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ACRONYMS

AoA : Articles of Association
CDO : Chief District Officer
CPDE : Civil Society Partnership for Development Effectiveness
CSOs : Civil Society Organizations
DAO : District Administration Office
DDC : District Development Committee
ECHR : European Convention on Human Rights
EENA : Enabling Environment National Assessment
FGDs : Focus Group Discussions
ICCPR : International Covenant on Civil and Political Rights
ICNL : International Centre for Not-for-Profit Law
IMF : International Monetary Fund
INGOs : International Non-Governmental Organizations
INTRAC : International NGO Training and Research Centre
LAs : Local Authorities
LDC : Least Developed Country
LSGA : Local Self Governance Act
MoA : Memorandum of Association
NFN : NGO Federation Nepal
NGOs : Non-Governmental Organizations
NPR : Nepali Rupees
NRN : Non Resident Nepali
OCR : Office of Company Registrar
OHCHR : Office of the High Commissioner for Human Rights
SSNCC : Social Services National Coordination Council
SWC : Social Welfare Council
SWNCC : Social Welfare National Coordination Council
UDHR : Universal Declaration of Human Rights
UN : United Nations
UNDP : United Nations Development Programme
UNGA : United Nations General Assembly
UNHRC : United Nations Human Rights Committee
UPR : Universal Periodic Review
VAT : Value Added Tax
VDC : Village Development Committee
EXECUTIVE SUMMARY

This report provides an analysis and evaluation of the current situation of Civil Society Organizations (CSOs) in Nepal from a legal perspective and makes recommendations on what could be done to improve its environment. The objective of the report is to examine whether the legal and policy framework of Nepal creates and maintains an enabling environment for CSOs. For that purpose, the report scrutinizes the six mandatory dimensions for assessment provided by the EENA research methodology, jointly developed by CIVICUS and ICNL, namely Formation, Operation, Access to Resources, Expression, Peaceful Assembly and Government-CSO Relations and one optional dimension, namely Taxation.

The research uses several research methods to identify the legal and policy environment for civil society. The assessment has been guided by a series of factual and perception questions associated with each dimension. Desktop review of available laws and policies, and existing literature has been used to answer the factual questions, while interviews with key stakeholders and focus group discussions (FGDs) have been conducted to provide a view on how laws and policies are implemented in practice – hereby informing the perception questions. For each dimension, the report analyses the existing legal and policy framework of civil society in Nepal.

The existing legal provisions regarding the formation of CSOs are fairly enabling and provide for an encouraging environment for the establishment of new CSOs. There are some procedural hindrances, amendment of which could further enhance the enabling environment for the formation of CSOs. Some concerns exist with respect to draft legislation which is currently under consideration besides the new Constitution. The provisions in the draft law and the Constitution must be compatible to Nepal’s international treaty obligations to protect and promote the freedom of association of CSOs.

The assessment of the existing laws and policies and the data obtained from the FGDs led to the conclusion that the existing environment in matters concerning the operation of CSOs is enabling. Interference on the part of the authorities is absent. The reporting and audit requirements are not deemed burdensome and prior approval is not needed regarding in the day-to-day operation of CSOs. However, certain provisions of the draft Association Act regarding the operation of CSOs seems to be less liberal and free than the current legislation in place.

With regard to the access of resources by CSOs, the existing legislation is rather encouraging. But, CSOs are obliged to seek prior approval of the government when they receive resources from foreign sources. The process of obtaining this approval is complicated. Furthermore, access to resources is relatively easier for the already established CSOs due to their track record and period of existence. This has led to a situation where a small group of larger, well-established CSOs is enjoying a quasi-monopoly over the available resources for CSOs in Nepal.

The freedom of expression, including access to internet, is enabling for CSOs in Nepal. CSOs can openly express their opinion on any matters, including on government policies. There are no explicit legal restrictions on the ability of CSOs to exercise their freedom of expression. The new Constitution of 2015 also does not deviate from the basic guarantee of freedom of expression for all CSOs, citizens, media and journalists.

The freedom of peaceful assembly is one of the characteristics of a democracy, which has been guaranteed by the 2015 Constitution of Nepal and existing laws. People are enjoying their right to peacefully assemble, although it allows local authorities to restrict this right in case of emergencies, riots and violent situations.
With regard to the relationship between CSOs and the government, the relationship has improved in recent times. The engagement of CSOs in the process of drafting a new Constitution, the domains of opinion forming, disaster relief activities, and citizen engagement among others has reflected the indispensable role of CSOs in complementing the government. The existing legal provisions intend to further enhance this relationship.

The assessment of the taxation regime for CSOs in Nepal reflects the need for certain amendments in the current tax regulation. Although it is not an explicit requirement for CSOs to pay income taxes, the requirement is implicit under a handful of relevant subsidiary laws. The taxation laws and policies must consider the non-profit nature of CSOs on the one hand and the financial sustainability of CSOs on the other. The government must install a lenient taxation policy as an instrument to encourage the operation of CSOs in the country.

The overall evaluation of the enabling environment for CSOs on the basis of these seven dimensions is fairly satisfactory. The government seems to be attempting to provide a favorable setting for the formation and operation of CSOs and their free functioning. There is, however, ample room left for improvement and the report has suggested some ways in which such improvement can be made. A national advocacy plan was prepared based on the findings and recommendations of this report, and suggestions made during the EENA National Consultation, a multi-stakeholder convening that took place on 24 June 2015. The advocacy plan aims at addressing the problems and challenges faced by CSOs in their enabling environment.
CHAPTER I
INTRODUCTION

1.1. Background

Civil Society Organizations (CSOs) are an integral part of a democratic society and associational life of citizens. The role of CSOs is significant in the modern day governance apparatus to fill in the gap between private and public institutions. The independent, voluntary and pluralistic organization of civil society is indispensable in maintaining and building a democratic society. There is a wide range of functional domains where CSOs play a constructive role and make meaningful contribution towards the progress and development of society. The structure, number and function of CSOs have been through significant changes in past decades. Currently CSOs are one of the major providers of basic services, influential advocates and knowledgeable advisors in the realm of public policy. CSOs have a wide area of functions in the present context going from its basic role as service providers, to watchdog of the state and establishing meaningful partnerships with the state.

The ability of CSOs to assume their role and functions is contingent on various factors. One of the basic pre-requisites for a well-functioning civil society is the presence of an enabling environment in any particular country, which includes a conducive legal framework. CSOs can only operate, flourish and attain their objectives there where an enabling environment for civil society exists. The legal framework, policies and regulations impact upon the operation of CSOs. An appropriate legal and policy framework for CSOs is one of the essential requirements in order for a society to yield the most from its civil society and for a meaningful existence of the civic organizations.

When we speak about a country’s legal, regulatory and policy framework, there are essentially two dimensions that need to be analyzed: the existing legislation and policies that regulate and govern CSOs and the implementation of its legal provisions. CSOs in Nepal have been vibrant vehicles for political as well as social, economic and cultural transformation, facilitating the democratization process, an effective rule of law, good governance, and delivery of basic services to poor and marginalized groups. The democratization process in Nepal is seen as both a cause and a consequence of the civil society movement in the country.

In the context of the legislative framework, Nepalese CSOs are guided by several legal and policy instruments. These include, but are not limited to, the Constitution of Nepal 2015, international treaties and covenants to which Nepal is a state-party, the National Directorate Act 1961, the Association Registration Act 1977, the Social Welfare Act, 1992 the Good Governance Act 2008, the Local Self-Governance Act 1999, and various government plans and other policy documents. As Nepal is on the verge of significant legal transition, the review the legal framework for CSOs in Nepal has been timely.

1.2. Definition of Civil Society Organizations

International NGO Training and Research Centre (INTRAC) in its adopted working definition referred to civil society, as ’... the institutions, organizations and voluntary participants outside the state, business world and the family” . At the same time INTRAC also recognizes that as a concept it is open to a broad spectrum of interpretations by different sectors and organizations.

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1 See website of INTRAC: http://www.intrac.org/
CSOs cover a broad spectrum of organizations including non-governmental organizations (NGOs), trusts, foundations, advocacy groups, national and international non-state associations. Another distinctive feature is that CSOs work independent from the normative and institutional government of a particular state. Apart from the separation from the state, CSOs also differ from economic organizations (very often referred to as profit-making organizations).

The International Monetary Fund (IMF), in its factsheet on CSOs, excluded “branches of government (government agencies and legislators), individual businesses, political parties, and the media” from the definition of CSOs. Philanthropy and non-profit are the crucial facets of civil society organizations. Additionally, some studies have highlighted a new trend of CSOs becoming not-for-profit commercial sub-contractors to the state.

Over a period of time civil society actors at the national and the global level have developed substantive capacity and influence in a range of development issues by advocating for the rights and participation of each and every group of society, with particular focus on the poor and vulnerable population. Thus, it can be summarized that CSOs include a varied set of organizations, ranging from small, informal, community-based organizations to large, high-profile international non-governmental organizations (INGOs) working through local partners across the developing world.

Their structures and modes of operation may be diverse and vary from one another but they all share the basic trait of independency of direct government control, and are non-profit in nature.

1.3. Significance of CSOs

CSOs are playing significant roles in the implementation of social sector development priorities of the state including health and education. Other important significance/functions of CSOs include:

a. Generating social basis for democracy: CSOs are concerned in strengthening norms, systems and networks ensuring that democracy at a national level are founded on interactive experiences at the local level.

b. Promoting political accountability: Civil society actors influence political accountability in two main ways: directly, by encouraging the creation and empowerment of institutional checks and balances, and indirectly, by strengthening the institutions of vertical accountability that underpin them, such as electoral democracy and an independent media.

c. Producing trust, reciprocity and networks: From the smallest parent-run play group, to a major trade union, relationships are built in a way which creates a social fabric that enables societies to actually work.

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2 Bridget M. Hutter, Joan O’Mahony (September 2004), The Role of Civil Society Organizations in Regulating Business. Discussion paper no: 26. London School of Economics and Political Science

3 Ibid


6 UNDP, NGOs and CSOs: A Note on Terminology (available at http://www.cn.undp.org/content/dam/china/docs/Publications/UNDP-CH03%20Annexes.pdf)

7 Ibid

8 Jonathan Fox (April 2000). Civil Society and Political Accountability: Propositions for Discussion. Available at https://kellogg.nd.edu/faculty/research/pdfs/Fox.pdf
d. Creating and promoting alternatives: CSOs have been the home of novelty, genuine concept and practical experiences serving as stimuli for a change in society.

c. Regional and international co-operation: Civil society give impetus to a community-building project within and across the national borders to universalize both individual and national life and motivate the citizens, governments and the states towards regional and international cooperation. 9

f. Supporting the rights of citizens: CSOs work as a catalyst to make sure that the basic rights including the political, civil, economic and cultural rights have been ensured to the citizens of the state.

1.4. Development of CSOs in Nepal: Legal Dynamics

The introduction of the concept of CSOs in Nepal is marked around 1980s. Over the decades, academics and professionals started to write on civil society and development, and efforts to strengthen civil society have become a common feature of the agendas and programs of many development organizations. 10

Until 1990, the Social Service National Coordination Council (SSNCC) was the government body mandated to regulate NGOs in the country. Another entity, the Social Welfare National Coordination Council (SWNCC), which was under control of the Royal Palace, controlled all the funds coming from funding agencies in the country. As the environment for CSOs and NGOs was very restrictive under the Panchayat regime (1961-1990), only a small number of NGOs managed to form: from only 10 registered NGOs in 1960 to 37 in 1987. 11

The Society Registration Act 1960 was the first legal instrument that legitimized involvement of NGOs in development, however overall patronage was provided by the state. 12 Prior to this development, each sector was controlled by the state and no private investment and services in development work was permitted. The Society Registration Act was later amended in 1977 and was renamed as ‘Association Registration Act’. The Act incorporated different types of association, such as clubs, public libraries, literary unions, self-help groups, NGOs and cultural groupings. Chief District Officers in the District Administration Offices were given the power to register, guide, direct, control and supervise the CSOs. 13

Gradually, the Social Welfare Council, which replaced the pre-1990 SSNCC, was reconstituted, and the Social Welfare Act 1992 was promulgated with the mandate to facilitate, promote, mobilize and coordinate the activities of NGOs and INGOs. 14 Moreover, the viability of NGOs was further stabilized when the Constitution of Nepal 1990 under its article 12 guaranteed “the freedom to form unions and associations”15 as a fundamental right of citizens of Nepal.

13 Ibid
14 Ibid
15 Article 12 3(d), Interim Constitution of Nepal 2007, Article 12(2) (c) The Constitution of Kingdom of Nepal 1990
The Ninth Five-Year Plan Document (1997-2002) and Local Self-Governance Act 1999 were two other policy documents that stimulated the growth of CSOs in Nepal. The Ninth Five-Year Plan endorsed the idea of empowering local authorities (District Development Committees, Municipalities and Village Development Committees), NGOs, CBOs, and the private sector in social mobilization and local development planning by enhancing a sense of political efficacy, developing opportunities to enforce their claims, receiving benefits and developing their stakes and interests in local governance. The Local Self-Governance Act encourages local governments to engage with local CSOs and NGOs in local development projects by creating the avenues to identify, formulate, execute, maintain and evaluate those projects.

The democratic movement in the 1990’s also played a big role in the development of CSOs, particularly in the form of NGOs and interest-based networks, by constitutionally guarantying the freedoms of expression, assembly, and association after the autocratic regime was overthrown. There was a substantial increase in identity-based organizations during the time of insurgency (1996-2006) caused by Maoist party. Meanwhile, King Gyanendra Shah took over the executive power of the government and started autocratic rule while the government tried to impose restrictive rules against CSOs. At the same time, CSOs in Nepal (NGOs, human rights defenders, and natural resource networks, as well as women, indigenous people, and other marginalized groups throughout the country) actively took part in the democratic movement for defending democracy and human rights. This movement in particular has shaped the present day standing and significance of CSO’s in Nepal.

1.5. National legislative framework governing CSOs in Nepal

Constitutional framework

The 2015 Constitution of Nepal is the supreme and fundamental law that governs in the country. Part 3 (articles 16 to 48) outlines the fundamental rights and duties, including the fundamental civil society freedoms such as the freedom of opinion and expression; freedom to assemble peacefully and without arms; freedom to form political parties; freedom to form unions and associations; freedom to move and reside in any part of Nepal; and freedom to practice any profession, carry on any occupation, industry, or trade (article 17 (2)). Each of these freedoms is subject to “reasonable restrictions” in case of acts that undermine several things such as “nationality”, “sovereignty”, “independence and indivisibility of Nepal”, “harmonious relations” between federal units or people of different castes, ethnicities, religions or communities, “Nepal’s security”, etc.

Other relevant constitutional provisions include:

- Various individual freedoms, including civil and political rights are set out in articles 16, 17, 18, 19, 20 and 43,
- Economic rights are provided in articles 17, 25, 29, 33 and 34,

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16 Ibid
19 Ibid
20 Ibid
Social rights, such as the right to health and education, are outlined in articles 31, 35, 38, 39 and 40. Religious and cultural rights, such as the right to participate in the cultural life of the community, are guaranteed in articles 26, and 32. Part 4, article 50 outlines "Directive Principles of the State" stated to ensure an atmosphere where democratic rights are exercised by protecting freedom, equality, property and all citizens through rule of law; by embracing the norms and values of fundamental rights and human rights, gender equality, proportional inclusion, participation and social justice; and by maintaining a just system in all spheres of national life. The fundamental rights and freedoms and human rights are protected at all three levels of government – the federal, provincial and local level (article 56).

Part 4, Section 51 (j) of the Constitution outlines the state’s policies regarding social justice and inclusion, and suggests a unified legal policy framework that facilitates NGOs and INGOs. Point (14) 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."

**National legal framework**

The following laws and policies, which will be discussed later under the respective dimensions, regulate the formation and operation of CSOs in Nepal:

- **The Association Registration Act 1977**: regulates the registration of associations in Nepal. Registration is mandatory for any organization in Nepal. It also provides for a definition of organizations that are considered as an association.

- **The National Directive Act 1961 (Rastriya Nirdeshan Ain 2018)** regulates CSOs that represent class or professions, with the aim of ensuring the development and professionalism of certain professions or organizations that defend the interests of any specific class. CSOs that fall under this Act include the Nepal Bar Association, Nepal Press Council, Teachers Union of Nepal, Federation of Nepalese Journalists, NGO Federation of Nepal etc.

- **The Social Welfare Act 1992** governs the provision of “social welfare” activity and “social service” activity. The special focus of this Act in relation to CSOs is highlighted upon the affiliation of CSO’s and the prior approval for the undertakings of the proposed activities.

- **The Local Self-Governance Act 1999** engages and encourages the involvement of local government with CSOs in conducting any specific development work. The Act envisions that local governments will facilitate NGOs in the identification, formulation, approval, operation, supervision, and evaluation of the development program. The Act also encourages the private sector to participate in local development process.

- **The Company Act (2006)** (paragraph 19, articles 166 and 167) provides the legal basis to register not-for-profit business organizations and consultancy companies. As such the Act addresses the establishment of not-for-profit companies to promote any profession/occupation or protect collective right/interest thereof or carry out scientific, academic or social benevolent or public utility or welfare objective.

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• **Citizens Right Act 1995** emphasizes the freedom of expression and publication, peaceful assembly and most importantly (from the perspective of CSOs) the freedom to run organizations and associations.\(^{23}\)

### 1.6. International framework

The International Covenant on Civil and Political Rights (ICCPR) is an international treaty to which Nepal is a state party (ratification in 1991). The ICCPR guarantees the rights of the people to associate in organizations, to express themselves freely, and to assemble peacefully. In the area of development, some internal commitments such as Accra Agenda of Action 2008, the Busan Partnership for Effective Development Cooperation 2011, the 2015 Addis Ababa Action Agenda (on the Third International Conference on Financing for Development) and the recent adopted Sustainable Development Goals (SDGs), which have explicit sections on the inclusion of CSOs and provide for ample opportunities to engage in governance and development processes.

On the other side, accountability and transparency of CSOs is promoted through three prominent international accountability frameworks namely: *Sphere Project*, *INGO Accountability Charter*, and *Istanbul Principles for CSO Development Effectiveness*.

### 1.7. Enabling environment and CSOs

This report is focused on assessing the legal, regulatory and policy environment for civil society in Nepal. The report lays special emphasis on six mandatory dimensions, as outlined in the EENA research methodology, namely (1) Formation, (2) Operation, (3) Access to Resources, (4) Expression, (5) Peaceful Assembly and (6) Government-CSO relations. These six dimensions are viewed as fundamental to the environment for CSOs in any national context, and is therefore included in all EENAs.\(^{24}\) The other four additional dimensions, referred to as ‘the optional dimensions,’ are viewed as important and consequential, complementing and providing additional insight to the analysis of the six mandatory dimensions. The optional dimensions is comprised of: (7) Internet Freedom, (8) CSO Cooperation and Coalition, (9) Taxation and (10) Access to Information. For Nepal, only the dimension of Taxation has been selected among the optional dimension to be included in the current report.

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\(^{23}\) In section 6 of the Act

\(^{24}\) Between July 2013 and June 2015, the EENA methodology was implemented in 16 countries worldwide.
CHAPTER II
METHODOLOGY

This analysis of the enabling environment for civil society in Nepal has been timely, as Nepal is on the verge of significant legal transition. A new Constitution has been promulgated recently in September 2015, making it pertinent to appraise the legal, regulatory and policy framework for CSOs in Nepal. The EENA methodology, developed jointly by CIVICUS and ICNL, includes ten dimensions, of which six are mandatory: Formation, Operation, Access to Resources, Expression, Peaceful Assembly, and Government-CSO relations. Additionally, the methodology provides for four optional dimensions – Internet Freedom, CSO Cooperation and Coalition, Taxation and Access to Information. These dimensions are optional, as to provide the flexibility to elect dimensions depending on the specific country context.

One optional dimension has been selected for inclusion in the EENA of Nepal, namely Taxation, which is considered relevant in the country context of Nepal. The scope of assessment was limited to national CSOs, as opposed to international CSOs – as different regulations apply to the latter.

The assessment of each of the seven dimension listed above has been guided by a series of factual and perception questions associated with each dimension. The answers to these questions have been collected primarily through three research methods:

1. **Desktop research**: online research, literature review and analysis of laws, regulations and policies that affect civil society in Nepal.

2. **Stakeholder meeting (National Consultation) and one-on-one interviews**: collection of perceptions on the degree of implementation of existing laws and regulations and challenges experienced on the ground by CSOs.

3. **Focus group discussions (FGD)**: collection of perceptions of CSOs on their environment through small open group discussions.

The information collected from each of these methods has been used to generate a comprehensive report analyzing the enabling environment affecting civil society in Nepal.

2.1. **Desktop research**

Each dimension consists of a set of factual questions and perception questions. Most factual questions have been answered by online research on the legal, regulatory and policy environment vis-à-vis CSOs in Nepal. In order to capture the practices and application of laws and policies in Nepal, guided by the perception questions, interviews and focus group discussions were conducted. Interviews were also used there where online research failed to provide an answer to the questions. To that end, the desktop research has involved reviewing laws, policies, existing literature on civil society, news articles from online journals and newspapers, government and CSO websites.

2.2. **Stakeholder meeting and interviews**

The EENA Research Team has conducted 24 interviews with key stakeholders and informants, including CSO activists and representatives, academia specializing in civil society, media professionals and journalists covering civil society, government officials and politicians shaping laws and policies affecting civil society, CSO donors, and other individuals knowledgeable of CSOs and their national environment.

Additionally, the NGO Federation of Nepal marking the Global Day of Citizen Action on 15 June 2015 organized a stakeholders meeting with a view to address the perception questions and collect
preliminary data for the assessment of enabling environment in Nepal. There were 43 representatives from major CSOs in the country. The stakeholders discussed key issues such as procedural complexity regarding the inspection of CSOs, operational complexity regarding the issues of taxation, non-recognition of the work and role of NGOs regarding relief efforts and the complexity regarding the recognition of the category of work of CSOs. In fact, there is no legal provision to categorize CSOs according to their nature, characters and scope of work.

2.3. Focus group discussions

In order to gain deeper insight into the experiences of CSOs in the different research dimensions, focus group discussions were held at the regional offices of NGO Federation of Nepal. These meetings served to identify and discuss the manifolds of barriers – legal and non-legal – confronting CSOs, and to discuss possible recommendations to mitigate identified challenges. In order to get a regional perspective on the issues at hand, regional focus group discussions were held in the following five regions:

<table>
<thead>
<tr>
<th>Region</th>
<th>Date</th>
<th>Venue</th>
<th>Number of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern</td>
<td>22 February 2015</td>
<td>Biratnagar</td>
<td>3</td>
</tr>
<tr>
<td>Central</td>
<td>28 February 2015</td>
<td>Hetauda</td>
<td>7</td>
</tr>
<tr>
<td>Western</td>
<td>18 February 2015</td>
<td>Pokhara</td>
<td>12</td>
</tr>
<tr>
<td>Mid-Western</td>
<td>26 February 2015</td>
<td>Nepalganj</td>
<td>5</td>
</tr>
<tr>
<td>Far-Western</td>
<td>28 February 2015</td>
<td>Dhangadi</td>
<td>6</td>
</tr>
</tbody>
</table>

2.4. National Consultation

A national consultation, a multi-stakeholder dialogue, was held on 24 June 2015 with 145 participants including participation of civil society networks, alliances and federations. During the consultation there was a discussion on the draft report and advocacy plan. INGOs, bilateral development partners and seven government agencies were also invited.

2.5. Expert Advisory Panel

An Expert Advisory Panel, made up of experts with particular expertise in the area of civil society, was formed with the aim to guide and advise the EENA research and its dimensions.

An expert advisory panel meeting was held on 2 July 2015 in Kathmandu. During that meeting the findings and recommendations of the research were further discussed. The report has incorporated the inputs collected from the experts.

The research team has adhered to basic ethical considerations of informed consent, absence of deception, interviewee's right to withdrawal, debriefing and confidentiality. The research team has maintained professional conduct and performed the assignment in good faith.

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25 Context: Nepal was hit by a 7.8 magnitude earthquake on 25 April 2015, killing over 8,000 people.
CHAPTER III
ASSESSMENT

The state has a duty to promote and respect human rights and fundamental freedoms, including the obligation to protect civil society rights such as the freedom of association, expression and peaceful assembly. The state's duty is prescriptive, that is to refrain from interference with human rights and fundamental freedoms, and to ensure for the fulfillment of human rights and fundamental freedoms. The state's duty includes the accompanying obligation to ensure that the legislative framework relating to fundamental freedoms and civil society is appropriately enabling, and that the necessary legal institutional mechanisms are in place to ensure the recognized rights of all individuals. Governments have exertive power over CSOs through the legal framework and can either help or hinder CSOs through establishing laws and regulations that guide CSO's formation, operation, taxation, their access to resources (public, private, and foreign), reporting requirements, and their engagement in government projects and policies.

This chapter will thoroughly review and assess the applicable domestic and international laws relating to CSOs focusing on seven dimensions. The dimensions examined in this report include (1) formation of CSOs, (2) operation of CSOs, (3) access to resources, (4) freedom of expression, (5) peaceful assembly, (6) government-CSO relations and (7) taxation. This section also looks into draft legislation, particularly on how draft laws will affect CSOs once enacted, and the perceptions of CSO practitioners in order to have a clear overview of the legal, regulatory and policy environment for civil society.

A conducive legal framework that regulates the formation and operation of CSOs is essential, but it is not sufficient for CSOs to flourish. Laws and regulations must also be implemented in practice. In developing countries such as Nepal the difference between legal guarantees and its implementation is often marked as a significant challenge. In some cases, Nepal has great legal provisions - compatible with international standards - yet the application of those provisions are far from satisfactory. The perceptions of participants obtained from Focus Group Discussions (FGDs), consultation meetings and interviews, assisted in understanding how the legislation in Nepal is implemented.

3.1. Formation

The right to form organization (freedom of association) is one of the fundamental civil society freedoms. International law protects the right of individuals to form, join and participate in CSOs. The scope of rights includes the rights of individuals to form trade unions, associations, and other types of CSOs. The permissible purposes under international law may include the broad range of objectives embracing a legal and lawful purpose, which can be pursued by individual vis-à-vis CSOs.

International law protects the right of individuals to form CSOs as a legal entity however the requirement of forming a legal entity is not a pre-requisite for an individual to enjoy freedom of association. The applied aspect of freedom of association requires the system of recognition of legal entity status, whether a “declaration” or “registration/incorporation” system, must ensure that the process is truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place. Further, in the case of a registration/incorporation system, the designated authority must be guided by objective standards and restricted from arbitrary decision making.

More importantly to mention is that Nepal is a state party to the International Covenant on Civil and Political Rights (ICCPR). Freedom of association is guaranteed by Article 22(1) of the ICCPR, which states that: "Everyone shall have the right to freedom of association with others, including the right to form
and join trade unions for the protection of his interests." The Universal Declaration of Human Rights also recognizes the right to freedom of association. The right to freedom of association is a fundamental human right and indispensable for the existence and functioning of a democracy.

### 3.1.1. Nepalese context

The 2015 Constitution of Nepal acknowledges the freedom of association as a fundamental right under its article 17(2) which states: "Every citizen shall have the following freedoms; … (d) freedom to form unions and associations". This fundamental right however has been restricted by paragraph (4) of article 17, which provides that the freedom to form an association may be restricted in order "to prevent the making of an Act to impose reasonable restrictions on any act which may undermine the nationality, sovereignty, indivisibility or Nepal, or an act of espionage against the nation, or disclosing national secrets, or helping foreign state or organization that may jeopardize Nepal’s security, or an act of treason, or an act that undermines the harmonious relations subsisting between federal units, or instigates communal animosity, or jeopardizes the harmonious relations subsisting among different caste groups, ethnicity, religious groups and communities, or an incitement of violence, or an act which is contrary to public morality."

Certain fundamental rights outlined in the Constitution, including the freedom of association, cannot be suspended even in a state of emergency pursuant to article 273 (10) of the Constitution. This article reads:

> "While issuing the Proclamation or Order of state of emergency pursuant to clause (1), the President may suspend the fundamental rights provided in Part 3 so long as the Proclamation or Order is in operation. Provided that, Article 16, section (c) and (d) of Article 17(2), Article 18, 19 (2), 20, 21, 22, 24, 26 (1), 29, 30, 31, 32, 35, 36 (1) and (2), 38, 39, 40 (2) and (3), 41, 42, 43, 45 and the right to constitutional remedy and right to habeas corpus related to Article 46 shall not be suspended"

The Civil Rights Act 1955 in its section 6(3) has also made provisions related to the freedom of citizens to operate associations and organizations. Section 6 reads as "Subject to the provision of the prevailing laws, all citizens shall have the following rights: - (…) (3) To run organizations and associations:"

The primary laws governing the formation of CSOs in Nepal include the Association Registration Act (1977) and the National Directive Act (1961). While the Association Registration Act is dedicated to CSOs, the National Directive Act governs professional associations such as Nepal Bar Association and the Federation of Nepalese Journalists. According to the Association Registration Act, no one is allowed to form an organization without registration - meaning that the registration of associations is mandatory. The Association Registration Regulation (1977) sets out the procedure of CSO registration. Additionally, there are internal directives issued by the Ministry of Home Affairs that provide procedural requirements for the registration of CSOs, which is complementary to the statutory provisions. A CSO can also be established pursuant to Section 166 of the Companies Act (2006) as a “profit-not-distributing” company.

In matters concerning the formation of CSOs, the Army Act (2006) and Civil Service Act (1993) are also applicable as they restrict involvement of government officials and army personnel in the formation and operation of CSOs without government approval. The 4th Amendment (2015) of the Civil Service Act (1993) has opened up an avenue under its section 49A providing that, the government official may be affiliated to a professional association or another social organization without receiving any monetary benefits or other forms of benefits. The Act also requires that such engagement should not hinder the formal work of officials.
3.1.2. Formation process

Forming an association without registering the association is considered a violation that is subject to a fine. As per article 3 of the Association Registration Act, “no person shall establish or cause to be established any association without having it registered pursuant to this Act.” Moreover, section 12 of the Act allows for a fine up to 2,000 Rupees (about 20 US$) on each member of the management committee of an unregistered association. At least seven people are required to serve as founding members of a CSO pursuant to section 4 of the Association Registration Act 1977. The Act does not provide for any qualification or restrictions for being a founding member of CSO.

Under section 166(3) of the Companies Act 2006, a minimum of 5 founding members are required for the establishment of a non-profit company. CSO formed pursuant to the Association Registration Act does not allow legal entities (such as CSOs and NGOs) as a founding member, it has be a natural person. However, section 166(2) of the Companies Act allows certain legal entities to be founders of non-profit companies. Section 166(2) reads: “Any person or trustee of a public trust registered pursuant to the prevailing law or any other corporate body incorporated pursuant to the prevailing law who wishes to register a company for the attainment or the objective mentioned (...) may make an application to the Office.”

The Association Registration Directive issued by the Ministry of Home Affairs however requires founders of a CSO to be Nepalese citizens, thereby disqualifying foreign residents as founding members. The directive also sets out the requirements of a certificate of clean criminal records of all seven founding members from the District Police Office, where the CSO intends to be established.

Compared to establishing a commercial legal entity, it is relatively difficult and burdensome to form an association. The additional documentation required to form a CSO makes the registration process burdensome compared to profit-making legal entities. The documents required for the process of registration of CSOs primarily include an application form along with the statutes of the proposed CSO, ad-hoc committee’s (transitional board) minutes resolving to register the CSO, a copy of citizenship certificate of the founding members, recommendation from a local government body, and a certificate of clean criminal records from the relevant police office. These additional required documents are time-consuming to gather. Furthermore, according to the citizen charter of the District Administration Office, the office can require a recommendation from the Regional Administration Office in case the proposed CSO has certain kinds of objectives. However, the citizen charter does not define the kind of objectives that requires such recommendation.

Even though the CSOs are registered in District Administration Office, its line ministry - Ministry of Home Affair - has no integrated records of the number of CSOs. But, according to the records of the Social Welfare Council (SWC), 39,757 CSOs were affiliated with of Social Welfare Council in July 2014. Affiliation with the SWC is not compulsory, but CSOs can do so if desired. Affiliation is mandatory for those CSOs receiving foreign funds.

For the registration of professional organizations under the National Directive Act, there is an additional requirement of obtaining prior approval from the Ministry of Home Affairs. The requirements for the registration of non-profit companies are relatively flexible. According to the Companies Act, at least five Nepalese legal or natural persons, along with their citizenship certificate.

\[26 \text{ Certification of non-engagement in any criminal activities}\]

\[27 \text{ Office located at district headquarter under the Ministry of Home Affairs}\]

or charter document, the proposed Memorandum of Association (MoA) and the Articles of Association (AoA), can file the application for establishing not-for-profit companies. However in all cases, during the process of registration, founders are also required to appear before the authority of Company Registrar Office.

There are no specific legal grounds of rejection of an application to register provided in the laws that regulate the formation of CSOs. But, if the objective is deemed contrary to law or public interest, morality or decency and if organization with the same name has already been registered, applications may be rejected or government officials may ask for a correction of the application documents. Pursuant to Section 4(2) of Association Registration Act 1977 the officer can proceed with the registration of CSO, if he/she deems it meets all the requirements for registration. This is overly vague and gives the authorities at the District Administration Office (DAO) involved in registration process a certain discretion.

In the case of the National Directive Act, section 3(3) requires close observation of the nexus of the CSOs with the intended class or profession, i.e. whether it is intended to be established for the interest and development of any specific class or profession and the building and development activities of the nation, which should be outlined in the statutes submitted along with the application. In the registration process initiated under the Companies Act, section 6 provides for certain reasons that may lead to a refusal of the registration of a non-profit company such as the use of name that is already taken by a registered company, a name or objective deemed contrary to law or public interest, morality or decency.

Section 166(1) of Companies Act, 2006 further clarifies that a non-profit company is incorporated to develop and promote any profession or occupation or to protect the collective rights and interests of the persons engaged in any specific profession or occupation or to carry on any enterprise for the attainment of any scientific, academic, social, benevolent or public utility or welfare objective on the condition that dividends are not distributed. If the applicant does not meet these criteria, it may lead to a rejection of the application to register the company.

Regarding the purpose of CSOs, there is no restriction mentioned in the Association Registration Act, 1977. The National Directive Act in Section 3(3) provides that professional associations seeking legal existence must be intended to be established upon interest and development of specific class or profession. The decisions relating to the registration, pursuant to the Association Registration Act 1977 and the Companies Act 2006 can be appealed at the Court of Appeals. However, the National Directive Act, provides in its section 8 that any order or direction given by the Government pursuant to the Act shall be final and no question can be raised in the court in relation to such order/direction.

Further, rule 5 of the Association Registration Regulation 1977 provides that CSO are required to renew their registration annually. A nominal registration fee of NPR 1,000 (about 10 US$) and renewal fee of NPR 500 (about 5 US$) are charged for CSOs. For non-profit companies, the registration fee is NPR 15,000 (about 150 US$). The duration of the registration process is not defined by laws although the registration process in practice requires about 60 days according to the FGDs with CSOs. The National Directive Act does not clearly mention a renewal of registration. Therefore, the CSOs which have been registered under this Act do not renew their registration annually.
3.1.3. Judicial decisions

There have been some instances where the court has ruled on the formation of CSOs. In the case of *Tilottam Poudel vs. Ministry of Home Affairs*, (Writ number 174 of 2000, decision date: August 9, 2001) the Supreme Court issued an order of *Mandamus* to the government asking to register a children’s club (CSO of Children). The court reiterated the international obligation of Nepal pursuant to the Convention on Rights of the Child, section 15(1), which guarantees the right to association and peaceful assembly to children. The court further decided that there should not be unreasonable restrictions to the freedom of association for children. The decision of the Ministry of Home Affairs to reject the registration of the association based on the ground that the founders were minors was not accepted by the court, and the Ministry of Home Affairs was ordered to register the association, without conditions.

Furthermore, in the case of *Tanding Dorje Tuladhar on behalf of Bhota Welfare Committee vs. DAO Kathmandu*, (Writ number 0684 of 2006) it was affirmed that if the objective of the proposed CSO has the prospect of illegal conduct and is likely to adversely affect Nepal’s relationship with its neighboring countries, this can be a valid grounds for rejecting the registration of a CSO.

In another case *Tble Parjlo Lama vs. Ministry of Home Affairs* (Writ number 3052 of 1993) the Supreme Court affirmed that it is an obligation of the applicant to submit an application along with the name and objective of the proposed CSO. The local officer, upon investigation, should register the organization and give the certificate if the CSO meets the objectives. It is the jurisdiction of the local officer to identify whether the name/objective of the proposed organization is valid or not. The decision to reject registration on the ground that the proposed organization’s name could result in an illusion amongst general people is legal. The applicant in the above case had applied for the registration of a CSO with the proposed name "Nepal Tibet Welfare Association" but failed to have any objective related to the name. The court therefore upheld the order given by the District Administration Office to the applicant asking the CSO to state the relevance of the name with the proposed objective.

These cases make it clear that although the law does not require a relationship and relevance of the name of a CSO with its objectives, such relevance is in fact necessary. Furthermore, the court observed that the registration of a CSO can be denied if the CSO's proposed objective is likely to hamper the country’s relationship with its neighboring countries or has prospects of illegal conduct.

3.1.4. Draft laws

Besides the Constitution and the above mentioned laws, the Bill on Association and Organization 2014 drafted by the Ministry of Home Affairs is currently under consideration. The bill is still under discussion and has not yet been tabled in the parliament. This bill aims to replace the Association Registration Act and National Directive Act. Some of the significant provisions of the draft bill include the following:

- Section 4 of the bill requires the following documents to register: the application, prescribed fee, memorandum of organization, details of executive committee members and other general members (such as name, address, age, occupation and educational qualification), financial and physical infrastructure of organization, income-expenditure plans of proposed organization (until the date of application), address of the proposed organization and other information and documents as required. Furthermore, it requires at least 25 Nepalese citizens to give their consent of registration in the District Administration Office and declare their consent stating to
elect the applicants as officials of the proposed organization. It also requires the application to be lodged together with this declaration.

- The proposed bill remains vague on certain issues. For example it provides that the registration process can proceed, if the local authority deems the CSO to be appropriate upon investigation.

- Section 5 of the proposed bill provides the following grounds to deny registration: if the objective of the CSO is contradictory to the prevailing laws of Nepal, if it is perceived that it will not be socially beneficial, if the objective of the organization promotes discrimination, if the application is incomplete and if false information has been submitted. The decision of the local authority with regard to denial of registration however can be appealed before the regional administrator (Head of Regional Administration Office) within 35 days of the notice of a rejection.

Due to other priorities of the country, the government is not giving sufficient attention to the bill. NGO Federation of Nepal has requested the government to include its suggestions in the bill.

3.1.5. Perspective of CSOs

The CSO practitioners that participated in interviews and the focus group discussion (FGDs) view the District Administration Office (DAO) and Company Registrar Office as insufficiently funded and staffed. In terms of accessibility and availability, registration of CSOs is relatively easy as DAOs are located in all the districts. The registration of CSOs can be initiated and completed at the district office level. But, currently there is no electronic registration system available. Some CSO participants experienced unreasonable delays caused intentionally by local officials at the DAOs. The participants of discussions also highlighted that the requirement of approval and recommendation from different institutions results in delays in the incorporation of CSOs. Certain participants of FGDs also expressed that they observed unfairness - in particular favoritism and corruption - in some applications. Another challenge that was discussed by participants in the FGDs was how CSOs are in practice compelled to affiliate with a number of agencies, such as the District Development Committee the Municipality and the Social Welfare Council, although the affiliation is not compulsory. The affiliation of CSOs with multiple agencies in practice is burdensome. The existing legal framework for formation of CSOs can in general be considered as rather enabling. However, some amendments in certain procedural requirements are needed to improve the enabling environment. The draft law (Association and Organization Bill) under consideration has some significant shortcomings. Provisions in the Constitution and laws must be compatible to Nepal’s international treaty obligations to ensure, protect and promote the freedom of association.

The above assessment also points out possible areas that need improvement in order for a full realization of the freedom of association. One such area is the burdensome registration process and the need to affiliate with a number of government agencies. Registration processes should be simple, straightforward and accessible. Similarly, it would be desirable if CSOs registered under the Association Registration Act 1977 could be classified according to their nature and area of operation such as social organizations, trusts, foundations, sports clubs, consumer groups, community based organizations, network organizations and professional organizations.

Additionally, registration of CSOs should be based on the geographical area and level of operation of individual CSO. CSOs that have activities in a single district can register in the District Administration Office of that particular district, while CSOs that operate in more than one district have to register at the Social Welfare Council. In a similar vein, CSOs that want to limit their areas
activities at the level of the Village Development Committee (VDC) or municipality, should be able to register at the concerned VDC or municipality.

3.2. Operation

One of the essential elements in an enabling environment of CSOs is the right of CSOs to operate free from unwarranted state interference. International law creates a presumption against any regulation or restriction that would amount to interference of recognized rights. The interference can only be justified where it is prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.\(^\text{29}\) Furthermore, laws and regulations that govern CSOs should be implemented and enforced in a fair, apolitical, objective, transparent and consistent manner.

This also requires that the involuntary termination or dissolution of CSOs must meet the standards prescribed by international law. The relevant authorities should be guided by objective standards and be restrained from arbitrary decision-making. CSOs must be protected against unwarranted government intrusion in their internal governance and affairs. Freedom of association embraces the freedom of the founders and/or members to regulate the organization’s internal governance. The civil society representatives individually and through their organizations, should also be protected against unwarranted interference in their private lives.

3.2.1. Nepalese context

Section 6(3) of the Civil Rights Act 1955 explicitly provides that all citizens have the right to run (operate) organizations and associations. Thus, Nepalese law has guaranteed the freedom to operate CSOs.

Core legislations relevant for the operation of CSOs in Nepal are: the Association Registration Act 1977, the Association Registration Regulation 1977, the National Directive Act 1961, the Social Welfare Act 1992, and the Companies Act 2006. The Income Tax Act 2000 and the Local Self Governance Act 1999 also include provisions that are relevant for the operation of CSOs.

The Association Registration Act 1977 mandates CSOs to renew their registration annually but fails to prescribe the documents that are required for renewal. According to the Citizen Charter\(^\text{30}\) provided by the District Administration Office (DAO) of Kathmandu (the same Citizen Charter also applies to DAOs in other districts), certain documents must be submitted for the annual renewal of the registration of CSOs. These documents are:

- a. Application form as prescribed;
- b. Copy of the decision made by the working committee for renewal;
- c. Copy of the minutes of the Annual General Meeting;
- d. Audit report;
- e. Yearly progress report;
- f. Copy of the license of the auditor, including any renewals of licenses;

\(^{29}\) Article 22 (2) of the International Covenant on Civil and Political Rights (ICCPR).

\(^{30}\) The Citizen Charter is a policy term, in practice also called service guarantee or service standard.
g. Copy of the tax clearance certificate;

h. Recommendation of the District Development Committee;

i. Copy of the registration certificate of the applying CSO;

j. The approval letter provided by the Social Welfare Council or recommendation letter for renewal of the CSO application if the CSO has received foreign funding;

k. A recommendation letter from the District Children Welfare Committee is also required if the CSO operates an orphanage home.

In addition to the aforementioned documents, if the working committee/executive board of the CSO has changed through a decision of the Annual General Meeting (AGM), then the details of such changes must be communicated to the District Administration Office. Furthermore, if the CSO intends to extend its activities to other districts, approval from the District Administration Office is required. Applications for the extension of activities must include the decision of the working committee of the CSO, along with a copy of the registration document and a recommendation letter of the District Development Committee.

However, in the context of non-profit companies, the procedures regarding its operation is much simpler compared with associations under the Association Registration Act. Such companies are obliged to hold an Annual General Meeting and provide the following information to the Office of Company Registrar before mid-November (Kartik):

(a) Copy of the minutes of the meeting of the board of directors calling the Annual General Meeting,

(b) Copy of the minutes of the Annual General Meeting

(c) Audit report

(d) Details of the members of the board of directors (if changed)

(e) Details of the financial status of the company (loans received, assistance received, liability added and details of the members)

Another important aspect with regards to the operation of CSO is its affiliation with the Social Welfare Council (SWC). According to section 13 of the Social Welfare Act 1992, it is not mandatory for CSOs to be affiliated to the SWC. Affiliation to the SWC is voluntary and interested CSOs can apply to this end. The main reason why CSOs are interested in affiliation with the SWC is the legal recognition from the government and because it is a requirement for receiving foreign or government funding. Pursuant to section 16 of the Social Welfare Act, a CSO, whatever its nature, needs to acquire approval from the Social Welfare Council if it intends to obtain assistance from the government or from foreign entities. Section 16(1) reads as follows: "Social organizations and institutions willing to get material, technical, economic or any other kind of assistance either from Government of Nepal or foreign countries, international social organizations and institutions or missions or individuals shall submit a project proposal and application along with other details to the Council as prescribed". Therefore, this means in practice it is mandatory for CSOs to obtain approval from the SWC if they intend to receive funding.

Applications for affiliation to the SWC must include the application as prescribed along with its statutes, names of the members of the executive committee or board of directors, their occupation and address, the date of the registration of the CSO and the address of the organization.
In addition to the reporting requirements outlined above, the Local Government Resource Mobility and Management Directive 2012 in its section 58(5) requires CSO to provide details of their activities to the respective local government body every trimester and annually. Any failure to provide these details may be a ground for a rejection of the annual renewal of the registration of the CSO.

With regard to the right to information or access to information of CSOs, CSOs receiving funds from either the government or any foreign country or international organization is considered as a public body pursuant to section 2(a) of the Right to Information Act 2007. Citizens have the right to obtain information of public bodies, as outlined in section 3(2) of the Act. CSOs are not legally obliged to disclose information to the public unless the information is sought by citizens under the Right to Information Act. But, as this act defines CSOs as public bodies, so they are obliged to disclose information such as nature and type of organization, roles and responsibilities, number of staff and their details, services delivered, detail of works performed, income-expenditure and transaction details etc.

CSOs are not obliged to align their activities with governmental priorities as defined in the national development plans. However, the Directive for Local Government Resource Mobility and Management 2012 in its section 58 states that CSOs should give priority to the projects which are prioritized by the local government bodies they operate in.

With regards to the operation of non-profit companies formed under the Companies Act, certain obligations are listed in its section 167:

a. There is no requirement of shared capital for the incorporation of not-for-profit companies. The company may receive membership fees from its members and receive any donation, gift, pursuant to law for the accomplishment of its objectives.

b. No member of the company shall be liable for the debts and liabilities of the company except in the case where any member accepts such liability in writing the liability of the company, with specification of the limit of such liability; his/her liability shall be limited to the extent of that limit.

c. The company shall not distribute dividends, bonuses or any other amounts, from the profits earned by it, to its members or employees; and the profits earned by the company shall be used to increase the capital of the company or for the attainment of its objectives.

d. The company shall obtain prior approval of the Office of Company Registrar to change objectives.

e. Any non-profit company shall not be merged with any company that is for profit.

f. The members of a company incorporated under this chapter shall elect the directors from amongst themselves in such number as fixed in the articles of association of the company, on the basis of one member one vote.

g. The meeting allowance, salary, facility receivable by the officers or a company incorporated under this Chapter and the incorporation and operational expenses of the company shall not exceed the amount as specified by the Office of Company Registrar (OCR) and in so specifying expenses, the OCR shall have regard to the capital situation and profits of such company.

This shows that the Companies Act has mandated a number of obligations for CSOs operated as a non-profit company. The distribution of financial benefits from its profit to its members is
forbidden, while it also installs the authority of the Office of Company Registrar in other financial matters. Such regulations do not exist for CSOs under the Association Registration Act.

CSOs can be dissolved voluntarily by taking such a decision at the CSO’s Annual General Meeting. The legal framework for CSOs has not effectively addressed the procedure regarding the dissolution of CSOs. Section 14 of the Association Registration Act provides that if the organization is dissolved, or is unable to operate due to other reasons, all the assets of the CSO shall be transferred to the government of Nepal. The only ground for dissolution specified in the Act is the failure on the part of CSOs to operate in the confines of the law. Section 14 of the law mentions “other reasons” with regards to dissolution, which is vague and open to interpretation. Assets of a dissolved CSO cannot be transferred to any other person or institution but can only be transferred to the government. There is no existent clear procedural guideline for the transfer of assets of a dissolved CSO to the government, and no case this kind of transfer is known so far.

In the case of dissolution of non-profit companies, section 167(1)(i) of the Companies Act determines that assets are transferred as provided in the article of association of the entity. Section 167(1)(i) reads, “In the event of liquidation of or cancellation of registration of a company incorporated under this Chapter, the assets of the company, if any, remaining after the settlement of the debts and liabilities of the company shall be dealt with as per the provision, if any, contained in its articles of association, and failing such provision, such assets shall devolve on the Government of Nepal. Provided, however, those assets shall, in no way, devolve on anybody or company where a promoter or member of such company or his/her close relative or close relative of such relative is a promoter or member.” This means that, the articles of association of the not-profit-company can provide for the transfer of the company’s assets to similar institutions.

The Companies Act has empowered the Office of Company Registrar to deregister a non-for-profit company if it violates the obligations stipulated in section 167 of the Companies Act. Section 167(2) provides that, in the event of violation of any provisions contained in this section the Office of Company Registrar may cancel the registration of the company. Apart from the de-registration of a non-profit company by the Office of Company Registrar, the Annual General Assembly of the non-profit company can decide to dissolve the company voluntarily and appoint a liquidator for such dissolution.

3.2.2. Draft laws

The proposed draft law related to Association and Organization 2014 has made some additional provisions regarding the operation of CSOs. Section 10 of proposed law requires transparency of the financial and infrastructural resources (assets) of associations, which is not present in the current Association Registration Act. Although this provision is not negative, the law remains silent on how this requirement will be assessed.

The draft Association and Organization 2014 law also requires the work and archives of associations to be subjected to social audit. Additionally, CSOs are to submit annual reports, annual program details, and approval from the Ministry of Finance (in case foreign resources have been received by the association), audit reports and details of the annual general meeting. The approval of the Ministry of Finance is a new provision of the draft law in terms of annual reporting. Previously, the approval was provided by the Social Welfare Council.

With regards to dissolution, section 29 of the draft law provides that CSOs may be dissolved by an order of the local authority (District Administration Office) on prescribed grounds. These 'prescribed grounds' are the following: if the CSO acts in contradiction to the national laws and regulations, espionage against Nepal, when the CSO conducts any activity that contravenes the
territorial integrity, sovereignty and nationality of Nepal and if the CSO is engaged in corruption. With respect to voluntary dissolution, a CSO can be dissolved if it is unable to perform the activities pursuant in its statutes.

Furthermore, the Draft Social Welfare Act also contains provisions relating to the suspension and deregistration of CSOs. Section 26 of the draft law provides that, if CSOs affiliated with the Social Welfare Council (SWC) are found to work on activities contrary to prevailing laws or statutes, the SWC may recommend the concerned government agency to suspend or deregister that particular CSO.

3.2.3. Perspective of CSOs

Based on the assessment of the legal provisions and the input obtained from FGDs the operation of CSOs can be considered as enabling and non-interfering. The reporting and audit requirement is not deemed burdensome and prior approval is not needed for operational aspects of CSOs. However, provisions in the draft law on Association and Organization seems to be less liberal than the existing laws. The minimum number of persons required for the purpose of CSO formation should be decreased as the draft law proposes 25 members. On the other hand, there should be a provision of legal dissolution of CSOs, if they do not renew within three years after its expiry.

3.3. Access to resources

One of the aspects of ensuring a smooth functioning and sustainability of civil society organizations is to ensure the protection of their right to seek resources from several sources. Within broad parameters, CSOs have the right to seek and secure funding from legal sources, including individuals, businesses, civil society, international organizations and inter-governmental organizations as well as local, national and foreign governments.

There is no general limitation on the access to funding for CSOs in Nepal and CSOs can generate funds from domestic and international donors. However, there is a requirement that the agreement between CSOs and donor agencies must be approved by the Social Welfare Council.

Policy 2.9.4 of the Development Cooperation Policy 2014 requires that project activities through national or international CSOs need to be aligned with national development priorities and requires coordination with the relevant Ministry during the preparation of the project proposal related to such activities. Furthermore, the policy 2.9.8 requires the project to be operated in leadership of a local government authority, and to adopt the implementation modality as prescribed by the government agency. As discussed in the chapter on the operation’ dimension in this report, the affiliation of CSOs with SWC is in se voluntary, but mandatory in case the CSO intends to obtain foreign or government funding. The Development Cooperation Policy 2014, policy 2.9.1, mandates the affiliation of all national and international CSOs established in Nepal with the objectives to mobilize development aid to the SWC while policy 2.9.2 requires all CSOs to obtain approval from SWC when obtaining development cooperation grants. According to the same policy, the Ministry of Women, Children and Social Welfare acts as the coordinating mechanism for the recommendation and approval of such cooperation aid funding to CSOs. This provision will be difficult for national CSOs due to access to and operational bottlenecks. In case the project period is

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31 According to the same Development Cooperation Policy 2014 (policy 2.9.12) CSOs receiving foreign funds are required to periodically submit reports to the SWC, the Ministry of Finance and the National Planning Commission with details of their finances and infrastructure.
short or volume of budget is low, going through the process and waiting for approval from the Ministry will be impractical.

Furthermore, with regards to access to resources as discussed in the chapter on ‘operation’ in this report, CSOs established pursuant to Companies Act 2006 (non-for-profit companies) cannot distribute profit to its founders or employees, but can only use the profit to increase the capital of the company or for the attainment of its objectives (section 167(1)(d) of the Companies Act). The Office of Company Registrar has in this regard the authority to regulate inappropriate private benefits to officers, directors or other insiders. Apart from a declaration of CSO as a 'non-profit making' entity in its statutes, CSOs registered pursuant to Association Registration Act have no clear restrictions in the law on the distribution of profits or income as they are supposed to be non-profit making organizations.

3.3.1. Government funding

Limited government funding is available to a small number of CSOs for selected activities at the discretion of concerned government agencies at the national and the local level. The amount of such support to CSOs is insignificant as the amount ranges mostly from 20-25 thousand rupees (about 200-250 US $) in practice. The practice of government funding has not yet been developed in Nepal and CSOs do not consider the government as a viable avenue of resources. The most significant form of “funding” provided by the government to CSOs is in the form of tax exemptions. According to the Income Tax Act, CSOs’ income is exempt from tax deductions because gifts (donations) and membership fees are not regarded as income. On the contrary, bank interests on the accounts of CSOs are taxed at source. In instances where CSOs are involved in providing services that must be paid for, they are required to pay the applicable income tax. More information the taxation of CSOs is discussed separately in the chapter on Taxation later in this report.

The Local Self Governance Act 1999 provides that CSOs at the local level can be assisted by the local government agencies (District Development Committee, Village Development Committee or municipality) through the development work to be carried out in cooperation with CSOs therein. Furthermore, the District Development Committee Assistance Directive 2010 and the Village Development Committee Assistance Directive 2012 both provide that assistance can be given to CSOs within their jurisdiction in the form of financial assistance for the operation of their project.

Besides assistance for the operation of their projects, CSOs can also get financial resources by working together with governmental agencies. Ministries and relevant departments have cooperated with CSOs for the implementation of their programs. Against this backdrop, the Public Procurement Act 2007 has opened avenues for service delivery by CSOs which could be another option available to CSOs to obtain resources. According to section 46(1) of the said Act, "If promptness, effectiveness and economy are achieved in having works such as public awareness training, orientation, empowerment, main-streaming carried out by a NGO, the Public Entity may have such work carried out or obtain such services from a non-governmental organization by application of the process."

The CSO participants in the FGDs expressed that the existing legal framework concerning government funding is favorable and that there are no significant legal or non-legal barriers to transparent government support. Furthermore, the participants argued that the government currently does not have any policy for using CSOs' human and physical resources more efficiently for their projects. The government uses consultancy services, with often high fees. The participants of the FGDs were in favor of the allocation of a certain percent of government funds to CSOs.
It has been observed that there are funding opportunities created by international NGOs working along with government and other institutions globally. The disbursement of government funds was viewed as extremely unpredictable, opaque, confusing and/or biased by some of the participants of the focus groups and they expressed that they were not optimistic about any positive development in the government’s support to CSOs in the near future.

Besides funding from government and foreign sources, CSOs are also able to generate their own funding from sources such as direct donations to the CSO and membership fees. Additionally, CSOs can also engage in resource-generating activities, such as the sale of their publications. It is important to note in this respect that such resource-generating activities are considered as economic activities by the tax laws, and therefore subject to income tax.

The legal and policy framework tends to support the access of CSOs to local resources. However, government funding is limited and it does not include core funding to CSOs. Additionally, government funds are not always available for specific projects and objectives. However, the donor agencies and international NGOs have their respective policies in place to provide in some instances core funding or funding of the operational costs of CSOs.

We can conclude, based on the analysis of the legal provisions, policies, interviews and focus group discussions that the situation of government funding on CSOs has improved. The government of Nepal has been working together in partnership with CSOs particularly in areas of raising awareness and the implementation of laws. Furthermore, the government and civil society have collaborated recently in the process of developing a new Constitution\textsuperscript{32} Constitutional making process and the emergency relief efforts following the April 2015 earthquake.

### 3.3.2. International funding

International funding is one of the major sources of funding for CSOs in Nepal. In order to obtain assistance from international sources, CSOs need to seek prior approval from the Social Welfare Council (SWC). Section 16 (1) reads as follows:

"(1) Social organizations and institutions willing to get material, technical, economic or any other kind of assistance either from the Government of Nepal or foreign countries, international social organizations and institutions or missions or individuals shall submit a project proposal and application along with other details to the Council as prescribed. Provided that, yearly assistance up to Two Hundred Thousand Rupees for the project that to be finished immediately may be taken only giving prior notice to the Council and after the completion of said work, a report should be submitted to the Council, within the period of three months."

An exception is made in the case of emergency assistance or assistance of less than NPR 200,000 (about 2000 US$) per year. Approval in these cases can be obtained after the accomplishment of the activities or projects. The proviso of the same sub-section has restricted the approval stating that "no permission may be given to the work or project which is against national interest". The Act has however, not defined what is considered national interest.

Subsection (2) allows the SWC a period of forty-five days to give the necessary approval, in coordination with the relevant ministry or agency.

Furthermore, sub-section 4 of Section 16 provides that "no pre-permission shall be required to those international institutions established under international agreements in which Government of Nepal is a party for

\textsuperscript{32} The new Constitution replaced the Interim Constitution of 2007, and came into effect on 20 September 2015.
assistance that relates to emergency relief services”. However, even in that case, there is a requirement of giving notification to the SWC after receiving such assistance. Section 16(5) requires that the assistance, which is subject to approval of the SWC, should be channeled through the commercial banks in Nepal.

There are no restrictions imposed on bilateral or multilateral agreements regarding international funding. The Social Welfare Act however has not addressed the issue of repatriation of excess budget that has not been spent by concerned CSOs. However, in practice if a CSO has not spent the full budget, the remainder goes back to its donors. Besides the official bilateral and multilateral donors, international NGOs can also partner with CSOs in the country to implement their projects. Certain non-legal barriers such as the difficulty in developing trust with donor agencies and international NGOs are making it difficult for newly established CSOs to benefit from such opportunities. Furthermore, participants of the focus groups also expressed that there is a monopoly of foreign funds by a small number of well-established CSOs. CSOs with a good track record and goodwill often turn out to be the recipients of international funding opportunities. This has led to a situation where a small group of CSOs are enjoying the monopoly over a majority of the available external resources. On the other hand, international NGOs and even UN agencies within the country have access to funds from bilateral donors and multilateral donors such as the European Union. These practices have constrained CSOs in their ability to mobilize sufficient foreign funding from international organizations.

A challenge that was pointed out by participants in the focus groups is the agenda-setting by donors. Donors – through their funding – tend to impose their agenda on CSOs. This kind of indirect or direct imposition of interests of the donors (especially international NGOs) has been a hindrance to the independent functioning of CSOs in Nepal.

Additionally, participants in the focus groups have also expressed that the procedure to obtain funds from donors is complicated and lengthy, mainly with the procedure of getting approval from the SWC acting as a hindrance with regard to access to resources by CSOs.

The government does not have a substantive impact on the regulation of funding by donor agencies. It is left to the discretion of the donor agencies to partner with local CSOs and if a donor agency trusts and decides to make a CSO its local partner, there are no regulatory procedures to be fulfilled other than obtaining an approval from the SWC on the project agreement.

But, according to the Development Cooperation Policy 2014, policy 2.9.12, CSOs are required to report to the SWC, the Ministry of Finance, and the National Planning Commission with details of financial and project progress.

### 3.3.3. Philanthropy

Besides government and international funding, the existing legal framework also seeks to promote funding from private donors. The Income Tax Act 2002 is one of the laws that encourages private assistance to the CSOs. According to section 12 of Income Tax Act 2002, any amount contributed as gifts or donations to tax exempted organizations, such as CSOs, may be claimed for exemption or deduction while calculating the income tax of such person or company making the contribution. Section 12(1) of the Act reads: “(1) A person may claim to have their taxable income for an income-year reduced by gifts made by the person during the year to an exempt organization”. However, subsection (2) of the same section limits the deduction to a maximum amount of Rs. 100,000 (approximately 1,000 USD) or 5 percent of the person's adjusted taxable income for the year, whichever lower.
Besides provisions in the Income Tax Act, there are no separate laws that govern philanthropy, while existing laws do not clearly define philanthropy. Laws that regulate the formation and operation of CSOs such as the Association Registration Act and the Companies Act also regulate philanthropic activities of them.

There are no restrictions for CSOs to receive funds from corporate or individual philanthropy and Nepalese institutions. Section 16(1) of the Social Welfare Act, however, also applies here, meaning that CSOs need to apply to the Social Welfare Council in order to obtain such assistance (see above, under international funding).

On the other hand Donations Act, 1973 section 3 of the Act reads: “Except to accept and give donation voluntarily for religious, charitable or for other public purpose without specifying the rate of donation upon taking prior permission from the Government of Nepal, no person or government or non-government office or organization shall collect or accept donation from any one”. Notwithstanding anything contained in subsection (1), a zone level committee constituted under the government pursuant to section 4 may give permission to collect donations particularly for educational and social organization and for other development activities to be made expenditure as prescribed pursuant to the Rules framed under the Donations Act 1973.

3.3.4. Draft laws

Section 27 of daft Social Welfare Act provides that social welfare related activities of the Government of Nepal could be carried out through established CSOs, providing a list of activities whereby CSO can be mobilized, i.e. benefits and welfare of children, elder, differently able indigenous people, Dalit and marginalized communities, programs related to employment and self-employment, women empowerment, participation in local development, programs against societal superstition and malpractice, poverty alleviation, economic, social, academic and cultural development; programs related to law and human rights, forest and environment conservation and eliminations of natural calamities and public awareness programs. Furthermore, section 28 of the draft Act also empowers the Social Welfare Council (SWC) to determine priority areas for CSOs to work on. This strengthening of the SWC to determine the priority areas of priority could be a hindrance for obtaining resources for CSOs because it may limit to the CSOs.

With regards to international funding, section 17 of the draft Social Welfare Act 2014, which has not yet been tabled in parliament, CSOs working on social welfare are required to be affiliated to the Social Welfare Council. Section 23 of the draft Act requires mandatory approval from the Social Welfare Council before obtaining assistance from foreign countries, INGOs or foreign individuals, which is already a requirement in the current Social Welfare Act. The agreement on the assistance of such donors must be presented to and approved by Facilitation Committee under Ministry of Women Children and Social Welfare. However, in the case of emergency relief, an amount not exceeding NPR 500,000 (about 5,000 US$) per annum can be obtained by providing information thereof to the Social Welfare Council and provide the Council with details of such expenses within three months. Additionally, section 30 of draft Social Welfare Act provides that foreign assistance must be going through proper banking channels, while section 25 restricts CSOs from obtaining foreign aid, if such aid is used or is likely to be used for the deterioration of societal norms of Nepal, used against social morale or provoke violence.

3.4. Expression

Freedom of expression is universally acknowledged as a fundamental human right and is essential for a democratic society. The right to freedom of expression is interlinked with other basic human
rights including freedom to access information, freedom of assembly, freedom of association, freedom of opinion and freedom of thought, conscience and religion. The freedom of expression is of a fundamental nature and is widely considered as a cornerstone of all democratic rights and freedoms. Recognizing the pivotal significance of freedom relating to information and expression, the first United Nations General Assembly (UNGA) in its resolution 59(i) on 14 December 1946 stated that: “Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.”

With the adoption of the United Nations Declaration on Human Rights (UDHR), freedom of expression was acknowledged as one of the basic and universal human rights. Article 19 of UDHR entrusted everyone with right to freedom of opinion and expression; including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (UNGA, 1948). Similarly, the International Covenant in Civil and Political Rights (ICCPR), to which Nepal is a state party, provides in its article 19:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The UN Human Rights Committee (UNHRC) in its General Comment No. 34 in 2011 relating to freedom of opinion and expression has elaborated that: “freedom of opinion and expression are indispensable conditions for the full development of the person and are essential for any society as they constitute the foundation stone for every free and democratic society”.

3.4.1. Freedom of expression in Nepal

Article 17 (2)(a) of the Constitution of Nepal 2015, recognizes freedom of expression as a fundamental right. However this right is limited only to citizens, and subject to so-called ‘reasonable restrictions’:

“Nothing in section (a) shall be deemed to prevent the making of an Act to impose reasonable restrictions on any act which may undermine the nationality, sovereignty, independence and indivisibility of Nepal, or federal units, or jeopardizes the harmonious relations subsisting among the people of various caste, ethnicity, religion, or communities, or incites racial discrimination, or untouchability, or disrespects labor, or any act of defamation, or contempt of court, or an incitement of offence, or is contrary to decent public behavior or morality.”

The obligation of Nepal to guarantee freedom of expression, as article 19 of the ICCPR, is reaffirmed by section 9 of the Nepal Treaty Act 1990, which states that provisions of international treaties ratified by Nepal are to be applicable as domestic law. Even if in case of conflict arising between treaties and domestic laws, the provisions of treaties prevail. So, it can be interpreted that article 19 of ICCPR has full implication in Nepal.

The Nepali Constitution and laws guarantee for freedom of expression to the individual, not addressing similar rights to entities, such as CSOs. Although the law does not mention rights or restrictions with regards to the freedom of expression of CSOs, we argue that the same rights , apply for CSOs as well.

The Constitution restricts the freedom of opinion and expression in the following clause (article 17 (2) (1)):

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33 UNGA, 1946
34 Art. 19, ICCPR, UNGA, 1966
35 CCPR/C/GC/34
“…Nothing in section (a) [freedom of opinion and expression] shall be deemed to prevent the making of an Act to impose reasonable restrictions on any act which may undermine the nationality, sovereignty, independence and indivisibility of Nepal, or federal units, or jeopardizes the harmonious relations subsisting among the people of various caste, ethnicity, religion, or communities, or incites racial discrimination, or untouchability, or disrespects labor, or any act of defamation, or contempt of court, or an incitement of offence, or is contrary to decent public behavior or morality.”

Additionally, the Constitution allows for a suspension of the freedom of expression and other fundamental rights such as the freedom of peaceful assembly in a state of emergency, pursuant to its article 273 (10) which reads, “The President may, at the time of making a proclamation or order of a state of emergency pursuant to Clause (1), suspend the fundamental rights as provided in Part 3 for as long as the proclamation or order is in operation.

The content available on electronic media is governed primarily by the Electronic Transactions Act 2008. Section 47 of the Act has criminalized “the act of publication of illegal materials in electronic form”. Any person can be penalized in case he/she publishes or displays any material in the electronic media including computer and internet which are prohibited by the prevailing law or which may be infringe on public morality or decent behavior. Additionally any type of material which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities.

In case of an offence committed under section 47 by an organization, it will be considered as being committed by the person who was responsible as the chief of operation from the organization, unless he can prove that the offense was committed without his/her knowledge (section 57 of said Act).

Some Public (Crime and Punishment) Act 1970 also regulates expression, under Section 2(1)(c) which prohibits,

"(c) To break public peace or to make obscene show by using obscene speech, word or gesture in public place,

(c1) To print or publish any obscene materials by using obscene language or by any word or picture which denotes obscene meaning; or to exhibit or sell or distribute such obscene publication in public place other than the purpose of public health or health science;"

The legal environment for the freedom of expression, based on the above analysis, is enabling for CSOs, except for the restrictions provided in the constitutional clause and other relevant laws. Despite the absence of any unlawful restrictions on the freedom of expression, in practice the government imposes in some cases defacto restrictions on certain topics (such as the intervention of the police on LGBTI’s and Tibetan Refugees’ movement) are observed, if the local administration deems such activities threatens social harmony, escalate security situation or affect to the sovereignty of neighboring country

In some cases, the purpose of imposed restriction is to avoid lawsuit under the Libel and Slander Act 1959, which regulates acts of libel and slander, while in other cases, it is to maintain an amicable relationship with the government and its respective organs. Therefore, the study does not show any legal barriers hindering CSOs ability to openly exercise freedom of opinion and expression.

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36 As mentioned before, the freedom of association cannot be suspended in a state of emergency.
3.4.2. Draft laws

There are currently no draft laws under discussion that deal with the issue of freedom of expression. Upon examining the existing Constitutional provisions as well as domestic laws and the international legal obligations of Nepal, it can be concluded that the freedom of expression is deemed enabling for CSOs. On the basis of available legal framework, CSOs can openly express their opinion on any matters including governmental policies. There are no explicit legal restrictions on the exercise of right to expression of CSOs.

3.4.3. Perspective of CSOs

The participants of the focus groups and interviews were aware of the existing legal provisions related to freedom of expression and its implications. To a large extent they expressed that they are exercising their right to freely express their opinion without being suppressed. The political culture was assessed as being liberal in respecting the freedom of expression with a few exceptions, which were said to be only sporadic in nature. A widespread political intolerance towards freedom of expression does not exist in Nepal.

Some of the discussions focused on the issue of anticipated lawsuits on basis of the Libel and Slander Act, which might be directed towards practitioners with malafide intention. The participants in the interviews and focus group discussions regarding the suggestions relating to attribution of expression towards CSOs for the organizational position held their view that the issue targeting the person beyond the veil is unfounded, given that CSOs maintain their distinct personality.

Some of the participants were also of the view that the level of tolerance towards expression largely depend on the government and its underlying values. The participants reflected on their experiences with restrictions on expression and the curtailment of rights during King Gyanendra’s reign when he assumed direct authority in February 2005. Instances like this in a transitional country like Nepal raises concerns over the freedom of expression.

3.5. Peaceful assembly

An assembly refers to an intentional and temporary gathering in a private or public space for a specific purpose which may include demonstrations, inside indoor meetings, strikes, processions, rallies and even sits-in. The freedom of assembly plays a vital role in democracy and in the mobilization of the population and the formulation of grievances and aspirations, the facilitation of the celebration of events and, importantly, influencing the states' public policy. The freedom of peaceful assembly serves as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. The freedom of peaceful assembly is an essential component of democracy as it empowers individuals to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable”.

Such interdependence and interrelatedness with other rights make freedom of peaceful assembly a valuable indicator of a state’s respect for the enjoyment of many other human rights.

37 For further details on King Gyanendra’s regime, see for example: http://www.bbc.com/news/world-south-asia-12499391

The right to freedom of peaceful assembly is one of the fundamental human rights guaranteed under international human rights law. Article 20 of the Universal Declaration of Human Rights guarantees the freedom of peaceful assembly and association: The International Covenant on Civil and Political Rights (ICCPR) also guarantees the right of peaceful assembly in its article 21: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others." This right applies to all individuals such as minors, indigenous peoples, persons with disabilities, individuals belonging to minority groups or other groups at risk, including victims of discrimination because of their sexual orientation and gender identity, non-nationals including stateless persons, refugees or migrants, as well as associations including unregistered groups.

Restrictions on freedom of peaceful assembly can only be justified when it is in conformity with the law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. The generally accepted norm in this regard states that “in adopting laws providing for restrictions … States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed”. As a result, when States would like to restrict these rights, all the above conditions must be met. Any restrictions must therefore be motivated by one of the above limited interests, have a legal basis (be “prescribed by law”), which implies that the law must be accessible and its provisions must be formulated with sufficient precision and be “necessary in a democratic society”. The enjoyment of the right to hold and participate in peaceful assemblies entails the fulfillment by the state of its positive obligation to facilitate the exercise of this right.

3.5.1. Freedom of peaceful assembly in Nepal

Freedom of peaceful assembly is guaranteed as a fundamental right under the Constitution of Nepal 2015 and other laws. The Constitution in its article 17(2)(b) has guaranteed freedom of peaceful assembly and states that: “Every citizen shall have the following freedom (…) (b) Freedom to assemble peacefully and without arms”. This constitutional provision of freedom of assembly resembles the provision in the Interim Constitution 2007. In some instances the freedom can be lawfully restricted. In a proviso attached to article 17 of the Constitution the following restrictions apply to the freedom of peaceful assembly: “Nothing in section (b) [freedom to assemble peacefully and without arms] shall be deemed to prevent the making of an Act to impose reasonable restrictions on any act which may undermine the nationality, sovereignty, independence and indivisibility of Nepal, or jeopardize the harmonious relations between federal units, or public law and order situation”. As is the case for the freedom of expression, the right to assemble peacefully can be derogated during a state of emergency, pursuant to article 173(10) of the Constitution.

Furthermore, the Civil Rights Act 1955 under section 6(2) has reiterated the same notion of freedom of peaceful assembly. The section reads: “Subject to the provision of the prevailing laws, all citizens shall have the following right :-(…) (2) To assemble peacefully and without arms and ammunition”.

Those seeking to assemble are not required to obtain prior permission or authorization, except in situations which might lead to disruption of traffic or in a case where security for the participants of the protest or assembly is required. Pursuant to section 6C (1)(a) of Local Administration Act 1971

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an assembly should not obstruct public services or roads or should not destruct any house or vehicle or property. Contravening this provision of section 6C (1)(a) is punishable by a fine up to 10,000 rupees (about 100 US$) or imprisonment up to six months, or both (section 6C(2)).

In practice it is observed that spontaneous assemblies are allowed. There are no limits on time, place and manner besides the restricted area as mentioned above. There are no legal provisions relating to simultaneous assemblies or counter-demonstrations. The Local Administration Act -1971 recognizes the government's responsibility to protect peaceful assemblies.

The Local Administration Act 1971 allows for some restrictions in the freedom of assembly, especially related to preventing violence and riots. Section 6(1) of the Act for example allows the local administrator, Chief District Officer (CDO), to perform the following functions to “prevent any activity if there is any doubt of violence or riot:

(a) If it deems that an assembly, procession or mob (crowd) may take violent or destructive tendency and there is a possibility of disorder from such activities, be/she shall cause to control it through the police and if it goes beyond the control of the police, be/she shall attend him/herself or depute a subordinate officer in the concerned place and persuade to maintain peace and if peace could not be maintained, be/she may cause to use batons, teargas, water force, blank fire as per necessity based on the situation to maintain peace and order;

(b) If it is not possible to maintain peace pursuant to Clause (a) and it deems necessary to open fire to issue warning to the crowd with all clarity before opening the fire; if the mob is not dispersed after such warning and if it becomes necessary to open fire to give order in writing to open fire below the knees”

The CDO can impose a curfew and prohibit assemblies, if it is deemed that the assembly would disturb the peace of the area. Section 6A (1) of the Local Administration Act 1971 reads: "If it is revealed that peace may be violated in any area due to mob hooliganism, the CDO may impose curfew order to prevent movement, assemble or not to commit any other act as prescribed by prescribing the boundaries upon considering the circumstances. While issuing such a curfew order, the CDO shall publicize the order for the information of the general public of the area where curfew is to be imposed and the vicinity". Additionally, section 6 B of said Act allows for a ban of assemblies, meetings and processions if the CDO declares an area as a riot affected area. Gatherings of five or more people fall under this ban, and not obeying this ban can lead to a fine up to 3,000 rupees (approximately 30 USD) and/or imprisonment up to three months.

The Some Public (Crime and Punishment) Act 1970 deals with demonstrators that committed acts of violence, who can be Demonstrators that committed acts of violence can be prosecuted under section 2(k) of the Some Public (Crime and Punishment) Act 1970, which criminalizes any act or any expression that causes intimidation or terror in the general public and breaks public peace by entering or not entering in any public gathering, assembly or demonstration. The CDO can, depending on the gravity of the offence, impose a fine of up to 10,000 rupees (about 100 US$) to the offender or a prison sentence up to two years. But, any order to imprisonment can only be decided upon by Court of Appeal (section 6 of the Some Public (Crime and Punishment) Act 1970).

3.5.2. Perspective of CSOs

Even though the Constitution guarantees the freedom of assembly, CSOs experience this right as restricted at times. Local district administrators have sometimes declared areas as restricted, thereby prohibiting peaceful assemblies to take place in those areas. For instance, during the last days of the first Constituent Assembly, the Kathmandu District Administrator issued on May 18, 2012 an order
to restrict peaceful assembly near the Constituent Assembly, New Baneshwor\textsuperscript{40} and near the residence of high profile individuals.

However, although the law has provided for the overall investigation and punishment against the demonstrators who are accused of violation of laws, the trend in recent times and practice of law enforcement officials indicates that the officials are lenient in this matter, as the people involved in such acts are detained for a few hours and released later. News, reports and observations show that the government is defensive in dealing with demonstrators. The police provide security to the groups having peaceful protest and rallies. However, where the protestors try to cross into a restricted area, police sometimes may use force to stop them.

However, in the past during the regime change there have been instances of use of excessive force by law enforcement officials. In the political movement against the monarch's direct rule in 2006, there was widespread use of excessive and disproportional force. For example, in 2006, a commission was appointed to look into the violence and it produced the “Rayamaji Report\textsuperscript{41}” concerning the aggression of government in the 2005 peaceful protests.

In general, the government of Nepal has not responded to assemblies and protests with violence and aggression.

3.6. Government- CSO relations

3.6.1. Legal environment

The dimension of government - CSO relations is a broad domain and subject matter of divergent discourse. Any relationship between CSOs and the government is dynamic and contextual. Opportunities and spaces for engagement between governments and CSOs are embedded in the wider political, social and legal context of the country. Constructive engagement between CSOs and governments are far more likely in well-established democracies that have a strong rule of law than in more authoritarian regimes, where independent civic groups may be rather seen as a threat than an asset. Yet in any context relations between civil society and government can range from extremely close to extremely confrontational\textsuperscript{42}, while the quality of relationships can also differ at different levels of government.

The relationship between CSOs and the government can take different forms. In some cases the relationship can be contractual where some CSOs implement government policies and programs through their work, often receiving funding to this end. In other cases, the relationship can be contributing where CSOs participate and contribute in the policy dialogue process and make recommendations for appropriate responses to specific situations or issues. The existing scenario of CSOs in most of the world vis-à-vis the government reflects complementarities, i.e. working in parallel as separate/autonomous entities within the same system of issues and relationships. The relationship


\textsuperscript{41} The Rayamaji Commission was appointed after the 2006 Democracy Movement that led ultimately to the overthrow of the monarchy was established to investigate and recommend punishment for those who were responsible for the abuse of state power following the royal coup on 1 February 2005. However, None of the recommendations of these commissions, however, has been implemented.

can also be *contesting or confrontational* when CSOs challenge government actions, priorities and behaviors.

CSOs are nonpartisan and non-political in nature. CSOs in Nepal do not actively support or oppose political parties or its candidates nor are they engaged in raising funds for political ends. Although there are no explicit provisions restricting such kind of practices, it is a general understanding in civil society which is often reflected in the statutes of the CSOs. Remaining nonpartisan and independent are values to which CSOs adhere to on their own...

There are no restrictions on CSOs working on policy activities, advocacy and lobbying. CSOs often play a significant role in matters of public policy. There have been instances where CSOs have acted as a catalyst in social, legal and economic policy changes. CSOs in Nepal have often assumed the role of a vigilant watchdog and have supported the government in developing policies and decisions reminding the government of its commitments. In some cases, CSOs in Nepal have resorted to the Supreme Courts to uphold rights and to tackle some of the government’s arbitrary rules, policies and activities.

Multiple avenues, both legal and institutional, are available for CSOs in Nepal to participate in decision-making processes. For instance, NGO Federation of Nepal (NFN) participates, as a representative of the CSO sector, in various committees of Government:

1) The Paris Declaration Evaluation Committee, within the Ministry of Finance;
2) The High-Level Least Developed Country Watch Committee, within the Ministry of Foreign Affairs;
3) The Revenue Consultation Sub-Committee (Education and Social Development), within the Ministry of Finance;
4) The National Development Council, within the National Planning Commission
5) The National Human Development Report Steering Committee, within the National Planning Commission;
6) The Project Advisory Board, within the National Human Rights Commission;
7) The Action Plan Committee on Violence against women; within the Office of the Prime Minister;
8) The Coordination Committee; within the Employment Information Center Operation and Management Committee, Ministry of Labor and Employment;
9) The Steering Committee/National Advisory Committee of the National Conservation Strategy; within the Ministry of Forest and Soil Conservation;
10) The Steering Committee of the Multi Stakeholder Forestry Program; within the Department of Forest Research and Survey;
11) The Central Implementation Coordination Committee of Gender Equality and Women Empowerment Project; within the Ministry of Children Women and Social Welfare;
12) The Climate Change Council; within the Ministry of Science, Technology and Environment;
13) The High-Level Coordination Committee for Volunteering; within the National Planning Commission;
14) The Child Friendly Local Governance Central Coordination Committee; within the Ministry of Federal Affairs and Local Development;

15) The committee on Promoting Community-based Adaptation through Integrated Management of Agriculture, Water, Forest and Biodiversity Sector; within the Ministry of Science, Technology and Environment;

16) The Advisory Board of Supporting Participatory Constitution Building in Nepal; project supported by UNDP

17) The High Value Agriculture Crop Project Steering Committee; within the Ministry of Agriculture;

18) The Project Steering Committee of the Adaptation for Smallholders in Hilly Areas (ASHA Project); within the Ministry of Forest and Social Conservation;

19) The Central Agriculture Development Implementation Committee; within the Ministry of Agriculture Development.

Similarly, NFN is represented, on behalf of CSOs, in about 20-22 various committees and fora of government agencies at the district level on behalf of CSOs. Moreover, the Ministry of Women, Children and Social Welfare has established a separate section within its agency to deal with CSOs. Likewise, many District Development Committees (local government bodies at the district level) have established NGO Desks and appointed some of their staff to engage with and work with NGOs/CSOs.

Besides institutional spaces as described above, sometimes CSO representatives are appointed at councils and committees as members of the team. Examples of such placements are: the Educational Institutions and Research Council, the Consumer Protection Council and the Bonded Labor Prohibition Committee amongst others. Furthermore, the government, when working on particular issues, at times actively seeks co-operation from CSOs or partners with CSOs working in the same sector. For instance, the Caste Based Discrimination and Untouchability (Offence and Punishment) Act 2011 provides for cooperation with CSOs working against caste based discrimination in investigating cases under the Act.43 The National Human Rights Commission Act in its section 9 defines the functions and duties of the Commission as “to encourage the functioning and efforts of institutions working in the non-governmental sector”. The existing legal regime provides several avenues, spaces and mechanisms for the representation and participation of CSOs in state matters. The relationship between CSOs and the government has been developing positively. However, despite the existing institutional and other spaces for CSO participation, there are certain challenges in the CSO-government relationship, which is mentioned later in this report (under 3.6.2).

The role of CSOs has been highly recognized in local government bodies. The Local Self Governance Act (LSGA) 1999 has in its preamble highlighted the importance of the role of CSOs, NGOs, and community-based organizations (CBOs) in the development of the local governance system with an aim to provide responsibilities and authority to such bodies in manners such that they are able to make decisions on matters affecting the lives of the people. The LSGA furthermore incorporates the following legal provisions that relate to CSO participation:

- section 99 provides that it is the duty of ward (local level government body) members to help consumers groups and other CSOs in the selection of projects and formulation of plans;

43 Article 6, Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011
• section 121 provides that CSOs in municipalities have to be encouraged for the identification, formulation, operation, evaluation, repair and maintenance of the town development program within the area of each municipality. The section also gives the possibility of the municipality providing resources to CSOs in order to operate their projects. It also mandates the municipality to implement and operate its plans through CSOs;

• section 189 provides that the District Development Committees can work with CSOs for development and construction activities.

Besides the Local Self Governance Act, the Village Development Committee Assistance Directive 2010 and District Development Committee Assistance Directive 2010 also provides that assistance must be provided to CSOs situated within their respective territory. The Public Procurement Act 2006 provides that if promptness, effectiveness and economy are achieved in having works such as public awareness training, orientation, empowerment, main-streaming carried out by a CSO, the public entity may have such work carried out by a CSO or obtain such services from a CSO by application of the process as prescribed in the Public Procurement Act.44

With respect to the settlement of disputes, government decisions falling within the purview of the Association Registration Act 1977 can be appealed at the Court of Appeal of Nepal. In case of issues or decision not within the mandate of the Association Registration Act 1977, if it can be established that such decisions violate legal/constitutional rights of CSOs or members thereof and that there are no other remedies available, the CSO can file a petition to the Supreme Court invoking its extra-ordinary jurisdiction.45 The CSO can also resort to the Supreme Court in matters concerning public interest.46 Article 133 of Constitution of Nepal 2015 provides avenue for the CSOs to file cases of public interest if the issue has meaningful relation and substantial interest of the concerned CSOs, i.e. the particular CSO must be already working in the issue which it deems to file a case for. There have been many instances where CSOs have used the judicial process to reverse decisions made by the government.47

There also have been instances where the decision of Chief District Officer has been altered through a judicial process of appeal. However, in practice, the use of extraordinary jurisdiction against the decision of the government is a measure that is only used in extreme cases, when all other avenues are depleted. The most used avenue by CSOs is the use of lobby and advocacy strategies.

3.6.2. Perspective of CSOs

The focus group, National Consultation and interviews indicated that practitioners and experts view the present CSO-government relationship as rather harmonious, and many instances exist where CSOs are working as partners of the government. Despite the complementary role of CSOs to the government, it is considered that no formal, effective, regular and structural communication and dialogue exists between CSOs and government. Additionally, the participants mentioned that the dialogue and consultation of CSOs is mostly conducted based on the agenda set by the government. The governments’ adherence to the input provided by CSOs is not guaranteed and such

44 Public Procurement Act, Article 46
45 Article 133(2) of the Constitution, 2015
46 Ibid
47 For instance, Pro Public (NGO) took a Public Interest Litigation case before the court and ensured the directive order from the court that right to environment is a basic human right and activities that degrade the environment should be stopped and avoided. Similarly, Forum for Woman, Law and Development (an NGO) raised the issue of equal parental property to son and daughter before the court. The court ordered the legislation to draft new provision of equal property right to son and daughter. Previously, only the sons were entitled to receive parental property.
consultations are often limited to a mere formality. Many CSOs experience that the relation between government and CSOs depends upon the attitude of specific government officials to some extent.

Despite these challenges, the relationship between CSOs and government has improved much in recent years. The engagement of CSOs in the constitutional process, in the disaster relief activities following the earthquake, and with citizen engagements in recent times has shown the indispensable role that CSOs have taken in complementing the government’s efforts. The existing legal framework is geared towards the enhancement of a constructive relationship between CSOs and the government.

3.7. Taxation

3.7.1. Legal Environment

As CSOs are not driven by profit and focus on investing their available resources to accomplish their objectives and mission for which they were founded, tax exemptions offered by government can be considered as a form of contribution.

According to the current tax regulation, CSOs are exempt from paying income tax and can obtain a tax exemption certificate from the Inland Revenue Office through following a procedure outlined by the tax authorities. The Income Tax Act 2001 does not consider the income of CSOs as within the ambit of taxable income. Section 5 of the Income Tax Act 2001 states that only income generated through business, employment or investment is taxable. Furthermore, section 2(s) of the Act explicitly mentions CSOs as entities entitled to tax exemption: “Following entities registered with the Department as an exempt organization: (s) a social, religious, educational, or a charitable organization of a public character established without having a profit motive”.

Furthermore, section 10 (g) established that gifts and donations or any kind of direct or indirect contributions received by the tax-exempted entity are also exempted from income tax.

Additionally, the Value Added Tax (VAT) Act 1995 does not require CSOs to be registered under VAT. Section 10(3) of the Act established that entities that are granted tax exemption are not required to register for VAT. Section 5 of said Act provides that VAT will only be levied for goods and services imported into Nepal, exported from Nepal or provided for inside Nepal.

Section 10(3) of VAT Act 1995 exempts any person carrying out the transaction of goods or services related to basic agricultural products, goods of basic needs, live animals and their products, agricultural inputs, medicine, medical cure and similar health services, education, books, newspapers, printed materials and printing and publishing, artistic, cultural and carving services, transportation services and professional services from the requirement of getting registered.

With regard to non-for-profit companies, there are no legal provisions regarding tax exemptions and benefits. The Directive on Income Tax 2009, while explaining the “tax exempted institution”, states that even if non-for-profit companies, formed under Companies Act, do not distribute profit, they do not enjoy income tax exemption. However, the Supreme Court of Nepal in the case of Corporate Social Consortium vs. Ministry of Finance quashed the provision and held that non-for-profit companies should have similar tax benefits as provided to CSOs registered under the Association Registration Act.

One of the main concerns for CSOs concerning VAT regulation is created by the Public Procurement Regulation 2007, which has made it mandatory for CSOs working with government

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48 Nepal Law Reporter (NKP) 2069, p 413, Decision number 8785
agencies through public procurement to register for VAT. Rule 19 (1) of the regulation states that, “the public entity shall, in making any procurement, make such procurement only from a person, firm, organization or company who has obtained permanent accounts number and value added tax registration certificate from inland revenue office”. This provision has added the burden of VAT registration for CSOs to work with government agencies. The public procurement regulation has failed to make distinctive provisions regarding CSOs acknowledging its tax and VAT exempted nature.

In practice, CSOs are paying VAT and custom taxes as is required by tax laws and regulations. In line with the above mentioned requirement under the Public Procurement Regulation, CSOs also need to undergo the VAT registration process. However, this goes against the nature of CSOs as they are non-profit making social organizations.

Another conflicting provision related to tax exemptions for CSOs is to be found in the area of micro-finance activities. Despite the generic provision of income tax exemption for CSOs, CSOs undertaking micro-finance activities are required to pay income taxes. This provision creates a tax burden on CSOs undertaking micro financing activities, which are set up as non-profit activities.

3.7.2. Perspective of CSOs

In practice CSOs are granted and are enjoying tax exemption, most notably on income tax, nonetheless specificity in legal provisions is lacking and creating additional burdens for CSOs. Despite a generic tax exemption provision, the law does not have detailed and specific provisions on which taxes are exempted, nor in other dedicated policies governing CSOs. Taxation regulation should consider the financial sustainability of CSOs as one of the most important components for the development of the sector which can be enhanced by favorable tax legislation.

Another issue raised by participants of focus groups and interviewees is the practice of some agencies (especially the Inland Revenue Department) to deduct tax 49 at its source. There was dissatisfaction with the above mentioned provisions in the public procurement regulation and with the tax levied on micro financing activities of CSOs. On the procedural aspect, the tax clearance certificates are required for the renewal of the registration of CSOs, which is made mandatory for CSOs to comply with their tax obligations. Tax clearance certificates can be obtained from Inland Revenue Office.

The participants of the focus groups have also mentioned certain practical challenges with regards to some practical challenges in this dimension, such as the difficulty to get the tax clearance certificates due to a lack of decentralized tax offices in the administrative offices. Additionally, it is sometimes difficult to obtain VAT invoices – especially in remote areas - from suppliers which can create problems during financial audits of CSOs.

Practical difficulties in obtaining tax exemptions for importing goods for charity work was equally highlighted during focus groups and interviews. CSOs need to get prior approval from the Ministry of Finance to get this specific tax exemption, which is difficult to obtain.

The above analysis demonstrates the need for amendments in the tax regulation for CSOs in order to enhance the enabling environment of CSOs. Taxation laws and policies must acknowledge the non-profit making nature of CSOs on the one hand and the need to enhance the financial sustainability of CSOs on the other. The government must use lenient taxation policy as an instrument to encourage the efficient operation of CSOs.

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49 For instance, this occurs with salaries and consultancy fees. Tax Deduction at Source is undertaken by the CSO while making payment to the consultant/employee as a service fee.
Besides the above mentioned challenges in this dimension - the taxation of CSOs on their microfinancing activities and the mandatory registration for VAT for CSOs working for/with the government - practitioners are rather positive with regards to the taxation regime for CSOs in Nepal. Additionally, a decentralization of the Inland Revenue Office to the district level could substantially simplify and ease the tax processes for CSOs.
CHAPTER IV
CONCLUSION AND RECOMMENDATIONS

Nepalese people's freedom of association was only restored after of the arrival of democracy in 1990. For the first time in its history, the freedoms of association, expression and peaceful assembly were guaranteed in Nepal's 1990 Constitution, which are equally considered as fundamental rights in the recent promulgated 2015 Constitution. Certain existing Acts that govern CSOs in the country, such as the Association Registration Act 1977, were adopted during the autocratic Panchayat regime. Although their legal provisions are assessed as rather enabling, and as providing the necessary spaces for CSOs, it is also felt that it is time to replace some of these laws by Acts that reflect the current context in Nepal.

This assessment has highlighted some procedural and legal hindrances to CSOs' enabling environment, amendment of which is necessary to create a truly conducive environment for CSOs. Unfortunately, the exact number of CSOs that exist in the country is unknown by government agencies, which contributes to its negative perception in the wider public. The Ministry of Home Affairs and the Ministry of Women, Children and Social Welfare have initiated a process to draft new separate laws, which is deemed necessary although concerns have been raised by CSOs over these draft laws.

Although the process of registration of CSOs is relatively straightforward, complexity is created through the mandatory annual renewal process and requirements that are rather bureaucratic. Local registration authorities request CSOs to submit several documents, some of which are impractical and burdensome for CSOs. An absence of a one-door service system in the country is felt by CSOs in the country. The Social Welfare Council, the main responsible entity to manage CSOs in the country, is unable to perform its functions due to its poor capacity. Organizations have been gradually more attracted towards not-profit companies, seen the difference between non-for-profit companies and associations in terms of registration procedures and requirements.

CSOs in Nepal rely heavily on foreign funding. The access to resources by CSOs is satisfactory to a certain extent, but challenges exist with certain provisions in the Development Cooperation Policy 2014 and the existence of operational bottlenecks created by bureaucrats, which have reflected negatively in this dimension. Additionally, the requirement of VAT registration in the Public Procurement Regulation, has limited the ability of CSOs to access government funds. Similarly, access of international NGOs to funds from international agencies in the country has negatively affected resource mobilization among local Nepalese CSOs.

As a democratic country, the freedoms of expression and peaceful assembly in Nepal are guaranteed through its Constitution and Acts, while these rights and freedoms are generally also respected in practice. The relation between the government and CSOs is also considered as positive at the national and the local level. Spaces for dialogue between CSOs and the government exist in different fora and policy processes, even though they are not always adequate to fit purpose. In general, a rather negative attitude by government officials and bureaucrats can be observed towards CSOs, although this is not considered as an unsurmountable challenge. Similarly, CSOs are experiencing some practical problems in terms of their taxation, mainly due to conflicting provisions in laws and policies.

The overall assessment of the enabling environment for CSOs on the basis of the seven dimensions assessed in this report reveals that the legislative framework is fairly enabling. The government seems to attempt to provide a favorable setting for the formation and operation of CSOs and their effective functioning. However, despite the de jure provisions in the existing legislation, there is need
for a de facto implementation of provisions at the local level which seems to have fallen short on a few aspects. There is room for improvement to enhance the enabling environment of CSOs, therefore the following recommendations are made based on the assessment of this report:

Legal reform

- In order to regulate and manage CSOs in the country, a single umbrella Act that can govern the Social Welfare Council, NGOs, network organizations, INGOs and other CSOs is recommended which would replace the separate existing Acts. If such umbrella Act is not possible, the government should bring the two current draft laws, developed by the Ministry of Home Affairs (the Association and Organization Act) and by the Ministry of Women, Children and Social Welfare (the Social Welfare Act), together. Nepalese CSOs have provided some corrections its current provisions.

- Any law that governs the formation of CSOs (the Association Registration Act being currently the main law) must classify CSOs according to its nature, function and specialization. The process of forming a CSO must be made more lenient in terms of bureaucratic requirements. A one-door procedure for the registration of CSOs is advised in order to ease and streamline the registration process.

- Documentary and procedural requirements for the registration of CSOs must be uniform for all types of CSOs, as these are currently regulated by different laws and different requirements apply. The same – need for uniformity - applies for the administrative requirements of CSOs’ operation.

- Grounds for the rejection of the registration of CSOs must be clearly outlined in laws, and any vague provision and a lack of uniformity must be avoided.

- The legislation should set out uniform administrative requirements for the operation of CSOs under different Acts.

- Laws should effectively address the procedure regarding the dissolution of CSOs in case they do not function or renew for a long time.

- The operational policies and legal provisions to access government funding by CSOs must be clear and specific.

Formation

- Requirements for the formation of CSOs pursuant to Association Registration Act should be made more clear and practical – including for CSOs in remote areas. For instance, the requirement for CSOs to include a clean criminal report, obtained from the police, in the application for registration has no rationale and should be avoided.

- The vague and extreme discretion granted to the authorities in the registration process should be removed. For example, Section 4(2) of Association Registration Act 1977 provides the authority to register a CSO if “deems it appropriate to register”. This is open to abuse and must be amended.

- Rejections of registration of a CSO forming under the National Directive Act cannot be appealed. Section 8, which restricts such an appeal, should be revised to allow applicants to appeal decisions.
• Facility of registration at 4 levels: Facility of the registration of CSOs at the local, district and provincial and national level must exist according to their pre-determined working area in terms of geography. Compelling practices of registration and affiliation of CSOs in multiple agencies should be removed.

Operation
• Operational requirements for CSOs under the Association Registration Act 1997 is relatively more complex than operational requirements requested from CSOs established under the Company Act (non-for-profit companies). Requirements for the different types of CSOs need to be harmonized.

• Although the Association Registration Act 1977 requests annual reporting and renewal of registrations from CSOs, the Local Government Resource Mobility and Management Directive 2012 (Section 58(5)) requires local CSOs to provide details of their activities to the local authorities each trimester and annually, and specifies that any failure to furnish such detail may be a ground for non-renewal of the CSO registration. The burden of reporting to multiple authorities creates an unfavorable environment, and reporting requirements must be unified and simplified.

• The draft law on Association and Organization 2014 includes burdensome provisions regarding operation which must be amended. The requirement of obtaining prior approval from the Ministry of Finance for receiving foreign funding is practically not viable, and will negatively affect CSOs in the country. This provision will replace the role of the Social Welfare Council, while access to the Ministry will be difficult for ordinary local CSOs.

Access to resources
• The financial sustainability of CSOs will be improved if governments at the national and local levels would allocate a certain percent of their annual budget for CSOs and the implementation of development works.

• Resources from local government bodies must be guided by clear and transparent guidelines and standards as to avoid favoritism and nepotism.

• The Development Cooperation Policy 2014 has installed the Facilitation Committee under the Ministry of Women, Children and Social Welfare as the coordinating body for the recommendation and approval of international cooperation and foreign funding. As the engagement with the Ministry has complicated the process for CSOs, it is recommended that this particular authority is delegated to the Social Welfare Council.

• Allow donations with amounts above NRs 100,000 (about 1000 US$) or 5 percent of income as exempt from income tax.

• The mandatory requirement of registration for VAT for CSOs must be amended in the Public Procurement Regulation.

Expression
• Amendment of section 47 of Electronic Transaction Act 2008, as the grounds for criminalization of publications in electronic media is overly broad and open for abuse.
• Amendment of the Libel and Slander Act is necessary, so it would be in accordance with the spirit of article 19 of the ICCPR.

Freedom of Assembly
• There should not be any restriction on freedom of assembly by District Administration Offices. There should be clear provisions that define the cause and reason for an authority to impose the restriction.

Government-CSO relations
• The government should consult with civil society on draft laws, regulations and policies. This should be reflected in the legal and regulatory framework.
• Recommendations from civil society in for a set up by the government must be taken into consideration.

Taxation
• The mandatory requirement of registration for VAT for CSOs must be amended in the Public Procurement Regulation.
• Government policies should accept and allow invoices without VAT or PAN bills in case of transactions made in remote areas, as many suppliers have no VAT registration. Decentralization of Inland Revenue Offices: all districts should have a local office as to facilitate tax issues of CSOs, including issuing tax clearance certificates.
• Expansion of tax exemptions and benefits for CSOs, for example allow an exemption on customs in case of importing goods for charity works.
ANNEX-I
LIST OF LAWS REVIEWED

International Instruments
i. European Convention of Human Rights, 1950
ii. International Covenant on Civil and Political Rights, 1966
iii. International Monetary Fund (IMF) in its fact sheet of April 9, 2015
v. The Universal Declaration of Human Rights, 1948
vi. UN Human Rights Committee in its General Comment No. 34, 2011
vii. United Nations General Assembly (UNGA) in its resolution 59(i) on 14 December 1946

National Legislation
Constitution
i. Constitution of Nepal 1990
ii. Interim Constitution of Nepal 2006
iii. Constitution of Nepal 2015
Acts
i. Agricultural Research Council Act 1991
ii. Army Act 2006
iii. Bonded Labour Prohibition Act 2001
iv. BP Koirala Memorial Cancer Hospital Act 1996
v. Caste Based Discrimination and Untouchability Act 2011
vi. Child Labor prohibition Act 2000
vii. Children Act 1992
viii. Citizen Investment Trust Act 1990
x. Civil Service Act 1993
xi. Competition Promotion and Market Protection Act 2007
xii. Consumer Protection Act 1997
xiii. Electronic Transaction Act 2008
xiv. Employee Provident Fund Act 2019
xv. Forest Act 1998
xvi. Greater Janakpur Area Development Council Act 1998
xvii. Higher Secondary Education Act 1989
xviii. Human Trafficking and Transportation Control Act 2007
xx. Karnali Academy of Health Services Act 2011
xxi. Kathmandu University Act 1991
xxii. Libel and Slander Act 1959
xxiii. Lumbini Buddhist University Act 2006
xxiv. Lumbini Development Trust 1985
xxv. Martyr Gangalal Heart Center Act 2000
xxvi. Mediation Act 2011
xxvii. Mid Western University Act 2010
xxviii. Music and Dance academy act 2007
xxx. Pashupati Area Development Trust Act 1987
xxxii. Pokhara University Act 1996
xxxii. Police Act 1955
xxxiv. Prison Act 1962
xxxv. Protection and Welfare of the Disabled person Act 1982
xxxvi. Public Procurement Act 2007
xxxvii. Purwanchal University 2050
xxxviii. Right to information Act 2007
xxxix. Some Public (Crime and Punishment) Act 1970
xl. The Association Registration Act 1977
xli. The Company Act 2006
xlii. The Income Tax Act 2000
xliii. The Local Administration Act 1971
xliv. The Local Self-Governance Act 1999
xlvi. The Social Welfare Act 1992

Draft Laws
i. Draft Law on Association and Organization 2014

Regulations
i. Association Registration Regulation 1977
ii. Public Procurement Regulation 2007

Policies
i. Development Cooperation Policy 2014

Directives
i. Local Government Resource Mobility and Management Directive 2012
ii. District Development Committee Assistance Directive 2010
iii. Village Development Committee Assistance Directive 2012
ANNEX-II
REFERENCES

i. Andrew Clapham (Ed. Sir Nigel Rodley and Scott Sheeran), The Use of International Human Rights Law by Civil Society Organizations, Graduate Institute of International and Development Studies, Geneva. P 7


iii. Bridget M. Hutter, Joan O’Mahony, The Role of Civil Society Organizations in Regulating Business (Discussion paper no: 26), London School of Economics and Political Science


v. CISOCH, WG1: T5: Creating an enabling environment for CSOs and Las (available at https://webgate.ec.europa.eu/fpfis/mwikis/aidco/index.php/WG1:_T5:_Creating_an_enabling_environment_for_CSOs_and_LAs)


ix. Jonathan Fox, Civil Society and Political Accountability: Propositions for Discussion


ANNEX-III
ASSESSMENT MATRIX

This table is the assessment of the research findings, with each question evaluated in terms of a green (enabling), yellow (partially enabling) or red (impeding) flag “ranking”.

<table>
<thead>
<tr>
<th>EENA Assessment Matrix</th>
<th>Mandatory Dimensions</th>
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</thead>
<tbody>
<tr>
<td><strong>Dimension #1: Formation</strong></td>
<td></td>
</tr>
<tr>
<td>Factual Questions</td>
<td>Green Flag</td>
</tr>
<tr>
<td>What legal instruments (laws, regulations, decrees, etc.) currently govern(s) the formation of Civil Society Organizations (CSOs)?</td>
<td>The Constitution of Nepal 2015 guarantees the freedom to form associations as part of the fundamental rights (article 17(2)(d)). The freedom of association cannot be suspended in a state of emergency. Section 6 of Citizen's Rights Act 1955 also provides for the freedom to operate and form associations. CSOs can be formed under (1) the Association Registration Act 1977; (2) the National Directive Act 1961 (for CSO related to class and professions) and (3) the Company Act 2006 (for non-for-profit companies).</td>
</tr>
<tr>
<td>Who is legally permitted to serve as a CSO founder? Who is excluded from serving as a founder?</td>
<td>Directive issued by the Ministry of Home Affairs requires founders to be Nepalese citizen. Founders require a proof of clean criminal records along with a recommendation of the local</td>
</tr>
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</table>
3. What minimum number of individuals is required to form a CSO? What are the requirements of membership?

| 7 or 5 minimum members; extensive eligibility requirements |

4. What procedures are required to register/incorporate a CSO? (A comparison can be made with registering business entities.)

| Compared to for-profit legal entities, the formation and registration of CSOs is extremely burdensome. For-profit can be established with incorporation documents (Memorandum and Articles of Association) and copy of citizenship of founder, whereas CSO registration procedure under the Association Registration Act requires proof of clean criminal records for each founder, and a recommendation of local authorities among other documents. In practice also a recommendation of the Regional Administration Office is required in case of complex objectives of the CSO. CSOs related to class and professional organizations (under the National Directive Act) require approval from the Ministry of Home Affairs. |

5. Is there a minimum capitalization requirement to register a CSO?

<p>| Minimum capitalization is not required, but a revenue of NPR 1,000 (10 US$) is required for CSOs under the Association Registration Act and NPR 15,000 (about 150 |</p>
<table>
<thead>
<tr>
<th>Question</th>
<th>US$) for non-for-profit companies</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. What are the specific grounds for rejecting a CSO’s application for registration/ incorporation? Are such grounds sufficiently detailed?</td>
<td>Grounds for rejection are not provided in the Association Registration Act 1977, but section 4(2) allows the officer to proceed with registration if he/she deems it appropriate to register. This provision is vague and allows for extreme discretion to the registration authority. Pursuant to section 6 of Companies act, certain grounds may lead to refusal of registration of non-for-profit companies: e.g. the name of the proposed organization already exists and name and/or objective is contrary to law or public interest, morality and decency.</td>
<td></td>
</tr>
<tr>
<td>7. Must CSOs adhere to certain categories of purpose before being allowed to form; or are some CSOs with certain agendas (human rights protection or democracy promotion, for example) forbidden from forming?</td>
<td>There are no restrictions on CSOs’ purpose under the Association Registration Act 1977.</td>
<td></td>
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<tr>
<td>8. Can registration decisions be appealed? If so, how frequently are registration decisions appealed? What are the results?</td>
<td>Registration applications under the Association Registration Act, 1977 can be appealed in the Appeal Court of Nepal. The same applies for registrations under the Companies Act, 2006.</td>
<td>Section 8 of the National Directive Act (class of professional associations) stipulates that any order or direction given by the government is final and no question can be raised in court in relation to such order/direction.</td>
</tr>
<tr>
<td>9. What documentation is required for a CSO’s incorporation/registration?</td>
<td>Registration of non-for-profit companies is straightforward: a citizenship certificate and two copies of the</td>
<td>Burdensome documentary requirements for establishing CSO under the Association Registration Act, 1997: application form, four copies of the membership base.</td>
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<tr>
<td>Question</td>
<td>Answer</td>
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<tr>
<td>Memorandum/Articles.</td>
<td>copies of the association’s constitution, recommendation of the local authority, minutes of the founder meeting, certified copies of citizenship &amp; clean criminal records of the founders, and if applicable a recommendation of other agencies. CSO to be established under the National Directive Act requires an approval from the Ministry of Home Affairs.</td>
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<tr>
<td>10. Are CSOs required to regularly renew their registration?</td>
<td>Non-for-profit companies are not required to renew their registration; only annual reporting and audit are required. Rule 5 of the Association Registration Regulation 1977 provides that CSOs are required to renew their registration annually.</td>
<td></td>
</tr>
<tr>
<td>11. What registration fees are required?</td>
<td>CSOs under the Association Registration Act: a nominal registration fee of NPR 1000 (about 10 US$) and a renewal fee of NPR 500 (about 5 US$). The registration fee for non-for-profit companies is NPR 15,000 (about 150 US$).</td>
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</tr>
<tr>
<td>12. What is the approximate cost to register a CSO, and how long does the process typically take?</td>
<td>Approximate cost is not clear as the total cost depends on the professional services used (for example lawyer). Estimation of the professional charges for CSOs under the Association Registration Act - 15,000 NPR (about 150 USD); non-for-profit companies - NPR 10,000 (about 100 US$). Unclear deadlines for registration: in practice approximately 60 days is required.</td>
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<tr>
<td>13. How many CSOs are currently registered?</td>
<td>Approx. 40,000 CSOs under the Association Registration Act and...</td>
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<tr>
<td>14. Are there draft laws or regulations that, if adopted, would restrict or, alternatively, ease the formation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.</td>
<td>the National Directive Act. 790 non-profit companies established under the Companies Act.</td>
<td>Yes, a draft law on Association and Organization 2014 is currently under consideration, but has not been tabled in the parliament. Concerns exist with this draft law.</td>
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<table>
<thead>
<tr>
<th>Perception Questions</th>
<th>Green Flag</th>
<th>Yellow Flag</th>
<th>Red Flag</th>
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<tbody>
<tr>
<td>1. Is the entity responsible for registering CSOs sufficiently funded and staffed?</td>
<td>The District Administration Office and the Company Registrar are sufficiently funded and staffed.</td>
<td>Registration under the Association Registration Act can be done at the District Administration Office, located in each district. Issues of accessibilities for CSOs in remote areas. Online registration is not available.</td>
<td>Non-for-profit companies can only be incorporated through an agency that has a total of three branches in whole country.</td>
</tr>
<tr>
<td>2. Is registration easily accessible? E.g., are there sufficient locations/centers around the state for registering CSOs, or is the process all done electronically?</td>
<td></td>
<td>Unreasonable bureaucratic delays in registration; requirement of approval and recommendations from different agencies can be time consuming and results in delays in the registration.</td>
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<tr>
<td>3. What non-legal and/or nongovernmental barriers, such as slow or ineffective bureaucracies, inability to access funds, or difficulty buying/leasing property, affect the formation of CSOs?</td>
<td></td>
<td>Some perceived unfairness (discretion, favoritism, corruption)</td>
<td></td>
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<tr>
<td>4. To what extent is there a perception of excessive discretion, favoritism (political, ethnic, religious, etc.), and/or corruption in the registration process?</td>
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**Dimension #2 Operation**

| Factual Questions | Green Flag | Yellow Flag | Red Flag |
1. What law(s) directly govern(s) the operation of CSOs? Do any other laws affect or influence the operation of CSOs?

The Association Registration Act 1977 and its Regulation along with the National Directive Act 1961, the Social Welfare Act, 1992, the Companies Act, 2006 are specific laws that govern operation of CSO. Specific laws such as the Income Tax Act and the Local Self Governance Act also impacts on the operation of CSOs.

2. Are CSOs required to notify the government of any meetings? If so, of each meeting or only key meetings? Are they required to notify the government of the list of candidates for the board of directors? Of the results of elections?

CSO are required to submit the minutes of the Annual General Assembly, an audit report of the previous year, tax clearance certificate, an annual report and future plan of actions. List of candidates for board of directors is not required. If CSOs want to open a new branch, the minutes of the meeting making that decision is requested.

3. Are CSOs required to submit periodic reports to the government? What kind of reports – e.g. activity or financial reports –, and how often?

Annual report required (annual program, activities, annual audit and next year plan of action) once a year. If the CSOs are affiliated with the Social Welfare Council, then the CSO is required to submit details of aid and assistance obtained. Point 58(5) of the Local Government Resource Mobility and Management Directive 2012 requires CSO to provide details of activities to be submitted to the local authorities quadrimestre and annually, failure to furnish these detail can be a ground to deny
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<tr>
<th>Question</th>
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<tr>
<td>4. Are CSOs required to periodically report to the government for any other reasons? What reasons and how often?</td>
<td>Annual report or in case of utilizing funds up to 200,000 (about 2000 US$), obligation to inform the Social Welfare Council as soon as they spend the amount.</td>
</tr>
<tr>
<td>5. Are CSOs subject to government audits or inspections? How often, and what types?</td>
<td>Rare instances of government audit are observed. However, sometimes for the CSO with high turnovers, government inspects the accounts.</td>
</tr>
<tr>
<td>6. What types of information are CSOs required to publicly disclosing?</td>
<td>CSOs receiving funds from the government, foreign countries or international organizations are considered as Public Bodies pursuant to section 2(a) of the Right to Information Act 2007. Section 3 of the Act gives citizens the right to obtain information from such public bodies. No mandatory disclosure is required.</td>
</tr>
<tr>
<td>7. What administrative requirements affect the operation of CSOs?</td>
<td>Minimal administrative requirements: only annual reports, meetings minutes and audit report.</td>
</tr>
<tr>
<td>8. Are CSOs mandated to align their activities with governmental priorities as defined in national development plans?</td>
<td>No alignment required</td>
</tr>
<tr>
<td>9. On what grounds is the government legally permitted to terminate or dissolve a CSO? Is there an opportunity to appeal this decision?</td>
<td>CSOs can only be dissolved voluntarily. The laws do not effectively address the procedure regarding dissolution of CSOs. Section 14 of the Association</td>
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<tr>
<td>10. On what grounds can a CSO be voluntarily dissolved?</td>
<td>Section 14 of the Association Registration Act, 1977, stipulates that a CSO can only be dissolved voluntary if the CSO cannot operate as per its constitution and any other ground. The last clause of 'any other ground' is vague and has created ambiguity.</td>
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<tr>
<td>11. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease - the operation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.</td>
<td>The new Constitution of Nepal 2015 provides in its Part 4, section 51 (j) (14) that Nepal will adopt a one door policy for establishment, approval, operation and monitoring for CSOs, and making CSOs accountable and transparent. The draft law on Association and Organization 2014, has additional provisions regarding the operation of CSO: transparency of financial and physical resources of association (section 10); compulsory public disclosure of activities, details of balance sheet on an annual or biannual basis, without mentioning the means of such public disclosure; annual report and annual program details; approval from the Ministry of Finance (if the CSO has received foreign funding), audit report, details of the General Meeting as reporting requirements. Additionally section 29 of the draft law allows for the compulsory dissolution of CSOs upon the order of local authorities (on grounds...</td>
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Section 26 of **Draft Social Welfare Act 2014** provides that if the CSO affiliated to the Social Welfare Council (SWC) is found engaged in activities contravening to prevailing laws or its memorandum, the SWC can recommend to suspend or deregister the registration of such CSO.

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<tr>
<td>1. What level of oversight does the government have over CSOs? Extensive, moderate, or light?</td>
<td>Light, requires annual reporting and no prior approval required for its operation.</td>
<td>Administrative requirements somewhat impede CSO's operation – e.g., slow bureaucracy.</td>
<td>Prior approval is required for obtaining foreign funding (see dimension 3: Access to Resources).</td>
</tr>
<tr>
<td>2. In practice, do the legal and administrative requirements referred to above act as impediments to the productive operation of CSOs? Are they helpful to the daily operation of CSOs?</td>
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<tr>
<td>3. Are there non-legal grounds that, in practice, the government use or cites to terminate or dissolve a CSO? In practice, how have such terminations been conducted: according to the law or otherwise?</td>
<td>No non-legal grounds for termination/dissolution.</td>
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<tr>
<td>4. Is there a history of state harassment?</td>
<td>Some history of harassment for not</td>
<td>There were cases of harassment of</td>
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harassment of CSOs for allegedly not adhering to administrative and/or legal requirements? Is there a history of state harassment of CSOs for other reasons or in general?

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<th>Dimension #3: Access to Resources</th>
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<tr>
<td><strong>General Questions about funding environment</strong></td>
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<tbody>
<tr>
<td>1. Which financial resources do CSOs have legal access to: State funds? Earned income? Donations? Foreign donor funding? Other?</td>
<td>No limitation on funding. CSOs in Nepal can obtain resource from governments (in some cases), earn their own income, receive donations (local and foreign donations). The Local Self Governance Act 1998 allows CSOs at the local level to be assisted by local agencies (DDC, VDC or municipality) and cooperation with CSOs in the development work. The District Development Committee Assistance Directive, 2010 and the Village Development Committee Assistance Directive, 2012 both provide that assistance shall be given to CSOs for the operation of their project. CSOs can also apply for financial resources from the governmental agencies for the implementation or advocacy of their programs. section 46 of the Public Procurement Act</td>
<td>Section 2.9.4 of the Development Cooperation Policy 2014, 2.9.4 requires project activities of CSOs to be for national development and should be affiliated to regional priority and requires coordination with the related ministry during preparation of project proposal. Furthermore, the policy (2.9.8) requires the project to be in led by the local authority, and should adopt an implementation modality as prescribed.</td>
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civil society activists who work to defend the rights of Tibetan refugees and Lesbian Gay Bisexual Transgender and Intersex (LGBTI) rights. In 2013, UN High Commissioner for Human Rights Navi Pillay highlighted the arbitrary arrest of transgender person and LGBTI activists by police.
2. What legal barriers hinder access to each of these potential sources of funding?

| 2. What legal barriers hinder access to each of these potential sources of funding? | Some legal barriers to funding: the requirement of prior approval of the agreement between a CSO and a donor agency by the Social Welfare Council (SWC). Affiliation to the SWC is voluntary, but section 16 of the same Act has creates. In case of assistance in emergency situations or assistance of less than NRs 200,000 (about 2,000 US$) per year, the required approval can be requested after the work was undertaken. Policy 2.9.1 of the Development Cooperation Policy 2014, aims to affiliate all CSOs with the SWC and requires CSOs who wish to receive grants from development cooperation, to get approval from SWC (2.9.2). The policy also installs the Ministry of Women, Children and Social welfare as the coordinating entity to recommend and approve such international cooperation aid funding. |

| 3. Do laws and/or regulations prohibit CSOs from distributing profits or otherwise providing inappropriate private benefit to | CSO established under the Companies Act as non-profit companies are mandated not to distribute profit to its founders, |

| CSOs established under the Association Registration Act have no clear legal restrictions on the distribution of profit. The |
| officers, directors, or other insiders? | members or employees. The Company Registrar Office also regulates inappropriate benefits to the companies’ founders, members or employees. | constitution of the CSO declares itself as 'non-profit making' entity. |
| 4. Upon dissolution or termination, what happens to a CSO’s assets? What laws and/or regulations affect distribution of assets upon dissolution? | Section 14 of the Association Registration Act, and Section 167(1)(i) of Companies Act, mandate that the CSOs assets will be transferred to the government after the settlement of debts and liabilities. |  |
| 5. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs access to resources? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands. | Draft Social Welfare Act 2014: section 17 of the draft law mandates CSOs working in social welfare to be affiliated to Social Welfare Council (SWC). Section 23 of the draft requires mandatory approval from the SWC before obtaining assistance from foreign states, INGOs, or foreign individuals. The agreement with such donor must be presented and approved. However, an exception is made for emergencies, for up to yearly NRs. 500,000 (about 5,000 US$), when the CSO need to provide the SWC with required information within 3 months after receiving such funds. Section 28 of the draft act also empowers the SWC to determine priority areas for CSOs to work on. | Draft Social Welfare Act, section 24 provides exceptional instances whereby the approval from SWC is not necessary – for example in case of emergency relief, humanitarian assistance by organization established pursuant to international treaty, financial assistance by NRN, relief distributed during natural calamities. Section 28 of the draft act also empowers the SWC to determine priority areas for CSOs to work on. | Drafts SW Act, in section 25 restrict obtaining foreign aid if such aid is used for deterioration of societal norms of Nepal, used against social morale, provoke violence. |

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<tr>
<td>1. What non-legal and/or nongovernmental barriers hinder access to each of the potential</td>
<td>Some non-legal barriers such as the difficulty to develop trust of donor agencies. Sort of monopoly</td>
<td>Policy 2.9.12 of the Development Cooperation Policy 2014, requires CSOs to provide reports to the</td>
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<td>sources of funding for a CSO?</td>
<td>amongst CSO who obtain the funding. Requirements from donors with regards to experience of the CSO and other funding requirements.</td>
<td>SWC, the Ministry of Finance, and the National Planning Commission with details of financial and physical developments.</td>
<td></td>
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<tr>
<td>2. How reliable is a CSO’s access to legally permissible funds? And how freely available are these funds?</td>
<td>Reliable, available funds: there are funding opportunities created by INGOs working in Nepal, the government and other international institutions.</td>
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<tr>
<td>3. How much does a CSO's financial sustainability depend on government oversight and approval?</td>
<td>Not at all. The government does not have a substantive impact on the oversight and approval of funding by donor agencies to CSOs. If the donor agency trust the CSO and decides to make a CSO its local partner, this will be enough – provided that the approval must be given by governmental agencies (SWC) of the Project Agreement.</td>
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<td>4. How effectively does the legal and policy framework support the mobilization of local resources?</td>
<td>The legal and policy framework tends to support local resources. The laws and directives of the Nepalese government are rather positive for the mobilization of local resources for operation of CSO.</td>
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<tr>
<td>5. Does government and donor funding support the full range of CSO programming and activities, including e.g., innovation, core funding, policy development and advocacy?</td>
<td>Limited availability of such funds. Government funding does not include core funding of CSOs. However, donors have their respective policy to and in some cases provide a certain amount to the core funds of CSOs or its operational costs.</td>
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6. What type of source of funding are CSOs most dependent on?

A variety of funding sources such as government funding, foreign donor funding, self-sustained funding (membership or donation), or earned income (for example income from selling publications).

7. What is the perceived reliability of different sources of funding? (or what source of funding is more reliable for CSOs)

A variety of reliable funding sources

8. Are you seeing any recent changes in the funding environment at the national level? What are the impacts of any changes on CSOs?

Funding environment is improving and is likely to remain so. Government has made CSOs as their partner organizations in advocacy and implementation. In a number of awareness campaign of government, CSOs are being taken as a partner. Furthermore, CSOs are equipped with resources by the government in a few instances such as emergency relief following the recent earthquake.

### b. Government Funding

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<tbody>
<tr>
<td>1. Is government funding currently available for CSOs? If so, is it available for any type of CSO or are there special types of CSOs that are supported by the government?</td>
<td>Government funding is available to a limited number of CSOs for a limited scope of work. The Local Self Governance Act provides the possibility of funding for local CSOs from the District Development Committee. It is upon discretion of the local authorities to provide certain amounts to CSOs. The government issues calls for proposals from CSOs. Some</td>
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2. In what form and at what levels is government funding available? E.g. are grants, subsidies, institutional (core) support provided at the central level and/or at the local level? Is there a special funding mechanism (e.g. a fund) for CSO support? Are there examples of contracting with the government by CSOs?

Limited government funding options; good practice examples exist but are not widespread.

3. What are the laws, rules and policies currently governing government grants and subsidies of CSOs?

The Income Tax Act provides CSOs with exemption of income tax. CSOs’ income is generally tax exempt and gifts (donations) and membership dues are not regarded as 'income'. However, bank interests on the account of CSOs are taxed at source. If CSOs are providing paid services, they are required to pay the applicable income tax. CSOs can obtain a tax-exemption certificate from the Inland Revenue Office. CSOs providing services to the government are obliged to register in the Value Added Tax system. As CSOs are not profit oriented, the mandatory registration in VAT is not a suitable option for CSOs in Nepal.

Perception Questions

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<tr>
<td>1. To what extent is the legal framework conducive to government funding of CSOs? What are specific legal and non-legal barriers to increased, more efficient or more transparent government support?</td>
<td>The task given to CSOs pursuant to Public Procurement Act (making CSOs partner in advocacy or as an implementation partner of a governmental agency) is somewhat transparent because it is preceded by a call for proposals, which is made public and all CSOs can</td>
<td>The legal framework is not so much conducive to the government funding of CSO. Although the framework provides that CSO can receive assistance from the government, it does not establish the procedure to do so. Ambiguity exists in the disbursement of</td>
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### 2. Is the dispersal of government funds seen as predictable, transparent, easily understandable and impartial?

| Government dispersal of funds by making CSOs as local partners is somewhat predictable and transparent because it is preceded by an application, tender, evaluation, expert requirement and other requirement of legal standards and documentations. |

### 3. Has government support decreased or increased within the past years? What is expected in the following years?

| Government support to CSOs has increased the past few years. Due to an increase of CSOs in number and an increase of budget allocation for local bodies, the support has in general increased. |

### c. International Funding

<table>
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<tbody>
<tr>
<td>1. Are there different standards/requirements for accessing foreign sources of funding versus domestic sources of funding?</td>
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<td>Compared to domestic sources of funding, obtaining foreign funds is burdensome, due to the requirement of prior approval of the Social Welfare Council.</td>
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| 2. What are legal barriers to accessing and using foreign resources by a CSO, if any? E.g. is there government notification and/or oversight required to acquire foreign funding? Are there burdensome legal barriers to foreign funding (e.g., permission and onerous reporting requirements)? Any organization that intends to obtain foreign assistance, must apply at least 45 days before the project start date. |

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<tr>
<td>Burdensome legal barriers to foreign funding.</td>
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<tr>
<td>additional reporting requirements when using foreign funding?</td>
<td>days prior the starting date of the project to the SWC, and can only start the project after obtaining approval from SWC. The application must be as prescribed along with project or programme details. A recommendation of concerned agencies must be provided in projects related to rights, research, study, human rights, awareness, peace and security. The consent letter from the related ministry/agency must be attached to the application.</td>
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<tr>
<td>3. Are there bilateral or multilateral agreements in place that affect foreign donors’ ability to donate and establish partnerships with CSOs? If yes, what kind of agreements are they (statement of medium to long-term commitment to a relationship; funding framework, etc.)</td>
<td>No or restrictive bilateral or multilateral agreements regarding foreign funding</td>
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<td>Perception Questions</td>
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<tr>
<td>1. What non-legal barriers to receiving foreign funds exist in practice?</td>
<td>Some non-legal barriers to foreign funds (e.g. complex application and reporting processes). Complex application processes and bureaucracy for obtaining the approval of the project agreement that is to be done with the local CSOs.</td>
<td>Overall governance and rule of law encourages donors</td>
</tr>
<tr>
<td>2. Has the overall state of governance and rule of law in the country affected donor’s contribution to CSOs? If so, how?</td>
<td>Overall governance and rule of law encourages donors</td>
<td>Overall governance and rule of law a risk for donors</td>
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### d. Philanthropy

#### Factual Questions

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<tr>
<td>1. What are the laws and/or regulations specifically addressing philanthropy?</td>
<td>Laws do not clearly define philanthropy. The previously mentioned laws such as Association Registration Act and Companies Act govern the activity of entities that practice philanthropy.</td>
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<td>2. Are tax exemptions available to those who engage in philanthropy?</td>
<td>Donations are exempted from income tax.</td>
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<td>3. Are CSOs permitted to be the recipients of both corporate and individual philanthropy?</td>
<td>No restrictions exist in receiving corporate of individual philanthropy from Nepalese institution.</td>
<td>In the case of donations from foreign individuals, policy 2.5 of the Social Welfare Council, Directive Related to Approval of Foreign Assistance 2014 provides that foreign assistance means any kind of material, technical, financial or any other kind of assistance obtained from a foreign country, INGO, agency or person. Even though this policy considers donations from foreign individuals as foreign assistance, experience shows that authorities deny CSOs obtaining donations from individuals (for example, Finish Women Campaign).</td>
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#### Perception Questions

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<tbody>
<tr>
<td>1. Does the legal and regulatory framework encourage philanthropy? If so, how? If not, how?</td>
<td>Yes, laws are in place to provide tax exemptions for receiving donations, while it is possible to create foundations and endowments.</td>
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<tr>
<td>2. Is there a philanthropic tradition? What encourages it? What discourages it?</td>
<td>Yes, there is a philanthropic tradition based on the religious belief and sense of social</td>
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### Dimension #4: Expression

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<tbody>
<tr>
<td>1. What laws affect a CSO's ability to freely express their opinions? What rights are guaranteed under the existing legal framework, including the constitution, with respect to expression, including access to the Internet?</td>
<td></td>
<td>The Constitution of Nepal and other laws guarantee the freedom of expression. The freedom to expression is subject to suspension when there is a state of emergency (Constitution).</td>
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<tr>
<td>2. Which international treaties have been ratified that affect the ability to publicly express oneself? What treaties have been ratified that affect the right to access the Internet?</td>
<td></td>
<td>All relevant international treaties have been ratified</td>
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<tr>
<td>3. What laws and/or regulations regulate the content of expression? What restrictions are placed on this</td>
<td></td>
<td>Electronic Transaction Act 2008 is the major law that regulates content in electronic forms.</td>
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3. Do CSOs regularly fundraise from the domestic public or corporations? Do CSOs have fundraising capacity? Or capacity to diversify their funding?  
Yes, there are established practices or well-known examples of domestic fundraising, and an increasing level of CSOs' income is from domestic philanthropic sources.

4. Do individuals regularly donate to CSOs?  
No, regular donations are insignificant in the income of most CSOs.

5. Do corporations regularly donate to CSOs?  
No – corporate donations are insignificant in the income of most CSOs. Companies in Nepal do not prioritize donations to CSOs. Companies tend to make their own contribution, as opposed to working with CSOs.
| Content (i.e., restrictions for national security, “fighting words”, commercial speech, obscenity)? | Section 47 of the Act has criminalized the act of publication of illegal materials in electronic form. Section 57 of the Act any offense committed by entities is considered to have been committed by chief of operation. Section 2(1)(c) of Some Public (Crime and Punishment) Act 1970 has prohibited certain actions considered to be a public crime, including the commission of an act of making an obscene show by using obscene speech, word or gesture in public place, to print or publish any obscene materials using obscene language or by any word or picture which denotes obscene meaning. Section 3 of the Libel and Slander Act 1959, has defined libel/defamation, for which punishment has been prescribed in section 5 of the Act (up to 5,000 NPR and/or imprisonment not exceeding 2 years). Section 14 of the Press and Publication Act 1991 has limited the freedom of expression through restricting publications considered as against the sovereignty of Nepal, or anything that may deteriorate the security, peace and management of Nepal, leading to violence between various people in Nepal or deteriorating the morality and social status of general people. Section 15 |
provides that the Nepalese government may prohibit certain news for a certain period after publishing the notice in the Nepalese gazette. Section 16 of the National Broadcasting Act 1992, prohibits the broadcasting of anything against the social security, morale, and social prestige.

4. Are there time, place and manner restrictions placed on expression?

The freedom of expression can be suspended in a state of emergency, according to the Constitution of Nepal 2015. Additionally, certain issues can be prohibited from being published under section 15 of the Press and Publication Act 1991. Section 7 of the National Broadcasting Act 1992 allows for the prohibition of broadcasts provided that such notice must be published in the Gazette of Nepal.

5. What legal barriers, if any, hinder a CSO’s ability to openly express its opinions, particularly on matters critical of government policies?

No legal barriers exist, except the above mentioned suspension in a state of emergency (Constitution).

6. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs’ freedom of expression? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.

No draft laws that affect the freedom of expression.

Perception Questions

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1. What non-legal barriers hinder a CSO’s ability to openly express its opinions?

   Limited non-legal barriers to expression. Threats to file a case under the Libel and Slander Act, due to ambiguity in the terminology, can lead to self-censorship.

2. Is open criticism of government policies and practices tolerated? What, historically, has been the reaction of the government to such open criticism?

   Public criticism is tolerated. In the past, during the period of the King’s direct rule and the state of emergency situation, such kind of criticism was not tolerated.

3. Are individuals and CSOs aware of their rights with respect to expression? Does the political culture openly support these rights? Or are they actively suppressed regardless of legal protections?

   Individuals and CSOs are aware of their rights; the political culture supports free expression.

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**#Dimension 5 : Peaceful Assembly**

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<tr>
<td>1. What laws address the rights to peaceful assembly, including domestic legislation/regulations and international treaties to which the country is a signatory?</td>
<td>Freedom of peaceful assembly is guaranteed in the Constitution of Nepal 2015 and other laws. Every citizen has the right of freedom to assemble peacefully and without arms although there are limitations in case of threats to national security or the freedom aiming at deteriorating the relation amongst the people. The Civil Rights Act 1952 under section 6(2) has reiterated the same notion on the freedom of peaceful assembly.</td>
<td>As is the case with freedom of expression, the freedom of assembly can be suspended in a state of emergency (Constitution).</td>
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<tr>
<td>2. Are there limits placed on who can assemble? Are groups with certain agendas or orientations</td>
<td>Section 6A of Local Administration Act 1971 gives the local administrator the authority to</td>
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<td>forbidden from assembling?</td>
<td>restrict peaceful assemblies in case of riots or chaotic situations. Any such restrictions should be reasonable and should not be discriminatory. A prior notice on such kind of restriction should be provided to general public. As is the case with freedom of expression, the freedom of assembly can be suspended in a state of emergency (Constitution).</td>
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<tr>
<td>3. Are individuals or CSOs planning a strike/protest required to seek permission or notify the government in advance of the strike/protest?</td>
<td>No permission or advance notice is required, except in certain situations e.g., if the protest would block traffic or security is requested; spontaneous assemblies allowed</td>
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<tr>
<td>4. Are there limits on the time, place and manner that individuals or groups can assemble strike, protest or otherwise publicly (and peacefully) express their views?</td>
<td>Minimal limits on time, place and manner of assembly: assemblies are not allowed in restricted areas.</td>
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<tr>
<td>5. How are aggressive/violent demonstrators dealt with in the law and in practice?</td>
<td>Violent demonstrators can be prosecuted under the charge of 'some public offence'. However in practice, protestors are detained for 3-4 hours and released later. Normally, security forces are defensive in dealing with violent demonstrators.</td>
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<tr>
<td>6. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – individuals and/or CSOs right to peacefully assemble? If so, please summarize the content of the key</td>
<td>No draft laws that affect the freedom of peaceful assembly.</td>
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</table>
provisions and in what stage of the legislative process it currently stands.

**Perception Questions**

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1. Is there a history of government-led violence or aggression against peaceful demonstrators, activists and/or strikers?

Yes, there have been frequent instances of disproportionate violence against peaceful demonstrators in the past. The Rayamaji Report in 2005 has reported on a large number of instances of aggression and violence against demonstrators.

2. In practice, are groups who gather to openly criticize the government through protest, strike or other form of peaceful demonstration tolerated?

Criticism and protest are tolerated in practice.

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**Dimension #6: Government-CSO Relations**

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1. To what extent are CSOs permitted to engage in the political (electoral) process? E.g., are they permitted to nominate candidates for public office? Support or oppose political parties/candidates? Fundraise for political parties/candidates? If so, under which conditions?

CSOs are nonpartisan and non-political in nature. They are not allowed to support/oppose political parties/candidates or raise funds for political parties/candidates. Even though this is not restricted in law, in practice it is a general understanding, often included in CSOs’ constitution.

2. To what extent are CSOs allowed to participate in public policy activities? Are they allowed to advocate (campaign) and lobby for legislation? If so, under which conditions?

CSOs are allowed to participate in public policy activities; advocacy and lobbying are permitted with no restrictions. There are a number of instances in which CSOs are playing a role in public policy activities. For example, CSOs such
Enabling Environment National Assessment 2015

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<thead>
<tr>
<th>Question</th>
<th>Response</th>
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<tbody>
<tr>
<td>3. What are legal / institutionalized opportunities for CSOs to</td>
<td>Multiple legal and institutional opportunities exist for CSOs to participate in decision making processes on a regular basis. The NGO Federation of Nepal represents CSOs in a number of committees. Other CSO representatives are also appointed in a number of state level councils and committees, for example in educational institutions and research councils.</td>
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<td>participate in the decision-making process? E.g., are there open</td>
<td></td>
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<td>hearings, consultations, multi-stakeholder working groups?</td>
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<tr>
<td>4. To what extent are there compacts, liaison officers, committees, or</td>
<td>The NGO Federation of Nepal has been awarded with places for representation at state level committees, which has promoted the cooperation and communication between the government and civil society.</td>
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<td>other similar mechanisms to promote cooperation and communication</td>
<td>No draft laws or regulations that will affect government-CSO relations.</td>
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<td>between government and civil society?</td>
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<tr>
<td>5. Are there draft laws or regulations that, if adopted, would inhibit</td>
<td>No draft laws or regulations that will affect government-CSO relations.</td>
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<tr>
<td>– or, alternatively, ease – government-CSO relations? If so, please</td>
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<tr>
<td>summarize the content of the key provisions and in what stage of the</td>
<td></td>
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<tr>
<td>legislative process it currently stands</td>
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<tr>
<td>Perception Questions</td>
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<tr>
<td>1. In general, what is the nature of the relationship between the</td>
<td>Harmonious or “live and let live” relationship between government and CSOs. A number of CSOs</td>
</tr>
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<td>Contentious? Harmonious? Somewhere in the middle?</td>
<td>work closely with the government. According to section 48 of Local Governance Act 1998, the projects of the Village Development Committee (VDC) can be done by different CSOs. The government also follows the policy of taking assistance and working together with CSOs for advocacy and policy development. For example, advocacy/awareness campaigns. The Public Procurement Act, 2006 also provides that, if promptness, effectiveness and economy are achieved in having works such as public awareness training, orientation, empowerment, mainstreaming carried out by a CSO, the government can have such work carried out or obtain such services from a CSO by application of the process as prescribed</td>
</tr>
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| 2. Is there regular communication between CSOs and the Government? How can the quality of the dialogue between the Government and CSOs be characterized? | There is limited, often ineffective communication between CSOs and the government. |

| 3. Are the opinions of CSOs taken into account when drafting legislation, or more generally, anywhere in the legislative process? | CSOs opinions are sometimes taken into account. At least the government tries to have stakeholders meetings. |

<p>| 4. Are there timely consultations with civil society organizations in order for them to impact | Sometimes. |</p>
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>5. Is there full transparency and accountability for development</td>
<td>There is some transparency and accountability (e.g., certain departments publish data)</td>
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<td>priorities, strategies, plans and actions by government?</td>
<td></td>
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<tr>
<td>6. Do CSOs have a mechanism to dispute or appeal certain government</td>
<td>If such a decision is against the Association Registration Act, then it can be appealed at the Appeal Court of Nepal under the provisions of the same Act. However, if the decision is not within the mandate of the Association Registration Act, and there is no other remedy for correction thereof or that violates legal/constitutional rights of CSO, the CSO has the right to take the case into court under extra-ordinary jurisdiction. However, in practice, the use of extra-ordinary jurisdiction against decisions of the government has not been observed frequently. If CSOs are against a decision of the government, they tend to use advocacy and lobby strategies against the decision rather than adopting the legal measures.</td>
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<tr>
<td>decisions at the central or local level? Is this mechanism a reliable,</td>
<td></td>
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<td>genuine and effective way for CSOs to voice their dissent to particular</td>
<td></td>
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<td>government decisions? In practice, has this mechanism been successfully</td>
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<td>utilized by CSOs to produce a fairer result?</td>
<td></td>
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<tr>
<td>7. Does the Government view CSOs as partners and allies in their own</td>
<td>CSOs are sometimes viewed by the government as partners and sometimes as a threat. At times CSOs are ignored by the government.</td>
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<tr>
<td>work, or as potential threats to their agenda?</td>
<td></td>
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<tr>
<td>8. Are CSOs capable of participating in a broad range of public policy</td>
<td>No/minimal non-legal barriers to CSOs’ public policy participation (the government does not prevent CSOs from participating)</td>
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<td>initiatives and activities, or are they restricted by</td>
<td></td>
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</table>
9. Have there been any significant changes in relations between civil society and the government in your country in the last two years? If so, please describe these.

| Relations between civil society and the government have improved in the last two years. Examples: the Nepal Bar Association and other professional associations’ decisions are taken into account by the government. |

10. Have any global events or processes in the past two years affected state-civil society relations at the national level? If so, how? (i.e. The Aid effectiveness debate, etc.)

11. What conditions do you feel need to be in place to allow for a good and effective relationship between state and civil society?

### Optional Dimension

#### Dimension #9: Taxation

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<th>Factual Questions</th>
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<tr>
<td>1. What taxes are imposed on the income of CSOs? Do they affect their earned income, grants, investments, or purchased goods and services?</td>
<td>Section 2(s) of the Income Tax Act 2001, established that entities with the objective of not distributing profit are considered as entities that are tax exempt. Social, religious, educational or philanthropic institutions or sport clubs (non-profit) are exempted from income tax. Additionally, section 10 of the Act provides that donations or gifts or any kind of direct or indirect contributions received by tax exempted institutions are exempted.</td>
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<td>2. Are CSOs subject to VAT and customs taxes?</td>
<td>Value Added Tax Act, 1995 of Nepal does not mandate CSO to be registered under VAT. Section 10(3) of the act provides that it is not necessary for the entity to register in VAT if the entity has a tax exemption. Additionally, activities of CSOs do not qualify for VAT. Section 5 of VAT Act provides that VAT shall be levied only for goods and services imported in Nepal, exported from Nepal or provided inside Nepal. As CSOs do not provide such kind of transaction, primarily CSOs activities are not taxable.</td>
<td>Although CSO are not required to register in VAT pursuant to VAT Act of Nepal, the Public Procurement Regulation 2007 makes VAT registration mandatory for CSOs that work with government entities. Rule 19 provides that procurement should be made only from entities with permanent account numbers and VAT registration certificates. Provision 19(1) states that &quot;the public entity shall, in making any procurement, make such procurement only from a person, firm, organization or company who has obtained permanent accounts number and value added tax registration certificate from inland revenue office&quot;.</td>
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<tr>
<td>3. Are CSOs subject to local taxes, fees or charges, in addition to federal taxes? Are any other levels of taxes imposed (regional or state taxes, for example)?</td>
<td>CSOs are generally tax exempt, or are eligible to receive tax exemptions</td>
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<tr>
<td>4. What are the tax and regulatory requirements on CSOs that engage in economic activities?</td>
<td>CSOs may not engage in economic activities. CSO carrying out microfinance activities are not tax exempt although they do not distribute profit.</td>
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<td>5. Are tax exemptions granted to all CSOs? Are only certain categories of CSOs granted tax exemptions?</td>
<td>Although, CSO are granted with tax exemption, there are problems regarding unclear provisions stating</td>
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6. Are there draft laws or regulations that, if adopted, would affect the taxation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.

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<th>Perception Questions</th>
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<tbody>
<tr>
<td>1. Have taxes been used by the state as a form of repression of CSOs practices? If yes, how so?</td>
<td>No</td>
<td></td>
<td></td>
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<tr>
<td>2. Is CSOs financial sustainability affected by taxes, duties and/or fees? Does tax legislation facilitate or impede CSOs in achieving sustainability in their finances?</td>
<td>CSO financial sustainability is enhanced by tax legislation, e.g. by tax exemptions</td>
<td>Although the tax legislation enhances the financial sustainability of CSOs, the provision of the Public Procurement Act making VAT registration mandatory for CSOs is burdensome.</td>
<td>There is a double burden of taxation CSOs in Nepal—for example, some donor agencies provide budget to CSOs deducting 15 percent of the budget. Furthermore, CSO engaged in microfinance activities are not tax exempt. There is no clear policy nor any laws to waive the income from microfinance activities. The requirement of being ‘non-profit making’ is the sole criteria for giving the status of tax exemption which is problematic. As CSOs cannot engage in profit making activities (earning their own income), CSOs will be dependent on external aid.</td>
</tr>
<tr>
<td>3. To what extent are the tax laws/regulations enforced? Are taxes regularly paid? What is the capacity of the government to enforce tax payments?</td>
<td>The tax laws and regulations have been enforced to a minimum standard. A tax clearance certificate is one of the required documents for the renewal of a CSO’s registration. Governmental</td>
<td></td>
<td>There is lack of accessibility to tax offices, as these are not present at the district level. For example, CSOs have challenges in obtaining the tax clearance certificates and filing tax returns. Additionally,</td>
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procurement policies have made it compulsory for CSOs to comply with the tax liability.

businesses in remote areas in practice sometimes do not have the necessary VAT registration, which makes it difficult to receive VAT invoices. Audits might reflect badly on CSOs when they have non-VAT invoices for services they purchased in remote areas.
ANNEX-IV

ADVOCACY PLAN

1. Context

CSOs are integral part of civil society. They have been widely recognized as an essential element in development worldwide. Increasingly, they have become important players in local, national and international governance processes. Their engagement has proved to have positive influence on the democratic governance of the state. In the past decades, CSOs have seen a significant change in their role and influence in society and politics. They are now one of the major providers of essential services, influential advocates for marginalized groups and knowledgeable advisors on public policy.

The role and contributions of CSOs to Nepal's development, particularly, in defending human rights and providing essential services to poor and disadvantaged social groups are proved to be immensely important. CSOs' contributions in supporting social movements for the realisation of rights of disadvantaged social groups have been catalytic after the restoration of democracy in 1990. In addition to these roles, CSOs are increasingly considered to be the catalytic agents/pressure groups/watchdogs in promoting democratic practices in Nepal's political parties and government entities. The Constitution of Nepal 2015 has recognized CSOs as essential development partners.

The NGO Federation of Nepal (NFN) commenced a research to assess the situation of enabling environment of CSOs in the country called Enabling Environment National Assessment (EENA). This assessment is part of the Civic Space Initiative, implemented by CIVICUS and ICNL in collaboration with Article 19 and the World Movement for Democracy. The study assesses seven dimensions, key to the enabling environment of CSOs namely: Formation, Operation, Access to resources, Expression, Peaceful assembly, Government-CSO relations and Taxation. The study concluded that the legal and policy framework for CSOs in Nepal, including the newly promulgated Constitution, is rather positive towards CSOs, and civil society is been given the necessary space for their operations. However, certain challenges exist, which hinder CSOs’ operations. The EENA in Nepal made several recommendations with the aim of improving the enabling environment for CSOs in the country.

This advocacy plan was prepared based on the discussions and recommendations of the EENA National Consultation, in which CSO activists, representatives and social campaigners participated. Although the EENA has identified several challenges, this advocacy plan is focused on a selected number of recommendations, namely: to minimise operational problems and the improvement of the legal environment for civil society in Nepal.

2. Goal

The goal of this advocacy plan is to contribute to peace, democracy and sustainable development process in the country.

3. Objective

The objective of this plan is to improve the enabling environment for CSOs in the country.

4. Expected outputs

This plan is expected to produce following two outputs:

1) **Improved legal, regulatory and policy environment:** It is anticipated that CSOs would be able to create an adequate pressure to the concerned ministries and government offices to start
the process of regulatory reform as per demand of CSOs. Even if a single umbrella act is not drafted, the proposed draft laws on Association and Organization and Social Welfare drafted by the ministries should be amended as per suggestion of CSOs. Similarly, it is also expected that the Development Cooperation Policy and Public Procurement Regulation will be amended as per the aspirations of CSOs.

2) **Improved operational environment:** Through the means of effective advocacy and lobbying CSOs will create heavy pressure to political parties and government agencies, so the government will be compelled to review their operational practices related with CSOs, as to ease the operation of CSOs. The registration and renewal process should be simplified. Most importantly, interaction and coordination between CSOs and government agencies will be improved and the attitude of government officials vis-à-vis CSOs will become more positive.

5. **Main activities**

The following activities will be undertaken for the above mentioned objectives. the activities will focus at the central level, but some of the activities relate to the local level as well. If it is deemed, NFN will revise its working strategies as demanded by the situation. The following strategies will be used (see also 10.):

1) Consultations
2) Dialogues
3) Meetings
4) Reviews
5) Delegations
6) Appeal
7) Submission of memorandum
8) Social media

6. **Duration**

Duration of the plan will be six months that starts from December 2015 and ends on May 2016. But, the advocacy activities will go beyond that period as well because the creating an enabling environment is a continuous process.

7. **Monitoring and evaluation**

Activities planned for advocacy will closely reviewed during the formal meetings of NFN central board and regional committees. Similarly, mid-term review and final review meetings will be organized among the key CSO networks, which will review the progress and achievements made. Also, they will help to address the problems and challenges faced by the plan. The information related with the activities will be well recorded and documented.

8. **Operational arrangement and resources**

NGO Federation of Nepal (NFN) will be solely responsible to implement this plan. It will form a task force for its smooth implementation. Similarly, its secretariat will support to implement the activities. CSO federations and networks will be close partners for each advocacy activity. Moreover, some financial resources will be required for the implementation of the activities. NFN has planned
to generate financial resources from its own internal fund and explore the avenues to link with its ongoing projects supported by donors.

9. **Risks and assumptions**

There would not be any risks when implementing the planned activities under this advocacy plan. But, the political situation of the country should be improved, which deteriorated after adoption of new constitution. Similarly, the economic blockade imposed by the Indian government should be removed as soon as possible. Cooperation and time contribution of board members and CSOs would be important for the implementation of activities. Further, financial resources required for the activities should be available in time.

10. **Plan of operation**

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<tr>
<th>SN</th>
<th>Activities</th>
<th>Timeframe</th>
<th>Stakeholders</th>
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<tbody>
<tr>
<td>1</td>
<td>Organize consultation meeting with CSOs on legal and operational challenges</td>
<td>December 2015</td>
<td>Civil society networks, alliances and federations and civil society leaders</td>
</tr>
<tr>
<td>2</td>
<td>Organize policy dialogue with government agencies at national level</td>
<td>December 2015</td>
<td>National Planning Commission, Key ministries and civil society networks, alliances and federations</td>
</tr>
<tr>
<td>3</td>
<td>Meeting with political leaders</td>
<td>January 2015</td>
<td>Civil society networks, alliances and federations, Political Parties and Parliamentarians</td>
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<tr>
<td>4</td>
<td>Organize dialogues with government agencies in the selected districts where CSO are facing serious operational problems</td>
<td>February 2016</td>
<td>Government Line Agency Offices, District Administration Offices, District Development Committees, Municipalities and Civil society networks, alliances and federations, Political parties</td>
</tr>
<tr>
<td>5</td>
<td>Organize meeting with Ministry of Finance</td>
<td>March 2016</td>
<td>Civil society networks, alliances and federations and officials of Ministry of Finance</td>
</tr>
<tr>
<td>6</td>
<td>Organize meeting with Public Procurement Monitoring Committee</td>
<td>April 2016</td>
<td>Civil society networks, alliances and federations and officials of Public Procurement Monitoring Committee</td>
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<tr>
<td>7</td>
<td>Review meeting among the CSOs</td>
<td>May 2016</td>
<td>Civil society networks, alliances and federations and civil society leaders</td>
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