Understanding the NGO Enabling Environment

Q. What are the legal, fiscal and regulatory factors needed for non-governmental organizations (NGOs) to thrive in different national contexts?

A. Just as a thriving economy needs a supportive environment to develop, grow and be self-sustaining, so too does the NGO sector. Much NGO support work done by USAID's democracy programs focuses on establishing and maintaining such an environment in different countries. If a project in a given country intends to work in partnership with local NGOs, it is critical that its design, expectations and logistics take into consideration the environment in which such local partners must operate.

While there are few resources that offer a clear comparative view of the civil society enabling environments in countries around the world, one resource that does provide this for countries in a particular region is the USAID Europe and Eurasia NGO Sustainability Index.[1] Data for this index have been collected every year since 1997, offering a model for understanding the factors that affect the ability of the NGO sector to develop, grow and become sustainable. Among the factors identified in the USAID Europe and Eurasia Sustainability Index as shaping the enabling environment for NGOs is the ease with which organizations are able to register; their legal rights and the conditions regulating them; and the degree to which laws and regulations regarding taxation, procurement and access to information benefit or deter NGOs' effectiveness and viability.

In its work on "good governance," the World Bank has recognized that a strong NGO sector makes an important contribution to sustainable development. It also recognizes that NGOs are much stronger in some countries than in others for a number of reasons. According to the World Bank's Governance and Development report, "A powerful factor clearly is government hostility or encouragement…Government policies determine the enabling environment for NGOs and the roles that they assume."[2] The Bank also has noted that some governments welcome certain NGO activities, but not others (such as advocacy). As the report states, "Some governments are suspicious of NGOs precisely because of their advocacy for the poor."[3] Others are suspicious of NGOs because of their involvement in the broader arena of politics.

How Has the Enabling Environment for NGOs Changed in Recent Years?

Today, fueled by concerns about terrorism, insecurity and the backsliding of democratic governance in some parts of the world, the enabling environment for NGOs has become increasingly complex, restricted and ever-more politicized.

A leading example of this is the repressive Russian NGO law passed in 2006. Fearful of the "color revolutions" in post-Soviet Georgia, Ukraine and Kyrgyzstan in which NGOs took the lead, the Putin Government instituted a new law significantly expanding government control

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over NGOs.[4] The law appreciably restricted the right to association and the right to privacy of NGOs and NGO members.[5] NGOs must report on every aspect of their work, from the precise nature of their activities—including the number and names of participants—to the identities of all donors, no matter how small. As reported by the Heritage Foundation, "Russian rights organizations are unanimous in their belief that the worst expectations of this new law are justified. If an NGO cannot be banned directly, the red tape, all-out control, endless check-ups and a stepped-up financial burden could smother it."[6] Furthermore, this phenomenon is not restricted to the countries of the former Soviet Union. NGO participation in the "color revolutions" has helped to create more concern about NGO activity among governments around the world that are autocratic in nature.

The International Center for Not-for-Profit Law (ICNL), a U.S. NGO, has worked with NGO leaders, government officials and donors in more than 90 countries, studying the legal environment for NGOs and public participation. A recent report co-authored by ICNL underscores changes in the enabling environment as a result of the current backlash against democratic governance, which is "characterized by a pronounced shift from outright repression of democracy, human rights and civil society activists… to more subtle governmental efforts to restrict the space in which civil society organizations (CSOs) operate."[7] These efforts include "barriers to entry" to discourage or prevent the formation of organizations, and "barriers to resources" to restrict the ability of CSOs to secure the resources needed to carry out their work. The report further notes that "[g]overnments have tried to justify and legitimize such obstacles as necessary to enhance accountability and transparency of NGOs; to harmonize or coordinate NGO activi-

ties; to meet national security interests by countering terrorism or extremism; and/or in defense of national sovereignty against foreign influence in domestic affairs." The report then lays out six International Principles Protecting Civil Society, which are already embedded in international law.

International Principles Protecting Civil Society

1. The Right to Entry (Freedom of Association)
2. The Right to Operate Free from Unwarranted State Interference
3. The Right to Free Expression
4. The Right to Communication and Cooperation
5. The Right to Seek and Secure Resources
6. State Duty to Protect

ICNL has published a *Checklist for CSO Law,* excerpted below, which is also available on its Web site and is a handy tool for anyone wishing to explore the environment for NGOs in a given country.

Questions to Ask about the Enabling Environment When Working with NGOs

To understand how NGOs operate in a country, it is helpful to learn about the official policy framework within which they must work. Answering the following questions, derived from the ICNL Checklist, will contribute to that understanding.

Protecting fundamental freedoms
What are the requirements for legal registration or incorporation? What government ministry or agency is in charge of legal NGO recognition? Is this a long and difficult process? Is it expensive? What types of activities are permitted in order to be registered? Is there a different registration process for community-based organizations (CBOs) that work only at a local or regional level?

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International Center for Not-for-Profit Law
Defending Civil Society

Integrity and good governance

What founding documents, such as a constitution, articles of incorporation or by-laws, are required, and what provisions are mandatory? Are there different requirements for membership and non-membership NGOs? What about CBOs? Are there specific requirements for the type and number of board members? For board committees? Must staff roles and responsibilities be spelled out?

Financial stability

Are there constraints or limitations related to fundraising and financial activities? Are NGOs exempt from income and VAT taxes? Are they exempt from customs duties? Are there tax benefits for individual or corporate donors? Are foreign funds received by NGOs treated differently?

Accountability and Transparency

Are there specific procedures for transparency and accountability to the government or to the public? What is the type and frequency of reports that must be submitted to the government? What is the purpose of the reports—to monitor activities, funds, etc.? Are reports also to be disseminated to members? Made available to the public? How are conflicts of interest and the misuse of resources handled? To what degree are NGOs allowed to participate in political activities, and how does the state define "political activities"?

Conclusion

A poor enabling environment does not mean that it is impossible include local NGOs on development projects, and USAID has proven that it is possible and even critical to work with NGOs in countries with restrictive policies towards citizen activism. However, a poor enabling environment does make such partnerships much more challenging. Regardless of where one is working or with what type of NGOs, development project designers and managers are well served to be aware of the civil society enabling environment in which they are working.

References

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[2] *Governance and Development,* World Bank, Washington, DC, 1992.

[3] Ibid.

[4] The "color revolutions" were nonviolent resistance movements that protested against governments seen as corrupt and/or authoritarian and advocated democracy. For more information, see http://en.wikipedia.org/wiki/Nonviolent_resistance. Accessed April 2011.

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