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Supporting Policy, Regulatory and Institutional Reforms for Civil Society Development in Armenia: Existing gaps and recommendations

Աջակցություն քաղաքացիական հասարակության զարգացման քաղաքականության, կարգավորման և ինստիտուցիոնալ բարեփոխումներին Հայաստանում

Supporting Policy, Regulatory and Institutional Reforms for Civil Society Development in Armenia

Սույն հրապարակումը հնարավոր է դարձել իրականացնել Զառուկերփարթ ինթերնեշնլի Հայաստանյան ներկայացուցչության կողմից իրականացվող Զաղաքացիական հասարակության և տեղական ինքնակառավարման աջակցության ծրագրի, և Ամերիկայի Միացյալ Նահանգների բնակչության առատաձեռն աջակցության շնորհիվ՝ ԱՄՆ Միջազգային Չարգացման Գործակալության No AID-111-LA-10-00001 համագործակցության պայմանագրի DFD-A-00-09-00141-00 պայմանագրի շրջանակներում Մարդկային զարգացման կենտրոնի միջոցով: Սույնի բովանդակությունը, արտահայտված տեսակետերը և կարծիքները պատկանում են հեղինակներին՝ Մարդկային զարգացման միջազգային կենտրոնի պատասխանատվության տակ, և հնարավոր է, որ չհամընկնեն Զառուկերփարթ ինթերնեշնլի Հայաստանյան ներկայացուցչության, ԱՄՆ Միջազգային Չարգացման Գործակալության և ԱՄՆ կառավարության տեսակետերի հետ:

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Supporting Policy, Regulatory and Institutional Reforms for Civil Society Development in Armenia: Existing gaps and recommendations

Acknowledgements

From June to August 2011 the International Center for Human Development (ICHD) conducted a needs assessment exercise to define the development needs of the civil society organizations (CSO) in Armenia. The project was implemented with the support of the Counterpart International Armenia (CI) and the Center would like to express its special gratitude to Arsen Stepanyan for his helpful insights into the issue, and Tatevik Davtyan for carefully attending to all the comments and concerns throughout the implementation of the project. Special thanks go also to Luben Panov, who patiently shared his expertise on the international experience of the civil society development with the Armenian expert community, and wisely advised on pros and cons of the existing mechanisms and potential risks while adopting those in the Armenian context.

ICHD is particularly grateful to all the representatives of the contacted CSOs who have found time in their busy schedules to meet for an interview and share their perspectives and concerns on the issue. Without their active participation this project would not have been carried through.

Finally, the Center would like to thank all the government officials for their constructive participation in the needs assessment exercise and especially the Deputy Minister of Justice Aram Orbelyan whose visionary perspective on the cooperation of the government and the civil society inspires hope for positive changes. We do hope that this collaborative effort will fruit further and contribute to the final goal of building a strong dialogic and democratic society.

The Issue and the Rationale for the Needs Assessment Exercise

The legislation regulating the activities of the civil society institutions in Armenia has been shaped in parallel to the development of the practices of exercising the fundamental human right to freedom of association. Indeed, throughout years people have chosen more and more comprehensive and sophisticated formats to realize their right to associate. Civil society institutions have been established; their needs for further development have diverged, so have been the issues requiring the legal regulation of these institutions. It is a truism that the legislation regulating the activities of the institutions should aim at their development, based on their specific needs. When at a certain stage of development the needs and perspectives of the institutions diverge significantly, the differentiation of the regulation inevitably becomes a necessity. Incidentally, when the need for differentiation is already voiced out, any delay to address it has always created a wave of complaints, which inevitably have led to the expected changes.

Throughout the one and a half decade of the independence, during the different development phases of the civil society organizations their regulation has been dispersed and differentiated. For instance, the regulation of the activities of commercial and non-commercial entities has been differentiated. Distinct laws regulate the activities of the religious, non-governmental and political organizations, as well as those of the foundations. The Labor Code regulates the activities of the trade unions and so on. In 2001 a rather mature step was taken in the same direction: the legislative regulation of several key institutions, such as the cultural centers, the health and educational institutions of state and communities ownership was differentiated. Further the regulation of certain professional unions, such as the Chamber of Lawyers and the Chamber of Commerce was differentiated. Thus, at a certain stage of development of CSOs the need for differentiation matures enough for a subsequent process of change to become inevitable.

Still, a considerable group of civil society organizations, for instance, creative unions (associations of professionals in arts) with hundreds of members to think tanks with only a dozen employees are regulated by the same law. The activities of about 4000 organizations currently are regulated by the 2001 Law on Non-Governmental Organizations (2001 NGO Law). It seems that throughout 2009 the need for defining the legal regulatory provisions which would take into account the needs and the specifics of the activities of the patriarchs of the Armenian civil society organizations – the creative unions has matured.

Taking into account the specifics of the activities of these few but quite significant organizations in terms of their membership and the role, the RA Ministry of Justice initiated the process of amendments in the 2001 NGO Law, based on their recommendations. In September 2009 the Armenian Government approved a draft of amendments to the Law on Public Organizations, recommended by the Ministry of Justice. According to the procedures, it was introduced to the National Assembly for ratification. However, at this point the proposal caused public discontent especially among several CSOs, which complained about the fact that the new draft was worked out without their direct involvement in the development process. Though there were public hearings at the National Assembly and several roundtables at ICHD, still many organizations felt marginalized within the process. Since the Government had failed to publicly discuss the suggested amendments. Moreover, the recommended amendments would inevitably impact an army of the organizations, which though of smaller membership, comprised quite a large number, and had totally different peculiarities and development needs. As a result, the numerous complaints ‘buried’ this rather controversial regulation initiative, given the vulnerability of its foundation, the risks associated with the legal provisions and other concerns verified by experience.

Moreover, the challenges of the large membership associations, one of the most significant segments of civil society, remained unaddressed. Their development needs still need to be correctly assessed and perceived, and the imperative of differentiating between the regulation peculiarities should be discussed and addressed through inclusive policy-making process. Perhaps, there is no need to regulate all the emerging issues with a different law or grant a special status to one or the other group of organizations. It is simply needed to fully and consistently use the whole inventory of the available instruments of the legislative technology.

In this regard it is necessary to understand the specifics of the development directions and the needs of the organizations, which though fall in the same spectrum of the organizations and are regulated within

the same legislation, still differ in nature. Furthermore, one should agree that the need for regular differentiation of the legislative regulation indicates the consistent development of the civil society organizations. For instance, in the recent years Armenian think tanks have developed quite considerably, and the need for adequate legislative regulation necessary for their further development is gradually articulated. This would provide such institutions with an opportunity to gain financial independence and address visionary and long-term issues.

Thus, the campaign started by the CSOs against the proposed draft which was supported also with expert evaluations, compelled the National Assembly to postpone the hearings of the draft for some time. However, the document is still on the agenda, and the hearings may resume technically at any moment. The Ministry of Justice has not withdrawn the draft, notwithstanding the strong CSO opposition against the document.

Therefore, this needs assessment exercise is a rather timely activity to try to formulate and articulate the development needs of various CSOs in Armenia in a time when relevant legislative initiatives are pending in the air and when the diversity of CSOs has necessitated distinct tracks of development. This should be done with the goal of having the next policy making cycle heed to the voice of direct beneficiaries of the proposed amendments. In summary, there is a need to facilitate an inclusive process to generate and analyze various alternative options to address the above-mentioned issues and enable key stakeholders to work out comprehensive and agreed recommendations on policy, regulatory and institutional reforms that will enhance the progressive development of the civil society in Armenia.

Methodology

To get a comprehensive snapshot of the developmental needs of the Armenian civil society it was decided to assess these needs in three dimensions: policy, regulatory and institutional with the goal of promoting a positive environment for development. The policy dimension is defined in terms of key sectorial strategies of the RA Government. Regulatory dimension looks at the relevant legislation which regulates the various phases of the CSO activities, such as its registration, rules and regulations with which it has to comply during its activities, and if need be, closure. Finally, the dimension of institutional interaction looks at how the CSO relates to other institutions in the country.

The primary stakeholder group and the direct participants of the exercise comprise non-governmental organizations (NGO), think tanks, foundations, professional associations, and civic movements. The secondary stakeholder group involves the government of the Republic of Armenia, namely the Ministry of Justice, Ministry of Economy and Ministry of Social Affairs, the state registry, the National Assembly, political factions, the Central Bank and the Treasury, and finally, international organizations operating in Armenia.

To carry out the assessment task, it was crucial to define *institutional development*, and the working definition of the concept adopted for this project is the following:

- The civil society organizations should be able to accomplish their missions without externally compelling interruptions in their activities;
- CSOs should be able to develop as self-sufficient, reliable and ethical institutions;
- CSOs should be able to seek innovative and creative approaches to address issues they target.

In an attempt to address the ambitious goal of the needs assessment exercise the ICHD research team developed a comprehensive methodology, which included three major instruments, namely:

- A. **Desk review of policy and regulatory documents:** In order to understand the policy and regulatory context where the Armenian CSOs exist and develop, it was essential to study the existing policy documents and regulatory mechanisms. The following policy documents were reviewed from the perspective of CSO development environment: Programme for Sustainable Development until 2021; National Security Strategy of the Republic of Armenia; RA Government Program for 2008-2012; ENP Action Plan; List of Actions for 2009-2011 ENP RA-EU Action Plan To Ensure Implementation of Annex to RA President Order NK-68-A, 6 May, 2009; Pre-election platform of the incumbent RA President; and the European Neighbourhood and Partnership Instrument/ National Indicative Programme 2011-2013. The second set of the document reviewed were the previous research studies that had attempted to study different aspects of the Armenian CSOs. This set includes the following reports: Armenian Civil Society: From Transition to Consolidation Analytical Country Report; Armenian Civil Society: from Transition to Consolidation Policy Action Brief; The 2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia; and Financial Sustainability of Armenia CSOs: From Dependency to Autonomy. Finally, the following laws have been reviewed: RA Civil Code; Law on Public Organisations; Law on Foundations; Law on Trade Unions; Law on Employers' Unions ; Law on State Registration of Legal Entities; Law on Organizing and Conducting Audits in the RA; tax legislation (RA Law on Taxes, Law on Income Tax, VAT law); Law on Freedom of Conscience and Religious Organizations; and Law on Non-Commercial State Organizations
- B. **Four Off-the-Record (OTR) discussions with 20-25 key stakeholders in civil society, government** (including the Ministry of Justice and the Staff of the RA Government) and development community on policy, regulatory and institutional aspects of development of civil society in Armenia. Each OTR focused on a specific issue, namely "National Policies of Development of Civil Society in Armenia"; "Regulatory Environment of the Civil Society Development in Armenia"; "Gaps and Challenges per Sectors of Civil Society in Armenia" and "International experience in development of civil society institutions". Based on the opinions passed by the participants of the discussions, the team developed four Policy Briefs – "Policy on

the development of the civil society in the Republic of Armenia: the current platform for the satisfaction of political interests”; “Regulation issues in the context of development of Armenian civil society institutes”; “Comparing experiences of the international community and Armenia in the development of civil society” and “Development of Civil Society in Armenia: Policies for Added Value”. The papers can be found in Appendix 3.

- C. **Semi-structured interviews** were conducted with the representatives of key stakeholder institutions in civil society, government and development community to identify development needs of various sub-sectors in civil society, as well as their vision and ideas on the ways to address those needs through effective and sustainable interventions. Diversity of CSO types has been another major criterion to take into account while assessing the development needs. The interviewee list has been developed with this criterion in mind. The type of the CSO was established according to its mission, key areas of operation, core activities and membership. To ensure a possibly inclusive pool of participants, seven types of CSOs have been selected for the exercise, namely think tanks; foundations; advocacy groups; civic movements; media NGOs, community based organizations; and professional organizations (creative unions).

45 interviews were conducted from June through August with 43 CSOs (see the List of Interviewees in Appendix 1).

Findings and Analysis

The findings from the desk review and the interviews are discussed in this section. All the documents have been analyzed in terms of policy, legislative and institutional mechanisms. Further the missing components have been suggested, based on the respective analysis and juxtaposition with the findings from the recent research on civil society organizations in Armenia.

Main Findings of the Desk Review

Assessment of the policy mechanisms in the development prospective	Missing policy components
<ul style="list-style-type: none">— Various policy documents, specifically those meant for the European community, encourage CSO participation in concrete sectorial policy making.	<ul style="list-style-type: none">— Still, there are no clear mechanisms that clearly outline CSO participation procedures. None of the reviewed strategic documents and laws mentions about the necessity of legally enforcing CSO participation in the policy making cycle. However, participatory cooperation is regulated by individual codes, adopted by a few ministries, for instance the “Code of participatory cooperation between RA Ministry of Labor and Social Affairs and Public Organizations”. These codes are developed based on respective statutes ratified by the RA Government.
Assessment of the regulatory mechanisms in the development prospective	Missing regulatory components
<ul style="list-style-type: none">— The Law on Public Organizations regulates the activities, management and working principles of NGOs, the rights and obligations of their members, financial sources, and publicity requirements for the NGO activities. It is quite liberal as a legislative act regulating the sector.— Armenia’s Law on Public Organizations provides that non-governmental organizations may engage in entrepreneurial activities only through establishing or participating in a commercial organization. The law thus outlaws the right to conduct direct economic activities whether or not they serve the organization’s goals. ... Running a separate commercial organization is financially and managerially too burdensome. ...The situation is different for foundations, which can engage in direct economic activities if they service the attainment of the organization’s mission.	<ul style="list-style-type: none">— The particularities of different types of NGOs are not determined and taken into account under this law. For instance, professional unions and think tanks are governed by one joint law, which does not consider their particularities. There is a gap related to non-registered organizations, such as civic initiatives, which may hinder them to engage in financial transactions.— CSOs should be permitted to engage in profit-making contractual based activities that support the organization’s statutory purposes. However, these activities can be restricted by several factors, such as the type of the activity and the scope of financial transactions. It should be made sure that these activities do not contradict the CSO mission.

- The legislative framework does not provide for tax policy mitigations or tax privileges such as exemptions to indirect income-generating activities. Thus, income generated from NGO-created commercial organizations is taxed at the same level as other commercial enterprises, with no differentiation between the two types of businesses. (Tadevosyan and Hakobyan, 2010; pp. 16-17)
- Taxation of income from economic activities related to nonprofit's mission should be mitigated.

Assessment of the institutional mechanisms in the development prospective

Missing institutional components

- Armenian CSOs seem to be predominantly funded by international donors, and this practice of funding from one source creates several problems, such as credibility of the CSOs, dependency, and lack of long-term strategies among others.
- Sustainability of the public sector requires a diversified resource base, i.e. funding sources should go beyond single or dominant one, and include state and private sector, international donors, and membership fees. The Organizational Survey conducted within the CIVICUS Civil Society Index project demonstrates that 88.5% of Armenian CSOs have a stable financial resource basis. However, the analysis of the quantitative data proves that financial stability cannot always be interpreted as financial sustainability and security, which is the necessary prerequisite for the CSO development. (USAID, 2010; CIVICUS, 2010; Tadevosyan and Hakobyan, 2010).
- Government and CSO cooperation is quite weak and some of the reasons mentioned are: (a) the government believes that nonprofit organizations are detached from general public and do not have a base of membership or constituency; (b) many CSOs are perceived as profit-seeking; (c) the nonprofit sector lacks the necessary competences and skills to affect policies. However, lately attempts are being made to institutionalize the government-CSO cooperation. Since 2008 the Ministry of Labor and Social Affairs, the Ministry of Health and Prosecutor's Office have adopted codes of participatory cooperation with public organizations¹. In 2008 a public council of artists, scientists and representatives of civic groups was created by the Armenian Police, and in 2009 the Public Chamber was formed.
- The positive examples need to be adopted by more government agencies in order to create a momentum for wider government-CSO cooperation.
- The cooperation is carried out through subsidiaries or grants and service contracts; however, there are some serious problems in this regard, such as the lack of sufficient levels of transparency and clear procedures for distributing government funds.
- Clear policies and procedures of grant distribution are needed to make the government's financial support more transparent.

¹ Code of participatory cooperation between RA Ministry of Labor and Social Affairs and Public Organizations: http://www.mss.am/home/index.php?code_id=98&menu_id=77
 Code of participatory cooperation between RA Ministry of Health and Public Organizations: http://www.moh.am/?section=static_pages/index&id=587
 Code of participatory cooperation between RA Prosecutor's Office and Public Organizations: <http://www.genproc.am/am/46/item/5431/>

Consolidated Key Messages from Interviews

Policy	
Identified Gaps	Proposed Solutions
<ul style="list-style-type: none"> — There is no comprehensive policy formulated by the current government that clearly defines the attitude of the state towards the CSOs and sets the goals and objectives of the CSO development. 	<ul style="list-style-type: none"> — There may not be a single policy document addressing the issue of CSO development. However, it is mandatory that the state legally enforces certain mechanisms for the CSO participation in the policy making cycle. The example of several ministries and other state agencies should be replicated further in the other sectors.
<ul style="list-style-type: none"> — Whatever policies exist, the current government does not seem to take ownership for their development. Most policy documents seem to be enforced by the European community. 	<ul style="list-style-type: none"> — The government needs to take ownership of the CSO development policy through providing tangible support, such as for instance CSO development grants and service contracts.
<ul style="list-style-type: none"> — CSO involvement in the policy making cycle seems to be an imitation, rather than a genuine involvement, and it is usually restricted to providing official information. Opportunities for CSOs to participate in policy making as providers of policy alternatives and institutions to voice the perspectives of certain social groups are very limited. 	<ul style="list-style-type: none"> — The government needs to ensure transparent procedures for CSO involvement in sectorial policy making cycle.
<ul style="list-style-type: none"> — CSOs are regarded as a threat rather than partners. 	<ul style="list-style-type: none"> — The government needs to change its attitude and reevaluate the role of CSOs in policy making.

Regulation	
Identified Gaps	Proposed Solutions
<ul style="list-style-type: none"> — Restriction to engage in commercial activities does not allow CSOs to diversify their revenue sources. According to the current legislation, they can engage in commercial activities only if they open a commercial organization. However, this requires investment of additional resources, especially time and human resources, which the CSO cannot afford. Moreover, this sometimes causes conflict of interest with the mission of the CSO. 	<ul style="list-style-type: none"> — Facilitation of the procedures for engaging in commercial activities such as — Redefine what ‘service’ is and allowing some CSOs to engage in service provision; — Make CSO ‘product’ sales tax-deductible: no income tax should be required when a CSO sells its products, such as papers and books.
<ul style="list-style-type: none"> — Service provision is legally problematic. Though there are some CSOs that provide social services, still this is not a common practice. 	<ul style="list-style-type: none"> — Redefine what ‘service’ is; — Tax mitigations for CSOs which implement public benefit projects, such as addressing the needs of vulnerable groups.

- The current Law on NGOs defines the principles of CSO governance which does not adequately address the differing needs of various types of CSOs.
- The current laws restrict CSO to secure diverse revenue sources which jeopardizes their sustainability.
- The Registry needs to facilitate the current procedures for registration and closure of the CSOs further.
- Absence of the law on volunteerism causes problems with audit and recruitment of volunteers.
- Small and medium businesses tend to engage in charity activities, but they avoid CSOs as intermediaries, since there is no trust towards CSOs. Another reason is they try to avoid burdensome bureaucracy which occurs when these businesses try to do charity officially.
- The umbrella law on CSOs should define the key principles defining and regulating the activities of the civil society organizations, rather than governance mechanisms. It should set accountability and transparency principles.
- Adopt additional laws, such as a law on endowment, which will entitle CSOs that take the responsibility to operate in accordance with strict accountability and transparency rules to secure financial resources through endowment funds;
- Revise the current practice of state funding, by ensuring more transparent and equal procedures for getting state funds;
- Continue the current practice of state orders, to support creative unions and add a new practice of distributing certain social functions which currently are carried out by the state, e.g. care of elderly and socially disadvantaged children, to relevant CSOs by providing subsidiaries.
- Offer tax deductibility to business through direct investment in CSO activities.
- Allow CSOs to make investments.
- Speed up e-registration procedures and mechanisms;
- Facilitate the NGO close down procedures.
- Adopt a law on volunteerism which will specifically clarify the tax issues and will allow legally considering volunteering experience as a work experience.
- Clarify the reporting procedures of small and medium businesses when they make donations to CSOs.

* *Civic movements* do not see direct legal gaps that hinder their activities and would actually prefer if no regulation is added.

Institutional

Identified Gaps	Proposed Solutions
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Government.....

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| <ul style="list-style-type: none">— The major issue is the lack of mutual trust. CSOs believe the government discourages and marginalizes their involvement in the policy making cycle, and the government claims that at times CSOs lack the necessary expertise to constructively engage in this cycle and they end up with providing deconstructive criticism which does not help address issues. | <ul style="list-style-type: none">— Secure transparent procedures for the CSO involvement in the policy making cycle. |
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Private sector.....

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| <ul style="list-style-type: none">— Business, especially the large businesses, is politicized to an extent that they cannot support CSOs.— Small and medium businesses do not have financial incentives to donate to CSOs. | <ul style="list-style-type: none">— Be more proactive in developing relations with the business, particularly through promotion of CSO activities to businesses that may be interested in supporting certain projects.— Secure financial incentives for small and medium businesses through strictly controlled and gradual tax deductions. |
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International donors.....

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| <ul style="list-style-type: none">— Donor funding may cause deviation from implementation of the CSO mission. Moreover, there are cases when the donor and state priorities do not match, and in the result CSOs implement projects that do not address priority needs of beneficiary groups.— Decreasing donor funding causes unequal conditions for getting the funds for the newly established CSOs. | <ul style="list-style-type: none">— CSOs can pursue their mission and negotiate with the international donors, because they are the ones that understand the overall environment the best: CSOs need to clearly understand their roles and assets and be prepared to negotiate with donors on equal terms.— To balance the situation, all CSOs should have a chance to secure different funding sources (<i>see Regulation</i>) |
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Internal

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| <ul style="list-style-type: none">— CSOs do not tend to cooperate much with each other, though there are some issues addressing which through a joint effort may yield more results. Another issue is the very slow turnover of generations in CSOs: new leaders and activists rarely appear in the current CSO arena. In the result, CSOs seem to lag behind in regards to generation of new ideas.— CSOs in the regions tend to be neglected. | <ul style="list-style-type: none">— CSOs should re-evaluate their operational strategies, focusing more common interests, rather than exclusively on organizational ones.— Both the government and the CSOs in the capital city should enlarge their outreach of activities to include regional CSOs. The government needs to allocate special development funds for these CSOs. |
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Policy Briefs

Policy on the development of the civil society in the Republic of Armenia: the current platform for the satisfaction of political interests

The present environment for the development of the civil society: the wash-tab² we have

Nowadays the development level of the civil society in transitional democracies is measured by the number of non-governmental organizations (NGO). According to this measurement the institutionalization of the civil society in Armenia - a country with a population of three million and 5000 registered non-governmental organizations - may be considered a fact. It will be difficult to challenge this statement, taking into account the activities of the civil society organizations (CSO) for the last years, among which the most telling achievement was prevention of the ratification of the recommended amendments to the Law on Non-Governmental Organizations. This experience can be considered a benchmark for the establishment of the civil society. However, establishment does not mean focalization, but new perspectives and horizons instead, and consequently new needs and challenges. It seems that it is high time to define new developmental challenges for the civil society and to seek for long-term solutions. These solutions need to be the foundation for the realization of comprehensive and long-term goals.

At the moment the priorities of the development of the civil society organizations and specifically of the NGOs, are the development of a targeted public policy and establishment of an adequate legal environment regulating the activities of these organizations. The legitimate question then is: "Does the current policy provide beneficial opportunities of the development?" In a number of strategic policy documents such as the Government's Programme for Sustainable Development, the National Security Strategy of the Republic of Armenia, the ENP and ENPI documents, including the European Neighbourhood and Partnership Instrument/ National Indicative Programme 2011-2013, the involvement of the civil society in the development and implementation of the sectorial policies has been recognized as a key factor for success. However, among the strategic documents it is only the List of Actions for 2009-2011 ENP RA-EU Action Plan to Ensure Implementation of Annex to RA President Order NK-68-A, 6 May, 2009 that identifies a clear mechanism on how this involvement should be ensured, namely, through the development of a concept paper on the participation of the civil society in public governance.

On the policy dimension there is an overall impression that the Armenian authorities have one day started a dialogue with the CSOs, following the logic of integration with the European community, and today this external requirement is being followed through inertia, without transforming into a real ownership. As a consequence, CSOs have been able to identify their interests, development opportunities and challenges more clearly and are ready to form a new power in order to positively change the dynamics of the current relations.

The need for a new wash-tab

The key difference between the current and new relations is the clear realization of the development needs by the CSOs, and perhaps it is high time to change the work style: stop being reactive and become more proactive. Essentially such work style needs to be aimed at bilateral development of the development agenda. Regardless the differences in the missions of the CSOs, each developed civil society organization should be able to consistently carry out functions relevant to its mission, without external interventions impeding and even preventing targeted activities. Such an organization should be able to develop sustainably, as well as seek and recommend creative and innovative approaches.

In order to engage in such activities one of the essential prerequisites should be the change in the perception of both the general society and the government regarding the CSOs. It is crucial that the state authorities understand and recognize CSOs as full members of the development processes in all the sectors and the process of addressing the national interests. To incite change in the perceptions it is necessary to ensure

² Reference to A. Pushkin's fairy-tale "The fisherman and the golden fish"

clear and functional mechanisms, including formation of the institute of state orders and establishment of state-funded foundations in order to support the activities of the CSOs which support the development of the Armenian state.

Between the old and new wash-tubs

Transition from the old wash-tub, i.e. the “forced” and inertia-driven policy to a qualitatively new one, in the framework of which the civil society and the state will act as partners, is an evolutionary process. It needs to be supported both by the present and coming governments, excluding any politicization of such support and ensuring accessible, transparent and equal conditions for the operation of the CSOs. Currently the financial instability of the CSOs and the absence of a long-term strategy push CSOs from one “fire” to another, i.e. from international donors to the government, or compel them to act as the most flexible tightrope walkers who need to perform between sometimes contrasting ropes of realization of their missions on one hand and on the other, the satisfaction of the contractor’s interests.

It seems obvious that CSOs will not be able to manipulate for too long: they will continue tightrope walking, gradually securing the rope of the state. It needs to be so strong as to ensure equal performance conditions for all the walkers who depending on the proficiency of their skills will compete for success. The security of the rope should be guaranteed by the clear and long-term policy of the state and not its short-term biased approaches that satisfy momentary political ambitions.

Regulation issues in the context of development of Armenian civil society institutes

The imperative of reviewing the current legislation

Democratization process in Armenia is marked with clear phases of social transformation, specifically review of Soviet legacy, introduction of western values and institutes, and finally, formation of local values and institutions in the result of the clash of the previous processes. Our society is stepping into yet another transformation phase: the chaotic logic of evolution is to be replaced by the imperative of development, which requires a qualitatively different environment and toolbox of policy, regulation and intervention. At the borderline of transformation phases it is critical to wrap up the outcomes of the previous phases and clarify the nature of probable challenges.

Among the major achievements of the previous phase one can highlight the establishment of a new social structure, institutionalization of non-governmental and non-commercial organizations. The second outcome is perhaps the clarification of the missions of these organizations and consequent diversification. Finally, awareness of development issues and subsequent differences, voicing the major concerns and demanding adequate solutions is the third achievement.

Non-governmental organizations advocating for the protection of the rights of different social groups, as well as protection of human rights, organizations providing services to communities and socially vulnerable groups, analytical centers and think tanks, creative and trade unions, all have a common developmental goal, namely to protect their members and/or beneficiaries in a possibly active and effective way.

Two key preconditions for development can be outlined: institutional capacities and financial sustainability. The first precondition has been met over the last decade, whereas the second is a top priority on the agenda at the very moment. In this regards legislative regulation of the civil society institutions faces two major challenges: to define the transparency and accountability principles for these institutions, while securing such rules of a game which will provide an opportunity for them to continue their activities without any impediments, and specifically to promote the establishment of financially self-sustainable institutions.

How can this be achieved?

Technical approaches to the issue vary: either to regulate the activities of the non-governmental, non-commercial organizations by common, comprehensive and possibly liberal and flexible fundamental principles, or taking into account the idiosyncrasies of civil society organizations (CSO) and differing perceptions of development needs, to try to regulate their activities through a number of different laws.

Perhaps the second approach seems more appealing at first sight, because it is expected that separate laws will be drafted taking a minute look at the specificities of each type of CSO. However, the clandestine trap is in the very details, which instead of promoting development will actually define restrictive rules that most probably will soon transform into limitations, because in the Armenian reality one of the axes of a democratic system, the rule of law, is yet too far from perfection. The best legislative solutions may turn into obstacles impeding development, in case these are not enacted, and this is, alas, a practice we witness quite often.

As many agree the current legislation regulating the activities of the CSOs is rather liberal. Therefore, in contrast to the second approach, a common law may define the basic rules of the game, while defining additional rights and opportunities and adequate transparency and accountability commitments, and securing such flexibility which will let the players put forward new legislative proposals when it is time to review the existing rules.

For instance, non-governmental organizations dealing with social issues may be granted a legal opportunity to acquire a special status of a public benefit organization, which implies that there will be state orders and subsidiaries, certainly with subsequent additional transparency and accountability commitments and mechanisms. Think tanks will have a chance to form endowment funds in order to secure financial stability; whereas creative unions will not be restricted by the tight deadlines for implementation of projects imposed by the current law on non-governmental organizations, and thus will be able to implement long-term projects with more tangible outcomes. Once again, such privileges imply willingness to comply with additional transparency and accountability commitments.

Comparing experiences of the international community and Armenia in the development of civil society

The situation in Armenia and Eastern Europe: Is it a difference of one step?

Both in Armenia and Eastern Europe civil society organizations (CSO) believe that the key pre-condition for development is financial sustainability. In some Eastern European countries where the development process has been crowned with success, the main contributing factor has been the fact that the respective governments have been able to secure sustainable income sources for the CSOs. In general, the international experience shows that there are three major local income sources for funding CSO activities: private donations and/or charity, state funding, and CSOs' own income sources, including membership and service fees, and investment of CSO funds in various institutional forms.

In Armenia the financial flows from all the mentioned sources are rather scarce. For instance, even if private donations are made, the practice shows that these are usually paid to the so-called "pocket" CSOs, i.e. organizations founded by the donors themselves. State funding is also available to few, and the income sources of CSOs are perhaps the most "shallow". Membership fees are rarely collected and direct economic activities in the forms of service provision or investments is restricted by the law.

When the path trodden takes you home: European experience of solutions

To direct the current situation in Armenia towards a developmental track, it is necessary, first and foremost, to have the government clarify its attitude towards the CSOs. A clear understating of the role of CSOs may enhance the improvement of the state funding mechanisms and procedures. Specifically, there is a need to improve the current procedures of delivering state grants. This need should be addressed immediately and effectively. Solutions to the issues regarding the development of CSO income sources can be sought within the existing international toolbox. Specifically, the following instruments can be adapted and introduced:

- endowment;
- special state funds which are available exclusively for initiatives that aim at the development of CSOs;
- distribution from lottery proceeds: for instance, in Bulgaria a certain proportion from lottery proceeds is provided to sports organization, whereas in Croatia, 5% from these proceeds are directed to public benefit projects;
- private donations, including diaspora donations;

- social contracting, which allows CSOs, among other institutions, to provide social services.

There is another mechanism among the ones already mentioned, the so-called “1% law”, which is often being referred to. According to this concept, by the end of each year private businesses get an opportunity to donate a certain percentage from their income tax, payable to the government, to non-governmental organizations, in order to support their activities. However, introduction of such a law in post-soviet countries, e.g. in Hungary, had a counterproductive impact. Instead of increasing a more comprehensive and large-scale participation of the business sector in the process of development of the civil society, this requirement harmed the real interest of the sector towards the process. Moreover, the legal requirement positively affected only the CSOs that were able to ensure a large-scale successful promotion of their activities. Obviously, the amount donated is state money and not a business asset. Therefore, it is eventually the government that invests in the development of the CSOs and not the business. Another important consideration is the overall cultural context where such a law should be introduced. In a society where tax avoidance unfortunately is still a common practice, adoption of such a law will create a necessity for additional control mechanisms.

In order to successfully apply any of these mechanisms in the Armenian context, it is necessary to consider the specifics of each type of CSOs. In particular, endowment might be an appropriate mechanism for think tanks, whereas a social contract can be one for organizations dealing with social issues. Smaller CSOs will need to reconsider their membership mechanisms, since according to the international experience, membership fees are the best warrants of their success. Meanwhile, these mechanisms should also be directed to specific targets, though this should not hinder any organization to take advantage of the opportunities these mechanisms grant, of course with the assumption of adequate responsibilities as well.

Development of Civil Society in Armenia: Policies for Added Value

Endowment as a functional policy mechanism

When facing a new challenge, a youngster tends to invent a bicycle. In contrast, a wiser adult, who has already had enough time to find out the advantages of all kinds of bicycles, starts to put those together to construct the means of transportation that serves his purpose the best. The Republic of Armenia is not an experimenting youth anymore, who desperately tries to boost his self-confidence, but an established state that tries to ensure affluent and respectful life for its citizens and develop civil society.

Some states have already been successful in such a task. Therefore, Armenia can use the existing resources, a number of influential toolkits and lessons learnt from other similar efforts, to pave a smoother way towards its vision. Endowment is but one of the mechanisms, the implementation of which has in most cases successfully promoted the development of civil society organizations (CSO) in several developed countries. Endowment is essentially a donation of money or property to non-governmental organizations. It is organized mainly through charity or private funds.

Donation is not a novelty for the Armenian legal system. Foundations are institutions receiving and operating in Armenia for many years. However, there is a critical difference between foundations as defined and operating in Armenia and an endowment. In contrast to other donations, endowment funds imply not only an implementation of a specific project, but also a long-term investment with interest which is the only amount that can be used for funding activities of a CSO.

Why introduce the institute of endowment?

Long-term investment in state bonds is the crucial opportunity of endowment which makes this mechanism quite appealing for Armenian realities. It offers a vibrant sustainability tool in a context where the major impediment to the development of CSOs is their financial instability. However, this is not the only asset. The answers to the question “Why should the government be interested in introducing this institute?” may reveal a series of other advantages.

Introducing the concept of endowment in Armenia touches three main stakeholders: philanthropies, i.e. business companies and individual citizens; non-state actors and the government. What interests of all these stakeholders are at stake if this new cycle of relations is introduced?

Let's start from the last stakeholder, the government. It is a truism that the main income source of the RA state budget is taxes, aka VAT, excise and income taxes. The major taxpayers are businesses, and the taxes they pay (or collect VAT and excise paid by consumer taxpayers) are accumulated in what we may call "the state's tax pocket". In order to establish an endowment, the government offers taxpayers tax exemption, which refers to the total amount that will have been donated to the endowment. This is possible if this sum is defined as an expense of the agent in which case the tax base is reduced. Businesses donate some money to an endowment fund, while indicating (or not), which types of activity they would prefer to see implemented with this money. Thus, these donations become tax-deductible. Meanwhile, an adequate CSO, if willing, can decide to take this funding opportunity, but has to do so if it is ready to meet two pre-conditions. First, it has to invest the endowment funds exclusively in long-term state bonds and use only the interest from this investment for its activities. Second, it has to take on commitments enhancing their transparency and accountability in disbursing this money.

It seems that this mechanism tends to address mostly the interests of philanthropies and CSOs. However, let's not forget that there is another stakeholder, the government. Actually, what is interesting in this scheme is that the tax-deductible sums are invested back into the state "pocket", but already through state bonds. Thus, one can claim that all three stakeholders win in these relations. The government does not lose anything, simply faces a shift of money from its one pocket to another. Businessmen acquire a possibility of tax deduction, and CSOs get an opportunity to act more independently and become self-sustainable.

Moreover, introduction of this mechanism will have an added social value, as it will create an opportunity for ensuring a continuous and consistent process, which will address the needs and will take account of the interests of various social groups. It will support the education of a citizen and the development of a pluralist society. Perhaps for decades this will be the first time when CSOs will get a chance to follow their mission and develop their own agendas based on the real needs and issues of their members, beneficiaries and constituencies. They will not be compelled anymore to modify and tailor those to the agendas of international organizations, which, as known, do not necessarily coincide with the priorities of the Armenian state and society. In such an environment additional commitments will not be regarded as redundant and meaningless. Instead, those will turn into a functional mechanism of communication with their social base.

Possible risks

It seems that we have depicted quite a rosy picture. Still, one of the most significant features of maturity is evaluation of risks of any initiative and development of adequate response mechanisms. In this case the serious predictable risks are two.

Perhaps the most significant challenge which may jeopardize the success of this initiative and even cancel out all the advantages offered by the institute of endowment are the narrow interests of state agencies involved in the cycle, and the subsequent inter-agency relations. The described cycle implies change in the activities of tax agencies, for instance. The scheme definitely reduces the contents of the pocket of these agencies, which are basically responsible for the "government pockets". Attempts to satisfy narrow agency interests may humiliate the state interest as such. To prevent such possible developments, it is necessary to adopt a "supra-agency approach" through a clear and holistic understanding of the state interest. Such understanding is possible only if the process is championed by a statesperson who can focus exclusively on the overall state interest; who is ready to carry the whole burden of responsibility for addressing issues; who can transcend the logic of individual pockets; who can clearly envision the whole picture of the described shift in the pockets and consequent additional social value, and finally who can successfully address the frustration caused by neglected narrow interests of some agencies and recommend innovative and long-term solutions.

The second risk is not perhaps even a challenge but an additional commitment: taking responsibility for transparent and accountable activity. Unfortunately, few CSOs are ready for such a commitment. However, this may become litmus which will sift out the established and developing organizations from those after one-time and short-term targets.

Conclusions and Recommendations

It seems that the findings of the needs assessment exercise come to confirm those from the desk review. Obviously, the major barriers to the development of CSOs in Armenia are the adversarial attitude towards the civil society organizations of the government and to some extent the general public, and the financial instability of the CSOs, which jeopardizes their ability to freely act towards the completion of their missions. Therefore, addressing the issue of financial sustainability of the CSOs seems to be the first and foremost imperative in the CSO development context.

Based on these findings of the needs assessment exercise, the research team has come up with the following recommendations:

- i. Regardless the differences in the missions of the CSOs, each developed civil society organization should be able to consistently carry out functions relevant to its mission, without external interventions impeding and even preventing targeted activities. Such an organization should be able to develop sustainably, as well as seek and recommend creative and innovative approaches. In order to engage in such activities it is essential to change the perception of both the general society and the government regarding the CSOs. It is crucial that the state authorities understand and recognize CSOs as full members of the development processes in all the sectors and the process of addressing the national interests. To incite change in the perceptions it is necessary to ensure clear and functional mechanisms, including the formation of the institute of state orders and establishment of state-funded foundations in order to support the activities of the CSOs which support the development of the Armenian state. This process needs to be supported both by the present and coming governments, excluding any politicization of such support and ensuring accessible, transparent and equal conditions for the operation of the CSOs.
- ii. There is a need for amending the current Law on Public Organizations which will define the basic rules of their activities, while defining additional rights and opportunities and adequate transparency and accountability commitments, and securing such flexibility which will let the players put forward new legislative proposals when it is time to review the existing rules. For instance, non-governmental organizations dealing with social issues may be granted a legal opportunity to acquire a special status of a public benefit organization, which implies that there will be state orders and subsidiaries, certainly with subsequent additional transparency and accountability commitments and mechanisms. Think tanks will have a chance to form endowment funds in order to secure financial stability; whereas creative unions will not be restricted by the tight deadlines for implementation of projects imposed by the current law on non-governmental organizations, and thus will be able to implement long-term projects with more tangible outcomes. Once again, such privileges imply willingness to comply with additional transparency and accountability commitments.
- iii. Solutions to the issues regarding the development of CSO revenue sources can be sought within the existing international toolbox. Specifically, the following instruments can be adapted and introduced: endowment; special state funds which are available exclusively for initiatives that aim at the development of CSOs; distribution from lottery proceeds; private donations, including diaspora donations; and social contracting, which allows CSOs, among other institutions, to provide social services.

Tax deductibility should be regarded with caution at the stage of Armenian democracy. One way to address this risk is introduction of the institute of endowment. Actually, in this scheme the tax-deductible sums are invested back into the state budget through state bonds. Thus, one can claim that all three stakeholders, the government, the business and the CSOs will benefit from this institute. The government does not lose any of its revenues. Businessmen acquire a possibility of tax deduction, and CSOs get an opportunity to act more independently and become self-sustainable. Moreover, introduction of this mechanism will have an added social value, as it will create an opportunity for ensuring a continuous and consistent process, which will address the development needs of the CSOs and will take account of the interests of various social groups.

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Appendix

Appendix 1: List of Organizations Interviewed

Non-governmental organizations	
A.1	Think tanks
1	ICHD
2	ACNIS
3	CIVILITAS
4	Regional Studies Center (RSC)
5	Caucasus Institute
6	Noravank
7	Civil Society Institute
8	European Integration
A.2	Advocacy groups
1	Transparency International Armenia
2	Institute for Democracy and Human Rights
3	Armenian Association of Women with University Education /AAWUE/
4	TATEV 95 Center of Psychological Assistance and Consultancy
5	Helsinki Committee of Armenia
6	Armenian Young Lawyers Association
7	Union of Manufacturers and Businessmen (Employers) of Armenia (UMB(E)A)
8	Civic Development and Partnership Foundation
9	Bridge of Hope
10	Մենք ենք այս քաղաքի տերը (This is our city)
11	Cinema Moscow Summer Hall
12	We are against foreign language instruction in public schools
13	Center for Education and Health
A.3	Foundations
1	European partnership foundation (EPF)
2	OSI-Armenia
3	Jinashian Memorial Foundation
4	Tufenkian Foundation
5	World Vision Armenia
A.4	Media NGOs
1	Yerevan Press Club
2	Asbarez
3	Hetq online
A.5	Professional organizations
1	Writers Union

2	Artists Union
3	Reporters Union
4	Union of cinematographers
A.6	Community based organizations
1	Armavir Development Center
2	Vanadzor NGO Center
Policy makers	
B.1	Executive
1	Ministry of Justice
2	State registry
3	Treasury
B.2	Legislative
1	Republican Party
2	Heritage
3	Armenian Revolutionary Federation
International organizations	
1	Counterpart International
2	USAID

Appendix 2: General guidelines for the interviews

- i. Do you think there is policy aimed at the development of the civil society in Armenia? What evidence could you provide to substantiate your opinion? CSO involvement in the decision making process seems to be encouraged in several key policy documents. How would you describe the actual practice of engagement? How can it be enhanced further? Are there any policy barriers that impede the development of CSOs in Armenia? What policy mechanisms can you suggest for improving the overall environment of CSO operations?
- ii. How would you describe the current legislation regulating CSO activities? What major fault-lines can you point out, and what would your recommendations be for amending the relevant legal acts? What are some specific legal and financial obstacles your organization has to deal with?
- iii. How do the current institutional mechanisms and practices affect the development of CSOs? What changes would you suggest to improve the practice? How would you describe the present relations with the government, the private sector and other CSOs? Do you have recommendations of improvement?