



UNIVERSITY OF CENTRAL ASIA
GRADUATE SCHOOL OF DEVELOPMENT
Civil Society Initiative

POLICY PRACTICE AND LEGAL ENVIRONMENT FOR THE DEVELOPMENT OF ENABLING CIVIL SOCIETY IN CENTRAL ASIA





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Civil Society Discussion Paper No. 2

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SOCIETY IN CENTRAL ASIA**

The Civil Society Initiative (CSI) was established in 2017 to foster an enabling policy and administrative environment for civil society in Central Asia and assist the development of a broad spectrum of civil society actors. CSI promotes the building of domestic institutional and leadership capacity, under three over-arching pillars of skills, knowledge and resources.

The Civil Society Initiative is part of the Graduate School of Development of the University of Central Asia. The University of Central Asia (UCA) was founded in 2000. The Presidents of Kazakhstan, the Kyrgyz Republic, and Tajikistan, and His Highness the Aga Khan signed the International Treaty and Charter establishing this secular and private university, ratified by the respective parliaments, and registered with the United Nations.

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INTRODUCTION

The purpose of this report is:

- ▶ 1. To analyse the policy and legislative environment for CS development in CA
- ▶ 2. To consider institutional mechanisms that have been put in place by governments to enable cross-sectoral dialogue
- ▶ 3. To consider the prospects for the development of civil society given public perceptions and the structures that have been put in place since independence

Content. The report examines a number of factors which characterize the current state of Central Asian civil society including legislation framework, government policy decisions and structures affecting civil society development, plus the impact of public opinion. These factors are laid out as a set of main findings for Central Asia region, followed by more detail in the three country studies for Kazakhstan, Kyrgyzstan and Tajikistan. In this report, the analysis of policies, practices and legal frameworks for the development of civil society is mainly focused on registered non-profit organizations, often defined in legislation as “public associations” or “public foundations”. Each country study includes a set of short conclusions.

The report will culminate with a series of recommendations for expanding the scope, visibility, and impact of the civil society sector, via a programme of activities that a future Civil Society Institute could undertake, subject to the consultation process presented in Appendix A.

Data sources. The authors of the report consulted a wide variety of sources in English, Russian and local languages, including a significant number of official and governmental information agencies and websites. References are given throughout the text and a wider bibliography of useful sources is given as Appendix B.

Comparative figures from the USAID CSO Sustainability Index. In the UCA-CSI reports, the USAID 2014 CSO Sustainability Index has been used for certain key statistics and assessments across the three countries - this was the last year that the CSI report was produced for Central Asia.¹ The table below shows capacity building indicators from the USAID 2014 CSO Sustainability Index that relate directly to policy practice and legal environment . Four indicators are shown (the other indicators in this system are shown in the Capacity Building paper). In this rating system, 1 is highest and 7 is lowest.

Capacity / environmental indicators from USAID 2014

	KZ	KG	TJ
 CSO sustainability index - legal environment	4,3	3,9	5,2
 CSO sustainability index - advocacy	4	3	4,9
 CSO sustainability index - service provision	4	4	4,4
 CSO sustainability index - public image	4,3	4,3	4,5

A short explanation of the scores is given in the three country profiles (separate file).

¹ <https://www.usaid.gov/europe-eurasia-civil-society/2015>

KEY FINDINGS FROM THE STUDIES

Uneven conditions for the growth of civil society across Central Asia

The three country studies show very different external environments for the development of civil society. Coming from a similar legislative base in the perestroika period, with quite a similar set of laws passed on public associations in the 1990s, the three countries have moved at different rates to recognize civil society and involve CSOs in dialogue, decision-making or implementation of government programmes.

In Kazakhstan, high oil and gas revenues through the 2000s helped provide a base for government support to CS. By contrast, Kyrgyzstan's economic development was much more patchy and affected by political instability. Tajikistan began its process of transition to the market economy almost 10 years late, due to civil war, infrastructure destruction and loss of human life. While CSOs in all three countries enjoyed major support from international donors in the first 15 years after independence, since then donor funding in Kazakhstan has dwindled, due to the country's middle-income status, while remaining at a relatively high level in poorer Tajikistan and Kyrgyzstan. The problems caused by lack of public sector budgets – plus political instability and security factors – have hampered policy-making and government support for CS in Kyrgyzstan and Tajikistan.

Legislation used to enable or control

The studies show that legislation and associated rules and regulations affecting CSOs can have a positive or negative affect on them. At one end of the spectrum, in Kyrgyzstan the framework for civil society has been historically evolving as relatively favorable for its overall development. The country's legislation is supportive of CSOs in regard to freedom of association, freedom of speech and possibilities to engage with the government in its decision-making process. Freedom of association is well observed in Kyrgyzstan and usually there are no restrictions on how CSOs are operating. By contrast, in the Tajikistan country study shows clearly how new regulations and procedures tend to control and restrict rather than enable CS in recent years. Added to which, Tajikistan does not formally recognize "civil society" in its Constitution and strategic documents in the same way as the other two countries.

And yet, even in Kyrgyzstan and Kazakhstan, there are concerns about the legislative environment, documented in detail by expert agencies like ICNL. Increasingly, we see pressures to regulate CSOs in terms of reporting which are not only associated with attempts by various political actors to label them as "foreign agents", but also due to the international security agenda related to anti-money laundering and countering terrorism. While the draft law on "foreign agents" in Kyrgyzstan was dismissed in the country's parliament, there is still the risk of new attempts to introduce excessive regulations on civil society.

Importance of institutional arrangements

For the future sustainability and impact of CSOs, advances in public policy and institution building are vital. Undoubtedly, the unbroken period of presidential rule by Nazarbaev has provided the most stable conditions for creation of new rules and agencies for liaison with CS. This is seen clearly in the country study. On the other hand, international agencies measuring progress towards democracy (USAID, Freedom House etc) consistently point to weaknesses in democratic processes in that country, contrasting it with the more free and open situation in Kyrgyzstan. Here there is a paradox. Undoubtedly there has been progress in Kyrgyzstan towards, for example, a more open multi-party system with more power for parliament. However, the 2005 and 2010 revolutions, while pushing forward the agenda for political transformation, also tended to destroy the arrangements for CS consultation set up by the previous regimes. And CSOs were as divided as anyone else in support of or opposition to the various political leaders and regimes that emerged and fell.

In Tajikistan, government relations with religious associations (Islam) have on the whole taken up more of its attention than effort to develop (secular) civil society; this is one of the results of the 1992-97 civil war and the country's proximity to war-torn Afghanistan. However, issues around religion are now very important in all three countries and the government agency delegated to work with CS is often the same agency as delegated to work with the religious sphere.

Institutional development is closely linked with funding issues for CS, where the perspectives for financial viability of any CSOs in regard to continued and diverse sources of funding are now rather grim. While there are some possibilities emerging from state-funded mechanisms or the emergence of new indigenous sources of funding, the overall financial environment is not very much enabling. This requires a long-term vision of engagement on reforming enabling tax incentives and development of culture of local philanthropy, as well as communication with external donors on best ways of their support for civil society in Kyrgyzstan.

Distrust of NGOs' "political" activities

Across the region, there is an established pattern of negative discourse towards the so-called political activities of CSOs. This is facilitated by general public distrust of CSOs, but also by the rise of populist politics ready to accuse CSOs of inefficiency and the pursuance of a foreign agenda. Nonetheless, CSOs have fought back and often denied their opponents the victory they hoped for. For the future, there is a need to engage in normative discourse with better tools than it has been so far. This requires reconceptualization of civil society, and intra- and cross-sectoral engagement on communicating a new vision of civil society, plus a better understanding and use of various communicating channels to reach the public and government more effectively.

There is a rising conservative sector within civil society which is not yet fully aware of itself or understood by others. There are some radical conservative organizations, but the picture is more nuanced and requires further study, both as to itself and as to how it interacts with other segments of CS and with the state for the benefit of society.

In recent years, the development of new "invited spaces" for CS within government-sponsored consultative groups provides a route into acceptable political activities. Kyrgyzstan's experiment with public councils in ministries and other national government agencies is a very positive step forward, promoted by President Otunbaeva after the 2010 events. In Kazakhstan, too, community/public councils were established at national level and in the main cities in 2015, and while there is some scepticism about how much room civil society representatives will have to do useful work in them, many activists are willing to try.

Opportunities for CS development

Despite the challenges described above, the three country studies show many opportunities for CS development. First, as noted in the Tajikistan study, civil society needs to follow technological advancement of recent decades and pursue online forms of group activism more seriously. Secondly, to mitigate pressure from the state, civil society needs to work in coalitions and/or networks rather than individually. Thirdly, a win-win strategy for civil society and their stakeholders is to engage more thoroughly with Sustainable Development Goals 2030 through priorities set forth in the country's National Development Strategy until 2030. Fourthly, civil society organizations should enhance reliance on domestic source of funding through delivery of paid services and philanthropy.

Added to which, CSOs should explore two domestic sources of financing: that is, income generation from their own commercial activity and from local philanthropy. As the country studies show, the laws "On Public Associations" permits civil society organizations to run commercial activity.² The only condition that they should spend generated income on activities in line with the mission of the organization. However, due to unwillingness of civil society organizations to take additional burden of financial management and taxation, this opportunity remains largely underutilized. This will have to change.

COUNTRY STUDIES

The three country studies are arranged in six sections:

- ▶ 1) Sector overview,
- ▶ 2) Legislation in relation to civil society,
- ▶ 3) Institutional development and government policy,
- ▶ 4) Sources of funding,
- ▶ 5) Public perceptions of civil society,
- ▶ 6) Conclusion – strengths, weaknesses and opportunities for civil society

² See Article 31 of the Law "On Public Associations".

KAZAKHSTAN

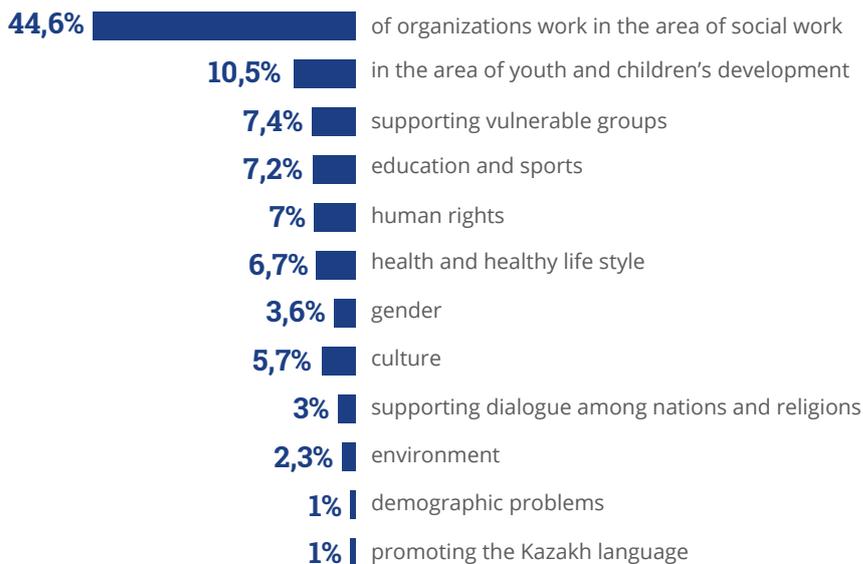
Sector Overview

Civil society organizations (CSOs) and nongovernment organizations (NGOs) are nonprofit organizations, which in Kazakhstan is a category that includes public associations, noncommercial joint-stock companies, consumer cooperatives, foundations, and religious associations, among others³. Currently there are 19680 non-profit non-government organizations registered in Kazakhstan, according to the 2018 data of the Ministry of Religion and Civil Society⁴.

The largest number of CSOs:



In terms of society development themes covered by NGOs



Legislation in relation to civil society

The main normative act which in regulating CSOs in Kazakhstan is the law "On non-commercial organizations" issued on January 16, 2001.

The official partnership between government of Kazakhstan and CSOs was initially established in 2005, when the law "On government social procurement" was issued on April 12, 2005. Since then, there were

two main sources of funding for non-profit organizations

international grants

social procurement order from the government

The social procurement order resulted in strong dependence of many CSOs from the government. As part of the social procurement order non-profit organizations provided diverse types of services, including social services for vulnerable populations, analytical and research services, organizing events and promoting government policies, etc. The government authorities, recipients of services provided by CSOs are: Regional Departments of Internal Affairs, Departments of Health, Departments of Labor and Social Protection, Departments of Environment, Sports, Languages, etc.⁵

Over the last three years more than 5,000 social project were implemented through the social procurement.⁶ In spite of benefits of the social procurement mechanisms, it comes across criticism from CSO experts, such as *disconnect from real needs of population, funding placed for implementing ideology related activities as opposed to solving serious social problems, the procurement regulations focus on lowest price as opposed to effectiveness and quality, presence of corruption and favoritism in the procurement system.*⁷

³ <https://www.adb.org/sites/default/files/publication/175220/csb-kaz.pdf>

⁴ <https://diakom.gov.kz/ru/content/ctatisticheskie-dannye-i-pokazateli-harakterizuyushchie-sostoyanie-i-dinamiku-razvitiya>

⁵ <https://articlekz.com/article/15183>

⁶ <https://diakom.gov.kz/ru/content/ctatisticheskie-dannye-i-pokazateli-harakterizuyushchie-sostoyanie-i-dinamiku-razvitiya>

⁷ http://ru.soros.kz/uploads/user_68/2016_23_11_02_31_01_249.pdf

Institutional development and government policy

One of the main national platforms set up to strengthen dialogue and partnership between government and civil society is *the Civic Forum (CF)*. The CF takes place every two years in the capital of Kazakhstan, Astana, and as the table below shows clearly, has had a clear focus on institutional development and government-CS collaboration at national level:

List of Civic Forum meetings:

- ▶ At the first Civic Forum held in October 2003, government and civil society discussed partnership mechanisms.
- ▶ At the second forum, held in 2005, the Civil Alliance of Kazakhstan was established, the social procurement order was adapted, and interaction between government, civil society and business was discussed.
- ▶ At the third Civic Forum in 2007, the implementation of Concept of Development of Civil Society in Kazakhstan for 2006-2011 was discussed.
- ▶ At the fourth Civic Forum in 2009, participants discussed the role of business community in implementation of the Concept of Development of Civil Society 2006-2011.
- ▶ In 2011, the Civic Forum focused on 20 years of independence of Kazakhstan, participants discussed the results of their joint work to date and set goals for the future.
- ▶ In 2013, the Civic Forum involved members of the Parliament and international delegates from Tajikistan, Turkmenistan, Uzbekistan and Kyrgyzstan. During the forum, an exhibition of NGO performance in Kazakhstan was organized. The law "On government support to NGOs was discussed"; and a republican competition for NGOs "Tanym" was introduced.⁸
- ▶ The seventh Civic Forum was held in 2016, on the 25th anniversary of Kazakhstan's independence. Prime-minister Imangali Tasmagambetov presented a speech where he highlighted strong impact of CSOs in all social sectors and invited NGOs to be more active in the areas of religious de-radicalization and education.⁹
- ▶ The eighth Civic Forum will take place in 2018. As previously, it will focus on issues of interaction between government and civil society, and will include exhibition of social projects and the republican competition "Tanym".

The Civil Alliance of Kazakhstan is responsible for organizing Civic Forums. This organization has representative branches in all regions of Kazakhstan and brings together over 500 NGOs. The organization is responsible for strengthening dialogue between CSOs and the government, for capacity development of CSOs, for lobbying recommendations to legislation of behalf of the NGO community.¹⁰ For the last five years, when Nurlan Erimbetov became the President of the Civil Alliance with some unpopular statements regarding strengthened control over international financing of the non-profit sector, the Civil Alliance lost its previous status among the CSO community and began to be seen as a GONGO (*NGOs established with participation from the government and promoting government interests*).¹¹

Another body established in 2005 for developing links between CSOs and the Kazakh government is the **Coordination Council on Interaction with Non-Governmental Organizations**. In 2015, the Council joined the structure of the Ministry of Religion and Civil Society. Before that, it operated under the Prime-Minister's cabinet. The Council consists of 15 representatives of the government structures and 15 representatives of non-governmental organizations. The Council is responsible for improving mechanisms of partnership between CSOs and the government, involving CSOs to social policy, creating conditions for improved civic initiative, improving legislation related to CSOs. Since 2016, the council is responsible for developing themes for government grants.¹²

On November 2, 2015, the law "On Community Councils" was issued. According to the law, each government body on national and local level is required to establish a **Community Council (CC)**, which involves community leaders, experts, CSOs, etc. The purpose of community councils is for government to receive opinion of public on socially important issues. The councils operate on the following principles: autonomy, self-sufficiency, publicity, rotation of its members, volunteerism. As described in the law, members of community councils have authority to review and provide recommendations to budgeting programs, public policies, social programs, strategic plans of government bodies, government reports, to provide input during development of legislation; to receive requests and appeals from general public regarding government programs or legislation; to conduct public monitoring of the government services, programs and plans. The members of community councils rotate every three

⁸ <http://forum.gakaz.kz/index.php/2-uncategorised/21-innovatsii-po-otraslyam>

⁹ <http://today.kz/news/kazakhstan/2016-11-26/730594-abdyikalikova-i-tasmagambetov-prinyali-uchastie-v-vii-grazhdanskom-forume-kazahstana/>

¹⁰ <http://gakaz.kz/o-nas/obshchaya-spravka>

¹¹ http://ru.soros.kz/uploads/user_68/2016_23_11_02_31_01_249.pdf

¹² <https://akk.diakom.gov.kz/ru/content/spravka-po-koordinacionnomu-sovetu>

years. The proportion of CC members distributed in the following way: 1/3 – members of CSOs, 1/3 - active citizens and 1/3 – government servants. The recommendations of community councils cannot be enforced but must be considered by relevant government bodies.¹³ This reform could help to open up the government system which is more centralized in Kazakhstan than Kyrgyzstan and Tajikistan.

Government Control of Civil Society Organizations. On the other hand, like in many countries around the world, the measures being put in place by Kazakhstan to check money flows and pre-empt political opponents, carry a potential threat to civil society. As a matter of fact, substantial financial input from the government lays the way for greater dependence of CSOs on the authorities. Funding mechanisms provide the Kazakhstan government with a so-called “soft-power” over civil society organizations. Moreover, the government has established another CSO control instrument – the NGO Database. According to the law “On non-commercial organizations”, NGOs in Kazakhstan are required to annually provide reports to the Ministry of Religion and Civil Society about their operational and financial performance. The information about funders, list of projects and financial records of each organization in the database is available online on <https://infonpo.kz/ru/db/>. In case if an organization provides false data or doesn't provide data for the database on time, it receives a warning notice, followed by a fine or suspension of operations for three months.

Besides maintaining control of the sector through the database, the Ministry of Finance has developed another mechanism – monitoring of international financing of the non-profit sector. The new article #14 was added to the Taxation Code, describing that each legal entity or a physical body in case of receiving financial resources from international organizations, for such services and research or consulting, including legal consulting is required to inform the taxation bodies about receiving the money, as well as providing quarterly reports on spending received funds. The following entities are not required to provide the reports: attorneys, notaries, diplomatic representatives, pre-school and middle school institutions. Also, if consultations or research are conducted for commercial purposes, the reporting is not required either.

Sources of Funding

During the 1990s, Kazakhstan NGOs received significant amounts of foreign funding and this helped the sector to grow fast¹⁴. By the mid-2000s, the economic and social crisis of the transition period had eased. Due to Kazakhstan's status as a middle-income country with significant natural resources, the amount of funding from foreign donors declined rapidly. As noted above, government funding in the form of social services contracting began to take the place of foreign funding for those NGOs working in the areas prioritised by government. However, even for NGOs able to sign contracts, there were a number of serious drawbacks – not least the very short-term nature of the contracts¹⁵. The system of government funding continued to develop despite Kazakhstan's severe economic problems and the devaluation of the tenge following the world economic crisis in 2007-09.

After lengthy consultations with the CS sector, in December 2015, the President Nazarbayev signed a law “On making amendments to normative acts related to regulation of non-profit organizations.” According to mentioned law and the law “On government social order, grants and awards for non-profit organizations of Kazakhstan”, the government established three forms of financial support mechanisms for CSOs: 1) government social order, 2) grants and 3) government awards for social contribution¹⁶. The Coordination Council on Interaction with Non-Governmental Organizations under the Ministry of Religion and Civil Society serves a responsible body for coordinating relationships between government and non-profit organizations¹⁷.

The Social Contribution Awards for the first time were rewarded to 59 NGOs in 2017. The award will repeat on the annual basis. Over 230 organizations were nominated. The selection committee consisted of representatives of government bodies, members of international organizations, public activists and representatives of media. The financial prize of each award comprised 4.5 million tenge.¹⁸ Selection criteria included: contribution to social development, experience, public recognition, innovation, and effectiveness.¹⁹

The Civil Initiatives Support Center (CISC) was established in order to distribute government grants by the Ministry of Religion and Civil Society – the National Operator of Government Grants to NGOs.²⁰ The mission of this non-commercial joint stock governmental Centre is the development of civil society in Kazakhstan. The CISC sets the following goals: 1) to contribute to strengthening cross-sectoral partnership in the social sphere; 2) to ensure transparency in providing funds to social projects, 3) to support NGOs during implementation of grants, 4) to adapt best practices of project management in the non-profit sector.

¹³ <https://www.zakon.kz/4762561-s-novogo-goda-v-rk-zarabotajut-novye.html>

¹⁴ INTRAC mapping reports etc

¹⁵ CS in CA, p169

¹⁶ https://online.zakon.kz/Document/?doc_id=38381898#pos=0;0

¹⁷ <http://adilet.zan.kz/rus/docs/Z050000036>

¹⁸ <https://diakom.gov.kz/ru/news/kak-prohodil-konkurs-npo-na-poluchenie-gosudarstvennoy-premii>

¹⁹ <https://365info.kz/2017/09/premii-dlya-npo-kak-budut-vybirat-pobeditelej/>

²⁰ <http://cisc.kz/ru/cisc/about-us/>

It is planned to achieve the goals through implementation of the following activities: providing and monitoring government grants, monitoring the social services market, fundraising, providing recommendations to improvements in legislation related to NGOs. The CISC provides grants covering diverse social topics, including education, science and sports; health and healthy lifestyle; protection of the environment, supporting children and youth; promoting gender equality; supporting vulnerable populations; supporting orphans; supporting citizens in employment; protecting rights and legal interest of citizens; developing culture and arts; strengthening public and religious consent, monitoring government services, supporting probation system in providing social and legal services.

The “Atameken” program is a part of a larger initiative launched by President Nazarbayev – “Rukhani Zhangyru” – the program for modernizing the public consciousness. “Atameken” is operated by the Ministry of Religion and Civil Society and CISC. Main goal of the “Atameken” program is to increase level of citizens’ activism and involvement in solving social problems in their communities. The program requires municipal authorities to promote civic activism and charity ideas among local communities and business. Companies are being persuaded to provide financial contribution to social projects. CSOs have opportunities to actively participate in the “Atameken” program.

In 2016 the Civil Initiatives Support Center distributed 208 million tenge for 11 grants and in 2017 – 580 million tenge for 55 grants. The 2018 grant cycle is currently in progress and the table below shows how government grants in Kazakhstan are rapidly moving into the more strategic areas of CS development.

Topics fundable under the 2018 grant cycle:

- ▶ monitoring, analysis and research in the area of children’s rights;
- ▶ conducting analysis and developing methodology of transferring government functions to non-profit organizations;

- ▶ conducting research on the level of development of civil society organizations by region;
- ▶ developing methodology for analyzing the contribution of NGOs in social development based on experience from the OECD countries;
- ▶ strengthening capacity of government servants on national and regional level to interact effectively with CSOs;

- ▶ strengthening capacity of representatives of mass media to cover topics related to performance of CSOs;
- ▶ assessing impact of social projects funded by government and international donors;
- ▶ conducting needs assessments among population in all regions of Kazakhstan, particularly in rural areas;
- ▶ establishing an information center for development of volunteer movement;
- ▶ analyzing cases of racial/national discrimination in Kazakhstan;
- ▶ analyzing the level of fulfillment of human rights in remote rural areas;
- ▶ establishing “one window” centers for supporting civil society organizations in several regions.

Public perception of civil society

The official support given to CSOs by government in Kazakhstan assures the sector of more media coverage, much of it positive in character. Local and national deputies have close links with particular CSOs and the system of social contracting means that the government has an incentive to speak positively about the good work that socially oriented CSOs are doing.

At least three tools/mechanisms, such as working groups or councils under government bodies, Community Councils and the Civil Forum exist to establish and sustain effective dialogue between government and the civil society in Kazakhstan. This helps to boost the image of the sector. More information is available to the public via instruments with the NGO database, and this increases the level of transparency and accountability of the non-profit sector to the public.

However, the 2015 Sustainability Report noted that the public image of CSOs is still weak, indeed the description of NGOs as “foreign agents” in neighbouring Russia had increased distrust in the sector among those in the population that do not have direct contact with the sector. However, it also noted that many government officials continue to consult with NGO experts in the development of services and policies: for example, in the reports submitted by the government to international agencies on elimination of discrimination against women (CEDAW) and on a wide range of environmental matters.

Many CSOs in Kazakhstan do not have the skills or resources to work effectively with the media, the 2015 Sustainability Report found. This is despite the provision of training on communications strategies and media techniques provided by specialist development agencies. Most NGOs do not publish annual reports or disseminate information about their activities to the wider public, that is, beyond the quite narrow circle of their staff, members and beneficiaries. This limits the development of their image and reputation with the wider public.

Conclusions - strengths, weaknesses and opportunities for civil society

Among the strengths of CSOs in Kazakhstan, especially those providing social services, is their access to substantial financial support from the government of Kazakhstan. The Civil Initiatives Support Center, by having slight autonomy from the government procedures and by employing well-qualified experienced staff, has been able to establish better links between needs of populations/NGOs and the priorities of government grants. The government is moving in the direction of transferring substantial amount of government functions, including social services, to the non-profit sector. This, in turn, leads to better sustainability and quality of service provided by NGOs to vulnerable people.

Among the weaknesses is the risk that government financial support mechanisms could establish dependent relationships between NGOs and the authorities, increasing the tendency for “government organized NGOs (GONGOs)” to dominate government funded programmes. Because government money is becoming a major source of funding for NGOs, the state could take control over which spheres NGOs can operate in and unpopular topics like human rights, accountable and transparent government, and democracy, could remain underdeveloped.

On the other side, increasingly strict regulations as to receipt and spending of international donors’ funds establishes barriers of access to funding for CSOs working in topics that are not covered by government or business sponsors, including human rights, democracy, independent research, etc. Corruption remains a problem. Consultation mechanisms like the Community Councils have not yet demonstrated their effectiveness due to unclear operation mechanisms and low qualification of their members. The population at large doesn’t fully understand the phenomenon of the non-profit sector.

Opportunities for civil society include the chance for social NGOs in Kazakhstan have great opportunities to improve their capacity and sustainability through government support. Already existing dialogue platforms, if effectively use by all parties, might empower successful and equal collaboration between CSOs and the government. NGOs which are not willing to fully depend on government funding may utilize the opportunities arising from social entrepreneurship and corporate social responsibility of business in order to sustain their operations.

KYRGYZSTAN

Sector Overview

Since the early post-soviet transition the Kyrgyz Republic was developing an enabling environment for civil society (Anderson, 2000). It was not only market reforms and massive privatization that helped to spring out for various autonomous economic actors. It was also political liberalization carried out by the first president - Askar Akayev - who came to power in 1990 partially due to support of some civic groups such as Democratic Movement of Kyrgyzstan protesting against the Communist Party and who embraced the support for these reforms from the West, support that included assistance in building a new civil society.

Despite autocratic reversal in the second half of 1990s, the importance of civil society was sustained via continuous support of western donors and liberal attitude of the government (despite increased struggle with political opposition) among other factors. In 1999 the law “On non-commercial organizations” was adopted which since then has been largely defining the legal basis for civil society to operate. Over the course of the 1990s and into the 2000s NGOs expanded, gradually increasing their strength and gradually building up their links with the state. The legal environment was supportive and in the economic and social sectors there was good collaboration at the local government level, especially when there was external finding available for projects on health, production, water, and education. However, the support for NGOs from external funders began to wane by the mid-2000s, under a logic that either it was time for NGOs to stand on their own feet or that donors were not seeing the results they had expected. Donors became more reluctant to support overtly political activities, and funding inclined more towards NGOs working on government programmes or in watchdog roles on particular themes. Following the violence in 2010 there was a sudden upsurge in NGOs, especially in the South, when new organisations sprouted to address the humanitarian needs of the displaced, and new funding sources appeared for conflict-prevention activities.

According to the National Statistical Committee contribution of noncommercial sector to GDP was estimated once being 2,2 % (2001). This is a reflection of relative size of the sector although some studies (ACSSC, 2013) show that in fact out of 14 thousands of non-commercial organizations only eight hundred can be operational. Nevertheless the growth of the sector was obvious and was a result of generally conducive environment.

Legislation in relation to civil society

As noted above, the legal framework in the 1990s and early 2000s for NGOs was fairly liberal. The Law On Public Associations was adopted in 1991, based on Soviet law, establishing the right of people to create associations on the basis of common interests. This was replaced in 1996 by the Civil Code of the Kyrgyz Republic, which contained basic provisions concerning non-profit organisations; and in 1999 by the Law On Non-commercial Organisations which defined different types of non-profit organisations (Association of Civil Society Support Centers 2006). The law provides for the formation of trade unions, and unions are generally able to operate without obstruction - but strikes are prohibited in many sectors. All religious organizations must register with the authorities, a process that is often cumbersome and arbitrary (Freedom House 2012a). From the early 2000s, local government decentralization laid the way for collaboration with both donors and CSOs on infrastructure and other projects at local level (villages or *aiyl okmutus*). Agencies like UNDP made full use of this.

The late 2000s show a varied picture. On the one hand, space continued to be respected and improved. For example, in 2009 state contracting for NGOs was formally approved by parliament; in March 2010 the Constitutional Court declared that some provisions in the Law on public assemblies were unconstitutional, marking a positive step in addressing such issues. On the other hand, prior to the disturbances and change of government in 2010-11, there were signs of attempts to reduce the operating space for NGOs. For example, attempts were made to bring in legislation giving the government discretionary power to close down NGOs or prevent NGOs from participating in 'political activities', to prohibit foreign funding and to impose stringent registration requirements on international organisations. The bill was rejected at the time (World Organisation Against Torture).

A new constitution was adopted in 2011 which allows civil society more freedom. New public advisory councils were established in the parliament and in most ministries, permitting improved monitoring and advocacy by NGOs, and these are considered to be getting stronger. According to the ICNL: "This will allow public councils to perform their supervisory functions without the risk of being pressured by state bodies. The new amendments will strengthen citizen participation in government policy-making. In turn, citizen participation and transparency will be powerful tools in the fight against government corruption in Kyrgyzstan" (ICNL 2011). Freedom of association is typically upheld, and a new law on peaceful assemblies adopted in May 2012. Between January and September 2011, 1500 peaceful protests were held, representing a more open atmosphere and a greater role for CSO (USAID 2012).

The procedures for registering a CSO are straightforward; public foundations and public associations can register with the Ministry of Justice within ten working days. The Law on Non-Commercial Organizations clearly describes the scope of permissible activities, internal management, and financial reporting requirements (USAID 2012).

Only relatively recently has the state started to develop mechanisms of funding CSOs' projects. One mechanism is developed through provisions of the law "On state social order" adopted back in 2008. It is still rare – only 1% of respondents (ACSSC, 2013) reported getting funding through this mechanism and in 2015 the Ministry of Labor and Social Development disbursed 22,5 mln soms, which more than 330 thousands USD, only for this purpose (ICNL, 2017). While having symbolic and limited practical significance in some areas, the funding through the state social order in overall remains the small portion of overall costs of civil society activities.

In most legal interpretations, CSOs are treated as commercial entities and pay the same taxes at the same rates. This means that CSOs have to pay the same tax rate as for-profit firms if they engage into non-profit commercial activities. Putting CSOs on the same taxable footing as commercial firms makes the sustainability of many nonprofit organizations quite difficult to achieve. According to the law "On charities and charitable activities", charitable organizations are exempt from income tax, VAT and sales tax. However, these benefits are practically impossible to receive due to the stipulation requiring these organizations to devote 98% of their budget to operational activities, while just 2% of expenditures can go towards administrative costs. As a result, most CSOs see little point in registering as a charitable organization, and tend to register as public foundations or public associations, which are not legally entitled to these tax benefits.

The process of registration of CSOs is relatively. There are more difficulties with the closure of an organization, but recently there were changes in the law on "State Registration of Legal Entities" which simplifies these procedures. Also the law does not place restrictions on who may constitute the founders of a legally registered CSO and the article 2 of the law stipulates that "legal entities and individuals having legal capacity may be founders of a noncommercial organization, regardless of the place of registration of legal entities and citizenship of individuals".

The Law on Noncommercial Organizations also allows non-registered organizations to operate, with article 6 of the law explicitly stating that "noncommercial organizations may be created with or without forming a legal entity". All this indicates

that freedom of association has almost never been a real issue in Kyrgyzstan - though with one of two important exceptions: for example, the refusal of the Ministry of Justice in 2012 to register a CSO of gays and lesbians due to the fact that the words "gays and lesbians" were included in the title of the organization. The CSO had to change its name in order to be registered.

The reporting requirements for CSOs are clear and a registered organization has to report their payments to the tax authorities and to the Pension Fund — just like any other legal entity. CSOs engaged in commercial activities for non-profit purposes are also required to be specially registered with the tax authorities and their reporting is more complicated than those who engage in purely non-profit activities. Nonetheless, the reporting requirements for such groups are no more cumbersome than those for business enterprises—although there have been complaints that CSOs should not be treated like businesses. There are also increasingly frequent attempts to impose additional regulations on CSOs on the ground of countering money laundering and combatting terrorism financing.

According to the Civil Society Sustainability Index (2015), the situation with the legal environment in Kyrgyzstan was quite volatile and the score for this dimension during the post-soviet period was going up and down regularly, fluctuating in overall between 5 and 3.7, and the last available score for 2014 is 3.9 which are worse than scores for previous two years. That year was a peak of discussion of the "foreign agents' law" (which was dismissed by the parliament in 2016).

Some studies (Tiulegenov, 2016) show that legislation in Kyrgyzstan is keen to mention civil society at a higher level normative acts (decrees by the President, cabinet of ministers, laws), but rarer mention it in the legal acts issued by ministries and agencies. This testifies to relatively high political importance of civil society in the national legislation, but a lower level of internalization of civil society as a norm by the state agencies.

While freedom of association is well observed, there have been several attempts to curtail the freedom to operate. During last few years there were a number of various legislative initiatives coming from MPs and some state agencies with the aim of monitoring the work of civil society. The post-2010 period has shown more attempts to regulate civil society than at any other time since 1991. The most notorious initiative was the draft law on the so-called foreign agents which aimed to regulate activities of CSOs allegedly engaged in political activities. The draft was largely copied from and prompted by the similar Russian law adopted in 2012. It was initiated by Kyrgyz MPs in 2014 and was eventually voted against by the parliament in 2016.

Institutional development and government policy

The political and governance environment in Kyrgyzstan deteriorated throughout the 2000s, leading to a very mixed picture regarding the operating environment for civil society. On the one hand, throughout the 2000s civil society was able to advance particular causes, for example on women's rights, consultation on national development plans (Giffen & Earle 2005), the right to assembly and to demonstrate, press freedom, the push for proportional representation in parliament and compulsory quotas for women, youth and minorities (Buxton 2012). NGOs were heavily involved in campaigning against the Akaev regime prior to the Tulip Revolution of 2005; and participated in the Constitutional Council set up after 2005. From 2007-2010 'radicals' within civil society organised a people's parliament which met every couple of months until April 2011 (idem).

On the other hand, only a small number of NGOs had real access to the corridors of power, notably those based in Bishkek or provincial centres or with personal access to the authorities. There were divisions and splits amongst civil society organisations between radicals and reformers. State pressure to keep NGOs under control increased following the Tulip Revolution, especially regarding activities related to the political sphere or human rights at same time the state was officially increasing space for public consultation (Musabaeva 2010). Overall collaboration seems to have worked best at the sub-national level, with consultation and collaboration with local authorities (Buxton 2012).

Again the picture is mixed following the violence of 2010 and political changes of 2011. On the one hand, the situation is considered to be more stable for civil society with NGOs making substantial inputs into the revision of the constitution, the new electoral commission, judicial reforms, and police reforms. Recommendations from civil society were taken on board and a number of civil society activists were absorbed into the new government (Buxton 2012, USAID 2012). Labour representatives opposed a draft bill to alter the labour code and succeeded in getting it withdrawn in 2012 (Dillon 2013). The USAID Civil Society Index report notes the stronger dialogue between CSOs and local and national government, with more regular invitations to CSOs to participate in meetings. It highlights more advocacy on environmental issues, and on human rights: "As CSOs have begun to engage more seriously in advocacy, state agencies have been forced to pay more attention to them. For example, Parliamentary staff now regularly seek the opinions of the Human Rights Council, a group of CSOs working on human rights issues" (USAID 2012). This position is underpinned by the rise of new organisations and movements, for example amongst young people.

On the other hand, other reports highlight how the violence of 2010 took its toll on civil society, affecting levels of trust between people and groups and intensifying apathy within the general population. As with the government, CSOs themselves had not managed to create space for the participation of minorities, and many were unclear about the roles of CSOs in the post-conflict situation (Moldosheva, Mamasalieva and Buxton 2013). Moreover in certain sectors operating space is not good for NGOs. Human rights activists who work on defending Uzbek victims in the aftermaths of the 2010 events faced

threats, harassment, and physical attacks. The major donor agencies had continued to engage with the Bakiev government, for example, in the creation of a new national development agency that once again would involve the CS sector. However, the agency was disbanded after the April 2010 revolution amid (well-founded) accusations of corruption.

This history of broken efforts to develop collaborative institutions means that overall there is a lack of coherent and explicit policy towards civil society at the national and local levels in Kyrgyzstan. While for the most part it worked for good with the neutral stance of the state except legislating some acts related to NGOs and charitable activities, but at times of increased political attention towards a sector this backfires. The state inadvertently is led by developments set either by populist politicians or by foreign-born ideas and laws.

This was partially addressed in 2010 by creating a department within the presidential administration (“on ethnic and religious affairs and interaction with civil society”) and by elaborating at this moment a section related to civil society within the package of governmental reforms titled Zhany Doorgo 40 Kadam (40 Steps Towards a New Epoch). Yet within activities of the department civil society remains a very low priority and within the reforms package a section is blurred with the local government development. Yet these constitute an important step stone for building policies towards civil society.

Sources of funding

In the 1990s, international funding for NGOs was abundant. An INTRAC NGO mapping report states....

A key reason for the generous funding was the perception of Kyrgyzstan as an “island of democracy” in the Central Asia region; another reason was Kyrgyzstan’s moves to local government decentralisation. This provided an excellent base for 3-sided partnerships between local government, NGOs and the donors, particularly on health, agricultural production, water services, and education.

The amount of donor funding continued at a high level during the 2000s. However, the effect of the 2005 and 2010 revolutions was to make international donors considerably more sensitive to accusations that their grants were destabilizing the regime. Less funding was given to civil society per se, and increasingly donors worked through NGOs specializing in particular topics (support to women, youth, environmental themes etc) often linked to the UN millennium development goals (MDGs).

The main multilateral donors in 2010-11 were: World Bank, IMF, and the Asian Development Bank. The main bilateral donors were: Turkey, USA, EU, Germany, Japan, and Switzerland. Total overseas development aid for 2011 was US\$523m; over 10% of this aid was for humanitarian relief (OECD 2012). China and Russia are also strong regional partners but working exclusively in the government and private sectors.

The 2015 Sustainability Report notes that funding for CS is decreasing year on year – including from leading donors like Soros Foundation-Kyrgyzstan and the Finnish Embassy – while other donors that has supported conflict prevention projects post 2010, were now winding down. The report notes that UNDP and the World Bank now increasingly work with government agencies rather than NGOs. In 2014, the Kyrgyz government boosted its budget for social services to \$400,000 but this was only available for a very small list of themes. The report notes that few private companies allocate funds for social projects and often give money direct to beneficiaries rather than fund CS projects.

The issue of sustainability of CSOs is perennial in Kyrgyzstan. According to a survey among CSOs (ACSSC, 2013) only 26% of respondents stated that the level of funding is sufficient for their operations, though 72% mentioned that this would not lead to closure of their organizations. There is a lack of enabling environment in financial matters mostly due to the heavy predominance of foreign (mostly western) funding – 22% of respondents noted that their organizations depend on it (ACSSC, 2013). Some of the organizations (15% in the same survey) rely on paid provision of goods and services. The study done in 2006 (ACSSC) shows that more than 80% of CSO funding comes from foreign sources.

Public perception of civil society

Public perception plays significantly important role in development of enabling environment for civil society. This is not only related to the need to get engaged with target groups and relevant stakeholders for the sake of projects and activities implemented by CSOs. It is also important because with the rise of the populist politics politicians more and more relate to sentiments of their constituencies which tend often to have negative attitudes towards civil society.

The public image dimension of the 2014 Civil Society Sustainability Index shows the score of 4.3 which is much worse than in previous two years. This can be attributed to the initiation of the foreign agents draft law which was aiming to tag a publicly derogative label to CSOs and put additional control measures over them. The public attitude towards CSOs has been changing over time. According to annual surveys by International Republican Institute a positive attitude towards NGOs decreased from around 80% in 2005 (the height of civil mobilization to correct the errors of the Akaev period) to less than 35% in 2016 (by which time disillusion in revolutions and democratic reforms had set in).

The overall public discourse in regard to civil society has had quite significant negative tint and the narrative of the so-called “grantoedy” (grant eaters) was supplemented, along discussion of a relevant draft law, by a narrative of CSOs being foreign agents and pursuing someone else’s agenda. There are little informed discussions in the country about understanding civil society in general and its role in the country’s development. And these narratives single out a specific segment of civil society, without considering newly emerging indigenous civic groups and organizations as well as non-liberal organizations which are funded from non-western sources.

All of that is formed due to the prevailing perception of civil society as being overly political and totally dependent on foreign donors from the west who impose their own agenda. This is somewhat also propagated by media which tends to focus on political aspects of the work done by CSOs and shows little of various importance work done by civil society for various vulnerable groups.

The rise of conservative movement in Kyrgyzstan can be traced back to the early 2000s when actions of some CSOs were protesting healthy lifestyle textbooks claiming that they go against mentality of the Kyrgyz people. The next wave emerged in the early 2010s and was complemented by the draft law initiative on prohibition of so-called “gay propaganda”.

Conclusion – strengths, weaknesses and opportunities for civil society

The strength of the CS sectors in Kyrgyzstan is still its independent and active nature. However, this is subject to continued external funding. By the mid-2000s a number of donors and international NGOs had begun reducing their activities in Kyrgyzstan, which intensified under the impact of economic problems in the West. However, there was an influx of new aid for humanitarian interventions and post-conflict projects in 2011-14. A large number of international NGOs and private foundations remain active in Kyrgyzstan, with their activities falling loosely into the following categories: education and cultural activities; health and social; agricultural productivity; and democracy and governance.

There are a small number of very experienced CSOs with a high capacity level and regular funding from international partners. These CSOs dominate their respective sectors – eg women’s rights and services, election monitoring, environmental education, development of agricultural services, human rights activity. Many of them engage in re-granting activity with funds from the European Union, USAID or other international agencies. However, as noted above, the challenge is how to increase their long-term sustainability.

One of the most interesting experiments in recent times is the development of social enterprise in Kyrgyzstan, led by disabled people’s organisations. A recent report showed that social enterprises operate across many sectors (from social services to retail and small production activities) but are still at a low level of turnover. They suffer from a low level of public awareness and a lack of government support.

In Kyrgyzstan, there is space to address democracy, governance and human rights issues. The 2014 Sustainability Report mentions health policy, electoral regulations and inter-ethnic relations as areas where the government welcomed collaboration and new ideas from CSOs. The new Public Councils were only just establishing themselves as this time, but the mechanism for selection of members of the councils was being overseen by civil society and independent bodies. Many different CSOs and independent experts were involved in supporting the new parliamentary system and ensuring that deputies were open to representations from the general population. These are among the most important opportunities for the sector in the future.

TAJIKISTAN

Sector overview

Civil society is one of the most dynamically developing sectors in Tajikistan (World Bank, 2014). Civil society organizations are engaged in a wide range of activities that includes humanitarian relief and charity, social protection of the marginalized and vulnerable groups, education and awareness raising, legal aid, environmental protection, human rights defence and advocacy, youth development, support to small business, community mobilization and many others. The number, scope and reach of CSOs has grown steadily since 1991, especially after the civil war 1992-97..

Civil society in the form of legally registered associations of citizens emerged in late 1980s during the social and political transformations of those years. In 1997 there were just 300 civil society organizations registered in the country, while already in 2007 this number rose to 2,700. In 2015, the Ministry of Justice briefed that there were more than 2,800 CSOs in their register and the number has not drastically increased or decreased since then. Yet, some estimates indicate that only about 35 per cent of registered organizations (about 1,000) are active with the rest being either idle or periodically active (USAID, 2012; USAID, 2014). In addition, there are thousands of community-based associations of citizens. As of 2015, there were more than 1,600 public self-initiative bodies or so-called Mahalla Councils (village organizations); more than 100 Associations for Development of Mahalla Councils; more than 100 Water Users Associations; and about 2,600 community-based savings groups (supported by the Aga Khan foundation) (USAID, 2014).

The scope of civil society activity has also expanded from service delivery to monitoring public services, advocacy and lobbying. Some CSOs have now grown into big organizations with relatively large resources and capacities to engage in service delivery, monitoring and advocacy. These are predominantly organizations that have been in the 'business' for more than 15 years and based in the capital city of Dushanbe or provincial centers. There are also several national associations, e.g. the National Association of NGOs (<http://www.cso.tj/index.php/>); the Anti-Torture Coalition (<http://notorturetj.org/>); the Transparency for Development Coalition of civil society organizations (inspired by the Extractive Industries Transparency Initiative) (<https://www.facebook.com/tfdtj>); etc.

The back side of these positive developments is numerous challenges that civil society faces in the country. The USAID Civil Society Organizations Sustainability Index rated CSOs in Tajikistan at 4.8 out of 7 points, thus underlining their poor sustainability score (USAID, 2012). The situation has not improved since then, but only worsened. In 2014, Tajikistan's CSOs scored the same but analysts indicated a worsening of the environment for civil society in the country (USAID, 2014). Furthermore, the general public remains largely unaware of civil society's role in society. While in rural areas, communities often fail to make a link between services delivered by CSOs and the term 'civil society', in big urban locations civil society is mostly perceived as grant- and donor-dependent.

Legislation in relation to civil society

A peculiarity of Tajikistan is that 'civil society' as a term does not exist in its domestic legislation. The legislative grounds for the existence of civil society are laid down in the Article 28 of the country's Constitution²¹, which stipulates that: "Citizens have the right of association. Each citizen has the right to participate in the formation of political parties, trade unions, and other social associations, as well as voluntarily to join them and resign from them."²²

Although not explicitly related to the enabling of civil society, Article 8 of the Constitution mentions some associational forms of civil society, namely political parties, public and religious associations, movements and groups.²³ Article 28 provides grounds for at least 10 laws setting regulations for different forms of civil society organizations shown in the table below. The table illustrates the wide range of CSOs that exist in Tajikistan as in other countries of the region. Once again, we note that this paper mainly focuses on public associations and foundations and that a full review would have to include other types of CSO.

Tajikistan legislation on civil society:

- ▶ The Law Tajikistan "On Public Associations" (May 2007, amended on March 19, 2013 and August 8, 2015);
- ▶ The Law "On Political Parties" (November 13, 1998, amended on August 8, 2015);
- ▶ The Law "On Freedom of Conscience and Religious Associations" (July 2, 2009 as amended on June 28, 2011);

²¹ The Constitution of Tajikistan was adopted on November 6, 1994 and amended on September 26, 1999; June 22, 2003; and May 22, 2016.

²² See at: <http://www.president.tj/ru/taxonomy/term/5/112>

²³ See *ibid*

- ▶ The Law “On Labor Unions» (August 02, 2011);
- ▶ The Law “On Charitable Activity” (April 2003);
- ▶ The Law “On Public Self-Initiative Bodies” (January 5, 2008);
- ▶ The Law “On State Social Contracting” (December 31, 2008);
- ▶ The Law “On Self-Governance Bodies in Towns and Villages” (August 2009, amended on August 1, 2012); The Law “On Volunteer Activity” (December 25, 2012);
- ▶ The Law “On Registration of Legal Entities and Individual Entrepreneurs” (May 19, 2009, amended on December 28, 2012);
- ▶ The Civil Code of Republic of Tajikistan, Part 1 (June 30, 1999, amended on December 29, 2010, July 22, 2013 and March 18, 2015);
- ▶ The Civil Code of Republic of Tajikistan, Part 2 (December 11, 1999, amended on July 29, 2010, July 22, 2013 and March 18, 2015).

There are separate laws for major forms of associational civil society, namely – political parties, religious organizations, labour unions, and charities. All non-profit civil society organizations are regulated by one law – the Law “On Public Associations”. Article 4 of this law re-iterates the right of citizens to form associations, which includes: “the right to create on a voluntary basis public association for the protection of common interests and the achievement of common objectives, to join existing public associations or abstain from entering them, and to freely terminate membership in these associations”.²⁴ Importantly, the same Article 4 provides the right of citizens to create public associations independently and without prior approval by the state. Article 5 defines what is meant by ‘public association’ in Tajikistan’s legislation. It is a voluntary, self-regulating, and non-profit association of citizens that assemble based on common interests to advance the goals set out in a statute. Underlining these three characteristics is an indication of the so-called neo-Tocquevillian approach adopted in Tajikistan’s legislation to civil society organizations. Civil society is understood as a part of society that associates voluntarily, regulates itself, functions for no profit, and at least declaratory is independent from the state.

The Civil Code of Tajikistan provides for non-commercial organizations, of which civil society organizations are part of. As per the Civil Code, six forms of non-commercial organizations are allowed in the country: non-commercial cooperative, consumer cooperative, public association or religious group, public and other foundations, and entities sponsored by the owner.²⁵ Of all non-commercial organizations registered in Tajikistan, some 80 per cent are estimated to be civil society organizations functioning as public associations.²⁶



There is a fine distinction between these forms based on the membership and scope of activity. A public organization is defined as a membership-based association, whereas a public movement and a public initiative body are not. A public movement is defined as a “mass association” of citizens and is somewhat similar to a thin definition of a social movement. It is not detailed what type/s of group action should be considered a public movement, but looking at a few that exist in Tajikistan (e.g. “Vahdat and ehyoi milli” [National Unity and Revival]), one may conclude that it should be a nation-wide association to qualify as a public movement. A public self-initiative body is then allocated a role of community-based self-help group that are limited in their geography of work and whose objectives are confined to resolving basic social and/or economic issues of a community.²⁷

Institutional development and government policy

There are several characteristics of the public policies with regard to civil society that put Tajikistan in a distinct position. Firstly, its legislation does not use ‘civil society’ as a term. Even in the laws that regulate how citizens should form associations

²⁴ See at: http://mmk.tj/ru/library/ob_obshestvennih_obedineniyah.doc.

²⁵ See at: http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=335#_Toc482024154

²⁶ See at: <http://www.icnl.org/research/monitor/tajikistan.html>

²⁷ See the Law on “Public Initiative Bodies” at: http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=179

(non-profit, political parties, religious groups, etc.), there is no mention of civil society. Although the term can be used in public by governmental officials (for instance, during press conferences, briefings, or round-tables), formally it is not encoded in legislation. Secondly, term 'non-governmental organization' is used neither in the legislation, nor in policy practice. The phrase 'non-governmental organization' is particularly avoided by the government officials. Thirdly, development of civil society is not recognized as a policy objective. There is no single national/state concept, strategy or programme on the development of civil society in the country.²⁸

The only mention of civil society in policy-making was made in early 2015 by President Rahmon in his address to Parliament.

Civil society was mentioned in two instances:

a) as a partner of central and local authorities in the impact assessment of the National Development Strategy to 2015;

b) as an actor to engage in analyzing mandatory pre-marital health check-ups for marrying couples.²⁹

Yet, the advancement of civil society is not mentioned as any goals or sub-goal in the country's two national development strategies – the current strategy to 2030, or the previous strategy to 2015.³⁰ The current National Development Strategy 2030 is a de facto roadmap not only for domestic public policies, but also for international development agencies (United Nations and other) and bilateral donors.

The government is concerned to support traditional bodies like jamoats and mahalla committees. A lot of discussion was devoted, for example, to the procedure by which jamoat head are either appointed or elected; and to the composition of jamoat committees in which mahallas are usually well represented. Both these bodies can be seen as CSOs (at least in part). Nonetheless, many of the institutional developments in Tajikistan in recent years can be seen not as enabling CSOs to work more effectively, but rather to strengthen legal and administrative controls. These are illustrated in the following paragraphs.

Territorial restrictions. According to the Law "On Public Associations", civil society organizations may operate within a defined territory, which corresponds to the territorial-administrative division of the country. Public associations may hold a 'national' status and thus, implement their activities all-over Tajikistan. However, these organizations should maintain branches in all major provinces of the country to qualify for a national status. A public association may be 'local' and thus operate within a certain province (oblast), district (rayon) or town. Organizations holding local status cannot directly implement activities in geographic locations beyond their defined area. Whereas before 2013, this clause did not hinder civil society organizations to organize events outside of their area of registered activity, since 2014 the Ministry of Justice started to enforce his norm more strictly, which led to several civil society organizations to close down for violation of this norm.

Registration, re-registration and termination. Most civil society organizations register with the Ministry of Justice. The registration process for public associations is a complex bureaucratic procedure that requires various documents and multiple visits to the Ministry of Justice offices. Registration is often denied due to small errors in the documentation or delayed far beyond the limit of one month since the submission of an application, as set forth in the law. Complications in the registration often open space for corruptive practices, whereby applicant organizations try to or have to bribe Ministry of Justice officials to speed up the process or receive approval to their application (AGNA, 2015).

Besides, the registration is costly. A local public association needs to pay the equivalent of about 40 USD in registration fees. The amount is almost twice as much for national public associations. For international public associations (of Tajikistani origin and branches of international NGOs) the registration fee skyrockets to the equivalent of about 750 USD. The situation looks even more pessimistic, when the 2015 amendments to the Law "On Public Associations" are taken into account. Since 2015, a public association has to re-register every time it changes its actual address.

In the past some civil society organizations managed to register as public funds and, thus avoid lengthy Ministry of Justice procedures. According to the Civil Code of Tajikistan, public funds (as well as consumer cooperatives and non-commercial cooperatives) are registered by the Tax Committee using one-stop principle. Since 2014, this 'loop hole' has shut down with the Tax Committee requiring some public funds to change their status to a public association and register under the Ministry of Justice.

Controls and inspections. The Law "On Public Associations" bans interference of state institutions and officials in the work of public associations. Similarly, the latter are banned from interfering with the work of authorities.³³ Besides, the state takes

²⁸ In 2008, a National NGO Development Strategy was drafted by a public organization called "Tajikistan Development Foundation", which claimed the draft to be a product of the 1st NGO Forum of Tajikistan held in 2008. The draft was never taken to the public policy level.

²⁹ See at: <http://www.president.tj/ru/node/8137>

³⁰ See for instance at: http://www.gki.tj/nsr2030_ru.pdf

responsibility to protect lawful rights and interests of public associations.³⁴ Yet, in practice, state authorities grossly intervene in the work of civil society organizations. Legal grounds for authorities to intervene in the public associations' life are laid in the same Law "On Public Associations" article 34. The law gives authority to the Ministry of Justice to inspect the work of public associations with the aim of ensuring that public associations do not violate any provision of the law "On Public Associations" and function in accordance with their statutory mission.

The Ministry of Justice has the power:



a) to demand resolutions of the association's governing body, documents detailing association's governance, including day-to-day decisions and supervision of the association's management and other information about the organization;



b) to attend all events organized and conducted by public associations without restriction.

In addition, public associations are obligated to submit to the Ministry of Justice or its offices annual report on completed activities and an advance notice about any grants awarded to them.

The Ministry of Justice is not the only state institution that is granted the right to inspect and control the work of public associations. The Tax Committee is authorized to inspect sources of income, amounts received, and tax payments made by public associations.³⁵ Violations of taxation rules revealed during regular or ad hoc tax audits may lead to fines as much as 10,000 USD, which is a highly burdensome amount for public associations. Besides Tax Committee, public associations are inspected by a number of other state regulators to control compliance with existing norms, e.g. labor inspection, fire-fighting department, environmental protection authority, hygiene and sanitation inspection, etc. Furthermore, in the case the non-compliance with any norm or standard has not been resolved by a public association, the law permits a prosecutor's office to initiate a compliance inspection.

Virtually all inspections of public associations are misused to either threaten a public association to withdraw or amend its specific activity, to penalize a public association for a 'wrong doing', or to extort bribes, if and where possible. Since 2014, inspections by the Ministry of Justice, prosecutor's office, Tax Committee and State labor regulator have increased in frequency and hardened in compliance confirmation (AGNA, 2015). Today, it is not exclusively human rights organizations that are subject to frequent inspections, but also civil society organizations working on development, social issues, environment, etc. In most instances, inspections are instructed by the State Committee on National Security,³⁶ which keeps an eye on political and religious activity, as well as civil society activism in the country. The latter brings up yet another challenge civil society has to face in Tajikistan – de facto restrictions on certain actions or types of activity, namely political activity.

Sources of funding

Civil society organizations in Tajikistan remain highly dependent on foreign donor funding (AGNA, 2015). After more than 20 years of operations, funding sources of civil society organizations are not sufficiently diversified (USAID, 2014).

The issue has at least three facets?

a) limited funding from local sources, both private and public;

b) gaps in fund raising;

c) unwillingness to engage in commercial activity.

³¹ See at: <http://www.icnl.org/research/monitor/tajikistan.html>

³² For instance, in 2015 the Tax Committee filed a case to the court to denounce registration of the Public Fund "Notabene" as violating the law. See at: <https://www.osce.org/odihr/184051?download=true>

³³ See Article 15 of the Law "On Public Associations".

³⁴ See *ibid.*

³⁵ See Article 34 of the Law "On Public Associations".

³⁶ See at: <http://www.icnl.org/research/monitor/tajikistan.html>

The largest share of funding to CSOs continue to come through grants from international donors and development agencies. According to the Ministry of Justice, in 2017 alone the country's public associations received more than 854 million TJS (almost 100 million USD) in grants.³⁷ 80 per cent of this amount was received by branches of international NGOs working in Tajikistan (e.g. Aga Khan Foundation agencies, Eurasia Foundation, Mercy Corps, Welthungerhilfe, Helvetas, etc.). The remaining 20 per cent (about 20 million USD) is assumed to receive local civil society organizations. Still, precise and verifiable data on amount of funding received annually by the civil society organizations is hard to estimate.³⁸

Domestic sources of funding are very limited. The government awards limited public contracts to CSOs working on certain health issues (e.g. HIV/AIDS, drug addiction), delivering services to specific social groups (e.g. people with disabilities, youth), adult training, and entrepreneurship. There are some good examples of funding or co-funding of civil society organizations through the Youth Committee, Women and Family Affairs Committee, and Ministry of Labor and Migration. There is also legal ground for such co-operation – the Law “On State Social Contracting”. However, there are some drawbacks to this form of funding. Firstly, the amounts available in grants are limited. For instance, in 2014, the government allocated only about 230,000 USD for public contracts (USAID, 2014). Secondly, due to the volatility of state revenues in general, grant allocation to CSOs is constantly at risk of budget cuts or under-funding. Thirdly, CSOs competing for public funding often admit that the government's procurement of social services is not transparent. They claim that the current practice promotes the government-organized or controlled non-commercial organizations³⁹ to benefit from state contracting (USAID, 2014; AGNA, 2015).

Funding through local private sources is also unreliable. In a survey of 165 civil society organizations conducted by Tajikistan's National NGO Association in 2012, only 7 per cent of organizations' funding came from local private sources, compared to 18 per cent in state social contracts, and 75 per cent from foreign aid (USAID, 2014). Individual and corporate philanthropy are still rare in the country. There are very few examples of local funding through philanthropy of commercial banks and telecommunications firms, e.g. Agroinvestbank, Bank Eskhata, Oriyonbank, TCell, Beeline, and Megafon. These funds are often granted for “one-off” charitable activities and events through CSOs and are rarely allocated to long-term projects.

Another barrier in securing funds is the gap in fund raising capabilities of CSOs. Only few well-established associations can enjoy short- to mid-term funding support. Such organizations (for instance, “Fidokor”, “Zerkalo”, “Sharq”, “Rushdi Dehot”, “Association of Small and Medium Businesses”, “Bureau on Human Rights”, etc.) have clear fund-raising strategies aligned with organizational goals and programmatic priorities.

Public perception of civil society

The last, but not least challenge for civil society in Tajikistan is its public perception or image among the public. Despite having thousands of CSOs and the whole sector being worth of 100 million USD (in 2017), the phenomenon of civil society has not become a part of social and political culture. The public awareness of civil society remains low (USAID, 2014). The idea of civil society is still appreciated by only few in the society. Beneficiaries and stakeholders appreciate the work of CSOs, but the wider public does not have sufficient information about their projects and activities.⁴⁰

As always, the problem is multifaceted. Firstly, the idea of a liberal civil society working independently from the state and acting as a check on the state seems to be alien to the local political culture. Secondly, the government interpretation of the role civil society should play in the society and its tight control over civil society activism promotes the image of the civil society being a suspicious ‘substance’. Thirdly, even well-off CSOs do little public relations work and do not invest in building their constituencies. Fourthly, information about organizations or their projects is not always available, which contributes to public perception of the civil society as non-transparent.

The weakness of Tajik NGOs' public image makes it hard for them to engage in income generation activity that would be paid for by ordinary citizens – and hence improve their financial viability. The Law “On Public Associations” gives public associations the right to generate income from commercial activity, as long as it is used solely for activities in line with statutory goals of the organization⁴¹. Yet, income from commercial activity is estimated at only about 5 per cent of the annual income of the CS sector (USAID, 2014). Paid services delivered by civil society organizations are mostly limited to trainings, consultancies, micro-credit activity, and handcraft products. Due to poverty among beneficiaries, CSOs cannot generate much income from paid services. Added to which, the public perception is that social and educational services should be free-of-charge.

Although civil society in Tajikistan faces numerous challenges, there are certain opportunities that can help sustain its activities. Civil society needs to follow technological advancement of recent decades and pursue online forms of group activism more seriously. Virtual space is now an immense alternative platform for human communication. As of 2017, Internet penetration

³⁷ See at: <https://news.tj/ru/news/tajikistan/society/20180131/v-tadzhikistan-dlya-podderzhki-obtshestvennih-obedinenii-postupilo-854-mln-117-tis-somoni>

³⁸ As per the Law “On Public Associations”, the Ministry of Justice should have track of incoming funding of all registered civil society organizations as of 2016. However, this data is not open to public.

³⁹ The so-called GONGOs. See: Anheier and Toepler, 2009.

⁴⁰ Findings of the author's doctoral research on everyday practices of civil society activists in Tajikistan.

⁴¹ See Article 31 of the Law “On Public Associations”.

was at 17 per cent in Tajikistan, i.e. almost every one in six citizens of a 9 million country used Internet (World Bank, 2017). Although statistics for Facebook penetration shows very low level – only 0.9 per cent (84,000 subscribers)⁴², many more Tajikistani users are subscribed to Instagram, Telegram and a Russia-based social network “odnoklassniki”. Furthermore, while there is no statistics on the number of instant messenger apps users, messengers WhatsApp and Viber are used extensively by all age groups in urban and rural areas.

These online opportunities should be used by the civil society to reach out to the wider public. There are several Facebook groups that are active in raising issues of concern to local communities. One example is ENT.tj – “Economic News of Tajikistan”, a group of economy experts that raise and discuss some of the pressing developmental issues the country is facing (e.g. investment climate, poverty reduction, taxation, exports/imports, trade balance, etc.). Another example is a group “We are Dushanbeans” [Мы - Душанбинцы] that has thousands of members. The group is constantly raising various issues of life in Dushanbe. The group also actively reacts to all major developments in the city, be it authorities’ decision to increase public transportation prices, opening of a new facility for children, a traffic incident, or else. One more example is a Facebook group “Stop Rudeness” [СтопХам], whose members associated to fight rudeness in public space. The group posts notes and photos of rude drivers, salesmen, and others.

Conclusion – strengths, weaknesses and opportunities for civil society

In this section we present some of the strengths, weaknesses and opportunities for civil society in Tajikistan today.

Realistic objectives. There is a chance to work with major donors like the European Union and the Open Society Institute (the two biggest providers of institutional support to civil society) and the state in issues where either CSOs can be supporters of the government policies, or alternatively, as intermediaries between the state and the public. These two contradicting approaches led in the past to situations, when civil society found itself “between the devil and the deep blue sea”. On the one hand, it had to conform to government policies, whereas at the same time it was expected to promote issues that were ‘taboo’-ed by the state (e.g. LGBT rights). However, there now seems to be a ‘consensus’ from both sides – state and donors – viewing civil society as a middle ground between the state and society at large, whose objectives should preferably relate to the themes and priorities of the National Development Strategy 2030. This potentially gives CS some realistic objectives.

Impediments to civil society. There are many challenges facing civil society in Tajikistan today. A general trend is that of worsening the environment for independent and critical civil society activism. As noted above, starting from early 2014, the government has taken a number of measures to tighten control over civil society activism in the country. These are severe impediments to free activity that have to be taken fully into account.

Capacity and resources. The second biggest cluster of challenges the civil society is facing, relates to its capacity and availability of resources. Poor financial viability of the civil society activism has been underlined in numerous reports (USAID, 2012 and 2014; AGNA, 2015). The problem is complex and drags many civil society organizations down the sustainability ladder. Besides, civil society organizations face capacity gaps in terms of qualified personnel, infrastructure, and property, which impede institutionalization of the civil society.

Exploring domestic sources of funding. As noted above, the difficulties in developing paid services, as well as the complexity of tax regulations and the risks of government checks and controls - all this means that most CSO managers chose not to overburden themselves with running separate financial management required for commercial activity. Finally, unlike business associations, civil society organizations cannot rely on membership fees since their membership – the general public – is unable or unwilling to contribute significant fees. However, for the future it seems like a necessary risk and strategy in CSOs are to become truly independent and financially viable.

Development of alliances to increase public support. To mitigate the pressure coming from the state, civil society needs to work in coalitions and/or networks rather than individually. The Law “On Public Associations” does not prohibit CSOs from creating associations or coalitions, but still, there are less than ten active coalitions in the country today⁴³. Those organization that do work in coalitions tend to be better positioned in terms of advocacy, resource availability, and resilience to external pressure. Existing coalitions of CSOs work on issues like gender, media, human rights, environment, youth, transparency, and business development (USAID, 2014). However, most of them are Dushanbe-based. Where CSOs from the provinces are also represented, they are usually not in managing or decision-making roles. Some of the prominent coalitions include the following:

⁴¹ See Article 31 of the Law “On Public Associations”.

⁴² See at: <https://www.internetworldstats.com/asia.htm>

⁴³ See Article 11 of the Law “On Public Associations”.

- ▶ National Association of NGOs, promoting the interest of the civil society sector (<http://www.cso.tj/index.php/>);
- ▶ Anti-Torture Coalition, promoting the rule of law in law enforcement and advocating for elimination of degrading and humiliating treatment of a person (<http://notorturetj.org/>)
- ▶ Transparency for Development Coalition, inspired by the Extractive Industries Transparency Initiative, promoting transparency of mining businesses in Tajikistan (<https://www.facebook.com/tfdtj>)

Working within the national strategy. Since the adoption of the National Development Strategy (NDS) of Tajikistan until 2030, the government is placing the NDS priorities at the center of its developmental assistance seeking policies. Many development partners, particularly the United Nations agencies are geared to the NFD priorities in their programme design and planning in Tajikistan. Large portion of the foreign funding to the civil society goes under various NDS priorities, e.g. water usage, sanitation, gender and youth, resilient farming, etc. Therefore, civil society organizations would benefit from explicitly linking their work to the priorities set forth in the National Development Strategy until 2030, but more broadly to the Sustainable Development Goals 2030 (SDG). And of course, each CSO should identify the best solution for itself based on the mission, expertise and profile of the organization. A CSO may either clearly situate its work within specific SDG and/or NDS goal and targets, or frame its strategic communication in the way that underlines the linkage to a specific SDG goal and/or NDS goal and target.

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