

CSO Assessment Study: Legal and Political Environment for Developmental/Rural Development NGOs in Nepal

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Introduction

Defining CSOs in Nepal

There is no clear distinction between civil society organizations (CSOs) and non-governmental organizations (NGOs) in Nepal. Both CSOs and NGOs are used interchangeably but CSOs also include the professional association, academics, social movement and campaign-based organizations who have contributed for strengthening Nepal's democracy and public interest. (Talcott, Khanal, & Bhattarai, 2019). CSOs are considered as one of the main pillars of socio-economic development in Nepal. Several legal and policy frameworks including the country's constitution do not have any separate definitions to distinguish the CSOs from NGOs. The term CSO is an umbrella term under which many NGOs, CBOs, and professional associations are referred. These all are called CSOs in Nepali context.¹

The current five-year National Development Plan (NDP) 2019 to 2024 acknowledges the role of CSOs in the priority sectors of the Plan. Similarly, the European Union's Multi-Annual Indicative Programme (MIP) 2021 to 2027 also emphasizes on Good Governance Sector and particularly the government and civil society as a priority area (PIN, 2022). Although the constitution has the provision to collaborate with CSOs/NGOs, it does not contain separate articles nor sub-articles for the recognition of the roles of CSOs/NGOs.

Objective of study

This assessment is undertaken to:

- provide a brief description of civil society organizations in Nepal;
- assess the policy and legal environment of CSOs in the country; and,
- present recommendations on protecting and enhancing CSO space in the country.

Methodology, Scope and Limitations

This assessment is primarily guided by the qualitative approach with several data collection tools and techniques. Both primary and secondary data were collected to conduct this study. For primary data collection, five key informants interview with CSO leaders ranging from different age groups were conducted in Kathmandu, capital city of Nepal. In the same way, three focal group discussions (FGDs) were conducted to collect data: a) with the youths [below 40 years of age], b) with senior CSO leaders above 40 years of age, and c) with both youths and senior leaders [mixed age group]. The researchers reviewed 11 different reports, articles, and journals to validate the data obtained from primary sources.

¹Based on the recommendation of validation workshop on 7 November 2022

As this report is prepared based on the framework prepared and agreed by the Asian NGOs Coalition for Agrarian Reform and Rural Development (ANGOC) and country writers, this may not represent any academic evidences and in-depth analysis of the findings. This assessment does not include any information of cooperatives, labor unions and other faith based groups. Although the religious organizations, women's groups and youth clubs are considered as CSOs in Nepal, the study team could not reach out to them to collect data.

CHAPTER 1: Overview of civil society organizations (CSOs) in Nepal

Brief History

After the restoration of democracy and enactment of multi-party system in 1990, CSOs have seen rapid growth contributing for polity change in Nepal. During the Rana regime, there was no opportunity to any Nepali people to form any CSO because the whole governance system was largely controlled by the elite regime. As the freedom of expression, the Rana rulers controlled association and assembly, the formation of critical mass was not possible for the growth of an independent civil society during Rana regime (Bhatta, 2016).

Before 1950s, CSOs were not visible in Nepal but faith-based organizations were contributing for social and humanitarian cause. During the Panchayat regime (1960 to 1990), the repressive move of the State did not allow CSOs to flourish. However, Association Registration Act 1977 paved the way to open up new organizations in the name of social and economic development of Nepal. Under the Panchayat regime, the number of NGOs grew slowly from ten in decade of 1960 to 37 in 1987. "Until 1990s, the Panchayat regime (1961 to 1990) exercised tight control over society. The Social Services National Coordination Council regulated and supervised the NGOs, while the Social Welfare National Coordination Council (SWNCC) handled majority of the funding agencies" (ADB, 2005).

In past and present, CSOs are facing several vicissitudes to enjoy their rights as well as to advocate for the people's rights. Although there is significant contribution of CSOs for regime change from overthrowing Panchayat regime to restoration of democracy, they are taken only as a safe shelter by the political parties. For example, in the advent of Restoration of Democracy in 1990, several Human Rights Organizations led people's movement that was followed by the political parties to restore democracy and people's freedom. However, the political parties introduced some repressive policies to control CSOs when they took power after the restoration of democracy. This was quite undemocratic practices performed by the democratic government even in multiparty system of Nepal.

The political parties are even unclear in their perception on CSOs' working modalities. The attitude and perception towards CSOs from political parties differ in terms of their political interest and

opportunities. “If a CSO has a different vision or approach from their own, politicians will blame the organization for being “anti-people” and supporting elite interests” (Upreti, 2011).

Even in the Panchayat regime, CSOs were free to work for the people's welfare but now the democratic government is directing CSOs in their agenda. They are not recognized as a development actor although CSOs played crucial roles during the regime and policy change including the promulgation of the constitution in 2015.² CSO leaders who are taking the leadership position in government's agencies based on their decades of contribution in development sector have started blaming CSOs as anti-State body without any evidences. Significant number of political leaders also associated with NGOs or they have own NGOs even they are criticized the role of NGOs.³

Number, composition, typologies

After the restoration of democracy, there is high number of registration of NGOs as the constitution and laws allowed any Nepali citizens to open NGOs for promotion and protection of people's rights. Social Welfare Act 1992 provisions of registration for any non-government organizations in Social Welfare Council (SWC) to implement their activities in Nepal.

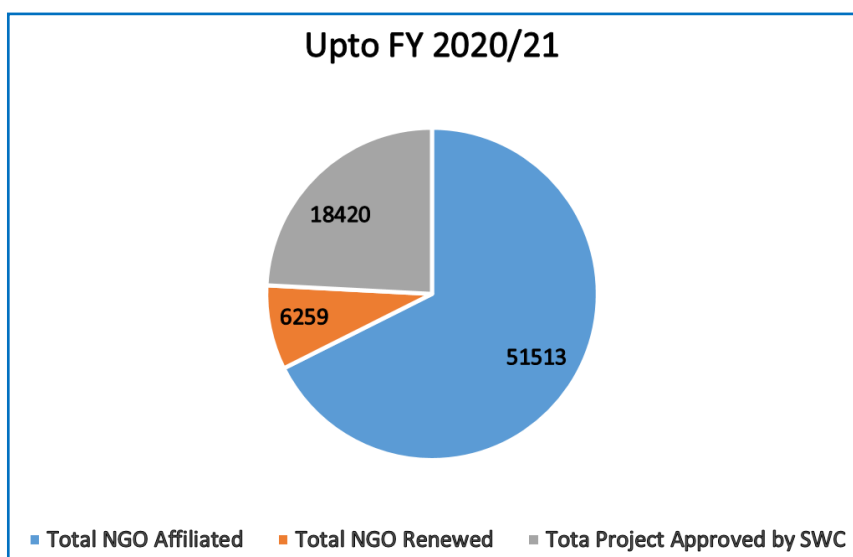
As of June 2021, the SWC data shows that 51,513 NGOs have been registered

in SWC. Among which only 6,259 NGOs are renewed in 2020/21 to get foreign aid (SWC, 2022). Out of the total number of registration, about 6,000 NGOs are active in Nepal which are performing several activities through the foreign aid [because registration of NGOs need to be renewed every year to approve foreign aid from SWC].

There is wide gap between registration and renewal of NGOs in Nepal because of several reasons. First is counting of religious associations, trust, mothers groups, community based organizations, consumers groups as NGOs. Another reason is to count both social and faith based organizations are also considered as NGOs so the number seems to be high in registration.

According to Upreti (2021), the several types of CSOs in Nepal are:

- NGOs
- Religious organizations



² Based on the FGD with CSO leaders (18 August 2022)

³ ibid

- Trade unions
- Social and cultural groups
- Identity-based associations
- Professional associations
- Networks
- Federations
- Trusts (Upreti, 2011)

Roles and Services of CSOs

The role of CSOs in Nepal are more facilitative for national development as well as democracy strengthening. CSOs not only provide independent centers of power to check abuse of federal and local authority but also empower people of different corners of the State together with political watchdog (Bhandari, 2014). “Many NGOs have included income generation or savings and credit components in their programs to promote community participation and sustainability” (ADB, 2005). After 1990, CSOs “have made a significant contribution to social welfare, community development, environmental sustainability, skills and livelihood development, micro-credit, health and sanitation, gender and minority human rights and inclusion, citizen empowerment and public awareness” (Talcott, Khanal, & Bhattarai, 2019). CSOs, however, have been recognized as change agents by the State and many of them are in dilemma whether they have contributed towards national development or not. It is very important to showcase the roles and contributions of CSOs for national development among the national and international stakeholders. CSO leaders should have a range of dialogues in different period to discuss on their roles and services being provided to people. In terms of capacity enhancement of youths, women, Dalit, marginalized and people with disabilities the roles of CSOs becomes crucial. Movement based organizations have contributed for policy change, their implementation and bringing out the local issues at national level. The role of some movement-based organizations are significant to organize scattered people together to strengthen movement and campaign from federal to local level.⁴

Sources of Funding

The main source of funding for Nepali CSOs is international donors including multinational and bilateral organizations. Some INGOs including charitable organizations also donated for certain cause such as poverty alleviation, child education, disaster response, gender equality, health and sanitation in different parts of Nepal.

The government agencies are not interested in donating funds for NGOs or CSOs but they want collaboration with them to implement their policies and programs in communities. It is found that some foundation (*Pratisthan*) which are established in the name of political leaders receive

⁴Based on the FGD with CSO leaders (8 August 2022)

government funds when their party leaders take power. Some of the CSOs or NGOs have their self-income generation activities such as establishment of training center as a company model, selling of products like handicrafts and some of the NGOs engage for street donation programs cause. Very few local NGOs are receiving nominal amount of fund from local government for some activities.

The data of SWC depicts that out of total NRs 14,626,271,265.35 approved budget from different NGOs in Nepal NRs 14,289,416,949.98 amount was received from international organizations whereas NRs 336,854,315.37 was managed from internal sources for the fiscal year of 2021/22 (Social Welfare Council, 2021).

The current government's policies have also contributed for the increment of such dependency. Unless Nepali CSOs are encouraged to go for social entrepreneurship model, they do not have any alternatives except they go to donors for project implementation.⁵

Chapter 2: The legal framework on CSOs in the country

Overall policy and legal environment of CSOs

The constitution has opened up new avenues to safeguard people's rights. Since this constitution was promulgated through consensus among political parties, CSOs and general public, most of its provisions are progressive. While the contribution of CSOs is recognized by the constitution, unfortunately the laws legislated after the promulgation of the constitution attempted to control the CSO movement, including freedom of expression, assembly and association. By taking some examples such as restrictive provisions to criticize president's move, government's actions, limitation of rights to information are some of the examples that showcase that there is a growing sense of fear that the legal environment for civil society is becoming restrictive. Moreover, intention and behavior of the legal entities is of mixed attitude. Legal bodies' preferences does not match with the regulation and principle of most CSOs.⁶

Major national legal frameworks prevailing in Nepal

- **Constitutional framework of Nepal for the Right to Freedom of Association:** Article 17 (d) of the constitution states that every citizen shall have the freedom of expression including freedom to form unions and associations. In the same way, the article 273 (10) of the constitution also has the provision that the State cannot suspend the provisions of article 17(d) even in the time of State's emergency. In the same way, article involving NGOs and INGOs only in the areas of national needs and priority, by adopting a one-door policy for the establishment, endorsement, engagement, regulation and management of such organizations, and by making the investment and role of such organizations accountable and transparent (Nepal Law Commission, 2015).

⁵ Based on the KII with a CSO leader (9 August 2022)

⁶ Based on the FGD with CSO leaders (8 August 2022)

However, the CSO leaders oppose to such condition as it is seen as restricting the functioning of NGOs. In the same way, article 249 of the constitution has allowed National Human Rights Commission to collaborate with CSOs/NGOs to enhance awareness of human rights.⁷

- **Association Registration Act, 1977:** Association Registration Act of 1977 is primary legal framework for CSOs in Nepal. This Act has not included some specific provisions such as no specific ground to reject a registration application but it has clearly mentioned on the investigative provisions for CSOs such as “the Local Authority shall make necessary inquiry, and register the Association, if he/she deems it *appropriate* to register the Association.”⁸ However, many CSO leaders have criticized the term “Appropriate” citing it is vague and arbitrary. In the same way, the authority delegated to the local authority to inquiry and investigation is quite unclear whether this provision is relevant to the local governments or the District Administration Office (DAO) (Upreti, 2011).

Although this has provided legal grounds to register association in Nepal, it has not provided roles of local and provincial governments to register renewal and monitor the local organizations in local level. It is pitiable to regulate the NGOs from the law developed in Panchayat regime in this federal democratic context. Many CSOs in Nepal have submitted recommendations to the government of Nepal to amend this act as per the mandate of constitution the process of tabling a draft of laws postponed when CSO leaders opposed some provisions of the draft. A leader in FGD shared many clauses of the draft version of the laws became more regressive than the prevailing laws such as Association Registration Act 1977.⁹

- **National Directive Act, 1961:** National Directive Act of 1961 is more concerned with the umbrella organizations, professional network, and membership-based coalition such as Nepal Bar Association, NGO Federation of Nepal, Nepal Press Council, Federation of Nepalese Journalists and National Land Rights Forum etc. The organizations that are registered under this Act are not mandated to take approval of foreign aid from SWC. However, the government of Nepal has also provisioned to provide authorities to SWC to take approval even from these organizations to approve their programs to be implemented in Nepal.
- **Social Welfare Act, 1992:** Social Welfare Act of 1992 was introduced to make effective coordination, cooperation, mobilization and promotion of the social activities performed by social organizations. Based on this Act, the Social Welfare Council (SWC) has been established in 1992 with the duty of extending support to the social institutions including NGOs. Any NGOs wishing to access fund from foreign aid must be registered to SWC. Now, the approval letter is mandatory to release foreign fund from bank. SWC is also responsible to conduct training courses, seminars, research programs to capacitate CSOs as well as SWC itself. SWC has the mandate to look for

⁷ Sub article (2-d) of Article 249 of the Constitution of Nepal

⁸ Clause 4(2) of Association Registration Act, 1977

⁹ Based on FGD with CSO leaders (18 August 2022)

financial records of any CSO affiliated to it. Qualitative and quantitative reporting of the projects/program is mandatory to submit to SWC twice a year in the prescribed format. The auditing of every CSO is mandatory for renewal and approval from SWC. Though SWC works as a link between CSOs and governmental agencies, the Government of Nepal (GoN) limits the scope and area of operation of CSOs.

- **Local Self-Governance Act, 1999:** The Local Self-Governance Act of 1999 becomes important to decentralize the political and administration processes of Nepali governance. This Act has also provided opportunity to local authorities to approve and supervise the work of CSOs. It also provides legal basis for CSOs. This Act has also provided opportunities to local communities and private sectors for development processes.
- **Local Government Operation Act, 2017:** The constitution and Local Governance Operation Act of 2017 have provided rights to the local government to legislate necessary laws based on their defined rights of constitution and the Act. However, very few local governments have already legislated organizational registration act. CSOs and local governments themselves are waiting for the amended federal organization registration act in order to make consistent as per the constitutional provision.
- **Company Act 2006:** The clause 166 of this Act has the provision of establishment of company for not distributing profit. According to this Act, the not-for-profit making company is established on the condition that it shall not be distributing any profits or any dividends to its members. It has non-commercial purposes of social wellbeing. As per the Act, the minimum number of members required for registering a not-for profit, company is five with no limit on the maximum number of members.
- **International Development Cooperation Policy, 2019:** NGOs and private sector have played leading role in economic development. Foreign aid has always assisted private sector for economic growth of the nation. Various CSOs recognizes foreign aid and grant in different forms for the socio-economic development. The government will facilitate private sector to contribute their views on development priorities and opportunities and implications of foreign aid to their communities (Ministry of Finance). CSOs and NGOs play as an actor or mediator to attract foreign aid, technical support and human resources from the donors.

Registration of CSOs

Overview

Registration of an organization is complicated in Nepal. The government officials ask to submit impractical and unnecessary documents in several times. Based on the current legal provisions, the CSO/NGOs registration procedure can be summarized in the following steps:

- Those interested in registering organization should **obtain recommendation letters from the ward office** where the office of the CSO/NGO is situated. The nine-member executive committee is selected by a gathering of at least 20 people. The gathering allows authority to the the ad-hoc committee to proceed for the registration of the organizations. The ad hoc executive committee prepares a registration file which should have the following documents:
 - an application letter with original signature of the chairperson of CSO/NGO;
 - copy of the minutes of the ah-hoc committee meeting regarding approval to register the CSO/NGO;
 - a copy of organization's constitution or statute duly signed by each member of the ad-hoc committee;
 - notarized copies of the citizenship certificates of all members of the committee;
 - rent agreement between the CSO/NGO and the house owner of the office or the land tax receipt of the house where the office of the CSO/NGO is situated; and,
 - notarized copy of the citizenship certificate of the house owner where the CSO/NGO is situated CSO/NGO (if the office is on rent).

- It is necessary to take a recommendation letter from the District Coordination Committee (DCC) with the following documents:
 - an application duly signed by all members of the ad-hoc committee;
 - copy of the letter of recommendation from the ward office;
 - notarized copies of citizenship certificates of the members of the ad-hoc committee;
 - copy of the organization's constitution duly signed by all the members of the ad-hoc committee;
 - copy of the rent agreement between the NGO and house owner; and,
 - copy of the minutes of the ad-hoc committee meeting regarding the approval for registering the NGO.

- Once the recommendation letter from the DCC is received an application should be submitted to District Administration Office (DAO) with the documents listed below:
 - an application duly signed by all the members of the ad-hoc committee;
 - four copies of the organization's constitution (statue) duly signed by all members of the ad-hoc committee;
 - notarized copies of the citizenship certificates of all members;
 - letter of recommendation from the ward office;
 - letter of recommendation from the DCC;
 - copy of the rent agreement between the CSO/NGO and the house owner; and,
 - copy of the minutes of the ad-hoc committee meeting regarding approval for registering the CSO/NGO.

- After the submission of an application with all documents, the DAO will issue a letter to Nepal Police seeking a clearance report. Upon the report issued by police and all clauses mentioned in the constitution of the CSO/NGO are in accordance with the prevailing laws of the country, the DAO will issue a certificate of registration.
- After completion of the abovementioned procedures, the CSO/NGO shall apply for affiliation to the Social Welfare Council (SWC).
- After online submission of the mentioned documents, a board member of the CSO/NGO must be presented before the tax office, which will keep a record of the biometric photograph and signature of the board member. The officer will physically verify all the presented documents. Once the NGO is affiliated with the SWC, a permanent account number (PAN) from the Inland Revenue Department (IRD) shall be obtained to initiate the operation of the CSO/NGO.

As per the legal provisions, NGOs must register at local level and seek approval from local governments to work in different districts. NGOs are bounded with different requirements, forms, and fees among district offices. After the Annual General Meetings (AGMs), NGOs should submit all documents such as AGM report, audit report, recommendation of local governments, tax clearance certificates, tax renewal certificates, and organizational annual report to renew NGOs from DAO. In the same way, they should also ensure annual renewal from SWC every year with the abovementioned documents.

Brief assessment

Submission of same type of documents in multiple government agencies clearly state that the government is more regulative to operate NGOs in Nepal. Although the constitution provides equal rights to private and NGO sectors and both are taken as development partners, the registration system is quite different between profit making companies and the non-profit making NGOs in Nepal. Even a company are registered under the non-profit making entitlement the procedures of its registration is lengthy. The owner of the profit making companies can submit necessary documents in the office of the Company Registrar to get approval for the registration of any companies. It is not mandatory to renew the company from multiple agencies annually and one can pay tax or VAT to get tax clearance certificate to continue the company every year. The Government of Nepal also provides incentives such as award to the high taxpayer company. Multi-level governmental system of Nepal makes the process more complicated and delayed as registration with every level of government and in each district where CSOs operate is mandatory. In addition to performance, documents required and cost, one of the challenges for the process is political interference. The size, donor fund and income generation of each CSO differ; the process and requirements are not fair for all.

Taxation of CSOs

Overview

There is no any legal grounds to tax the grants amount received by CSOs/NGOs in Nepal but many CSOs/NGOs are now facing the problems to pay huge amount of tax in the grants amount that they received to implement various programs in field. Even individual or legal agencies that donate financial support are not exempted. There is no custom duties to CSOs for the equipment imported specially for disables and orphans. For this, CSOs must gain prior recommendation from relevant line ministry and final approval from cabinet. Organizations that have received tax-exemption certificate from the Department of Internal Revenue, their income from grants, donation and investment are not taxed. The certificate remains valid as long as the organization carries out the public benefit purposes mentioned in the organization's by-laws and does not carry out income generating activities. Income Tax Act 2058 (2002), clause, recognizes a category of tax exempt organization which include organization of social, religious, educational or benevolent organization of public nature established with non-profit motive.

Brief assessment

Taxation in Nepal is actually a complicated process. Even if CSOs are exempted for importing equipment for orphanage and disables, CSOs must register to their relevant line ministries and get final approval from cabinet, which is a very lengthy process. Taxation is highly influenced by public officials and personal connections of CSOs. Government of Nepal attempts to compel the CSOs/NGOs to register in TAX/VAT to mobilize fund even for social welfare and people's rights.

Funding in CSOs

Foreign Funding

Most of the NGOs are dependent on funding agencies, especially INGOs and foreign donors. CSOs are required to get approval from government in order to receive any fund from foreign agencies. CSOs do not limit their source of fund to foreign aid but engaging in self-reliance income generating activities. This approach have considerably increased participation and capacity building of the CSO leaders and public.

Government Funding (Support to CSOs)

The Government of Nepal allows CSOs to utilize local resources to generate income with the approval of relevant governmental bodies. Government supports CSOs in accordance to project,

activities and objectives. Financial support by the government is very less and only few organizations receive fund from governments. If there are certain projects that are being implemented by the government in collaboration with local NGOs, the political parties may provide fund to accomplish the projects. Political parties in the name of social development register many NGOs. However, they are registered only once and not renewed in SWC. This is one of the reasons of having more than 50 thousand of registered NGOs in Nepal.¹⁰

Brief assessment

Government has a mixed feeling towards access to foreign funding. While at times it believes that CSOs seek funds for development and social work, there is a perception that CSOs/NGOs are damaging the country's reputation internationally. Government is restrictive towards funding mechanism of the CSOs/NGOs. They must register with SWC to receive any foreign monetary assistance. Funds must pass through the Ministry of Finance and SWC. Fundraising and use of local resources are allowed with the permission of Home Ministry and line agencies.

Reporting requirements and system of CSOs

Overview

In Nepal, CSOs must submit annual reports on their activities and finance to DAO, SWC and DCC. Reporting to responsible agencies such as DCC and DAO is compulsory and it is a part of registration renewal application. AGMs appoint registered auditor or a certified accountant for an annual audit, which is mandatory for all organizations. An organization registered with SWC must submit an audited annual activity, financial report and activity plan for the following year to the SWC. In Nepal, reporting undergoes through a multiple process and in a multiple level.

Brief assessment

There is no common procedure of report for each CSO/NGO. The common mechanism and procedure of reporting somehow becomes impractical for organizations focusing on research, advocacy and campaign. It could be acceptable for large organization but not for smaller ones. Disclosure of finance, annual reports and activity plan of the CSOs/NGOs with significant level of funding to the governmental agencies is appropriate but unnecessary for the smaller organizations who do not have any record of funding. Moreover, DAO imposes fine on each member of the management committee in case the organization fails to submit proper documents timely.¹¹ The submission of monitoring report to the government agencies including SWC is tough and costly. It puts an additional administrative burden. CSOs/NGOs go through a lot of time, effort and capital for the submission of annual report and audit that could make CSOs/NGOs less focused towards their services.

¹⁰ Based on FGD with CSO leaders (18 August 2022)

¹¹ Based on FGD with CSO leaders (23 August 2022)

Accountability Mechanism of CSOs

Overview

The practice and policies, guidelines and principles CSOs/NGOs operate are in accordance to the priority and aspirations of the society. Self-regulation and participation of CSOs/NGOs facilitate the country with proper coordination and cooperation with every stakeholders. The performance are always progress, result-oriented and responsive towards own projects/programs. CSOs/NGOs believe in transparency and invests in each method that are mandatory by the GoN. CSOs/NGOs are accountable in case of annual audit, disclosure of the publications of their findings and other reporting activities so that as transparent as possible. CSOs/NGOs adopt various significant measures for justice, equality, advocacy, empowerment, participation and protection of the resources. They are responsible and positive to work on the gap between the CSOs and government to increase both the effectiveness and strength of their initiatives.

Brief assessment

Legitimacy is important for CSOs/NGOs but it is highly controlled by external forces. Moreover, it is hard to explain that to which stakeholder CSOs/NGOs are more accountable. Right and access to information and resources is limited in Nepal, which is one of the challenges regarding accountability. Multi-level federal governmental system of Nepal poses complication for various mandatory administrative requirements. Public trust and perception literally



determine the action and effectiveness of the CSOs/NGOs. There is a lack of mutual understanding between CSOs/NGOs, government and other authorities regarding responsibility, rights and work. In addition, bureaucracy and political hurdles have influenced capacity building, inclusiveness and participation.

CHAPTER 3: Government-CSO Relations

Brief historical overview of the state of relationship of CSOs and Government

The anecdote of CSOs presents that Tulsi Mehar Shrestha was the first founder of NGO who established Tulsi Mehar Mahila Ashram in 1979. This Ashram used to work in several sectors for the women's empowerment and their livelihood improvement. (Bhatta, 2016). During Rana regime (until 1951), Nepal was isolated from the rest of the world. The then rulers tried to stop people's rights including freedom of expression and association but some individuals formed institution and supported global human rights movement. The efforts of CSOs towards promotion and protection of human significantly increased which supported to establish CSOs overthrowing party-less Panchayat regime (Bhatta, 2016). During the Panchayat system, there was so much control over the establishment and operation of CSOs and NGOs.

After the restoration of the country's democracy in 1990, the CSO movement increased rapidly for the promotion of protection of human rights as well ensuring sustainable livelihood of people. From 1990 to 1997, the roles of NGOs were highly recognized by the democratic government but during Maoist insurgency (1997 to 2007), they blamed NGOs as the agent of expansionism and weaken the communist movement. After the Comprehensive Peace Accord (signed between then Maoist and Government), the CSO movement flourished with strong recognition of polity change in Nepal. For the abolition of monarchy in 2008, CSOs and political parties stood together in the street. The CSO movement was alike to democratic movement in Nepalese context. For this reason, civil society was regarded savior of democracy and champions of marginalized.

After 2006, CSOs raised the issues of marginalized and indigenous communities respecting their rights and duties. The women, *Madheshi* (the southern backward community of Nepal), Dalit and other marginalized communities were taken in central position while designing any programs by CSOs in Nepal. However, governmental action were unpleasant and blamed CSOs as capital-oriented rather than a development mechanism. Soon after that, it became difficult to approve campaign and advocacy related programs from government agencies because of restrictive move of government (Talcott, Khanal, & Bhattarai, 2019).

From the time of origination to this date, civil society has been directly and closely associated in social transformation. Although government was not supportive in any era of the country, civil society was determined to embrace the periphery of the political and social structure of the State. CSOs have been performing as the facilitators and mediators in governmental plans and projects for technical assistance and capacity building. CSOs believed in sustainability and worked in alliance to achieve the Sustainable Development Goals (SDGs). Level of participation in the field of equity, security, human and social rights, environment conservation, capacity building, socio-economic promotion prioritized by the people and most of the development works is significant. In today's

context, CSOs have been working from the phase of problem identification to solution with maximum worthy possibilities. CSOs are community-based, operating in grassroots level, use bottom–up approach, and continuously nurture the society.

The relation between CSOs and government could be characterized by both adjustment and cooperation. It could be measured in terms of autonomy, partnership and solidarity. Their relationship varies based on the issues. Sometimes it seems disturbed due to trust and understanding of each other's role in the society. Both feel like they compete for development and funding (ADB, 2005). Despite of all, GoN could not contradict the truth that CSOs had put up immense effort in the development of Nepalese society. GoN had acknowledged the contribution of CSOs in achieving the goals of the prolonged transition period to democracy. The governmental agencies and CSOs had worked together for common interest. There were coordination between CSOs and government in some cases to implement government's policies and program. The 15th periodic plan of Nepal has encouraged private sectors to acquire long-term goals for rapid economic growth and prosperity. It states that public-private partnerships have important role in building a socialism-oriented economy based on democratic values and beliefs. The plan aims to enhance public-private partnership to encourages and facilitate private sector to produce goods and services by increasing investment and creating productive and dignified employment opportunities. During the period, 55.6 percent of the investment is expected to come from private sectors that is to be used in wide and diverse range of social, physical and environmental development.¹²

Rights to freedom of expression, assembly and unrestricted mobility

CSOs had played significant role in history for the establishment of democracy, socio-economic awareness as well as their institutional. It was notable that CSOs movement succeeded to enshrine the provision of rights to freedom of expression, assembly and unrestricted mobility in the constitution.

National legal Framework

- **Constitution of Nepal**

Article 17 (2) of the constitution guarantees the freedom of expression and opinion, among other rights and freedoms, in line with the International Covenant on Civil and Political Rights.

Article 17 (2) also states that every citizen has the freedom to assemble peaceably and without arms and ammunition. It focuses on holding and policing of peaceful demonstrations and mass protests; the freedom to create and participate in associations or political parties and the freedom to form and join trade unions and cooperatives. The constitution has provisioned with the right to freedom of movement and residence within the borders of the State.

¹² Based on KII with National Planning Commission Member

- **Local Government Operation Act, 2074**

Clause 25 of the Local Governance Operation Act of 2074 requires community and social organizations to work in coordination with local government while international NGOs (INGOs) must receive permission from the federal government. CSOs must include annual plans, program and budget in budget of the local governmental budget. This Act abides CSOs in every step of program: research, implementation, monitoring and evaluation. Local governmental agencies are responsible for the supervision. This Act encourages private sector in different areas of development of CSOs.

- **National Directorate Act, 1961**

This Act allows professional organizations such as Nepal Bar Association, NGO Federation of Nepal, National Land Rights Forum, and Federation of Nepalese Journalist Association to act without any restriction. Such organizations can also criticize the government's undemocratic move.

- **Association Registration Act, 1997**

“The Association Registration Act is the primary legal framework for CSOs in Nepal. Most of the CSOs are registered under this Act” (Upreti, 2011). Under this Act, any seven or more person willing to establish an Association must comply with the rules fulfilling the document requirements. An association can be registered with the permission of local authority.

- **Social Welfare Act, 2007**

Any organization affiliated to Social Welfare Council (SWC) is eligible to proceed for foreign assistance. SWC was established to make effective promotion, coordination and resource mobilization of social organizations in order to run social activities in more organized way. The SWC allows NGOs to conduct training courses, studies and research and programs in the areas with social welfare.

- **Right to Information Act, 2007**

This Act has clear provisions on the freedom of expression, association, and assembly to individual and organization. It mandates the government to form National Information Commission and to receive necessary complaint from individual whether the organizations are providing adequate information to the individual or not. Even the NGOs should submit periodic report to National Information Commission with their detailed activities and progresses.

International Legal Framework

Nepal is a party to Charter of the United Nation and the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR) and its optional protocol, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Similarly, the country is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its optional protocol, the Convention on the Rights of Persons with Disabilities (CRPD). These international instruments have the provisions of freedom of expression, assembly and association.

Brief assessment

It seems dual standard of political parties and State's authorities in the perception towards CSOs in Nepal. They participate in several events organized by NGOs and applauded their contribution but when they discuss on the formulation of policies related to NGOs they try to control CSOs/NGOs by putting several restrictive provisions in the policy documents.¹³ The absence of consistency, practical rules and regulations and other policy documents that conform to the constitution are the reasons for CSOs/NGOs to accuse government of formulating regulative policies (Upreti, 2011).

The constitution protects the right to freedom of expression but the rules abided by the government does not let the civil society exercise it properly. Changing governmental structure has affected the CSO/NGO sector in various ways. Despite the right to association, CSOs/NGOs have been continuously facing several problems from government. Political interference, unclear policies, complex legal instructions and institutional mechanisms are the barriers to enjoy freedom and operate organizations soundly. The mandatory requirement and re-registration of CSOs/NGOs violates the right provided by the constitution. The controlling and ruling nature of the governmental agencies interrupts the growth as well operation of CSOs/NGOs.

There is a problematic aspect of the current constitution. Article 51(j) provides “Policies regarding social justice and inclusion.” Point 14 of the that policy states “Involving NGOs and INGOs only in the areas of national needs and priority, by adopting a one-door policy for the establishment, endorsement, engagement, regulation and management of such organizations, and by making the investment and role of such organizations accountable and transparent” (emphasis added). Right to association enables to operate freely without any governmental and political interference. Continuous provocation by the government in different requirements have troubled NGOs’ working atmosphere. Restrictions and limitations imposed by the nation decelerate overall cultural, economic, and political and social rights of the NGOs.

It is pitiable that the space of CSOs/NGOs is continuously being limited, interfered and their operations are controlled by the government. Government prefers to collaborate with NGOs for

¹³ Based on FGD with CSO leaders (24 August 2022)

so-called “hardware” type of work such as construction, disaster management, publication of government's books and resources rather than affairs of human rights, research, and community awareness. Government is reportedly distrustful of the rights-based advocacy CSOs/NGOs. During the global pandemic COVID-19, those CSOs/NGOs working in advocacy were more critical of the state of freedom of expression. Differences were observed between female-led and male-led organizations where females were more critical than male. "The mobility of CSOs/NGOs was stifled and their operation was significantly reduced with the onset of the virus and subsequent movement restrictions imposed by the government" (NGO Federation of Nepal, 2021). Yet, it is well known that it is impossible to prosper and uplift the country and its people without the assistance of civil society organizations. Nonetheless, government has still excluded CSOs/NGOs from decision-making in such global pandemic and the crisis.

Rights to information and participation

In Nepal, the right to information has been in a place as fundamental right since 1990. A separate act has been enacted to implement right to information effectively. Article 27 of the constitution enshrines, “every citizen shall have the right to demand and receive information on any matter of his or her interest or of public interest.” According to the constitution, no one shall be compelled to provide information on any matter of which confidentiality must be maintained in accordance with law, the right to communication freedom from prior censorship Article 19 (1) on the information and ideas to be published, broadcasted and disseminated. It does not just protect the right of speakers but also the listeners to receive the information that others are trying to impart to them, as well as the right to investigate and seek information from public bodies without interference.

Right to participation is linked to other rights to peaceful assembly and association, freedom of opinion and expression, and right to education and information. It describes the person have equal right to participate on their own or through their related unions, organizations in the process of development of important policies that may affect them.

Brief assessment

CSOs/NGOs have been following the principle of public participation in all the activities of planning to implementation of any program and policies within the organization and sensitizing the public about these provision through various campaigns and programs. There is still significant problem in access to information and as well as participation for which civil society group is still pushing the issue. A large proportion of public bodies have failed to appoint information officers as required under the law. The opacity in government has not been eradicated which is making this a vast problem to operate social and development works harmoniously. Coordination, communication mechanism and political interference are at peak regarding to this right. Moreover, receiving information is a long and difficult process. Nepal is restrictive towards the information freedom and

does not line up with international laws. Freedom of Information allows CSOs/NGOs to participate in projects and programs of national concerns. CSOs/NGOs have been pushing for advocacy and trying to engage with the government at all level for participation, discussing laws and implementation. The right to freedom is curtailed, and CSOs/NGOs are less able to intervene effectively in the policymaking. Restrictive and limiting policies of the government acts as barrier to enjoy the right to information.

Partnership and Coordination Mechanisms

The partnership and coordination between CSOs/NGOs vary based on the individual perception of government's agencies. The resources of CSOs/NGOs mainly determine it, individual relation between CSO leaders and the government agencies and influencing capacity of CSOs/NGOs for policy formulation as well as mass mobilization. Those who have attractive support package for government's agencies the government agencies themselves come to CSOs/NGOs to collaborate with them. It is hard to collaborate with government for CSOs/NGOs that are implementing so called "software" types of programs such as policy advocacy, mass mobilization, awareness raising and empowerment of men and women in diverse communities.¹⁴

Brief assessment

NGOs and government cooperate in various ways, from joint policy development to funding agreements. Government tends to be dismissive of and its legitimate role in a society. Government perceives CSOs as personal projects and all about training and workshops, not addressing actual need of the society. Government of Nepal view civil society ineffective but also a potential threat.

CHAPTER 4: Conclusion and Recommendations

Conclusion

There is no clear distinction between CSOs and NGOs in Nepal. The understanding of meaning and identity towards CSOs and NGOs in Nepal is quite unclear. Both CSOs and NGOs are defined interchangeably but some CSOs leaders who have founded some professional organizations such as intellectual forums have not been registered in government agencies but are profoundly working for the promotion of people's rights. The prevailing laws and policies have not clearly mentioned clear distinction between CSOs and NGOs, and, therefore, all NGOs are defined as CSOs in this study.

There are more than 50,000 of NGOs registered in SWC but only 6,500 NGOs are active. It means they need to renew regularly the registration of their organizations and programs from SWC. The number of NGOs seem to be high because of their registration system. The mothers' groups,

¹⁴ Based on the FGD with CSO leaders (24 August 2022)

religious groups, professional organizations, faith-based organizations, youth clubs, community based organizations are registered under the name of NGOs based on the current laws and regulations. Although the CSO leaders have long been demanding new acts with clear distinction among these organizations, no act has been legislated by the parliament yet.

CSOs and NGOs act as bridge and lobbying body between international and governmental agencies. Government works actively in coordination and collaboration in the field of physical development but is not supportive for rights based campaign such as legislation of new act, awareness building, and community mobilization. The perception of government towards CSOs/NGOs varies time to time. There is no equal treatment of government to all CSOs/NGOs. The individual perception, availability of resources, nature of work are some of the key factors that directly and indirectly affect the CSOs/NGOs and government relation in Nepal. Additionally, the repressive policy and legal provision for CSOs/NGOs are of controlling nature rather than monitoring. This move has interrupted the space of CSOs/NGOs and has gradually reduced the capacity and working sphere.

CSOs/NGOs have been facing numerous and varieties of challenges from the program design to implementation. Lack of independency, their opacity, politically divided ideologies and government's formed CSOs/NGOs are some of these internal challenges. On the other hand, repressive and regulative move of the government, complex registration and renewal procedures, and lack of one door policy for registration, monitoring and mobilization of CSOs/NGOs political and bureaucratic biasness towards CSOs/NGOs are some of the external challenges encountered by CSOs/NGOs in Nepal.

Recommendations

To Government

- In order to create a harmonious working environment, government needs to create one-door policy for mobilization of NGOs/CSOs as per the constitutional mandate.
- The provisions of freedom of expression, association, assembly, and access to information are realized fully through policies and adequate resource allocations.
- Multi-level registration provision should be abolished for NGOs to manage and operate activities smoothly.
- The SWC should regularly update the list of NGOs.
- Government should delegate authorities to provincial and local government for mobilization of NGOs. It would possibly ease the distribution of works, allocation of human and finance resources.
- It is practical to take approval for research and advocacy type of work from local level so government should refrain from this impractical provision.

To CSOs

- CSOs need to increase their coordination and cooperation among the development partners, including national and international NGOs, to eradicate the duplication of same types of programs in same areas.
- Foreign aid and funds are not always adequate for operating all the activities of the project/ program. To combat insufficiency, CSOs must find an alternative own source of resource generation.
- The present scenario of the country and the organization needs the involvement of youths in development. CSOs must increase youth leadership and capacity building focusing to the marginalized community. CSOs need to be transparent accountable while implementing their programs and the resources obtained from different sources. It is better to organize different events (such as social audit, public hearing) to publicize the resources among the beneficiaries and stakeholders.
- Ensure the sustainability of fund with proper utilization of money for the benefit of community members.

To Private Sector

- Based on current legal provisions and policies of the government, private sector must respect NGOs as development partners.
- Coordination is one of the tools to increase pace and effectiveness of any program. Private sectors should collaborate with CSOs for development projects.
- To decrease the dependency of CSOs in external source of funding, the private sector must implement Corporate Social Responsibility and fund to the NGOs not from their own foundations.

To Funding Agencies

- The funding agencies should equally treat the policies, compliances and governance system of the Government of Nepal and NGOs to increase the trust among all parties.
- To utilize the foreign resources effectively and efficiently, the funding agencies should directly provide fund to the NGOs (without INGOs as intermediary) so that the large amount of fund would reach to the communities.
- An understanding and cooperation is vital for the success of the project that is why donors should create discussion platform to resolve the issues between NGOs and INGOs.
- Donors are required to focus on sustainability of the program rather than changing policies and priorities and mechanisms should be developed to go the fund directly to the community. ■

List of acronyms

AGM	Annual General Meeting
CEDAW	Convention on the Elimination of All Discrimination Against Women
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
DAO	District Administration Office
DCC	District Coordination Committee
GoN	Government of Nepal
ICERD	International Convention on Elimination of All forms of Racial Discrimination
INGO	International Non-Governmental Organization
NFN	NGO Federation of Nepal
NGO	Non-Government Organization
PAN	Permanent Account Number
RTI	Right to Information
SWC	Social Welfare Council

Acknowledgments

Community Self Reliance Center (CSRC) would like to express its gratitude to many institutions and individual who contributed to accomplish this report. We would like to thank Asian NGO Coalition (ANGOC) for the technical and financial support. We are more than glad and feel privileged to work with the NGO Federation of Nepal, Government of Nepal, and Social Welfare Council.

We would also like to thank to CSO leaders, youths and members of several organizations for sharing their ideas, thoughts, and information related to the issues, challenges, opportunities and learning of CSOs that have been working for safeguarding people's rights. We are also thankful to different media houses in Nepal, Government agencies, NGOs, Land Rights Forum, and other CSOs for providing relevant information of the report.

Furthermore, with much appreciation, we acknowledge the crucial role of our partner organizations including Action Aid Nepal (AAN), Asian Farmers' Association for Sustainable Rural Development (AFA), UN-Habitat, Forum Asia, People In Need, CARE Nepal, and Oxfam for their contribution for land and agrarian rights campaign.

I would also like to thank Mr. Jagat Basnet, Research and Policy Analyst and Mrs. Usha Kumal, intern of CSRC for their contribution to collect data and prepare the report in this shape. Finally, Mr. Binod Gautam, Accountability and Governance Coordinator of CSRC deserves special thanks for preparing this assessment report.

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Citation:

Community Self Reliance Centre (CSRC). (2022). *CSO Assessment Study: Legal and Political Environment for Developmental/Rural Development NGOs in Nepal*. [Paper prepared by CSRC of Nepal for the project, "Study on Legal and Political Environment for CSOs in Asia" implemented by the Asian NGO Coalition for Agrarian for Agrarian Reform and Rural Development (ANGOC) and supported by the Fair Finance Asia (FFA) through the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS)].

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