

Illustrative Priorities for CSO Legal Reform Funding Priorities in the NIS, CEE and Regionally

*Working Draft of November 15, 2006
Submitted by ICNL and ECNL*

NIS:

Armenia: While several laws were adopted in 2002 - 2003 (laws on public associations, on foundations, and on charities), little progress has occurred with the implementation of this legislation, or with further legal reforms. Civil Society Organizations (CSOs) suffer from poor implementing regulations and practices that seriously deter CSO registration. Foreign funding remains the primary source of income for CSOs, while Armenian CSOs and their local donors continue to suffer from the lack of tax benefits. Economic activities by public organizations remain prohibited. Moreover the law prescribes arbitrary percentage limits for the overhead (administrative) costs of an organization. The following are some illustrative activities that would improve the legal regulatory environment for CSOs:

- Training for implementing officials to ensure that they appropriately apply enacted legislation;
- Training for CSO representatives and lawyers to ensure that they understand the opportunities and obligations presented by the laws;
- Working on CSO tax reform, recognizing that this is essential to ensure the long-term sustainability of the CSO sector; and
- Assisting with amendments to the Law on Public Organizations to allow Public Organizations to undertake economic activities directly.

Azerbaijan: Key priorities in Azerbaijan relating to freedom of association include, first, the registration process, which is mandatory (in violation of international law) and currently so cumbersome that approximately 60% of CSOs are unregistered. Second, the law hinders CSO sustainability by requiring CSOs to register all grants with the Ministry of Justice, and by making available no state funding for CSO activities. Third, CSO/state cooperation is encumbered by legal provisions, which potentially restrict advocacy activity, and contain vague prohibitions against political activities.

Georgia: While the framework legislation is generally not a problem, the key issue is the legislation relating to the sustainability of CSOs.

Most funding to CSOs has traditionally come from foreign sources. Therefore, all tax incentives in the tax code relate to foreign funding. Following the Rose Revolution, foreign funding dedicated to supporting CSOs has greatly decreased. However, the legislation does not always keep up with these developments. The Law on Grants, for example, does not envision the government as grant maker to CSOs, but rather as recipient of international grant funding. Continuation of reform of tax legislation is required to allow CSOs to diversify their sources of income.

The following is an illustrative list of examples of laws which would help to improve the sustainability of Georgian CSOs:

- Legislation providing incentives for economic activities of CSOs (providing an exemption from income tax on income generated from economic activities);
- Legislation which would provide incentives for individual donors supporting charities;
- Legislation which would provide a mechanism for defining the value of in-kind contributions from individual and corporate donors;
- Legislation on government grants (program funding); and
- Legislation on government procurement of social services (including mechanisms for bidding and quality standards).

Another important issue that has been stagnating development of the sector is the lack of self-regulation, which would establish high standards for internal governance of CSOs.

Moldova: The legal framework lacks consistency and contains contradictory laws that are in need of reform to meet international and European best practice standards. Moldovan applications accepted by the European Court of Human Rights are among the most numerous compared with those of other states.

- Priority areas include, first, the current registration practice, which is reportedly overly bureaucratic and time-consuming, thereby demanding attention to improve the law's implementation.
- Second, the regulation of charity (or public benefit) status demands reform. There are currently contradictions between the tax code and the Law on Charity and Sponsorship (2002), creating confusion over eligibility for tax-exempt status and tax-benefited donations. Moreover, the work of the Public Benefit Commission lacks transparency, independence and professionalism.
- Third, there is a critical opportunity to improve CSO/state cooperation. In 2005 the Parliament adopted a Concept of Cooperation with civil society, relating primarily to the participation of CSOs in decision-making at the central and local levels. Government financing of CSOs lacks appropriate procedures to ensure transparency.

Russia: There are several problems that arise out of Russian laws, which impede the activities of Russian CSOs and do not encourage their sustainability.

The new Russian CSO Law introduces burdensome and difficult-to-meet reporting requirements for CSOs, accompanied by severe penalties for non-compliance.

In this new law, the most essential changes to the regulation of Russian and foreign civil society organizations include the following:

- New reporting requirements for Russian and foreign CSOs;
- New registration procedures for non-commercial organizations (NCOs);
- New “notification” requirements for inclusion in the registry of representative offices and affiliates of foreign non-commercial non-government organizations (FNNO);
- Restriction of the rights of foreign nationals and stateless persons, as well as persons serving a term in prison, and persons whose actions, in a court's opinion, resemble the characteristics of extremist activities, to become founders, participants or members of Public Associations (PAs) and NCOs; and
- New powers of the registration bodies to define whether a CSO's activities are in compliance with its goals stated in its charter, and to decide on closing down a CSO found to be not in compliance.

The new CSO Law and the implementing regulations allow for broad and restrictive interpretations. Some reporting requirements are burdensome and difficult to comply with, leaving room for discretion in determining whom to target when enforcing these rules. Reporting requirements apply to all Russian CSOs, of which there are dozens of thousands. Other regulations complicate the registration procedure for NCOs, and enlarge the basis on which the government may choose to deny acceptance of notification (registration) for foreign representative offices and affiliates.

The Russian legislation does not include a public benefit or charitable status, which would provide a basis for granting preferential tax treatment to charities and their donors. Russian donors lack tax incentives. For example businesses that make contributions or donations to CSOs, including charities, do not receive tax deductions or credits at the federal level. As a general rule, individuals may not deduct from taxable income any monetary donations to private CSOs. Foreign donors are also discouraged from supporting Russian CSOs. The 2001 Law on Foreign Aid requires donors and recipients to register their programs with the governmental Commission on Foreign Aid through an overly bureaucratic process, and to obtain a letter from local or regional authorities confirming their consent to regulate the expenditure of the foreign assistance funds, a process that is likely to encourage abuse. Furthermore, there is no clear procedure for foreign donors to be included on the government's list of qualifying grantors, whose grants will be tax exempt for recipients.

The majority of CSOs are facing burdensome taxation and regulation of all income, including donations. Tax-exempt donations are not available to all CSOs, as the 1995 Civil Code permits only certain legal forms of CSOs to receive donations. In addition, the Tax Code provides CSOs with only very narrow tax exemptions for received grants, only in cases when grants are awarded: (1) by organizations appearing on a list approved by the Russian Government; and (2) for the implementation of specific activities (even after progressive amendments in 2005). Moreover, income from the economic activities of CSOs is taxed in the same manner as for commercial organizations even if related to charitable purposes.

VAT is an additional burdensome tax that affects many CSOs. The provision of services or goods (including money) to a CSO is exempt from VAT if the services or goods are provided for the implementation of its statutory charitable goals, unrelated to any commercial operation. In addition, provision of free-of-charge goods and services by CSOs are exempt from VAT only when it is provided in conjunction with charitable activities. The list of activities considered charitable, however, is narrowly defined by the 1995 Law on Charitable Activities and Charitable Organizations. CSOs, whose activities are currently subject to VAT, are unable to compete with governmental and municipal providers of services whose assistance to the sick, disabled, and aged are exempt from VAT. As a result many Russian CSOs are deprived of government funding.

Multiple provisions in the current legal framework discourage the creation and maintenance of endowments. For example, the passive (investment) income of CSOs is taxed at the same rate as income received by commercial entities.

Other problems with taxation includes personal income tax on individual recipients of CSO services and material aid, personal income tax on compensation of travel and accommodation expenses for individual participants at CSO events and expenses of CSO volunteers, and others.

Central and Eastern Europe

Albania: There is currently a working group, which addresses issues relating to the legal framework and self-regulation. Among the issues being addressed by the group which would benefit from assistance are:

1. Revision of the tax laws affecting CSOs, as well as the sponsorship law, to create a coherent system of exemptions from tax as well as greater incentives for philanthropy;
2. Implementation and capacity building for judges and CSOs to address problems with implementation of the laws on registration; and
3. Technical amendments to the Law on CSOs.

Bosnia: Priorities in Bosnia include the following:

- Improved implementation of existing laws;
- Legal framework for public benefit organizations;
- Tax treatment of CSOs;
- Legal framework for volunteers; and
- Government funding for CSOs.

Croatia: In Croatia the regressive 1995 Law on Foundations is still in effect. This allows for invasive government interference with the internal governance of foundations, as well as a long registration process. As a result there are only about 90 foundations in the country, as opposed to almost 30,000 registered associations. Priorities for Croatia include:

- Enactment of the new Law on Foundations;
- Drafting and adopting a Law on Volunteering;
- Improving the legal framework for public funding (there is a draft Code of Good Practices on government funding of CSOs); and
- Training for government officials and CSOs on international law as it affects FOA and CSO operations.

Kosovo: Current initiatives include efforts to amend the VAT regulation to eliminate the VAT on imports of humanitarian aid, and to persuade the SRSG to reject provisions of a Freedom of Association Law that restrict rather than facilitate the freedom of association. There is also a need to address the poor understanding on the part of Kosovar government officials and assembly members of the benefits of an enabling legal and regulatory framework for CSOs.

Macedonia: Through funding from USAID Civil Society Strengthening Initiative implemented by ISC, ECNL is providing assistance in three general law reform issues: drafting amendments to the Law on Citizens' Associations and Foundations; drafting a law on volunteering; and reform of tax laws affecting CSOs and private donations. In addition, under funding by EAR, ECNL serves as an expert to a working group developing a Government Strategy for Cooperation with the CSOs (to be adopted end of 2006). Beyond 2006, the key priorities in Macedonia will be:

- Drafting amendments to Law on Citizens' Associations and Foundations to introduce public benefit status, allow CSOs to engage directly in economic activities and harmonize the provisions on founders, establishment and governance with EU best practice.
- Introducing tax exemptions on income from economic activities.
- Monitoring the implementation of the recently adopted Law on Donations and Sponsorship to document how the provisions are being put into practice (for example,

the type of entities that benefit from the law and purposes for which donations are being given).

- Developing a legal framework for volunteering.
- Improving the framework and mechanisms for government funding to CSOs.
- Implementing the action plan incorporated in the Government Strategy for Cooperation with CSOs.

Montenegro: Top priority remains to amend the Law on Associations and Foundations, and the treatment of economic activity in particular. The current Law does not provide clear guidelines on the extent and scope of legitimate economic activities CSOs can pursue; legal provisions are vague and overbroad. As a result, hundreds of businesses and cafes are registered and operating illegitimately as CSOs, thus detracting from the good work of the smaller number of genuine CSOs and having a negative impact on the image of the CSO sector as a whole.

Other priorities in Montenegro include:

- Developing an improved framework for volunteers;
- Improving the system of government funding for CSOs;
- Introducing a comprehensive reform of the CSO Law, in order to create a more conducive legal environment for a rapidly growing CSO sector. Among others, the reform shall seek to address or revisit the following issues in the CSO Law: establishment of a foundation, relationship between a founder and a foundation, the governing structure of an association, standards of diligence for members of the board, protection of members' rights, dissolution of an organization, etc.

Romania: ECNL is working with World Learning and the Civil Society Development Foundation in Romania to assist in addressing CSO legal reform needs. Priorities include:

- Enhancing CSO participation in the EU programming process. This is also important in order to position the CSO sector to be eligible to receive support from the Structural Funds after joining the EU;
- Revising the legal framework for public benefit organizations;
- Analysis and recommendations to improve government funding mechanisms;
- Effect of the EU accession on VAT treatment of CSOs.

Serbia: The long due new Law on Associations has still not been adopted, which is a significant setback and delays harmonization of Serbia's legal framework with European standards. In light of this, priorities in Serbia include:

- Enactment of the Law on Associations;
- Adopting the draft Law on Volunteerism;
- Improving the legal framework for foundations;
- Creating a transparent mechanism of public funding for CSOs.
- Developing a more supportive tax framework for CSOs.

Regional Priorities

Priorities include:

- A Research and Publications Fund to support the preparation of policy analyses on cutting edge regional issues (e.g., how to address restrictions in legislation of FoA; CSO law and CSO sustainability; policies to promote CSO-government cooperation; good practice legislation in government financing of CSOs; VAT treatment of CSOs etc.).
- Workshops and conferences to share and discuss such analyses.
- A more intense “Summer Institute on CSO Law” to provide deep capacity to government officials and civil society representatives on enabling environment issues.
- Expansion of the CSO Law Educational Initiative to new countries and faculties to build capacity, to provide low cost legal services to CSOs through legal clinics and otherwise, and to interest the next generation of lawyers on enabling environment issues as they set forth on their career paths.
- Support for cross-border consultations and technical assistance to promote “East-East” information-sharing.