multilateral lending institutions such as the World Bank and the Asian Development Bank have also joined the comity of INGOs, there is a further danger that NGO as a movement might be stifled by the attraction of using NGOs as agents for project execution.

In some ways one could be generous and conclude that the NGO sector in Nepal has begun to assume the character of a movement. If we use the generational classification of NGOs used by Korten (1991), a movement is arguably building up in Nepal. According to Korten, NGOs tackle different problems as they move from one generation to another, passing from the relief and welfare phase to the community development phase,

sustainable systems development phase and to people's movement phase. Nepal is still far from entering the people's movement phase or even sustainable development phase in its NGO sector, but it is gradually outgrowing the relief and welfare phase and moving on to the community development phase. The only problem is that its potential role is not getting adequate attention. As already emphasized, national and international development agents engaged in collaboration for development tend to look at NGOs as just another mechanism for implementing development schemes and programmes.

When everything is open, without any control from the government, there should be no issue left to be clarified. An argument can be made that if things are left as they are, a concept and a framework for practice will evolve on its own, befitting the democracy and the politically, economically and professionally competitive age that has been ushered into Nepal. But, both the government and the NGOs are not comfortable in the present situation. The reasons are:

- (a) The government feels that there is a need for at least some parameters to guide and monitor the work of NGOs, including the INGOs, so that their accountability and apolitical character are ensured. Some sections in the government even see the need for assigning priorities and programme areas for NGO activities.
- (b) The funding agencies wish to see all uncertainties removed as to what is permissible and what is not. It would be their hope that they would be given maximum flexibility to do what they think is desirable from the standpoint of their objectives and priorities.
- (c) The national NGOs are caught in a situation of conflict and unhealthy competition where what they might consider genuine NGOs, opportunist NGOs, consulting businesses masquerading as NGOs, government-supported NGOs and NGOs that are a front for political parties all grouped together to the disadvantage of the very objective and credibility of the NGO movement.

Legal Setting and Constitutional Framework

Broadly, from the legal perspective, there are at least five types of NGOs operating in Nepal at present.

- (i) NGOs that operate within the umbrella of SSNCC;
- (ii) NGOs that have shied away from SSNCC's influence of any kind and have sought legal sanction from other sources;
- (iii) NGOs that are like research and consulting firms but are engaged in non-commercial operations;

- (iv) NGOs that are informal and that derive legitimacy either from tradition or from contemporary development strategy;
- (v) NGOs that are given special Charter by the government.

What this means is that there are at least three different laws in addition to the special Charter to which NGOs have taken recourse to for their legitimacy and authority. In addition, of course, there are INGOs that also require a legal foundation for their operations in Nepal.

The first category of NGOs are registered under the Society Registration Act 1977 (SR Act), but they derive their true legitimacy from the Social Services National Coordination Act 1977 (SSNCC Act). The second category of NGOs are registered under either the SR Act or the Nepal Company Act 1964 (NC Act). The third group are registered as "cottage industries" under the NC Act. The fourth category consists of NGOs that are not registered at all but are functioning entities. They may be illegal, or they may be unstructured groups sanctioned by tradition or by modern development themes of the government that encourage setting up of user groups or other bodies under the policy of decentralization and encouraging people's participation in development.

Until recently, the SSNCC Act has been the most important and most controversial legal instrument related to the establishment and operation of NGOs. The *raison d'être* of the Act, as stated in the Preamble, is reported to be the need to avoid "duplication in the activities of various social organisations" and, among other things, the need "to bring in uniformity in the national, foreign and international grant and aid" by formulating policies and programmes to be applicable and implemented throughout the nation. The principal output has been the creation of SSNCC as the apex body in charge of all NGO activities. The SSNCC Act permits SSNCC to exercise considerable control over the entire NGO sector, including access to registration and funds from INGOs and other potential sources of support.

Interestingly, the SSNCC Act does not give authority to SSNCC for registering NGOs as legal entities. For this, NGOs have to seek recourse to other legal instruments such as the SR Act. But the SSNCC Act gives it wide powers to take full charge of the NGO sector. For example, the very first function envisaged for SSNCC is "to undertake responsibility to provide leadership at the national level for carrying out all social welfare programmes with a sense of purpose and direction by utilizing the available resources and facilities effectively and in a planned manner for the purpose of organized execution of the totality of social welfare programmes of the Social Organisations which have the public welfare and its enhancement as their main objectives". (Section 9.a) Under Section 9.m, the SSNCC Act authorizes SSNCC "to issue necessary directives or to supervise, evaluate and control the Committees (set up as an integral part of SSNCC) and the Social Organisations with a view to make them conscious, active and responsible in their respective designated objectives, policy, plan, administration, management, programme and implementation, as well as to

mobilize maximum creative cooperation and participation of the general public". Under a preceding Sub-Section of the SSNCC Act, the SSNCC assumed the most interesting function of "making recommendations to His Majesty's Government from time to time about the question of conducting, expanding, consolidating or winding up Social Organisations as the case may be and following the same by itself to achieve the objectives of the welfare of the general public in accordance with the objective of the Act".(See Appendix B)

NGOs under the provision of the SSNCC Act have to get themselves registered twice - firstly, with the relevant government agency for the purpose of getting incorporated as an entity, and secondly, with SSNCC for authority to function and to obtain financial support from donors. The SSNCC Act, as amended, provides under Section 18 that all social organisations established before and after the enactment of that legislation must obtain a certificate from the concerned committees of SSNCC to enable them to continue functioning as a social organisation.

The SR Act is a new version of the earlier Society Registration Act 1958 under which social and professional organisations sought registration during the first and short-lived elected government in the late 1950s. After the political reverses of December 1960, government-sponsored or government-supported organisations were registered under the National Guidance Act which is now defunct. The SR Act itself remained virtually unoperational because the then-government was not favourably disposed towards any independent social organisation. That the new SR Act was enacted in 1977 apparently to coincide with the enactment of the SSNCC Act, shows the intention of the government with regard to the role of social organisations or the NGO sector in Nepal. The SSNCC, with all its powers mandated by the SSNCC Act and the prestige and authority bestowed on it by having the Queen as its Chairperson, was not and is not an executing agency of the government. The government thus needed a separate legislation and an agent to deal with the registration business. The SR Act which, among other things, designated the "local authority" as the government agent for society registration envisaged that the business of social organisation was directly related to the law and order question. The "local authority" normally meant the Chief District Officer of a district, who is like a magistrate in the British colonial system of administration followed in the rest of South Asia. The purpose of SR Act has been to control the establishment of social organisations, not to facilitate it.

The SR Act is restrictive, contradictory and undemocratic. Many NGOs that wanted to be independent entities in the old political dispensation did not wish to be registered under the SR Act. The SR Act, which has not been amended even in these two years since the second dawning of democracy in Nepal, is full of contradictions and seeks to limit the autonomy of an organisation to the maximum. This point may be illustrated by the following provisions of the SR Act.(See Appendix C and Appendix D).

- (a) Under Section 4 (2), the act of registration is left at the discretion or mercy

of the local authority who, after receiving an application, will undertake "necessary investigations and register the organisation if deemed appropriate". The investigations include intelligence reports on the political activities, affiliations or inclinations of the promoters. It also has to seek the approval of the SSNCC as a part of this investigation.

- (b) Any consideration of a proposal for a change in the objective of an organisation by its general body has to receive the prior approval of the local authority. (Section 8)
- (c) The government can issue "necessary directives" to an organisation and it is considered the duty of the latter to follow such objectives. (Section 11)
- (d) The "local authority" can fine or imprison a member of a social organisation suspected of trying to politicize it. The member would then lose his/her membership automatically. [Section 12 (5)]
- (e) An appeal against the decision of the local authority not to register an organisation or against any other decision and action of the local authority is to be heard by a higher local authority, namely, the Zonal Commissioner and not by an independent judiciary. Recourse to a court of law for appeal against the local authority is allowed only for individual members of an organisation, fined or convicted to imprisonment, as mentioned in (d) above. [Sections 4 (3), 4 (4) and Section 13]
- (f) The government can suspend or terminate the life of an organisation when it feels that the organisation is not following the provisions of the Act. [Section 12 (5)]
- (g) The Society Registration Rules 1977, framed under the SR Act, provide that the certificate of registration is valid for only one year, which means that the registration has to be renewed every year, which again largely depends upon the discretion of the local authority. (See Appendix D)
- (h) If the life of an organisation gets terminated for any reason, all its assets revert to the government.

The last three points mentioned above contradict the simple and universal norm that a registered organisation has to have a corporate life for functioning autonomously and ceaselessly. This aspect is, in fact, given due attention in Section 5 of the Act. Its purpose, however, is rendered meaningless by the provision that the life of an organisation has to be renewed every year. That is, every year, an organisation would be investigated upon, and

every year it would run the risk of meeting sudden death.

No wonder, then, that hardly any organisation that cherishes autonomy as NGO sought or seeks registration under the SR Act. Only organisations precipitated by the SSNCC Act or by direct and indirect sponsorship of the government or only the opportunist NGOs sought/seek registration under this Act. Also, it may not be too speculative to suggest that even if a NGO applied for registration, the government in the past would not oblige the independent-minded organisations in any case. In fact, many applications for registration of such innocuous organisations like the Consumers Forum, Nepal Former Civil Servants Associations, the Society for International Development (Nepal) etc. were not acted upon. The supreme irony of the time was that a Human Rights Organisation of Nepal would not be registered by the government while the Nepal Bar Association of the Supreme Court preferred to continue functioning without seeking new registration after the National Guidance Act, under which it was originally registered, ceased to be operative.

As pointed out earlier, a few organisations have preferred to be registered under the Company Act 1964 (as amended), the purpose of which is to facilitate the establishment, operation and regulation of private and public, industrial and business firms, not NGOs. The problem emanating from this practice, with the consulting firms sometimes being in the same legal bracket as the NGOs, has already been discussed. For the latter, too, the NC Act became more preferable because the government could not be as arbitrary in the exercise of its regulating function under this Act than would be the case under SR Act. The NGO-like organisations registered under the NC Act, adopted the practice of declaring themselves as non-profit organisations. This helped them to distinguish themselves from regular business firms. Sometimes, such a declaration helped them to obtain grants from funding agencies that would support only a NGO. However, the government did not recognise such declaration and there was no law to handle such matters.

There is no need to further discuss the NC Act because its provisions are standard. In fact, the Sections in this Act regarding the organisation and management of a corporate entity is the same as in the SR Act. The former becomes more desirable from the standpoint of the needed autonomy because there is little room for interference from the government under this Act. The disadvantage is that many provisions of the NC Act are related to the financial and managerial aspects of a business firm which render them not only redundant but also cumbersome from the perspective of a NGO.

Finally, we should mention the case of some organisations that have been set up under special Charter given by the government. These are truly autonomous because their authority emanates from special legislation. But they are also directly or indirectly sponsored by the government for the execution of some important and special functions. Some of these organisations that are generally treated as NGOs in Nepal are the King Mahendra Trust for Nature Conservation, the Lumbini Development Trust and the Pashupati Area Development

Trust. These are trusts that have a character of a NGO because they are autonomous. But they also have a character of a government because they are deemed to be closely associated with the government. In any case, it would be neither possible nor desirable for each and every NGO to seek a separate Charter.

The preceding point indicates yet one more unique aspect of Nepal's legal framework governing NGOs. There is no special law in Nepal to facilitate and manage a private or a public trust. There is a Trust Corporation Act, with limited objectives. Its purpose is to help manage the assets traditionally kept aside or surrendered in the name of temples, monasteries and other religious services and to help run the designated affairs smoothly. But there is no legal instrument available to a citizen or a group of citizens who wish to set up a Trust and run it from their own resources or through endowments from one source or another for the fulfillment of functions they cherish. At the moment, as in the past, the practice followed by the interested party is first to surrender the assets through something like a sales deed by indicating the purpose for which the transfer is being made. After this, the concerned party sets up an organisation following the same procedure and the same legislation as in the case of other NGOs. In most cases, they take recourse to the SR Act.

As for the INGOs, most of them are "registered" with SSNCC as required by Sections 9.h, 9.k and 9.m(1) of the SSNCC Act. Apart from the above specific provisions, the INGOs are bound by the general policy that requires them to work only as partners of SSNCC. There is some concern in circles close to SSNCC that "a tendency towards creating donor-organized NGOs (DONGOs) as a means of circumventing the counterpart requirement seems to be increasing". (Simkhada, 1992) The premise behind this concern is the perception that none other than SSNCC can be a counterpart. At present 70 INGOs are reported to be active in Nepal. Of this, 56 have formal agreements with SSNCC.

There are also cases of INGOs that have a larger mandate than what is provided by the provision of their partnership with SSNCC. Some INGOs like HELVETAS of Switzerland or CARE of the United States of America operate in Nepal on the strength of the agreements they have with the government itself. In that sense, they are the "counterparts" of the government as are the official bilateral and multilateral aid agencies. All in all, however, the difference in the type of formal arrangements does not affect the style of operation of the INGOs. Many INGOs are happy with their association with SSNCC because, according to them, the latter does not interfere with anything they do and don't. The previous "nuisance" of requiring all programme funds of INGOs to be routed through SSNCC has also been discontinued. On the other hand, INGOs that have the government as their partner have difficulties at times to make the bureaucracy understand the ethos and style of the NGO mode and obtain the freedom and flexibility required.

The dawning of democracy for the second time has not resulted so far in any change in the legal framework for NGOs. But because of a fundamental change in the political

environment and attitude of the government, a paradoxical situation has arisen when, after the introduction of the democratic order, organisations have rushed for registration under the SR Act and with the SSNCC under the SSNCC Act. According to one information, there are now 550 NGOs registered with SSNCC. Of these, only 249 were registered before July 1990 or about the time when the political change took place. The number registered under the SR Act with the local authority in Kathmandu only is over 700. The rush for new NGOs, on the one hand, and the stagnation as far as the obstructive legal setting is concerned points to an unfortunate situation where the need for autonomy for NGOs might have been met in a perverse sort of way through a mutual accommodation to an anarchical state of affairs by the parties concerned.

Since the political change, the only initiative taken by the government is the introduction of a 13-point policy guideline in April 1991. A measure adopted by the interim government in which the present author was a Cabinet Minister, this policy paper has been most controversial and, probably, represents an unfortunate compromise with the forces of tradition. The policy decision (See Appendix E) is less restrictive politically, of course. But because SSNCC continues to exist for one reason or another, the government has to find a role for it. Hence, the overseeing responsibility and functions were kept in tact. What has made the present arrangement worse in the eyes of independent NGOs is that because now the democratic government is more assertive vis-a-vis the SSNCC (which no longer has the Queen as the Chairperson), the concerned agency of the government too has become assertive. Thus, when it comes to matters such as negotiating and coming to an agreement with the funding agencies, the government's approval too has been made necessary, which was not the case before. A perceptive analyst has this to say about the present arrangement: "Of the thirteen policy statements issued by the government in 1991, seven clauses tend to restrict the open linkage between national NGOs and INGOs or donor agencies for technical and financial assistance. Direct linkages are authorized but (they assume) pre-sanction from SSNCC or some other body authorized by the government. The SSNCC has been given a ruling hand on matters in which it does not have ... expertise as yet. At the district level, this work has been assigned to the Local Development Officer who may happen, in most cases, to be a non-person in a technical sense. With so many NGOs/INGOs around the country, it is not even logistically possible for the SSNCC to scrutinize methodically all the piles of the quarterly status reports of each and all bodies and report the same on a half-yearly basis to the Ministry of Finance and the Ministry of Labour and Social Welfare.... Worst still is the opaque statement that the SSNCC will have to implement the policies of the government as well as its instructions. The painful experience about the government's behaviour in Nepal is that instructions sometimes even supersede policies." (Maskay, 1992) A coalition of NGOs put out a Press Release in May 1991 that the policy guidelines violated, among other things, the right of association granted by the Constitution. (See Appendix F)

That in this confusion NGOs are growing and functioning without let or hindrance, if not with full efficiency or accountability, has to do with the change that has taken place

on the political landscape. The Constitution of the Kingdom of Nepal 1990, unlike its predecessor, fully guarantees the right of association. On fundamental rights, the Constitution specifically provides that all citizens shall have the "freedom to form unions and associations" under Article 12-2(c) and the "freedom to carry out any profession, occupation, trade or industry under Article 12-2(e). (See Appendix A) The right of association is a big achievement compared to the previous dispensation under which even professional associations were suspect and often not registered. It was the irony of that time that even human rights organisations operated as illegal entities when they could, and suffered the wrath of the government when they had to. The previous constitution, too, had a chapter on fundamental rights with all the usual provisions found in a democracy. But, then, there was also a provision that political parties would not be allowed. More importantly, in the context of this study, the government could enact laws to suspend all rights, including the right of association in public interest. The intention of the then-government can be understood from one such qualification that even the need to enact laws to require the observance of fundamental duties could be a matter of public interest. In practice, therefore, none of the fundamental rights were justiciable.

At present, however, the Constitution provides that enactment of laws to impose reasonable restriction on the right of association is permissible only to prevent activities that undermine the sovereignty and integrity of the country, disturb the harmonious relation subsisting among the various castes and communities, or instigate violence or are against public morality. (Article 12(e)(3). It is possible that the restrictive provisions that are there in the existing legislation and government directives covering NGOs can be declared *ultra vires* should they be challenged in the court of law. No such occasion has arisen because, in practice, NGOs have not faced any legal hurdles at present. The anarchy is in the lack of a policy; the shortcomings and contradictions in the legal framework is only its result.

Government Policy

The elected government that came to office in May 1991 has made it known that it is reconsidering the existing policy. So, whatever may be the status of government policy at the moment, including the 13-point policy-framework, a change is in the offing.

The government is not as apprehensive now as in the past of the possible political activities of NGOs that could be declared seditious in the old dispensation. The concern now is of a different nature. What should be the government's attitude about NGOs that may be directly or indirectly aligned with political parties and hence make use of foreign funds for partisan purposes? This is a ticklish question for which other countries in South Asia too are groping for an answer that represents a consensus. In Nepal, there is no special legislation to monitor and control the flow of foreign funds.

Both the party in power and the principal opposition party have a vested interest in

flexibility. There is no doubt that they all see in the NGO mode an opportunity to expand their support base, specially in the rural areas, through resources mobilized in a relatively effortless manner. However, the government has the additional responsibility of maintaining order even while it encourages NGOs in the interest of the party or the public - hopefully, the latter.

Politics apart, the bureaucratic concern against giving a bigger space to NGOs is the same as before. With the tendency to look at NGOs as development agents or implementing agencies, it is only natural that the bureaucracy perceives them as actors that need to be brought under the coordinating jurisdiction of the government. There are always arguments in favour of prioritization of activities for effective use of scarce funds, avoiding duplication and overlapping. Hence, the need from this perspective for a power centre to which NGOs have to be accountable in one form or another. The SSNCC even now takes some satisfaction from its claim that it has the potential of being the "single window" for clearance, information and monitoring of NGOs. The term "single window", it may be noted, is one that is used for streamlining bureaucratic procedures for licensing and otherwise servicing the industrial and business firms in the private sector to spare it the bureaucratic harassment.

In recent policy pronouncements, the government has appeared receptive of NGOs. In fact, this was the case even in the years before the political change. At that time, however, when the government said that it would encourage the participation of NGOs in development, it meant the SSNCC and the organisations within its fold. At present, no such danger is anticipated when, for example, the government has indicated in the Approach Paper of the Eighth Plan to be implemented from July 1992 that, "The private sector and NGOs have clear advantages in terms of low cost, flexibility, motivation and initiative for the efficient execution of many development activities". (NPC, 1990) There may now exist a problem of a different kind - at least, in the judgment of this analyst. Lumping the private sector together with NGOs is not a good omen. The emphasis on the contractual role of an implementing agent than of an innovator or than on the social commitment of a people's organisation is also evident. This is partly the result of the government wishing to share the perception of the World Bank or some other official donors in this respect. The multilateral lending institutions are short-listing NGOs for possible collaboration as they would for commercial contracting firms.

There is a more positive policy pronouncement for the Eighth Plan (1992-1997). The Approach Paper also promises that "in order to increase their effectiveness, government will define specific areas and sectors in which NGOs could contribute more effectively, based on their expertise, comparative advantage and track record. Rules and regulations pertaining to registration and organisation of NGOs will be simplified, and appropriate modifications in tax laws will be made to enable NGOs to mobilize greater resources from within the country". (NPC, 1990)

Financing the NGOs

The available information on the sources of finance of NGOs is too inadequate for a meaningful analysis. The suggestions here should be taken as informed impression of the author except in cases where specific facts and figures are quoted.

The mode of financing needs to be investigated on two fronts. One, the extent to which the NGOs have their own resources for their activities and the extent to which they are dependent upon donations, contributions and grants from the government or parties within the country indicates the degree of self-reliance of the NGOs concerned. Two, the degree of support from external sources of funds indicates the degree of self-reliance or lack of it of not only the NGOs concerned but of the society as a whole. Nepal's problem is of dependence of both types and more acutely so of the latter kind.

NGOs in Nepal are basically foreign-financed activities. The traditional initiatives originating in the ancient times lasting, to some extent, to this day have been domestically-financed operations. The resources came from individuals or a household's act of charity. But when a non-governmental activity became a NGO conceptually, it also became almost a corollary that it would be funded by foreign aid whether from INGOs or official sources of development assistance. The situation is so bleak that the worry is not so much about the dependence upon foreign aid for necessary activities as about the perception that foreign aid is the motivation behind the initiatives for setting up NGOs. There are some NGOs that are aware of this dependency problem which can have a cascading adverse effect even when the NGO concerned carries out its activities efficiently and honestly. In the case of a rural development programme, for example, a dependent NGO makes its "clients" in the rural area also dependent upon outside resources if the programme is not designed and implemented carefully.

Specific information on financing is available for the programmes of SSNCC-affiliated NGOs only. Accordingly to SSNCC, in the fiscal year 1991-92, 88 per cent of the total budget of Rs 653 million was to be met by external sources. Only 8 per cent would be mobilized from the NGOs internal sources, which probably means donations. The rest would come as grant from the government, most of it to meet administrative and other recurrent costs of SSNCC.

Other than the SSNCC and some institutions it has sponsored, NGOs do not have any endowments to give them the security they need for a long period of operation. Even these organisations depend upon outside resources for their routine activities because they have hardly any income-generating assets of their own. SSNCC's administrative costs are borne from the government's budget.

To remedy this situation, many NGO activities give priority to income-generating

programmes for the community they collaborate with. Some of them run economically productive activities themselves so that they themselves can be self-reliant ultimately. However, the experience to date is that NGOs falter almost as much as the government when it comes to designing and implementing employment and income-generating programmes on-farm and off-farm for their "target groups". Some NGOs have made some impact in community-building and in the delivery of social services which are grant-in-aid operations. When it comes to economic transactions and developing sustainable economic relationships, they, too, have a problem in finding a way out of the vicious circle of low assets, high debts and penalizing unemployment and underemployment affecting the poor communities and households, the proportion of which is estimated to be as high as 70 per cent in the country. One informed source points out that, "Problems in NGOs income-generating programmes are two-fold. First of all, the fully grant system in funding NGO income-generating projects seems to give the 'free lunch' impression. Secondly, income-generating projects run by NGOs seem to face the same difficulties faced by public sector corporations. Hence, while reducing external dependence is important, a more comprehensive study of NGOs income-generating programmes has become vital." (Simkhada, 1992)

When foreign funding is as high as in Nepal, a question arises as to whether the NGOs are mobilizing and utilizing "additional" resources for development or whether they are simply diverting resources from the government to themselves. This issue is not relevant in a context where a funding INGO or a donor and its counterpart in Nepal identify and agree on a programme strategy that is more productive than would have been the case if the resources were going to the government. This possibility is indeed the principal rationale and source of legitimacy for NGOs and INGOs. But when the NGOs too develop their own dependency syndrome that has afflicted the government of Nepal, the difference narrows considerably.

Outlook Ahead

NGOs (including INGOs) are the product of the perceived and demonstrated inadequacies of the state-tied traditional model of development partnership. (Panday, 1992) They can be the conscience-keeper of development cooperation at a time when the international aid system is afflicted by pathologies whose self-perpetuating tendency is depriving the poor and the handicapped of Nepal of the opportunity to live in dignity and security. Sustained more by their commitment to voluntarism than by the incentive of perks and privileges, NGOs can reach the poor and build their self-confidence and prospect for self-reliance in a manner not likely to be possible for the bureaucratic and political agents of a present-day Third World democracy to follow.

In Nepal, there is now democracy in the sense of the usual structural paraphernalia, including the prospect of periodic elections to choose a government. But the political culture, bureaucratic practices and general social norms are still tarnished and rendered unsuitable for

a democracy in a poor country by the legacy of the Panchayat system. NGOs, as a part of a social movement involving the educated and the poor in intimate interaction, can make the difference which the formal structures, including the operation of the international aid system, cannot. NGOs need to be promoted and nurtured to meet such social objectives. However, the encroachment of SSNCC, in addition to the inherent weaknesses of Nepal's intelligentsia trying to cash in on the NGO boom, has had some stifling effect to this process. This may change with the expected change in the government's policy and relevant legislation. Even if it does, the recent developments of looking at NGOs as service-delivery systems can take the movement in the wrong direction. Then it would no longer be the movement we are looking for.

Democracy is likely to affect NGOs in a different way too. Its positive aspects have already been emphasized and they are already noticeable in the changed environment for the establishment and operation of NGOs even while legislation and bureaucratic procedures remain the way they were in the previous political dispensation. But there can be problems of a different kind. Established political parties can feel threatened by the NGO movement much the same way as the dictatorial regime might. Enlightening the people and raising their awareness can be damaging for political power brokers who thrive on the innocence of the masses and their sufferings which make the latter gullible and vulnerable to any material temptation. Furthermore, NGOs can be seen directly as a political competitor that must not be allowed to grow or at least to work effectively in rural areas and backward communities.

There is, therefore, already an assertion from within the government and a large section of NGO community to make the movement apolitical. If this is meant to discourage NGOs to avoid partisan politics and to be a front for a given political party, this is understandable. But to argue that the NGO process can be or should be apolitical is symbolic of the typical technocratic, bureaucratic and self-serving attitude of NGO leaders in Nepal who, with some important exceptions, use their value-free and ideology-free devotion basically to enrich themselves financially and intellectually. Development is a political process. One should be fully cognizant of the opportunities, risks and contradictions involved in this dialectical course.

The future will be controversial and difficult from yet another standpoint. This has to do with the norm of secularism which NGOs may be required to follow. A large number of INGOs operating in Nepal are Christian missionaries belonging to various denominations. They have done useful work, specially in health, education and even in industries through the NGO avenue. It is widely believed that, in the process, they also proselytize. This has been a problem between the missionaries and the government of Nepal for some time. Nepal has been and is still a Hindu kingdom. Hinduism does not permit conversion of the faithful to another religion or, strictly speaking, vice versa. Proselytizing is a crime punishable under the law of the land.

The democratic Constitution is liberal as expected as far as right of worship and right of practicing one's religion is concerned. But it still bans conversion of Hindus through proselytization. Nepal is criticized by international human rights groups in this respect. But the government has a point that its citizens should be protected from the lure of a good life now than of salvation later. From a human rights point of view, it is a question of protecting one's right not to believe as much as protecting the citizen's right to believe. Anyway, the government has to find a suitable via media so that INGOs do not lose their space in Nepal and render the country a pariah. It will have to come to terms with itself as to how can it be a Hindu state and promote secularism among NGOs at the same time.

Finally, it should be noted that in matters of politics, secularism, finance and general code of conduct, the NGOs in Nepal are currently accountable to none. SSNCC has never been a good and effective monitoring unit in this respect. Neither the banks nor the Income Tax Department of the government has records of funds flowing into the country except the partial picture available at the SSNCC. When the legal framework is rewritten and a simpler institutional mechanism is created to provide a common framework for the operations of NGOs in Nepal, the question of accountability will probably have to take central place.

REFERENCES

- Asian Development Bank. 1989.
Cooperation with NGOs in Agriculture and Rural Development in Nepal, Volume I,
Manila.
- Coalition Nepal. (1991).
Press Release, Kathmandu.
- Korten, David C. 1991.
Getting to the 21st Century Voluntary Action and Global Agenda, West Hartford,
Ct.: Kumarian Press.
- Maskay, Bishwa Keshar. 1992.
"Non-Governmental Organizations for Development: Search for a Vision", Paper
Presented at a Workshop on Role of NGOs in National Development, Kathmandu.
- National Planning Commission. 1991.
Approach to the Eighth Plan: 1992-1997, Kathmandu, The National Planning
Commission Secretariat.
- Panday, Devendra Raj. 1992.
"NGOs at the Grassroots", The Rising Nepal, 22 January, 23 January, 24 January,
Kathmandu.
- Search. 1990.
NGOs in Nepal: Change and Challenge, Kathmandu.
- Simkhada, Shambhu Ram. 1992.
"NGOs in Democracy: Beyond the Plethora of Popular Rhetoric", Paper Presented
at a Workshop on Role of NGOs in National Development, Kathmandu.
- Statutes**
Constitution of the Kingdom of Nepal, 1990.
Nepal Company Act (Amended), 1964.
Social Services National Coordination Council Act (Amended), 1977.
Society Registration Act, 1977.
Society Registration Rules, 1977.

APPENDIX - A

**CONSTITUTION OF THE KINGDOM OF NEPAL
2047 (1990)**

PART - 3

FUNDAMENTAL RIGHTS

11. Right to Equality

1. All citizens shall be equal before the law. No person shall be denied equal protection of the laws.
2. No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideology or any of them.
3. The State shall not discriminate citizens on grounds of religion, race, sex, caste or ideology or any of them, provided that special provisions may be made by law to protect or promote the interests of women, children, aged or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially and educationally backward.
4. No person shall on the basis of caste be discriminated as untouchable or be denied access to any public place or be deprived from the use of public utilities. Any act in violation of this provision shall be punishable by law.
5. No discrimination in regard to remuneration shall be made between man and woman for the same work.

12. Right to Freedom

1. No person shall be deprived of his personal liberty save in accordance with law and no law shall be made which provides for capital punishment.
2. All citizens shall have the following freedoms:
 - (a) freedom of thought and expression;
 - (b) freedom to assemble peaceably and without arms;

- (c) freedom to form unions and associations;
- (d) freedom to move and reside in any part of Nepal; and
- (e) freedom to carry out any profession, occupation, trade or industry.

Provided that -

- (i) Nothing mentioned in sub-clause (a) shall be deemed to prevent the making of law to impose reasonable restriction on any act which undermines the sovereignty and integrity of the Kingdom of Nepal or which disturbs the harmonious relations subsisting among the people of different castes or communities, or on any act of sedition or defamation or contempt of court or the instigation of crime, or which is against decent public behaviour or morality;
- (ii) Nothing provided in sub-clause (b) shall be deemed to prevent the making of law to impose reasonable restriction on any act which undermines the sovereignty and integrity of the Kingdom of Nepal or causes disturbance in the law and order situation within the country;
- (iii) Nothing mentioned in sub-clause (c) shall be deemed to prevent the making of law to impose reasonable restriction on any act which undermines the sovereignty and integrity of the Kingdom of Nepal, or disturbs the harmonious relation subsisting among the various castes and communities, or instigates violence or is against public morality;
- (iv) Nothing mentioned in sub-clause (d) shall be deemed to prevent the making of a law which is in the interest of the general public or which is made to impose restriction on any act which disturbs the harmonious relation subsisting among the various castes and communities; and industry, business, profession or occupation.
- (v) Nothing mentioned in sub-clause (e) shall be deemed to prevent the making of laws to impose restriction on any act which is against public health and morality, or to confer on the State exclusive right to undertake specific industry, business or services, or to impose any condition or qualification for carrying out any industry, business, profession or occupation.

APPENDIX - B

SOCIAL SERVICES NATIONAL COORDINATION COUNCIL ACT, 1977

- September 22, 1977 First promulgated. Nepal Rajapatra, Vol. 27, No. 32 (Extraordinary),
Aswin 6, 2034 (September 22, 1977)
- October 20, 1982 First amendment, Nepal Rajapatra, Vol. 32, No. 32 (Extraordinary),
Kartik 3, 2039 (October 20, 1982).

Preamble

Whereas it is expedient to put an end to the duplication of work of different social organisations and associations run on the basis of the interests and services of social workers so as to ensure coordination in their activities; promote coordination in local, foreign and international groups of assistance as far as possible by formulating and executing national policies and programmes, develop and expand the services of social organisations and associations with public welfare as their main objective in a coordinated manner in the task of national reconstruction and development, promote cordial relations among people belonging to different classes, professions or regions; ensuring their health, morality, and economic interest, and protect and promote the interests of children, youths, old people, women, and helpless people.

Now, therefore, His Majesty King Birendra Bir Bikram Shah Dev has enacted this law on the advice and with the approval of National Panchayat.

1. Short Title, Extent and Commencement

1. This law may be called the **Social Services National Coordination Council Act, 1977**.

3. Establishment of the Council

1. For the purpose of achieving the objectives of this Act, there shall be established a national-level Social Services National Coordination Council.
2. The Council shall be registered as an autonomous and corporate body with perpetual succession.

4. Formation of the Council and Tenure of its Members

1. Unless otherwise provided for by His Majesty, there shall be formed a Social Services National Coordination Council under the chairmanship of Her Majesty the Queen, with the following composition:

9. Functions and Duties of the Council

In addition to the functions mentioned elsewhere in this act, the Council shall perform the following functions, duties and coordinative activities in relation to different social organisations and associations within the limits of the objectives of this Act:

- (a) To guide the activities of social organisations and institutions coming forward to serve philanthropic purposes in a definite direction at the national level, and assume the responsibility of providing leadership in operating all social welfare programmes systematically, utilizing all available resources and facilities in a planned and well-regulated manner.
- (b) To examine carefully the philanthropic aspirations of social organisations and associations whose efforts have so far been dispersed, and the various problems facing them, and extend all possible cooperation and encouragement to social organisations and associations which are likely to contribute to the task of national reconstruction and the welfare of Nepali society.
- (c) To make efforts for playing a leading role in the formulation and execution of national level policies, programmes and administrative arrangements regarding the social welfare activities of different social organisations and associations.
- (d) To remove the duplication of work or effort by different social organisations and associations, provide necessary motivation, and undertake necessary arrangements to make a single social organisation or association more effective and capable of assuming responsibility for performing the same functions.
- (e) To offer advice to His Majesty's Government from time to time on appropriate measures regarding any parallelism or duplication which may be seen between the role that may be conveniently played or the jurisdiction that may be assumed by social organisations or associations in respect to matters relating to social welfare and the programmes of His Majesty's Government.
- (f) To classify social organisations and associations into different categories according to need, and initiate appropriate steps to determine their level and jurisdiction with the objective of furthering the interests and convenience of social organisations and associations, promoting faith among international organisations or associations, and encouraging and inspiring a maximum number of social workers to show interest and extend services.

- (g) To make efforts for the management, disbursement and utilization of new resources, in addition to the resources usually available for the purpose of social welfare.
- (h) To initiate appropriate measures to promote uniformity and coordination as far as possible in local, foreign, and international grants or aid, taking into consideration the larger interests of the coordination among social organisations and associations.
- (i) To make appropriate arrangements for training, study, research, and other necessary measures to promote the skills and efficiency of social organisations or associations and social workers in regard to matters connected with social welfare.
- (j) To make necessary scientific arrangements for information, publicity and broadcasting regarding social welfare programmes.
- (k) To make efforts in keeping with the current policies of His Majesty's Government for promoting amicable relations and cooperation with foreign or international organisations or agencies in areas connected with social organisations and associations.
- (l) To decide in time on questions on which any social organisation or association may be run, expanded, amalgamated, or dissolved according to need for achieving the objective of public welfare in the course of the implementation of the objectives of his act, submit necessary suggestions to His Majesty's Government accordingly, and also gradually implement them on its own initiative.
- (m) To issue necessary directives, exercise supervision and control, and perform the function of evaluation to make the committees and social organisations and associations conscious, active and responsible in relation to their respective objectives, policies, plans, administration or management, programmes and their execution, and to enlist the active cooperation of a maximum number of social workers and ensure maximum public participation.
- (m1) To conclude necessary agreements or contracts with local, foreign or international organisations or associations and foreign governments, and make available to the appropriate social organisations or associations the grants or assistance obtained under such agreements or contracts.
- (n) To formulate and enforce codes of conduct for office-bearers and members of

the Council, committees, and social organisations and associations, other than representative members of the Council and its Committees and take action in the event of contravention thereof.

- (o) To determine the programmes and activities of the Council, Committees, social organisations and associations in such a way that these do not conflict with the programmes of Panchayats and their class organisations, and make continued special efforts for their implementation in as much as the objective behind the activities of the Council is wholly social welfare, ensure all possible active cooperation from them from their respective levels, and work for harmony among them.

18. Certificates

1. After this section comes into force, social organisations and associations registered under current law must obtain certificates from the Council through the appropriate Committee within two months after such registration.
2. Social organisations and associations registered under current law before the commencement of this section and functioning accordingly, which have not yet obtained certificates from the Council, must do so through the appropriate Committee within the time-limit prescribed by such Committee. Such social organisations and associations shall be allowed to function only after obtaining certificates under Sub-Sections (1) and (2).
3. For the purpose of obtaining certificates under this section, social organisations and associations must submit an application to the Council through the appropriate Committee, clearly indicating their objectives, Constitution, name, address, nature of service, the names, occupations, and addresses of members of the Executive Committee, and the office where the organisation or association was registered.
4. On receipt of an application under Sub-Section (3), the appropriate Committee shall conduct necessary investigations, and forward the application to the Council along with its opinion.
5. The form of the certificate to be issued by the Council under this section, and the fee payable for such certificate, shall be as prescribed by the Council.
6. The appropriate ministry shall include the name of the social organisation or association which obtains a certificate under Sub-Section (5) in the list of such organisations and associations by notification in the Nepal Rajapatra.

19. Merger or Dissolution

1. In case the appropriate Committee recommends the merger, dissolution or amalgamation of any social organisation or association on any of the following grounds, and if the Council accepts such recommendation, such organisation or association shall be deemed to have *ipso facto* been merged, dissolved, or amalgamated, the Council shall effect necessary alterations in the lists of social organisations or associations by notification in the Nepal Rajapatra.

24. No Question to be raised in the Court

Except in matters specified in Sub-Section (4) of Section 3, no question may be raised in any court on any action taken by the Council under this Act.

APPENDIX - C

REGISTRATION OF ASSOCIATIONS ACT, 1977

- Number 12, 1977 First promulgated. Nepal Rajapatra, Vol. 27, No. 28 (Pre-Extraordinary), Bhadra 27, 2034
- Number 10, 1986 Amended by Judicial Administration Reforms (Fourth Amendment) Act. Nepal Rajapatra, Vol. 36, No. 31A (Extraordinary), Kartik 29, 2043.

Whereas

it is expedient to make arrangements relating to the establishment and regulation of social, religious, literary, cultural, scientific, educational, intellectual, economic, professional, and philanthropic associations, now, therefore, His Majesty Jitendra Bir Bikram Shah Dev has enacted this law on the advice and with the approval of the National Panchayat.

Definitions

Unless otherwise meant with reference to the subject or context, in this Act:

- (a) Association means any association, organisation, club, institution, council, study centre, etc. established with the objective of developing and expanding social, religious, literary, cultural, scientific, educational, intellectual, ideological, physical, economic, professional, and philanthropic activities; the term includes friendship associations.
- (b) Local authority means the authority designated by His Majesty's Government by notification in the Nepal Rajapatra, and where no such authority has been designated, the Chief District Officer.

3. Prohibition to open Association without Registration

Nobody shall establish any association without registering it under this act.

Registration of Association

2. After receiving an application under Sub-Section (1), the local officer shall conduct necessary inquiries, register the association if he deems it appropriate to do so, and issue a certificate of registration.

3. In case the local authority decides not to register any association, he shall notify the applicant accordingly, and the applicant may file a complaint against such decision with the Zonal Commissioner within thirty-five days after receiving such notice.

4. After receiving a complaint according to Sub-Section (3), the Zonal Commissioner shall conduct necessary inquiries and order the Chief District Officer to register the association if he deems it proper to do so. The Chief District Officer shall register the association after receiving such order.

5. Associations to be Regarded as Corporate Bodies

1. Every association which is registered under this Act shall be an autonomous and corporate body having perpetual succession. It shall have a seal of its own for its entire business.

7. Registration of Unregistered Associations

Associations which had been established before the commencement of this Act but had not been registered under the law then current shall register themselves under this Act within three months after the commencement hereof.

8. Changes in the Objectives of the Association

1. In case it is considered necessary to change the objectives of the association or to amalgamate it with another, the managing committee of the association shall prepare a resolution accordingly and convene an extraordinary meeting according to the constitution of the association for the purpose of discussing such a resolution.

2. Such a resolution shall be deemed to have been passed by the extraordinary meeting if it is endorsed by two-thirds of the total number of members present therein, provided that prior approval of the local authority shall be obtained for the execution of such a resolution.

11. Directives

His Majesty's Government may issue necessary directives to the association, and it shall be the duty of the concerned association to comply with such directives.

APPENDIX - D

REGISTRATION OF ASSOCIATIONS RULES, 1978

February 13, 1978 First Promulgated. Nepal Rajapatra, Vol. 27, No. 43 Falgun 2, 2034.
November 11, 1985 First Amendment. Nepal Rajapatra, Vol. 35, No. 30, Kartik 26,
2042.

2. Application for Registration

Any person who desires to register an association according to the act must file an application in the form prescribed in Schedule 1 to the local authority along with a fee of Rs 100.

4. Registration and Certificate

After an application is received under Rule 3, the local authority shall conduct necessary inquiries, and if he considers it appropriate to register the association, he shall enter its name in a register maintained in the form indicated in Schedule 2. After the association is registered in this manner, he shall issue a certificate in the form indicated in Schedule 3.

5. Term, Renewal, and Fees

The certificate of registration issued under Rule 4 shall be valid for one fiscal year.

APPENDIX - E

POLICY ADOPTED BY HIS MAJESTY'S GOVERNMENT ON THE NATIONAL AND INTERNATIONAL NON-GOVERNMENTAL SOCIAL ORGANISATIONS

MARCH, 1991

1. To make timely reforms on the Act and Rules of the Social Service National Coordination Council (SSNCC) with the objective of encouraging the active participation of the national non-governmental social organisations in the social services to be carried out in the Kingdom of Nepal.
2. The SSNCC will act as a coordinator between the national and international social organisations.
3. The national non-governmental social organisations dedicated to economic and social development activities may work for the achievement of their respective goals in an organized manner. No restriction, in whatsoever form, will be placed on the establishment and operation of such social organisations provided, however, that such organisations shall carry on only such activities which may have national or public importance.
4. The national organisations may directly contact the international organisations for technical, material and financial assistance needed for achieving its goals provided, however, that such organisations will be required to obtain prior approval from the SSNCC and His Majesty's Government before receiving such assistance.
5. Any international organisation can directly provide technical, material or financial assistance to the national organisations for carrying out a particular activity. Before providing such assistance, a letter of acceptance to this effect will be required to be obtained from the SSNCC and HMG.
6. In case where any international organisation, as donor agency, desires to assist HMG in its development works or participate in them through the national organisations or directly, the former should enter into an agreement with HMG or HMG's authorized government or non-governmental organisation and act in accordance with the agreement.
7. Any organisation may conclude an agreement with the international organisation with the objective of securing assistance provided, however, that the former will be

APPENDIX - F

NGO COALITION PRESS RELEASE

The following is the unofficial translation of the Press Release circulated on 7 May 1991 by Coalition Nepal.

1. It is inappropriate for the interim government to make a major policy decision on the eve of the first general election under the multi-party system after 30 years of the Panchayat system.
2. We are obviously all deeply hurt by the decision taken to undemocratically impose controls on social institutions that are a part of the democratic process of this nation.
3. The Social Services National Coordination Council (herein- after referred to as SSNCC) has in the past played a reactionary role and was created with the purpose of establishing an autocracy. On this background, we felt that the decisions to strengthen such an institution (with even more powers) is aimed at de-activating all social institutions. Thus the decision is undemocratic, untimely and completely inappropriate.
4. Under the new Constitution of Nepal, the government rightly has the powers to control and even ban institutions that endanger the sovereignty, unity and communal harmony; promote anarchy and disrupt the law and order situation; and work against socially accepted norms and practices. Besides these, the government has no power to control, create obstacles and impose unnecessary preconditions to any organization. However, with the present policy, the government has imposed technical, material and economic control upon non-governmental organizations by empowering the SSNCC and thus violating Article 12(2) Ga of the Constitution of Nepal.
5. In order to oversee the registration, supervise the activities, acquire annual reports, obtain the audit reports and, based on these, to make a decision as to whether or not an organization's registration should be renewed or not, the Chief District Officer has already been empowered. What we do not accept is the empowering of an autonomous, yet publicly unaccountable SSNCC to register, re-report, re-audit, and to grant permission for each activity and financial transaction to be undertaken by SGOs. We read this as the government's intention to wipe out such social institutions.
6. In the decision, the government has made arrangements to have every social institution register with SSNCC, made it compulsory to submit progress reports every 4 months which would be evaluated by the SSNCC every 6 months and reported to the Ministry of Labour and Social Welfare and the Finance Ministry. This is clearly

a move to impose government control over these organizations through the SSNCC. This is an indication of the Panchayat era. In the present political context, such a policy is neither logical or principally appropriate.

7. Social organizations are formed as the basis of freedom, self-government and voluntarism, and because these fundamental principles were suppressed during the Panchayat days, such organizations could never prosper. SSNCC was the weapon used for the purpose. At that time, organizations within the SSNCC at least had some freedom even though they may have been on surface. Now even that has been taken away.
8. The question that looks before us is, "How should we view the SSNCC that does not break a match-stick, but in the name of coordination takes special interest in the money that comes in through International NGOs?"
9. Another vital question is: If the government, through the SSNCC, is going to approve each activity and financial transaction of each NGO, is there a need for the non-governmental sector? The present decision is clearly aimed at governmentalizing and centralizing the independent sector. In the decision-making process itself, it seems that the Ministry of Labour and Social Welfare has fooled the Cabinet in a way. No other ministry was consulted, no cabinet committees or ministerial committees were asked for opinions, there is no reference to alternatives, there is only reference to autocracy and no experts were consulted. It seems clear that a group of self-centered persons took benefit of the ministry's preoccupations with the elections to get the policy through.
10. In the context, we demand that the government immediately withdraw its policy regarding national and international NGOs. We also appeal to all national and international NGOs not to affiliate themselves with the SSNCC. And since the SSNCC has no place or need in the new democratic process, we demand that the government, being formed after the general elections, dissolve and dismantle the SSNCC.

Coalition Nepal consists of the following organizations:

1. INSHAN
2. Centre for Rural Technology
3. Conservation Asia
4. Nepal Forum of Environmental Journalists
5. Women in Environment
6. Youth in Environment Group
7. Nepal Environment Conservation Group

8. King Mahendra Trust for Nature Conservation
9. Environment and Public Health Organization
10. Engineering Study Group
11. Save the Environment Movement
12. Seto Gurans
13. Environmental Camps for Conservation Awareness
14. OCEAN
15. Science Writers' Association
16. SCAEF
17. Jara Juri Trsut
18. WOGEP
19. EMA Group