

Nurturing Civil Society – Building Legitimacy, Ensuring Relevance

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Introduction

The government of Bhutan has initiated a process to review the civil society organisation (CSO) rules and regulations, nearly eight years after the establishment of a formal registration system for CSOs. This is expected to provide a much-needed analysis of the direction and impact of civil society in Bhutan.

Bhutanese CSOs welcomed the initiative that should open up more space for groups - both formal and informal - to associate. A number of CSOs met as early as 2016 at an annual retreat to review the CSO Act and the rules¹. We believe that the review must begin with the Act which frames the broad direction for CSO growth. Also, a conducive environment can be created only if the views of CSOs are taken on board.

This comes at a time when we see organisations in the global non-profit sector also calling for a review of the legislative environment to meet changing needs.

Not surprisingly, there are “tensions” between the state and civil society groups in a country not fully acclimatised to the presence of civil society. These tensions are familiar to many countries that have a longer history of NGOs (non governmental organisations) and CSOs. Bhutan’s history with civil society, however, is very different from the global experience. We are a long way from the violent activism that characterise some international NGOs. Given the right environment, Bhutan can ensure that civil society development serves the best interests of the country.

Development partners such as the European Union are openly calling on the government to be “open to civil society”, and to “try and seek longer term partnership with civil society organisations”².

This article will review the current state of CSO growth in the context of the regulatory environment in Bhutan, highlight some of the constraints that civil society faces, and propose changes to keep up with the times.

1 This was formally reviewed at a CSO retreat although minor efforts were made in earlier CSO monthly meetings to discuss shortcomings of the Act and Rules that govern CSOs.

2 From a statement made by the EU Head of Co-operations, Johann Hesse, when EU launched the support to civil society programme in Thimphu on August 14th, 2017.

Current Concerns

In 2017 a total of 54 CSOs are registered although only 48 are operational, according to the CSO Authority. However, key institutions of governance, including the Cabinet and civil service, seem unconvinced about the importance of civil society. These institutions have expressed concerns about the “fast growing” numbers and their long-term sustainability. A perception study in 2017 noted the concern about the risk of “briefcase” CSOs that are so common in South Asia³.

“We need to be mindful that, as a small country, we can easily have too many CSOs that may be doing the same thing and duplicating efforts,” said the Prime Minister in his State of the Nation address in 2015.

“In a small country, how many CSOs can we have and how can they all be sustainable?” a Cabinet minister asked recently.

“The government has recognised the role of CSOs in the development process, it’s now up to CSOs to prove themselves,” said a government planner at a societal leadership summit held in May, 2017, to bring together civil society and government partners to strengthen coordination, collaboration, and consolidation.

These comments reflect concerns even as CSOs received the highest recognition for service to the nation when His Majesty The King awarded 22 CSOs the National Order of Merit (gold)⁴ on Bhutan’s National Day 2016. It shows that the government is still cautious about the role of civil society and that CSOs face the challenge of needing to prove themselves and gain the confidence of the people, government, and the business sector.

Add to this the fact that many people, even those who work in CSOs, struggle to fully understand the nature and role of civil society. In the minds of the general populace, CSOs are often linked to government or misunderstood as government agencies. It is clear that the identity of CSOs is still being shaped. The nature of CSOs is such that they are not just development partners of the government. CSOs sometimes exist simply to give voice to people’s interests and needs, for example, the LGBT community.

Legislation Shaping Growth

The Parliament of Bhutan approved a CSO Act in 2007 to prepare for democracy that was “gifted” by His Majesty The Fourth King to the Bhutanese people. A CSO Authority was established in 2009 to facilitate the emergence of what the 2010 CSO Rules and Regulations describe as “healthy” civil society organisations.

³ From a draft report on a perception study on civil society organisations undertaken by the Royal Institute of Management, Bhutan, 2017

⁴ The award was for recognition of their services to the nation in “volunteering and working towards humanitarian values, preserving culture and tradition, and national objectives”.

CSO legislation was drafted at a time when Bhutan was preparing for the introduction of democratic governance. It was a time when the developing world, the South Asian region particularly, had already witnessed decades of the proliferation of non-governmental organisations that unfortunately became synonymous with corruption. Elsewhere, NGOs became anti-government activists in countries where governments were failing to meet people’s needs. In response, governments clamped down on their activities.

In contrast, Bhutanese society had trust in the state that had always been steered by the Royal Government. This public trust continues and our civil society is less likely, in the foreseeable future, to take the confrontational path of NGOs in other countries. The very fact that we use the phrase CSOs rather than NGOs reflects this caution and highlights the difference in thinking and approach.

According to a legislator who was involved in the drafting of Bhutan’s CSO regulations, a concern at the time of drafting the Act was that CSOs could grow so large that they would become parallel governments in local communities. Another underlying fear is that CSOs could be “politicised” and become partisan to political parties.

Thus the Act was aimed at creating a more controlled and stable environment with clear government priorities. The CSO Act and regulations are aimed at creating a civil society space that complements the activities of government.

The preamble to the CSO Act states that CSOs are being registered to “strengthen civil society by developing human qualities and rendering humanitarian services”. The Act states that CSOs do not include trade unions, political parties, co-operatives, or religious organisations which are devoted primarily to religious worship.

It categorises CSOs into public benefit and mutual benefit groups. Public benefit organisations are described as those serving to “supplement or complement” the efforts of government in various fields. Mutual benefit organisations aim to advance the shared interests of their members.

CSOs are obligated to be conscious of Bhutanese traditions and values. The preamble to the CSO rules states:

CSOs must take cognisance of the existence of *kidu* which has benefitted and continues to benefit the socially and economically marginalised citizens of our society since the days of our first Monarchs. In the spirit of creating a unique fabric of civil society that’s suited to our own model of development, *kidu* must be held sacrosanct and CSOs must work in a constructive partnership with the government to fulfill the government’s policies and programmes.

The preambles to the Act and Rules come closest to describing the government’s

policy on civil society. The statements require the government to look at CSOs not as “competitors”, as is the tendency, and to map a space and method of collaboration and partnership between government and CSOs. But CSOs as development partners is just one facet of the globally accepted role of civil society.

Beyond Development Partners

Civil society is understood the world over as being more than just “development” oriented organisations. His Majesty The King told the nation that, “A strong civil society is a fundamental pillar of democracy”. As a democracy, it is critical that Bhutan also looks beyond the service-oriented and welfare approach that has been so narrowly defined in the current legislation. Civil society requires citizens to learn about their public roles and to exercise their civic duties.

The association and the resulting action of civil society groups represent the transition of the Bhutanese populace from being loyal subjects to becoming responsible citizens of a democratic constitutional monarchy. Participation and action in governance becomes a mandate and is enshrined in Articles 7 and 8 of the Constitution of Bhutan, relating to rights and duties of citizens. Exercising our civic duties is as important as voting in elections.

Constitutional agencies, such as the Anti Corruption Commission, clearly see a role for CSOs beyond providing services and have called on CSOs to work towards increasing accountability measures with regard to government activities.⁵

Legislation also prevents CSOs from being directly involved in party politics. In this regard, there is a need to distinguish between being “partisan” and “non-political”. CSO work requires that we adopt a particular viewpoint and even to make some political choices, e.g pro-animal groups, supporting local economies, reducing domestic violence, gender equality, and taking on rights-based work spearheaded by Bhutan’s own development partners. Being political in this sense does not mean being aligned to any political party. All CSOs today subscribe to being non-partisan and are not aligned to political parties.

From a political science perspective, civil society also encompasses what Thomas Metzger calls the “ideological marketplace”⁶, the flow of information and ideas, including those that evaluate and critique the state. Guided by our vision of Gross National Happiness (GNH), we can reframe this as an ideological space that includes the media and a range of activities in the cultural and intellectual realm such as universities, publishing agencies, film makers, artistic performances, drama, and so on.

Such a space is only just beginning to emerge in Bhutan but is critical for the success

⁵ This issue was discussed at ACC’s meeting with CSOs held in August, 2017 as well as in previous interactions with CSOs.

⁶ Larry Diamond. 1999. *Developing Democracy: Towards Consolidation*. Baltimore: Johns Hopkins Press.

of civil society, and ultimately for a GNH society. Civil society is, therefore, an inherent part of a GNH state.

The concept of GNH is not a promise or a guarantee to make everyone happy. GNH is recognised as the duty of the state to create conditions for people to pursue happiness, happiness being the sense of well-being and contentment. Therefore, the creation of an enabling legal environment for civil society, from a GNH perspective, is one of the best investments that the government can make to develop a healthy civil society, one that strengthens social trust and empowerment and serves societal interests. An active civil society is all about public needs, and helps build community and social cohesion. In the long-term, this contributes to a stronger democracy.

Policy on Civil Society

How then can Bhutan move away from a policy of caution - some would even say distrust and fear – of CSOs to one that is based on building trust and is more enabling?

Considering Bhutan's current needs as a changing society and emerging democracy, such a policy can build on the tradition and history of self-help groups and volunteerism. Civil society, after all, is a natural progression from the self-help groups and associations that were central to traditional community life in Bhutan. Through active *tshogpas* and associations Bhutanese have always understood the need to, and exercised their ability to, come together and associate for the common good to address local needs.

The policy will need to be more inclusive and broad. Legislation should support the ability of CSOs to fulfil their missions while requiring them to be transparent and accountable with sound disclosure guidelines. It can help build a new form of social trust that enables CSOs to associate along larger community interests, thereby strengthening the sustainability of civil society and ultimately, a stronger and more cohesive nation.

Building Trust and Legitimacy

An enabling environment, while largely shaped by legislation, must also be influenced by the willingness of CSOs to work towards building civil society.

CSO members themselves constantly seek the endorsement and recognition of the government. CSO members often say that the CSO Authority must convene meetings with government - that the state must recognise the value of CSO periodic meetings. While this may simply reflect the fact that CSOs are still trying to gain the trust and support of government, civil society is not government and has to be free from government processes.

Legitimacy comes not just from recognition by the state. It has to begin with civil society's own perception of itself and its confidence in our collective associations. CSOs must have the confidence to take decisions together and to see these decisions as being truly representative of the will of a group of people who have come together in the common interest of strengthening civil society.

CSOs are beginning to recognise that the issues discussed at quarterly meetings⁷ are common interests. They are a part of the process of defining priorities and needs. This in itself gives CSOs the legitimacy to carry out collective decisions and move away from the habit of waiting for government to lead and spearhead policies and ideas. The strengthening of a core committee among CSOs is important in growing a more collaborative space for building trust among civil society members.

Legitimacy also comes when CSOs gain the trust of the people. CSOs cannot simply rely on our non-profit status as proof of our commitment. Trust is earned through our commitment to society, through the quality of our work, and our dedication to fulfil public needs.

It is time to reverse the government's perception of CSOs as "competitors" even as development support shrinks.

What Needs to Change?

- The CSO Act, along with the Rules and Regulations, need to be updated to create a more progressive environment.
- There is the need for a policy that will be inclusive and responsive to varying needs, including both formal and informal associations. Such a policy should draw on the views of CSOs.
- While the Act spells out how foreign CSOs can be formally registered, several of these organisations, in existence in Bhutan before the 2007 Act, continue to enter into Memorandum of Understanding with the government instead. This needs to be addressed and the Act applied with uniformity as more international CSOs are likely to come to Bhutan.
- Article 6 of the CSO Act states that no CSO shall "engage in any activities that are directly related to public elections". CSOs have suggested that this be rephrased to state that "no CSO should engage in party politics, campaign on behalf of political parties, or favour any political party in its work".

The same article states that no CSO shall "be involved in political activity".

⁷ CSOs meet every quarterly in the capital, Thimphu, to discuss CSO affairs and all related issues. These meetings were held monthly and formalised into quarterly meetings conducted on rotation amongst CSOs.

This clause is not necessary because the above clause bars CSOs from party politics. It can also be misconstrued because CSOs may take stands on issues and lobby with the government for or against policies on these issues.

- While guided by the Royal Audit Authority on the overall national regulations, CSOs should develop their own standards based on universal best practices of non-profits as long as they do not contradict existing policies.
- The government should consider introducing tax waivers and support to CSOs based on their areas of activity. For example, taxes on cigarettes and alcohol and other similar taxes can be directed to support the work of CSOs providing rehabilitation services or supporting youth development. This is common international practice.
- In a changing global environment, CSOs should be permitted to change their priorities and focus without having to dissolve and re-register.
- The CSO Secretariat should be strengthened and the mandates and roles of the Secretariat and the Authority clarified.
- Legislation should be broad and accountability monitored through regular audits. The capacity of CSOs to regulate themselves can be strengthened and bureaucracy reduced.
- Government partners and regulators and the public need to be educated on the role of CSOs and the CSO Act.
- There needs to be better cooperation among CSOs and between government and CSOs.

Envisioning a Future

CSOs in Bhutan are emerging as a “fraternity” after several years of regular consultations and networking. In February, 2017, 46 representatives of 37 CSOs attended a retreat during which they envisioned a future for civil society in Bhutan⁸. The vision, which looks ten years ahead, is as follows:

- A civil society to promote an equitable, just, inclusive, and compassionate society.

⁸ The final vision and mission was adopted in a CSO quarterly meeting held on 6 April, 2017 held in Thimphu at the Royal Textile Academy.

From this the mission was drawn to set the aspirations for the creation of a healthy civil society to serve the needs of the Bhutanese public:

- To strengthen civil society as a credible, compassionate, and inclusive agent of change guided by Gross National Happiness values
- To create a collaborative, inclusive and enabling environment to address the diverse needs of people and all forms of life
- To promote, advocate, and strengthen active citizen engagement in democratic governance and development of communities.

The Way Forward

We have the opportunity of creating a more open society and an environment where civil society can work with the government and business sectors. We can co-design a space needed for citizens to associate, test, and exercise their civic senses to become engaged citizens of a democracy.

Bhutan has a strong state with democratic institutions in place at a time when the world is struggling with weak democracies and failed states. Our system must, however, remain open to feedback and put in place more inclusive measures in consultation with the people. How can we provide the opportunity for civil society to develop, even at the risk of failure? It is by learning and reflection that we grow more robust as a society. The current efforts by CSOs to network and collaborate are instrumental in building civil society in Bhutan.

Global experience and the UN's Sustainable Development Goals show that in today's world social, economic and political problems cannot be solved without an alliance between the state, non-profits, and businesses needs constant maturing. Yes, there are challenges in creating civil society but this is a vital space that cannot be sacrificed.