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A Synopsis of Law Reform for Iranian NGOs

By Zahra (Sahar) Maranlou*

1. Preface

If we are to conceive of non-governmental organizations (NGOs) as the bedrock of social participation, we have no choice but to understand the meaning of "participation" before we enter the discussion of law reform of NGOs. In Iran there are two different understandings of "participation":

The common understanding of the word participation is that since it includes concepts such as solidarity, union and unity, it has a long historical background; it is as old as humanity. According to history in Iran the emphasis of "Doing Good" preached by Zoroaster, and the "Cooperation and Good Deed" preached by Islam, have caused us to witness a shining record of social participation. Due to this factor the majority of NGOs in Iran are known as the "New Generation of Charities."[\[1\]](#)

On the other hand, some sociologists and thinkers believe that participation must be done with awareness and voluntarily. Therefore existing evidence in Iran points to forced cooperation in the past, rather than participation.[\[2\]](#)

This latter argument, although not commonly accepted, stands more true to the point, because participation "can mean getting involved, meaning passively participating in a process that an individual is involved in. It is therefore possible for a person to be forced to work and participate without feeling any responsibilities [for his/her acts]. It is also possible for the individual to participate in an active and positive way and [to] share the responsibility in a process."[\[3\]](#)

In today's literature, "participatory development" means the voluntary and aware involvement of individuals in the development process. It requires that NGOs be positioned by legal and official structures to engage in the development activities. This suggests the greater institutionalization of NGO structures, because the law and the guarantees of law are required for sustained participation by the citizens in development processes.

2. Raising the issue

NGOs are of the foundations of the people's official participation. According to the existing situation in Iran it is widely accepted that individuals are active in NGOs voluntarily and peacefully and pursue non-profit and non-political objectives. Therefore there are five characteristics of NGOs in general consensus:

- non-governmental,
- non-profit,
- non-political,
- independent, and
- voluntary.

The formation, establishment, activities and the survival of NGOs requires appropriate and suitable planning at the micro level. Good legislation affecting them can attract

people's participation through NGOs in such an effective way, and this will lead to more willing voluntary participation of individuals in society as a whole. The attraction and strengthening of people's participation through NGOs requires the preparation of a group of laws that will have a positive impact on what people may do; this can be accomplished through a process that is called law reform.

3. The initial question

The right to freedom of association and assembly enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and in the constitutions of almost all countries is accepted as one of the most fundamental rights of citizens. In spite of this, objective of many existing laws is the preservation of state-dominated conditions, rather than the protection of individual freedoms.

Article 26 of the Constitution of the Islamic Republic of Iran states:

"The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them." Constitutional law, like other laws, thus recognizes the existence of associations without having a specific law stating their right of access to information, assistance, the elimination of legal obstacles to their existence, and rules about tax exemptions.

In this article I will study the situation of NGO laws currently existing in Iran and describe the necessity for the laws affecting NGOs to be reformed. In fact, this article is an attempt to answer the following questions: What is the necessity of the reformation of the laws affecting NGO in Iran? And how can this reform result into a positive process for the blossoming of their establishment and the activities of these organizations?

4. The method of analysis

The method of analysis of the present conditions and the legal position of NGOs in Iran was to do research in libraries, through several opinion-seeking meetings, discussion groups, interviews and questionnaires. In addition, after the Consultative Workshop held in Busher in 1997, we attempted to clarify the legal position of NGOs, in Iran. One of the objectives of the Workshop was to begin the process of clarifying what NGOs are doing to empower people and to carry out work in Iran, and what impediments they face in doing so.[\[4\]](#)

5. The necessity for reforms to NGO laws

If the sensitivity of governments to political participation is understandable, their attempts to limit social participation in the framework of social NGOs should be condemned. This is particularly true in Iran, where NGOs have accepted non-political, non-profit objectives. In fact, the general consensus is that the NGOs have primarily a social function, aimed at solving people's problems.

Despite the existence of important protections and the recognition of fundamental principles in the Constitution of the Islamic Republic of Iran, the current sub-constitutional law has shortfalls and is an obstacle to an encouraging and facilitating environment for NGOs or social activities. Governmental organizations have always sought to accomplish the objective of limiting NGO activities. One of the impediments has been a proliferation of laws affecting NGOs. As a result, in an opinion poll conducted in the context of the Busher Workshop follow-up activities "the lack of a single plenary law" has been said to be one of the most significant obstacles in the activities of NGOs in Iran.^[5] The key fundamental of the above-mentioned problem is that lawmakers lack an understanding of those active in NGOs. They are also not aware of the viewpoints of NGOs leaders. The major issues with the current legal environment are as follows: There are several and different NGO Laws in existence, NGO Laws are contradictory. In some cases the NGO Laws are in contradiction with the true nature of NGOs.^[6]

6. The legal framework for NGOs in Iran

In Iran laws can be divided into three groups:

- Constitutional Law
- Common Law
- Legislation, Regulation and Government Circulars.

These are defined as follows:

Constitutional Law guarantees the system, general powers of the government and the people, and the key laws of the country.^[7] It sets the limits of the jurisdiction of the three branches of government. The Parliament does not have the authority to alter or change the Constitution and must always adhere to its Articles.

Common Law means laws that are ratified by the Islamic Parliament as a result of general consultations. International treaties become a part of the common law, when the government or the Parliament ratifies them.

Legislation, Regulation, and Government Circulars are exercised by the executive branch with regard to its approval, after determination and deliberation, with respect to the implementation of the common laws.

6-1. Constitutional Law

The Constitutional Law of the Islamic Republic of Iran emphasizes the right of people's participation. This right is as a result of the right of the people to govern themselves.

Article 56 of the Constitution states:

"Absolute sovereignty over the world and man belongs to God, and it is He who has made man master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this divine right in the manner specified in the following articles."

Articles 6, 7, 56, 58, 62, 100, 107, 114, 117 of the Constitution detail political, social and legal participation clearly. The formation of associations for the purpose of pursuing and obtaining fundamental rights is officially recognized.

6-2. Common Laws

Various laws in Iran have applicability to NGOs. The following section considers them. What it indicates is that various types of NGOs are permitted to register under various laws, and that various laws give effect to NGO rights and obligations.

6-2-1. Civil Code

This law was ratified in 1928. Article 9 of the Civil Code states:

"Treaties concluded between the Iranian government and other governments in accordance with the Constitution shall have the force of law.

One of the international conventions is the International Covenant for Civil and Political Rights, which the Iranian government has ratified. This Covenant guarantees the right of expression, right to peaceful assembly and the right to be members of associations for the 140 countries that have signed it. However, the precise application of the ICCPR in Iran as regards the freedom of association has yet to be determined.

6-2-2. Commercial Law

The law was ratified in 1932. The Commercial Law Regulations, promulgated pursuant to this law, paid attention to non-commercial issues for the first time, by recognizing that there are entities called "non-commercial organizations." Under this law, all NGOs in Iran can register through the Companies Registry Office, as set out in the Commercial Law.

The existing faults in the application of the Commercial Law to NGOs are as follows:

1. The Commercial Law only refers "non-commercial organizations." This term includes many organizations, and not all non-commercial organizations are NGOs, (e.g., trade unions).
2. The legal rights of NGOs are not discussed in the Commercial Law.

6-2-3. The law on the activities of political parties, societies, political or union associations, Islamic associations or religious minorities recognizes their rights.

This law presently is the most important law that the NGOs have at their disposal. It was ratified in 1982. The law gives the types of NGOs it describes the right to register through the Ministry of Interior.

Unfortunately the law was ratified during the peak of the Iran-Iraq war and it looks at NGOs with suspicion and concern. To that extent, that it has made forming NGOs very difficult.

6-2-4. Employment and social affairs law

Article 131 of the Employment Law gives employers and employees the right to form trade unions

6-2-5. Cultural institutions

The term "cultural institutions," according to the 1996 legislation providing for them to be established, means organizations that have cultural based aims and objectives be they for-profit or non-profit. The Ministry of Culture and Islamic Ershad (correctness) issues permits to cultural NGOs and monitors them and can dissolve them.

6-2-6. Legislation of the Supreme Administrative Council on the establishment and activities of NGOs

This is special legislation directly dealing with the issue of NGOs and how they are allowed to founded. The law directs that organizations are to register with a committee in the Provincial government authority. Unfortunately, this law is seldom used by the NGOs because it has many flaws.

A short glance at the variety of these laws affecting NGOs is enough to show that the legal framework is full of holes and fails to give satisfactory answers to their needs. . From another point of view, one could say that the opacity of the law has caused the NGOs to be misunderstood, with respect to the nature and purpose of their activities. Thus the legislation affecting NGOs limits the capacity of people's participation in a truly democratic way.

7. Law reform of NGOs

The emphasis of President Khatami on the "Civil Society" has made the general public aware of the importance of participation. In addition, it has become clear that the government and the people want to strengthen and enhance participation structures. In fact the government wants find ways to institutionalize participation.

On the other hand, the variety of contradictory and conflicting laws concerning NGOs has created a feeling of urgency about drafting a single, comprehensive law for these organizations. Two things have led to the creation of a new legal framework. On the one hand, the studies carried out by the non-governmental sector support this move. In addition, the Ministry of Interior was given the duty, under the Third Social, Economic and Cultural Development Plan which governs the Islamic Republic of Iran, to support and strengthen NGOs. The result was the formation of a committee of legal experts and researchers and NGO leaders under the sponsorship of the Ministry of Interior. The duties of the committee are to draft legislation for NGOs and to take into account the needs expressed by the NGOs in studies and opinion polls.

Several meetings of the committee resulted in a draft of legislation, under which optimistic lawmakers proposed to simplify the formation and registration of NGOs and to eliminate the obstacles in current laws. For the purpose of receiving public opinion about the draft, the Ministry of Interior published it in the national newspapers. The Ministry of Interior has reviewed the draft of bill several times, and presently it is in the hands of the cabinet ministers.

8. The characteristics of a good law

According to studies carried out in Iran a good legal framework for NGOs must have the following characteristics:

- The law in its introduction must emphasize its support for the recognition of NGOs as the pivotal point for people participation; attention should be given to the vast areas of activity of NGOs so as to reduce the skepticism of those in power.
- The definition of NGOs must be clear and comprehensive.
- The law must specify that NGOs have non-political and non-profit objectives.
- It must emphasize the importance of participatory management of the organizations.
- It must emphasize the transparency of NGOs and their duty to provide information about their activities.
- The legal rights of the organizations must be emphasized.
- The position of NGOs in governmental programs must be clarified.
- The requirement of confirming the non-political objectives must be removed.
- NGOs must be monitored by the civil sector.
- Economic activities must be permitted.
- The dissolution of the organization should be according to the agreement of the members, and based on the organization's statute or, alternatively by a competent court.

9. Main recommendations for the development of civil society in Iran

1. The creation of participation culture.
2. Education and recognition of those in power of the necessity for people participation.
3. The institutionalization of the rights and duties of NGOs via a vis the government and the rights and duties of the government vis a vis NGOs and the people.
4. Support, encouragement and promotion of people participation by the government.
5. Emphasis on self-spontaneity of NGOs.
6. Avoiding the emphasis on government instrumentalities controlling NGOs and the situation of people participation being subordinate to the desires of government.

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[1] Namazi, M. Baquer: "Iranian NGOs: Situation Analysis"; Jan. 2000; Tehran-Iran

[2] Parviz, Piran: Presented Article at the Iranian NGOs: Achievements, Challenges and the Futures Seminar. May, 2001; Tehran-Iran

[3] Roland, Colin: "Is it Possible – and if so, by what methods and means – to institutionalize socio-economic, political and cultural situations – summary of the discussions of the expert meeting organized on this topic by UNESCO in Dakar, Senegal, 10-14 December 1979, p.8. UNESCO Division for the Study of Development, Paris, UNESCO, 1980.

[4] In February 1997, the Family Planning Association of the Islamic Republic of Iran (FPA) and the Population Council, supported by the World Health Organization, hosted a ground-breaking meeting of Iranian NGOs and officials from the Iranian government and international organizations whose work fell into three clusters:

- Health and population;
- Women and development; and
- Environmental protection and sustainable development

Encouraged by Iran's new focus on the development of civil society, the 50 participants discussed the role NGOs could play in Iran in the coming years, as well as the issues and challenges they face. The Buser Consultation Workshop resulted in the formation of the Iran NGO Initiative, a cooperative program of activities by all the groups represented at the Workshop to strengthen the role, capacity and effectiveness of NGOs in Iran. The Initiative was supported by a Steering Committee nominated at the meeting and by FPA, which served as the Initiative's Secretariat.

A recommendation of participants at the Buser Consultation Workshop was "Law Reform." (Excerpts from The Iran NGO Initiative Leaflet p. 2)

[5] The necessity in the legislation of NGOs Law for a single coordinated law; Maranlou, Zahra (Sahar). Article prepared for the First Symposium on the Role of NGOs in the Agricultural and Rural Sector. Ministry of Agriculture; 2001 Tehran-Iran.

[6] The Synopsis of Law Reform of NGOs. Iran NGOs Initiative, 2002 Tehran-Iran.

[7] Legal Terminology's: Langroudi, Mohammad Jaafar. 1973, Tehran-Iran.