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Nepal

LAWS AND REGULATIONS GOVERNING NON-GOVERNMENTAL ORGANISATIONS IN NEPAL NGOs BEWILDERED, NEPALESE CASE

NGO Federation of Nepal

I. INTRODUCTION

NGO movement in Nepal is gradually taking a new shape. Despite allegations and counter allegations. The social welfare covering delivery, research and development sectors, NGOs are trying to review and consolidate their position in order to be more effective and meaningful. Since NGOs are the product of the existing society, the impact of the socio-political environment on NGO movement cannot be ignored. NGOs as agent of change therefore need to be examined in the prevailing social context only. The legal status and emerging challenges of NGOs have been examined in this paper from the Nepali perspective and attempts have been made to give some conclusive remarks on the future prospects as well.

The political movement of 1990 is a landmark event not only in the political and constitutional development of Nepal but also in the emergence of new development concepts that

recognize and promote the value of private as well as NGO sectors in the task of nation-building. While reducing the role of state in national affairs, the new legal regime formulated under the changed democratic framework have, despite shortcomings, tried to innovate additional devices with a view to encourage people to act as development partners and directly share the benefits and losses through participatory mechanism. Thus the non-government sector, widely known as NGO or PVO, has grown as a phenomena in Nepal in recent years. The credit for this partly goes to the enthusiastic international development agencies and partly to the success stories of NGO movement in some developing nations such as Bangladesh. In Philippines and Malaysia, even after half a decade of democratic experiment the question as in the status, role and achievements of NGOs in Nepal is still as burning as ten years ago when the country had very respective NGO regulatory mechanism and adverse legal and political environment.

Nepal is a democratic country situated between two big Asian nations governed under totally different political systems. It has a written Constitution promulgated in 1990 as the fundamental law of the land. The constitution has assimilated such basic features which are broadly known as constitutional monarchy, parliamentary system of government, adult franchise, independent judiciary and judicial review, the rule of law and regulations rights including the right to form union, association or organisations. The legal system of Nepal can broadly be described as based on common law system with some indigenous imprints. The Society Registration Act of 1977 comprises the basic laws in Nepal regarding societies, establishing their existence as independent judicial entities and conferring upon them all the rights, duties, powers, and immunities necessary to accomplish their objectives. The Act also assures these societies autonomy, subject to the authority of the government to oversee their activities and enforce the state laws and regulations. It has reasonable provisions for judicial review by independent judges. The registration procedure are generally simple. Societies as independent legal entity are permitted to maintain bank accounts in their own name, to control and have discretion over the expenditure of their funds, to publicize their activities and to communicate through all public media, and to engage in all legal actions and transactions generally available to individuals and enterprises, including owning property, entering into contracts, employing workers and so forth. An attempt has been made here to trace out the legal regime involving societies

as per the standard template provided by the International Centre for Not-for-profit Law (ICNL).

II PROVISIONS OF THE GENERAL LAWS.

(A)

It is necessary to point out at the outset that the laws and regulations that affect the NGO Sector in Nepal are not numerous. Since the country is a unitary state, there exist no conflicting provisions in state laws and national laws as are seen in federal and quasi-federal states. Apart from the Society Registration Act, there are no major statute directly dealing with NGOs and this Act is also very simple and easily administrable and generally easy to understand and follow.

(B)

The Constitution of the Kingdom of Nepal as stated earlier guarantees freedom to form union, assembly and association, freedom of speech, press and publication right, right to property, etc. These rights are subject to reasonable restrictions on several grounds. The right to proceed for the enforcement of these rights is guaranteed as a fundamental right. As such, the Supreme Court is empowered by the Constitution to declare void any law or any part thereof if it is found to have imposed an unreasonable restriction on the enjoyment of the fundamental rights or on the ground of inconsistency with the Constitution. The court is also competent to respond to any question of public right or concern by way of constitutionally recognized

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public interest litigation. Although the Constitution has no specific provisions that deal with NGOs, the directive principles of the state, nevertheless, requires the state, among other things, to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspects of national life including social, economic and political life, while at the same time protecting the lives, property and liberty of the people.

(C) Types of organisation

The legal system of Nepal contains various statutes which provide for different provisions regarding government corporations, Development Boards, Companies and political organizations. The Society Registration Act 1977 is, however, the only statute which deals with societies (i.e. NGOs, associations, foundations or other type of organizations as will be proposed by the funding members). Their specific nature, whether societal, religious, literary, cultural, scientific, academic, intellectual, ideological, physiological, economic, commercial or benevolent depend on the constitution of the juridical entity as proposed by the founding members for the registration under the Act. As such the Act does not distinguish between NGOs that provide a public benefit and those that serve their members private or mutual interest. It must, however be noted that trade unions and political parties are regulated separately. Generally any type of societies is permitted to exist under the Act leaving a wide avenue open for NGOs. Any types of NGOs as stated above, can be established

under the Society Registration Act. However, NGOs are not allowed to exist without getting formal registration.

(D) Registration or Incorporation Requirements

In order to establish a Society (NGO) as a legal entity at least seven persons (there is no upper limit) have to make application to the local authority in the concerned district along with a constitution of the proposed society. The application has to contain the name of the society, its objectives, the name, address and occupation of the founding members, economic resources and the address of the proposed society. There is no statutorily defined amount of basic capital required to form an NGO. The local authority has to register such a society if it thinks it reasonable to do so upon necessary inquiry into the matter. The local authority must give an intimation to the applicant if he decides that registration should not be allowed. However, the applicants are entitled to make a complaint against the decision of the local authority in a law court. Its decision upon such a complaint is final. However, constitutional remedies against the inferior law courts is always guaranteed. If worthy to be registered, a society is required to pay a certain amount of registration fee. The amount is however nominal.

There is no provision in the Act which prohibits non-natural legal persons to be founders or members of the society. But foreigners cannot be founders because citizenship certificate must be submitted along with the application

for registration. However, foreigners are permitted to do so with an arrangement with the Social Welfare Council - a statutory creation of the government. NGO umbrella organizations are permitted under the Act.

(E) Society's Register

Every concerned local authority maintains a register for society's registration. The register contains basic information regarding the society. There is a constitutional right to demand and receive information on any matter of public importance. As such, the public may claim the right to have access to the register. The register does not list organizations that were denied the right to register. The register is not generally considered accurate and up to date because it does not contain information regarding the defunct organizations or those that have been sanctioned or disciplined by the local authority.

(F) General Powers

NGOs are permitted to act according to the provisions of their constitution and the existing laws. They are empowered to exercise the general rights and powers of judicial entities, such as ownership of real properties or entering into contracts. Every organisation has a duty to submit its financial statements each year along with its audit report to the local authority. The local authority has a power to appoint its own auditor to audit the accounts of such organization where it has reasons to do so. If it is found that any official, member or staff of the organization has misutilized the fund of the organization or has caused loss

or misused it, the local authority is required to initiate proceedings against the concerned official, member or staff. The local authority also has power to help refund the organization its property illegally distrained, possessed or misused by any member or staff of the organization against the provisions of its constitution. The person affected under this category can proceed for judicial remedy against the decision of the local authority. The local authority has also power to initiate legal proceedings against any person acting contrary to the good will or binding documents of the organisations, or where such person has acted against its proprietary interests. In all cases, there are provisions for judicial corrections against the decision or order of the local authority.

(G) Membership organizations

Membership organizations are free to act as per their own constitution and rules. The constitution may contain conditions for membership. The professional societies registered under the Act may exercise regulatory authority over its members.

III GOVERNANCE

There is little to be said about the governance of these societies. The rules of the Act are applicable for all foundations, associations, and NGOs. The Governing Board is the executive organ of every such organization. Their powers are as set out in the constitution of the organization. Decisions are taken by majority. As a matter of practice, the local authority does not register a society if it finds

NGOs are permitted to act according to the provisions of their constitution and the existing laws.

that its rules in the proposed constitution are not democratic and if the issue of accountability is not adequately dealt with. Such organizations are restricted at the threshold. Once registered, all these societies are bound to observe the directives, if ever given, by His Majesty's Government.

IV DISSOLUTION, WINDING UP AND LIQUIDATION OF ASSETS

If the organization gets dissolved due to the inability to pursue its objectives or on other grounds, all its property and assets are transferred automatically to His Majesty's Government. However, the government is not bound under the Act to pay off the liabilities of the organization in excess of the value of the property or assets transferred to it.

V. REGULATION

The local authority in every district of Nepal is the principal regulatory authority for the societies within the district. The Act, as stated earlier, provides for reporting requirements. There are penalties for their violation. The societies who are accredited to the Social Welfare Council of the government may also be monitored by it. However, societies are under no compulsion to get the accreditation.

VI. FOREIGN ORGANIZATION AND MISCELLANEOUS

Foreign organizations can work in Nepal with an arrangement with the Social Welfare Council and the government. Domestic organizations can receive foreign grants. The

donors themselves reach an understanding with the government regarding the amount to be distributed to the NGOs. There are neither any rules for mergers and split-ups of NGOs nor for investing the property or endowment of an NGO. In the same vein, it is not clear whether NGOs can invest abroad. NGOs engage in political or legislative activities in service sector, such as helping to draft laws or weighing the government to adopt certain policies.

VII TAX LAWS

Societies are granted tax exempt status if they are non-profit making organizations. But this privilege is not applicable for those who earn salary, remuneration, rent etc. from the society. In practice, the trend is such that the tax clause be minimally observed.

VIII GOVERNMENT FUNDING AND PRIVATIZATION

There are no specific legal arrangements regarding them. Government funding for NGO sector does not exist at all, except the key word commonly used in corporate and foreign investment sectors, not in the NGOs field. Nepal would be pleased to learn about it from the experiences of other countries.

IX. NGO'S IMAGE

Despite liberal legislative framework, NGOs in Nepal have not been able to feel comfortable. Functional problems are multiple. The basic issue that the NGO protagonists of Nepal need to address now is "diagnosis must

be made on the basis of pragmatic assessment of the existing situation. While doing so, some questions being generally raised about NGOs must be critically appreciated before dealing with the basic issues. Why have NGOs not been able to win the confidence of the people and international development partners? Despite new policy commitments and legislative initiatives, why are the government and donor counterparts shy about fully joining hands with NGOs? Have the NGOs failed to perform and deliver goods? What is wrong with NGOs? The moot question therefore the NGOs in Nepal have left unanswered is their failure to restore its clean image as development agent that has recently been painted as "donor driven dollar harvesters". Answer to all these questions is not possible in a small paper, however, only a few basic legal issues are touched upon, keeping image question at the background.

The image of an NGO till now projected as informal, less expensive, flexible easily accessible, productive, result oriented, less bureaucratic, time bound, specialized, participatory, focused, efficient and effective agent suited to development and other national needs, has occasionally been found severely tarnished with blames and abuses. No in-depth research to identify and examine the reasons has yet been done in Nepal. But anti-NGO propaganda continues to appear in media as ever with no appreciation of NGO contributions and without giving them any opportunity for defense. Paradoxically, however, the mushroom growth of NGOs in the registration desk of the local authority has no visible sign of decline. NGOs are

becoming the victim of negativism in Nepal now. Apprehension of financial manipulation on the one hand and failure from the responsible quarters to appreciate the advantages of freedom and flexibility enjoyed by NGOs on the other hand, may be considered by key factors responsible for defacing the name of NGO and have jeopardized the right reflection of the image.

After the invent of democracy NGOs in Nepal have started working independently in a real sense. Some advocacy and community development NGOs have done excellent works despite many constraints. Sustainability without resources (both human and material) is impossible. Policy and legislative back up can make a big difference in creating the right politico-legal environment. The issue of administrative overhead is the least preferred item in the agenda in the donor's grant criteria. Nevertheless, some selected NGOs are doing their best and producing good results. The tragedy, however, is that no body studies success stories and appreciate NGO contributions. There is a need to review and reveal achievements also. If no one else does, the NGOs themselves have to do it. The purpose here, however, is to examine the problems and vices rather than virtues which in fact are universally proved, hence, need no repetition. The main issue in question right now is image problem.

To be precise, the NGO image problem has been excessively magnified by some outsiders who are not fully prepared to appreciate the strengths and advantages of NGO. The source of negative propaganda to a large

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extent is the government itself which may be compared with big NGOs in many developing countries. Hence, government as a competitive agency in terms of grant seeker and recipient body but circumscribed by regulatory and bureaucratic features, does not feel comfortable with the liberty enjoyed by an NGO as a private sector agency. However, it does not mean that an NGO is a sacred body free of all vices. NGOs as a legal and functional entity do have vices and many genuine problems. Neither the NGO alone is a cause nor an effect. Problems are basically the offshoots of the existing environment - legal, political, cultural and to a certain extent donor driven. Ignorance and lack of management skills and institutional support from the concerned sector is equally responsible for many maladies. To be more specific, setting aside legal malady three additional maladies may be noted for clarity:

- a) Donor driven malady
- b) NGO driven malady
- c) Government driven malady.

All these three maladies are equally responsible for poor performance and bad image of NGOs. Basis for receiving grants from many donors are basically personal contact, unconditional acceptance of imposed idea and programme, connections, vested interest, paper work than performance, imposition of obligations, frequent change of schemes and venues, publicity, one sided transparency, master-servant relation, disregard of feedback from NGOs, no guarantee of continuity, no commitment but generally lip services, short-term investment,

abrupt closure of project, no opportunity for correction and improvement, inconsistency of approach, advanced evaluation process in crude situation, western biases, no institutional support, too much expectations from locals, imposed consultants etc. Not a single NGO can get across the test of such persecution if it has to continue receiving support from donors. These maladies exist almost with all donors, except a few who appreciate flexibility and quality and are committed to host-country development.

Among the most visible NGO driven maladies are lack of management skills, very little paper work, poor record, financial weakness, poor language and non-communication, poor result, slowness, too much of dependency, inferiority complex, tendency to avoid issues, poor accountability, non-compliance of project proposals and procedures, high expectations, light comments, no local input, beggar attitude, poor coordination, politicization, non-sustainability etc.

Well known government driven maladies are control tendency, non-cooperation, non-transparent inefficiency, bureaucratic resentments, negativism, fund biased outlook, lack of coordination, shifting responsibility, technical rigidity, conservative approach etc.

If an NGO has to work under these extreme circumstances in any countries the result of any understandings will be questionable and the image question will never be answered. Image issues are equally applicable to donors. Adjustments of attitudes among development partners and a sense of pragmatism may

provide the right solution to this issue. Objective considerations and suitable approach must be made a basis by all the actors and partners of NGO sector before dwelling into the issues inherent in development efforts and NGO management. Advantages from strengths and lessons from failure have to be derived by all concerned.

If we assess the overall situation the environment in totality is not very bad, it can be improved and challenges addressed. But for Nepali NGOs time is running out. In such circumstances it is but natural for NGOs to be bewildered. Even the legal framework has not been able to fully create a congenial environment for NGO functioning due to lack of appropriate climate suitable for the growth of a competitive development of NGOs.

X. COMPLIANCE

There are some basic problems regarding the laws and its compliance. In fact, lack of law means no restriction. NGOs can enjoy freedom and autonomy at its best in absence of laws. But for this, good and less governance is needed. More regulations means more government and many constraints. Therefore we have to create proper legal environment through law in order to reduce the role of state and law in NGO sector for future. Hence, the role of law under the new framework should be more facilitative and less restrictive. Law not only empowers its creature but at the same time it prescribes behavioral norms, thereby limiting the freedom which would otherwise have given wide range of flexibility.

Until 1990, before the commencement of the present constitution the concept of NGO understood in the modern sense did not exist in Nepal. The Society Registration Act 1960 was framed almost 36 years ago; it had hardly become functional as no one ever felt the need of private sector to facilitate development efforts. A new dimension was given to NGO sector by promulgating two parallel enactments. In order to recognize and regulate NGO; as development and social welfare agency, Society Registration Act 1977 was introduced which brought under it many non-governmental legal entities with diverse objectives and functions, including clubs and study centres. But these entities, called NGO; were placed under total control of local administrative wing of the government which had power to issue mandatory directives and resolve conflicts also. Thus, the then legal environment was not congenial for functional NGOs.

In addition to the Society Registration Act, another enactment called Social Services National Co-ordination Council Act, 1977 was promulgated with a view to bring in all functioning NGOs and INGOs within the fold of the "Social Services National Coordination Council", a statutory body, to be chaired by Her Majesty the Queen and predominantly constituted by government high officials. The main objective of this Act was to channelize the funds and regulate social welfare activities in the name of coordination. This council had the supreme authority to dissolve any NGOs registered under the Society Registration Act also in the pretext of noncompliance of the constitution of the concerned NGO

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and the law of the land. In this way, legally speaking, NGOs were made subservient vehicles to be driven only by the government.

Even the then Constitution of Nepal 1962 had a severe restriction on freedom of union and associations on political and 'public policy' grounds. In a nutshell it could be said that there existed no meaningful legal environment in favour of NGOs till 1990 when the political movement replaced the partyless political system by a multiparty parliamentary democracy that brought a radical change not only in political environment and people's attitude alone, but also opened new opportunities for competitive and innovative ideas through NGO sector as well.

A simple change in political environment happened to pave the way for many NGOs, INGOs and aid agencies to work in partnership. A new wave emerged and NGOs started reaching out to grassroot people and contribute to the constitution making and civil rights awareness process. It could happen even within the existing orthodox legislative framework governing NGOs but, of course, in the changed democratic environment. Till now more than the change in legal environment, democratic environment created by political movement and the new constitutional framework, which is quite sophisticated and loaded with modern features of constitutionalism, is more dependable than the reformed legislation.

The constitution of the Kingdom of Nepal 1990 is the basic legal document against

which all other legislative frameworks have to be tested. The legal environment created by the constitution is apparent in the preamble which gives primacy to basic human rights and other democratic values as unamendable features of the constitution. The elaboration of basic human rights has been made in Article 12 in the form of Right to Freedom to form unions and associations. Accordingly the Society Registration Act 1977 was amended deleting the controlling features. The Chief District Officer (CDO) still happens to be the local authority in districts in registration and renewal matters. The Social Services National Coordination Council Act, 1972 has now been replaced by the Social Welfare Act 1992 which has made optional for the interested NGOs to register their names in the Social Welfare Council, headed by the Minister. However, the restrictive measures still exist which enable the Council to dissolve and reconstitute the NGOs registered under the Council. Moreover, the project funds to be given to NGOs by donors have to be mandatorily channelized through Council. Surprisingly, however, neither the donors nor any NGOs are interested to comply with this provision of the enactment.

Such provisions have given a strange feeling in the mind of NGO activists and leaders as to the Council. The Council during the last four years has failed to create any impact on NGOs, and motivation of an NGO to register its name under the council has declined. It has yet to be seen how the new Ministry recently formed as Ministry of Women Development and Social Welfare responds to NGO issues.

A positive development has taken place in favour of NGOs with the commencement of local government law in 1991. Local Government bodies are asked by laws to encourage NGO participation while designing, implementing and managing local development projects at district, municipality and village levels. Avenues to seek expert services through NGO have also been opened. An NGO may directly work as partner in development projects with local elected bodies under these new laws. Similarly, sectoral laws like Forest Act, 1992 and Forest Rules 1995 have recognized the status of Forest Users Groups involved in Community Forestry Management as equal to that of the powers and responsibilities of NGOs. Even the Water Resources Act 1992 and Electricity Act 1992 have opened doors for NGOs and user groups to be development partners.

Governments Commitment to liberalize economy by encouraging private sectors to invest in development efforts is bound to bring NGOs and INGOs in Nepal. But the real problem emerging out of these legal developments has been the dilution of the very basic concept of NGO understood by the concerned sectors.

Functionally, an NGO registered under the Society Registration Act, 1977 and other legal entities registered as 'user group under local government laws or Forest Act 1992 hardly have any difference. Even a non-profit organization registered under the Company Act may operate similarly as an NGO in various circumstances. The question,

therefore, naturally arises as to what does an NGO really mean in Nepal? Should we have any definition as such to differentiate the nature and function? May be the dilution of difference is more advantageous for private sector development than the qualified artificial differentiation made about NGOs/PVOs. Moreover, a new area still undefined is open regarding legislative framework governing the registration and operation of regional and international NGOs/groups in Nepal, except the clearance needed from the government. In this matter INGOs have larger range of wilderness open for their operation than local NGOs.

XI CONCLUSION

Left in the wilderness, NGO and INGOs feel bewildered in Nepal. Inadequacy of laws are sometime blessing in disguise but when problems have to be encountered government's highhandedness through policy instruments may invite more problems before NGOs than other development partners. The problems may compound more when thousands of NGOs and INGOs start operating at different institutional levels in various places, and institutional conflict start brooming with no specified body to handle the problem.

Imparting management skills and urgency to extend institutional support are essential to make an NGO effective, functional and meaningful, But how these non-governmental legal entities holding different titles and nomenclature under different laws may operate in absence of clarity of conceptual basis,

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vagueness in definition and accountable institution and understandable legal environment, is a big question that needed immediate answer. The Social Welfare Council, a supreme legal entity created by the Social Welfare Act, has failed to act like a coordinating and supporting body due to structural and functional vagueness. INGOs, more bewildered than national/local NGOs, are unable to confidently operate in a wide playground where neither the umpire nor the players are clear about their respective rights and obligations. What is needed in Nepal is not freedom for NGOs but legal and institutional clarity. For this a perusal of existing laws and policies governing NGO/PVOs/INGOs is urgent. Based on such studies, a liberal democratic environment may have to be created through appropriate legal instrument that should at least be simple, comprehensive and technically sound. An NGO once registered under the new legal instrument should not find itself losing its identity and freedom rather than being legally empowered.

What is needed in Nepal is not freedom for NGOs but legal and institutional clarity.

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Pakistan

LAWS AND REGULATIONS GOVERNING NON-GOVERNMENTAL ORGANISATION IN PAKISTAN

Ms. Sadiqa Salahuddin

I. INTRODUCTION

In Pakistan, the term 'NGO' has not been defined in any statute and is used to refer to all types of organisations. The perceptions about what an NGO is as well as the categories of NGOs, are widely divergent. Traditionally, NGOs have been seen as welfare-oriented organisations staffed by volunteers. The concept of developmental NGOs, staffed by professionals, has not yet been fully understood or accepted.

For the purposes of this paper, the focus is on those organisations: which are clearly intended to be non-profit; which by virtue of the law covering them would necessarily be organisations; and which by law are not government-controlled. It must be pointed out,

however, that this excludes a number of organisations which have emerged and function as NGOs, although the concerned law does not deal with 'organisations' per se. It also ignores charities and trusts which are legally government-controlled, even though they may be functioning as fairly autonomous organisations, as well as some which are actually non-profit organisations, but are registered under laws which view them as profit-making.

There are a number of laws which deal with the registration and regulation of NGOs, others which recognise the existence of entities which may be NGOs. Having emerged over a period of time, the laws use varying terminology and concepts, and have obviously tried to cover gaps or meet new situations

Traditionally, NGOs have been seen as welfare-oriented organisations staffed by volunteers. The concept of developmental NGOs, staffed by professionals, has not yet been fully understood or accepted.

Note: The studies/reports done in Pakistan do not provide information on all the areas addressed in the format for the country report. Thus the information or analysis contained in this paper may be incomplete or generalised, based on reports, studies and discussions which are area-specific.