

Terms of Reference (ToR)
Review of regulatory framework governing
Civil Society Organisations in Bhutan

Background

The *Civil Society Organisations Act* of Bhutan, 2007 was enacted to facilitate the establishment and growth of Civil Society Organisations (CSOs), and to ensure a system of accountability and compliance with legal obligations. The Ministry of Home and Cultural Affairs spearheaded the establishment of the Civil Society Organisations Authority (CSOA) and the CSOA Secretariat on 20th March 2010 as an appropriate registrar and regulatory agency to implement the CSO Act 2007. In 2010 the CSOA developed the ensuing *Civil Society Organisation Rules and Regulations* (CSO R&R) that further details out and specifies provisions of the CSO Act.

As of 30th November 2016 47 civil society organisations have been registered by the CSOA and are now governed by the CSO Act. These organisations are divided into two categories as set out in the CSO Act: a) Public Benefit Organisations - those that engage in social welfare, providing services to vulnerable groups, advancing knowledge and learning, supporting environmental and cultural causes, and promoting social harmony and Gross National Happiness; and b) Mutual Benefit Organisations that are membership-based and serve the interests of their members. Of the total registered CSOs; currently there are 35 PBOs and 12 MBOs.

Other forms of non-profit organisations such as cooperatives and farmer groups, and religious organisations are under the purview of other legal frameworks like the Cooperatives (Amendment) Act and the Religious Organisations Act respectively.

After several years of operation and experience in the CSO sector, there is now a felt need to review the legal and regulatory framework governing CSOs in Bhutan. As CSOs grow in numbers and experiences, there is a need for to revisit some of the rules and legal provisions especially to further improve accountability, transparency and professionalism in the CSO sector. Concurrently, the role of the CSOA is evolving, from a mainly CSO registration agency to an interlocutor with and link between CSOs and the Government, and also to a watchdog of minimum governance standards among CSOs. The existing legal framework does not seem adequate or some less relevant to this

changing and changed situation and , hence the need to conduct this review to improve the legal provisions governing civil society organisations in Bhutan. It will be done as part of the partnership between the CSOA Secretariat and HELVETAS under the project Support to Civil Society in Bhutan.

Objectives and Scope of Work

The objective of this assignment is to review the existing regulatory framework governing CSOs, and to provide concrete inputs and recommendation on the new regulatory framework to the CSOA . The assignment should take into account legal, political and socio-economic aspects of the country's regulatory framework.

More specifically there will be *two parts* for this whole assignment. Firstly to conduct and recommend specific rules and regulations in the CSO Rules and Regulation 2010 in accordance with CSO Act 2007. Secondly a review exercises on the amendment to the existing legal framework (CSO Act) to accommodate new implementable legal provisions.

Scope of work

This assignment will entail a broader thinking with the focus on the current and future plans, strategies and status of the CSOA while also considering the external environment such as Government policies, other legal & regulatory framework, and good international practices. To achieve this, the consultant is expected to undertake the following activities:

- Review and propose CSO's current legal & regulatory framework, governing and operating rules; Revise and finalize the CSO Act 2007 of Bhutan in line with existing national plans and policies .
- Work under the supervision of CSOA
- Involve and engage key stakeholders and conduct facilitation workshops and meetings for the carrying out the activity.
- Carry out consultations with key individuals in relevant agencies for adding value presentations on the draft and final revised CSO Act and review of rules and Regulations to 2010.
- Consolidate the information, insights, comments and views elicited from the workshops and meetings into a comprehensive and well-structured report for record and reference.
- Make presentations on the deliverables to the Technical Reference Group and Project Steering Committee.

Methodology

The methodology used for this assignment should include:

1. A **desk review** of the existing legislation governing aspects of Civil Society Organisations and other available documentations to conduct the review as outlined above, especially:
 - Civil Society Organisation Act of Bhutan, 2007
 - Civil Society Organisation Rules & Regulations, 2010
 - Cooperatives (Amendment) Act of Bhutan, 2009
 - Religious Organizations Act of Bhutan, 2007
 - Anti-Corruption Act of Bhutan, 2006
 - Labour and Employment Act of Bhutan, 2007
 - Other documents available pertinent to the functioning of CSOs and the CSOA, such as standard operating procedures, form templates, best practices, memos on legal inconsistencies etc.

Preliminary findings from the desk review should be presented in an inception report. Based on these findings the consultants may propose further points to clarify during the consultation process.

2. A **consultation process** through semi-structured interviews, focus-group discussions or similar means, with representatives of different stakeholder groups, should serve to elaborate the set of recommendations as outlines above. Consultations should take place with representatives of:
 - Government of Bhutan (national level and local level, specifically CSOA and Secretariat, Ministry of Home Affairs, Department of Agriculture Marketing and Cooperatives, GNHCS)
 - Registered civil society organisations
 - Non registered non-profit organisations
 - Legal experts acquainted with the CSO Act (e.g. lawyers who drafted the legal provisions)
 - Other relevant stakeholders involved in or affected by the work of CSOs

The consultation process with representatives of these stakeholder groups should follow the principle of purposive sampling. The chosen consultation process, selection criteria for sampling, and tools such as questionnaires, etc.

shall be described in the inception report and shared with a reference group for approval.

3. A **validation workshop** with representatives of all stakeholder groups to present findings and discuss proposed recommendations.
4. A **reference group** consisting of one representative each from the CSOA, CSOA Secretariat, and CSOs shall serve as a sounding board for the consultancy, and review and approve methodology, approaches, and tools to be used.

Team Composition

Overall the consulting firm must be able to demonstrate proprietary skills in delivering legal expertise and knowledge in the Civil Society services area, a proven track record in similar assignment. Possession of knowledge on the country's laws, policies, rules and regulations with regards to the CSO governance and affairs

Given the complex nature of the assignment to assess regulatory, political, and organisational aspects of the framework governing CSOs, the consultancy assignment should be carried out by a *team of two consultants*, consisting of:

1. A **legal expert** with deep knowledge of the public law of Bhutan, specifically pertaining to CSOs and other forms of non-profit organisations, and
2. An **expert of civil society organisations**, preferably with a background in social sciences, and/or substantial working experience with CSOs.

Depending on the different tasks at hand, the consultants may divide tasks among themselves or conduct them jointly. However, it is expected that they jointly elaborate and present the expected set of recommendations.

Period of Engagement

The assignment should be completed within 5 months from the date of signing the contract agreement. The work plan and the time frame shall be jointly developed in consultation with CSOA.

Timeframe

A detailed time plan will be developed once consultants are assigned for this task. The following table provides an estimated number of days for the activities. The total number of days shall not be exceeded.

Activity	Time-frame	Responsible
Desk review	20 days	Consultants
Development of inception report consultation process methodology	15 days	Consultants
Approval of methodology	10 days	Reference group
Consultation process	20 days	Consultants
Preparation and conduct of validation workshop	10 days	Consultants
Elaboration and submission of draft report with findings and recommendations	30 days	Consultants
Stakeholder feedback to draft report	30 days	Reference group
Finalisation and submission of final report	15 days	Consultants
Total work days	150 Days	

Deliverables

The following deliverables are expected from the consultancy:

1. **Inception report** outlining preliminary findings from the desk review, the approach, methodology, division of tasks among the consultants, and finalised work plan for achieving this assignment, to be discussed and agreed upon with the Reference group. The inception report shall not exceed 5 pages.
2. **Validation workshop** with representatives of all relevant stakeholder groups
3. **Draft report** containing a detailed of the exercises and analysis.
4. **The Draft proposal** of the Rules and Regulations with copies in English and Dzongkha should be submitted to CSOA.
5. **The Draft proposal** of the revised CSO Act with copies in English and Dzongkha should be submitted to CSOA .
6. **Final Report** taking into consideration feedback to the draft report.

Draft and final reports are expected to contain:

- a. Executive Summary
- b. Analysis of the exercises according to the scope of work and methodology
- c. Set of recommendations

Draft and final reports shall not exceed 25 pages excluding annexes.

All the documents and supporting research material, whether draft or final documents should be submitted to CSOA in soft and hard copies. Any material submitted under this ToR is the property of CSOA and cannot be submitted or distributed to or used by any other agencies, unless arranged otherwise.

Submission Details

Interested bidder are invited to submit the technical and financial proposal in two separate packages on or before 6th February 2017. The envelope should be clearly labelled and sealed as “Technical proposal” and “Financial Proposal”.

The technical proposal should consist of relevant documents covering the technical evaluation criteria. This should include:

- Details of the organization of the Bidder
- Past experience of the Bidder (with relevant documentary proof of each credential stated, in form of work order/ letter of award/ completion certificate)
- Team members clearly mentioning the Team Leader, and profile of each member
- Any other information relevant to the Project

(The CV along with photograph for the identified consultant representing the consulting firm working with CSOA should be included in the proposal)

The financial proposal should include the cost break down of all the cost associated to carry out the exercise for CSO Authority.

Evaluation of the bids

- I. The bids will be evaluated in two stages (Technical and Financial Proposal) by the evaluation team appointed by the client comprising representatives from CSOA and representation from other relevant agencies.
- II. To qualify for the second stage (Financial evaluation), the firms should score 75% and above for the technical evaluation.

- III. The firms qualifying both the stages only will be considered for the award of the assignment.
- IV. The weightage for the technical and the financial bid would be at the ratio of 80:20.
- V. The firm that scores highest in the accumulated assessment result of technical and financial assessment will be selected for the award of the assignment.
- VI. The technical evaluation and the financial evaluation will be based on the following factors:

Technical Evaluation

- a. Quality of the technical proposal (Understanding of the subject, Methodology, Work plan)
- b. Specific expertise in the relevant area of practice/specialization (legal expertise and awareness and knowledge on Civil Society/ NGO affairs,
- c. Track record of successful completion of past assignments
- d. Skills related to capacity building and facilitation (assessment will be based on awareness and community/stakeholders facilitation conducted).

Please note that the technical proposal where relevance should be backed by testimonials and other documentary evidences.

Financial Evaluation

- I. The evaluation committee will determine if the financial proposals are complete and without computational errors. The lowest financial proposal (Fm) will be given a financial score (SF) of 100 points. The financial scores of the proposals will be computed as follows: $SF=100 \times Fm/F$ (F-amount of financial proposal)
- II. Proposals will finally be ranked according to their combined technical (St) and financial (SF) scores using the weights indicated below in serial number (III)
 $S=St \times T\% + SF \times F\%$.
- III. The weight (T %) given to the Technical proposal is 80 percent. The weight (F %) given to the financial proposal is 20 percent.

Price and Payment

- I. Unless otherwise stated, prices are in Ngultrum and are exclusive of all payable taxes.

- II. Discounts should be included on quoted prices, if any.
- III. Quoted price would be open to negotiations.
- IV. Payment shall be made as per the contract agreement.

Reporting

The consultant will report to Mr. Thinley Norbu, Deputy Chief Program Officer, CSO Authority, for all matters pertaining to the conduct of the exercise.

Valid Trade License

The bidder should submit the copy of valid trade license and latest tax clearance certificate.

Award of Contract

The contract will be awarded after successful negotiations with the winning bidder. If negotiations fail, the client will invite the consulting firm having obtained the second highest score for contract negotiations. Upon successful completion, the client will promptly inform the other firms that their proposals have not been selected.

The selected consulting firm is expected to commence the assignment within a week after the award of the contract.

Payment of Professional Fees

The modality of the payment for the consultancy will be decided once the contract is being signed between the Secretariat and the consulting firm.

Submission of Bid

The bid should be submitted in a seal envelope and marked as “***Bid to Review Regulatory Framework governing Civil Society Organisations in Bhutan***” and addressed to Member Secretary, CSO Authority, Thimphu.

Annexure

Probing Questions

- a) What should the *mandate of the CSOA* entail? What are the roles and responsibilities of the CSOA towards: i) CSOs, and ii) towards other Government agencies at national and sub-national level?

- b) In what ways could the CSOA ensure *minimum standards of good governance* in the conduct of CSOs?
- c) How could the *CSO registration process* be professionalised and systematic?
- d) Do *differing regulatory frameworks* for different forms of non-profit organisations (CSOs, cooperatives, religious organisations, and non-registered organisations) lead to unequal treatment before the law (e.g. with regards to legal and tax status, reporting/disclosure obligations, Government oversight such as auditing, etc.)?
- e) Are there any *legal ambiguities and/or inconsistencies* between the CSO Act and the CSO R&R, and between CSO Act and other legislation enacted by the Government of Bhutan?
- f) Are the legal provisions on the *governance structures of CSOs* adequate and clear enough? Do roles and responsibilities of the CSO Board of Trustees need to be adapted?
- g) How to clarify and strengthen the mandate of the CSOA;
- h) How to improve the governance structures of CSOs including administrative action and penalties in case of non compliance by CSOs;
- i) How to *make CSO registration process more feasible and systematic* and to make registration for unregistered organisations more inclusive;
- j) How to *address existing inconsistencies* or unequal treatment of different forms of non-profit organisations, including non-registered organisations;
- k) How to *harmonise provisions* of the CSO R&R with the CSO Act;
- l) How to best move forward to *implement above recommendations*, outlining pros and cons of different options (i.e. revision of CSO Act vs. update of CSO R&R only).

List of reference materials:

- The Civil Society Organizations Act of Bhutan 2007
- Civil Society Organization Rules & Regulations 2010
- CSOA website: www.csoa.org.bt