

NGO and Associations Law

Briefing Report (1).

International Best Practice for NGO and Association legal reform process

- 1. 8 Broad Principles**
- 2. Examples of Good Practice**
- 3. NGO Legal Reform in Post-Conflict Settings Lessons Learned and Recommendations**

This information comes from *The International Journal of Not-for-Profit Law* – extracts from various articles.

The briefing is compiled by the Co-operation Committee for Cambodia 12/09

1. BROAD PRINCIPLES FOR EFFECTIVE LEGISLATIVE REFORM PROCESSES

There will always be initiatives geared at revising or developing laws to govern a variety of aspects of life. Some may result in laws that are widely accepted and respected. Others may end in laws that are rejected by certain segments of society or even ignored.

Whether a legislative reform process is successful or not is dependent on a variety of factors, including the context in which the process is undertaken, the commitment and interest of the stakeholders, and the resources available. Over and above this, however, certain basic guidelines or principles must be observed to ensure that legislative reform processes are successful. They include the following:

1. **The process must be indigenous.** This principle is an answer to the question: For whom is the law being reviewed? To be successful, the process must be led and owned by those for whom the law is being created—local institutions and individuals. Only then will the law be applicable and reflect the social, economic, and political realities experienced by the people it affects. Local institutions and people are generally very good at working out solutions to their own problems if they are given the time and resources to do so.
2. **The process must be inclusive.** The voices and views of the actors and sectors that will be affected by the law – the stakeholders – must be represented. Otherwise, the legitimacy of the process may be questioned or even threatened. It is therefore vital for organizers and participants to have a sound understanding of the prevailing social dynamics. Selection of representatives to the process must also be transparent.
A process that is representative of the views of NGOs, government officials, parliamentarians and others can lead to good laws, a stronger likelihood of enactment, and a vested interest among participants in continuing the reform process. (Rutzen, ICNL 2008)
3. **The process must be participatory.** A participatory process promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers. To the extent that people feel involved in creation or ratification of democratic decisions, they will support the implementation of those decisions. The process should therefore give stakeholders the chance to provide input through a variety of methods including consultation, dialogue, information, or partnership.
The parameters for participation must also be clear: for instance, participants must have knowledge and skill to carry out the tasks but also be sufficiently representative of the various constituencies to provide their perspectives.
4. **The process must be transparent.** Participants need to be well informed in order to participate in a meaningful way in the discussions on reform. The process must therefore provide information to the broad constituencies of the

stakeholders and be employed as a channel for disseminating information and opinions from those stakeholders. In addition, it should provide participants with information about how the input they provide will be used. Where transparency is a key element of the process, trust will readily be nurtured amongst the stakeholders.

5. **The process must be accepted as valid across the country.** The need for legal reform must be expressed widely in the sector if the law is to be broadly and readily accepted and applied. To foster widespread support, it will be crucial to begin the process by laying emphasis on the *common goal*. This will help to minimize conflict and reinforce the cultivation of respect among the stakeholders.
6. **The process must be empowering.** The process will be most effective if associated with a broad capacity building effort that ensures that the constituency at large as well as those directly participating in the legislative process are reasonably knowledgeable of and proficient in articulating the concerns and wishes of the constituency. It must give those involved the chance to develop their capacities to organize and influence change in their respective fields, thus leading to reforms on a larger scale.
7. **The process must be collaborative.** The process must involve a reciprocal relationship among decision makers and stakeholders in which all parties listen as well as talk and contribute towards achieving a mutually agreed objective. Central to this principle is the need to ensure that stakeholders are deliberately and actively involved and share responsibilities for various elements of the review process.

In Afghanistan, the legislation drafting process in 2005 was government-led and allowed for civil society input only reluctantly. Moreover, the process was quite hurried. Consequently, the law that was ultimately enacted, although a big step toward a more enabling environment, was not enabling as it would have been if the process had been collaborative.

8. **There must be wide consultation throughout the review process and fair utilization of all relevant input.** This will ensure that decisions reached are sustainable and have legitimacy. The failure to invite sufficient input may cause the resulting law to lose the benefit of valuable perspectives and insights. In addition, some NGOs may perceive the reform initiative as the work of an elite group, thereby undermining the legitimacy of the reform effort. Hence, stakeholders should be convinced that their participation will achieve something worthwhile in order for them to buy into the process.

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Extract from article. **The Process of Reviewing the NGO Coordination Act, 1990: A Step-by-Step Road Map**⁶⁶ by: Faith Kisinga

2. Some Examples of Good Practice and also what can happen if Good Practice is not implemented

1. Leadership by Indigenous Institutions and Individuals

In order for an NGO law reform process to be successful, it is important that indigenous institutions and individuals assume ownership of the activities. Of course, international organizations can serve as catalysts for the process and provide technical assistance and comparative perspective, but they should not actually write the laws, nor should they lead lobbying efforts. By enabling local initiative, international organizations reinforce the notion of self-help, promote democratic values, and help to ensure that laws appropriately reflect local conditions.

Best Practice

England and Wales – reform process initiated by National Council of Voluntary Services .

Kenya –NGOs have complained about faults with their own laws. Kenyan government officials, NGO leaders and many others developed a consensus that Kenya's 1990 NGOs Co-ordination Act is gravely flawed. Precisely how to reform the law has inspired intense and prolonged debate but NGOs have worked with ICNL to ensure that best practice is incorporated NGOs and secured a potentially productive reform process.

What can happen when good practice not implemented

Afghanistan, the legislation drafting process in 2005 was government-led and allowed for civil society input only reluctantly. Moreover, the process was quite hurried. Consequently, the law that was ultimately enacted was not as enabling as it would have been if the process had been collaborative.

2. Drafting Groups Representing All Interested Parties

The degree to which the reform process invites participation by all potentially interested parties is frequently determinative of the success of a particular reform process. A process that is representative of the views of NGOs, government officials, parliamentarians and others leads to good laws, a stronger likelihood of enactment, and a vested interest among participants in continuing the reform process. Of course, there are often obstacles to such cooperation, including lack of coordination between ministries and, sometimes, open hostility between the government and NGOs. *Stakeholders meeting to discuss substance and establishing a drafting group that addresses unresolved issues has been critical to success in many countries.*

Good Practice

Albania, the Berisha government proposed a law that would have imposed severe restraints on NGO activities, and there was palpable tension between NGOs and the government. ICNL organized a seminar in Budapest to discuss “regional best practices in NGO law,” which attracted both NGO representatives and the drafters of the restrictive law. As a result of this meeting, the participants agreed to form a joint NGO-government working group, which has now produced one of the most progressive draft laws in the region.

Afghanistan In 2002 a legislative drafting group made up of key ministry representatives established, with ICNL assistance, prepared a progressive draft Law on NGOs, which was circulated widely to NGOs throughout Afghanistan. Based on feedback from NGOs, the draft Law was revised and refined before being submitted to the Ministry of Planning in July 2003. Consequently, the July 2003 draft Law was the product of a broadly inclusive and deeply participatory process, which included both NGOs and government officials.

What can happen when good practice not implemented

Bosnian NGO community embarked on legal reform activities in isolation from the government. While the working group was in the midst of preparing its draft, the government enacted an extremely restrictive Law on Foundations. It is now proving exceptionally difficult to generate governmental support for further revisions to the NGO legal framework.

3. Broader Public Participation

It is not sufficient to have a collaborative drafting group composed of a few key NGO representatives and government officials. It is also important that all stakeholders have a chance to provide input on legislative reform. The fostering of public participation helps reinforce the democratic process, ensured the relevance of the legislation, and promoted trust among the sectors.

Good Practice

Hungary Published draft law in leading newspapers and then law drafters organize local meetings to promote public participation

Macedonia Working group uses broadcast and print media to publicize principles to be included in the new law. They then distributed the draft to all active NGOs and convened a series of roundtable discussions to refine the draft.

Lithuania Parliament organized a public hearing at which key NGO legal issues were discussed.

NGO Law issue Update as at November 2009

1. Activities by CCC NGO Forum Medicam and CARE

- **Joint Statement**
The statement has been endorsed by 237 organizations; Officially sent to RGC, all development partners, and International Human Rights Organisations.
- **Raising awareness on the NGO Law Issue** – 5 regional workshops held capturing 24 Provinces and over 300 NGOs attended.
- **Strategic response for when draft law is released** - planning and preparation for Feed Back Centre (please see attached)

2. Development Partners and OHCHR:

- OHCHR shared its analysis with development partners.
- Meeting with INGOs planned to support dialogue with embassies and development partners

3. Royal Government of Cambodia:

- Speech given by Prime Minister Hun Sen on 24th November with direct reference to NGO law to be prioritized after Anti –corruption Law and Penal Code.

4. International links and support:

- Civicus – meeting on 23rd November with Ingrid Srinath, Secretary General; potential areas of support identified
- All briefed on latest speech from Prime Minister Hun Sen
- FIDH scheduled mission for January 2009
- Licadho to attend UPR meeting in Geneva, Dec.1st

UPCOMING:

Meeting with INGOs December 9th 9am -12am The Imperial Gardens Hotel

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3. Enabling Organizational Development: NGO Legal Reform in Post-Conflict Settings Lessons Learned and Recommendations

Countries emerging from conflict face widely differing circumstances as they begin their journeys towards greater stability. The nature of the conflict, local culture, reconstruction needs, and the level of development of civil society pre-conflict, among other things, will differ and will affect a country's approach to the laws governing civil society as part of its post-conflict response. Nonetheless, both the field research and observations from ICNL's work suggest several common lessons that can be taken regarding the role of NGO law reform initiatives in post-conflict societies.

- The preferred timing for NGO law reform is early on in the post-conflict period. Enabling laws have positive impacts, while delays in reform have detrimental consequences.
- The positive impact of law reform is dependent on a number of other variables, including how well the law is implemented and the overall political and economic situation. Support is therefore needed for the implementation of the law, including training of government officials, and development of regulations, forms, and processes that will support fair, consistent and non-partisan application of the law.
- Even where a good law is enacted early on, it is important to continue the process of educating both NGOs leaders and government officials to prevent backsliding.
- Inappropriate laws for NGOs in a post-conflict setting include (1) the law that is overly restrictive and in clear violation of international norms, and (2) the law that is overbroad and vague and ambiguous, thereby inviting on the one hand poor organizational behavior and on the other hand arbitrary implementation. Law reform initiatives should therefore take these dangers into consideration.
- In the wake of a conflict, NGO capacity is often weak; it is often necessary, in drafting an NGO law, to ensure that it is not overly complex and can be applied by small and newly formed NGOs. New NGO laws in a post-conflict environment often benefit, then, from simplicity.
- A key factor with respect to the sequencing of post-conflict law reform initiatives is the phase of post-conflict recovery. In the emergency or crisis phase, the predominant concern is ensuring that NGOs are easily able to form and be registered. As the country transitions toward consolidation, the legal framework must therefore address a far wider range of needs, and provide appropriate mechanisms for partnership and financial sustainability.
- The inclusion of NGOs into a participatory drafting process is critical to the preparation of a law that is fully responsive to practical realities and the needs of those governed by the law.
- In post-conflict environments, there are often limited formal mechanisms for encouraging public participation. In such cases, participation can be supported through the formation of informal working groups, through dissemination of draft legislation, and through public discussions. Moreover, the frequent

turnover of government personnel underscores the need for ongoing broad-based education relating to a multi-stakeholder participatory process.

- In post-conflict environments, government and NGO representatives alike often lack expertise, which underscores the need for ongoing broad-based education relating to legal drafting skills and the substance of NGO law.
- Laws to encourage sustainability are generally best addressed as ‘second-tier’ issues, after the basic legal framework has been set in place.
- Good organizational practices can be developed through progressive laws that clearly define NGO organizational forms, set minimum standards of internal governance, and provide for external government supervision.

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