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# **ASSESSMENT OF THE LEGAL ENVIRONMENT FOR CSO FINANCIAL SUSTAINABILITY AND CORPORATE AND INDIVIDUAL PHILANTHROPY**

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## LIST OF ACRONYMS

<b>AML/CFT</b>	Anti-money laundering/Countering Financing of Terrorism
<b>CSRDG</b>	Center for Strategic Research and Development of Georgia
<b>CSEP</b>	Civil Society Engagement Program
<b>CSI</b>	Civil Society Institute
<b>CSO</b>	Civil Society Organization
<b>CSR</b>	Corporate social responsibility
<b>EWMI</b>	East-West Management Institute
<b>ECNL</b>	European Center for Not-for-Profit Law
<b>FMS</b>	Financial Monitoring Service
<b>FGD</b>	Focus group discussion
<b>GITA</b>	Georgian Agency for Innovation and Technology
<b>GCNG</b>	Global Compact Network in Georgia
<b>ICNL</b>	International Center for Not-for-Profit Law
<b>KII</b>	Key informant interview
<b>KYC</b>	Know Your Customer
<b>LLC</b>	Limited liability company
<b>NNLE</b>	Non-entrepreneurial (non-commercial) legal entity
<b>PPP</b>	Public-private partnership
<b>RDG</b>	Rural Development Agency
<b>SE</b>	Social enterprise
<b>SCA</b>	State Care Agency
<b>SRS</b>	State Revenue Service
<b>SYA</b>	State Youth Agency
<b>VAT</b>	Value added tax



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## A. INTRODUCTION

Under the USAID Civil Society Engagement Program (CSEP), which is implemented by the East-West Management Institute (EWMI), the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL) (hereinafter – the Assessment team) jointly prepared an Assessment of the Legal Environment for Civil Society Organization (CSO) Financial Sustainability and Corporate and Individual Philanthropy (hereinafter – the Assessment). The main goal for the Assessment was to identify gaps and good practices in the legal environment and to help CSEP to design activities that address opportunities to improve the legal environment.

In the report, the Assessment team reviewed Georgian legislation related to various CSO income sources and analyzed how and to what extent CSOs use various mechanisms. As a result, the Assessment team identified a number of challenges CSOs face in accessing resources to support their activities and provided recommendations on how to address such problems. During the research process, the Assessment team also reviewed various analyses and materials that provide information about different CSO funding sources. The Assessment team also reviewed existing advocacy efforts to improve the environment for CSO financial sustainability.

## METHODOLOGY

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The Assessment was designed to inform future programmatic activities in line with CSEP Objective 3, Activity 3.1: Improve the Ecosystem for Corporate and Individual Philanthropy and Improve the Ecosystem for E-fundraising and Volunteering.

### 1. Goal

The main goal for the Assessment was to identify problematic issues and opportunities in the legal framework for CSO financial sustainability, in both written laws and implementation practices, and to help CSEP design activities to improve the relevant legal environment. By addressing these gaps and good practices, CSEP will support improved CSO financial sustainability by promoting corporate and individual philanthropy and strengthening CSOs' ability to generate income, including through fundraising and other means. Some of the Assessment's findings may be broader than CSEP's mandate, but nonetheless they will help inform other stakeholders who are interested in strengthening the financial sustainability of CSOs and promoting philanthropy.

### 2. Key Questions

During the Assessment, the team obtained fact-based and analytical responses to the following questions:

- a) What are the available mechanisms of income generation for CSOs?
- b) What are the obstacles and good practices for CSOs using various income generation mechanisms?
- c) What are the obstacles and good practices for private persons (legal entities and individuals) to support CSOs?

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### 3. Critical Assumptions

Prior to starting the Assessment, the team identified four critical assumptions:

- a) There are some CSOs that are interested in income generation sources besides foreign funding.
- b) There are some businesses that have a proprietary agenda for their charitable activities and are interested in expanding their charitable activities beyond private interest.
- c) Both businesses and CSOs are not constrained to openly respond to questions within the scope of the Assessment.
- d) Participating representatives of government agencies, businesses, and CSOs are competent to respond questions within the scope of the Assessment.

### 4. Assessment Tools & Approaches

The Assessment team conducted data collection through desktop research, conducting in-depth key informant interviews (KIIs), and facilitating focus group discussions (FGDs).

The Assessment primarily targeted CSOs as the main beneficiaries, but also included other stakeholders. The Assessment used a purposive voluntary sampling approach for all stakeholders. The Assessment team targeted CSOs based on their practice of using various mechanisms for income generation and interest in exploring the use of new mechanisms and promoting changes in law and practice, if needed. Private businesses were selected based on their known support of CSOs and/or involvement in corporate social responsibility activities. Government representatives were selected based on the relevance of the respective government body's responsibilities to the regulation of activities relating to CSO financial sustainability. In selecting stakeholders to participate in the Assessment, the Assessment team heavily relied on contacts and information provided by EWMI and its local legal expert, as well as data collected through the desktop research.

### 5. Data collected through desktop research

The desktop research focused on review of the legal framework (law as written and its implementation); existing research relating to CSO financial sustainability and corporate philanthropy; and relevant activities already implemented by other organizations outside of CSEP. The desktop research included the review of written information and interviews with expert organizations specializing in aspects of CSO financial sustainability and philanthropy. In addition, the Assessment team prepared a request for information from the State Revenue Service (SRS) on data related to CSOs and philanthropy.

### 6. Data collected through KIIs

The Assessment team conducted 17 KIIs. The purpose of each interview was to learn about the technical and detailed issues each respondent faces, as well as to learn about innovations and practical opportunities used in support of CSOs and/or CSO income generation. The Assessment team strived to arrange interviews with qualified representatives or organizations with the necessary knowledge and practical experience to respond to the identified questions. Interviews were held both online and during the Assessment team's visit to Tbilisi from May 16 – 20, 2022.

### 7. Data collected through FGDs

The Assessment team conducted two FGDs on the topics of CSO economic activity and philanthropy. The FGDs were held in Tbilisi during the Assessment team's visit from May 16 – 20, 2022. Six CSO

participants attended the FGD on CSO economic activity, while eight CSO representatives attended the FGD on philanthropy.

## **8. Content**

The Assessment was divided into eight themes, with each theme addressing a potential CSO income source. Under each theme, the Assessment team provided context, analyzed the relevant legislation and its implementation, and identified potential problems. The final part of the Assessment consists of recommendations and suggestions for further actions.

The following topics are addressed in the Assessment:

1. General CSO regulation related to donations and income
2. Individual philanthropy
3. Corporate philanthropy
4. Peculiarities of specific fundraising methods
5. Income from economic activities
6. Social entrepreneurship
7. Volunteering
8. State funding



## B. REVIEW OF POSSIBLE FUNDING SOURCES FOR CSOs

### 1. GENERAL CSO REGULATION RELATED TO DONATIONS AND INCOME

#### a) Overview

Some basic data about the CSO sector in Georgia reveal the following:

- The most important source of income for Georgian CSOs is donor funding, specifically grants from foreign donors. According to the [2020 USAID CSO Sustainability Index](#), “the vast majority of CSOs remain largely reliant on foreign funding, which threatens their sustainability.” Moreover, Georgia’s financial viability score has not improved in the last five years.
- As of June 2022, [more than 29,000 CSOs](#) were registered as legal entities and Georgia leads the Caucasus region with 64 registered CSOs per 10,000 inhabitants. However, the number of active organizations (1,275) is substantially lower, [according to the Civil Society Institute \(CSI\)](#).
- According to a [2020 Caucasus Barometer report](#), only 24% of the population has trust in CSOs. Further, the public views CSOs as implementing the agenda of Western countries and just 4% of the public is a member of a CSO.<sup>1</sup>
- There is negative rhetoric against CSOs by some political leaders.

#### b) General overview of law and its implementation

##### General regulation

Georgia has one of the most advanced frameworks for **CSO registration**. Registration can be completed in one day, the costs are minimal, the list of documents for submission is not burdensome, and the law provides CSOs sufficient flexibility to determine their structure. The Civil Code defines the registration procedures for non-entrepreneurial (non-commercial) legal entities (NNLEs).<sup>2</sup> From January 1, 2022, the latest amendments to the Civil Code entered into force and, among other novelties, introduced changes to the registration system. The wording of the changes, especially in terms of their effect on CSOs, is ambiguous, so there is a need for a clear official interpretation, as CSOs have a two-year timeline to comply with the amendments. In case of non-compliance, CSOs could have their registration revoked. The amendments to the Civil Code are ambiguous because they reference the Law on Entrepreneurs, and some of the provisions, while applicable for all legal entities, might not necessarily apply to CSOs because of their different structure. Some of the unclear elements include:

- the obligation of a NNLE (including CSOs) to ensure compliance of their registration data with the requirements of the Law on Entrepreneurs, as the relevant articles of the amendments do not identify the specific components of the registration data that should be updated; it is also unclear whether the amendments affect CSO charters;

<sup>1</sup> CRRG-Georgia (2018). [Attitudes of the Population of Georgia towards Civil Society Organizations, European Integration and Business Entities](#), pages 4 and 43.

<sup>2</sup> Civil Code, Articles 27-38.

- many CSOs will need to amend their founders agreements in order to bring them into compliance with the new law; however, many will not be able to do so as they must reach out to original founders, which may not be feasible for various reasons (such as when founders are no longer engaged in CSOs activity, have departed the country, among other reasons);
- the need to clarify how existing CSOs can obtain an official electronic address to receive official notifications.

After their registration, CSOs are free to engage in various activities without the need for government permission or approval. The only exceptions are some limitations on engagement in economic/entrepreneurial activities (see section on income from economic activities) and in the areas where the government has introduced general licensing or registration regimes, such as for medical institutions, universities, banking, among others.

### Charity status

The Tax Code (Article 32) allows CSOs to obtain the **status of charitable organizations**. In addition to the need to submit several documents (charter, activity report, among others), the CSO must be registered as an NNLE, established with the purpose to carry out charitable activity, must carry out charitable activity for at least one year prior to its application for the status, and must comply with other law requirements. Charitable organizations are allowed to engage in economic activity that serves a charitable purpose. After considering an application, the Head of the Revenue Service issues charitable status within one month of receiving the application. On an annual basis by April 1, charitable organizations are obliged to submit to the tax authorities:

- a program report with description of activity, including economic activity;
- a financial report with sources of income and purposes of expenditures; and
- prior year financial documents (balance sheet and income statement), certified by an independent auditor.

After obtaining charitable status, a CSO benefits from specific preferences, such as a possibility to attract more corporate donations, as corporate donors may deduct the cost of donations to charitable organizations up to 10% of their annual profit, and to distribute funds to final beneficiaries (individuals), who are exempt from income tax. If distributed funds are designated for medical aid or services;<sup>3</sup> **or** when a charitable organization gifts property to persons registered in the unified database of socially vulnerable persons (who receive subsistence allowances that can be evidenced by relevant documents); **or** to persons maimed in defense of the territorial integrity of Georgia, as well as to a family member of a person killed in defense of Georgia's territorial integrity, charitable organizations are relieved from responsibility to withhold income tax on cost of such distributions.<sup>4</sup> Charitable organizations are also required to publicize their program report, balance sheet, and income statement. The SRS maintains a Register of Charitable Organizations and charitable organizations are obligated to update their information in case of changes. As of April 2022, there are just 123 organizations in the SRS Register;<sup>5</sup> despite more than 28,938 non-commercial entities registered, 3,774 of which are considered as active.

One problem mentioned during the FGDs is that the requirement for audited reports is very burdensome for some CSOs and might act as a barrier for registration as charitable organizations. Separately, many people consider charitable organizations solely as organizations that collect and then distribute money/donations to people in need. While this is an important activity, from a legal point of view, the term "charity" in Georgia is linked to a special status rather than to a specific type of ac-

<sup>3</sup> Article 82.1.b2) of the Tax Code.

<sup>4</sup> Article 82.1.z3) of the Tax Code.

<sup>5</sup> Letter from the Service Department of State Revenue Service of Georgia N21-11/54085 dated July 15, 2022, in response to a request for information from CSEP.

tivity. Therefore, it is possible to engage in various public benefit activities and work as a charitable organization, even without disbursing money to disadvantaged groups. It is important to note that under Georgia law, any CSO may carry out charitable activity, and, other than the special requirements that apply to charitable organizations, it is hard to distinguish them, since the law does not permit all CSOs to distribute income among founders or members and may carry out public benefit activities.

#### Anti-money laundering/Countering Financing of Terrorism (AML/CFT) regulation

CSOs are not obliged entities under the Law on Facilitating the Suppression of Money Laundering and Terrorism Financing. The National Bank of Georgia has no regulation that specifically targets CSOs. The Assessment team learned that some banks classify CSOs as “high-risk” entities, but that designation does not entail any specific burdens for CSOs.<sup>6</sup> However, banks may consider international organizations or well-known organizations as lower risk. Banks determine the level of risk when initiating their business relationship with their clients. They also have to determine the beneficial owner of the organization, but in most cases for CSOs, that is usually the person who has control over the organization (e.g., the official representative). Overall, CSOs do not face significant burdens under AML/CFT regulations, even if some may be considered high-risk clients by banks.

After a bank account is opened and the CSO is classified as a high-risk entity, the bank conducts an annual verification of the CSO (if the CSO is determined a medium risk, the verification is carried out every three years). Banks may also lower the risk for the CSO as result of the verification process. The bank may also carry out a check on suspicious transactions, such as those from high-risk jurisdictions or transactions that substantially exceed the usual transaction amounts for the customer. In addition, all transactions above 100,000 GEL in foreign currency must show the basis/purpose of the operation, such as an invoice or contract.<sup>7</sup>

#### Taxation of CSOs

Since 2019, CSOs do not pay **profit tax** if they only carry out charitable activities, which are broadly defined (Article 10 of the Tax Code). Therefore, the majority of CSOs do not pay profit tax. According to official information from the SRS for 2021, only 415 CSOs paid profit tax.

However, generally all CSOs with employees have to pay **individual income tax**,<sup>8</sup> which CSOs have to withhold from salaries as a source of income.

CSOs are recognized as taxpayers and required to register for the purpose of **value added tax (VAT)** if they perform economic activities<sup>9</sup> and if the value of their taxable transactions exceeds 100,000 GEL during any 12-month period.<sup>10</sup> This is in line with international practices. If a CSO does not meet these requirements, it has no obligation to report and pay VAT. (CSOs still pay VAT when they purchase goods and services.) The Tax Code provides a VAT exemption for certain categories of transactions, which might be relevant to CSOs without the right of deduction.<sup>11</sup> In other words, if such transactions are carried out, the taxpayers are not required to charge VAT on goods and services they provide, but they cannot deduct the amount of the VAT they have already paid for purchasing materials and services needed for the production/service provision. As an example, this can include the provision of lecture courses through electronic media, which are educational in nature and may

<sup>6</sup> Interviews with the Central Bank of Georgia and TBC Bank.

<sup>7</sup> Article 23 (3) of the Rule of Conducting Payment Operations of the National Bank of Georgia states that:

“3. If the amount of operation in foreign currency exceeds 100,000 GEL or its equivalent in other currency, the bank is obliged to additionally demand the copies of the documents certifying the basis for the transfer from the payer entrepreneur. The bank is obliged to store the copies of the documents submitted according to this paragraph. It is possible to store the copies in electronic form.”

<sup>8</sup> Article 154 of the Tax Code.

<sup>9</sup> Article 158.1 of the Tax Code.

<sup>10</sup> Article 165(1) of the Tax Code.

<sup>11</sup> Article 171 of the Tax Code.

also be published as books; or the sale of printing services or goods (magazines, newspapers, and printed music).<sup>12</sup>

Amongst other relevant exemptions, the Tax Code exempts, with the right of deduction, supply of goods and/or provision of services and/or import of goods, if they are carried out within the scope of the international agreements ratified by the Parliament of Georgia,<sup>13</sup> and provides the right to a grant recipient, which has purchased goods and/or services within a grant agreement, to a deduction or a refund of the VAT paid for the goods/services (see further analysis under Section 5. Income from Economic Activities).<sup>14</sup>

According to Article 206 of the Tax Code, CSOs are exempt from **property tax**, except for property used for economic activity. This differentiated tax treatment creates practical problems for CSOs to distinguish between property used for economic activity and property used for statutory activities. In those cases, CSOs are expected to calculate property tax according to the rule provided for by Article 30(4). They must calculate the specific share of the income from economic activity in the income earned by the organization and use that ratio for the tax calculation. According to official information from the SRS, only 736 CSOs paid property tax in the first eight months of 2022.

#### Taxation of beneficiaries of CSOs' activities

According to the Tax Code, donations are defined as “goods/services, including funds received by an organization as gifts.”<sup>15</sup> However, when referring to individuals, Article 82.1h of the Tax Code also uses the term “gift.” For the purposes of the Assessment, the word “donation” will be used throughout the report as a term broadly encompassing the gratuitous transfer of goods, services, and/or funds from or to individuals.

Income (including gain) that does not have a Georgian source and is received by a resident natural person is exempt from income tax for the individual recipient.<sup>16</sup> This means that individuals receiving financial support from CSOs, individuals, and corporate members of the diaspora located outside of Georgia do not have to pay income tax on such funds. Therefore, diaspora giving does not face any tax obstacles in Georgia.

For individuals, the income received from Georgian sources is considered part of their taxable income and therefore is subject to income tax. There are specific exemptions from income tax in cases listed in Article 82 of the Tax Code. Specifically, all grants to individuals (Georgian citizens) are exempt from income tax. Grants can be issued by various foreign donors, including international charitable, humanitarian and other public organizations and foreign governments, and certain types of Georgian NNLEs that have the main statutory objective to accumulate the property in order to support charitable, social, cultural, educational, scientific-research and other activities beneficial to the public.<sup>17</sup> In addition, individuals are exempt from paying income tax on the value of benefits received from a charitable organization for medical treatment or care.<sup>18</sup> Individuals are also exempt from tax on income received from a NNLE founded by the government within the scope of charitable activities, or, when property is received as a gift and its value is below 1,000 GEL/year (meaning that the donor has to withhold income tax on the value of the gift to a particular individual exceeding this amount in a reporting year).<sup>19</sup> As the law is written, an individual recipient receiving multiple gifts, even if below the 1,000 GEL threshold for individual gifts, is required to register as a taxpayer and to pay income tax on the value of combined income exceeding 1,000 GEL in one year. In practice,

<sup>12</sup> Article 172(4) of the Tax Code.

<sup>13</sup> Article 172(5) of the Tax Code.

<sup>14</sup> Article 181(2) of the Tax Code.

<sup>15</sup> Article 8 (40) of the Tax Code.

<sup>16</sup> Article 82(1)(u) of the Tax Code.

<sup>17</sup> Article 3 of the Law on Grants.

<sup>18</sup> Article 82.1.b2) of the Tax Code.

<sup>19</sup> Article 82(1)(h) of the Tax Code.

however, local experts have indicated that these law provisions are not being enforced and the SRS does not track whether individuals pay tax on such income. Therefore, there might be no urgent need to change existing legislation.

There are also exemptions for some categories of qualified persons, such as persons registered in the unified database of socially vulnerable persons or persons wounded in the defense of Georgia's territorial integrity, when they receive property from charitable organizations. Additionally, there are special exemptions for certain categories of individuals above the 1,000 GEL threshold value of exempt income. Namely, income tax shall not be levied on taxable income up to 3,000 GEL earned by Georgian citizens- veterans of World War II, other qualified military veterans, single mothers; persons who have adopted a child or are providing foster care to a child.<sup>20</sup>

Taxable income exemptions of up to 6,000 GEL, earned during a calendar year, apply to persons with childhood disabilities, as well as for persons with severe and persistent disabilities, amongst several other categories.<sup>21</sup> If an income taxpayer becomes eligible for more than one tax privilege defined in this and the previous paragraph, he/she shall use the highest of the tax privileges.<sup>22</sup>

### Reporting requirements

Other than for charitable organizations, there are no general reporting requirements for CSOs. Still, CSOs are required to submit reports to the tax authorities, specifically:

- report as employers;<sup>23</sup>
- information on opening bank accounts outside of Georgia;<sup>24</sup>
- monthly information on tax withheld on salary payments;<sup>25</sup>
- monthly declarations for profit tax;<sup>26</sup> however, if they do not submit such information, the tax authorities accept there is no tax during the respective month;
- annual property tax declaration, in case they engage in economic activity and use their property for such activity;<sup>27</sup> and
- VAT declarations, if the CSO is registered as a VAT payer.

## **c) List of identified opportunities and problematic issues**

Georgia's legal framework provides many opportunities for CSOs to generate income from various sources. It is fast, cheap, and simple to register a CSO in Georgia and the regime for operation of CSOs is extremely liberal – they can engage in almost any activity, including economic activity, without the need for special permission, and government oversight is not burdensome. CSOs do not have to pay profit or property tax unless they engage in economic activities. In fact, CSOs often do not have to pay profit tax in many instances when they engage in economic activities. CSOs can receive donations both from within Georgia and from abroad without any specific restrictions. It is also possible to obtain the status of a charitable organization. In general, CSOs do not face any major legal barriers on access to funding, which means that they have the possibility to use various methods to raise funds from different sources if they want to overcome their dependence on foreign funding.

However, CSOs face some potential problems. For instance, the **newly adopted amendments to the Civil Code** that relate to CSO registration, as well as statutory documents (which might require

<sup>20</sup> Article 82.2.a) of the Tax Code.

<sup>21</sup> Article 82.2.b) of the Tax Code.

<sup>22</sup> Article 82.3 of the Tax Code.

<sup>23</sup> Article 12 (3) and (4) of the Tax Code.

<sup>24</sup> Article 43 (2) of the Tax Code.

<sup>25</sup> Article 153 (5) of the Tax Code.

<sup>26</sup> Article 153 (10) of the Tax Code.

<sup>27</sup> Article 205 of the Tax Code.



re-registration) are not clear for CSOs. There is a need for clear official interpretation, or amendment, of some of the provisions to ensure they consider the specificities of CSOs.

**Charity status** is rarely used by CSOs and there is a need to identify why that is the case and how this beneficial status should be promoted, regulated, and used in the future. The specific problems identified include, among others, the high cost of complying with the status (e.g., the requirement for audits is costly, especially for small CSOs), the lack of understanding of how the charity status could be beneficial to various types of organizations and not just those engaged in supporting vulnerable groups; limited preferences that are exclusive to charitable organizations and do not apply to others, such as the exemption from withholding income tax due on the cost of benefits provided to beneficiaries-individuals in very limited instances; as well as CSOs' lack of interest in raising funds from the corporate sector and using the existing benefits for charities.

Another problem identified by the Assessment team is that individuals are taxed for their **income from donations** exceeding 1,000 GEL/year, which may be extremely burdensome for both donors and recipients. According to local experts, this legal provision is not being enforced in practice and therefore does not cause a practical problem for individual recipients of donations. However, this is a very weak policy and a practice that works against the rule of law concept, as it depends entirely on poor implementation of the law in planning activities. Even if the government admits that they do not enforce the law, this is a good reason to change it.

Tax issues relating to specific activities of CSOs, or stakeholders supporting CSOs, are addressed in the following sections of the Assessment report.

## 2. INDIVIDUAL PHILANTHROPY

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### a) Overview

According to existing research, philanthropy in Georgia, and specifically individual philanthropy, is not sufficiently developed. The [Charities Aid Foundation World Giving Index](#) reports that just 9% of Georgians have donated to CSOs, ranking Georgia as #112 among 114 countries surveyed, while just 16% of CSOs in Georgia have reported receiving donations, with just 5% engaging in crowdfunding. When considered as part of CSOs' total income, just 2% comes from donations, which is a very insignificant amount.

There is no existing research to explain why philanthropy remains underdeveloped in Georgia. Multiple factors might be involved. For example, many CSOs consider foreign funding as their main reliable income source, so they do not seek other sources of funding. Another factor might be the general public's poor knowledge and distrust of CSOs, which may limit interest in providing donations. According to data from the [Caucasus Barometer 2020](#), 24% of Georgian respondents said they trust CSOs, while 22% expressed distrust of CSOs. Another 54% of respondents expressed neither trust nor distrust CSOs. Further, just 16% of the surveyed population has communicated with a CSO,<sup>28</sup> and many people (52% of respondents) view CSOs as self-serving.<sup>29</sup> In addition, CSOs do not adequately inform the public about their activities, as more than 75% of CSOs have not published their reports in the previous three years.<sup>30</sup>

During KIIs and FGDs, the Assessment team did not identify an organization that focuses specifically on supporting the development of individual philanthropy in Georgia or actively advocates for changes to government policy on philanthropy. However, there are organizations that address philanthropy within the context of financial sustainability.

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<sup>28</sup> CRRC-Georgia (2018). [Attitudes of the Population of Georgia towards Civil Society Organizations, European Integration and Business Entities](#), page 17.

<sup>29</sup> Ibid., page 28.

<sup>30</sup> CRRC-Georgia (2021). [Civil Society Organizations in Georgia: Mapping Study](#), page 6.

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## b) General overview of law and its implementation

### Regulation of individual donations

The term “donation” is defined in both Civil Code and Tax Code by the term “gift.”<sup>31</sup> The concept of a **gift** is defined in Georgia’s Civil Code as a contract of gift according to which the donor gratuitously transfers to the donee ownership of property with the consent of the donee.<sup>32</sup> In the Civil Code, a donation is defined as a contract of gift according to which the parties may determine that its validity depends on the performance of certain conditions or on the achievement of a particular objective<sup>33</sup>. This objective may also be the common good. Besides the donor, the person in whose interests the condition was stipulated for the gift may also demand performance. If the donee does not perform the condition, the donor may repudiate the contract.<sup>34</sup> Georgian legislation also allows the possibility for pledges, which are promises to make donations, under the condition that the promise was made in writing.<sup>35</sup> That opens the possibility, for example, to sign contracts for regular donations (which could be transferred from the donor to the CSO automatically). Although this is not common practice, its legal basis in the Civil Code creates an opportunity for the future.

Separately, Georgian legislation defines **sponsorship** as “the contribution made by natural and legal persons to the activity of other natural and legal persons (in the form of monetary funds, property, results of intellectual activity, provision of services, and performance of work) on the condition that the products manufactured by the sponsor are advertised.”<sup>36</sup> Such definition largely equates sponsorship to advertising, as the sponsorship costs are considered as advertising costs for the sponsor, according to the law. Although CSOs’ income from sponsorship/advertising might be considered income from economic activity, CSOs do not pay tax on such income unless they use it for non-statutory activities or for expenses not related to economic activities.

CSOs are allowed to receive property in the form of **inheritance** by will.<sup>37</sup> In addition, anonymous donations, while not explicitly mentioned in legislation, are not prohibited. For example, setting up collection boxes is a common practice (for more information, see the section on peculiarities of specific fundraising mechanisms).

Individuals are **not required to report** on distributions they make. CSOs are also not required to report on received donations. The only exception relates to charitable organizations, which are required to submit information about their income sources (including received contributions) to the SRS. While CSOs do not have to report about received donations or other income sources, they have the obligation to document their revenues and expenses.<sup>38</sup> Based on actual cases, there is a risk that the SRS can fine CSOs for not complying with this requirement. Although the Assessment team did not come across specific examples, the SRS has the authority to inspect CSOs, and if some costs are not properly documented, the SRS can charge the organization with profit tax (such costs may be considered non-statutory or not related to economic activity) or other taxes, as well as impose a fine on the organization.

### Taxation of donations by individuals

In terms of **taxation of donations/gifts**, there are several different types of taxes and differences in how the donation is taxed from the perspective of both the donor-individual and CSO-recipient. Individual donors do not benefit from any tax exemptions on donations made to CSOs, including charitable organizations. The only exception applies to individual entrepreneurs, which can deduct

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<sup>31</sup> Article 8 (40) of the Tax Code of Georgia defines a donation as “goods/services, including funds received by an organization as gifts.”

<sup>32</sup> Article 524 of the Civil Code defines the essence of a gift agreement: “Under a contract of gift, the donor gratuitously transfers to the donee ownership of property with the consent of the donee.”

<sup>33</sup> Article 528 of the Civil Code.

<sup>34</sup> Article 528 of the Civil Code.

<sup>35</sup> Article 525 (3) of the Civil Code states that: “A promise of a gift shall give rise to the obligation to give the gift only if made in writing.”

<sup>36</sup> Article 13 of the Law on Advertising.

<sup>37</sup> Definition in Article 8.40 of the Tax Code includes money and material.

<sup>38</sup> Article 136 (1) of the Tax Code.

donations made to charitable organizations up to 10% of their gross income.<sup>39</sup> For CSOs, there is no income tax, so they do not pay tax on the donations they receive if they use the donations for statutory purposes. A similar rule applies in case the CSO receives property in the form of inheritance.

### c) List of identified opportunities and problematic issues

In terms of individual philanthropy, the legal framework does not contain any impediments to making donations for individuals and to receiving donations for CSOs. On the contrary, the legal framework provides various opportunities for CSOs that may be underutilized. These include, for example:

- entering into contracts for regular donations to CSOs (pledges), including setting up automatic bank transfer for these donations;
- entering into sponsorship agreements with companies where the CSO receives money to promote the company, which could be considered as a business expense for the company and would not fall under the 10% limit for corporate donations;
- soliciting donations from the general public through various means without any restrictions (website, calls, mailing, among others), including collecting donations in cash in various currencies; and
- despite the lack of reporting requirements for CSOs and their donors, CSOs can publicly report on how they have used the donations which may increase their visibility and attract more donors. There is also no tax on donations received by CSOs.

The lack of general **tax benefits for giving** to CSOs is the main issue for individual giving. Another issue is the lack of a state policy towards stimulating philanthropy in Georgia.

A more strategic problem is the lack of coordinated effort among CSOs to promote philanthropy, develop giving mechanisms, and increase the skills and understanding of individual organizations on how to solicit donors. Another issue is the need to increase trust in CSOs among the general population. All these issues require long-term, strategic, and coordinated effort.

## 3. CORPORATE PHILANTHROPY

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### a) Overview

The Assessment team's preliminary review shows that corporate philanthropy in Georgia is not sufficiently developed. Recent research shows that just one-third of CSOs have received support from businesses.<sup>40</sup> This support takes different forms:

- 18% of CSOs have engaged in joint projects with companies;
- 18% of CSOs have provided paid services to businesses;
- 14% of CSOs have received donations; and
- 7% of CSOs have received pro-bono services from businesses.

Although some CSOs have received corporate donations, the share of corporate funding in overall CSO income is very low. There may be different reasons why corporate philanthropy for CSOs is not developed. One reason is the lack of trust on both sides: *"Businesses do not want to be associated with CSOs because of their 'political,' watchdog activities, while CSOs believe that cooperation with the business sector carries reputational risks."*<sup>41</sup> Besides, there is a lack of transparency, as the majority of CSOs do not publish reports on their activities. The lack of communication between businesses

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<sup>39</sup> Article 117 of the Tax Code.

<sup>40</sup> CRRG-Georgia (2021). *Civil Society Organizations in Georgia: Mapping Study*, page 29.

<sup>41</sup> EWMI (2019). *Assessment of the Civil Society Sector in Georgia*, page 22.



and CSOs (except for business associations) creates additional problems. There are examples of cooperation, but these are still limited and just highlight the fact that corporate philanthropy, to a large extent, has not been seen as a prospective income source for most CSOs.

As noted during interviews, cooperation with the business sector requires commitment and long-term strategy, which does not necessarily lead to a great financial gain, at least initially. According to the CRRC-Georgia Mapping Study, some CSOs engaged in joint projects with businesses and conducted for-profit services.<sup>42</sup>

Companies also do not see corporate philanthropy as a strategic priority. This is a term not commonly used, as the focus is on corporate sustainability and corporate responsibility. Even so, research by the Global Compact Network in Georgia (GCNG) shows that only a minority of companies engage in corporate responsibility activities – just 47% of large companies, 18% of medium-sized companies, and 5% of small companies.<sup>43</sup>

There are some positive examples of companies that support CSOs and their programs, but these examples are limited, targeting specific priorities that are important for the companies and but not accessible for the larger CSO community. Still, there are efforts to increase the cooperation between CSOs and businesses. For example, the Center for Strategic Research and Development of Georgia (CSRDG) organizes an annual contest “Meliora” to promote corporate social responsibility (CSR) while GCNG organizes the Corporate Responsibility Award. There is also an informal Pro Bono Network in Georgia, where businesses make their expertise available to CSOs. In 2020, the Corporate Social Responsibility Club became part of GCNG. GCNG’s work offers an interesting example of the many ways that CSOs can cooperate with the business sector, which includes:

- corporate sponsorship for each issue of their magazine;
- sponsorship for events, such as paying a fee to operate a stand;
- a corporate sustainability academy, where it organizes paid training courses; and
- corporate membership, which requires payment of a membership fee.

In addition, in June 2022, CSRDG, with support from the European Venture Philanthropy Association, established a new Impact Investment Fund called “Actio,” which pursues the venture philanthropy approach. There are number of examples of large companies that establish their own CSOs to carry out charitable activities. The biggest charity foundation in Georgia is Cartu, which was established by the business conglomerate Cartu Group. Cartu Group is owned by Bidzina Ivanishvili, the richest person in Georgia and founder of the Georgian Dream political party. TBC Bank also established several charity organizations, including Statusdonates.ge, which is an online charity platform. Bank of Georgia established the charitable organization “Sitsotkhli Khe” (which is translated as “tree of life”), which carries out charitable activities, including supporting CSOs. They often announce grant competitions for CSOs and social enterprises (SEs).

## **b) General overview of law and its implementation**

### Regulation of corporate donations

The legal regulation of donations and sponsorship is described in Section 2 on individual philanthropy. Under Georgian law, there is no specific requirement for companies to report on donations made, although they have to document them and include relevant information in their tax declarations.

### Taxation of donations

Unlike individuals (as opposed to individual entrepreneurs), corporations enjoy tax incentives for

<sup>42</sup> CRRC-Georgia (2021). *Civil Society Organizations in Georgia: Mapping Study*, page 29.

<sup>43</sup> Innova LLC (on behalf of Global Compact Network Georgia) (2020). *The Influence of COVID-19 on Corporate Social Responsibility in the Business Sector in Georgia*, pages 4 and 5.

making donations, but only to registered charitable organizations. Article 117 of the Tax Code states that *“the amount donated by an enterprise/entrepreneur natural person to a charitable organization shall be deducted from gross income, also the market price of goods (other than immovable property)/ services supplied free of charge and included into gross income, but not more than 10% of the amount remaining after deductions under this Code from gross income (without the deductions specified in this article).”*

Separately, Article 98 (3) (a) states that *“a donation made to a charitable organization during a calendar year not exceeding 10% of the net profit gained by it during a previous calendar year”* shall not be subject to profit tax.

Exemptions under Articles 117 and 98(3)(a) are very similar but not the same. The exemption in Article 117 is used by businesses, which are taxed under the traditional tax model, while the exemption under Article 98(a) is used by businesses which use the “Estonian” tax model. Businesses can only use one exemption, depending on the chosen model, under Articles 117 or 98(a). The CSO Meter report notes that *“the process of obtaining such a tax benefit is complicated, as profit is calculated according to the financial accounting and is different from tax accounting.”*

The Tax Code allows companies to deduct the value of both monetary and in-kind donations. There is a separate exemption (not included in the 10% limit) for the *“free provision of immovable property to a charitable organization if the property recipient organization does charitable work in relation to persons with disabilities from childhood and/or persons with severe and persistent disabilities for at least three previous calendar years.”*<sup>44</sup> In-kind donations are treated differently under VAT. For instance, in-kind donations provided by a VAT-registered company are subject to VAT, so companies cannot reimburse the input VAT they have paid. However, the Tax Code contains a special VAT exemption for in-kind donations to the state.<sup>45</sup> In such cases, companies are reimbursed for their VAT payments.

### c) List of identified opportunities and problematic issues

Georgian legislation allows companies to deduct the cost of donations to charitable organizations from taxable income up to 10% of profits in the previous financial year. The 10% deduction is substantial and reasonable compared to similar benefits in other countries. However, only a few businesses utilize this benefit. While there is no research on why this is the case, some influencing factors may include the limited number of charitable organizations in Georgia, as well as limited knowledge about charitable organizations and businesses’ lack of interest in supporting charitable organizations.

However, the situation could be improving, as more CSOs are informing the business community about their activities and seeking to build corporate partnerships. Moreover, there are organizations that already focus their work on promoting CSR policies among companies. This could be a starting point to add corporate philanthropy as an important element of the CSR policies, particularly when companies develop clear strategies to accompany such engagement.

Nonetheless, there are problems that should be addressed:

- There is no developed practice of corporate giving programs to CSOs.
- Some companies prefer to set up their own CSOs instead of supporting existing organizations.
- Corporate philanthropy is not seen as a priority among companies. Although terms such as corporate sustainability or corporate responsibility are being promoted, they do not necessarily imply providing financial support to CSOs for solving societal problems.
- Tax deductions are only available for donations to registered charitable organizations, which constitute only a small percentage of the total number of CSOs, and are not applicable when donations are made to CSOs that do not have this status.

<sup>44</sup> Article 98-3 (3)(e) of the Tax Code.

<sup>45</sup> Article 98-3(3)(d) of the Tax Code.

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- There is no exemption on VAT for in-kind donations to CSOs, including charitable organizations.

## 4. PECULIARITIES OF SPECIFIC FUNDRAISING METHODS

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### a) Overview

Individuals and businesses can support CSOs by using diverse payment methods, including cash, credit and debit card, bank transfer, and direct debit. They can donate to CSOs in local and foreign currencies, as well as virtual currencies (cryptocurrency). CSOs can attract donations through various fundraising methods, including website collections, SMS and phone call collections, crowdfunding, lottery, payment kiosks, cash boxes and other cash solicitations, fundraising events, payroll giving, social advertisement, and other methods. In Georgia, all of these methods are generally permitted by law.<sup>46</sup> However, some of these methods are not well developed and used to their full potential. Therefore, there is a need to further promote the benefits and use of the various fundraising methods to exploit the potential of philanthropic giving.

In this section, the Assessment team reviews the peculiarities of legislation that regulate different methods, identify gaps in legislation and its implementation, and highlight the practical problems and potential opportunities regarding some of the methods. While there are no specific regulations on certain fundraising methods (e.g., cash boxes and street collections, crowdfunding platforms), CSOs need to consider a range of different laws as they solicit funding using these channels. This includes laws and regulations on payment systems and payment services, electronic communications, organizing lotteries, games of chance and other prize games, broadcasting, among others. Each fundraising method has its distinct tax implication under the Tax Code. In addition to the laws and regulations, CSOs need to follow special terms and conditions and/or sign individual contracts to benefit from some fundraising methods.

### b) General overview of law and its implementation

#### 1. Payment methods

Individual and corporate donors can use various payment methods to support CSOs.

**Cash.** Cash payment is the traditional way for donors to support CSOs. CSOs can collect cash payments through cash boxes, street collections, and other types of solicitations.

**Bank transfer.** Donors can also make payments by transferring money to a CSO through their bank account. The principles of regulation and supervision of payment systems and payment services are defined by the Law on Payment Systems and Payment Services. According to Article 2, payment systems include fund transfer system, securities settlement system, and clearing system.<sup>47</sup> Fund transfer system is a “set of common rules and standard procedures that ensures the processing of fund transfer transactions or transfer orders.” **System operator** is a “legal person that under the legislation of Georgia, either independently or with other legal persons, is responsible and authorized to operate payment systems and develop system rules.” **Payment service provider (provider)** is a “legal person that provides payment services to a payment service user under the legislation of Georgia.” Payment services, among others, include “making payments through direct debits (including one-off orders), payment cards, or any other electronic means, or credit transfers (including standing orders) within the funds or credit resources of a payment service user.”

According to Article 5<sup>1</sup> of the law, the operator shall ensure that the payment system is available to pro-

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<sup>46</sup> There is no clarity yet on the legality of lottery and games of chance for charitable purposes.

<sup>47</sup> Securities settlement system is a set of rules and standard procedures that are common for three or more system participants through which transfer orders issued by participants are processed and based on which net positions are calculated and/or established for future settlement among the participants and in which the calculation of net positions may be based on the principle by which the system operator becomes seller to every buyer and buyer to every seller.

viders under objective, nondiscriminatory and proportionate conditions. The operator may not establish with respect to providers, users, or other payment systems:

1. restrictions on participation in other payment systems;
2. conditions that put certain system participant providers in a discriminatory position; and
3. restrictions on the basis of their institutional status.

Relations connected to the payment system are also governed by the Organic Law of Georgia on the National Bank of Georgia, the Law on Securities Markets, and other normative acts. Order No. 29/04 of the President of the National Bank of Georgia further describes the terms of registration and regulation of payment service providers.

Donors may consider making a direct transfer from their bank account to the bank account of a CSO, by instructing their own bank to make the payment or they may choose to use an intermediary payment system (e.g., PayPal).

There are 31 payment service providers registered under the National Bank of Georgia, including TBC Pay, e-Money, Unipay, Bank of Georgia, Money Movers, and others.

Donors can decide to make one-time contributions or recurring monthly donations through a standing order. According to Article 2 Z (11) of the Law on Payment Systems and Payment Services, the standing order is “an instruction from a payer to a payment service provider, based on which the payment service provider makes regular payments to the payee.” Direct debit is another way to make recurring donations. According to Article 2 of the Law on Payment Systems and Payment Services, “Direct debit is a payment instrument for the debiting of a payer’s account in which a payee initiates a payment transaction on the basis of prior authorization given by the payer.” A donor can give an authorization for a CSO to debit its account with a regular donation. The Assessment team is not aware of whether such recurring donations are taking place in practice.

Credit and debit cards. Donors can make a payment to a CSO through the CSO’s website by using a credit/debit card. The money is then processed through a payment system. CSOs can solicit donations by indicating the available options on their website and social media platforms (e.g., Facebook, Twitter). For a CSO to integrate card giving as an option for payments on its website or social media platform, it needs to enter into a contract with the payment service provider. Order No. 155/04 of the President of the National Bank of Georgia on Approval of the Regulation on Card-based Instrument sets out the rules of issuing and servicing card-based instruments, the major terms of the agreement between issuer<sup>48</sup> and card-based instrument holder (for example, a CSO) and other details. According to Article 2, card-based instrument is “a payment instrument, including payment card mobile phone, computer, or other technical device that has a payment application and that allows the payer to initiate card operation.”

Virtual currencies. Cryptocurrency is a digital form of currency that uses cryptography to secure the processes involved in generating units, conducting transactions, and verifying the exchange of currency ownership. So far, cryptocurrency is not recognized as an official payment system in Georgia. However, owning and trading with cryptocurrency is legal. According to Article 34 (2) of the Law on the National Bank of Georgia, the Georgian Lari (GEL) is the only means of payment on the territory of Georgia, except for free industrial zones, duty-free shops, and/or cases defined by the National Bank. Thus, payments in Georgia are allowed only in GEL and a person located in Georgia holding any other currencies (including the cryptocurrency) must convert it to GEL in order to make payments. According to Article 160 of the Tax Code, cryptography currencies (crypto assets) shall not be considered as goods and therefore are not subject to VAT.

Demand for cryptocurrency in Georgia has increased significantly in recent years. However, the As-

<sup>48</sup> Provider that issues card-based instrument through which card-based operations can be initiated.

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assessment team only learned about one CSO that collects donations in cryptocurrency. GiveInternet.org established a donate button via cryptocurrency on its website and the donations are processed via the interface of Endaoment, which is a US-based charity. The Endaoment is an easy-to-use donation application that allows donors to choose and donate cryptocurrency to 1.5 million US-based organizations. However, the minimum amount of donation is 500 USD, which is quite high for most donors.<sup>49</sup>

From a technical standpoint, it is possible to solicit donations via cryptocurrency in Georgia. For example, the Georgian company CityPay.io provides a payment gateway that enables its clients to receive customer payments in cryptocurrency. Founded in 2020, the company already supports hundreds of companies by adopting new additional ways of receiving payments. They mainly have business clients, but also support a CSO that helps sick children. Organizations that wish to use their services need to register and create a CityPay.io customer cabinet and download CityPay.io POS application on their Android or iOS device. The customer cabinet serves as a crypto wallet. Customers need to provide limited information to register, including their name, industry, website, and contact details. CSOs can receive payments from donors in six types of cryptocurrencies through four different ways:

1. *e-mail order*: customers can create a one-time payment order of a set amount and send the link via e-mail to the donor, which can pay by scanning the QR code using a crypto-wallet;<sup>50</sup>
2. *deposit API*: customers can create and send a link to the donor to deposit a desired amount of cryptocurrency;
3. *API integration*: customers can integrate the payment system on their website by using the API solutions provided by CityPay.io and generate orders directly; and
4. *POS (Point of sale applications)*: customers can use POS for payments at physical locations.

Donors can use any crypto wallet to process donations for CSOs. The identity of the donor remains anonymous and the CSO only sees the donor's wallet address, unless the donor decides to share their e-mail address. Once the CSO receives a payment in its customer cabinet, it can decide to either keep it in cryptocurrency or convert it into traditional (fiat) currency (GEL, EUR, or USD). In case the cryptocurrency is converted into traditional currency, CityPay.io needs to perform further Know Your Customer (KYC) processes and request information on the beneficiary's registration country, registration documents, director, shareholders, and additional information. As part of the verification process, they need to check whether the identification documents of the director(s)/ founder(s) are up to date; the company is based in Georgia; the KYC form is filled in completely and correctly; the identification documents are verified by an authorized employee; and the status of the company is active. It is possible to convert up to maximum of 50,000 USD in one transaction based on internal AML rules. The CSO can connect a bank account to its customer cabinet to be able to withdraw the money. CityPay.io charges a 1% fee for each transaction.<sup>51</sup> For the purposes of taxation, cryptography currencies (crypto assets) are not considered as goods and the transfer of the right of ownership of cryptography currency (crypto asset) is not considered service provision. Article 201 of the Tax Code defines property taxpayers and the objects of taxation. However, the Tax Code does not mention cryptocurrencies nor other intangible (non-material) assets. Cryptocurrencies are also not considered fixed assets.<sup>52</sup>

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<sup>49</sup> Source: Interview with Charte/GiveInternet.org.

<sup>50</sup> Cryptocurrency wallets, or simply crypto wallets, are places where traders store the secure digital codes needed to interact with a blockchain. They function as an owner's identity and account on a blockchain network and provide access to transaction history. It allows users to send and receive cryptocurrencies like Bitcoin and Ethereum. They come in many forms, from hardware wallets to mobile apps.

<sup>51</sup> Source: Interview with CityPay.io and website (<https://www.citypay.io/product>).

<sup>52</sup> Article 160(2), 160 prima (4), 201 and 8(31) of the Tax Code.



## 2. Source and destination of giving (cross-border giving)

CSOs face no limitations on the receipt or transfer of money into or outside of Georgia. Usually, when a person opens a bank account, the account allows for GEL, USD, and EUR transfers. However, the commercial bank is required to notify the Financial Monitoring Service (FMS) of Georgia about transactions to/from high-risk countries when the transfer exceeds 50,000 GEL (approximately 15,000 USD) or to/from countries located within suspicious zones<sup>53</sup> if the transfer exceeds 150,000 GEL (approximately 45,000 USD).<sup>54</sup> In addition, the FMS should be informed about all transfers to CSO bank accounts from abroad if the amount exceeds 50,000 GEL (approximately 15,000 USD) or 10,000 GEL (approximately 3,000 USD) for charities.<sup>55</sup>

Through their websites, CSOs can use PayPal, Patreon, and other sites to solicit funding from abroad or to launch specific campaigns. Some CSOs raised concerns about the high fees for using services like PayPal.

## 3. Fundraising (outreach) methods

Some common CSO fundraising methods include the following:

Website collections. Based on the interviews and FGDs, several Georgian CSOs, including SOS Children's Village, Super Heroes, First Step Georgia, and Charte, solicit donations via their websites through credit card and internet debit card giving. However, according to some donors, these mechanisms can be complex to use and do not always work properly.

Charte is an example of an organization that has successfully solicited online donations. Donors can support Charte in two ways – they can register on the website as a donor and set up a one-time payment or make monthly donations by adding bank card details. Donors can also transfer money to Charte's bank account through online banking or by using payment system such as Stripe and Paypal, including when sending money from abroad. Based on an interview with Charte, which has a service contract with Stripe, it is very easy to use Stripe. Charte's contract with Stripe requires a minimum payment of US\$0.30 and charges a 3% fee on all payments transferred to Charte's bank account. In case of Paypal, the minimum fee is US\$0.50 and Charte has to pay only 1.9-2% (a discount compared to a regular 5% fee on all payments transferred to Charte's bank account). Charte also has a discounted 2.5% commission rate at TBC Bank for payments.<sup>56</sup> Charte allows donors to decide how their donations are used and what percentage of the funds should be directed to a specific cause versus the administrative costs of the organization. Charte documents this process in its internal dashboard and ensures that the division of costs is reflected in overall spending on a monthly basis. For further donor assurance, Charte undergoes an annual audit conducted by Ernst & Young.<sup>57</sup> Please see further details about Charte under the digital platforms sub-section.

One technical issue that some CSOs have faced is 3D Authentication, which is a security protocol that helps to prevent fraud for online credit card and debit card transactions. It allows banks to request extra details from a cardholder to verify a purchase before banks transfer funds. According to the Order No. 156/04 of the President of the National Bank of Georgia on Approval of the Rule on Strong Customer Authentication, Authentication is “*a procedure which allows the payment service provider to verify the identity of a Payment Service User and/or the validity of the use of a specific payment instrument, including checking personalized security credentials used by the user.*”<sup>58</sup> Charte recently noticed more frequent failed donations and attributes the cause to 3D Authentication. Often, donors do not receive a message for the 3D Authentication, or receive it with a delay, which causes them to

<sup>53</sup> According to Article 2(1)(m), suspicious zone is a country or the territory of a country that, based on the information available to an obliged entity, is considered to have a weak anti-money laundering control mechanism.

<sup>54</sup> Article 5 of the Order N 1 of the Head of the Financial Monitoring Service of Georgia on Approval of the Rule on Record-keeping, Storage and Reporting of the Information on the Transaction by an Obligated Entity to the Financial Monitoring Service of Georgia.

<sup>55</sup> Global Philanthropy Index, Georgia, 2022, pages 3-4.

<sup>56</sup> Source: Interview with Charte.

<sup>57</sup> Source: Interview with Charte.

<sup>58</sup> Article 2 a) of Order No 156/04 of the President of the National Bank of Georgia on Approval of the Rule on Strong Customer Authentication.

give up during the process.<sup>59</sup> Further, Super Heroes noted it could not manage its regular credit card donations after the introduction of 3D Authentication.<sup>60</sup>

The COVID-19 pandemic and the war in Ukraine triggered the launch of new fundraising initiatives in Georgia. For example, Charte and Educare Georgia set up a dedicated website to collect donations to cover food, medical supplies, refugee support, and evacuation support for Ukrainians fleeing the conflict. All of the collected funds are transferred to six partner organizations that provide support in Ukraine. In order to promptly respond to emerging needs, Charte and Educare Georgia include bank account details on the website, which donors can then use to copy/paste into mobile banking and make a transfer. This remains the preferred method, as integrating the donation button onto the website would require more administration and signing a contract with a bank.<sup>61</sup> Since the platform was created in April 2022, Charte and Educare gathered 140,340 GEL in donations. The platform operator publishes a transparency report, including a breakdown of the donations given by private persons and certain financial institutions (such as TBC Bank and Bank of Georgia) and the amount each beneficiary CSO receives. In addition, the donors that leave their e-mail address receive more detailed information on how the donations were spent.

SMS and phone call donations. CSOs may also receive donations through SMS text messaging and phone calls. The Law on Electronic Communications establishes the legal and economic framework for activities carried out through electronic communication networks and associated facilities, the principles for creating and regulating a competitive environment in this field, the functions of the national regulatory authority (the Georgian National Communications Commission), and the rights and obligations of natural and legal persons in the process of possessing or using electronic networks and facilities, or when providing services via such networks and facilities. The provider of electronic communications services (i.e., telecommunication companies) can grant numbers to their subscribers. A subscriber is “*the end-user who or which is provided with publicly available electronic communication services on the basis of a prior written contract entered into with the provider of electronic communication services.*” The key rules for the distribution and use of numbering resources are described in Article 48 of the Law on Electronic Communications, Article 6 of the Resolution No. 355 of the Government of Georgia on Approval of Regulation on National Numbering System of Electronic Communications Networks of Georgia and Resolution #2 of the Commission concerning Approval of the Rules on Issuance, Use and Payment for Numbering Resources (dated February 21, 2012).<sup>62</sup> The National Communications Commission (the Commission) carries out the assignment of numbering resources.

Resolution No. 355 of the Government of Georgia uses the term “additional charged services” that includes charitable phone numbers. They start with 901 and are followed by six digits.<sup>63</sup> Only authorized companies can obtain such numbers for distribution purposes through a simple administrative proceeding. The basis for granting the right to use the numbering resource is the existence of free resources and an application to obtain the right to use a numbering resource. Usually, the Commission gives 10 numbers to a telecommunication company with one decision (there are limits from 10 to 100 numbers). The price of one number is 1 GEL/year. The telecommunication companies distribute these numbers to their customers, and they have contracts with them to determine how the collected money will be distributed. The Commission does not regulate this, as it is subject to the contract between the company and the customer. One SMS number costs 5 GEL/year.<sup>64</sup>

According to the statistics provided by the Georgian National Communications Commission (from

<sup>59</sup> Source: Interview with Charte.

<sup>60</sup> Source: FGD on philanthropy.

<sup>61</sup> Source: Interview with Charte.

<sup>62</sup> Resolution #2 of the Commission Concerning Approval of the Rules on Issuance, Use and Payment for Numbering Resources (dated February 21, 2012) <https://matsne.gov.ge/ka/document/view/1593937?publication=10>.

<sup>63</sup> Annex No. 2 of the Resolution on Codes of Non-geographical Numbering Areas of Electronic Communications Networks, Length of Subscriber Number and Numbering Resource.

<sup>64</sup> Source: Interview with the National Communications Commission and follow-up information.

April 2022), five companies have obtained charitable phone numbers for distribution, including Akhali Kselebi (New Networks), Magticom, Georgian Central Communications Corporation, Veon Georgia (which operates under the brand Beeline), and Silknet. Altogether, 1,810 numbers are in use, out of which 1,562 were distributed to customers. In addition, three companies - Magticom, Silknet, and Veon Georgia - obtained 110 charitable SMS numbers, which have yet to be registered by their customers. Therefore, there is room to further promote the use of this method among CSOs. Below are some examples of how charitable SMS and phone call donations work in practice.

Silknet, one of the largest telecommunications companies in Georgia, grants numbers to charitable organizations, other CSOs, businesses, and individuals to collect funds via phone calls. Notably, Silknet discontinued issuing numbers for SMS donations due to lack of demand. Interested people/organizations can apply to Silknet and obtain a number after signing an agreement that describes the main terms and conditions of the service. Usually, each phone call costs 1 GEL to the donor. In the case of charitable organizations, the phone calls are granted free of charge and the total amount goes to the beneficiary. For other CSOs, businesses, and individuals, a certain percentage goes to the beneficiary, depending on the conditions of the individual contract. After collecting the amounts from the phone calls on the bank account, Silknet pays the beneficiary organizations directly based on their invoice. It should be noted that Silknet only provides information to the beneficiary on the total amount of donations, but not the identity of the individual donors. If the beneficiary organization has a charity status, the spending for Silknet is not taxed based on the exemption provided under the Article 98<sup>3</sup>.3.a of the Tax Code. If the beneficiary does not have a charity status, the transfer of money is considered as expenses not related to economic activities for Silknet and therefore subject to profit tax. Silknet classifies the transfer of donations to the beneficiaries as a spending operation not related to economic activities.

In addition to providing charitable numbers, Silknet also has a CSR policy that primarily focuses on education, sport, and culture. In 2018, Silknet founded the Wounded Warrior Support Foundation, which provides support to wounded soldiers who have served in the Georgian army as well as their children. The Foundation also runs communication campaigns to engage all sectors to support vulnerable people. People can donate to the Foundation through a special charity number assigned to the Foundation or through wire transfer.<sup>65</sup> They publish annual activity reports on the [Foundation's website](#).

Both Magticom and Beeline also provide numbers for charity calls. For example, as a response to the war in Ukraine, donations made through a phone call to the 16222 Beeline (Georgian Red Cross Society Charitable Number) are used to help the Ukrainian Red Cross Society. [Each call to 16222](#) results in a 1 GEL donation. [Beeline's website](#) lists the special numbers, as well as the [Mobile Communication Service Subscriber Agreement](#).

Dimitri Tsintsadze Foundation uses a hotline number (0901080806) to receive charitable donations. [Each call results in a 1 GEL donation](#) and the amount is charged automatically. The Foundation cooperates with all mobile operators through individual agreements with each company. For each call, 96 tetri (lari cents) is transferred to the Foundation; the payment occurs at the end of a month and the total sum is transferred to the Foundation's account.<sup>66</sup>

While SMS and phone call donations are used by several CSOs, the system could be developed further. For example, there is no single charitable SMS number to be used for donation campaigns. CSOs have to negotiate each time with mobile operators to conclude a special contract and pay fees for using mobile numbers for fundraising campaigns (unless they have charity status). According to some CSOs, the fees of mobile operators are quite high.<sup>67</sup> Instead, in some countries, including Czech Republic and Bulgaria, there is a single SMS number that is negotiated with all mobile operators and the fees are extremely low.

<sup>65</sup> Source: Interview with Silknet.

<sup>66</sup> Source: Interview and follow up exchange with Dimitri Tsintsadze Foundation.

<sup>67</sup> Source: Interview.



Telecommunication services are considered an economic activity for VAT purposes, even for public institutions.<sup>68</sup> However, according to the practice of the SRS, only the commission fee of the mobile operator is subject to VAT, rather than the value of the SMS and phone call donation itself.<sup>69</sup>

Crowdfunding. CSOs can also raise funds through crowdfunding on their websites and dedicated crowdfunding platforms. Donation-based crowdfunding allows individuals to donate small amounts to meet the larger funding aim of a specific charitable project while receiving no financial or material return. Crowdfunding platforms are websites that give space for different CSOs to launch their campaigns and solicit donations for a specific cause. Fundraisers are usually charged a fee by crowdfunding platforms if the fundraising campaign has been successful.

Funds raised through crowdfunding in Georgia are modest compared to donations from foreign donors. According to the mapping study developed in 2021 by CRRC-Georgia on CSOs in Georgia, only 6% of the surveyed organizations reported using crowdfunding methods in 2019. Two organizations received less than 200 GEL, while five organizations collected more than 1,000 GEL through crowdfunding.<sup>70</sup> According to research conducted in 2021,<sup>71</sup> CSOs are not familiar with crowdfunding methods and 30% of CSOs do not have the human resources to run such campaigns. However, crowdfunding continues to develop. One recent example is the broad online fundraising efforts in support of Ukraine in 2022.

There are no specific regulations concerning crowdfunding. Some CSOs and platforms establish internal terms and conditions on their websites. For example, Charte established a local and international online crowdfunding platforms for fundraising to support providing internet and laptops for school kids in rural areas of Georgia. Charte contacts schools in various regions and requests information on students that have been awarded a rating score of 70,000 or less in the register of socially vulnerable families and have no computer and/or internet. After the students complete questionnaires, Charte's regional representative personally visits the families, documents the students, conducts interviews and surveys, and makes sure the students meet the project criteria. Charte's donors can choose from a variety of projects that they wish to support, including detailed information about the students. They can also determine whether their donation should fund a new laptop or internet access. From the donated amount, Charte buys new Google Chromebooks for students and/or pays 20 GEL to each beneficiary to cover the monthly fee for a basic internet package (the remaining minimal amount is covered by the beneficiaries themselves). In the rare case when the beneficiary's family already pays for internet at the time of enrollment, he/she still receives the rest of the project services, including the laptop, training, access to resources, and ongoing technical support from Charte's team. The platforms operate in a highly transparent manner by publishing a transparency report, including their income statement, the breakdown of donations, and the staff salaries. The administrative costs cover the fees for the project coordinator, accountant, social media manager, as well as the platform development and online advertising costs. Donors who register for monthly donations automatically receive a monthly transparency report from Charte. If donors donate through a bank account transfer (as opposed to the crowdfunding platform), they will not be on the donor list and will only receive a transparency report if they subscribe to it through the site or provide Charte with their email address. In addition to the transparency report, Charte also uploads its bank statements to the website. Over the past five years, the platform connected 1,800 students throughout the country with more than 4,000 donors, including 2,500 regular monthly donors, collecting a total of 1,270,000 GEL through online donations.

Super Heroes is another newly established online platform which supports vulnerable children. The CSO uses crowdfunding and online funding methods for carrying out charitable activities that focus on finding sponsors, "super heroes," for their beneficiaries. Super Heroes collects information about

<sup>68</sup> Article 158 4. b.a) of the Tax Code.

<sup>69</sup> Source: Interview with the SRS.

<sup>70</sup> CRRC-Georgia (2021). *Civil Society Organizations in Georgia: Mapping Study*, pages 7 and 28

<sup>71</sup> Ghvinjilia, Lana (2021). *Philanthropy Culture and Civic Activism Perspectives in Georgia*, page 7

beneficiaries both through secondary research (TV shows, social media), as well as through a platform where anyone can post a request to add a beneficiary. Children are included in the program after Super Heroes examines the child's situation and visits their residence. For each child sponsor, Super Heroes deducts 100 GEL and a transaction fee of 2% from the sponsor's bank account every month. Sponsors can also send in-kind donations by using the platform. 100% of the monthly donations is spent on the child. During the first two years of the program, Super Heroes supported more than 370 kids, with a total of 584,462 GEL in assistance. On its website, Super Heroes publishes the rules for using the platform, the types of support, the payment terms, the delivery policy, and other details. The Super Heroes publishes regular news updates and a report about the results of their work.

Another good example of a successful fundraising initiative is the Knowledge Café, which is a multi-functional social enterprise founded in 2016 in Tsnori that serves as a venue for cultural-educational activities and aims to facilitate the engagement of youth in social life. Knowledge Café launched a crowdfunding campaign in 2018 to gather resources to buy their own property (including the land and the building) and collected more than 100,000 USD in over three years. As a recognition of the donors' contribution, Knowledge Café grants people right to include their name on the bricks that symbolize their help in building the Knowledge Café.<sup>72</sup>

CSOs can also use dedicated crowdfunding platforms to launch fundraising campaigns. For example, Orbeliani created a funding platform that gives people the space to fundraise by posting information about proposed actions and reporting on their implementation. The user of the platform (author of an initiative/project) suggests the idea and sends it to Orbeliani. The special commission evaluates and approves the idea, after which it is posted on the platform. Anyone can donate to support specific projects, either by using credit/debit cards or by transferring money to the Orbeliani account and indicating the name of the project. The authors of the project receive 90% of the donated money instantly, once the targeted amount is collected and the remaining 10% after six months.<sup>73</sup> The conditions of using the platform are governed by the agreement posted on the website, which includes use of materials and information, the rights and features that allow users to make and receive donations, create an account, start a project, and use other similar features on the platform. In case the platform is used by anyone outside of their project participants, the relationship is governed by the agreement on the platform. They also have a separate contract that regulates the relationship. Donors can pay by a credit/debit card or transfer funds directly from their bank account to the Orbeliani account if they indicate the title of the project when transferring. Orbeliani strives to keep the information about the authors of the idea, the goals, the progress of the project as accurate as possible and verify the validity of the author of the project before publication. Also, the target amount of the project may be changed due to the variability of the GEL exchange rate or at the request of the project author. The authors of the project shall provide accurate information and are responsible for maintaining their profile. TBC Bank is responsible for the security of the card and the financial transaction and Orbeliani does not have access to the credit/ debit card data of the donor. In 2021 Orbeliani channeled 60,3 thousand GEL in 1000 donations in 2021.<sup>74</sup>

In addition to the above initiatives, there are Georgian campaigns on global giving platforms, including support to homeless teenagers and Georgian refugees. Individuals also use GoGetFunding to organize campaigns on behalf of CSOs. The supported causes include Children's Hospice, cultural heritage (Ribirabo Foundation), among others.<sup>75</sup>

Leading a crowdfunding campaign is a significant undertaking; therefore, one of the interviewees suggested that it would be beneficial to have guidelines on the process. CSRDG recently published a guidebook on crowdfunding events, with main emphasis on an offline variation of crowdfunding -

<sup>72</sup> Source: Interview with Knowledge Café.

<sup>73</sup> Source: Interview with Orbeliani and its [website](#).

<sup>74</sup> Research Report on Ecosystem of Online Giving and Crowdfunding, CSEF, 2022.

<sup>75</sup> Source: FGD on philanthropy.

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Live Crowdfunding, which provides more information on what crowdfunding means and how it can be used in practice.

Gaming and lottery. The Law on Organizing Lotteries, Games of Chance and Other Prize Games establishes strict rules for any types of lotteries. According to Article 5(1) of the law, *“all games of chance and prize games which are held on the territory of Georgia shall be subject to obtaining permits under the Law of Georgia on Licenses and Permits. Organizing games without relevant permits or the failure to comply with the license conditions shall be deemed a violation of law and shall entail liability under the legislation of Georgia, except for the cases provided for by paragraph 3 of this Article.”* Article 5(2) of the law establishes that in Georgia it is allowed to organize only those lotteries, games of chance and prize games, which are provided for by this law.

Consequently, if an event qualifies as a game of chance, a “prize game” or a lottery, it should be held in line with the mentioned law. There are some exceptions when an event is not considered to fall under this law, but there are no specific exceptions for fundraising events or charitable lotteries. For example, Article 4 of the law provides that *“Games, which are held by means of machines, devices, appliances, and other means and which do not involve elements of contingency (chance), shall not be considered as lotteries, games of chance or other prize games. Such games are designed for the examination or demonstration of special knowledge, intelligence, prowess, flexibility, or any other special skills.”* The law also regulates the state lottery. According to Article 6, *“The winner of a tender organized by the Ministry of Finance of Georgia shall operate and hold lotteries in Georgia.”* Based on the license granted by the Ministry, the Georgian National Lottery has the exclusive right to produce and sell lottery tickets on the territory of Georgia under the trademark [www.lotto.ge](http://www.lotto.ge). The Georgian National Lottery implements social projects in the field of sports, education and with the help of their customers, supports socially disadvantaged families. During the lottery game, lottery participants automatically become donors, as part of the proceeds from each lottery ticket sold is used for social projects. Cash boxes, street collections, and other cash solicitations. There is no specific regulation on cash boxes and street collections in Georgia. However, there are some general rules that are relevant for cash payments. According to Article 5 of the Order N 1 of the Head of the Financial Monitoring Service of Georgia on Approval of the Rule on Record-keeping, Storage and Reporting of the Information on the Transaction by Obligated Entity to the FMS, a commercial bank shall submit a report to the FMS on depositing cash to the account of a legal entity if it exceeds 50,000 GEL or the equivalent in a foreign currency.<sup>76</sup>

The obligation to use cash registers (devices that print receipts) exists only when the person is involved in economic activities. Article 259(2) of the Tax Code states that *“when a person engaged in economic activity accepts payment in cash from a customer during the supply of goods/delivery of services, the relevant data shall be recorded by using a cash register. A customer shall be a person who makes a cash payment for any goods supplied (to be supplied)/services delivered (to be delivered) to him/her.”* The article also lists some exemptions from the general rule. The SRS also published information that only persons involved in economic activities are required to use the cash registers. As receiving donations does not qualify as economic activity (instead it is the part of charitable activities), CSOs do not have to provide cash receipts to donors.

Some organizations have been using cash boxes to collect donations. For example, the Dimitri Tsintsadze Foundation started with cash boxes for raising funds for a colleague who had leukemia.<sup>77</sup> They placed the boxes in the branches of Smart and Goodwill. The branches do not take any responsibility (even in the case of the damage of boxes), they only give space for placing the boxes. The Foundation uses its own procedure to collect the money from the cash box. Once every three or four months, three members of the council of the Foundation, together with the manager of a branch and employees of the security unit, collect the cash from the boxes. The director of the fund takes the

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<sup>76</sup> Article 5 of Order No. 2 of the Head of the Financial Monitoring Service of Georgia on Approval of the Procedure of Identification and Verification of a Customer by an Obligated Entity.

<sup>77</sup> Source: FGD on philanthropy.

money in the bank and opens the bag, counts the money, and adds the funds to the bank account.<sup>78</sup> Based on interviews with CSOs, street collections are increasingly less common.<sup>79</sup>

As of January 1, 2019, the principle of carrying out cash payments with the accuracy of 1 tetri was changed to the “rounding method,” which was introduced with the amendment of the Organic Law of Georgia on the National Bank of Georgia,<sup>80</sup> the Code of Administrative Offenses of Georgia, and the Resolution No. 7 of the Council of the National Bank of Georgia. The rounding method is used for cash payments when the unit price of the product/service or the total value of several products/services does not end at 0 or 5. The established rule does not imply a change in the prices of each product and service, and the principle of rounding applies only in the case of cash payment, both in the case of the purchase of a product and the provision of services, to the total cost of several products or services. The rounding method leaves additional funds at the service providers which can be an opportunity for CSOs to fundraise from businesses.

Fundraising events (sports, concerts, dinners): There are no specific rules applicable to fundraising events in Georgia. However, general rules should be considered on entertainment, consumer protection, and taxation.

If a CSO organizes a fundraising event in the framework of charitable activities (socially beneficial activities) or a grant project, it is not considered as an entertainment cost or “representative expenses.” Costs carried out for such events qualify as expenses within charitable activities. Therefore, the limitations on the entertainment costs set by Article 97 of the Tax Code do not apply to fundraising events and are applicable only for enterprises and organizations conducting economic activities. According to the Tax Code, the entertainment costs paid in excess of the limited amount determined under the Tax Code is the object of profit taxation of an organization conducting economic activities.<sup>81</sup> According to Article 98, the limited amount is 1% of the income gained during a previous calendar year, and 1% of the expenses incurred if the expenses exceed the income gained. Further details on income from economic activities are provided in Section 5.

Large businesses actively engage in charity events and provide in-kind donations to CSO campaigns and activities.<sup>82</sup> Some CSOs organize auctions. For example, the Children’s Hospice carries out annual auctions, while the Dimitri Tsintsadze Foundation organizes auctions to sell paintings and other items. First Step Georgia also organizes charity concerts.<sup>83</sup>

Payroll giving: Payroll giving is an opportunity for employers to regularly transfer donations on behalf of the employees to charitable causes. Dimitri Tsintsadze Foundation established such a practice with state bodies. However, the procedure is complex and accountants often are not willing to engage in such a process due to the extra burden. The only other prominent example identified by the Assessment team is the Solidarity Fund of Georgia, which was established in 2014 and supports children suffering from leukemia and oncological diseases through payroll giving.

Social advertisement: If CSOs advertise on TV and radio, they need to adhere to the Law on Broadcasting. The general rules on advertisement, teleshopping, and sponsorship are described in Chapter 8 of the law. The placement of improper, unfair, unreliable, unethical, and clearly false advertisements or teleshopping is prohibited.<sup>84</sup>

Broadcasters are required by law to provide space for social advertisement. According to Article 2 z 14 of the Law on Broadcasting, social advertisement is “an advertisement intended to promote public good, achieve a charitable purpose, raise public awareness regarding important social issues and/or facilitate positive change in public behavior, which is neither commercial nor pre-election advertisement,

<sup>78</sup> Source: Dimitri Tsintsadze Foundation.

<sup>79</sup> Source: FGD on philanthropy.

<sup>80</sup> Article 34 2.4 of the Organic Law of Georgia on the National Bank of Georgia.

<sup>81</sup> Article 97 (2) of the Tax Code of Georgia.

<sup>82</sup> Global Philanthropy Index, Georgia, 2020, page 8.

<sup>83</sup> Source: FGD on philanthropy.

<sup>84</sup> Article 65 of the Law on Broadcasting.



and which does not contain an advertisement of the service provided by a state or a municipal body, or by a legal entity under private or public law.” According to Article 65, a broadcaster shall allot at least 90 seconds every three hours to a social advertisement submitted for placement free of charge and without discrimination.<sup>85</sup> The person ordering such advertisement is responsible for the content. Article 65(2) sets special requirements regarding the placement of social advertisements for Georgian public broadcasters: *“The Public Broadcaster, the Ajara TV and Radio of the Public Broadcaster, and a community broadcaster shall allot at least 90 seconds in total per three hours for free and without discrimination to a social advertisement submitted for placement, at least 10 seconds of which the Public Broadcaster shall allot to a social advertisement related to the integration of Georgia into NATO and the European Union, provided that an appropriate advertisement video has been submitted. The Public Broadcaster, the Ajara TV and Radio of the Public Broadcaster, and a community broadcaster shall deliver information on electoral subjects and significant election procedures to the public as a social advertisement during the electoral campaign taking place within their service areas. Information shall be accurate and contain the following data: a) addresses of electoral precincts; b) date of elections; c) electoral procedural rights and obligations.”*

In 2020, the Communications Commission adopted Guiding Recommendations regarding the Placement of Social Advertisements in the Broadcast Network to inform broadcasters and other interested parties about the legal obligations and the powers of the National Communications Commission of Georgia. It defines the three types of advertising (commercial, political/pre-election, and social advertising) and lists what broadcasters need to check and verify to ensure that the presented video content falls under social advertising. Article 5.2 of the Guiding Recommendations requires that the broadcasters, within their editorial independence, should post social advertisements in a manner that does not violate Article 65(1) of the Law on Broadcasting. The advertisement should be posted so that other clients fully enjoy guarantees stipulated in Article 65(1). In case of refusal to post a social advertisement, a person has the right to apply to the Commission with a request to study the video, which the Commission then evaluates according to the law.<sup>86</sup> Before the adoption of the Guiding Recommendations, broadcasters often turned to the Commission to request evaluations, as they found it difficult to understand social advertisement. The adoption of the Recommendations helped the market understand how social advertisement works, resulting in no complaints in the past two years.<sup>87</sup> The public service broadcaster has special rules on the technical characteristics of the advertisement video clips. The document also includes the basic procedure of applying for ad placement. The Commission, in the review of an appeal from the Eurasian Cooperation Fund, clarified that disclosing the name of the organizations and the display of organizational logos for supporters of a campaign should not be considered advertising of such organizations.

### **c) List of identified opportunities and problematic issues**

CSOs are not limited in their ability to receive or make donations in cash, through bank transfers, credit/debit cards, or even virtual currencies. There is also the possibility for banks to allow recurring/monthly donations. CSOs can receive donations from abroad and they can use foreign payment platforms such as PayPal to collect donations.

There are no major legal obstacles to use various fundraising methods. The legal framework allows CSOs to fundraise through SMS/phone call donations, cash solicitations, and the use of various online methods. CSOs also have the opportunity to reach the broader public through social advertisements. In addition, there are already number of active organizations that use different fundraising methods to collect donations from individuals and companies. There are also companies willing to support

<sup>85</sup> Article 65 of the Law on Broadcasting.

<sup>86</sup> Article 5.2 and 5.3 of the Guidelines for the placement of social advertising in the broadcast network.

<sup>87</sup> Source: Interview with the National Communications Commission.

charitable causes. In particular, the war in Ukraine has stimulated a variety of fundraising campaigns and inspired some CSOs to engage more heavily in fundraising.

However, the Assessment team identified some practical issues based on the interviews and focus group meetings:

- Several fundraising methods, including crowdfunding, SMS donation, and cryptocurrency donation, are not yet popular among CSOs.
- Some CSOs have faced problems with processing credit card donations (including regular giving) since the introduction of the 3D authentication.
- For SMS and phone call donations, CSOs have to negotiate each time with mobile operators to use mobile numbers for fundraising campaigns. Once a CSO receives an assigned number with one telecommunications company, it needs to sign a contract with other telecommunication companies in case it wants to activate the same number for the users with various telecommunications companies.
- The procedure of using payroll giving could be simplified, as it currently imposes extra burdens on accountants, which makes payroll giving less appealing for companies/institutions.
- There is a need to ensure that charitable sales are not necessarily classified as income from economic activity and can be treated as fundraising/donation income.
- There are no exemptions from the law requirements for charitable lotteries or games of chance.

## 5. INCOME FROM ECONOMIC ACTIVITIES

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### a) Overview

The Assessment team reviewed multiple sources of research that show very little engagement of CSOs in economic activities.<sup>88</sup> For example, according to the *Assessment of the Civil Society Sector in Georgia in 2019*, “one-fifth (20%) of the interviewed organizations conducted additional economic activities in 2019.” Following 2019 amendments to the Tax Code adopting the Estonian model, the data on CSO engagement in economic activities is very limited, which creates difficulties in assessing how the new Tax Code provisions affected CSOs’ engagement in economic activities.

In general, CSOs do not pay profit tax on income from economic activities. However, there is a general perception in Georgia that CSOs do not enjoy benefits when carrying out economic activities. For example, the CSO Sustainability Index 2020 stated that “*Georgian laws allow CSOs to engage in economic activities, but income from these activities is taxed at the same rate as activities pursued by any other commercial organization. The laws prevent economic activities profit being CSOs’ primary activities.*” While technically correct, it does not address new opportunities granted to CSOs through amendments to the Tax Code that took effect on January 1, 2019, and specifically affect profit tax.

At the same time, economic activity, especially considering the limited resources to support CSOs through local philanthropy and limited state funding, is extremely important and in some countries is the main source of CSO financial sustainability. Based on review of CSOs engaging in economic activity globally, fees (including fees for services and membership fees) constitute 53% of CSOs’ gross income (compared to 12% from philanthropy and 35% from the government). In the US, fees for services in 2019 constituted 49% of gross income.

### b) General overview of law and its implementation

#### The right to carry out entrepreneurial activity

Georgian NNLEs (CSOs) may engage in any activity not prohibited by law, regardless of whether this

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<sup>88</sup> In this report, the terms “economic activity” and “entrepreneurial activity,” are used depending on which term is referenced by Georgian legislation. The generic term used in this paper is “economic activity” means sale of goods and services for a fee.

activity included in its articles of incorporation,<sup>89</sup> including entrepreneurial activity. However, the law limits CSO entrepreneurial activity to activities of an auxiliary nature.<sup>90</sup> The law further defines that CSOs are permitted to carry out such activities when the profit from such activities is used for achieving the CSO's objectives. The profit made from such activity may not be distributed to the founders, members, or donors of the CSO or to those having managerial and representative powers in such CSO.<sup>91</sup>

If a CSO has substantively engaged in entrepreneurial activity, a court, based on the application from the registration authority and/or the interested person, shall consider and make a decision to suspend or prohibit the activity of the CSO, according to the Civil Code.<sup>92</sup> However, according to the Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations, the court may only make a decision to suspend activities of such type of CSO for up to three months,<sup>93</sup> but does not have authority to liquidate it. According to the same law, after expiration of the suspension term, the public association may resume its activities.<sup>94</sup> Remarkably, according to this law, even the court does not have authority to liquidate a public association based on its "substantial engagement" in economic activity. However, the Supreme Court in its 2001 decision determined "revocation of registration on this [substantial engagement] in entrepreneurial activity] base" assuming that such liquidation is possible.<sup>95</sup>

Further, the Supreme Court's decision provides interpretation of a term "substantial engagement" in entrepreneurial activity, stating: *"it should also take into account that the revocation of registration is permissible only when the organization substantially switches to entrepreneurial activities (a union<sup>96</sup> principally has the right to carry out commercial activities. The income generated from such activities should justify their purposes). This takes place when it is established that profit generated from entrepreneurial activities is distributed amongst the members of the union."* It appears that the only criterion in determining whether a CSO has substantial engagement in entrepreneurial activity is if it distributes its income amongst members of the CSO (union). The frequency of engagement and percentage of income generated through entrepreneurial activity versus income from exempt activity or the use of income to support the entrepreneurial activity itself are irrelevant.

The Civil Code and the Law on Entrepreneurs use the term "entrepreneurial activity," which is defined as *"a legitimate, repeated, independent and organized activity carried out for the purpose of earning profit."*<sup>97</sup> The Tax Code uses the term "economic activity," which is defined as *"activity...performed to gain income or compensation, irrespective of the result of the activity, unless otherwise provided for by this Code."*<sup>98</sup> However, for the purposes of VAT, Article 158 (2) of the Tax Code states that *"one-off/occasional activities"* are not considered as economic activity. The main difference between the two definitions is that *"entrepreneurial activity"* requires to be *"repeated, independent, and organized activity,"* while the Tax Code treats as economic activity as *"any activity performed to gain income"* and does not require it to be repeated, independent, or organized.

Therefore, it can be concluded that although there is no clarity of the meaning of "auxiliary" or "substantive engagement" regarding CSOs' entrepreneurial activities, CSOs can engage in entrepreneurial activity without problems as long as they do not distribute the income to founders, members, or

<sup>89</sup> Article 25.2 of the Civil Code.

<sup>90</sup> Article 25.5 of the Civil Code.

<sup>91</sup> Article 25.5 of the Civil Code.

<sup>92</sup> Article 33 of the Civil Code.

<sup>93</sup> Article 3.2 of the Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations.

<sup>94</sup> Article 3.2 of the Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations.

<sup>95</sup> Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia, Decision # 3K/939-01 (33/939-01) (Supreme Court decision), November 28, 2001.

<sup>96</sup> The unofficial translation of the court's decision into English uses the term "union," which per our understanding means "association" or "public association," as one legal form of a CSO.

<sup>97</sup> Article 2.2. of the Law on Entrepreneurs.

<sup>98</sup> Article 9 of the Tax Code.

donors. Thus far, the Assessment team did not identify a case when a CSO was suspended or liquidated because of substantial engagement in entrepreneurial activity.

#### Taxation of income from entrepreneurial activity: profit tax

Economic activity is defined in the Tax Code as any activity if “it is performed to gain income or compensation, irrespective of the result of the activity,” with some exceptions, including “charitable activity.”<sup>99</sup>

From 2019, CSOs are subject to the so-called “Estonian model” of taxation. This means that some expenditures are taxed instead of income. According to Article 97 (2) of the Tax Code, “the object of profit taxation of an organization conducting economic activities shall be:

- a) the costs incurred, or other payments not connected with economic activities and/or which are not related to the objective of the organization’s activities (including those not connected with charity activities or not related to the objective of a grant agreement);
- b) supplying goods or provision of services free of charge, and/or transfer of financial resources if it is not related to the objective of the organization’s activities;
- c) the entertainment costs paid in excess of the limited amount determined under this Code.”<sup>100</sup>

CSOs usually spend all received funds on statutory organizational objectives and do not have expenditures qualified as objects for profit tax. Even when a CSO is engaged in economic activity, it is subject to profit tax only in very limited cases, such as when the organization does not use its income to cover costs related to the economic activities or for the statutory objectives of the organization.

Considering that many CSOs carry out “auxiliary entrepreneurial activities,” which would fall under “economic” activities as defined by the Tax Code, such as consultancy services, professional trainings, selling books, or conducting research, and use such income to cover costs related to entrepreneurial activities or activities related to statutory objectives – they will not be subject to profit tax. Therefore, most CSOs carrying out economic activities might avoid paying any profit taxes.

Georgian law provides another option for CSOs to generate income from economic activities - through establishment of entrepreneurial legal entity. Such entrepreneurial legal entity, founded by a CSO, may engage in economic activity without any limitation, while the sole beneficiary of the generated profit is the founding CSO, which in turn uses such profits for furthering its social objectives. Such enterprises are sometimes called SEs, although this is not a term established in Georgian legislation. If income from economic activities is subject to profit tax, the tax rate is 15%,<sup>101</sup> which is the same rate for CSOs and business entities (after adjustments are made to the respective costs based on Article 97 (5) of the Tax Code).

#### Taxation of entrepreneurial activity: VAT

CSOs are recognized as taxpayers for the purpose of VAT if they perform economic activities,<sup>102</sup> and if the value of taxable transactions exceeds 100,000 GEL during any 12-month period.<sup>103</sup> If a CSO does not meet these requirements, it has no obligation to report and pay the VAT (while still recognizing that they pay VAT when purchasing goods and services). According to information provided by the SRS as of September 2022, 368 nonprofit legal entities are registered as VAT taxpayers.

It is important to note that for the purposes of VAT, the Tax Code has a separate definition of economic activity. One-off occasional activities, such as the sale of a CSO’s property (except for the delivery of a non-residential building/structure), do not constitute economic activity and such transactions are not subject to VAT.<sup>104</sup>

<sup>99</sup> Article 9.1 and 9.2b) of the Tax Code.

<sup>100</sup> Article 97 (2) of the Tax Code.

<sup>101</sup> Article 98.1 of the Tax Code.

<sup>102</sup> Article 158.1 of the Tax Code.

<sup>103</sup> Article 165(1) of the Tax Code.

<sup>104</sup> Article 158.2 b) of the Tax Code: a definition of an “economic activity” specifically for the purpose of VAT references definitions in the Law of Georgia on Entrepreneurs, as well as includes activities of persons performing transactions of supplying goods/providing services, except for a one-off/occasional activities; and use of property for earning regular income.



The Tax Code provides for privileges in relation to the charges borne regarding certain types of transactions. Specifically, the Tax Code provides a VAT exemption of certain category transactions, which might be relevant to CSOs without the right of deduction,<sup>105</sup> which means that taxpayers are not required to charge VAT on goods and services they provide, but they cannot deduct the amount of the VAT they have already paid for purchasing materials and services needed for the production/service provision. For example, these transactions can include:

*“e) provision of lecture courses through electronic media (disks), which are of educational nature and may also be published in the form of a book;*

*f) provision of selling services and printing services of goods (magazines, newspapers and printed music)...and/or provision of advertising services by newspapers and magazines;”<sup>106</sup>*

Article 172 (4) of the Tax Code provides additional exemptions on VAT. Some of them are relevant to CSOs’ activities, such as the opportunity for VAT exemption with the right of deduction for the transfer of goods and/or provision of services to the state and/or a municipality free of charge. The same tax benefits apply in case of supplying books and electronic books or providing sales or printing services of books/e-books.<sup>107</sup>

Article 172(5) of the Tax Code sets out an important exemption, which is frequently used by Georgian CSOs: *“Supply of goods and/or provision of services and/or importation of goods shall be VAT exempt with the right of deduction if the aforementioned is carried out within the scope of the international agreements ratified by the Parliament of Georgia and that have come into force, and supply of such goods and/or provision of such services and/or importation of such goods under the agreements are VAT exempt.”*

The Government of Georgia has concluded several international agreements that contain provisions related to the mentioned tax exemptions. For example, the Parliament of Georgia has ratified the Agreement on Cooperation to facilitate Humanitarian and Technical-Economic Assistance between the Government of the Republic of Georgia and the Government of the United States of America (in force from July 31, 1992). This agreement includes provisions that provide a wide range of tax exemptions associated with US assistance. This agreement, together with Article 172(5) of the Tax Code, creates legal grounds for CSOs to enjoy tax benefits when implementing projects funded by the United States. For example, goods and services acquired in the framework of a project funded by USAID are VAT exempt. Georgia has also ratified the Framework Agreement between the Government of Georgia and the Commission of the European Union. Article 3.3. of the agreement specifies that activities carried out under EU funding are exempt from VAT in the beneficiary state. Georgia has ratified other relevant bilateral agreements with some countries such as Germany and other international organizations.

Another tax exemption is associated with grants. Article 181(2) of the Tax Code states that: *“A grant recipient, who has purchased goods and/or services within a grant agreement, shall be entitled to a deduction or a refund of the VAT paid for the goods/services, on the basis of a tax invoice or, in the case of reverse charge, of a document evidencing payment of the VAT to the budget filed with a tax authority.”* In order to deduct or refund VAT, CSOs have to file the documents stipulated in the Article 181(2) within the 3 months since the date of purchase of goods and services.<sup>108</sup> However, those funds, received through a grant and used to achieve entrepreneurial goals, shall not be deemed to be a grant, per Article 2.2 on the Law of Georgia on Grants. Therefore, CSOs cannot take advantage of the Article 181(2) provision, in case of carrying out economic activity and being supported through such grant, even if the purchased good is being used for both non-profit and economic activities (for example, a

<sup>105</sup> Article 171 of the Tax Code.

<sup>106</sup> Article 171 of the Tax Code.

<sup>107</sup> Article 172(4) of the Tax Code: *“z3) supply of goods (a book) provided for under the NCNFEA Codes 4901 and 4903 00 000 00, or of an electronic book, and provision of sales and printing services for the goods.”*

<sup>108</sup> Article 181(3) of the Tax Code: *“the VAT shall be deducted or refunded if a grant recipient has filed an appropriate document with a tax authority within 3 months since the end of a month he/she carried out a taxable transaction.”*

car, an apartment for an office or a computer). They may, however, use the property acquired through a grant for economic activity after the end of the grant, even if acquired during the grant through a VAT exemption.

The general Tax Code approach to VAT and provision of exemptions is in compliance with international law.

#### Peculiarities of taxation of income received as dividends, interest, rent, or royalty<sup>109</sup>

CSOs may generate income through investing in stock, other papers of value, in other companies, and/or by selling royalty rights. Income received as interest, dividends, or royalty is regarded as income generated from economic activity.<sup>110</sup>

Regarding the **taxation of dividends received by CSOs** from companies, including their own companies, such companies are required to withhold a 5% profit tax from the amounts paid to a CSO.<sup>111</sup> CSOs do not have to pay profit tax on received dividends.<sup>112</sup>

Companies do not have to pay profit tax on the value of dividends received from other companies, and the latter are not required to withhold profit tax on dividends distributed to other companies. This leaves CSOs in an unequal and unfavorable position in comparison to companies.

Interest earned from a licensed financial institution in accordance with the legislation of Georgia shall not be taxed at the source. At the same time, such interest shall not be included in gross income by the person earning the interest, unless the recipient of the interest is a licensed financial institution.<sup>113</sup>

At the same time, royalty or rent paid to a CSO shall not be taxed at the source.<sup>114</sup> The same rules regarding taxation of income from royalty or rent apply for income from other economic activities. Generally, CSOs have a slightly preferential treatment of income from economic activities in comparison to companies.<sup>115</sup> In particular, when CSOs spend their income from economic activities on charitable or social activities, they are not required to charge profit tax on those costs. However, companies incur tax on the same costs and do not enjoy any preferences regarding the taxation of such income, which is in compliance with international practice.

#### Licensing of certain activities

The Law on Licenses and Permits does not substantially impact CSOs' activities, as most activities requiring a license do not apply to CSOs.<sup>116</sup> Therefore, the Assessment team did not address the licensing procedure in this report.

### **c) List of identified opportunities and problematic issues**

CSOs in Georgia enjoy a supportive environment for engaging in economic activities. The legal framework allows CSOs to engage in broadly defined "auxiliary" economic activities and there is no legal

<sup>109</sup> Article 8 of the Tax Code: "12. Dividend – any income (including interest from preference shares) earned by a shareholder/interest-holder from shares or rights (interests) as a result of a distribution of profits made by a legal person to its shareholders/interest-holders in proportion, or not in proportion, to their shares/rights in the capital."

Article 8 of the Tax Code: "19. Interest – any pre-declared (established) income (including that received as a discount) from any debt claim related to cash investments or debt obligations (whether backed by mortgage or securities in any other way)."

Article 8 of the Tax Code: "21. Royalty: a) a fee for the right to use subsoil in the course of extracting minerals and processing anthropogenic formations; b) income received for the right to use copyrights, software, patents, drawings, models, trademarks or other intellectual property or for transferring the right to another person; c) income received for the right to use industrial, trade or research equipment or for transferring the right to another person; d) income received for the use of know-how; e) income received for the right to use cinematograph films, video films, audio records or other recording devices or for transferring the right to another person."

<sup>110</sup> Article 102(1) of the Tax Code.

<sup>111</sup> Article 130(1) of the Tax Code states: "dividends paid by a resident enterprise to a natural person, a non-entrepreneurial (non-commercial) legal entity or a non-resident enterprise shall be taxed at source at the rate of 5% of the amount payable."

<sup>112</sup> Article 130 of the Tax Code.

<sup>113</sup> Article 131 of the Tax Code.

<sup>114</sup> Article 132 of the Tax Code.

<sup>115</sup> Articles 97(1) and 97(2) of the Tax Code.

<sup>116</sup> Article 6 of the Law on Licenses and Permits lists only a few activities which might apply to some CSOs, such as private and community broadcasting, and carrying out educational activities (such as a university or a secondary school).

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precedent for CSOs to be judged as non-compliant with the “auxiliary” requirement. Income from economic activity is usually not taxed as long as a CSO uses the income to achieve its statutory purposes or re-invests it into the economic activity itself. CSOs can engage in any kind of economic activity not specifically prohibited by law, ranging from delivery of fee-based social services to sales of goods or investment in business ventures.

Despite this positive overall situation, the Assessment team identified some specific problems:

- It appears that many CSOs and stakeholders are not aware of the positive changes in the 2019 amendments to the Tax Code, as there are underutilized benefits for CSOs engaged in economic activities. It will be important to improve CSOs’ awareness of these new opportunities.
- One possible explanation as to why CSOs are not engaged in economic activities is the complexity of accounting, as CSOs are required to maintain separate accounting for income from economic activities versus statutory (non-profit) activities.
- Instruments available under the Tax Code that allow CSOs to engage tax authorities, such as seeking a consultation or written opinion, are underutilized. Taxpayers also may apply to the service department of the SRS to ask questions and request interpretations. The lack of such communication (requests for information) further limits opportunities for CSOs to understand the law relevant to economic activities.
- Most activities exempt from VAT are irrelevant to CSOs. It is therefore important to consider if new VAT exemptions for certain areas should be added to the Tax Code, such as for provision of social services.

Regarding the taxation of dividends, CSOs, as recipients of dividends, are put in an unfavorable position compared to companies, as no tax is levied on the value of dividends companies receive. In comparison, CSOs are subject to a 5% dividend tax. It would be useful to discuss applying the same tax treatment of dividends received by CSOs as for companies.

## 6. SOCIAL ENTREPRENEURSHIP

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### a) Overview

Social entrepreneurship is a relatively new concept in Georgia. Both social entrepreneurship and SEs are not defined in the law. Such activities generally relate to for-profit or non-profit entities that engage in economic activities using entrepreneurial approaches in offering services or products on the market, while having social impact as a primary goal. At the same time, numerous think tanks and resource organizations, supported by foreign funders, conduct research to promote and provide an enabling environment for SEs.

As the situation stands now, according to [CSR DG’s database](#), there are 66 SEs in Georgia. According to the [CRRC 2016 survey of 282 CSOs](#), only 23 CSOs (8% of surveyed organizations) considered themselves as SEs.

SEs in Georgia may exist in different legal forms, including NNLEs (CSOs); limited liability companies (LLCs), cooperatives, and/or social entrepreneurs acting as individuals. Presently, there is no unified state policy dedicated to promoting SE.

However, there are also different organizations focusing on supporting SEs in Georgia, providing various support such as technical assistance (incubators and accelerators, consultancy companies), co-working spaces, network organization to strengthen horizontal relations and advocacy efforts (Social Enterprise Alliance), and assistance from the academic sector.

With funding from the EU, CSR DG has a particularly comprehensive program to support SEs, which has various components including legal reform, support of organizations interested and engaged in SE, integrating SE into the educational system, improving access to finances for SEs (working with

businesses and financial institutions), providing direct financial support to SE start-ups and with the development of existing SEs, awareness rising and policy advocacy on SE (mostly by the Social Enterprise Alliance), and research and analysis.

## **b) General overview of law and its implementation**

### Legal framework

For CSOs interested and engaged in SE activities, the most relevant legislation concerns the regulation of entrepreneurial/economic activities of CSOs. The same issues that impede CSOs from carrying out such activities also apply to SEs established in the form of NNLEs (CSOs). Please, see section on economic activities for more details.

Entrepreneurial legal entities (such as LLCs) experience additional obstacles when striving to perform as SEs, including a restriction on receiving state funding, as most state funding is only available to SEs in the form of NNLEs (CSOs). Under the Law on Grants, such businesses also are not eligible to receive grants, with a few exceptions.

### Draft legislation

CSR DG, ASB Georgia, and CSI developed a package of legislative amendments related to developing SE in 2020 and submitted them to the Parliament. However, the amendments were removed from the parliamentary agenda following the election of the new Parliament. In spring 2021, key stakeholders working in the field of social entrepreneurship signed a Memorandum of Cooperation, which acknowledges the need to improve the social entrepreneurship ecosystem and highlights the importance of cooperation between the actors involved. By signing the Memorandum, the parties agreed on cooperation in various areas, such as sharing information about activities supporting the development of the social entrepreneurship ecosystem and concurrence on supporting the activities of other partners. Twelve stakeholders signed the Memorandum, including the LEPL - Youth Agency, which is one of the leading public institutions working in the field of social entrepreneurship. As of the time of this report, the Assessment believes that this group is still coordinating on ongoing initiatives.

Presently, there is a new initiative to develop a package of legislative changes, but they are still at the conceptual level. Interested stakeholders can post ideas and recommendations in a shared document. The primary focus is to draft a standalone Law on SEs, which later might be supplemented with proposed amendments to other relevant laws.

## **c) List of identified opportunities and problematic issues**

There are number of diverse organizations that promote social entrepreneurship and support start-up efforts in that area. Currently, there is a group of CSOs that have united efforts to produce a draft law on social entrepreneurship. This is a good example of collaboration between CSOs and state institutions to improve the environment. The Assessment team hopes that such a draft law would address the problems identified below:

- issues relating to the regulation of entrepreneurial/economic activities of CSOs (See section on entrepreneurial/economic activities);
- lack of special legislation that defines and provides incentives for SEs;
- lack of state policy to promote and provide support for SEs; and
- restricted access to funding, as SEs, are not eligible to receive grants and do not have access to most state funding.

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## 7. VOLUNTEERING

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### a) Overview

Per the research paper “Non-State Funding of Civil Society Organizations in Georgia”:

*“According to the World Giving Index by Charities Aid Foundation (CAF), 18% of Georgia’s population carried out volunteer work (CAF, 2020), which places Georgia 86th among 125 countries surveyed. At the same time, 37% of respondents were willing to cooperate with CSOs, which work on tackling important issues for the community and country and provides an opportunity to engage with people to encourage volunteering. The most recent study of CSOs carried by CRRC-Georgia, based on a survey of 249 CSOs operating in Georgia, found that 55% of surveyed organizations involved volunteers in their projects, meaning that many CSOs recognize the importance of engaging volunteers in their work.”<sup>117</sup>*

At the same time, the level of trust in CSOs, which should be primary beneficiaries of volunteer work, is low, which might affect interest in volunteering with CSOs. According to the data from the Caucasus Barometer 2020, just 24% of Georgian respondents said they trust CSOs.

In 2015, the Ministry of Sport and Youth Affairs led the government’s initiative to promote volunteering. A key component of the initiative was the Volunteer Work Development Program, within the framework of Youth Policy Development Program. The program aimed at strengthening volunteering at the national level, raising civic awareness of youth through volunteering, and increasing the number of youth engaged in volunteering across Georgia. In addition, the program created a common database of volunteers, but the database is not public and CSOs cannot use it directly.

Currently, the State Youth Agency (SYA) is working on a state strategy for youth that includes a component on volunteering. The SYA plans to establish a special council that includes CSOs, and they have already started contacting key stakeholders. Among other issues, the council will address the need for legal amendments related to the Law on Volunteering. The main objectives for improving volunteering legislation would be to establish a mechanism for recognition of volunteers’ knowledge and skills and create incentives for volunteering.

### b) General overview of law and its implementation

#### Law on Volunteering

The 2016 Law of Georgia on Volunteering (the law) defines volunteers and volunteer host organizations, the relationships between host organizations and volunteers, as well as the rights and responsibilities of various stakeholders.

The law defines a volunteer as an individual who is at least 16 years old. Individuals below the age of 16 may be engaged in volunteer relations only with the consent of their legal representative, guardianship, or custodianship authority. While carrying out volunteer work, an individual who lacks other paid employment continues to be recognized as unemployed by the government and consequently retains the right to benefits and allowances provided to the unemployed under the Constitution and Georgian legislation.

The law also defines a volunteer host organization, which, along with CSOs, includes public law legal entities, local self-government bodies, and educational and medical institutions. The law regulates the legal relationship between a host and a volunteer for the purpose of implementing socially useful activity, which is defined broadly enough to encompass all typical activities of CSOs. The law does not prohibit host organizations from engaging volunteers without entering formal relations, although there is a requirement to have a written contract if the volunteer work lasts more than one month. The law does not apply to individual or spontaneous activities.

Overall, the law conforms with international volunteering principles and legal guarantees effective

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<sup>117</sup> Vakhtang Natsvlashvili, “Non-State Funding of Civil Society Organizations in Georgia,” 2019.



in other countries. Consequently, legal provisions in the law regulating volunteer relations do not require any substantial amendment or improvement. More research is required to identify if there are issues with the law, including collecting opinions of volunteering organizations on the problems they face.

#### Other laws affecting volunteering

While the law is in line with international volunteering principles, other laws do not adequately facilitate volunteering by removing practical obstacles, such as issues with the taxation of certain costs related to hosting volunteers.

Although volunteers do not receive salaries, their work for CSOs requires some expenses such as transportation, meals, and communication costs. According to the law, such expenses shall be covered by a host organization (Article 5). The Tax Code qualifies the compensation for volunteer expenses as a taxable income for volunteers and therefore, obligates host organizations to pay income taxes. This obligation not only increases the cost of engaging volunteers for host organizations, but more importantly, imposes the requirement to calculate and pay tax for every transaction for each volunteer. It is not entirely clear in the law if a host organization has to calculate and withhold tax on the cost of material support provided to volunteers (such as purchasing meals or paying for transportation), when an organization does not pay for such expenses directly to the volunteers. In practice, such payments may constitute statutory activities and do not withhold income tax on such payments. However, implementation practice is limited and there is no official clarification on this issue from the SRS. This is also linked to the problem that benefits to individuals above 1,000 GEL/year are considered taxable income (see the section on donations for more information). When volunteers are engaged on a long-term basis, practical problems may arise if the host organization provides them with regular reimbursement of expenses. While there are no statistics available to support this point, it can be assumed that this requirement might limit the pool of volunteers interested in engaging with CSOs.

Apart from tax benefits, there are numerous mechanisms, based on international practice, for promoting volunteering. Such mechanisms can include a state program for volunteer education, a possibility to receive academic credits for volunteer hours, discount vouchers for volunteers for various cultural institutions, among others. In some countries, volunteering is facilitated by online platforms that enable micro-volunteering and short-term, task-specific volunteering. Currently, Georgian legislation does not provide for such instruments. One initial priority would be to introduce changes to the Tax Code that limit obligations for host organizations and incentivize volunteering.

### **c) List of identified opportunities and problematic issues**

CSOs widely use volunteers and there is potential to increase the share of volunteers in Georgia. Volunteerism is legally regulated and although there are no special incentives for volunteers, there is interest from the government in revising the law to provide more incentives. When draft amendments are being developed, it is important that the drafters consider the following problems:

- The obligation of host organizations to withhold and pay income tax on expenses associated with volunteers work not only increases the cost of engaging volunteers for host organizations, but more importantly, imposes burdensome requirements on CSOs.
- The government does not provide incentives for volunteering, such as a state program for volunteer education, a possibility to receive academic credits for volunteer hours, discount vouchers for volunteers for various cultural institutions, among others.

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## 8. STATE FUNDING

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### a) Overview

State funding has the potential to become a significant source of funding for CSOs. The system consists of diverse mechanisms for support and the funding is distributed in a decentralized manner via numerous institutions. The total state funding amount for CSOs varies each year, ranging from 1,776,130 EUR in 2017 to 738,527 EUR in 2021. There has been an increase in the number of CSO recipients of state funding,<sup>118</sup> as well as the number of thematic areas in which funding is provided. Yet, state funding only covers a small portion of CSOs' budgets and is still insufficiently developed in terms of transparency and accountability of the overall procedure of allocation of funds, the insufficient allocated amount, and the lack of institutional support. Researchers highlight the lack of a transparent procedure for funding allocation as one of the most pressing problems. The Civil Society Organizations Sustainability Index for Georgia (2020) noted that *"Georgian CSOs, especially watchdogs, are reluctant to apply for government funding because of concerns about partisan influence and limited transparency in the process."* The new EU Roadmap for Engagement with Civil Society in Georgia (hereafter, the EU Roadmap) additionally emphasizes that the lack of access to institutional funding from the state *"undermines CSOs' potential for constituency building and makes them more donor-driven."*

In an effort to improve state funding, several Georgian CSOs have led an advocacy campaign for many years. One of the major avenues for changes was the collaboration between the Government's Administration and CSI to prepare a package of amendments to the Law on Grants in 2018. However, the bill was never finalized. Both the latest OGP Action Plan and the EU Roadmap emphasize the need to improve state funding.

### b) General overview of law and its implementation

There are different mechanisms for state financial and in-kind support to CSOs in Georgia. CSOs are eligible to receive state funding through grants, subsidies, state procurement, voucher system and so-called "program financing."

#### Grants<sup>119</sup>

The legislation that regulates **grants** in Georgia is complex,<sup>120</sup> consisting of numerous laws and implementing regulations. The Law on Grants provides the legal basis for issuing and receiving grants. In addition, there are several thematic laws that provide the possibility to issue grants in specific areas or to specific legal entities of public law. Such laws include the Law on Political Unions of Citizens, Law on Innovations, the Law on Science, Technology and Their Development, the Law on Agricultural Cooperatives, and the Law on the State Service Development Agency.

The Law on Grants is a general law that does not provide specific rules on how grants should be issued and therefore, each state institution providing grants develops its own procedures. The Law on Grants provides the definition of a grant:

*"The targeted funds gratuitously transferred, in cash or in kind, from the grantor (donor) to the grantee, that are used for specific humanitarian, educational, scientific-research, health care, cultural, sporting, ecological and social projects, as well as for implementation of the programs of the state or public importance, shall constitute a grant."*<sup>121</sup>

The law lists the possible grantors that include, among others: international organizations and do-

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<sup>118</sup> CRRC-Georgia (2021). *Civil Society Organizations in Georgia: Mapping Study*.

<sup>119</sup> While the Law on Grants regulates grants provided by private and state sources, only state grants are reviewed in depth in this section.

<sup>120</sup> CSI developed a detailed analysis of legislation on grants in Georgia in 2017 - [State Funding Mechanisms for Civil Society Organizations in Georgia](#).

<sup>121</sup> Article 2(1) of the Law on Grants.

nors, foreign governments, NNLEs, legal entities of public law (since 2010), and ministries (since 2011).<sup>122</sup> The law defines the legal basis for the grant, liability in case of violation of the grant terms, and taxation of the grant. The law contains a closed list of possible areas in which grants may be provided. In addition to the definition listed above, the law also provides a list of topics in which legal entities of public law can provide grants.<sup>123</sup> This list is further expanded by the thematic laws that define additional areas for grant-making. Government ministries have the freedom to issue grants within their overall area of responsibility.

The other important document that regulates grant-issuing is Resolution No. 126 of the Government of Georgia (2011), which provides the basic rules for ministries to issue grants. The main requirement is that ministries need to obtain approval by the government if a grant exceeds 50,000 GEL. In addition, the grants provided by a ministry cannot exceed 1% of its annual budget without approval from the government. As part of the approval process, ministries must obtain a positive opinion from the Ministry of Finance before submitting the proposal to the government.

Resolution No. 126 does not provide any rules or minimum standards for the selection or the overall procedure for issuing grants, so individual ministries have the discretion to determine specific topics and rules for issuing grants. A notable exception from the Law on Grants is the lack of municipalities among the grant-issuing entities.

Currently, no entity issues grants specifically for CSO institutional development. Previously, the legal entity of public law – Civil Institutionalism Development Fund established by the President - focused on support for CSOs, but it only functioned from 2009-2013 and was later dissolved.

#### State programs

In 2014, the Government of Georgia established a Legal Entity of Public Law – Enterprise Georgia. The agency is accountable to the Ministry of Economy and Sustainable Development, which also carries out state oversight over the agency's activities. The statutory purposes of the agency include the following:

- increasing the competitiveness of the Georgian private sector;
- supporting start-ups and development of business activities;
- raising public awareness about the state programs supporting business development and ensuring the accessibility of this information;
- supporting the development of business culture;
- planning and implementing activities in order to support the export potential of the country, co-operating with various institutions and organizations to this end;
- popularization of the country's investment potential;
- identifying potential investor companies and communication with investors; and
- attracting foreign direct investment.

The agency's work includes three priority areas:

1. Enterprise Georgia - Business, which supports entrepreneurs and the development of business in Georgia, supporting creation of new enterprises and strengthening existing ones;
2. Enterprise Georgia – Export, which promotes the export potential of Georgia, rising competitive-

<sup>122</sup> Article 3 of the Law on Grants.

<sup>123</sup> Article (1) c: "Grantor is a legal entity of public law so determined by the government of Georgia, whose purposes of operation according to its statute/regulations include: 1) issuing grants to improve the quality of learning and teaching in the field of education; 2) issuing grants to finance the costs of study; 3) issuing grants for scientific purposes; 4) scientific grants to support integration of citizens living in compact settlements with national minorities and in highland regions; 5) issuing grants to finance youth and public projects; 6) issuing grants for the purpose of social and economic integration of internally displaced persons - IDPs to ensure their access to means of subsistence; 7) promoting reforms and innovations implemented in Georgia and promoting them in the international community; 8) assisting the governments of partner countries of Georgia in the fields of education, healthcare, social security and sustainable development, assisting in elimination of results of disasters caused by natural and human impact.; 9) carrying out activities supporting agricultural cooperatives by the state."



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ness of Georgian products on international markets, increasing the export volume of Georgian products, and diversifying export markets of the country;

3. Enterprise Georgia – Investment, which attracts and supports foreign direct investment in Georgia. Invest In Georgia plays the role of moderator between foreign investors and the Government of Georgia, ensuring that the investor receives different types of updated information and maintains effective communication with government bodies. It serves as a “one-stop-shop” for investors to support companies before, during, and after the investment process.

The agency implements various state programs approved by the government and/or Parliament of Georgia. The largest among them is the state program Enterprise Georgia. The program includes different sub-programs and components, which support various industries, micro and small enterprises, individual enterprises, tourism, among other areas. The program provides different support mechanisms such as grants, loans, technical assistance, leasing of a property, co-financing of business projects, collateral towards banks, and other support.

NNLEs (CSOs) are not considered beneficiaries of the programs (or relevant sub-programs and components) implemented by Enterprise Georgia. The normative acts approving the relevant state programs limit the circle of beneficiaries to the enterprises established under the Law on Entrepreneurs. In some cases, individuals or individual entrepreneurs are also entitled to apply for different forms of support. Such approach can be considered as discriminatory towards CSOs, because they are deprived of the opportunity to take advantage of these programs.

Another problem is that programs carried out by Enterprise Georgia are focused on supporting business initiatives and for-profit activities and the agency does not carry out any targeted programs supporting SEs in Georgia. Although CSOs can overcome this problem by establishing their own entrepreneurial entities, such approach can only solve the problem technically, while the context of the programs conducted by the agency will remain the same. It is more important to change the approach of Enterprise Georgia towards CSOs at the conceptual level. CSOs and SEs should be recognized as institutions that can play immense role not only in developing social economy but also in creating economic and social value for vulnerable groups.

The same logic can be applied to the programs carried out by the Rural Development Agency (RDG) and the Georgian Agency for Innovation and Technology (GITA). These programs are tailored to business and for-profit organizations and exclude Georgian CSOs as potential beneficiaries.

Participation of NNLEs in the programs carried out by Enterprise Georgia, GITA, RDG, and other similar agencies can improve the financial sustainability of Georgian CSOs and SEs and facilitate the diversification of their funding sources. In addition, CSOs’ engagement can increase the social impact of the programs and ensure accessibility of vulnerable groups to state support mechanisms.

#### State procurement

The Law on Public Procurement is the general law used by the government to procure goods or services. The law excludes “*financing of relevant education, health and social protection services/goods through a voucher, as well as voucher redemption and transactions relating to redemption*”<sup>124</sup> from the application of the state procurement legislation (there is a separate legal procedure for vouchers that is reviewed separately).

The law creates three basic procedures – a simplified procurement (for amounts below 5,000 GEL), a simplified electronic tender (for amounts between 5,001 and 200,000 GEL) and an electronic tender (for amounts above 200,000 GEL). Each contracting authority prepares an annual procurement plan. When defining the criteria for candidates, the contracting authority shall ensure that “*criteria shall be fair and non-discriminatory and promote effective competition.*”<sup>125</sup>

While the law does not discriminate against CSOs in the state procurement process, in practice, CSOs

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<sup>124</sup> Article 3<sup>1</sup>(j) of the Law on Public Procurement.

<sup>125</sup> Article 13 of the Law on Public Procurement.

have challenges in using this mechanism. From a practical point of view, there are some financial obstacles that are difficult for most CSOs to overcome, which include:

- the mandatory performance guarantee or insurance for tenders above 200,000 GEL;<sup>126</sup> and
- the requirement to provide a guarantee in an amount equal to the advance payment.<sup>127</sup>

Such conditions can act as a barrier to participation for CSOs that do not have the necessary financial resources to cover such guarantees. In addition, according to the *CSO Meter 2021 report*, “CSOs have the same opportunities for participation in state procurement awards as representatives from the business sector; but in practice, considering that demand for services related to the operatory scope of CSOs is not high and the awarding criteria are mostly related to service/product price, CSO participation in such procurement procedures is low in comparison to business entities.” Also, since CSOs primarily focus on generating social value, they lack the competitive capabilities compared to businesses, which are oriented towards earning profit. For these reasons, some Georgian CSOs advocate for establishing preferences for CSOs on state procurement procedures (such as giving preferences to CSOs in the social sphere, assessing social value during procurement, among other areas).

Currently, there is a new draft Law on Public Procurement being discussed in Parliament. The draft law was prepared in order to fulfill obligations taken by the Georgian government under the Association Agreement with the EU.<sup>128</sup> Article 146(1) of the Agreement requires Georgia to ensure that its legislation on public procurement is gradually approximated to the EU’s public procurement acquis. Further, Annex XVI of the Association Agreement provides a list of the EU directives and regulations in the field of public procurement, which Georgia is obligated to approximate.

The new draft law intends to fundamentally change the public procurement concept, its methods, mechanisms, and the relevant procedures. It broadens the scope of public procurement and extends the relevant requirement nearly all public institutions. The draft includes more guarantees of transparency and accountability in the field of public procurement. In addition, it provides new exemptions and incentives for different types of legal entities, although there are only few exemptions that apply to CSOs specifically or to the activities they carry out.

After the draft law has passed the first reading of the parliamentary committees, it is being amended according to the committees’ recommendations and others received from the involved stakeholders. Therefore, it is a good time for the Georgian CSOs, social enterprises, and social service provider organizations to advocate for the specific incentives that can affect their work and financial sustainability. The USAID Economic Security Program is already working with the Parliament and Government of Georgia to assist with further developing the draft law. The program has invited and involved CSOs, business associations, and other interested parties in the process.

### Vouchers

Vouchers at the central level of governance.

Vouchers are used by the central and local government bodies mostly for financing education, health-care, and social services. The Law on Public Procurement allows state institutions to fund such services via vouchers without conducting formal procurement procedures.<sup>129</sup> However, this law does not define the term “voucher,” nor does it establish any procedures related to voucher funding. Some sectorial laws governing the powers of the central government in specific spheres offer definitions of a voucher.<sup>130</sup> Therefore, state institutions are limited to use vouchers as a funding tool only in the following sectors:

<sup>126</sup> Article 21 (3<sup>1</sup>) of the Law on Public Procurement.

<sup>127</sup> Article 21<sup>1</sup> (1) of the Law on Public Procurement.

<sup>128</sup> [Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.](#)

<sup>129</sup> Article 1(j) of the Law on Public Procurement provides that this law shall not apply on “financing of relevant education, health and social protection services/goods through a voucher; as well as voucher redemption and transactions relating to redemption.”

<sup>130</sup> The Law on General Education defines a voucher as “a financial instrument, which is intended to finance general education of a school pupil.” According to Article 3 (g1) of the “Law of Georgia on Health Care” a voucher is “a negotiable financial instrument in materialized and/or non-materialized form transferred by the State to a target group, which is intended to finance medical services or personal insurance.”

- Article 3(g1) of the Law on Health Care defines the voucher as “a negotiable financial instrument in materialized and/or non-materialized form transferred by the State to a target group and intended to finance medical services or personal insurance.”
- Article 2(k) of the Law on General Education defines the same term as “a financial instrument which is intended for financing general education for a pupil.”
- The term is also defined by the Tax Code only for the purposes of VAT; in this case, the voucher is considered as a means of payment, which can be used by both state and private entities.<sup>131</sup>

#### *Vouchers in the education sector*

The Law on General Education provides for basic principles of funding general education via vouchers. Article 22 defines that the studies at a general education institution shall be funded by the state through a school voucher compatible with fiscal standards per pupil. Further, the Ministry of Education and Science is entitled to fund a private school in the framework of the relevant target program/programs according to the procedure and conditions approved by the Government of Georgia. CSOs are eligible to receive such funding if they provide general education services and have completed authorization procedures.

The amounts of standard and increased school vouchers are determined taking into consideration the financial capabilities of the pupils under different conditions and observing the principles of equality for ensuring the right to receive an education.<sup>132</sup> The funds remaining from the school voucher after covering the current expenses of a general education institution may be used to cover the capital costs of the same institution.

Vocational education in Georgia is also funded through vouchers. The Government of Georgia is responsible for determining the procedure and conditions for financing vocational education, short-cycle education programs, and official language training programs.<sup>133</sup> The Government of Georgia issued Resolution #244, which defines the rules and conditions for funding vocational education and approving the maximum amounts of state-funded tuition fees for vocational education programs.

Vocational education can be financed through vouchers, program funding, and targeted program funding.<sup>134</sup> Resolution #244 further defines the conditions for reimbursement of service providers and maximum prices of vouchers, as well as the maximum prices for different stages of vocational education in the educational institutions funded by the state.

Higher education in Georgia is also funded according to the principles applied to vouchers in the spheres of general education and vocational education. In this case, the Law on Higher Education uses the term “grant,” but considering the legal implications applied to such funding, it can be considered in practice more as a voucher than a grant:

- *the study grant is allocated individually for financing the studies of a student;*
- *an individual who has received a study grant is free to choose the higher education institution from the list of the universities/institutes determined by the student in advance (the institution should be authorized and accredited in Georgia);*
- *in case the student transfers to another university, the grants are transferred to the new institution;*
- *students can use the study grant only for the purposes of receiving higher education within the country; and*

<sup>131</sup> Article 157(r) defines a voucher as “an instrument that gives rise to an obligation of a taxable person to accept it as a remuneration or part of a remuneration in return for the supply of goods/services, and the goods/services to be supplied or a potential supplier are identifiable in it or in a related document, and the conditions for using this instrument;” Article 1603 of the Tax Code defines further details associated to issuing and taxation of vouchers.

<sup>132</sup> Article 22 of the Law on General Education.

<sup>133</sup> Article 21 (h) of the Law on Vocational Education.

<sup>134</sup> Article 4 of Resolution #244.

- the Government of Georgia annually determines the rule of obtaining study grants and the total volume and maximum amounts of study grants.<sup>135</sup>

#### *Vouchers in the Healthcare Sector*

According to Article 19 of the Law on Health Care,<sup>136</sup> “Health care services for the target groups financed by the State shall be provided under the Law of Georgia on Public Procurement or through a voucher.” Personal insurance for the target groups financed by the government shall be provided by means of a voucher.

Financing of health care services or personal insurance through vouchers is not considered state procurement.<sup>137</sup>

The law further defines the general principles of voucher funding in this sector:

- “Vouchers shall be personalized; the owner of the voucher can be a person or a group of persons (family, community, among others);
- the owner of the voucher shall have the right to freely choose a service provider or an insurance company;
- the voucher conditions should include the rules for selecting potential service providers;
- respective state bodies are responsible for monetizing vouchers by transferring money to service providers, which submit vouchers;
- voucher conditions (including the selection criteria of potential service providers, the list of health care services, the price of the voucher, issues relating to the use and reimbursement of the voucher, among other areas) shall be provided for by law and/or an ordinance of the Government of Georgia.”<sup>138</sup>

The Government of Georgia has issued number of bylaws associated with the funding of various health care programs and services through vouchers. However, they do not have the direct impact on CSOs’ state funding and therefore, will not be discussed in the framework of this research.

The principles listed above serve as a foundation for voucher-based financing in the sphere of social services. Income generated through the provision of these services could potentially comprise a significant part of the revenues of Georgian CSOs and SEs, therefore, this subject will be discussed in more detail below.

#### *Vouchers in the Sphere of Social Services*

Georgian CSOs are also involved in providing social services to vulnerable people. They combine state funding and finances from international donors in order to ensure quality of their services and respond to high demand in this field.

Voucher funding in the sphere of social services is based on the Law on Health Care and the Law on Social Assistance. In addition, the Law on Competition provides for the general requirements associated with state aid. On an annual basis, the state budget of Georgia determines the general purposes of the state-funded social services and overall priorities in this sphere. The budget also determines the total volume of funding allocated for social services.

The second layer of regulations, which provide for the detailed description of social services and the rules for their implementation, is adopted by the Government of Georgia and particular ministries. The state agencies responsible for implementation also adopt numerous regulations associated with administration of social service provision.

The Government of Georgia annually adopts a resolution approving state programs on social rehabilitation and childcare and the rules of their implementation. This is the most comprehensive bylaw

<sup>135</sup> The Resolution of the Government of Georgia #220 determining the total volume and maximum amounts of study grants.

<sup>136</sup> Law on Health Care, dated December 10, 1997.

<sup>137</sup> Article 19(3) of the Law on Health Care.

<sup>138</sup> Article 19 of the Law on Health Care.

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in this sphere and includes most of the state-funded social services that Georgian CSOs provide. The content of the resolution is generally uniform, but certain sub-programs and the volume of funding changes annually.

As an example, Resolution #634 on Approving State Programs on Social Rehabilitation and Child Care for 2022 is currently in force (adopted on December 31, 2021). Two programs were approved by the Resolution: 1. State Program on Social Rehabilitation for 2022 (Annex 1 of the Resolution); and 2. State Program on Childcare and Youth Support for 2022 (Annex 2 of the Resolution).

The general purpose of the first program is to support the improvement of the physical and social condition of people with disabilities and the elderly, as well as to facilitate their social integration. The second program focuses on supporting social integration and the improvement of the physical and social condition of children with disabilities, children deprived of family care, socially vulnerable children, homeless children, and children who face the risk of abandonment.

The two programs include dozens of sub-programs that consist of different services and components. The sub-programs may involve the financing of various social services or delivery of goods to vulnerable people, or both at the same time. The Resolution specifies that the mechanisms established under the Law on Public Procurement or vouchers can be used for funding social services (and delivery of goods) for the beneficiaries. However, the resolution provides for the use of vouchers in most cases. There are two types of vouchers: materialized and non-materialized vouchers.

Organizations providing voucher-based services are required to undergo registration, which is carried out by either the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health, and Social Affairs of Georgia (hereinafter - the Ministry of Health) or the Agency for State Care and Assistance for the (statutory) Victims of Human Trafficking (hereinafter – the State Care Agency (SCA)), depending on the specific sub-program. The registration authorities are entitled to cancel the registration if a provider fails to comply with the requirements established prior to the registration or the conditions established for particular services.

The Ministry of Health is responsible for the overall oversight and monitoring of the services mentioned above. The SCA is responsible for implementing the sub-programs and components of these state programs. Additionally, the SCA is also in charge of the detailed supervision and oversight of the requirements and conditions associated with specific sub-programs and components (if the functions of the program implementation are devolved to other entity that is in charge of oversight).

The functions related to supervision and oversight involve the following:

1. checking the compliance of the provided services (or goods) with the requirements set out by the program, sub-programs, or components (checking quality, volume, characteristics, criteria, among other areas); and
2. comparing the documentation and information submitted by service provider with the information and documentation evidencing fulfilment of obligations.

According to Resolution #634, the SCA typically makes decisions on the enrollment of beneficiaries in the specific programs. In case the function of the program implementation is devolved, the admission procedures are carried out by the relevant entity. In some instances, the decision on the admission is made by the special commission created within the SCA (there are several sub-programs where the commission is in charge). This function is devolved to regional councils in case the sub-program provides small family-type facilities for children (including specialized facilities). For some components, there is a requirement that social workers conduct an evaluation and provide an expert opinion before the decisions on the enrollment are made (e.g., for a sub-program on providing food products to young people who have left state care facilities).

The government resolution (in this case, Resolution #634) does not establish procedures for civic engagement or CSOs' participation in the decision-making process. Such approach raises concerns regarding the transparency and fairness of the decisions. CSOs and citizens are also not involved in the oversight and evaluation of the services. As a result, the practice of social funding, selection



procedures, and the process of social service provision remain one of the least transparent areas of governance in Georgia.

The general criteria of target groups for each sub-program (or component) are also included in the resolution. Some sub-programs describe the detailed criteria for selecting beneficiaries, such as age, level of disability, status of socially vulnerable family, living conditions, among other areas. In some components, there is also a list of specific health conditions that serve as a precondition for enrollment.

Further, for some sub-programs (or components), the maximum number of beneficiaries is set according to the regions of Georgia. Resolution #634 also imposes limits on the total number of beneficiaries of specific sub-programs. For some services, such as daycare services for children with disabilities, the limits apply on both aspects.

In practice, these limits can create problems for provider organizations, as the number of the potential beneficiaries may exceed the maximum limits established under the resolution. In such cases, provider organizations have to search for other funding sources to deliver services to the remaining beneficiaries.

It is worth mentioning that the resolution classifies the assistance and services provided within the programs as “state aid.” Consequently, such services do not fall under the restrictions established by the Law on Public Procurement and the Law on Competition. However, the latter law establishes some preconditions for providing state aid.<sup>139</sup>

The resolution also specifies the voucher price ranges and rules for each sub-program (component). For example, the regulation defines that the amount of remuneration for providing daycare services for children with disabilities is 378 GEL/month per beneficiary, but this amount can be reduced if a beneficiary is absent from the services for 12 days or more within a month. In case of this service, the amount to be reimbursed via the voucher will be calculated by multiplying the number of days of received services by 18 GEL. In some instances, the resolution determines the maximum prices for goods or services to be provided under the specific sub-programs (or components).

Some sub-programs or components also utilize different methods for defining voucher prices. For example, organizations providing sign-language interpreter services to the deaf are required to submit the information about beneficiaries, the volume of rendered services, and actual expenses to the SCA.

With some exceptions, the resolution defines exact or maximum prices for vouchers of those sub-programs (components) that are funded through materialized vouchers. Materialized vouchers are given personally to beneficiaries or their legal representatives, who are free to choose service providers (however, sometimes there is a requirement that the potential service providers operate in the specific city or region). The service providers submit vouchers paid by the beneficiaries to the SCA within the timeframe defined in advance. The SCA then monetizes the vouchers by transferring funds to the providers.

In case of non-materialized vouchers, services are usually reimbursed according to actual performance or actual costs. The rules established for the sub-program on providing services of sign language interpreters is a good example of this method of reimbursement. Another example is the rehabilitation services for war veterans. In this case, providers receive reimbursement according to the prices of medical procedures delivered to the beneficiaries, but no more than 300 GEL per benefi-

<sup>139</sup> Article 12 (1) of the Law on Competition states that “State aid for a specific type of activity in a form that hinders competition or endangers it shall be prohibited, except for the exceptions provided for by paragraph 2 of this article.” According to the article 12(2) State aid without the consent of the Competition Agency shall be permissible if: **a) state aid is granted to individual consumers as a social allowance, provided that the aid does not lead to the discrimination against the producer of the relevant goods/services;** b) state aid is intended to eliminate the consequences of natural disasters and force-majeure events; c) state aid is intended to carry out environmental protection activities; d) state aid is intended to exercise the rights or fulfil the obligations stipulated under the relevant legislative act of Georgia or an international agreement to which Georgia is a party; **e) state aid is granted in an insignificant amount in the form of individual state aid. The insignificant amount of individual state aid shall be determined by an ordinance of the Government of Georgia;** f) state aid is intended to implement an important state project, and if the Government of Georgia has made a decision in this respect.

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ciary. The rules related to voucher redemption and service reimbursement depend on the types of vouchers, character of provided services, and other aspects of specific sub-programs.

As for the non-materialized vouchers, service providers are required to periodically submit information regarding delivered services (the content of this information varies between different programs) to the SCA (in most cases) within the specified periods. The SCA calculates the amount to be reimbursed according to the submitted information and transfers funds to the service providers.

The resolution also defines slightly different methods of reimbursement for some services that are funded via non-materialized vouchers. The rules established for the sub-programs that involve services of multi-functional teams is a good example of this method. In these cases, the fixed amount is allocated on a monthly basis for such teams. One example is a sub-program that provides shelters for homeless children and involves multifunctional team visits (a psychologist, a peer-educator, and a driver). Each month, 4,000 GEL is allocated for each multifunctional team.

In practice, the vouchers do not provide sufficient financing to cover the minimum costs for providing the specific services for which they are provided. All organizations interviewed by the Assessment team reported that they have to find additional financing sources to be able to provide the voucher-funded services to beneficiaries.

Another important aspect is that vouchers can be cancelled by the program implementers. Beneficiaries also have the right to change service providers. Due to these nuances, CSO income from voucher funding often varies and can be unreliable. Most sub-programs define specific time limits for utilizing vouchers, the validity of which can be cancelled if beneficiaries exceed the established deadline. For example, in case of the sub-program on providing food products for young people (aged 18-21) who have left state facilities, the vouchers must be used within 20 days from the date of their receipt. The resolution also establishes the general requirements and criteria for each service and component, such as duration of services, their quality requirements, and specific activities included in the provided services. For some components, the resolution describes criteria for specialists and experts to be involved, while in other cases, the characteristics of goods to be provided are also defined in advance.

In accordance with the resolution, program implementers may introduce additional rules and requirements for services they administer. In practice, the SCA (and other program implementers) have issued dozens of bylaws related to the sub-programs included in this resolution.

Hence, the rules of voucher financing differ from sector to sector. There are different legislative foundations for voucher-based financing in the sphere of education, health care, and social services. The central government is limited to use vouchers only in these sectors, as there is no uniform and centralized regulation that would allow state institutions to use vouchers as a general funding tool. However, voucher-based services in the mentioned sectors are exempt from the formal requirements of the Law on Public Procurement.

Further, the rules of voucher financing are not always uniform even within a particular sector, as the government, ministries, and implementing agencies have adopted dozens of bylaws related to different voucher-based services.

#### *Vouchers at the Local Level*

The central legislation governing the powers of municipal authorities does not contain provisions allowing local governments to use vouchers as a tool for funding CSOs. Further, it is not clear whether the exemptions from the state procurement procedures established for certain types of services apply to local authorities. The fact that the term “voucher” is not defined in the Law on Public Procurement creates additional ambiguity for local authorities. Considering that state and local governments can only exercise powers conferred to them by law, the lack of relevant regulations jeopardizes the legitimacy of voucher funding at the local level as well as in some sectors of central governance.

On the other hand, in practice, local governments widely use vouchers for funding social and health-care services. Some municipalities, such as Tbilisi, use vouchers for financing early and pre-school

education services, but these vouchers can be used only in the state kindergartens established by the specific municipalities.<sup>140</sup>

As there are no centralized regulations for providing voucher-based funding at the local government level, the relevant normative acts adopted at municipal levels often differ from each other. However, municipalities usually preserve the principles used by the legislation associated with voucher funding at the central level. Based on anecdotal evidence, there is also a trend of adapting relevant regulations adopted by Tbilisi City Council into the context of other municipalities (regulations adopted by the capital city government is used as a sample).

Despite the differences in the content, there are some basic principles that are common for almost all municipal regulations governing voucher-based funding at the local level. The structure and architecture of the relevant regulations are nearly identical across municipalities:

First, local authorities adopt municipal budgets, where they describe overall goals and the scope of the relevant social programs, the general criteria of target groups and beneficiaries, and the total volume of funds allocated for each program (in some cases, the total number of potential beneficiaries is also specified).

After that, municipal councils adopt specific rules (normative acts) on implementation of the programs included in the budget. Such rules usually include the detailed description of program outputs, the explanation of the anticipated services and specific activities included in the services, criteria of beneficiaries and the rules for their admission, entities in charge of supervision, monitoring, and administration, among other areas.

According to research conducted by Irakli Mkheidze in 2018, the rules of decision-making usually define who makes the decisions on the admission of beneficiaries, how beneficiaries are selected, documentation and application requirements, among other areas.<sup>141</sup> In most cases, structural divisions of city administrations or mayors make the decisions unilaterally. However, some municipalities have established special commissions, advisory boards, social councils, and other bodies for making decisions on the enrollment of beneficiaries. CSO representatives, members of the general public, sectorial professionals, and other invited experts are usually involved on voluntary basis in such decision-making bodies.<sup>142</sup>

The normative acts adopted by the municipalities also determine the criteria for provider organizations, as well as the procedures for their registration. Some municipalities have introduced the requirement that potential providers of certain services must operate within the territory of the municipality.<sup>143</sup> Other criteria established for providers depend on the content of services to be provided. Some regulations also include reporting rules for service provider organizations.

Other important aspects included in such regulations are:

1. The amount to be provided for each beneficiary/or for certain services (or price of a voucher); and
2. rules for remuneration of service provider organizations (relevant procedures and the rules of calculation).

According to Irakli Mkheidze's research, several municipalities have established transparent and fair procedures for funding social services via vouchers, but in most cases, decisions are made by municipal bodies unilaterally.<sup>144</sup> Different municipalities use various models, but the main char-

<sup>140</sup> [Resolution #25-101 of the Tbilisi City Municipal Assembly \(dated October 2, 2015\)](#)

<sup>141</sup> Mkheidze, Irakli (2018). [Guidebook for the Public Servants of Local Self-Governments: The Mechanisms for Cooperation between the Public Sector and Non-Entrepreneurial Legal Entities at the Local Level in the Field of Social Services.](#)

<sup>142</sup> Ibid.

<sup>143</sup> Article 9 of the Rule on Implementation of the Sub-Programs : "Free Tuition at the Student-Youth Palace and Homes" and "Free Tuition in Art Houses," approved by [Resolution #5-14 of Tbilisi City Municipal Assembly, dated December 29, 2021.](#)

<sup>144</sup> Mkheidze, Irakli (2018). [Guidebook for the Public Servants of Local Self-Governments: The Mechanisms for Cooperation between the Public Sector and Non-Entrepreneurial Legal Entities at the Local Level in the Field of Social Services.](#)

acteristics of the voucher funding is that the beneficiaries are generally free to choose the service provider organizations.

As the central legislation does not prescribe the standard model for voucher-based funding at the municipal level, in most cases, the relevant municipal regulations do not provide for transparent procedures. Therefore, they allow for biased and unilateral decisions; sometimes such regulations give unfair preferences to certain service provider organizations, while beneficiaries may be restricted from accessing all service providers. One of the major problems is that unfair procedures and lack of funding can prevent beneficiaries from receiving necessary services.

#### Public-private partnership (PPP)

The Law on PPP creates opportunities for private entities (including CSOs) to carry out joint projects with state authorities. The law defines two main types of PPPs:

- **a non-concessional PPP** – *“a public-private partnership in which a contractor, on the basis of a non-concessional public-private partnership, receives remuneration from a state partner for the provision of a state service and/or state infrastructure, and which, at the same time, is not a concession according to this Law;”*<sup>145</sup> and
- **a concession** – *“a public-private partnership, during which a concessionaire, on the basis of a concession agreement, directly or indirectly receives remuneration from an end user, or a state partner and an end user, in exchange for a state service rendered by the concessionaire, and within which the concessionaire takes important operational risks including the risks of demand and/or the risks of delivery.”*<sup>146</sup>

The main difference between these two types of PPPs is whether the price for the state service provided is paid by a state entity or by the user of the service itself. Article 28 of the law provides the methods through which a state partner can provide support to a private partner, such as through *“grants and/or subsidies aimed at covering certain costs and returns on investments made in accordance with the procedure and in the cases provided for by the Government of Georgia, including grants in-kind.”*<sup>147</sup>

The criteria for a PPP include:

- “a) duration - the minimum term of a public-private partnership agreement shall be determined by a legal act of the Government of Georgia, but shall not be less than five years;*
- b) cost - the cost of a public-private partnership project before 1 July 2020 shall be no less than 5,000,000 GEL,<sup>148</sup> and the minimum term of a public-private partnership project from 1 July 2020 shall be determined by a legal act of the Government of Georgia;*
- c) the provision of a state service or the establishment and maintenance and/or operation and/or maintenance of state infrastructure by a private partner;*
- d) the distribution of risks between public and private partners;*
- e) the full or partial financing of a public-private partnership project by a private partner.”*<sup>149</sup>

Two important criteria are relevant for CSO state funding - first, PPPs are primarily oriented towards large-scale projects, although the law allows for small projects. The second and more important point is that the private partner will partially or fully cover the cost of the PPP project, so this mechanism cannot be considered a viable source of state funding for most CSOs.

<sup>145</sup> Article 2(a) of the Law on PPP.

<sup>146</sup> Article 2(j) of the Law on PPP.

<sup>147</sup> Article 28(1)(e) of the Law on PPP.

<sup>148</sup> The Government of Georgia has adopted Resolution #2133 (dated October 29, 2020) on defining minimal price for the projects of PPPs. According to the Resolution, the minimal price defined is 5,000,000 GEL.

<sup>149</sup> Article 4 of the Law on PPP.

### State aid

State aid is another instrument that could potentially be used to provide state funding to CSOs. The Law on Competition regulates how institutions can provide assistance to individuals and legal entities in the form of state aid. State aid is defined as “*tax exemptions, tax reductions or tax deferrals, debt relief, debt restructuring, granting loans on favorable terms, transfer of operating assets, monetary assistance, granting of profit guarantees, privileges, or other exclusive rights.*”<sup>150</sup>

However, the objective of the law is to protect free and fair competition, as state aid is seen as an instrument that distorts competition. Therefore, the law specifically clarifies the cases in which state aid can be provided. Article 12 (1) prohibits state aid except for the cases that are specifically listed in the law, including:

- “a) state aid is granted to individual consumers as a social allowance, provided that the aid does not lead to the discrimination against the producer of the relevant goods/services; b) state aid is intended to eliminate the consequences of natural disasters and force-majeure events;*
- c) state aid is intended to carry out environmental protection activities;*
- d) state aid is intended to exercise the rights or fulfill the obligations stipulated under the relevant legislative act of Georgia or an international agreement to which Georgia is a party;*
- e) state aid is granted in an insignificant amount in the form of individual state aid. The insignificant amount of individual state aid shall be determined by an ordinance of the Government of Georgia;*
- f) state aid is intended to implement an important state project, and if the Government of Georgia has made a decision in this respect.”*<sup>151</sup>

The law applies to “economic agents,” which includes only NNLEs or other organizations that carry out economic activities.<sup>152</sup> Therefore, CSOs are eligible for benefits from state aid. It should be noted that vouchers are classified as state aid in most cases.

Most importantly, the mechanism of the state aid defined by the law cannot be considered as an independent tool of funding. Instead, it is a classification rather than an instrument. State institutions can use the state aid if sectorial or thematic laws allow them to do so. For example, the annual resolution approving state programs on Social Rehabilitation and Child Care states that voucher funding is classified as state aid for the purposes of these programs. Some services established under the Law on Social Assistance can also be considered a form of state aid.

### Municipality funding

Another important component of state funding is the possibility for municipalities to provide funding to CSOs. Under current relevant legislation for municipalities - Organic Law of Georgia, the Local Self-Government Code, and the Law on Grants - they are not mentioned as entities that can issue grants. To overcome this exclusion from the granting mechanism, municipalities use other instruments such as state procurement, program financing, voucher system, and subsidies on social issues, education, sports, ecology, among other areas. Another option is to establish a municipal CSO, which can issue grants. However, most municipalities refrain from using this instrument since the legislation related to the dispersal of budget (state) funds does not prohibit, but it also does not explicitly allow, municipalities or legal entities established by them to allocate the funds in the form of grants.<sup>153</sup>

Municipalities most frequently use program funding to finance CSOs and service provider organizations.<sup>154</sup> However, this mechanism is considered less transparent. In addition, CSOs are not able

<sup>150</sup> Article 3(r) of the Law on Competition.

<sup>151</sup> Article 12 (2) of the Law on Competition.

<sup>152</sup> Article 3(a) of the Law on Competition.

<sup>153</sup> Natsvlishvili, Vakhtang, Vazha Salamadze, Levan Paniashvili, Mariam Latsabidze, Irakli Melashvili, Natia Apkhazava, Ia Gabunia (2018). Civil Society Organizations' State Funding Reform Policy Paper, CSI.

<sup>154</sup> Salamadze, Vazha, Levan Paniashvili, Giorgi Avazashvili, Natia Apkhazava (2017). [State Funding Mechanisms for Civil Society Organizations in Georgia, a study \(legislation and practice\)](#), pages 59-95, 99-101.



to use the tax benefits available for grants with this type of funding. On the other hand, the central legislative framework does not clearly provide municipalities with clear legal foundations to use the “program funding” as an instrument for funding CSOs directly. Despite the fact, this mechanism is frequently used by all municipalities.<sup>155</sup>

The mechanism is called the “program funding” because the respective programs of municipal budgets either directly define the recipient organizations or they define that the funds will be transferred to certain types of organizations for fulfilling the specific functions included in the competencies of local government. In addition, the programs stipulated in the budgets are the only legal bases that enable municipal authorities to use this method as funding tool. While municipalities cannot exceed the competences conferred to them by the local self-government code, program funding allows for the implementation of these competences.

In practice, municipalities allocate the necessary funds in local budgets, narrative sections of which usually include general purposes and the scope of the corresponding programs. Local authorities usually adopt bylaws on the rules for implementation of such programs, which include the detailed procedures of funding, description of services, criteria for target groups, program administration rules, reporting requirements, among other areas.<sup>156</sup>

Some municipalities use the programs to directly define the recipient organizations. For example, the budget of Ozurgeti Municipality includes a program that transfers 150 GEL per beneficiary on monthly basis to a particular organization that provides social shelter and day-care services to vulnerable children. Kutaisi Municipality directly funds services carried out by “Caritas Georgia” and Red Cross Georgia. The budget of Tbilisi Municipality includes a program that enables creative industries to participate in the municipal contest and receive funding for projects carried out in the spheres of design, craftsmanship, and visual arts. The budget of Gori Municipality defines that organizations that operate within the territory of Gori and carry out social or welfare projects supporting the vulnerable people can apply to the City Administration for co-funding.

Some municipalities, including Tbilisi, Gori, Bolnisi, and Zugdidi, have established special commissions for making decisions on financing or co-financing CSOs’ initiatives.<sup>157</sup> In these cases, CSOs submit applications to the commissions, which make decisions based on the rules and criteria described in the narrative budget and special bylaws adopted by local councils.

The practice of program financing is quite supportive for CSOs, but it lacks a legal basis in Georgian legislation. There are no clear provisions in the legislation that entitle local authorities to use the described mechanism for financing CSOs. Some lawyers point out that such practice contradicts the Law on Public Procurement. Due to lack of clarity on the regulations, some local authorities refrain from using this mechanism. Another problem is that there are no unified standards of transparency and accountability when municipalities use this mechanism. Therefore, there are risks of corruption and biased decisions. The practice also lacks the participation of citizens and CSOs in the decision-making procedures. Legislative changes are needed to tackle these problems and provide municipalities with the clear legal bases for using program funding.

### Subsidies

Although Georgian legislation defines the rules for distributing subsidies in specific areas, the definition of the term is not always uniform.<sup>158</sup> The Law on Competition previously included the definition of a “subsidy,” but it was removed after the adoption of new amendments to the law in September 2020.<sup>159</sup> Further, there are no unified and transparent rules for using subsidies as a funding instru-

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*, pages 64-73, 76-79, 80-84, 86-89, 92-93.

<sup>157</sup> *Ibid.*, page 65.

<sup>158</sup> Article 28(1)(e) of the Law on PPP, the Law on Facilitating Employment, the Law on Culture.

<sup>159</sup> The definition of a subsidy and state aid was the same.

ment. The lack of clear procedures and transparency creates risks for corruption and biased decisions. Municipalities also lack the legal authority to provide subsidies to CSOs.

At the national level, the state budget includes a few programs that determine the recipient of state funding in advance, but examples are limited and it is unclear whether funding in those cases are provided as subsidies.

However, different ministries directly fund various organizations, such as sports federations, theaters established under private law, among others, but the state budget does not specify them. Based on specific laws, the ministry responsible for implementing this program is entitled to directly fund specific federations. For example, the Law on Sports allows the Ministry of Culture, Sports, and Youth to fund sport federations and sport organizations directly. In particular, Article 23(3) of this law states that the ministry is entitled to “distribute” state funds in the sphere of sports based on the proposals received from sport organizations, which may include NNLEs, federations, and even private entities.

Other ministries use the same method to directly fund various sectorial organizations. In most cases, it is very difficult to track such funding, because the narrative part of the programs included in the state budget is very broad and general. If someone wants detailed information on the spending of a particular ministry, he/she needs to file a formal informational request with the government. In some cases, ministries refuse to provide such state information. Some watchdog organizations, such as Transparency International Georgia, point out that the lack of transparency, accountability, and deficiencies in legislation create risks of corruption associated with subsidies in some sectors.

According to CSI’s 2017 study of state funding mechanisms for CSOs in Georgia, there are four main focus areas for municipalities to provide subsidies to NNLEs for expense reimbursement:

- 1) direct support of organizations assisting various vulnerable groups (financing utility costs, administrative expenditures, transportation, and food costs);
- 2) supporting needs of dioceses and the NNLEs they established;
- 3) supporting the participation of athletes in different sports events and subsidizing various events organized by sport federations; and
- 4) subsidizing literature publishing houses and the periodicals; local authorities stipulate the relevant subsidies in the municipal budgets on the basis of the applications from particular organizations, taking into account the local needs and necessities.<sup>160</sup>

Although the mechanism of providing state subsidies has the potential to become significant source of income for Georgian CSOs, the lack of relevant legislation, absence of standards for transparency and accountability of relevant decision-making procedures, lack of clarity in regulations, and the sporadic and variable character of the relevant practice hinders the development of this instrument.

### ***c) List of identified opportunities and problematic issues***

CSOs are able to access most state funding mechanisms (grants, procurement, vouchers). There is legal basis for providing state grants to CSOs under the Law on Grants, so many of the problems can be resolved by educating more state institutions on the benefits of using this mechanism, particularly to promote increasing the amount of funding available to CSOs. More importantly, there is already a significant amount of research and specific proposals for legislative or other changes relating to state grants. Further, there is an existing group of CSOs (led by CSI) that actively advocate for reform of state grants for CSOs. The Assessment team believes that these organizations are well-positioned to address the problems in the area of state funding, including:

<sup>160</sup> Paniashvili, Levan, Giorgi Avazashvili, Natia Apkhazava, Vazha Salamadze (2017). State Funding Mechanisms for Civil Society Organizations in Georgia. Research (legislation and practice). CSI, page 61.

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#### State grants:

- There is insufficient annual funding for CSOs and a lack of consistency in the amount of funding allocated to CSOs annually. State funding is provided in a limited number of fields and to a small number of CSOs.
- Municipalities are not listed among the entities allocating grants for CSOs.
- CSOs should be eligible to receive support under the programs of various state-established funds such as Enterprise Georgia.

#### State procurement:

- CSOs are not well-positioned to compete with businesses in state procurement, since many of them do not have sufficient resources and do not qualify to obtain bank guarantees or collateral to meet the requirements for state procurement bidders.

#### Vouchers:

- The regulation of the different types of vouchers varies across sectors.
- The number and price of vouchers is not sufficient to cover the needs and the costs of providing the respective social services. CSOs often need to secure an alternative source of funding to supplement the voucher and provide services to beneficiaries.

#### Other mechanisms and general problems:

- There is a lack of legislation for a standardized and transparent procedure across different bodies that provide funding under the different mechanisms, including municipalities.
- Program funding needs more clear legislation and practice.
- There is a lack of transparency and availability of information on state funding for CSOs.
- There is no unified state platform for accessing comprehensive information about state funding opportunities.

## C. RECOMMENDATIONS AND NEXT STEPS

### a) Recommendations

#### General

- Carry out research of CSOs in Georgia to identify the quantitative and qualitative parameters of the sector, its impact on economy and society, including but not limited to employment and social sectors to serve as a tool to inform the public and the Georgian government, to promote reforms and to improve public image and trust of CSOs with people.
- Since foreign funding remains the primary source of funding for many CSOs, it would be important to conduct a consultation with foreign funders to encourage support of CSO financial sustainability when funding projects. This may be done in various ways, such as providing a separate budget line (as part of direct costs) for covering costs related to fundraising from alternative sources; providing preferences for projects with cost share from non-foreign funded sources, among others.
- Discuss with stakeholders how to make charitable status more desirable to CSOs, such as by introducing additional benefits for charitable organizations, and/or simplifying requirements for charitable organizations. Beyond discussion of changes to the legal framework for charities, if audits for charities and other requirements are true impediments for the operation of charitable organizations, consider providing legal assistance, accounting, tax advice and other services to charitable organizations. For example, this could include setting up a resource center to support charitable organizations (and/or the wider CSO sector) in meeting legal requirements.
- In discussions with stakeholders, identify new benefits that may be granted to a broader circle of CSOs (beyond charitable organizations) encouraging them to utilize local sources of funding. Many European countries, as well as the US, provide broad tax incentives to CSOs.
- An important precondition to increasing giving to CSOs is the need to increase public trust in and knowledge of CSOs. There are various ways to do so, but a few ideas that emerged as relevant to this Assessment are listed that could be discussed further with funders and CSOs:
  - support CSO capacity-building for communication and engagement with their constituents;
  - promote transparency of CSOs, including consultation with other funders to invest in creative efforts of CSOs to increase transparency;
  - informational campaign in mass media about CSOs' good work and how to support them; and
  - reexamine self-governing mechanisms in the CSO community, where CSOs voluntarily unite and set public transparency rules for themselves.
- It is important for CSOs to engage in the ongoing initiative by stakeholders (lawyers, businesses, experts) to develop a joint strategy on addressing the potentially damaging provisions in the new Law on Entrepreneurs. According to available information, a group of stakeholders is discussing possible amendments to the Law on Entrepreneurs. However, CSOs' interests need to be considered in the development of such initiatives. Local stakeholders, with active participation from CSO community, should decide which strategies are the most effective for defending their rights under this new legislation. Potential strategies might include:

- repealing certain provisions (specifically the provisions allowing to liquidate public associations if they fail to amend bylaws to comply with the new law), as contradictory to the Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations;
  - testing such certain provisions in the courts (i.e., the courts shall prioritize organic law provisions over those in other laws);
  - preparing commentary explaining certain provisions of the new law; and
  - requesting further interpretation of new provisions by authorized government agencies, amongst others.
- Discuss increasing the threshold on income not subject to income tax for individuals (increase the current 1,000 GEL/year) to discuss a full exemption from income tax of gifts from charitable organizations.
  - Currently, the relations between the government and the CSO sector are poor and a number of initiatives aiming to improve cooperation are stalled. Examples include the Concept for CSO Development, which was discussed in the Parliament in 2018, as well as the Open Government Partnership Action Plan. It is important to identify areas to rebuild trust and establish communication and cooperation between CSOs and the government, such as potential joint work to develop and adopt the Concept for CSO Development.
  - Identify leaders in the CSO community capable and interested in leading efforts in specific thematic areas related to financial sustainability.
  - Initiate a discussion amongst stakeholders about various mechanisms of stimulating corporate and individual philanthropy or financial sustainability based on experience of other countries and practices in Georgia, such as the percentage designation mechanism.

#### Corporate and Individual Philanthropy

- Engage in public discussion about the future of philanthropy and the ways to support it. As a result of this discussion, CSOs and the government should develop a joint policy for promoting/stimulating philanthropy, to be adopted by the government.
- Improve CSO understanding and increase their skills and capacity in fundraising from individual and corporate donors. Therefore, practical materials should be developed explaining how to make donations/gifts to CSOs and to charitable organizations, and how companies can take full advantage of existing tax exemptions when providing support to charitable organizations. These can include guidelines, Q&A documents, promotional TV programs, articles in mass media, among others. CSOs should learn how to generate support from individuals in a simple way, using examples from successful organizations such as Charte, Knowledge Café, and others. With regard to engaging with the business sector, possible activities could include organizing events where CSOs can pitch their ideas to businesses, trainings for communication with businesses, among others.
- During the KIIs, the Assessment team did not identify an organization or a coalition that is systematically working to promote philanthropy in Georgia. Identification and support for such an organization/s could be an important step to engage strategically in improving the environment for philanthropy in Georgia. Such an organization/coalition could start systematic efforts for promoting philanthropy, advocating for a supportive environment, and increasing the capacity of CSOs.
- Create new mechanisms for raising funds from individuals, such as advocating with mobile operators to introduce charitable numbers and reducing their fees; working with banks to reduce their fees on collecting donations, among others.
- Work with businesses and inform them about employee opportunities to contribute to charitable causes, such as withholding a portion of salaries for donation to charitable organizations or



helping employees interact with and support CSOs of their choice or working with businesses to explore different ways how that may incentivize their customers to donate to CSOs (for example, rounding up microdonations).

- Discuss changes to the tax framework for philanthropy and CSOs including:
  - the introduction of tax benefits for individual donors;
  - potentially expanding the existing tax exemption for corporate donors to a broader range of CSOs, such as those that carry out activities in the areas defined in the definition of “charitable activity” in the Tax Code;
  - consider the possibility to include registered charitable organizations, in addition to the state, as recipients of donations whose input VAT can be reclaimed;
  - provide exemption from VAT for certain charitable fundraising activities, such as charitable concerts, sale of donated goods, charitable auctions, among others.

#### Peculiarities of specific fundraising methods

- Further promote the use of various fundraising methods, including crowdfunding platforms and provide guidance to CSOs how they can benefit from them.
- Simplify the process of obtaining a number for SMS donations and charitable calls. One solution could be to facilitate signing an internal agreement between the telecommunication companies in which they recognize each other’s charitable numbers. Another option is to consider creating single charitable SMS numbers to be used for donation campaigns.
- Simplify the process of payroll giving and promote it to the business and government sectors.
- Conduct further research and provide clear guidance to CSOs whether organizing charitable events with prizes qualify or fall outside of the Law on Organizing Lotteries, Games of Chance, and Other Prize Games. Changes to legislation might be necessary.
- In some countries, banks offer the possibility to open transparent accounts to CSOs and others who wish to disclose information about the transactions in their account.<sup>161</sup> Banks in Georgia could also consider providing such packages to interested CSOs.
- Explore the potential of using the “rounding up” mechanism for fundraising from businesses.

#### State funding

State funding needs to be reformed to ensure funds are allocated in a transparent manner and in support of the CSO sector. As this is a complex endeavor that touches upon numerous processes and institutions, some of the following steps can be undertaken by the government:

- Adopt the drafted amendments on the Law on Grants to include the key principles of a transparent grant-making process, including the stages of the process, criteria for evaluation, the process of evaluation (including who will evaluate the proposals), independence from political influence, among other areas. It should not include excessive details that should be part of a separate law or regulation. The amendments should also include municipalities as institutions that are eligible to distribute grants as part of the Law on Grants.
- Create legal foundations in the central legislation defining program financing, so that municipalities are authorized to fund CSOs directly according to a competitive, transparent, and unbiased procedures adopted at the local level.
- Open discussion with CSOs on funding priorities and their needs and consider revising the list of institutions that distribute funds.

<sup>161</sup> For example, Slovenska in Slovakia: <https://www.slsp.sk/sk/vans/ucty/transparentny-ucet>, Fio Banka in Czechia: <https://www.fio.cz/bank-ser-vices/bank-accounts/transparent-account>

- Develop unified electronic platform where information from all institutions related to state grant support for CSOs will be available and timely updated.
- Establish unified, clear, and transparent procedures for providing subsidies.
- Engage in discussion with the government on the need to improve the system of financing services through vouchers, including increasing the budget for vouchers, which currently does not cover the full cost of most services.

#### Economic activity and social entrepreneurship

- Conduct a broad awareness-raising campaign to allow CSOs to learn about new incentives to carry out economic activity, as well as to learn about existing successful practices from other CSOs.
- Review existing available written resources, such as FAQs and guides regarding the taxation of CSOs, and promote such resources; if such guidelines do not exist yet, develop guidelines for CSOs with the engagement of accountants, tax experts, and lawyers, explaining to CSOs how to carry out, account for, and report on various ways of conduct of economic activities.
- Review existing implementing regulations and instructions adopted by the SRS relating to taxation of CSOs; if certain issues of concern for CSOs are not addressed, reach out to the SRS with the request to develop additional regulations and instructions to address relevant CSO-related issues.
- Depending on the results of assessing the needs of targeted CSOs interested in carrying out economic activities, provide them with access to consultations by lawyers, accountants, and tax experts.
- Provide technical support to CSOs so they are comfortable requesting consultations and seeking interpretation of unclear provisions in the law from the SRS officials using consultations mechanisms available to all taxpayers under the Tax Code.
- Facilitate consultations amongst donors and CSOs regarding the most effective incentives and support to be provided by donors to CSOs to enable the latter to engage in economic activities and other income generating activities.
- Conduct training for tax inspectors and auditors to ensure that they have a unified understanding of tax provisions relating to accounting and taxation of income and expenditures relating to economic activities.
- Provide CSOs interested in carrying out economic activities with professional training from business consultants, similar to trainings provided to businesses and entrepreneurs.
- Support mentoring of interested CSOs by businesses and other successful CSOs.
- While conducting consultations with the SRS, review if there is inconsistent understanding of the term “auxiliary” economic activities; if so, request a clarification.
- Hold consultations with CSOs to identify if there is a need to advocate for VAT tax exclusions for new types of services that currently lack exclusions and might be relevant to CSOs (for example, relating to provision of social services under government contracts).
- Continue to support initiatives to improve ecosystem for SEs. However, considering existing initiatives to improve legal framework for SEs and available support for such initiatives, the Assessment team recommends for CSEP not to prioritize SE as a separate area, but rather focus on improving the legal framework for CSO entrepreneurial/economic activities.
- Discuss the possibility to apply the same tax treatment of dividends received by CSOs as for companies.

#### Volunteering

- Engage in discussions with the government and CSOs on the most effective ways to promote and

incentivize volunteering, employing comparative law and practice experience. This process may result in a government policy providing a road map for support of volunteering and law reform.

- Carry out awareness campaigns for CSOs on the benefits of hosting volunteers and about the relevant legislation and practice.
- Engage in the planned work of the Council of the Youth Agency on revising the Law on Volunteering to ensure that the amendments address all existing practical problems and there are incentives for engaging volunteers.
- Review the Tax Code and propose amendments to address the issue with covering expenses relating to volunteering as a taxable income; support advocacy relating to the legislative change.

## **b) Suggested list of priority areas**

CSEP aims to support, rather than duplicate, existing efforts to promote CSO financial sustainability. Therefore, as part of the Assessment, the team tried to map existing efforts, including key stakeholders that are engaged in advocating for a better environment for CSO financial sustainability and the availability of funding to support such initiatives.

As a result of the preliminary Assessment, the team identified the following areas as priority areas for further research, engagement in advocacy and development of capacity:

- CSO economic activity
- Philanthropy

There are also several priorities related to CSO financial sustainability that require more in-depth discussion and concurrence on the way forward:

- The need to engage in a discussion on how to make charitable status a working mechanism that brings more benefits for CSOs. In addition, there is a need to decide if the benefits for donors (both individual and corporate) should be linked to the status or should be available to a larger segment of CSOs.
- The need to engage in a discussion with CSO social service providers to discuss potential reforms to the voucher system (and more generally, to the system of social service provision), considering that the system is currently heavily under-financed.
- The need to inform CSOs on the use of various fundraising mechanisms, especially with the use of technology, provide them with practical guidance and technical assistance (by lawyers, accountants, PR consultants).
- The need for a discussion on new innovative mechanisms that may be appropriate in Georgia, based on international practice. For example, this could include “percentage designation” legislation and establishment of endowments.<sup>162</sup>

Regardless of the areas where follow up work and advocacy is necessary, it is important to ensure that all efforts are inclusive and various CSOs have the opportunity to participate.

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<sup>162</sup> The percentage designation is a mechanism through which taxpayers (mostly individual taxpayers, although in Slovakia this option is open to companies as well) request the government to transfer a certain percentage (usually 1-2%) of the taxes they pay to a specific CSO of their choice. This is not a donation, as the transferred funds are part of the taxes owed to the government.

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