

ENABLING ENVIRONMENT FOR VOLUNTARY ORGANIZATIONS

A GLOBAL CAMPAIGN



VOICE OF THE VOLUNTARY SECTOR
VVS

Voluntary Action Network India (VANI)

Enabling Environment for Voluntary Organizations

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PREFACE

Today more than hundred national platforms of voluntary development organizations are active in the world, working towards ensuring enabling environment. The most contested issues like regulatory regime, taxation, capacity building and financial resources are addressed by these national entities. Almost all countries in the world are in transition as far as the relationship between state and voluntary sector is concerned. The boundaries are redefined; the norms of interactions are entering into new arenas. Simultaneously, numerous controlling measures are also imposed on the voluntary organizations. Some governments have started looking tax exemptions to the voluntary sector as the loss of revenue. Some are trying to put check through curtailing the free flow of development aid. All these issues which are addressed by the national platforms which are otherwise cannot raise by the individual organizations. There are high expectations from these national platforms not only from the voluntary sector but also common people as they want to see a strong and vibrant actors who can raise their voice.

This document is an attempt to break the isolation of national platforms, and build a link of information exchange. Working on enabling environment is not only in the hub of the existence of each platform, but it is also area where sharing of information across countries is needed. A thread of solidarity is important today which will facilitate the sharing of experiences and learning's. In collaboration with International Forum of National Platform, VANI initiated an online study last year. The objective of the study was not to develop a thick research report (to begin with) but to collect the basic data from various national platforms, a sensitize each other to build a relationship.

This handbook was done in cooperation with a number of civil society networks from different countries. Their collective inputs contributed to the achievement of the objective of sharing knowledge and experiences of national platforms and other institutions for ensuring enabling environment for voluntary organizations; linking the various national platforms on the issue and develop mutual trust and support; developing and sharing the global picture regarding the challenges being faced by the national platforms; initiating the campaign to support the national platform in

the event of being victimized by the individual government (through joint petitions, technical inputs and solidarity messages); and to make sure that there is solidarity in order for the various networks and organizations to share information among themselves to make the sector strong and effective.

The online survey conducted focused on the policy administration between the government and the voluntary sector. In this handbook, it can be found that the government and voluntary organization needs to have a regular dialogue as well as to regularly engage the sector in various societal issues where the contribution and participation of the voluntary organizations has been in present for a long stretch of time. With regard to policy creation and/or update, the voluntary sector should also be involved given that the sector has been deeply immersed in making sure these policies are being implemented in the relevant sectors of society.

Being a first attempt in this direction, we expect that in the long run it take the shape of campaign wherein national platforms across the world will have ongoing information exchange. We are thankful to International Forum of national Platform and its members for providing VANI for providing this valuable opportunity. I would also like to appreciate the hard work of VANI team to put thing in shape in short period.

Harsh Jaitli

Chief Executive Officer

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ABBREVIATIONS

DTC: Direct Taxes Code (in India)

FCRA: Foreign Contribution Regulation Act (in India)

IFP: International Forum of National NGO Platforms

NGDE: Non-Government Diplomacy Exercises

NGO: Non-Governmental Organization

NPO: Non-for-Profit Organization

OECD: Organization for Economic Co-operation and Development

VAT: Value Added Tax

VANI: Voluntary Action Network India

VO: Voluntary Organization

BACKGROUND

In order to enable national voices to be heard in international negotiations, national platforms of non-governmental organizations (NGOs) from 82 countries decided to create the International Forum of National NGO Platforms (IFP) in October 2008. IFP members ratified 6 priority themes on which they agreed to share their reflections and work by conducting non-government diplomacy exercises (NGDE) which aimed to draw up position papers. These would constitute the basis on which to lobby governments and international governmental organizations. The NGDE themes were:

- ODA and development funding
- Prevention and resolution of conflicts
- Access to water and sanitation
- Fight against social inequality and exclusion
- Regulation of agricultural markets
- Climate change

In October 2011, IFP's facilitation group decided to undertake a seventh NGDE on the subject of enabling environment for voluntary organizations (VOs). In this respect, VANI was given the responsibility of playing the role of the NGDE Secretariat with the following mission:

- To ensure information is shared among the members of the task force.
- To support the emergence of collective positions.
- To contribute to briefing the other members of the forum, notably through publication on the forum website.

VANI for more than two decades has strived to be an effective platform for national and global advocacy. In continuation of its efforts towards promoting and creating an empowering environment for VOs in India and globally, VANI in collaboration with IFP initiated an online survey to collect data on the enabling environment for VOs across several countries.

INTRODUCTION

Since the late 1970s, VOs have played an increasingly prominent role in the development sector. They have been widely praised for their strengths as innovative and grassroots driven organizations with the desire and capacity to pursue participatory and people-centred forms of development and to fill gaps left by the failure of states in meeting the needs of their citizens. The sector has evolved as a viable third sector along with the government and the private sectors.

However, in recent times, VOs have experienced a number of challenges, difficulties and constraints in their operating space. These constraints are either in the form of emergence of new legislations and regulatory regimes or arbitrary implementation of existing laws. A major challenge is the decline of financial resources available to the sector. The sector has been denied the space and freedom to associate and raise the cause of marginalized and deprived groups. Such restrictions have also curtailed the scope to innovate, which the sector is known for.

CONTEXT ANALYSIS

IFP members in every country have encountered similar challenges and in more than 70 national and regional open forum consultations this was highlighted as an important area of intervention. The need to understand the enabling environment of different countries in order to develop a global solidarity campaign for action and protection was expressed. This report is a result of a study on enabling environments for VOs and is the first of its kind as it describes the legislative arrangements in 9 countries and the relationship of VOs with the respective governments. The countries studied were:

1. India
2. Mauritius
3. United States of America
4. Fiji

5. New Zealand
6. Nepal
7. Indonesia
8. Brazil
9. France

The endeavour involved bringing together national platforms of NGOs in these countries. The primary purpose of the task was to support the process of developing regional coalitions to serve as genuine civil society voices on key international issues along with strengthening national platforms and their mutual relationships.

There is an imperative need to work in a collaborative environment with a sense of mutual trust and support. This study was conducted in this context and all efforts have been made to make it a collaborative product.

OBJECTIVES

1. To share the knowledge and experiences of national platforms and other institutions for ensuring enabling environments for VOs.
2. To link various national platforms on the issue and develop mutual trust and support.
3. Develop and share the global picture of the challenges faced by national platforms and contribute in developing regional/global strategies.
4. Initiate the campaign to support the national platform if victimized by the respective government through joint petitions, technical input and solidarity messages.
5. To establish solidarity so that various networks and organizations share information with each other in order to make the sector strong and effective.

RESEARCH METHODOLOGY

With the objective to engage, mobilize and collect experiences, a basic online survey was designed. (See Annexure for the questionnaire used to conduct the survey.) The

survey primarily focused on the regulatory regimes around the world: registration, foreign contributions, income tax and the relationship between the government and the voluntary sector.

DISCUSSION

This report is a source of knowledge, information and guidelines about the status of the voluntary sector in different countries. It is therefore a discussion of the legislative environments under which civil society operates in these countries. The study is divided into four sections:

- Registration
- Foreign contributions
- Income tax
- Relationship between the government and VOs

Each section analyses responses received from organizations in the 9 countries.

Registration

Registering a VO has several advantages. It adds to the general credibility and reliability of the organization and aids in formalizing an identity. This section analyses the process of registration, changes in registration laws in the last 5 years and whether the laws are encouraging or restrictive.

India

There is multiple legislation under which VOs can be incorporated in India. Three legal entities – charitable societies, charitable trusts and non-profit companies – can be registered under three different acts:

1. The Societies Registration Act 1860
2. The Trusts Act 1882
3. The Companies Act 1956

Registration as a Society under Societies Registration Act

A VO may be formed as a society. A society is defined as an association of persons united together by mutual consent to deliberate, determine and act jointly for common purpose. When an organization is constituted as a society, it is registered under the Societies Registration Act 1860, which is a federal act. Registration can be done either at the state level (in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies). Registration as a society is the most common legal entity for an NGO in India. The national act has been adopted by many states. However, some states have separate acts governing the registration of VOs which acts as a hindrance in registration.

The chief advantage of forming a society is that it gives an identity to the organization and provides greater flexibility as it is easier to amend the memorandum and bye-laws of the society. However, formation of a society requires more procedural formalities than registration as a trust. Societies can be dissolved when at least three-fifths of the

society's members approve the dissolution. On dissolution, the funds and property of the society are not to be distributed among the members. Rather, the remaining funds and property have to be given or transferred to another society, preferably one with similar objectives.

A VO registered as a society needs a minimum of seven managing committee members. There is no upper limit to the number of members. The main instruments for managing a society are the memorandum of association and rules and regulations wherein the aims, objectives and mode of management (of the society) are clearly defined.

The national registration law in India is not only more than 150 years old but is also being misused by fly-by-night operators. Any non-profit entity, ranging from large private hospitals to private corporate schools, sports club foundations and even small voluntary development organizations, are registered under the same act. This has not only created ambiguity about the nature, scope and scale of the voluntary sector but has also created a question of its identity. VANI has consistently lobbied for the segregation and definition of the 'voluntary sector', even appealing to the prime minister of the country to update the Societies Registration Act 1860. This will not only help in professionalizing the voluntary sector but will also help in maintaining uniformity of regulatory and reporting mechanisms as well as give an exclusive identity to the voluntary development sector.

Registration as a Trust under Indian Trusts Act

The Indian Trusts Act 1882 is a federal law which permits registration of private trusts. It is the simplest and easiest method of registering an NGO. Registration as a trust has four requirements: the trust property or trust money being the subject matter of the trust, the author of the trust (also called the settler or donor), the trustee or trustees, and the beneficiary. The trustee is the legal owner of the trust property and the property vests with him/her. S/He holds the trust property for the benefit of the beneficiaries and not on their behalf. Different states in India have legislated separate trusts acts. In the absence of a state trust act, the general principles of the Indian Trusts Act 1882 are applied, except in the states of Jammu and Kashmir and the Andaman and Nicobar Islands.

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the charity commissioner can take steps to revive the trust. Further, if the objects of a trust become too difficult to carry out, the doctrine of cy pres (meaning 'as near as possible') is applied to change the objects of the trust. Thus, the grantors are secure that the charitable nature of a trust will be honoured even if the original, specific purposes of the trust cannot be carried out.

Incorporation as a Not-for-Profit Company under Indian Companies Act

The Indian Companies Act 1956, which principally governs for-profit entities, permits certain companies to obtain not-for-profit status under Section 25 of the Act. According to Section 25(1) (a) and (b) of the Indian Companies Act 1956, a Section 25 company can be established 'for promoting commerce, art, science, religion, charity or any other useful object'. A Section 25 company must apply its profits, if any, or other income to the promotion of its objects and prohibits payment of any dividend to its members.

Incorporation as a non-profit company is the least exercised option because it is expensive and cumbersome in nature. To obtain a license under Section 25 of the Companies Act without suffixing the words 'limited' or 'private limited', an association in the application must include copies of the memorandum and articles of association as well as a number of other documents, including a statement of assets and a brief description of the organization's objectives; list of companies, associations and other institutions in which such promoters are directors or hold responsible positions, with description of the positions so held; an estimate of the future annual income and expenditure, specifying the sources of the income and the objects of the expenditure; a statement giving a brief description of the work, if any, already done by the association and proposed to be done after registration; a statement specifying briefly the grounds on which the application is being made; a declaration by each of the persons making the application that he/she is of sound mind, not un-discharged, insolvent, has not been convicted by a court for any offence and does not stand disqualified for appointment as a director.

A Section 25 company needs a minimum of three members; there is no upper limit to the number of members. The governing structure of a Section 25 company is similar

to that of a society. It is governed by directors or a managing committee or a governing council elected by its members.

Section 25 companies can be dissolved and after settlement of all debts and liabilities, the funds and property of the company are not to be distributed among the members. Instead, the remaining funds and property must be given or transferred to some other Section 25 company, preferably one with similar objectives.

There is need for an updated legal registration mechanism for VOs in India which will help in bringing about a uniform regulatory and reporting mechanism.

Mauritius

NGOs in Mauritius are registered under the following:

1. Registrar of Associations Act 1982 which is a unit with the Ministry of Labour
2. There are also specific organizations to which NGOs are affiliated
3. They can also be registered under the Trust Act
4. The registrar of companies
5. As governed by an Act of Parliament

The Government of Mauritius and the voluntary sector are presently working on a legal framework for NGOs which will address the regulatory framework of NGOs in Mauritius. The Registration of Associations Act was proposed to be amended in 2004.

The registration laws in Mauritius are not restrictive and new laws are being drafted to address the following issues:¹

1. The current mandatory registration which violates international law protecting the freedom of association and could hinder the formation of smaller community-based groups and ad-hoc coalitions that operate more effectively on an informal basis.

¹ Report by Law Reform Commission, 'Laws Relating to NGOs: Legislative Proposals for a New Legal and Regulatory Framework' (November 2008), <http://www.gov.mu/portal/goc/lrc/files/rep-ngo-071009.pdf>

2. The insufficient procedural safeguards to ensure a speedy registration process. The current Act does not include a fixed time period within which the registrar must review registration applications (this can take more than six months to a year).
3. The Act does not distinguish association sizes.
4. Lack of provision relating to the splitting up or division of one association into two or more associations (as with mergers).
5. Improved cancellation and winding up procedures to ensure the grounds for cancellation are exhaustive and objective.

New Zealand

There are many non-governmental and civil society organizations throughout New Zealand. Statistics New Zealand (a government department) and the national statistical office counted 97,000 non-profit institutions operating in New Zealand in 2005.²

To register as an NPO, the organization must register with the New Zealand Ministry of Economic Development under the Incorporated Societies Act 1908.³ This is done through submitting an application form, a copy of the society's rules and a filing fee of NZ\$102.22.⁴

For tax and fundraising purposes, all charities are advised to register with the Charities Commission, the body responsible for the registration and monitoring of NGOs in New Zealand.⁵

The New Zealand Law Commission published an issue paper in June 2011 titled, 'Reforming the Incorporated Societies Act 1908'.⁶ Conclusions from the paper suggest

² http://www.stats.govt.nz/browse_for_stats/people_and_communities/households/non-profitinstitutionsatelliteaccount_hotp2005.aspx

³ <http://www.legislation.govt.nz/act/public/1908/0212/latest/DLM175775.html>

⁴ <http://www.legislation.govt.nz/act/public/1908/0212/latest/DLM175775.html> (The Incorporated Societies Act 1908) <http://www.societies.govt.nz/cms/incorporated-societies/starting-an-incorporated-society/>

⁵ Commonwealth of Nations website, http://www.commonwealthofnations.org/civil-society/pacific/new-zealand/national-ngos__civil_society

⁶ http://www.lawcom.govt.nz/sites/default/files/publications/2011/06/incorporated-societies-issues-paper_72dpi.pdf

that New Zealand should reform its law in line with changes in Canada and Australia and that ‘there is a trade-off between seeking greater accountability and governance controls, and creating unnecessary compliance costs from community groups’. Further, the current legislation does not provide incentives for the current NGO status to improve, nor does it require civil society to ask the appropriate questions when they are being set up. The registration laws are comparatively encouraging but for an OECD member they are not encouraging enough.

The Law Commission began the project with the assumption that the public itself must take responsibility for the NPOs they support while the legislation should aim to create a climate of good governance, organizational credibility and informed choices with as little state interference as possible. Bodies incorporated under a new Incorporated Societies Act should have the following characteristics as facilitated by the legislation:

- Established for a public purpose or for the (non-financial) benefit of its members
- Private and independent
- Self-governing
- Income and profits should not be channelled to members, trustees or anybody else except as reasonable compensation for services rendered.

United States of America

NPOs register themselves in the state in which they are formed and they receive an Employer Identification Number. Regulations and method of filing vary from state to state. There are both federal and state registration laws. The most pertinent is the IRS regulation that grants tax-exempt status for the organization and for the donor.⁷ If the organization seeks non-profit, tax-exempt status, it must separately file with the Internal Revenue Service to obtain the right to have donations made to it exempt from taxes for the donor.

⁷ <http://www.irs.gov/charities/>

Registration requirements and forms of organizations vary from state to state but are generally very simple and can be completed in just a few days at the state level. The process involves providing a short description of the organization, its mission, name, the address of an agent within the state and payment of a modest fee. Most states have a general incorporation statute that makes this process a routine matter, not subject to approval by the legislature or any other government official. This removes the risk that a government official might abuse his or her power in determining which organizations should be allowed to exist or not.⁸

Independent Sector⁹ is an organization that analyses the non-profit law on a regular basis for organizations that work in the US. InterAction is an organization of US NGOs that does international work. InterAction also tracks changes in regulations and advocates for the sector as a whole.

Earlier, small organizations did not have to file a tax return (Form 990) if their revenue was limited. Currently all non-profits have to file returns and their tax exempt status is automatically revoked if they do not file. The new Form 990 requires much more information than earlier to provide more transparency. Form 990 (not 990-EZ or 990-N) must be filed by an organization exempt from income tax under Section 501(a) (including an organization that has not applied for recognition of exemption or whose application for recognition of exemption is pending) if it has gross receipts greater than or equal to \$200,000 or total assets greater than or equal to \$500,000 at the end of the tax year. While the tax forms are a little complicated, the process to register an NGO is simple and fair.

Nepal

In Nepal, NGOs have to register under the Associations Registration Act 2034 (1977)¹⁰ in the District Administration Office of respective districts. The National Directive

⁸ Embassy of the United States of America, IIP Digital, <http://iipdigital.usembassy.gov/st/english/texttrans/2012/01/20120130171036roma0.1718823.html#axzz2KfXOJmgw>

⁹ <http://www.independentsector.org/nonprofit>

¹⁰ <http://www.lawcommission.gov.np/en/prevaling-laws/constitution/func-startdown/421/>

Act 1961 (available only in Nepali)¹¹ was introduced with a view to nationally direct harmony, economic development and welfare of people associated with various groups, professions and areas to enable them to professionally and organizationally pull together for national development.

A group of seven or more citizens can apply to register as an NGO with the Chief District Officer (CDO) by specifying the name, address, objective and source of funding, including the names of the management committee members. The registration has to be renewed annually. While it is mandatory for all NGOs to be registered with the CDO, registration with the Social Welfare Council (SWC) is not compulsory. NGOs generally register with the SWC for project approval or endorsements. Registration with the SWC also helps obtain tax benefits and other specified facilities accorded by the government.¹²

A more enabling, politically and socially upgraded law has been an important issue of discussion among Nepali NGOs. In spite of considerable effort, there has been no change in registration laws in the last 5 years. The Associations Registration Act 2034 (1977) is not sufficiently encouraging since it was introduced in the old political and social context. It does not adequately address the diverse organizations that are registered under this Act. Nepal needs a more enabling and facilitating environment for NGOs.

Indonesia

NGOs require a legal notarized document which is submitted to the Ministry of Law and Human Rights for legal approval. After approval, the organization has to register with a relevant ministry based on the scope of work it wants to engage in (social and welfare work with the Ministry of Social Welfare; general development work with the Ministry of Home Affairs; human rights with the Ministry of Home Affairs).

¹¹ <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/Prevailing-Laws/Statutes---Acts/Nepali/%E0%A4%B0%E0%A4%BE%E0%A4%B7%E0%A5%8D%E0%A4%9F%E0%A5%8D%E0%A4%B0%E0%A4%BF%E0%A4%AF-%E0%A4%A8%E0%A4%BF%E0%A4%B0%E0%A5%8D%E0%A4%A6%E0%A5%87%E0%A4%B6%E0%A4%A8-%E0%A4%90%E0%A4%A8-%E0%A5%A8%E0%A5%A6%E0%A5%A7%E0%A5%AE/>

¹² Visit Nepal website, http://www.visitnepal.com/nepal_information/ngo_in_nepal.php

NGOs in Indonesia have legal recognition when registered. They can be registered as a foundation (*yayasan*) or as a membership association (*perkumpulan*).¹³

1. Foundations – Non-profit, non-membership legal entities established for social, religious or humanitarian purposes governed by Government Regulation No. 63.
2. Associations – Membership organizations recognized as legal entities regulated under the Indonesian Civil Code (1854) which requires an association to explain its proposed activities and provide a list of its members. This law is currently under review.

Most NGOs register as foundations. The law on foundations stipulates that the foundation is owned by the founders but if something happens to the foundation, the government will take it over, including the assets, if the founders do not take legal or appropriate actions to solve the problems.

The registration laws in Indonesia are restrictive in nature. The law under which foundations are registered tends to make the organization undemocratic because the founders become very authoritative. Registration of mass organizations and associations does not distinguish between development and advocacy NGOs and those that are established for political purposes. NGOs in Indonesia are trying to change the Indonesian Civil Code (1854). However, registering an NGO is not very difficult.

The Bill on Societal Organizations, which is one of 29 priority bills, is expected to be passed during the first session of the parliament in 2013. It will include several new provisions, such as:

- Requirement for NGOs to be registered as legal entities.
- Clarification of foreign NGOs in Indonesia.
- Regulation of the dissolution procedure of NGOs through judicial process.

¹³ The International Programme of the Charity Commission website, http://www.ngoregnet.org/country_information_by_region/Asia_and_Oceania/NGO_law_and_regulation_in_Indonesia.asp

Brazil

In general, there is only one broad category of NGOs (rights based organizations) in Brazilian legislation, which includes different types of organizations. There are several registration laws for NGOs in Brazil at the state level and the existing regulatory framework is unclear.

Non-profit civil society organizations of public interest are governed by the Third Sector Law where four types of institutions are recognized: associations, foundations, cooperatives and religious organizations. To be legally registered as an NGO, the organization needs to pay a registration fee to the Ministry of Justice. Registration with the Federal Revenue Service is also required.¹⁴

The existing regulatory framework is confusing and it allows for the misuse of resources by NGOs. This makes accountability and fundraising even harder. In order to reform the regulatory framework there is a strong movement in Brazil and Abong is one of the leading institutions in this effort. There is an ongoing process of change, which is being closely monitored by Abong.

Fiji

VOs in Fiji are registered under the Charitable Trust Act, Religious Society Act and Friendly Societies Act. In order to register an NGO, the application has to be submitted to the Registrar General's Office.

NGOs in Fiji are formed for welfare services, rights and advocacy/empowerment, policy development, and research and development where the basic focus has been on health, education, legal, social, civic, arts, cultural and economic development.¹⁵

The Charitable Trust Act was amended in 2011. VOs now have to submit an annual report and there is a provision for de-registration due to non-compliance. The registration laws are fair to some extent.

¹⁴ The Brazilian Business website, <http://thebrazilbusiness.com/article/forming-a-non-governmental-organization-in-brazil>

¹⁵ 'Laws Affecting Civil Society Organizations (CSOs) in Fiji', A Report for the International Center for Not-for-Profit Law (ICNL), Prepared by Chaitanyan Lakshman, June 2004, http://www.vanuatu.usp.ac.fj/sol_adobe_documents/world/icnl/lakshman.htm

France

VOs in France do not have a clear legal entity and therefore no real legal bearing. The Association Law 1901¹⁶ under which 80 per cent of the non-profit sector is registered is a declaration to form an association which includes:

- The name of the association
- The social object
- The address
- Names, professions, domiciles and nationalities of the directors
- A copy of the statutes signed by at least 2 directors

The non-profit sector in France is mainly made up of recognized public utility foundations, endowment funds and cooperatives (SCOP, CICS, CAE).

The procedure to register VOs in France is not clear and is very old. It does not cover all kinds of associations/organizations. A study conducted in 2008¹⁷ analysed the relationship between VOs and the state and also referred to the mutations of the voluntary sector.

¹⁶ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069570 & dateTexte = 20090506>

¹⁷ <http://www.assemblee-nationale.fr/13/pdf/rap-info/i1134.pdf>

Income Tax

India

NGOs in India may be formed as a society, trust or a company holding a license under Section 25 of the Companies Act 1956. All these registered organizations derive income by way of donations, members' contributions, income from property owned by them, etc. Such income is liable to taxation which is assessed based on the status of the association of persons. The Income Tax Act 1961, which is a national Act, governs tax exemptions with respect to NPOs. An organization can qualify for tax-exempt status if the following conditions are met:

- It must be organized for religious or charitable purposes.
- It must spend 85% of its income in any financial year (April 1st to March 31st) on the objects of the organization. Surplus income may be accumulated for specific projects for a period ranging from 1 to 5 years.
- The funds of the organization must be deposited as specified in Section 11(5) of the Income Tax Act.
- No part of the income or property of the organization can be used or applied directly or indirectly for the benefit of the founders, trustees, relatives of the founders or trustees or a person who has contributed in excess of Rs. 50,000 to the organization in a single financial year.
- The organization must file its annual income return regularly.
- The organization's income must be applied or accumulated in India. However, trust income may be applied outside India to promote international causes in which India has an interest.
- The organization must keep a basic record (name, address and telephone number) of all donors. As per Section 115BBC, introduced with the Finance Act 2006, all anonymous donations to charitable organizations are taxable at the maximum marginal rate of 30%.

In August 2009, the finance ministry released a draft Direct Taxes Code (DTC) with the objective of simplifying and rationalizing the direct taxation regime in India. Although the proposed code simplifies taxation for corporate and individual tax payers, it reverses this where the voluntary sector is concerned. VANI has been advocating with the ministry to make the DTC enabling for the voluntary sector. DTC has been tabled in parliament. However, it is yet to be passed. Once DTC is implemented, the Income Tax Act 1961 will become redundant.

Mauritius

In Mauritius, taxation laws are enabling. VOs do not pay any taxes and under certain projects they even get tax refunds for value added tax (VAT) and a levy on duties. However, individuals or corporates who have made donations do not receive tax deductions.

In the context of the legal review of the NGO sector for the UNDP-Government of Mauritius project on 'Strengthening the NGO Sector in Mauritius', a report was prepared by David Moore, Program Director of the International Center for Not-for-Profit Law (ICNL) and Rosario Domingue, CEO of the Law Reform Commission of Mauritius after extensive consultations with all relevant stakeholders. It analysed laws pertaining to tax benefits to NGOs, the government support structure for NGOs (registration, legal aid and fiscal policies) and other issues related to taxation of NGOs. The law does not include enhanced accountability and transparency requirements for organizations registered as charitable institutions. At the time of registering, there is confusion regarding the definition of 'charitable'.¹⁸

The Law Reform Commission report advised reintroduction of tax incentives. But this may not be politically feasible. Another recommendation was regarding the impact of the elimination of donor incentives. These should be monitored to allow the issue to be revisited at an appropriate time. The recommendation regarding VAT was that it should be applied with greater consistency to the tax treatment of NGOs – charitable institutions should be treated uniformly by providing VAT and customs

¹⁸ Report by Law Reform Commission, 'Laws Relating to NGOs: Legislative Proposals for a New Legal and Regulatory Framework' (November 2008), <http://www.gov.mu/portal/goc/lrc/files/rep-ngo-071009.pdf>

duty exemptions to all charitable institutions and not merely to those affiliated with Mauritius Council for Social Service (MACOSS).¹⁹

New Zealand

In New Zealand, income of VOs is generally not taxed and there is no maximum limit on the tax credit for donations made by individuals. Charities and many NGOs are exempt from tax.²⁰ Individual or corporate donors receive tax exemptions if the payment is made in the form of a donation.²¹ However, Goods and Services Tax (GST) and/or income tax may be levied on VOs under certain circumstances.

In New Zealand, the Income Tax Act of 2004 was updated in 2007. The changes made were aimed at greater tax incentives for charitable donations and include removing the maximum limit on the tax credit for donations made by individuals and removing the 5% deduction limit on donations made by companies and Maori authorities. Thus, the taxation law in the country is enabling but can be improved further.

United States of America

Many NGOs in the United States qualify for exemption from state and federal taxes. This legal status makes it easier for NGOs to operate as NPOs because they do not have to pay tax on the income (funding) they receive. If an NGO wants to receive exemption from income tax from the US federal government, it must apply to the Internal Revenue Service. The types of benefits available depend on the type of NGO and its activities. In general, NGOs organized exclusively for educational, religious, charitable, scientific, testing for public safety, literary purposes and certain sports that are non-profit and do not play a partisan political role (e.g., by supporting candidates for election or attempting to influence legislation) can apply for exemption from federal income tax on all income related to these purposes.

NGOs organized for political purposes receive only limited tax exemption for income received from contributions solicited from the general public, membership dues or

¹⁹ Ibid.

²⁰ <http://www.ird.govt.nz/non-profit/np-gst/liable-gst/>

²¹ <http://www.ird.govt.nz/income-tax-individual/tax-credits/dch-taxcredits/>; <http://www.ird.govt.nz/business-income-tax/paying-tax/rebates/>

fundraising events. State governments often use the same standards for applying state income tax laws. No amendment has been made in the income tax acts. The act operative in USA is liberal, but complicated.

Nepal

In Nepal, VOs do not pay taxes under the Income Tax Act (along with each year's Financial Act Amendments) 2058 (2002).²²

Nepalese tax laws recognize tax-exempt organizations which include political parties and NGOs who request this status. For civil society organizations that have received a tax exemption certificate from the Department of Internal Revenue, income from grants, donations and investments is not taxed. The certificate remains valid as long as the NGO carries out the public benefit purposes mentioned in the organization's bye-laws and does not carry out income generating activities.²³

There have been no specific changes in the tax laws and the income tax act is relatively enabling. Nevertheless, NGOs do have some concerns regarding a few donors and international NGOs requiring VAT registration certificates.

Indonesia

In Indonesia, the income tax act for VOs is included in the national tax law and VOs are bound to pay taxes. Individual and corporate donors do not receive any tax deductions.

The income tax act for VOs is enabling in nature. The Income Tax Law 2008 gives tax incentives in the form of tax exemptions and tax deductions for activities in the non-profit sector. Tax exemption is given to 'surplus money received or obtained by non-profit bodies or agencies in the fields of education and/or research and development'.²⁴ Incentives in the form of tax reduction are only provided for mitigation of disasters,

²² [http://www.lawcommission.gov.np/ne/prevailing-laws/prevailing-rules/Prevailing-Laws/Statutes---Acts/English/Income-Tax-Act-\(Alongwith-each-year-Financial-Acts-Amendment\)-2058-\(2002\)](http://www.lawcommission.gov.np/ne/prevailing-laws/prevailing-rules/Prevailing-Laws/Statutes---Acts/English/Income-Tax-Act-(Alongwith-each-year-Financial-Acts-Amendment)-2058-(2002))

²³ 'NGO Law Monitor: Nepal', The International Center for Not-for-Profit Law website, <http://www.icnl.org/research/monitor/nepal.html>

²⁴ <http://www.expat.or.id/info/2008-IncomeTaxSDSN-Amendment.pdf>

research and development, construction of social infrastructure, education facilities and sports development.²⁵ It appears no specific analysis or change of tax laws has been undertaken.

Brazil

In Brazil, all income of NGOs is not free of tax although there are some tax exemptions. A small percentage can be deducted by corporate and individual donors, but the legislation limits this to a few subjects (such as access to culture and education) and is also fragmented and unclear.

The income tax act for VOs is enabling in nature. The income tax regulations establish certain conditions under which such institutions can enjoy tax exemption of income tax (IRPJ) and social contribution on net income (CSSL). It is noteworthy that non-compliance with such conditions may result in taxation similar to that for a for-profit company.²⁶

Non-profit organizations which use their revenues to finance their activities are subject to taxation. In this circumstance, any value the NGO receives, from donations or other transfer of resources, becomes taxable. Only organizations under IRPJ and CSLL are exempted. The exemption does not cover income tax returns and capital gains earned on investments in fixed or variable incomes.

In order to enjoy tax exemption, NGOs are required to:

- Not compensate its officers in any way for services rendered.
- Fully apply their resources in maintaining and developing their social goals.
- Maintain accurate and complete bookkeeping of all revenues and expenses in formal books.
- Retain, for a period of five years from the date of issuance, documents proving the origin of their revenue and realization of their expenses, as well as performing any other actions that modify the status of its assets.

²⁵ 'Preliminary Mapping of the Legal Framework Related to Social Activities in Indonesia', December 2008, The Centre for Indonesian Law and Policy Studies (PSHK).

²⁶ <http://thebrazilbusiness.com/article/forming-a-non-governmental-organization-in-brazil>

- Report annually an income statement in accordance with the provisions of the Act of the Internal Revenue Service.
- Ensure the allocation of assets to another institution that meets the above conditions in case of a merger, spin-off or closure of its activities or public agency.

Fiji

VOs do not pay any taxes in Fiji and individual or corporate donors receive tax deductions. Section 21 (1)(n) of the Income Tax Act allows any cash donation to the aggregate sum of \$50,000 by any taxpayer to be expensed as a deductible expense if the donation is made to academic and charitable institutions, such as the University of the South Pacific Endowment Fund, St. John's Ambulance Brigade, Fiji Red Cross Society, Fiji Crippled Children's Society, Fiji Blind Society, etc.²⁷

France

VOs do not pay taxes (business tax and VAT) in France if they meet specific criteria laid down by the tax authorities which qualify them to be general interest associations (the criteria applied are the 4 Ps: price, product, public and publicity). In addition, the association must be a non-profit, must not be in competition with the lucrative sector and its management must be devoid of personal interest.²⁸ Further, if the organization is recognized as a general interest association, it can deliver tax receipts to allow its donors to benefit from tax advantages (tax relief of 66% for individuals and 60% for companies).

There has been no change in tax legislation so far. Current laws incentivize day-to-day management of the association (tax exemption) and the development of collecting private funds (tax benefits to donors and companies).²⁹

²⁷ 'Laws Affecting Civil Society Organizations (CSOs) in Fiji', A Report for the International Center for Not-for-Profit Law (ICNL), Prepared by Chaitanyan Lakshman, June 2004, http://www.vanuatu.usp.ac.fj/sol_adobe_documents/world/icnl/lakshman.htm

²⁸ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000018619914 & cidTexte = LEGITEXT000006069577>

²⁹ http://www.coordinationsud.org/wp-content/uploads/instruction_fiscale_18_dec_2006-2.pdf

Foreign Contribution

A foreign contribution means the donation, delivery or transfer of funds by any foreign source. This section also analyses the receipt of foreign contributions or foreign hospitality for any activities detrimental to national interest.

India

Receipt and utilization of foreign contributions and foreign hospitality by associations, individuals and VOs working in important areas of national life is regulated under the provisions of the Foreign Contribution (Regulation) Act 2010 (FCRA). The primary purpose of its enactment was to ensure that foreign contributions are utilized for bonafide activities without compromising national security. The basis of FCRA is to protect the sovereignty, democratic and republican nature of the Indian government. The Ministry of Home Affairs, Government of India is assigned the responsibility of implementing FCRA.

FCRA 2010 repealed the 30-year-old Foreign Contribution (Regulation) Act of 1976. It gives more authority to enforcement agencies to regulate donations from abroad. The Act's preamble prohibits acceptance and utilization of foreign contributions or foreign hospitality for any activities detrimental to national interest. It also bars several organizations, including those of a political nature and electronic media houses and journalists, from receiving foreign funding. Using the 'law and order' situation in the country and the need to control the 'foreign hand', FCRA 2010 was passed without much space for debate. It also indicates a change in the intention of the government – from reforming and enabling the voluntary sector to controlling and commanding it. Thus, in India, the foreign contribution act is restrictive and controlling in nature.

Mauritius

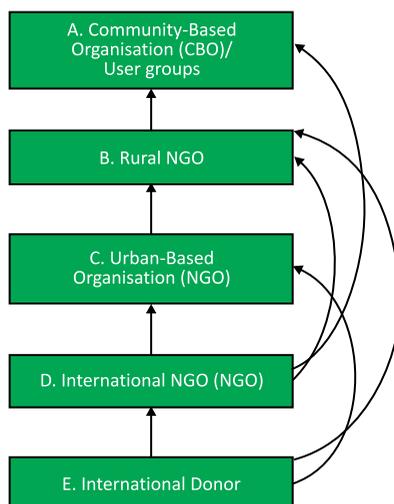
Receiving foreign contributions in Mauritius is not difficult. The government is aware of the international funding available to VOs. There has been no change in the law.

New Zealand

In New Zealand, there is no special legislation (in the form of an act or law) regarding the inflow of foreign funding to local VOs/NGOs.

Nepal

International donors have different approaches to development, according to their own goals, objectives, traditions and culture. Some donor agencies have strategic alliances with particular international NGOs through which they mobilize a majority of grant aids. The main donor agency has limited direct engagement with civil society (see figure below). Local Nepali organizations who receive this money see the ‘intermediary’ organizations as their donors. Therefore, in interactions with local NGOs, the term ‘donor’ has been used broadly and encompasses the various international NGOs in the aid channelling process.³⁰ Sometimes, aid may also be channelled from international donors through these international NGOs.



Channel of Aid through Different Organisations

Laws to receive foreign contributions are enabling in Nepal.³¹

³⁰ Amina Singh and Nora Ingdal, Discussion Paper on ‘Donor Best Practices Towards NGOs in Nepal’, Commissioned by The Working Group, Donor Heads of Agencies, including the Royal Norwegian Embassy, Nepal, March 2007

³¹ Social Welfare Act, 2049 (1992) (http://www.swc.org.np/swc_act.php); Associations Registration Act, 2034 (1977) (<http://www.lawcommission.gov.np/en/prevaling-laws/constitution/func-startdown/421/>); General Agreement Format of Social Welfare Council (<http://www.swc.org.np/ga.php>)

United States of America

Secretary Hilary Clinton said, 'In the United States, as in many other democracies, it is legal and acceptable for private organizations to raise money abroad and receive grants from foreign governments, so long as the activities do not involve specifically banned sources, such as terrorist groups.'³² In general, US law imposes no limits or restrictions on the receipt of foreign funding by NGOs operating in the United States. Of course, laws that are generally applicable to all Americans apply to NGOs, such as restrictions on receiving contributions from a terrorist organization. There are also restrictions on direct financial support of political candidates by foreign individuals.³³ In general, regulators are more concerned with how American VOs spend their money overseas.

Indonesia

The law to receive foreign contributions in Indonesia is enabling in nature, although there are several regulations regarding the receiving and granting of assistance to/from foreign parties.³⁴ These include:

- In order to be able to receive assistance from foreign parties, Community Organizations (CO) must be registered with the Department of Home Affairs, other government institutions, or regional government (Article 7).
- COs that are to receive foreign assistance directly are obliged to report the plan to receive such assistance to the Minister of Home Affairs (Article 10).
- CO that are to receive assistance indirectly through an internationally affiliated CO are obliged to report such plan to the Minister of Home Affairs (Article 18).

³² <http://www.state.gov/secretary/rm/2010/07/143952.htm>

³³ 'Fact Sheet: Non-Governmental Organizations (NGOs) in the United States', Embassy of the United States, Cairo website, <http://egypt.usembassy.gov/ngos.html>

³⁴ Eryanto Nguroho and Erni Setyowati, 'Preliminary Mapping of the Legal Framework Related to Social Activities in Indonesia', commissioned by the International Programme of the Charity Commission of England Wales, December 2008

Brazil

There is no single body of laws that approaches this subject clearly. International aid flows to NGOs generally happen without knowledge/support from the government.

Brazil has a legal framework that allows receipt of development cooperation but no legal framework for providing aid, despite its growing engagement and cooperation. Brazilian aid focuses on partner countries and their needs, respects national sovereignty and does not include conditions. Its approach is anchored on the principles of horizontality, consensus and equity.

There is ongoing reform of the regulatory framework for development cooperation in Brazil.

Fiji

There is no special legislation (in the form of an act or law) regarding the inflow of foreign funding to local VOs/NGOs.

France

France has no specific law governing receipt of foreign contributions. Within the European Union, it is possible for individual donors, under specific conditions, to fund an association whose headquarter is located in another member state and to benefit from tax advantages in his/her own country. But this legal provision does not apply as yet in France.

The tax law is very stringent regarding the possibility of private donors funding activities which are not implemented in France. If the association does not have its headquarters in France, it must have activities in France. The Act does not deal with the modalities of receiving funding from private foreign donors. This is regulated as per the law of the country of the foreign donor.

France contributes some 18% of the European Union's development aid and participates in the multilateral aid programmes of international development

banks and the United Nations. Most of France's assistance is granted in the form of bilateral aid mainly to sub-Saharan Africa via the Ministry of Foreign Affairs and the French development agency (AFD), which together support over 500 development projects each year, provide technical assistance and offer grants to study in France. The focus is on developing infrastructure, access to health care and education, implementation of appropriate economic policies and consolidation of the rule of law and democracy. French local authorities and NGOs also make contributions towards this.³⁵

³⁵ 'Development Assistance and Humanitarian Action', France Diplomatie website, April 2011, <http://www.diplomatie.gouv.fr/en/france/france-in-the-world/development-assistance-and/>

Relationship Between the State and the Voluntary Sector

Civil society is part of a broader spectrum and effective civil society is key to a very strong democracy. The relationship between the state and the voluntary sector is very crucial because the impact, efficiency and effectiveness of the sector is directly dependent on the relationship the sector enjoys with the state. This relationship need not necessarily be a cordial one, but it should be marked by regular discussion, dialogue and continuous engagement. Unfortunately there are always constraints and difficulties in this relationship.

New Zealand

NPOs have generally operated within a positive legal and ideological climate in New Zealand but the climate has become more restrictive since the election of the National Party in 2008 and the global financial crisis.

In 2001, the government committed to improving funding arrangements with NGOs. *The Statement of Government Intentions for an Improved Community-Government Relationship* was signed at this time, stating: 'Government acknowledges the valuable contribution made by community, voluntary, and iwi/Māori organizations to the achievement of shared social, cultural, environmental, and economic goals. Government agencies will, together with the community sector, undertake a program of work to address concerns about funding arrangements, effectiveness, compliance costs, and related matters.'³⁶

United States of America

NPOs are free from harassment by the government and they can freely address matters of public debate and express voice.

³⁶ New Zealand Government, Department of Internal Affairs, www.newzealand.govt.nz

Once an NGO has registered according to the legal requirements, the US government does not interfere with how the NGO accomplishes its purposes. An NGO is free to recruit participants as it wishes and need not provide notification to any government agency about its membership, activities or outreach. Like any other organization and company in the US, NGOs must refrain from working with governments or individuals under US sanctions as well as with groups designated as foreign terrorist organizations. They are free to collaborate with foreign NGOs or foreign governments to achieve their purposes. There are no regulations that restrict US NGOs from attending conferences abroad, finding donors overseas, or performing work internationally.³⁷

Brazil

Generally speaking, NPOs can freely address matters of public debate, except with organizations dedicated to land-related rights and issues. This is especially sensitive in the Northern region where there is widespread violence against individuals and organizations agitating for land access and distribution.

Nepal

The government-NGO relationship can best be described as somewhat competitive and retaliatory, not complementary. Local and international NGOs act as 'sovereigns' and have set up their own empires, such as the NGO Federation of Nepal, an umbrella organization of local Nepali NGOs, and the Association of International NGOs (AIN). Strong alliances with donors and international NGOs have consolidated the position of these associations in society and are used to bypass the state and its agencies. This phase could well be characterized as a phase of steady erosion of state capacity and disintegration of social order.³⁸ However, NGOs can express their views freely as long as the activities they pursue are under prevailing laws.

³⁷ 'Fact Sheet: Non-Governmental Organizations (NGOs) in the United States', Embassy of the United States, Cairo website, <http://egypt.usembassy.gov/ngos.html>

³⁸ C.D. Bhatta, 'Nepal: State and Civil Society Ties, Home and Global Player Weight', Telegraphnepal.com

Indonesia

NGOs are free to participate in public debate both in open arenas and closed meeting rooms. Often the government asks for inputs from NPOs on certain policy issues and even involves them in government delegations to international forums.

The government sees NGOs as partners in the implementation of programmes and as a stakeholder in development. It also sees the need for a forum of NGOs to create NGO accountability.

Fiji

Currently there is no specific legislative provision for NGOs carrying out advocacy work. There has been ongoing consultation within Fijian civil society and in some instances with the Fijian government to draft legislation that recognizes the role of civil society.³⁹

NGOs are free from harassment by the government and they can freely address matters of public debate and express voice.

Mauritius

NGOs are free to express their opinion and a national NGO policy is being prepared. NGOs in Mauritius are generally free to engage in public policy activity, including research, education and advocacy. The current legal framework does not allow for public interest litigation. However, NGOs can represent the interests of their own members.⁴⁰

India

The National Policy on the Voluntary Sector, approved in May 2007 by the Government of India, suggested strategic collaboration between the government and the voluntary

³⁹ Nexus Commonwealth Network Fiji website, <http://www.commonwealthofnations.org/civil-society/pacific/fiji/>

⁴⁰ Report by Law Reform Commission, 'Laws Relating to NGOs: Legislative Proposals for a New Legal and Regulatory Framework' (November 2008), <http://www.gov.mu/portal/goc/lrc/files/rep-ngo-071009.pdf>

sector and to develop systems on the basis of mutual trust and respect by which the government may work together with VOs. However, since its introduction, instead of creating an enabling environment for the voluntary sector, the government has imposed strict regulations that hinder the overall growth and sustainability of the sector. There is a vital need for a process to evolve a new working relationship between the government and the voluntary sector in India, without affecting the autonomy and integrity of VOs.

France

French NGOs are not subject to harassment from the authorities but there is lack of formal strategic dialogue with the government. VOs have been asking for a clear and formal framework for cooperation and consultation on strategic issues.

ANALYSIS

S. No.	Country	Registration	Foreign Contribution	Income Tax	Relationship with the Government
1.	India	<p>Obsolete</p> <p>Misused by fly-by-night operators</p> <p>Ambiguity in the nature, scope and scale of the voluntary sector</p> <p>Creates question of identity of each kind of entity</p> <p>All organizations are clubbed together under one law and wrong action by one leads to negative branding of others</p> <p>Need for segregation and defining what the voluntary sector is</p>	<p>FCRA 2010 repeals the Foreign Contribution (Regulation) Act of 1976, giving more authority to enforcement agencies to regulate donations from abroad</p> <p>Indicates a change in the intention of the government – from reforming and enabling the voluntary sector to controlling and commanding it</p>	<p>The Income Tax Act 1961, which is an all-India Act, governs tax exemption of not-for-profit entities</p> <p>In August 2009, the finance ministry released the draft Direct Taxes Code (DTC) with the objective of simplifying and rationalizing the direct taxation regime in India</p>	<p>The relationship between VOs and the government is restrictive in nature</p>

	New Zealand	<p>Current legislation does not provide incentives for NGOs to improve their status nor does it require civil society to ask the appropriate questions when they are being set up</p> <p>The laws are comparatively encouraging but for an OECD member they are not encouraging enough</p>	<p>There is no special legislation (in the form of an act or law) regarding the inflow of foreign funding to local VOs/NGOs</p>	<p>Most income is not taxed</p> <p>There is no maximum limit on the tax credit for donations made by individuals</p> <p>Charities and many NGOs are exempt from tax</p> <p>The taxation law is enabling but can be improved further</p>	<p>The climate has been more restrictive since the election of the National Party in 2008 and the global financial crisis</p>
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	USA	<p>The forms are a little complicated, but the process to register an NGO is simple and fair</p>	<p>There is no major restriction to receiving foreign funding</p> <p>Only restrictions are with regard to transactions with terrorist organizations</p> <p>Regulators are more concerned with how NGOs spend their money overseas</p>	<p>NGOs do not have to pay tax on the income (funding) they receive</p> <p>The act operative in USA is liberal, but complicated</p>	<p>Free from harassment by the government</p> <p>NGOs are free to address matters of public debate and express voice</p>
	Nepal	<p>Does not adequately address the diverse organizations that are registered under the Act</p> <p>Need for a more enabling and facilitating environment</p>	<p>Laws to receive foreign contributions are enabling in nature</p>	<p>VOs do not pay taxes</p> <p>The income tax act is relatively enabling</p>	<p>VOs can express their views freely as long as the activities they pursue are within prevailing laws</p>

	Indonesia	<p>Registration law is restrictive in nature</p> <p>Does not distinguish between development and advocacy NGOs and those that are established for political purposes</p> <p>NGOs are trying to change the law on association</p>	Foreign contributions law is enabling	<p>The income tax act is included in the national tax law</p> <p>VOs are bound to pay taxes</p> <p>The income tax act for VOs is enabling in nature</p>	<p>Free to participate in public debate both in open arenas and closed meeting rooms</p> <p>Active involvement of VOs in policy formulation</p>
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	Brazil	<p>The existing regulatory framework is confusing and it allows for the misuse of resources by NGOs</p> <p>It makes accountability and fundraising even harder</p> <p>There is an ongoing process of change</p>	<p>There is no single body of law that approaches this subject clearly</p> <p>International aid flows to NGOs generally happen without knowledge/ support from the government</p> <p>There is ongoing reform of the regulatory framework for development cooperation</p>	<p>There are some tax exemptions, but NGOs are not free from all taxation</p> <p>The income tax act for VOs is enabling in nature</p>	<p>Can freely address matters of public debate, except for organizations dedicated to land-related rights and issues</p>
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	Fiji	The registration laws are fair, to some extent	There is no special legislation (in the form of an act or law) regarding the inflow of foreign funding to local VOs/NGOs	Taxation laws applicable in Fiji do not affect VOs VOs do not pay any taxes Individual or corporate donors receive tax deductions	Free from harassment by the government Can freely address matters of public debate and express voice
	France	VOs do not have clear legal recognition, and therefore no legal capacity The procedure to register VOs is not clear, is very old and does not cover everything	No specific law	Do not pay taxes (exempt from business tax and VAT) if they meet specific criteria set by the tax authorities to qualify as general interest associations	Not subject to harassment from the authorities There is lack of formal strategic dialogue with the government

<p>VOs have been asking for a clear and formal framework for cooperation and consultation on strategic issues</p>	
<p>In addition, the association must be non-profit, must not be in competition with the lucrative sector and its management must be devoid of personal interest</p>	

Among the countries studied in this report, India and New Zealand are the only two countries where the voluntary sector works in a restrictive and ambiguous environment. There is also a lack of mutual trust and respect between the government and voluntary sector in these countries. Thus, there is a need to redefine the relationship with government and feed civil society opinions into the policy making and decision making process.

The mechanism to register VOs is obsolete and confusing in countries like India, Nepal, Indonesia and Brazil. There is need for an updated regulatory mechanism which is more enabling and facilitating in nature.

Taxation laws in all the countries studied are enabling in nature. In India, recently, a large numbers of NGOs have received income tax notices in order to scrutinize whether NGOs are avoiding tax while in practice carrying out business activities.

Receiving foreign contributions in India is difficult and the law hinders the overall growth and sustainability of VOs. By contrast, in the USA, there is no major restriction to receiving foreign contributions. In other countries, receiving foreign contributions is not difficult.

RECOMMENDATIONS

Government-voluntary sector relationship: It is recognized that societal problems cannot be solved by government acting on its own, nor can markets be relied upon as the sole alternative to the state. Thus, there is a growing role for the non-profit sector, which is distinct from the state and the market but is connected to both in myriad ways. In general, civil society tends to have a negative mindset about government. Similarly, government questions the sector's credibility. Thus, there is an urgent need to educate governments about civil society and to change the perception of civil society towards government and remove common misconceptions.

There is also need for regular dialogue and engagement with government to pressurize them to work in favour of the sector and involve the sector in the entire process of development and nation-building. This is possible through a strong empirical base and evidence.

In order to influence policy, personalized advocacy with government should be undertaken for greater impact.

Inter-agency collaboration and understanding: One of the major determinants of successful collaboration is the quality of communication between partners/NGOs. The manner of communication is as important as the frequency of communication. Differences between NGOs should be recognized and addressed in an appropriate manner. A sense of competition should be avoided and organizations should work collaboratively. In order to improve inter-agency collaboration, joint workshops can be conducted. Suitable training and public education and awareness should be improved. There is also a need to develop shared frameworks and coordinated approaches.

There is need to improve the limited understanding of those outside the sector about what the civil society sector is and how it operates. NGOs need to work towards strengthening their relationships in order to maximize development impact and long term change, as well as improve their capacity to make a difference.

NGO management: The number of NGOs has steadily increased and widened but

there is lack of attention towards the management of these organizations. There is a need for an emerging field of NGO management to examine the key management challenges faced by development organizations by focusing on both internal and contextual issues. Efficient and effective administration is essential to help increase the impact of welfare to the people. NGOs should adhere to a charter and structures that ensure transparency.

Overcoming identity crisis: The civil society sector is not clear about its own identity. There is no clarity as to who represents the sector. This identity crisis gets reflected when tripartite dialogue between government, private corporations and the sector is initiated.

This single study alone is not sufficient to understand the diversity of the sector across the globe. Discussions and collaborations are very necessary to keep the momentum of understanding going.

ANNEXURE

QUESTIONNAIRE

IFP-VANI Initiative

ONLINE SURVEY OF ENABLING ENVIRONMENT

Name of the National Platform:	
Country:	
Year of Establishment:	
Number of Members:	

A. REGISTRATION

1. How are non-governmental organizations/not-for-profit voluntary organizations registered in your country?

2. What are the registration laws for not-for-profit organizations in your country? Please provide a source/link to the registration law.

3. Has there been any analysis done on registration laws prevailing in the country? If yes, what lessons have been learnt?

4. Has there been any change in the registration laws in the last five (5) years?

5. In your opinion, are the registration laws in your country encouraging or restrictive in nature? In practice, are not-for-profit organizations able to register and operate easily?

B. INCOME TAX

1. Do voluntary organizations pay taxes in your country?

2. Do individual or corporate donors receive tax deductions?

3. Link it with relevant section(s) of the tax laws and provide the source to the taxation law of your country.

4. Has any analysis been done of tax laws? If so, what are the major findings?

5. Has there been any change in taxation laws in the last five (5) years?

6. In your country, is the taxation law enabling or restrictive in nature?

C. FOREIGN CONTRIBUTION/AID

1. Does your country have any special legislation (in the form of an act or law) on the inflow of foreign funding to local voluntary organizations/non-governmental organizations?

2. Please provide a link/source to access the law/act for foreign funding in your country.

3. Has any analysis been done on laws to receive foreign contributions? If yes, what are the major outcomes?

4. Have there been any changes in these laws in the last five (5) years?

5. Are laws to receive foreign contributions enabling or restrictive in nature?

D. Please provide any other relevant information/act related to the enabling environment for voluntary organizations in your country.

E. Are not-for-profit organizations free from harassment by the government? Can they freely address matters of public debate and express criticism?

LIST OF VANI PUBLICATIONS

Economic Policy

1. GATT, WTO and the Developing Countries (Hindi and English)
2. Proposals for National Union Budget for 1993-94: An Alternative to the Fund Bank Dictated Union Budget. (English)

Panchayati Raj

1. Local Self-Governance: The Role of Voluntary Organisations (English and Hindi)
2. Nagarpalika (74th Amendment) Act, 1992: The Role of Voluntary Organisations, (English and Hindi)
3. State Panchayat Acts: A Critical Review (Hindi and English)

Social Development

1. Summary of Declaration and Programme of Action of UN World Summit for Social Development (Hindi and English)
2. State Reports on Social Development: Assam; Bihar; Gujarat ; Haryana ; Karnataka; Kerala; Maharashtra; Madhya Pradesh; Orissa; Tamil Nadu; Uttar Pradesh Report; West Bengal.
3. Community Based Disaster Management: An Information Guide. (Hindi & English)

Law and Rules

1. Report of the Task Forces: To review and simplify Acts, Rules, Procedures affecting Voluntary Organisations (Hindi and English).
2. Laws, Rules and Regulations for the Voluntary Sector- Report of the South Asian Conference (English).
3. Action Plan to bring about a collaborative relationship between Voluntary Organisations and Government (Hindi and English)
4. FCR Bill 2006 (Marathi)

Promoting Voluntarism

1. Youth & Voluntarism (Hindi and English)
2. Into the Media World: An Introduction to Media Relation for Voluntary Activists.
3. Voluntary Development Organisations: The Guiding Principles (English & Hindi)
4. Non-Governmental Organisations: Guidelines for Good Policy and Practice (Hindi and English)
5. Voluntary Organisations Responsible Partners in Nation Building (English)
6. Voluntarism & Politics (English & Hindi)

General Issues Concerning the Voluntary Sector

1. The Election Process Voters Know How (Hindi and English)
2. Foreign Aid & NGOs: Edited by Dr. Manoranjan Mohanty & Anil K. Singh (English)
3. Voluntarism & Govt.: Policy, Programme & Assistance Edited by Dr. Manoranjan Mohanty & Anil K. Singh (English)
4. Report of workshop on Good Governance in Civil Society Organisations, Guwahati.
5. Report of Workshop on Good Governance in Civil Society Organizations, Kolkata.
6. Report of the Asian Meet of National NGO Platforms Prior to the WTO Ministerial Meeting in Hong Kong, (English)
7. Status of NREGA in Chhattisgarh: Key Issues & Hard Options, A Report on State Tribunal 2006 (English & Hindi)
8. National Policy on the Voluntary & Eleventh Five Year Plan: Report on National Convention 2007 (English & Hindi)
9. The Hand book on Good Governance for the Voluntary Sector 2010 (English)

The International Forum of NGO Platforms (IFP)



The International Forum of NGO Platforms (IFP) brings together over 50 national NGO platforms from Africa, Latin America, Asia, Europe and Oceania and seven regional coalitions, which together account for more than 10,000 organizations. It was founded at an international conference in Paris in 2008, with the conviction of broadening the space to participate in global debates to defend our vision of a supportive world where human rights are respected, the most vulnerable populations have a voice and inequalities and injustice are fought. This prompted the decision by the national platforms from the five continents to start a cooperative work and joint advocacy.

The IFP Secretariat is hosted by Coordination SUD, the French national NGO platform. In 2011, a process of Secretariat decentralization was initiated; the first step was to transfer the communications area to the Chilean (ACCIÓN) and Brazilian (ABONG) national Platforms.

The IFP has been endowed with a Charter of values, Statutes and Rules & Regulations.

In this consolidated formal framework, regional coalitions of national NGO platforms play a major role in facilitating and supporting their members' participation in IFP governance and initiatives.

About VANI

Voluntary Action Network India (VANI) is an apex body of the Voluntary Organisations.

- Founded in 1988 to act as a promoter/protector and collective voice of the voluntary sector.
- Base of 5000 non-governmental organisations spread in 25 states of India.
- Resource centre for publications, research work, articles, important documents and information about and related to the voluntary sector.

Objectives:

- As a platform, to promote voluntarism and create space for voluntary action.
- As a network, attempt to bring about a convergence of common sectoral issues and concerns for building a truly national agenda of voluntary action in India. In addition, facilitate linkages of various efforts and initiatives of the Indian voluntary sector, which succeed in strengthening a united and sustainable movement of change.
- As an association, work towards fostering value based voluntary action and long term sustainability especially amongst our members.

Areas of Work

- Promoting practices of good governance in the voluntary sector.
- Strengthening networks
- Articulating independent voices of the sector.
- Research and advocacy of policies and laws effecting the voluntary sector.



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