



# Nepal

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## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Trust, Endowment, Society

**Five main social issues addressed by these organizations:** Primary and High School Education, Health and Medical Research, Basic Needs, Water and Sanitation, Human Rights

**Average time established by law to register a philanthropic organization:** 0-30 days

**Average cost for registering a philanthropic organization:** US \$22.50

US \$5 to get a recommendation letter from Ward Office; US \$10 to get a recommendation letter from District Development Committee and US \$7.50 to pay as registration fee with District Administration Office.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	3.0	2.8	1.5	2.8	3.0	2.60

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 3.0</b>
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The Constitution of Nepal 2015 (Article 17) ensures that every individual has the fundamental right to peaceful assembly and to freely associate. However, while individuals are mostly free to form organizations, the Association Registration Act – the umbrella act responsible for the registration and regulation of civil society organizations – clearly states that any attempt to act without registration is illegal, and those participating will be fined by the government. The Association Registration Act is, in most cases, the only piece of legislation governing the registration of civil society organizations (CSOs), unless otherwise stated in other statutes. Effectively, the only law is the Association Registration Act – which the government aims to amend – therefore, various forms of CSOs such as community based organizations, nongovernmental organizations (NGOs), clubs, networks and federations are all lumped together and registered under the same Act. Hence, whenever networks attempt to make any changes in their statutes through two-third majority decisions – the legal process required to amend statutes – there is no guarantee that the changes will be automatically approved by the government authority. In summary, all CSOs, despite the differences in the nature of their work, are subject to the same restrictions on most of their activities.

Provided that the founders submitted the necessary documents as stated in the Act, the District Administration Office – which also takes into account recommendations from the local government – is then responsible for registering the association. Though minors are allowed to participate as members in civic organizations, they and foreign nationals are not permitted to create CSOs. As a check against foreign influence, all CSO members associated with an organization are required to submit their citizenship certificates when applying for registration. Foreign nationals can, however, have advisory status and serve as cooperative members.

Though the statutes and bylaws of a CSO are required to have a section that describes how the organization mobilizes its resources, there is no minimum requirement for assets or capital at the time of establishment. There is, however, a reasonable registration fee required for registration, and CSO's are also required to renew – and pay for – their registration every year.

The processing of a CSO application by the concerned authority usually takes no more than seven days after submission of the necessary documents, which includes bylaws, the names and addresses of executive committee and founder members, an application, recommendation for local bodies and a copy of their citizenship certificate. The registration authority may refuse a CSO's registration request if the name of the organization, its objective or its activities seems inconsistent and illegal. The Act does not provide any specific time period within which the registration must be completed upon receiving the application. However, as per Section 13 of the Act, if a request to register is denied, CSOs may appeal against the decisions of the concerned authority to the authority specified by Government of Nepal within 35 days of the denial.

**Question 2: To what extent are POs free to operate without excessive government interference?****Score: 3.0**

Though the Constitution of Nepal 2015 guarantees the freedom of peaceful assembly and association, according to the Article 17, the government may prohibit associations from pursuing purposes or activities that may undermine the sovereignty and integrity of Nepal. Unions and associations are also prohibited from carrying out activities that jeopardize harmonious relations among the people of various castes, tribes and communities; instigate violence; or be contrary to public morality.

The Association Registration Act clearly defines the basic rights, limits, and powers of CSOs. Similarly, basic minimum provisions necessary for the operation and governance of a CSO must be a part of an organization's governing documents and bylaws as developed by its founders. Sample governing documents for CSOs are made available at every District Administrative Office and those interested may make a copy. Organizations are encouraged to model their governing documents on the sample documents and maintain its key aspects, including section titles.

According to Section 8 of the Association Registration Act, changes to the objectives of an association require a two third majority vote of the extraordinary general assembly. Such changes, however, require the prior approval of the local authority before the implementation of any change. Failure to comply with these and other directions of Government of Nepal could subject a non-compliant CSO to suspension or termination of registration. Moreover, CSOs are required – at least in principle – to be apolitical. Despite this, most Nepalese can readily link CSOs to a particular political party.

CSOs are allowed to cooperate and partner with national and international partners, including government bodies, academia and any charities provided that they have prior approval from the Ministry of Finance and Social Welfare Council before receiving any financial support. There are no restrictions on the use of social media or networks by CSOs and there are no specific provisions unique to CSO use of media outlets provided it doesn't violate the Cyber Crime Control Act. Unfortunately, the Cyber Crimes act is not always applied fairly, and the Home Ministry and Police Administration have brought charges against some CSOs, accusing them of using inappropriate language against the government on social media.

The Annual General Assembly of a CSO, as set forth in its statute, is the forum where responsible persons present various reports on the status of the CSO and obtain the Assembly's approval on various voting matters. These reports must also be presented to the relevant government authorities, and reporting to the relevant state agency – usually the District Development Committee and District Administrative Office – is a mandatory part of an organization's renewal application. Organizations are supposed to renew their registration within three months after their previous registration's expiry, usually around July 15th. If a CSO should fail to register, they will be subjected to penalties, the amount of which will increase every year that they are not in compliance. In extreme cases, where an organization has not renewed for five years, this noncompliance may lead to the cancellation of registration.

While reporting is mandatory and although the country's Social Welfare Council recently introduced some templates for project proposal and reports, there are no standardized reporting formats for CSOs to choose from when writing their reports. Additionally, recent legal changes have forced NGOs to consult with project advisory committees if they have received funding from foreign sources. The government also frequently conducts independent evaluations of NGOs run with foreign support.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 3.0**

The Association Registration Act allows for the dissolution of organizations, but does not provide dissolution procedures. Customarily, such procedures are provided for in organizational documents, which are approved by relevant government authorities, and thus procedures frequently differ between organizations. Private trusts are regulated by either the trust's deed or the conditions and objectives on which it was founded, and there is no specific statutory provision regulating the dissolution of such trusts.

CSOs can be dissolved if they fail to carry out the functions stipulated in their statutes or bylaws. Should dissolution occur, all the assets will automatically transfer to the Government of Nepal and the liabilities of the dissolved organization will be borne by the Government of Nepal. The government will not, however, assume the responsibility for a dissolved CSO's outstanding payments. The government of Nepal, as per the Social Welfare Act, can also suspend or dissolve the executive committee or the associations affiliated with it if the association does business that runs afoul of prevailing laws or their own constitutions. However, a reasonable opportunity to provide an explanation of any violation – accidental or otherwise – must be given to the executive committee before its suspension or dissolution.

Furthermore, the Government of Nepal may form ad-hoc committee drawn from the general members of any organization or institution under investigation to carry out the business of that organization or institution until any suspension is lifted, and until the constitutions of new executive committee are pursuant to Nepalese law. As such, these committees essentially form an interim form of management for CSOs in the process of dissolution. Any organization can merge or amalgamate with similarly natured organizations or networks provided that the merger decision is made by a two third majority of members from its annual meeting.

An organization registered under the Association Registration Act may also be dissolved involuntarily on the basis of (1) a change in organizational objectives without prior approval of the relevant local authority; (2) amalgamation with another organization without prior approval of the relevant local authority; (3) activities inconsistent with approved objectives; or (4) failure to comply with the instructions of the government of Nepal. Fortunately, the dissolution order can be challenged in court. Under the Association Registration Act, an appeal may be filed at the appellate court in the jurisdiction where involuntary dissolution has been entered against an institution, within 35 days of receipt of such decision. There is already a precedent where the Supreme Court had declared a government authority's decision to cancel registration of a "one child rights" NGO to be void, suggesting a process that is at least somewhat apolitical.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

<b>Score: 2.5</b>
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While Nepal's tax code makes provision for specific exemption from taxes, such exemptions are granted only on a case-by-case basis from the relevant line ministry or Cabinet. The Tax Act 2058 (2002 AD) requires nongovernmental and nonprofit organizations to apply for a Permanent Account Number (PAN) and, upon grant of the PAN, to apply for tax-exempt status by going through prescribed procedures. The conditions for exemptions are normally prescribed in exemption certificates, which are published by the government. If an organization has income generating activity – other than receipt of donations, contribution, membership fees, and the like – then that income is normally also covered by the tax exemption. CSOs are, however, prohibited from receiving exemptions on transactions involving the purchase or sale of any product with a commercial motive. Under the prevailing Income Tax Act 2058, tax paying establishments are allowed to deduct from their tax bill up to NPR 100,000 (US \$1,000), or five percent of taxable income, whichever is lower. This amount is negligible, and corporate establishments have not been incentivized to give more by such provisions. A company may also deduct up to NPR 1 million (US \$10,000), or ten percent of taxable income, whichever is lower, if their contribution is used for the protection and promotion of ancient, religious and cultural heritage in Nepal or for the construction of physical infrastructure for sports open to the public. It is, however, subject to the prior approval of the Inland Revenue Department. However, in special cases, such as natural disasters, the government of Nepal has made special appeals to corporate sectors and raised – albeit temporarily – this ceiling to facilitate higher levels of giving.

All other tax facilities and benefits are granted on an ad-hoc basis. Customs duty and value added tax (VAT) have been exempted on various goods imported from abroad provided that they are obtained by an NGO as a commodity grant or are purchased for charitable uses. For instance, buying an ambulance or receiving relief materials to be distributed to disaster victims would both qualify for partial exemptions. Despite these allowances, Nepalese income tax law does not guarantee that such nonprofit donations are entitled to exemptions from income taxes, and this issue must await decision by the Inland Revenue Department. So far there are no laws restricting civic organizations from engaging in public benefit or charitable activities, provided the activities fall within the scope of the objectives contained in the organization's statutes.

Despite the ad-hoc nature of the exemptions, in practice the income of CSOs is generally tax free and gifts, donations, and membership dues are not regarded as income. Interest is, however, usually taxed by Nepalese banks. If CSOs are providing services and are paid for rendering them, they are required to pay – although many CSOs are suspected of noncompliance – taxes unless they have a tax exemption certificate, for which they must apply to the Inland Revenue Office.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

Score: 3.0

CSOs are eligible to receive exemptions on transactions involving the purchase of property – including land, buildings and equipment – provided that the transactions are for charitable purposes and that the organization has been pre-approved by the relevant government authority. The process is not, however, predictable and the approval process consumes considerable time. This is particularly important because if a CSO has goods waiting for pickup but has not received approval, it will be forced to pay a demurrage charge to the customs office. Additionally, if property is sold by a CSO – though not purchased – the organization is required to pay capital gains taxes. Furthermore, if equipment and buildings are procured for development or commercial purposes, then those transactions are ineligible to receive tax exemptions. Renting out of property to a third party is also subject to a variety of taxes, usually in the form of rent taxes.

Most CSOs are registered as tax-exempt and receive these exemptions for internal income and donations. However, while CSOs can receive donations from in-country private donors, they cannot receive contributions from international donors, including both individuals and institutions. Fortunately, there are some exceptions for larger charity agencies such as the Red Cross, the Family Planning Association and the Rotary Club.

**III. Cross-Border Philanthropic Flows**

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 1.0

Neither individuals nor CSOs in Nepal have the right to send cash or kind donations outside the country for charitable purposes, and there is no act making even the most tangential of provisions for it. However, government-to-government support can be made for humanitarian support and individual experts can go abroad to provide volunteer services. This policy is largely enforced by the fact that the Central Bank does not provide any foreign currency exchange facilities for cross-border donations, and most of Nepalese are not allowed to have dollar denominated accounts unless they receive their income in dollars. It is difficult to make any online contributions for any purposes except for those related to the treatment of family members or the education of children. Theoretically, any person who has dollar denominated income could use ATMs to make payments abroad, however this is not counted officially.

There is no provision for providing tax exemptions to CSOs that send cash or kind donations abroad for charitable purposes. The only exception to this rule is the Red Cross, which has received special

approval to send contributions to other countries for humanitarian purpose in the aftermath of major disasters.

The government's stated justification for their policy is that CSOs in Nepal are supposed to serve people in Nepal, not those abroad. This policy is especially draconian when one considers that no individuals can send money outside the country without pre-approval from the Central Bank.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

<b>Score: 2.0</b>
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Foreign grants and donations to CSOs are legal provided that the organization has received pre-approval from the government of Nepal, and all financial transactions are deposited in commercial banks or financial companies in Nepal. Current Nepalese law does not, however, regulate the tax treatment of donations in kind: a blind spot that has injected uncertainty into the decision making processes of many CSOs. Consequently, at present it is assumed that only contributions in cash are deductible expenses and it is similarly presumed that the government makes no provision for tax credits with respect to such physical contributions or gifts.

The Value Added Tax Act does not provide a specific exemption to nonprofit or philanthropic entities, treating such organizations as end-users or consumers. That said, the government initially granted general VAT exemption to ambulance and fire-fighting vehicles imported by NGOs on a case-by-case basis and has – albeit on an arbitrary basis – extended that exemption to all such imports, irrespective of the activities of the importer. The Finance Ordinance 2004 AD has continued VAT exemptions for ambulances, but each exemption requires Health Ministry approval, for which no procedures have been prescribed. The government has also granted VAT exemptions on specific medical equipment, religious items, and various other items used for relief after natural disasters.

According to the Protection and Welfare of Disabled Act (1982), the government has the authority to fully or partially exempt customs and excise duties, local taxes, surcharges and other fees on medical equipment, raw materials, and other items used for the training and employment of the disabled. Similarly, the Vehicles Tax Act also exempts vehicles owned by social, religious, and educational institutions approved by the government and established with nonprofit intent.

In general, exemptions are available only for contributions that directly relate to an organization's nonprofit function. Exempt organizations are exempt from taxes levied on returns from investments, savings and reserves, although dividends are subject to a withholding tax at a rate of five percent. A final key piece of legislation is the Local Self-Governance Act, which was enacted to promote decentralization and local decision making. Critically, this Act gives local provinces the power to impose taxes on their own as well as to assign working areas and issues to CSOs in their territory. There is no statutory exemption of taxes and charges levied by these provincial authorities for nongovernmental or nonprofit institutions. However, except for service charges on services and facilities provided by a municipality, nonprofit organizations are exempt from other charges or taxes that are imposed by municipalities.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

<b>Score: 3.0</b>
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In principle, at least, the government seems to have understanding of the value of philanthropic organizations as change agents and their contribution in social change. Though the constitutional provisions and other policy documents are positive towards POs, there is an underlying tensions between government and the philanthropic sector. However, the government response to the policy environment is not consistent. In the public forum, especially to the international community, POs are applauded for their contribution. On the other hand, government attempts to shrink the space for POs to function effectively is evident in its recent move to change the Social Welfare Act. Political actors seems to be confused with the notion of POs and their contributions to social change. A recent statement of the ruling United Communist Party of Nepal (UCPN) is evidence; as it clearly mentioned that CSOs are to be strictly regulated for majority of them serving the interest of 'external force'.

POs participation in policy development exists but that is limited to merely cosmetic participation. On some of the sectoral issues, POs are invited to discuss the issues. However during the policy development process PO's participation is often curtailed and the draft bill is not typically shared until it gets its almost final shape. AT this point it is typically too late for POs to have any influence. Rather, the policy formulation is heavily influenced by political actors and bureaucrats, both of whom have 'control mindset' towards POs.

Nepal had a long transition after the 2006 Peace Accord with then rebel groups, now leading the government, in which to draft and promulgate a new constitution. Even after the promulgation of the Constitution of Nepal 2015, continued implementation requires promulgation of more than 200 laws, bylaws, and acts and the carrying out three tiered election (Federal, Provincial and Local) that has not yet seen full consensus. Political stability is vital, especially at the local level which, according to the new constitution, has huge responsibilities including the facilitation of CSOs and POs. However, it seems that dream is still far.

Economic conditions of Nepal are not that bad to fully restrict the philanthropic sector from prospering. However, it is the discouraging tone set by the government as well as the public image of POs (mostly known as NGOs) that stand in the way.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

<b>Score: 2.5</b>
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Government does not systematically promote a philanthropic tradition; government prefers social organizations to focus their activities more on 'relief' rather than 'reform' and 'transformation'. There

has been no formal initiatives from government institutions to engage POs in formulating an enabling environment to promote a cultural philanthropic tradition. Some spiritual organizations have the capacity to garner larger philanthropic contributions from public. However these organizations also face the ceiling on buying land or property. Further, if the organization dissolves, the acquired land will automatically be government property.

Government as such is indifferent in promoting POs equal access to resources and opportunities. Largely, it is the POs themselves which use their networking and fundraising skills to access resources from other countries. Even when some resources/funds are available to the POs in specific sectors and themes, political network or affiliation of POs becomes vital for them to access the resources. However, Social Welfare Council has prepared a list of geographical priorities that aims, at least in principle, to make equitable distribution of resources in the underdeveloped and marginalized regions.

Ideally the donors and funders of POs would be free to support any philanthropic cause or organization without government pressure. However, there are some concerns/areas (religious conversion, political awareness, ethnic issues) that have drawn government attention and some evidence suggests that government authorities have warned funders (locally working INGOs) to abstain from such acts that government views as a threat.

Coordination among government agencies is extremely level. For example, in one of the programs organized by the European Union and NGO Federation of Nepal, the head of the department (Ministry of Home Affairs) that looks after all associations registered under Association Registration Act admitted that she is not aware at all about the draft bill that the Ministry of Women, Children and Social Welfare prepared in a series of consultations with some of the CSOs' representatives.

Government capacity to facilitate POs is very weak – government-line agencies are understaffed and frequent transfer of those staff makes it further difficult for POs to deal with new staff who possess low or even no knowledge on how POs are different than any business groups (private sectors) and government bodies. Corruption is one of the big challenges to the governance in Nepal, which hinders POs from having effective and equitable access to resources and opportunities.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

<b>Score: 3.0</b>
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Philanthropy is deeply rooted in Nepalese society and has been recognized as an essential part of the country's customs, culture and traditions. Providing food and shelter to visitors; constructing public shelters, resting places and drinking wells on the trails; and helping others in need have always been an honored behavior in society, one that highlights how deeply rooted the religious belief and concept of inter-connectedness is in Nepal. Central to the idea of good karma is the welfare concept, which includes the construction of temples and clinics; the provision of food and clothes to the poor and destitute; and donation of land for public use. As a result of this long-held belief, Nepalese

nonprofit organizations have come to focus on the welfare approach, although there is still a widespread concern that CSOs are losing their spirit of volunteerism.

Nepal is also home to various forms of ‘trusts’ created by the state, organizations, communities, individuals and families that mobilize resources to serve various constituencies. Most of the cultural traditions, rituals and functions are funded by the regular income – though it is minimal at present – of trusts known in Nepali as ‘Guthi’ – which derive their income primarily from land and interest on fixed deposits – and from the donations of individual devotees.

The broad concept of civil society seems not to be yet fully understood in Nepal, and a large segment of CSO members do not actually consider themselves as part of the CSO community. Moreover, many identify CSO leaders as politically motivated activists whose job is to pressure the government on policy issues. Despite enormous contributions and longtime involvement, CSOs in Nepal continue to suffer from the misconception of being cunning, donor-driven ‘dollar harvesters’. This negative image has partly been created by the media and partly by civil society members themselves. The media often presents CSOs as urban-based, dollar hungry groups that prefer a luxurious lifestyle. Accordingly, some CSO members are reluctant to identify with the sector. Despite the fact that self-regulation has been initiated by NGO Federation, an umbrella organization of NGOs in Nepal, it has not been very effective as a way to clean the image of NGOs.

Despite the high – and perhaps unrealistic – expectations of CSOs to be innovative, less corrupt, less bureaucratic, more efficient, and generally more reliable than government, CSOs are regularly criticized, particularly for a lack of accountability. CSOs in Nepal, despite operating in improving legal and political circumstances, have not been successful in winning the support of large and influential segments of society.

## **VI. Future of Philanthropy**

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

As of now, the philanthropic sector in Nepal is non-institutionalized and informal. However, some spiritual institutions and relief organizations (such as Old Age Homes, Child Homes) have been able to mobilize local resources. Spiritual/religious institutions have their own members who contribute financially as well as in-kind to the institution they are members of (or have personal connection to). There are a few good examples: Help Nepal Network has to some extent been able to mobilize resources from Nepali diaspora for some social causes, TEWA has mobilized resources locally to promote its cause. Despite this, various organizations are not successful in mobilizing philanthropic contributions resulting in poor sustainability of their work.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Massive Earthquake in Nepal where both organizations and individuals immediately responded to the situation and helped each other – that was a height of proactive philanthropic contribution people volunteered to be a part of;
- An initiative taken by popular artists (a couple) also proved that philanthropic tradition is deeply rooted in Nepali social setting – where people volunteered physically as well as those unable to do so, contributed with financial support to rebuild three damaged settlements within remarkably short period of time; and
- A big flood in Terai (border to India) caused human casualty and property loss when an entire village was swiped away and local residents were not even able to locate where their houses and farm lands were. People from different walks of life came together to extend their support and various organizations ran charity programs – football game, cultural shows, street walk, door-to-door campaign etc. to raise funds.

### **Future development trends in the philanthropic landscape**

With the gradual rise in family economy and some good examples of philanthropic contributions resulting in lasting change in the society, an increase in the individual and collective contribution to causes has been noticed in the last couple of years. For example, parents are taking their kids on their birthday to any children or old-age home and support those living there. School students are sometimes taken to such places and are encouraged to contribute whatever they can. Even some students from private schools are taken to the government schools, as a part of their social work, and are encouraged to teach poor government school students. It seems that various forms of philanthropic ideas are emerging and will continue to do so that will definitely put pressure to the government to make an enabling legal environment.

### **Three key recommendations to improve the environment for philanthropy**

- Facilitate a discourse on ‘philanthropic freedom’ nationwide and engage various forms of CSOs in this endeavor to make the process inclusive and to ensure that both the depth and breadth of the issue is explored and disseminated through various means;
- Engage government also in this discourse and help them realize that there are several benefits of creating an enabling environment for philanthropic freedom as well as promote the idea of “buy-in”; and
- Advocate for effective enforcement of ‘corporate social responsibility’ and make a monitoring body, inclusive of POs representatives, to ensure that CSR principles are truly adhered to.