Legitimacy and legal compliance

Key issues and dilemmas for civil society organisations

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Basic concepts

• **Legal compliance** (technical, value free) – we act according to the existing law, irrespective whether law is ‘good’ or ‘bad’

• **Legitimacy**, (it is not purely technical, it includes element of our judgement)

  1. acting in accordance with law (the same as legal compliance)
  2. validity of law is accepted by people = people recognise law that is ‘good’
  3. credibility, authenticity
Legitimacy & rule of law

- Law can be considered legitimate if rule of law is upheld
- Rule of law:
  - all are equal before the law (including government officials)
  - rules are clear, well-understood, fairly enforced, not applied in arbitrary manner
  - universal standard of justice, equality and impartiality against which all governments can be measured
  - individual enjoys the full exercise of his fundamental liberties and civil rights
Legal compliance for NGOs

Two scenarios:

1. Legitimacy of law is not in question.
   - rule of law prevails, even if the legal system is not perfect
   - fundamental rights e.g. freedom of association respected

2. Legitimacy is questioned
   - law does not protect fundamental rights
   - law is not applied or interpreted in arbitrary manner
First scenario

Legitimacy of law is not in question.

Full legal compliance is a must

- civil society organisations cannot afford to ignore the law
- example setting for the others
- consistency between ideals being preached and practice - credible reputation
- less vulnerability if we are threatened by those who don’t like us
- we have to start from ourselves....
Second scenario

Legitimacy of law is questioned

- We have to determine precisely which elements of legal system are not legitimate
  - (bad regulations, unclear regulations that may be subject to various interpretations, lack of enforcement)
- We cannot assume that unfriendly, regulatory environment justifies us in ignoring law (e.g. not paying taxes)
- We should make an effort to maintain as much legal compliance as possible
Case: freedom of association

- Does the legal and administrative framework for civil society organisations conform to the principles of rule of law?

- If not what shall we do?
Case: freedom of association

Go through a checklist (based on ICNL):

1. Creation/registration of NGO easy, cheap and quick
2. Body responsible for registration (administration or court) acting fairly, negative decisions could be appealed
3. Public/transparent register
4. Liquidation of NGO by administration or court only in absolutely extraordinary situation
5. All activities should be permitted, if subject to regulations they should not be discriminated
6. Public benefit status (e.g. tax privileges should be applied universally according to transparent criteria)
Case: freedom of association

The response is negative: the legal and administrative environment is not friendly

1. Advocate for change of the system
2. Make all possible attempts to acquire/maintain legal status of your activities
3. Resort to measures that are not in full legal compliance only in exceptional circumstances that are vital to your mission, (remember it is ‘lesser evil’ not the ‘good thing’)
   • analyse carefully pros and cons,
   • do not expose to risk your subordinates
Case: paying taxes

• Do we have to pay high taxes on salaries of NGO employees? Is it acceptable to use legal (or illegal) tricks to reduce fiscal burdens put on our organisations?

Possible answers:
• „If high taxes are an instrument to make your activity impossible we may have the right to avoid them”
• „Taxes are not used for good of the people. Why should we pay them”

Risks:
• We look for justification to earn more
• Once we are able to afford taxes (or authorities will stop using them to impede our activity) we will get used to not paying taxes
• we make ourselves vulnerable to accusations undermining our credibility
Self-regulation of NGOs

1. Individual self regulation
   - established operational procedures, reporting rules, financial accountability within organisation is even more important if we cannot disclose some aspects of our activity to authorities e.g. alternative accounting
   - self regulation should be even more rigorous than in normal’ situation when we conform to all existing rules

2. Collective self regulation
   - ethical codes
   - transparency standards (publishing annual reports, sharing information with other organisations etc)
   - good argument for authorities that they do not have to regulate everything
   - important tool for building credibility and image of NGOs within society
Legitimacy & credibility

- How to maintain legitimacy understood as credibility to our stakeholders (members, partners, clients, donors)?

1. We really stand for something: represent interests of a particular group or promote a particular idea

2. We govern ourselves in a democratic manner (not by an unchallenged autocratic leader), we have provisions for avoiding conflict of interests

3. We are transparent, open for external scrutiny, financially accountable

4. We are serious about our mission (it is not a lip service): we do provide services (something concrete) to those who are our clients