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## ***Letter from the Editor***

This issue of the *International Journal of Not-for-Profit Law* features a special section on the Middle East. First, **Hoshyar Salam Malo**, director of Kurdish Human Rights Watch, analyzes and contrasts two civil society bills submitted to the Iraqi Council of Representatives. Next, **Nadine H. Abdalla**, Research Assistant at the Al Ahram Center for Political and Strategic Studies in Cairo, considers civil society and democratization in Egypt, with a skeptical eye on the approach adopted by the West. A different perspective on Egypt comes from **James G. McGann**, assistant director of the International Relations Program at the University of Pennsylvania, who enumerates the legal and extralegal means by which the Egyptian government hobbles civil society.

In our other articles, **Katerina Hadzi-Miceva**, Senior Legal Advisor at the European Center for Not-for-Profit Law, comprehensively evaluates the mechanisms for cooperation between NGOs and governments in Croatia, Estonia, and Hungary. **Donald Morris**, who teaches in the Department of Accountancy at the University of Illinois at Springfield, explains the perverse and potentially dangerous ways in which the Internal Revenue Service applies cash-reporting requirements to 501(c)(3) organizations as part of its battle against money-laundering. **Scott Atran**, Presidential Scholar in Sociology at the John Jay College of Criminal Justice, shows how soccer teams and other informal networks within civil society can help spawn terrorism. Finally, **Shambhavi V. Murthy Gopalkrishna**, Lecturer and Senior Academic Faculty in Political Science at Nigeria's University of Lagos, meditates on civil society from the mixed perspective of participant and scholar.

For this wide range of perspectives on civil society, we are, as always, grateful to our authors.

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*The Middle East: New Challenges*

**The Future of Civil Society in Iraq:  
A Comparison of Draft Civil Society Laws  
Submitted to the Iraqi Council of Representatives**

**Hoshyar Salam Malo<sup>1</sup>**

**I. Introduction**

In this article, I make a comparative analytical study of two draft civil society laws that have been submitted to the Iraqi Council of Representatives.<sup>2</sup> The first draft was proposed by the Ministry of State for Civil Society Affairs and for this reason, it represents the view of the current Iraqi government of what the future of the Iraqi civil society should look like. The second is a draft proposed by Iraqi civil society organizations (“CSOs”) with the support of the Iraq Civil Society Program (ICSP) administered by America’s Development Foundation (ADF). The second draft law therefore represents the future of Iraqi civil society as envisioned by Iraqi CSOs themselves. As I will show, the civil society draft law is a superior law; it is not perfect, but it does give more space and freedom to civil society. The ministry draft has received the most attention in Iraq – although it has not been enacted by the Parliament – because it shows the way the current government (i.e., the executive branch) thinks about civil society in Iraq.

In the beginning of this article, I will briefly discuss the international charters regarding the right to freedom of association and assembly as one of the original human rights as well as the different ways this right is regulated around the world. This discussion will be followed by a review of the current legal environment for civil society in Iraq and a description of the need for a new law. Next, I will provide a general overview of the two draft law civil society laws that are the focus of this article: the draft proposed by the Ministry of Civil Society Affairs and the draft submitted by Iraqi CSOs themselves.

I will then come to the core part of this article: a comparison and analysis of the two draft laws. In reality, this is a comparison between two very different views of civil

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<sup>1</sup> Hoshyar Malo is a lawyer and the Director of Kurdish Human Rights Watch and is based in Baghdad and Irbil, Iraq. This article is the product of Mr. Malo’s Senior Research Fellowship with the International Center for Not-for-Profit Law (ICNL).

I would like to dedicate this humble article to all those brave persons who work for civil society in Iraq. I would also like to express my thanks and appreciation to the Middle East Partnership Initiative (MEPI) and the International Center for Not-for-Profit Law (ICNL), especially to Catherine Shea, Kareem Elbayer, and Douglas Rutzen for their efforts and continuous support. My hope is that this research will promote the adoption of the best civil society regulation for Iraq in the near future.

<sup>2</sup> The Council of Representatives, or *Majlis an-Nawwab*, consists of 275 members elected for a four-year term. It is the lower house of the new Iraqi parliament and the main source of legislative power. The upper house of parliament, called the Council of Union (or *Majlis al-Ittihad*), has not yet been constituted.

society: the view of the government and that of the CSOs. My comparison will focus on the most controversial issues debated in Iraq today: registration, the independence of CSOs, financing, penalties, and foreign CSOs operating in Iraq. I will conclude with a set of recommendations to guide the adoption of a new and more appropriate law for civil society in Iraq.

## **II. International Conventions on the Rights of Assembly and Association**

It is generally recognized around the world today that the right of assembly and association is one of the fundamental human rights. These rights are protected by international charters such as the United Nations' 1948 *Universal Declaration of Human Rights* (UDHR),<sup>3</sup> which states in Article 20 that:

- 1. Everyone has the right to freedom of peaceful assembly and association.*
- 2. No one may be compelled to belong to an association.*

This principle has been adopted by subsequent, legally binding international conventions, such as the 1966 *International Covenant on Civil and Political Rights* (ICCPR),<sup>4</sup> which states in Article 21:

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*

Article 22 of ICCPR continues:

- 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
- 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*

Many other international conventions adopt these principles using similar language, including the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 11), the *American Convention on Human Rights* (Articles 15 and 16), the *American Declaration on the Rights and Duties of Man* (Articles

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<sup>3</sup> Adopted and proclaimed by UN General Assembly Resolution 217 A (III) of 10 December 1948.

<sup>4</sup> Adopted and opened for signature, ratification, and accession by UN General Assembly Resolution 2200A (XXI) of 16 December 1966. Iraq signed on 18 February 1969 and ratified on 25 January 1971.

11 and 12), the *Arab Charter on Human Rights* (Article 24) (not yet in effect<sup>5</sup>), and the *African (Banjul) Charter on Human and Peoples' Rights* (Articles 10 and 11).

All of these conventions and charters, particularly the ICCPR, emphasize that restrictions on the practice of the right of association may only be placed “in limited conditions which are necessary in a democratic society, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” It must be stressed that restrictions on the practice of the right of association must be prescribed by law. In addition, many of these treaties impose an affirmative obligation on nations to protect the right of freedom of association. As such, it is necessary for each country to have a civil society law which provides clear mechanisms for the exercise of these rights.

Laws and regulations that address the rights of association and assembly differ from one country to another depending on the political and economic system in the country and the level of the state's control of CSOs, but we can divide the countries of the world into three broad categories according to their regulations:

1. **Countries that adopt voluntary “notification” systems for CSOs.** These countries permit the existence of informal civil society groups; individuals generally do not need to form legal entities to practice their right of freedom of association. If an organization decides to obtain legal personality, then it simply announces its existence to the government authority by taking certain steps to notify the government. This system is used in France, Lebanon, the Netherlands, and a handful of other countries.
2. **Countries that adopt voluntary “registration” systems for CSOs.** These countries also permit the existence of informal civil society groups; however, if a CSO decides to obtain legal personality, then it must apply for registration and await the approval of a government authority. It is important to note that these types of systems can be either enabling or restrictive depending on the requirements involved, but in the United States of America and most other Western countries they are enabling.
3. **Countries that adopt mandatory registration systems for CSOs.** These countries generally prohibit informal, unregistered groups and require that certain (often very difficult) conditions be met before formal establishment of a new CSO is granted. This system is especially prevalent in the Middle East and Asia, and is used in Iraq today.

It is worth mentioning that in many countries, especially in the Middle East, neither the governments nor the people believe that the rights of association and assembly are among the fundamental rights — despite their agreement and ratification of one or more of the treaties mentioned above. Even where the government allows individuals to establish associations, this is seen more like a gift or a bonus from the government to the people than a recognition of the human rights protected by international conventions such as those mentioned above. This false understanding of human rights in the Middle East is

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<sup>5</sup> This treaty will not take effect until it has been signed by seven members of the League of Arab States. As of this writing, only Jordan and Tunisia have signed.

due to many factors — mainly cultural, religious, and historical — that prop up the idea that the government grants rights and freedoms to the people.

### **III. Current Civil Society Regulations in Iraq and the Need for New Legislation**

In Iraq today there are three regulations for civil society, applicable depending upon the location in which the CSO is registered:

1. **Coalition Provisional Authority (CPA) Order Number 45.** Issued by the CPA in 2003 on authority of UN Security Council Decisions 1483 and 1511, this law — also known as “Bremer’s order”— is applicable in the center and south regions of Iraq. More specifically, it applies in all Iraqi governorates, except Irbil, Duhok, and Sulaimaniya (the Kurdistan region) — as is the case with most Iraqi laws and regulations that are not included in the exclusive powers of the federal authorities.<sup>6</sup>
2. **Kurdish National Assembly (KNA) Law Number 15.** Issued by the KNA on October 24, 2001, this law is applicable in the entire Kurdistan region with exception of Sulaimaniya governorate. It is often referred to as the “Kurdistani NGOs law.”
3. **Kurdistan Regional Government (KRG) – Sulaimaniya Governorate Decision Number 297.** KRG Decision Number 297, issued on December 25, 1999, is applicable solely in the Sulaimaniya governorate. This decision, often referred to as “the System of Civil Society Organizations Act in the Kurdistan Region,” was issued when two separate government administrations existed in the Kurdish region (the Patriotic Union of Kurdistan, or PUK; and the Kurdistan Democratic Party, or KDP). Today, both administrations have been unified and there is only one KRG, but this decision is still in force and is applicable in the Sulaimaniya governorate as of this writing.

Despite the different organization and terminology used by the regulations mentioned above, all three are very similar in substance because all of them endorse strong governmental control of civil society. Several provisions of these laws are disliked by Iraqi CSOs, including the mandatory registration / licensing rules, the fact that the registering agency is controlled by the government, the rules in place for foreign CSOs in Iraq, the detailed intervention of these regulations in internal CSO management issues, provisions legalizing governmental monitoring of the finances and accounts of CSOs, and other deficiencies. Beyond simple dislike, these regulations prevent civil society from fulfilling its potential role in the reconstruction and rehabilitation of Iraq.

In fact, all of the laws and regulations mentioned above need to be liberalized in order to take into consideration the protection of human rights. These regulations should be redesigned in a way that minimizes the intervention of the government in CSO internal affairs and that guarantees the independence of civil society both ideologically and practically. The civil society sector will not reach its full potential if it continues to be

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<sup>6</sup> See Article 117 of the Constitution of Iraq (“The governments of regions have the right to practice legislative, executive and judicial powers according to this Constitution, except in areas listed as exclusive powers of the federal authorities.”)



subject to the type of interference and government control that characterizes the situation in Iraq right now. If a civil society is truly independent, it will be able to criticize the negative aspects of the government and help to reform the government and to provide services to the people; but if it is dependent on the government, then of course it will be reluctant to criticize the government policies and actions.

Furthermore, it is very clear that the laws and regulations mentioned above contain vague provisions regarding the large number of foreign and international CSOs operating in Iraq. Instead of facilitating the work of these important organizations, Iraqi regulations create obstacles to their effectiveness. Any new legislation needs to be clearer regarding foreign and international CSOs in Iraq because of the community's need for their assistance and especially because local Iraqi CSOs critically need their financial and technical support.

According to Article 45 of Iraqi Constitution, "the state is keen to strengthen the role of civil society groups and to support, develop them and preserve their independence in accordance with peaceful means to realize legitimate goals." But current regulations accomplish just the opposite. For all the reasons mentioned above, a real need exists for the adoption of a new law for civil society that addresses these problems.

#### **IV. General Overview of the Government and Civil Society Draft Laws**

##### **A. The Draft Law Submitted by the Ministry of State for Civil Society Affairs**

This draft law was written by the Ministry of State for Civil Society Affairs in 2006. It is also known as the "draft of al-Asadi" because it was drafted while Mr. Adel Al-Asadi was the Minister of State for Civil Society Affairs in Nouri Al-Maliki's cabinet.

Section V of this article argues that the Ministry's draft law (hereafter the "MCS draft") demonstrates that the government does not accept the independence and freedom of associations in Iraq. Section V will further identify the deficiencies in this draft law, including the excessive control over civil society through their bylaws, finances, administration, etc.

After much pressure from Iraqi CSO and extensive lobbying, advocacy, media pressure, and proposal of alternatives, the MCS draft was withdrawn from the Legal Committee of the Iraqi Council of Representatives at the end of 2006. CSOs then began the process of drafting their own law with the assistance of the United Nations, international and foreign CSOs, and the Ministry of State for Civil Society. However, even though the Ministry draft has been withdrawn, it is worth studying because of the clear picture it gives of the Iraqi government's thinking on civil society issues.

##### **B. The Draft Law Submitted by Iraqi CSOs**

The draft law submitted by Iraqi CSOs is the preferred draft of most representatives of the Iraqi civil society because it is from CSOs and for CSOs. It is important to mention that the drafting of this law (hereafter referred to as the "CSO draft") took a long time — about two years of hard work by hundreds of CSOs from all regions of Iraq. The work was supported by ADF, many local and international legal experts, and civil society representatives. The CSO draft law tried to address all the deficiencies of the draft law of the Ministry with respect to the government's control over CSOs, protection of CSO independence, and space for freedom of association. It is not a

perfect law, but I believe that it is the best one among the many civil society law drafts that have been submitted to the Council of Representatives.

As an additional note, several other draft civil society laws have been submitted to the council of representatives in the last few years by groups, including Iraqi Al-Amal Association, the Iraqi Civil Society Congress, the National Board of Iraqi Civil Society Organizations, and the Civil Society Committee in the Council of Representatives. However, these drafts are not considered in this article because they are similar to each other or to one of the drafts that are the subject of this study, and in many cases are regional rather than national draft legislation. As such, I have chosen the MCS draft and the CSO draft because they are representative of the two distinct views toward civil society in Iraq.

## **V. Analytical Comparison Between the Ministry and Civil Society Draft Laws**

In this section of my article, I will focus on the differences between the two most important draft civil society laws that were submitted to the Iraqi Council of Representatives – the MCS draft and the draft proposed by Iraqi CSOs with the support of the ADF ICSP program. It must be said that there is a big gap between the two different views of civil society represented by these drafts: one calls for more government control and isolation of civil society in Iraq from the world, while the other calls for more freedom of association and more openness in Iraq. Needless to say, most civil society groups in Iraq do not accept the MCS draft; but on the other hand, the government and especially the radical and conservative parties in Iraq do not accept the CSO draft.

This comparison and analysis will focus on the most important differences between the two drafts:

1. Registration of CSOs;
2. Authority of registration;
3. Protection of CSO independence;
4. CSO finances;
5. Penalties against CSOs; and
6. Foreign CSOs operating in Iraq.

Generally, I will follow a convention of presenting, for each major point, the approach of the MCS draft, the approach of the CSO draft, and then finally my recommendations for what a final CSO law in Iraq should look like.

First, however, I will discuss briefly some of the constitutional basis and objectives of both laws.

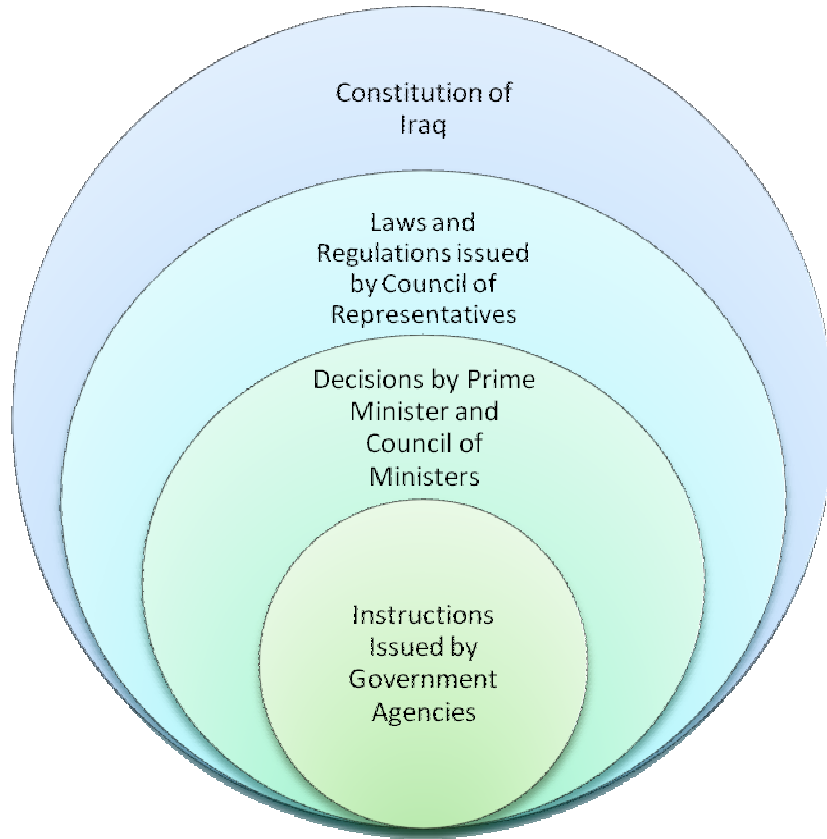
### **A. Constitutional Basis of the Law**

It is a common legal principle that any law to be legislated should be based on constitutional authority. In this way, laws derive their legality and legitimacy from the constitution, which is the supreme law of the land. In this case, both the MCS and CSO drafts lack an appropriate constitutional basis.

The preamble of the MCS draft states:

*In pursuance of the provisions of paragraphs (a) and (b) of Article 30 of the Iraqi State Administration Law for the Interim Period, the following Law is issued ...*

This, of course, is an incorrect basis for the law. Any law to be applied in Iraq today should be based on the Constitution, not on the Administration Law for the Interim Period (which has expired). Of course, there is a transition period, in which laws drafted under the Administration Law must be updated to reflect the new source of constitutional authority; but that period has now passed and it is now improper to depend on interim laws as the basis for the legitimacy of permanent laws.



The CSO draft, for its part, completely fails to mention its constitutional basis.

In light of the fact that Iraq now has a permanent Constitution, any law to be enacted by the Council of Representatives should be based on one or more articles of the Constitution; in turn, any decisions taken by the Council of Ministers should be based on a valid law, any administrative orders by the separate ministries should be based on a valid decision of the Council of Ministers, and finally any instructions by government agencies and branches should be based on a valid decision (see illustration).

As such, a better approach for any draft CSO law would be to cite the constitutional authority provided by Article 45(1) of the permanent Iraqi Constitution:

*The state is keen to strengthen the role of civil society groups and to support, develop them and preserve their independence in accordance with peaceful means to realize legitimate goals. This shall be regulated by law ...*

as well as that provided by Article 39(1):

*The freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law ...*

## **B. Objectives of the Law**

Both the MCS and CSO drafts are vague and unclear in terms of their objectives. In the MCS draft, Article 1 states that the law “aims to establish non-governmental organizations that guarantee the freedom of individuals to gather and carry out ... activities,” but this goal is “subject” to Article 3, which says that CSOs may not “conflict with the independence of the state, its national unity and republican system ... [or] contravene public order and morals.” These types of provisions simply do not belong in the “objectives” of the law, because they open the door for abuse by government authorities — not just in a newly established democracy like Iraq, but in any country. Because other provisions of the law are interpreted in light of the objectives of the law, it is very important that these objectives be narrowly defined.

For example, what exactly is “public order and morals”? Although the ICCPR and other international conventions allow restriction where activities would contravene public health, safety or morals, these restrictions must be narrowly construed, not completely open to interpretation as they are in this law. How are these terms defined, and by whom? In one of the workshops on CSO law reform held in Baghdad in which I participated, one participant pointed out that the government may use these terms in a different way than a civil society would. He said that if a CSO representative tears the picture of the Iraq’s President, the government might consider it a contravention of public order and morals.

The CSO draft similarly fails to state clear objectives. The draft does provide a certain degree of specificity and support, especially in the first part of Article 2 which states that the law should “register, encourage, develop, support, and regulate Iraqi civil society organizations and foreign organizations operating in Iraq.” This is a comprehensive and positive objective. However, the second part of Article 2 states that the law is also intended “to establish an independent ‘Commission of Civil Society Organizations’ under the Parliament to exercise the authority of the state in implementing this law.” As I will discuss in greater detail below, the inclusion of provisions relating to the Commission is inappropriate because this is a very complex issue that needs to be addressed in a separate law.

## **C. Registration of CSOs**

Under existing Iraqi law, as is the case in most countries of the Middle East and North Africa, CSO registration is mandatory. The government sees the right of association as a gift from the government to the people, when in actuality it is one of the original human rights and is protected as such by international law (as discussed above in Part II). Registration of CSOs is mandatory, and even informal groups are prohibited from operating without first obtaining a license. Furthermore, complicated registration procedures with many requirements make the registration of a new CSO difficult or near impossible.

Any new CSO law for Iraq should take this history into account and facilitate the registration of CSOs. Unfortunately, both the MCS and CSO drafts embrace mandatory licensing of all CSOs. Articles 4 through 8 of the MCS draft set up a procedure by which a CSO submits an “application” for an “establishment license” that is either “granted” or “rejected” by the Minister. This provision is hotly contested by CSOs, and rightly so. An organization should properly be considered *established* as an informal entity on the date

of its first founding meeting. This informal entity must be recognized by the government as legitimate even though it has not been registered by a government agency. This is the view embraced in the UDHR and ICCPR as well: CSOs are not obliged to obtain legal personality in order to practice the fundamental right of association. Registration is only required when the CSO desires to establish itself as a *legal* entity.

The CSO draft is marginally better because it employs the term “registration” instead of “establishment” and the term “certification” instead of “license,” indicating the true nature of what is being granted by the government (see Articles 18 and 19). The use of these terms indicates recognition that CSOs are *established* by the free will of their founders and *registered* by the government. Individuals should not need permission to *establish* CSOs. The CSO draft also provides that the registration of CSOs should be made exclusively by an independent commission rather than a single minister (Article 18). Finally, the CSO draft recognizes prior registrations, meaning that existing CSOs registered under the Ministry of Planning, the Ministry of Civil Society Affairs, and the Ministry of the Interior will not need to re-register (Article 18(2)). However, despite these improvements, the fact remains that the CSO draft establishes a mandatory registration procedure which prevents the existence of informal CSOs.

A better approach to a final CSO draft law in Iraq would be to create a system of incentives for voluntary registration by CSOs. For example, CSOs will be likely to seek registration if they receive certain specific benefits, such as the protection of legal entity status (i.e., limited liability), tax benefits, and so on. These benefits would enhance the likelihood of CSO registration without imposing mandatory and repressive laws upon them.

#### **D. Registration Authority**

The authority that is responsible for CSO registration now for most of Iraq is the NGO Assistance Office, which is part of the Iraqi Ministry of Planning (in the Kurdistan region it is the KRG Ministry of Interior). Given the history of government control over civil society in this part of the world, as well as the relatively poor relationship that currently exists between the government and civil society in Iraq, the question I want to ask is, why should registration be under the authority of the executive branch of the government in the first place? Doing so only opens the way for the government to interfere in CSO internal issues.

The MCS draft states in Article 5 that the Ministry of State for Civil Society Affairs is responsible for CSO registration. This is not acceptable to most of the CSOs in Iraq because they think that this will lead to control of civil society by the government and total loss of CSO independence. As a result, CSOs proposed in their draft that registration authority be given to an independent organization patterned after the Independent Electoral Commission of Iraq. The proposed Commission of CSOs would include elected members from CSOs in all of Iraq’s governorates: members of parliament and members of the executive branch (one each from the Ministry of Planning, the Ministry of Finance, the Ministry of Women’s Rights, the Ministry of Human Rights, and the Commission on Public Integrity).

As everyone knows, civil society is a newly established sector in Iraq which needs a suitable legal environment to mature in the right way. We Iraqis should not (re)invent

everything by ourselves, but should instead take advantage of other countries' successful and unsuccessful experiences. In the case of the Ministry of Civil Society, it is worth noting that I have never come across this type of government office anywhere else in the world. The only country that attempted this model was Palestine, where after just six months the Ministry was dissolved and the idea was condemned as illogical and unworkable. And yet the MCS draft wants Iraq to follow this failed model!

The CSO draft, on the other hand, proposes registration of CSOs through an independent Commission of Civil Society Organizations, which is loosely patterned after successful examples, including in the United Kingdom and Moldova. However, this solution has also been criticized by those who argue that the Iraqis are not yet ready for such degree of independent civil society. Many people, including government officials, journalists, writers, and even some civil society activists, say that the CSO draft law is unrealistic and ignores the state of society in Iraq as it is today.

In fact, many discussions took place regarding the issue of the independent Commission of CSOs during the more than one year of planning and writing of the CSO draft. These discussions included local CSOs and international and foreign CSOs and focused on how such a commission might be established, how it would be structured, how commissioners would be selected, and so on. Initially, it was expected that a separate law solely focused on the commission would eventually be generated, but by the end of the process Iraqi CSOs decided to simply merge the separate commission law into the CSO law. (Personally I don't agree with this decision because the two different laws have very different aims; but this was the decision that was made.)

In any event, according to the CSO draft, the legal status of the Commission of CSOs would be the same as that of the Independent Electoral Commission of Iraq. The Commission of CSOs would "derive its authority from the Parliament,"<sup>7</sup> and would receive "an annual budget ... in the same manner as for other government agencies" (Article 4). Article 5 explains the composition and structure of the commission, defining it as a group of twenty-seven persons, selected as follows:

- Eighteen voting representatives from civil society (one from each of Iraq's eighteen provinces);
- Four voting representatives from the Parliament – "two men and two women from different political entities and different parts of the country," selected by the Speaker of Parliament; and
- Five voting representatives of the Government or Executive Branch, "including one each designated by the Ministers of: 1) Planning and Development Cooperation, 2) Finance, 3) Women's Rights, 4) Human Rights, and 5) the Commissioner of the Commission on Public Integrity.

The most important powers and responsibilities of the Commission are the registration of CSOs; provision of technical and financial support to CSOs; issuance of regulations and instructions regarding CSO activities; and acting as a liaison between CSOs, the Parliament and the Government on civil society issues. The CSO draft law also

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<sup>7</sup> Some Iraqi CSOs objected to this language out of fear that it would make the Commission of CSOs subordinate to the parliament, thus affecting its independence.

contains detailed provisions on election of Commission members, eligibility for elections, nomination procedures for elections, and so on.

One issue that has been raised in connection to the CSO draft is the method of electing members of the Commission of CSOs. Many worry that these elections will be influenced by political parties (as is the case with all elections in Iraq, including professional unions, syndicates, student associations, etc.) and that this influence will affect the quality and independence of the individuals who will be elected to the commission. In addition, the process of setting up the commission and electing commissioners will take a long time, but the CSO draft law does not contain provisions on what will happen during the interim period.

All things considered, I think it is clear that registration of CSOs by an independent commission is superior to placing registration authority solely in the hands of one executive ministry. However, I want to add a couple of caveats to my endorsement of the CSO draft. First, an alternative process of establishing the commission that is simpler, easier, and more realistic, is essential. Any CSO law must include provisions for the registration and regulation of CSOs while the commission is being established. Finally, the structure of the commission should include a liaison function that will bring together members from all the different executive ministries in order to facilitate access to information for CSOs and to increase coordination between the government and civil society. This, after all, should be the normal relationship: one based on cooperation, coordination, and complementary relations rather than antagonism.

One final note about the CSO draft concerns the concept of “registration by law” or default registration. Article 19(2) of the CSO draft states that if a CSO validly applies for registration (turns in all required documents correctly filled out) but does not receive any response from the Commission after thirty days, then the CSO will be considered validly registered. The idea is inspired from other countries’ regulations but needs more particularization for the Iraqi context. What should a CSO do to prove that it filed registration but did not get a response? How is a CSO supposed to apply for funds from a donor on the basis of a “registration by law,” with no proof of registration from the government? The CSO draft law does not suggest any suitable solution to these problems.

I think that the best solution to this legal dilemma is to involve a judicial authority in the registration procedure. I would recommend that a new paragraph be added to Article 19 of the CSO draft to guarantee that CSOs receive a registration letter after the thirty day period expires. The CSO should be able to address a request to a local court demanding a registration letter, and the court should then order the commission to issue a registration letter for the CSO.

### **E. Protection of CSO Independence**

Current CSO legislation in Iraq allows the government to intervene in many internal issues of CSOs, which leads to a loss of civil society’s independence. When a government, political party, or any agency of the state imposes its agenda on CSOs, then civil society becomes meaningless in any real sense.

The degree of allowed government intrusion presents the most significant difference between the MCS and CSO draft laws that are the subjects of this study. The

MCS draft clearly demonstrates that the Iraqi government desires to control the civil society sector in Iraq in a heavy-handed manner, while the CSO draft clearly shows that civil society is demanding more space to work and less intervention on the part of the government.

For example, Article 7 of the MCS draft allows the minister to “request the realization of legal amendments or additions to the bylaws” of an organization, but beyond providing certain minimum standards, a government has no business telling civil society organizations what their bylaws should contain. Similarly, the MCS draft gives the individual governors of the province in which a given CSO attempts to incorporate the ability to object to the opening of a CSO’s office (Article 10) so that even if a CSO gets an official license from the Ministry, the governor may still block its operations. A CSO can object to a governor’s decision by bringing a request to the Ministry of State for Civil Society Affairs — but in this case both the adversary (the governor) and the judge (the Minister) are from the same branch of the government (the executive)! This is unfair because a CSO will not be facing an impartial judge but instead will be facing a judge closely identified with its adversary.

### **Intervention of the Government in CSO Relationships and Membership**

The MCS draft law gives other inappropriate powers to the Minister; for example, CSOs cannot merge with one another and cannot affiliate, participate in, or join other international entities or organizations without the permission of the minister (Article 11). These are major infringements on the freedom of association. More worryingly, Article 15 gives the Minister of State for Civil Society Affairs the power to force a CSO to accept a membership application it may have rejected — thus forcing CSOs to accept as members potential bad actors or government representatives.

Iraqi government and political leaders often say that the civil society in Iraq needs international support and that the reconstruction process in Iraq requires assistance and effort from foreign CSOs. But they then turn around and put into place regulations that create obstacles to the existence of foreign CSOs in Iraq, to their successful operations, and to their ability to work with local CSOs. For example, Article 17 includes limitations on the membership of non-Iraqis in Iraqi CSOs, preventing them from voting or participating in administrative committees. All these obstacles and limitations show the mentality of the Iraqi government toward civil society.

### **Intervention of the Government in CSO Operations**

Another important way in which the MCS draft interferes with the freedom of association comes from the very detailed provisions on issues that should be left to CSOs to decide. For example, Article 17 determines the decision-making process inside the CSO, requiring certain majorities for certain activities. Articles 18 and 19 determine the process of elections and the approval of general balance sheets; Article 22 requires the attendance of a judge to supervise any elections of CSO administrative committees; and Article 23 gives the Minister the right to cancel the elections of CSOs or any decision taken by the administrative committee or by the president of the organization. While it is important to encourage good bylaws for CSOs and appropriate regulation of internal issues, these measures go too far.



### **Securing Independence: The CSO Draft**

Unlike the MCS draft, the CSO draft makes a great effort to protect the independence of civil society from inappropriate interventions by the government and the political parties. Articles 21 and 22 provide some basic requirements for what should be included in bylaws—things like “basic internal policies for financial management” and rules prohibiting “conflicts of interest”—but they do not impose overly broad requirements and restrictions on CSOs. The CSO draft does not give the Commission the kinds of inappropriate powers that the MCS draft gives to the Minister. With few exceptions, most internal issues are left to the organization to decide. This is the real meaning of “civil society”: groups of people organizing among themselves to pursue their own interests. The Commission of CSOs is meant to provide technical assistance rather than to dominate the entire sector.

Other legal protections for civil society included in the CSO draft law are freedom of activities for local and foreign NGOs (Article 27):

*The state shall ensure the freedom of all civil society organizations' work in Iraq in accordance with the Constitution, and likewise for foreign organizations.*

The CSO draft also includes an affirmative requirement that the Commission of CSOs protect civil society (Article 27(3)):

*The Commission shall have the responsibility to assist any civil society institution whose activities are prevented, interrupted, harassed, or otherwise interfered with by individuals, political organizations, or government agencies at any level.*

And finally, the draft provides explicit rights for CSOs to practice economic activities and own movable property, real estate, or other fixed assets (article 28); and to engage in political expression and to propose or oppose any legislation or action of the government at any level (Article 29).

Many people, especially those from the Iraqi government, argue that it is not realistic to ask the government to help and support NGOs and at the same time ask the government not to intervene in civil society. These people argue that even in Europe and the United States of America, the government has the ability to impose its agenda on CSOs. But this is not true. The governments of the United States and Europe have powers to seek accountability from CSOs to ensure that their funds are spent properly; but a given CSO is pursuing its own agenda, and it is the CSO that seeks funding from the government, not the government that forces the CSO to run certain programs. This is an important distinction. What the law is designed to do is to regulate the relationship between civil society and the state — but these are two different sectors in the end. Therefore, it is important to set some basic guidelines and then to step away and let civil society decide for itself how best to pursue its aims.

### **F. Financing of CSOs**

The question of how CSOs can be financed in Iraq today has no satisfactory answer. Many CSOs receive funding exclusively from the government and thus consider

themselves essentially arms of the government; others are funded exclusively by political parties and thus consider themselves political organs. Most CSOs do not have sufficiently diverse funding sources to feel that they are truly independent. Furthermore, in parts of Iraq such as the Kurdistan region, where the government is providing funding to CSOs, money is unfairly directed toward those groups whose founders have personal relations with individuals in the government or the relevant department. In the end, there is no real legal framework for financing civil society.

The MCS draft law defines seven sources of financing for CSOs (Article 26):

1. Cash or in-kind donations;
2. Inheritance, bequests, or grants;
3. Membership fees;
4. Real-estate ownership;
5. Income generated from legitimate commercial activities;
6. Allocations from the state budget; and
7. Profits and interest from investments.

The CSO draft includes an almost identical list of potential income sources in Article 33. However, though both drafts seem to be the same on the surface, in fact there are two very important differences.

#### **Limitations on Foreign and Domestic Funding**

According to the MCS draft, Iraqi CSOs are “prohibited from receiving or taking funds of any kind from inside Iraq or from abroad ... except with the approval of the minister” (Article 27). Not only does this prohibition make the preceding Article 26 worth very little, but it absolutely ensures that Iraqi civil society will be a failure from the start. In essence, Article 27 makes the Minister of State for Civil Society Affairs the executive director of all the CSOs in Iraq — not one organization will be able to conduct a program or raise funds without his approval. Even the most liberal and enlightened minister and his staff would be unable to review the funding requests of every single CSO in Iraq every single time it attempts to raise funds!

Of course, it is appropriate for the government to monitor the funding sources of CSOs, but this does not mean that the government must pre-approve every single transaction. The MCS draft already contains appropriate monitoring provisions: for example, Article 34 obliges all CSOs to provide the minister with annual reports on every detail of their activities and budgets that are reviewed by a licensed auditor. There is actually no need at all for this kind of pre-approval process. The CSO draft, of course, does not contain the same kinds of restrictions, and, in fact, explicitly recognizes the right of CSOs to receive funding and support from “foreign and international organizations” (Article 33). This is especially important because international donors can truly enhance Iraqi civil society, both financially and technically.

## **State Funding**

As I have mentioned, the biggest problem facing civil society in Iraq now is funding. But Iraq has a huge potential for income from oil,<sup>8</sup> and CSOs are providing important public services, including reconstruction, so it is only logical and fair that CSOs get a share of this income. The question is, how can CSOs get their fair share of state oil income while simultaneously protecting their independence?

To be fair, the MCS draft law recognizes the right of civil society to have a share of the state budget, and this is a very positive point (see Article 26(6)). Unfortunately the draft does not mention how much CSOs are entitled to or how they might get it. Nevertheless, this shows that the government recognizes that CSOs are entitled to a percentage of the state budget because their activities are serving Iraq's people.

The CSO draft law solves the problem of specifics by compelling the government to invest significantly in the civil society sector and by specifying that the Parliament must dedicate "unconditional" support of no less than 1/1000 of 1% of the annual national budget of Iraq for civil society organizations engaged in public benefit activities (Article 36). This money is then awarded through a competitive proposal program administered by the Commission of CSOs and approved by the Parliament (Article 37).

Although the CSO draft is an improvement over the MCS draft, the issue of state funding could be legislated more clearly. I am specifically thinking of the mechanisms for allocation under the competitive proposals: this needs to be more detailed and to consider who will be responsible for reviewing CSO proposals, how priorities will be set up regarding the CSO projects, what should be included in the Commission of CSOs' plan for spending, etc. I would further recommend that the government go beyond the allocation of funding for civil society designed projects (as is contained in the CSO draft) and that it adopt a model like that used in the United States, where the government entrusts implementation of certain social services and humanitarian projects to the CSO sector and in effect pays the sector to design and administer certain government programs as well.

## **G. Penalties**

When a CSO violates the law, what should be the penalty or sanction, and who is responsible to impose it? On this topic, both the MCS and CSO drafts are problematic.

### **Executive Discretion**

The MCS draft gives very wide powers to the Minister of State for Civil Society Affairs to freeze, suspend, or dissolve CSOs (Articles 36 and 37). These powers are so discretionary that they will almost certainly be abused; I would estimate that fully 90% of currently existing Iraqi CSOs could expect to be shut down simply because civil society is a new sector in Iraq. For example, the Minister can dissolve a CSO if it:

- "[C]ontravenes public order and morals";
- Conflicts with "national unity";

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<sup>8</sup> Iraq is now exporting 2 million barrels per day, and when the security situation improves the export rate has the potential to be multiplied many times over.

- Fails to maintain certain records or submit certain reports;
- “Becomes unable to fulfill its undertakings and obligations”
- Has “gambled”; or
- Uses its funds in pursuit of “objectives other than those for which it was established.”

Even worse, the right to appeal the Minister’s decision is limited because any appeal must be lodged with the Council of Ministers (Article 38), which is a part of the same branch of government (the executive) that the Minister comes from! Instead of requiring consideration of a dispute by an independent court, the MCS draft puts the government in the position of arbitrator and disputant at the same time.

The CSO draft avoids the problem of too much government discretion by limiting the power to impose punishments to the independent Commission of CSOs. The Executive Director of the Commission does have the power to suspend or decertify CSOs that fail to respond to warnings that they are not complying with the law (see Articles 38 – 41); but the potential for abuse is lower because the Executive Director is an independent Commissioner and not a member of the executive branch. In addition, the CSO draft allows organizations that are subject to penalties to appeal these penalties to a Council of the Commission, and if this does not satisfy the parties they may appeal to an Iraqi Court of Appeals (Article 43).

### **Disproportional Punishments**

The potential punishments for noncompliance with the law are disproportionate in both the MCS and CSO drafts. In addition, the MCS draft imposes individual penalties for violations that are properly the fault of the organization itself as a separate legal person. For example, Article 41 of the MCS draft imposes a fine of up to 100,000 Iraqi Dinars (“ID”) on the members of the administrative committee of a CSO for a variety of minor organizational violations, including “accepting a member who did not fulfill the membership conditions stipulated.” Article 42 even provides for a prison sentence of up to three years for every member of a group “that performed work ... without completing its establishment procedures.” This contradicts the international right of association, particularly the rights of informal entities to freedom of association. The penalty of jail time simply should not be included in a civil society law; crimes that deserve to be punished by jail, like fraud and corruption, are already regulated by other laws.

The CSO draft has similarly high monetary penalties for non-compliance with an order to correct violations (see Article 39). But the point here is that fines or other punishments should be appropriate to the violation. A fine of 100,000 ID is not appropriate for a minor violation; but neither the CSO draft, nor the MCS draft contains any recognition of this principle. Only in limited and very serious cases (for example, criminal activity or fraud) should fines of this amount, or the greater penalties of decertification and dissolution, actually be applied.

### **H. Foreign CSOs in Iraq**

Current regulations in Iraq create many obstacles and put many restrictions on foreign CSOs working in Iraq, but because civil society is so new in this country, local CSOs are in need of international and foreign support. Therefore, any new civil society

law for Iraq should create a comfortable legal environment that facilitates the operation of foreign CSOs in Iraq.

Unfortunately, Article 45 of the MCS draft retains the existing mentality and makes it even more difficult for foreign and international CSOs to work in Iraq (or more accurately, to be registered in Iraq). In order to register legally, a foreign CSO must, among other things:

- Obtain a “verification” from the Iraqi Ministry of Foreign Affairs stating that the CSO has worked and is registered in another country;
- Provide the Ministry with a letter from the national government of the foreign CSO’s home country;
- Provide the addresses of the CSO’s foreign staff;
- Specify the number of visits of the CSO’s foreign staff to Iraq; and
- List the CSO’s revenues, expenditures, assets, balance sheet, sources of finance, and debts for the current year and the previous and subsequent three years.

The MCS draft also requires the director of the foreign CSO’s local branch to be an Iraqi citizen and provides that no less than 80% of the members should be Iraqis (Article 45). Furthermore, Article 48 of the MCS draft allows the Minister of State for Civil Society Affairs to amend the bylaws of a foreign CSO and if the minister decides to reject their registration, his decision is final and cannot be appealed (Article 49). All these provisions are in addition to the obstacles mentioned throughout this article that apply to local CSOs – meaning, for example, that a foreign CSO cannot receive or send any funds to international or local entities except with ministerial approval.

The government argues that it raises obstacles against foreign CSOs and makes their existence in Iraq difficult because foreign CSOs will change the customs, traditions, and morals of the Iraqi people and will lead to an ideological invasion of Iraq. We have even heard the frail excuse that foreign CSOs are actually working for intelligence agencies. But all of this is nothing more than a pretense.

I think it is clear that the aim of placing all these obstacles on foreign CSOs is to prevent them from operating in Iraq. These CSOs are enhancing and promoting the community’s ability to abide by democratic principles. They are helping the Iraqi people become aware of their rights and freedoms in order to embrace the new democracy and pass through the transitional period from dictatorship to democracy. Before 2003, most Iraqis did not know what their rights were; their concept of public service was more like a gift or a donation from the government, not a duty which the government was required to uphold. Now, the Iraqi people have started to know their rights and have started to talk openly about the deficiencies of the government, such as its inability to provide security and public services, inability to remedy violations of rights, etc.

Therefore, the conflict between the government and foreign or international CSOs is continuing. It is a conflict between democracy, freedom, civil society, the international community, foreign and international CSOs, openness to the world, globalization, and human rights, on one side; and on the other side, the concepts of strong national government, sovereignty of the state, isolation from the world, control of civil society, national security, radical Islamic political parties, etc.

The CSO draft takes an almost opposite approach from the MCS draft; instead of raising obstacles, it facilitates foreign CSOs' activities. In fact, encouraging the growth of foreign CSOs is one of the explicit "goals" of the law (see Article 2(4)). The registration process is extremely streamlined (Article 20), requiring only that the foreign CSO provide any formal document to the Commission for CSOs that proves it is a CSO with a legal personality in its home country. These facilitations were placed in the draft law as a result of pressure of a large number of Iraqi CSOs, because, in fact, it is already difficult enough for foreign CSOs to work in Iraq and to endure the bad security, radical Islamic entities, and government hostility. We wanted to encourage a foreign CSO presence in Iraq rather than discourage it further.

It is worth mentioning that almost all civil society activities in Iraq today are supported and funded by foreign and international NGOs — even the development of the "CSO draft." Therefore, we should not contradict ourselves by obliging these organizations to go through difficult registration processes as long as we need their help.

## **VI. Results and Recommendations**

There is no doubt that there is a real need for new legislation on civil society organizations in Iraq. It is time for Iraq to embrace more openness so that its people can continue to democratize the laws and protect human rights while minimizing the intervention of the government in CSO issues and guaranteeing the independence of CSOs. Iraq is one of the countries that signed the ICCPR; this should be reflected in all national legislation and regulations, especially laws that regulate civil society in order to guarantee the protection of human rights. With these thoughts in mind, I make the following recommendations and conclusions:

- 1) CSOs should be involved in the drafting process for any new civil society law. Any draft law submitted by the government without participation of CSOs will be unacceptable, and CSOs will object strongly because civil society in Iraq intends to be involved in all legal reforms and legal developments from now on, including the law of anti-terrorism, the emergency law, and so on.
- 2) The new law of civil society should move toward the "notification" system rather than a "registration" or "licensing" system because this is a very successful model in countries that are attempting to escape an authoritarian past. Even if a "licensing" or "registration" system is ultimately chosen, it should be voluntary for organizations that seek formal legal status, not required of all organizations. Only a voluntary system can reflect the concept that the right of association is one of the original human rights and not a gift from the government to the people. Only a voluntary system would allow for informal groups to practice their right to freedom of association and assembly.
- 3) I also believe that the registration authority must be an independent agency instead of one tied to the government. The suggested registration authority contained in the CSO draft, which is a very good one, is an independent commission of civil society affairs, but this authority should be regulated in a separate law rather than the civil society law because of the complexity of organizing and administering that body.

- 4) In the period before the establishment of the Commission, the Ministry of Civil Society Affairs could take responsibility for registration. The responsibility should then be transferred to the Commission, after which it may be possible to dissolve the Ministry of Civil Society Affairs.
- 5) The civil society law to be legislated in Iraq should deal with major issues and general concepts to provide minimum guidelines regulating the relations between the government and the civil society. Subsequent regional regulations should deal with registration procedures and other details of applying for registration. The details of CSO operations should be regulated by their internal bylaws and the law does not need to specify, nor should it regulate, all the details of the CSO operations.
- 6) The new law should include articles that prevent or decrease inappropriate governmental and political party's intervention in civil society affairs; in other words, the civil society should be allowed to pursue its own agenda.
- 7) Iraq is a rich country with a huge and increasing income from oil; at the same time, Iraqi CSOs are major contributors to the rebuilding and rehabilitation of this country. It is therefore axiomatic that CSOs should get their share of the nation's (not the government's!) wealth. Any new civil society law should require that a good percentage of the state budget be allocated for civil society via a clear mechanism that guarantees that the funds will be accessible by CSOs. One of the best possible mechanisms is through a competitive project bidding, as such exists in most countries in the world.
- 8) The law of civil society should also be clear in terms of CSO involvement in implementation of government projects in a way that does not negatively affect civil society's independence. Also, the law should encourage the private sector to make investments in civil society and facilitate these investments through, for example, tax exemptions.
- 9) Any new CSO law for Iraq must remove all legal limitations on the receiving and sending of funds for the civil society sector from inside or outside of Iraq.
- 10) The law should facilitate the existence of foreign CSOs in Iraq. Current regulations are unclear and put many legal restrictions for their registration and operation in Iraq. Given the current environment in Iraq, it should be enough for a foreign CSO to prove that it is a legally registered CSO with a legal personality in its home country for it to operate in Iraq because local CSOs need financial and technical support from foreign NGOs.
- 11) The new law should not allow the government to control the relations of local CSOs with international and foreign CSOs, including their right to network and affiliate.
- 12) The new law should enable CSOs to access information from the government that they need in order to implement their programs.

Finally, there is a big gap between the CSO and MCS drafts. The gap is basically between two different mentalities: the government's, which embraces international isolation and control of civil society justified by the current situation in Iraq; and that of the civil society, which promotes increased openness to the world justified by thinking of the future of Iraq. Some criticize the CSO draft as unrealistic for the current situation in Iraq, but legislation is not supposed to be limited by reality; it is supposed to change reality! This is the entire point of the law — it is a key to change in the community.

At the Iraqi Civil Society Conference II in Amman, Jordan on November 21, 2006, a decision was made that a new CSO law would be drafted by a high committee that includes members from the US Agency for International Development, the UN Assistance Mission for Iraq, America's Development Foundation, the Iraqi Ministry of State for Civil Society Affairs, the UN Office for Project Services, and a number of local Iraqi CSOs and university professors. In order to draft the best possible law and create enough consensus to see the law through passage in the Council of Representatives, the new draft must take advantage of all previous drafts that have been submitted to the Council of Representatives, and especially of the two drafts that are analyzed here.

## **VII. Epilogue**

With the conclusion of this research I hope that I have been able to present something new and helpful to assist in the development of a new civil society law for Iraq. Enacting a new CSO law is an important part of reforming the entire legal environment that exists in Iraq in order to support our new growing democracy. Despite the current situation, we believe that the democratic reform process in Iraq, and especially the legal reform, should not stop, because the Constitution guarantees the right of freedom of expression and the right of freedom of association, but these statements need laws to regulate and enshrine our rights. Now is the right time to seize the opportunity for a civil society law reform. Iraq is starting to set up the legal system, and therefore, we should put things in the right way from the beginning in order "for the tree to have a straight trunk."<sup>9</sup> I hope that my comments and recommendations will contribute to the development of the civil society law in Iraq in such a way that would enable the civil society to face more challenges and to work on other laws in the future.

## **References**

- Civil Society / ADF ICSP Coalition, *Final Draft Civil Society Law* (Baghdad 2006).
- International Center for Not-for-Profit Law, *Comments on the Regulation of Non-Governmental Organizations Issued by the Coalition Provisional Authority, Order Number 45* (Washington, DC, 2003).
- International Center for Not-for-Profit Law, *Guidelines for Laws Affecting Civic Organizations* (Open Society Institute, New York, 2004).
- Iraqi Ministry of State for Civil Society Affairs, *Final Draft Civil Society Law* (Baghdad, 2006).
- All of these documents and several additional resources are available to the public in the ICNL Online Library – <http://www.icnl.org/knowledge/library/index.php>*

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<sup>9</sup> This is a very common Iraqi saying; if you have a tree with a bent trunk it is almost impossible to straighten, so things should be done in the right way from the very beginning!



*The Middle East: New Challenges*

## **Civil Society in Egypt: A Catalyst for Democratization?**

**Nadine H. Abdalla<sup>1</sup>**

Over the past decade, it has been noted that the West (mainly Europe and the United States) tends to view civil society as a catalyst or engine for democratization, especially in the Arab world. The role played by civil society in some countries of Eastern Europe and Latin America leads to a hope that other countries can make a successful transition to democracy even if they are still confronting some problems of democracy consolidation. Undoubtedly, this trend also reflects the West's will to find a reliable partner, capable of achieving a transition to democracy in a region that is characterized, on the one hand, by authoritarian Arab governments reluctant to implement significant reforms, and, on the other hand, by a secular opposition unable to counterbalance the power.

Thus, strengthening civil society seems increasingly to be the watchword at meetings, seminars, and conferences in the official and academic spheres. Recently, at the European level, the development of civil society has appeared to be the only way to achieve democratization in the Arab world

Within this framework, Arab NGOs have been heavily funded, especially those of Egypt. Here, the question arises: *To what extent can Western aid granted to civil society in general and NGOs in particular help to achieve a democratic transition and be considered an engine of democratization in a country like Egypt?* To answer that question, I outline some challenges to the idea of funding a civil society-engine of democratization, and argue that the West's "strategy of indirect promotion of democracy"<sup>2</sup> cannot succeed in Egypt, at least in the short term.

### **1 - Proliferation of NGOs or consolidation of authoritarianism?**

The Egyptian regime cannot be called authoritarian, but rather "semi-authoritarian," according to Marina Ottaway<sup>3</sup>; or "liberalized autocracy," in Daniel

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<sup>2</sup> For further information about the Indirect Strategy for Democracy Promotion in the Arab World, see CAROTHERS Thomas, *Is Gradualism Possible? Choosing a Strategy for Promoting Democracy in the Middle East*, in CAROTHERS Thomas (Editor), *Critical Mission: Essays on Democracy Promotion*, Carnegie Endowment for International Peace, Washington DC, 2005, pp 243-245.

<sup>3</sup> OTTAWAY Marina, *Democracy Challenged : The challenge of semi-authoritarianism*, Carnegie Endowment for International Peace, Washington DC, 2003, p3.

Brumberg's phrase.<sup>4</sup> That is to say, this regime is able to consolidate its authoritarianism while putting in place measures that can be considered more or less liberal. For such a system, the proliferation of NGOs is less likely to be a means of empowering groups seeking to change the regime's strategy than a part of the controlled-liberalization strategy itself. The presence of these NGOs and their various activities, even those seen as anti-government, can be viewed as outgrowths of a *policy* of controlled liberalization.

Thus, the government has much more to do with promoting civil society than civil society has to do with democratization.<sup>5</sup> This situation creates a plight for donors, who find themselves funding organizations that bolster the regime's survival strategy, rather than organizations with a realistic chance of affecting this strategy.<sup>6</sup>

## **2 - A "romantic" Western vision for civil society?**

We should be wary of romanticizing civil society. Nongovernmental organizations (NGOs) can play a positive and effective role in the democratic transition process only if they have two prerequisites:

First, they must have a degree of autonomy vis-à-vis the regime.<sup>7</sup> But in a country like Egypt, the regime in place does not hesitate to co-opt NGO leaders and activists by giving them better positions elsewhere in governmental or semi-governmental organizations while letting them retain their positions as head of the NGOs.<sup>8</sup> An important example is the appointment of Hafez Abu Seada, director of one of the largest and oldest NGOs in Egypt, the Egyptian Organization for Human Rights (EOHR), to the board of directors of the National Council for Human Rights, a governmental or semi-governmental institution. Beyond leaders of NGOs, the regime is working to co-opt the game itself by creating organizations that are supposedly work in the fields of advocacy and human rights. The result of that a large proportion of external funding aids institutions that pose no threat to the government's plans. Examples include the Federation of Non-Governmental Organizations, the National Council of Human Rights, and the National Council of Women.<sup>9</sup>

For NGOs to make a difference, they also must possess the capacity to build alliances with other sectors of civil society as well as a clear agenda for advocacy and,

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<sup>4</sup> For more on "liberalized autocracy, see: BRUMBERG Daniel, *The Trap of Liberalized Autocracy*, *Journal of Democracy*, Vol 13, n4, October 2002, pp57-67.

<sup>5</sup> DENEUGEUX Guilain, *Promouvoir la démocratie et la gouvernance dans les pays arabes : Les options stratégiques des bailleurs de fond (Democracy and Governance Promotion in the Arab World : Strategic Options for Donors)*, dans BEN NAFISSA Sara, *ONG et Gouvernance dans le Monde Arabe (NGOs and Governance in the Arab World)*, Karthala and CEDEJ, Paris- Cairo, 2004, p87.

<sup>6</sup> YOM Seon L, *Civil Society and Democratization in the Arab World*, *Middle East Review of International Affairs*, Vol 9, n4, December 2005.

<sup>7</sup> HAWTHORNE Amy, *Middle East Democracy: Is Civil Society The Answer?*, *Carnegie Papers* 44 (March 2004), p11.

<sup>8</sup> On cooptation, see *Policy Failure et Political Survival : The Contribution of Political Institutions*, *The Journal of Conflict Resolution*, Vol 43, n2, April 1999.

<sup>9</sup> YOM Seon L, *Civil Society and Democratization in the Arab World*, *op.cit.*

where appropriate, militancy.<sup>10</sup> Through alliances, they can pressure the government for socioeconomic or human rights reforms.<sup>11</sup> However, structural deficits afflicting Egyptian NGOs interfere with their ability to ally with other NGOs, and hence their ability to play effective leadership and mobilizing roles.<sup>12</sup>

These structural deficits are of two types. The first is the absence of internal democracy and transparency. These NGOs, especially those of political nature, are most often centered around a charismatic personality and feature a staff with scant experience.<sup>13</sup> The situation probably promotes authoritarian leadership of these NGOs.<sup>14</sup> In addition, the imbalance between the voluntary and professional side and staff within these NGOs affects their ability and their effectiveness. Donors, consequently, must give qualitative rather than quantitative aid if they want to enhance the effectiveness of these NGOs, a problem afflicting mainly the assistance offered by the European Commission in Egypt.

### **3 - Receiving funds versus acquiring a social base?**

Without external funding, NGOs of an advocacy type or political in nature may never emerge. The Egyptian government prohibits NGOs from receiving funds without its permission, which is rarely granted.

Even if permission is given, the culture of the country can be a real obstacle. The public has relatively little interest in politically active organizations, by contrast to its considerable interest in organizations of a religious nature that provide economic and social services; these social service NGOs are much likelier to receive local funds for their activities.<sup>15</sup> This creates contradictory interests between external donors interested in democratization, on the one hand, and the community, relatively uninterested in political activism, on the other. Political groups in general have little or no social base.

An additional problem is that the democratization-oriented NGOs compete for external donors. Scarcely any cooperation between them exists, which weakens their ability to lead and mobilize effectively.<sup>16</sup>

### **4 - Nongovernmental partner in the government?**

The government welcomes partnerships with NGOs working in development and providing services, especially given the rising Egyptian population.<sup>17</sup> These

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<sup>10</sup> HAWTHORNE Amy, *Middle East Democracy*, *op.cit.*, p11.

<sup>11</sup> YOM Seon L, *Civil Society and Democratization*, *op.cit.*

<sup>12</sup> Interview with Ms Nihad Rageh, director of the USAID project for strengthening NGOs' capacities at the NGO Support Center, Cairo, 17 October 2007.

<sup>13</sup> AL AGATI Mohamed, *Challenges that Face Civil Society in Egypt*, paper presented at the 2<sup>nd</sup> Subregional Conference of the EuroMeSCo at Alexandria, April 2007.

<sup>14</sup> Field observation.

<sup>15</sup> Interview with Mr. Ayman Abd AL Wehab, Head of the Civil Society Unit at AL Ahran Center for Political and Strategics Studies (ACPSS), Cairo.

<sup>16</sup> *Ibid.*

<sup>17</sup> DALACOURA Katerina, *US democracy promotion in the Arab Middle East since 11 September 2001: A critique*, *International Affairs*, May 2005, pp976-977.

organizations, unlike those in Latin America, for example, do not possess a dual agenda combining development and democratic change, so they do not mobilize the population to demand democratic reforms.<sup>18</sup> USAID in 2001 implemented an action plan for Egypt, under which it would stress aid to NGOs that combine their activities with advocacy or democratic change, but this approach is still limited and relatively ineffective.<sup>19</sup> One must ask, then, whether these organizations are generally reinforcing the government's authoritarianism rather than challenging it.

### **5 - The Islamist dilemma**

A further problem is that Islamist NGOs in Egypt tend to be more effective than secular ones, yet the Islamist ones tend to be excluded from external funding. (The Islamist organizations do not necessarily want external funds.<sup>20</sup>) The result is two categories of organizations: secular ones with limited effectiveness, a weak social base, and access to outside aid; and Islamist ones with greater efficiency, a stronger social base, and no outside aid. These two categories confront each other rather than cooperating, and thus are unable to act as a combined catalyst for pressuring the government for greater democracy. Donors generally do not promote such cooperation.

### **6 - Civil society, a catalyst for democracy?**

One way of framing the issue is whether we wish to foster the *demand* for democracy, by increasing the capacity of civil society organizations to pressure the government and rally the citizenry; or whether we wish to foster the *supply* of democracy, by enhancing the ability of state institutions to behave consistently with democratic values. In a famous article, Berman showed that civil society in Germany in the 1930s failed to achieve greater democracy. Highly mobilized, facing state institutions that were weak and unable to meet their demands, the organizations sided with the Nazi party.<sup>21</sup> Admittedly, this situation differs from that currently in Egypt, but the point is that civil society is not invariably a catalyst for democracy; the political and cultural contexts play a crucial role.

The West knows that the dynamics of democratization, in terms of political openings or more radically in terms of regime change, could at least in the short term lead to instability. The Muslim brotherhood, for example, is the only viable opposition in Egypt; it could assume power. The 2005 legislative elections confirmed this danger. For this reason, the West is seeking to promote democracy indirectly through civil society, an approach with limited promise.

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<sup>18</sup> HAWTHORNE Amy, *Middle East Democracy*, *op.cit.*, p12.

<sup>19</sup> Interview with Nihad Rageh, *op. cit.*

<sup>20</sup> AL Sayed Kamal Mustapha, *Helping Out is Hard to Do*, *Foreign Policy*, n117, Winter 1999-2000, p25. See also AL Sayed Kamal Mustapha, in NORTON Augustus Richard, *Civil Society in the Middle East*, EJ Brill Leiden, New York Koln, 1995, pp282-290.

<sup>21</sup> DENEUGEUX Guilain, *op. cit.*, p87. See also CAROTHERS Thomas and BRANDT William, *Think Again: Civil Society*, *Foreign Policy*, n117, Winter 1999-2000, p 21.

***The Middle East: New Challenges***

**Pushback Against NGOs in Egypt**

**James G. McGann<sup>1</sup>**

*This article discusses the current political conditions within Egypt, and how its position in the world community impedes the development and operation of domestic NGOs. Understanding the resistance that NGOs and democracy activists face helps illuminate the dilemmas involved in democracy promotion under present conditions. Awareness about the inconsistencies in NGO policy within Egypt will hopefully induce sympathy and pressure from the international community for Egypt to revise its behavior towards NGOs.*

*Introduction*

In recent years, various political and social indicators have surfaced that highlight a mounting backlash in developing and transitional nations against the rise of civil society as well as the think tanks and other non-governmental organizations (NGOs) that are active within it. As part of a global trend against democratic avenues of participation, increasing state suppression of NGOs has appeared in nations ranging from Belarus to Tunisia. The rising prominence of domestic NGOs and their growing success at engaging the public has increasingly been met with threats from governments that seek to constrain their operations and, in extreme cases, to orchestrate their collapse. Historically, public policy think tanks in developing and transitioning countries have been key civil society actors: they often bring attention to critical policy issues and help create legislation and regulations that provide all NGOs the space to operate freely. Since think tanks are often in the vanguard of civil society movements, they are frequently the primary targets of legal and extralegal restraints designed to limit their number, role, and influence. It is for this reason that we are giving them special consideration.

The Egypt case study was one of five countries selected for a comparative study designed to document and analyze this alarming transnational trend. Among the study's key findings is a detailed picture of the rising and systematic use of both legal and extralegal means in restraining domestic NGOs. Common legal measures of governmental pushback include the following:

- *Registration Limitations*
- *Funding Restrictions*
- *Government Oversight/Monitoring*
- *Explicit Legal Restrictions on NGO Activities*

Governments have also increased the range and penetration of extralegal measures targeted at the same domestic NGOs:

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- *State Control of Media Outlets*
- *Suppression of Key Leaders*
- *Threats of Armed Force*
- *Underdeveloped Legal/Operating Environment*

Each of the five nations highlighted in the larger study have applied most if not all of these legal and extralegal approaches to their particular domestic situations. The similarity of these tactics and those evidenced in Egypt should be cause for increased international awareness and action by NGOs, donors, and intergovernmental organizations.

### *Regime Type and State of Civil Society*

The Egyptian government emerges in liberal discourse as a perennial violator of human rights and a staunch opponent of authentic liberal democracy in the Middle East. However, Egypt consistently receives praise from the American government as well as some European governments for being a “moderate” Arab state—a description referring to both its position vis-à-vis Israel and its stance against the operation of many Islamist movements in the region.<sup>2</sup> This dichotomous characterization is the simplest way to point out the inherent contradiction facing democracy activists in Egypt, who often face a battle within their state as well as on the international field in order to gain positions as brokers of social and political power.

After Egypt gained independence from Britain in 1922 and the Western-backed King Farouk I was ousted in 1952, Gamal Abdel Nasser led the state in consolidating political, economic, and social power under a central government. Nicola Pratt states that in the postcolonial period, “[Egypt] has exercised hegemony through a combination of a nationalist-patriarchal discourse, the institutional framework of corporatism, and the economic structures of the public sector.” By hegemony, she means “the ‘ensemble’ of discursive, economic, and institutional structures through which rulers exercise their power.”<sup>3</sup> As a result, public paths to political and socioeconomic power have been traditionally limited in the name of protecting the interests of the state as a corporate entity. However, recent developments have altered the state’s preeminent role as domestic power broker in these areas.

Since 1981, after the assassination of Anwar Sadat, President Hosni Mubarak has overseen a gradual opening up of the economy and turned towards privatization as a method of generating wealth and modernizing Egyptian business and institutions. However, he has maintained the status quo in politics, taking little or no initiative to reform the political system.<sup>4</sup>

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<sup>2</sup> On many occasions, Egypt has condemned the actions of Hezbollah, al-Qaida, Hamas, and other Islamist groups that have used violence to articulate grievances against Israel, the United States, and other Western governments.

<sup>3</sup> “Hegemony and Counter-Hegemony in Egypt: Advocacy NGOs, Civil Society, and the State.” *NGOs and Governance in the Arab World*. Ed. Ben Nafissa, Sarah, Nabil Abd al-Fatah, Sari Hanafi, and Carlos Milani. New York: The American University in Cairo Press, 2005. 126.

<sup>4</sup> 2005 was the first election cycle that permitted a multi-party presidential election; however, the validity of the election was fundamentally undermined by the imprisonment and restriction of Mubarak’s opponents. See Lavin, Abigail. “Democracy on the Nile: The Story of Ayman Nour and Egypt’s Problematic Attempt at Free Elections.” *The Daily Standard*. 27 Mar 2006. Accessed March 2008  
<http://www.weeklystandard.com/Content/Public/Articles/000/000/012/034kggwf.asp>.

Since his inauguration as president, “emergency laws” have been in place to suppress political dissent and allow the government to break up any public gatherings or demonstrations deemed oppositional to the regime’s interest.<sup>5</sup> During this period of slow reform, NGOs and think tanks have emerged to influence the debate about political and social power—namely, to advocate a reorientation of sociopolitical power away from the state and towards private citizens.

Yet Mubarak has consistently blocked significant opportunities for civil society by employing legal and extralegal means to ensure that liberalization proceeds only at a rate that is desirable to the Egyptian establishment. This establishment, which is centered on the National Democratic Party (NDP), has vested interests in the economy developed over years of nepotism and patronage-entrenching deals between the political and business communities.<sup>6</sup> However, the so-called “New Guard of the NDP,” led by the president’s son Gamal Mubarak, a likely inheritor of the presidency, appears to be more engaged with economic modernization; he has equipped Egypt for “global economic competitiveness” by, for example, removing state subsidies. The removal of the old-guard elements from his father’s generation seems to be moving as slowly as economic reform.<sup>7</sup> The current conflict between political reformers and the state is an example of how the state continues to embrace its role as patron, strong-arming opponents into supporting a particularly slow type of reform that “entrenches a system in which NGOs are treated as the children of a paternalistic government.”<sup>8</sup> It is currently unclear as to whether a new Mubarak presidency would be more receptive to NGO involvement in domestic politics.

The history of the Egyptian state’s repressive control of NGOs shows parallels to obstacles that NGOs have faced in the other countries. However, one distinguishing characteristic of the regime is its position as a confidant of the current U.S. administration—and all other U.S. administrations since the 1970s. Mubarak inherited the Egypt of Sadat, boasting the second largest amount of annual military aid from the United States (behind Israel). For helping the U.S. with the Israel-Palestine conflict and accepting its regional presence in the Gulf, Egypt has received much economic assistance while tempering American criticism of its human rights abuses and restrictions on civil society. This situation does not mean that American administrations resist calling for democratic change in Egypt, only that the United States has vested interests in maintaining a strong alliance with the Mubarak regime.<sup>9</sup> Democracy activists cite this close relationship as one of the major impediments to building a more equitable and free Egyptian society. For allowing Egypt a free hand in restraining groups like the Muslim

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<sup>5</sup> Freedom House. “Freedom in the World – Egypt.” Freedom House, 2007. Accessed 8 Mar 2008 <<http://www.freedomhouse.org/template.cfm?page=22&year=2007&country=7170>>. These laws were actually renewed in 2006 for two more years. See Williams, Daniel. “Egypt Extends 25-Year-Old Emergency Law.” *Washington Post* 1 May 2006. A13.

<sup>6</sup> And in the reform period, many businessmen held elected office. Owen, Roger. *State, Power and Politics in the Making of the Modern Middle East*. New York: Routledge Press, 2003.131.

<sup>7</sup> Dunne, Michele. “Egypt’s National Democratic Party: The Search for Legitimacy.” Carnegie Endowment for International Peace, 16 Nov 2007. Accessed March 2008 <<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=19716&prog=zgp&proj=zme>>.

<sup>8</sup> Human Rights Watch. “Egypt: Margins of Repression: State Limits on Nongovernmental Organization Activism.” *Human Rights Watch* 17.8 (July 2005): p.1.

<sup>9</sup> See Kessler, Glenn. “Rice Criticizes Allies In Call for Democracy.” *Washington Post* 21 Jun 2005. A01.

Brotherhood and other civil society actors calling for greater reform, American policy “cements the perception among Egyptians that Washington blesses autocratic regimes.”<sup>10</sup>

### *NGO Climate*

In its annual report, Freedom House International gave Egypt a “downward trend arrow” for 2007, with a political rights score of 6, a civil liberties score of 5, and an overall rating of “not free.”<sup>11</sup> The current NGO climate reflects this trend, and although Egyptian society shows many cultural indicators of philanthropy and is demonstrably committed to the founding of NGOs, official registration, long-term development, and the growth of NGOs is significantly limited under current political conditions.

The Egyptian NGO scene began to take off in the years after the October (1973) War between Egypt and Israel. By the mid-1990s, Egypt boasted the largest NGO community in the southern global community, including the rest of the Arab world.<sup>12</sup> However, at the same point in time, approximately a quarter of the NGOs then registered with the Ministry of Social Affairs were in fact inactive.<sup>13</sup>

LaTowsky groups most of Egypt’s NGOs under five categories: (1) community development organizations, (2) religious welfare associations, (3) private-member associations, (4) non-religious welfare organizations, and (5) scientific/public cultural organizations.<sup>14</sup> Religious support bases from both the Muslim and Coptic Christian communities can extend into the community development organizations, with many as well extending into the private-member associations. In fact, the Muslim Brotherhood in the 1980s became very powerful in lawyers’ and writers’ syndicates, effectively turning these groups into “religious-friendly” institutions.<sup>15</sup>

Despite the large number of NGOs in the country, a fifth of Egypt’s population lives in poverty; therefore, its citizens cannot be expected to donate as much money to charitable organizations as do the citizens of Western Europe or the United States.<sup>16</sup> However, Egypt is a mostly Muslim country, so the religious obligation of *zakat* contributes significantly to the strength and operation of many charitable organizations with religious association.<sup>17</sup> International religious charities associated with both the Coptic Christian and Muslim communities are also active in promoting social welfare in terms of education, orphanages, hospitals, and agricultural development. Other organizations require assistance in the form of

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<sup>10</sup> Hamzawy, Amr and Dina Bishara. “Burying Democracy Further in Egypt.” *The Daily Star*, Beirut, Lebanon. 16 Mar 2007.

<sup>11</sup> A rating of 1 represents “most free,” while a rating of 7 is “least free.” Report is available online at <http://www.freedomhouse.org/template.cfm?page=22&year=2007&country=7170>.

<sup>12</sup> In 1997, Egypt had 14,000-15,000 private non-profit organizations, in addition to many more youth clubs, professional syndicates, and trade unions. See LaTowsky, Robert J. “Egypt’s NGO Sector, A Briefing Paper.” *Education for Development* 1.4 (1997): 1.

<sup>13</sup> *Ibid.*, 4.

<sup>14</sup> *Ibid.*, 5-7.

<sup>15</sup> Owen, 184-185.

<sup>16</sup> 2005 estimate. The Central Intelligence Agency. *The 2008 World Factbook*. Accessed 7 Jun 2008 <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html#People>.

<sup>17</sup> *Zakat* is considered one of the five pillars of Islam, and it requires those who are financially capable of meeting their immediate needs to donate 2.5% of their income to those in need within their communities.



grants, with much assistance traditionally coming from abroad in the form of foreign grants or international aid. Yet the debate surrounding the funding of NGOs from abroad has piqued interest in government and non-government groups in recent years.

The so-called “foreign funding debate” revolves around the fact that it is illegal under certain circumstances for NGOs in Egypt to accept funds from foreign organizations or governments (this is elaborated upon in the section on legal restrictions, below). Essentially, officials in the government view the foreign funding of domestic NGOs as a potential method for achieving political reorientation of social groups away from state control. The debate can be seen as replicating an oppositional binary inherited from the colonial period in which “domestic mechanisms of authoritarianism” mediate a power struggle between the ruling establishment and those out of power.<sup>18</sup> Critics accuse NGOs of representing a “homogeneous bloc of Western interests seeking to dominate Egypt.” This perspective in turn “creates a ‘siege mentality’” among actors who believe they are acting in the government and state’s national interests, who are then able to justify abusing the rights of those who oppose them in the name of national security, state unity, preservation, etc. Nicola Pratt makes three assertions to undermine the common argument put forth by the anti-NGO side in the debate: (1) “the West is not a homogenous bloc of interests,” (2) “Egypt is not a homogenous bloc of interests,” and (3) “the process of globalization provides new challenges, such as multi-national corporations, environmental degradation, and human trafficking, that do not subscribe to the paradigm of Western domination over Third World or periphery countries.”<sup>19</sup> She found through interviewing many NGO activists that the strength of the anti-foreign funding argument lies not in any flaw in the pro-foreign funding side, but in the “anti” side’s monopoly of nationalism. By placing the world against Egypt in an “us vs. them” dichotomy, those critical of the work of NGOs can undermine any nationalist or patriotic reason put forth by NGO activists for justifying the work that they do for Egyptian society.<sup>20</sup>

Even the NGOs lucky enough to obtain registration from the Ministry of Cultural Affairs must maintain a close relationship with the Ministry and appease bureaucrats who are capable of obstructing their operation. In such an environment, though, the Egyptian government can permit the free operation of NGOs that closely serve the interests of the regime, and thus appear to be NGO-friendly. One obvious example of such an NGO is that run by Gamal Mubarak, the son of the President. He is the chairman of the Future Generation Foundation (FGF), an NPO “with the aim of bolstering Egypt’s bold strategy for achieving sustainable economic growth through global competition by helping to create a tech-oriented and skilled workforce that could confront the needs of the new century.”<sup>21</sup> The organization’s website shows that board members of FGF include the Minister of Trade and Industry, the minister of Housing, Utilities, and Urban Development, and several prominent bankers and industrialists.<sup>22</sup> That three members of the

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<sup>18</sup> Pratt, Nicola. “NGOs and the ‘Foreign Funding Debate’ in Egypt.” *Human Rights in the Arab World: Independent Voices*. Ed. Anthony Chase and Amr Hamzawy. Philadelphia: University of Pennsylvania Press, 2006. 124.

<sup>19</sup> *Ibid.*, 124-125.

<sup>20</sup> *Ibid.*, 125-126.

<sup>21</sup> Future Generation Foundation. “About us | Background.” Future Generation Foundation. Accessed on 10 Mar 2008 <<http://www.fgf.org.eg/About.aspx?pageID=156>>

<sup>22</sup> Future Generation Foundation. “About us | Members.” Future Generation Foundation. Accessed on 10 Mar 2008 <<http://www.fgf.org.eg/About.aspx?pageID=160>>.

board of this NGO have direct connections to the government leaves little doubt that the FGF qualifies as an “ersatz NGO.”

NGOs that are not supported in the mainstream opinion of the government and NGOs that appear to have a “patron-client” relationship with international donors are likely to be closed down by the government.<sup>23</sup> The next section describes in detail the legal methods with which the Egyptian government can limit the activities of NGOs and justify their closure. Following that is a description of the security services that the government employs to police the NGO community.

### *Recent Developments*

Civil society in Egypt has passed through three distinct phases during which the government has developed various legal methods to control and affect the breadth and depth of its reach into civil society its control over the activity of NGOs. Each of these three phases has had its own set of codes and regulations.

The first phase of civil society development, which took place up until World War II, had mostly private, philanthropic organizations as the mainstay of civil society. As these organizations were under the auspices of royal family members, the government did not get involved with regulations.

During the second phase of civil society development, which began under the rule of President Nasser, the government and its role in society as a whole shifted. The state became authoritarian, and as such, began to pursue policies aimed at societal control. The Civic Association Code, Law 32/1964, gave the government great powers over civil society, including the power to reject the formation of organizations and to consolidate or dissolve groups at its discretion. Of great importance to current Egyptian society is the Emergency Law, which was implemented in 1967 during the Arab-Israeli War. The law dramatically expanded police powers, suspended constitutional rights, and legalized censorship. The law is pertinent to NGO pushback as it gives the government the legal right to act in any manner which it believes is needed for its national security.<sup>24</sup>

The third and current phase of Egyptian civil society development began in the 1980s with the emergence of a new role for civil society: that of “participant in the processes of development and democratic evolution.”<sup>25</sup> In this period, the government has increasingly focused on economic development, which has allowed for the implementation of more liberal, market-oriented economic reform. However, that spirit of liberalism and reform has yet to cross over to the political realm. The legal restraints against Egyptian civil society that the government developed during this period will be further detailed in the next section.

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<sup>23</sup> For a discussion on the issues facing international NGO relations between the global North and South, see Milani, Carlos. “Non-Governmental Organizations in Global Governance.” *NGOs and Governance in the Arab World*. Eds. Sarah Ben Nefissa, Nabil Abd al-Fatah, Sari Hanafi, and Carlos Milani. New York: The American University in Cairo Press, 2005. 19-37.

<sup>24</sup> Agati, Mohamed. “Undermining Standards of Good Governance: Egypt’s NGO Law and Its Impact on the Transparency and Accountability of CSOs.” International Center for Non-for-Profit Law, Apr 2002. Accessed Mar 2008 <[http://www.icnl.org/knowledge/ijnl/vol9iss2/special\\_4.htm](http://www.icnl.org/knowledge/ijnl/vol9iss2/special_4.htm)>.

<sup>25</sup> Agati.

### *Legal Methods of Restraint*

Egyptian civil society has evolved alongside government restrictions which have become stricter over time. In 1999, the Egyptian government began to entertain the idea of a law that pertained specifically to NGOs. The draft of the law that was to regulate NGOs, Law No.153, was crafted by the government without the direct consultation of civil society and was sent to Parliament for approval. It was approved, but it was criticized as unconstitutional and was repealed by the Supreme Constitutional Court in 2000 for procedural reasons. Though repealed, this law laid the groundwork for the law which was to come, Law 84/2002.<sup>26</sup>

Law 84/2002 was quickly and quietly passed, again with no consultation from the NGOs it would come to affect. The law was very similar in content to Law 153 and would be used “as a tool for the government elite to control CSOs.”<sup>27</sup> The law is very broad in scope and allows the government to control almost every level of NGO operation. Law 84 allows the government to undermine efforts of the political opposition by regulating out of existence NGOs that question state authority, through regulations during the registration stage, the ability to deny the legal foundations of an NGO, and the power to refuse access to procured funding. The law also allows the government to regulate not just the formal existence of NGOs but also their goals and intentions. Article 11 of Law 84 is particularly used to prevent the registration of NGOs based on what their goals are perceived to be. The government can control the composition of an NGO’s board as well as demand minutes from all its meetings. If an NGO does not operate satisfactorily, Law 84 provides the government many options: it can impose steep fines, jail the NGO’s members, or even dissolve the organization for breaking rules, whether clearly defined or not, established by Law 84.<sup>28</sup>

From the beginning, NGOs face large obstacles. For an NGO to be legal, it must be registered with the state. While some NGOs try to avoid registration, many find it nearly impossible to operate successfully without the government-issued NGO identification number. The many who do decide to register have to go through the Ministry of Social Affairs, which Article 2 of Law 84 established as the government authority to approve or disapprove NGO registrations. The Office of State Security also plays a large role in overseeing registration, but its role is extralegal and not provided for explicitly in the law. Registration is mandatory under Law 84 for any group that has more than ten members and exists “for a purpose other than gaining physical profit.”<sup>29</sup> The Ministry is able to reject applications under Article 11 of the Law, which outlines, albeit vaguely, prohibited NGO activities. Rejections can also be based in disapproval of an organization’s founding members or for “any provisions in an association’s article of incorporation that it determines violate the law.”<sup>30</sup> When Human Rights Watch obtained data on registrations that occurred after Law 84 was implemented, it found that of the thirty NGOs it traced, seven had successfully registered, five were fighting Ministry rejection through litigation, and the remaining groups had decided to pursue alternative legal options.<sup>31</sup>

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Human Rights Watch, “Egypt: Margins of Repression.”

One major obstacle in registration for many NGOs is compliance with Article 11. This Article allows the Ministry to reject applications on the ground that the NGO in question is “threatening national unity or violating public order or morals.”<sup>32</sup> Human Rights Watch describes Article 11 as “a tool with which to block the registration of groups whose behavior or goals do not fit within the narrow margins the state favors.”<sup>33</sup> At least five human rights NGOs had been denied registration as of June 2005 due to “security concerns” or other Article 11 considerations: the Egyptian Center for Housing Rights, the Egyptian Initiative for Personal Rights, the Egyptian Association Against Torture, the Civil Observatory for Human Rights, and the World Center for Human Rights. And the label “threatening,” which is at the center of Article 11, seems to be one that faces no real standards of scrutiny. Additionally, when NGOs try to fight rejections based on Article 11 grounds, they often receive little additional explanation for their rejections, or face long court battles that can drain their funding. When the Egyptian Association Against Torture attempted to challenge its rejections, the Ministry, five weeks after a request, vaguely informed the group that “its objectives breached Law 84 in practice and in spirit and violated the public order.”<sup>34</sup>

If an NGO successfully navigates the challenge of registration with the Ministry, it faces additional hurdles in operation. Law 84 allows the government great freedom of interference in almost all NGO activities, with the threat of dissolution always looming in the background. According to Article 25, the Ministry has the right to send “representatives to an organization’s meetings and even call a meeting of the general assembly.”<sup>35</sup> The Ministry also requires that the NGO send the Ministry a copy of the minutes from each meeting within thirty days of it taking place. Regulation of activity is also attained through rules regarding the composition and number of board members. The Board of Directors must comprise an odd number, anywhere between five and fifteen, and a list of those nominated as board members must be submitted for approval to the Ministry sixty days before the election. Board nominees can be removed by the Ministry for “non-fulfillment of nomination requirements” according to Article 34.<sup>36</sup> Human Rights Watch found cases in which individuals were blocked from participating in board elections for two NGOs, one focused on human rights and the other on development.<sup>37</sup>

Another realm in which the Ministry exercises great control is the funding of NGOs. Many NGOs have come to rely on foreign funding to keep their organizations running, since domestic sources of funding are often few and far between. However, according to Article 17, “associations may not accept foreign funding without explicit authorization from the Ministry of Social Affairs.”<sup>38</sup> There are strict protocols regarding the transfer of foreign funds, one of which stipulates that all foreign funds must be deposited into designated bank accounts during the review period, none of which the NGO can access. The law also states that the Ministry must give its final decision within sixty days. However, since the NGO cannot access any of the funds

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<sup>32</sup> Ibid.

<sup>33</sup> Human Rights Watch, “Egypt: Margins of Repression.”

<sup>34</sup> Ibid.

<sup>35</sup> Agati.

<sup>36</sup> Ibid.

<sup>37</sup> Human Rights Watch, “Egypt: Margins of Repression.”

<sup>38</sup> Agati.

during this period, the waiting period can often drive the NGO to insolvency. This complication frustrates many NGOs, as one NGO leader said to Human Rights Watch: “The sixty days are an issue—of course the government will take longer, and we won’t be able to touch it. Our operational funding is vital. It is essential we get it in time, and it’s the hardest to find. The electricity [bill] must be paid.”<sup>39</sup> Many organizations that had experienced trouble with registration find that gaining permission to use their foreign-donated funds can be equally trying.

The relationship between the government and NGOs is often marked by distrust, as the government perceives many NGOs to be “wealthy groups corrupted by foreign political interests.”<sup>40</sup> The dynamics and difficulties in the registration process are thus often affected by the social, economic, and political differences between NGO activists and government officials. Additionally, corruption in the government, confusion among officials, and lack of knowledge of the complicated NGO laws contribute to the difficulties many NGOs face. Belligerence from government officials makes legitimate NGO work in Egypt even more difficult. One NGO leader remarked that whenever he went to the Ministry he “took a copy of the law in one hand and the executive regulations in another. [I] would read aloud different provisions to them and they would say ‘but we have orders to do it this way.’”<sup>41</sup> Many of these barriers to NGOs within the Ministry bureaucracy “appear to be the bureaucratic expression of political resistance” to voices of opposition in Egypt.<sup>42</sup>

Groups that break any of the rules laid out in Article 84 may face fines, penalties, jail time, or even dissolution. If an NGO tries to avoid registration, activities deemed “clandestine” can be punished with up to a year in prison and hefty fines. However, the law is so vaguely defined that many NGOs are subject to penalty without being clearly forewarned of their illegal activity. We have to remember that any activity that threatens national unity or violates public order or morals can be punished; furthermore, any activity seen as political is illegal. This ban can cause issues when an NGO is accused of sponsoring a “campaign,” a word without non-political connotations in Egypt. When organizations are punished, they are done so collectively, which discourages many Egyptians from participating in these groups. Likewise, dissolution of an NGO can take place as a result of the actions of a single member.<sup>43</sup>

While many groups have faced sanctions as a result of Law 84’s penalties, the Ibn Khaldun Center for Development Studies in Egypt is a particularly poignant case. Its director, Dr. Saad Eddin Ibrahim, was arrested at gunpoint in 2000 with two of his employees and was then held for forty-five days while receiving no formal charges. The police along with about fifteen to twenty armored cars took Dr. Ibrahim to the center where he saw his building ransacked. After three years in and out of courts and jails, Dr. Ibrahim was acquitted after the high court of Cassation, the only independent court of Egypt, overturned all of the charges. Upon returning to the Center’s office, he likened its appearance to the “National Museum of Baghdad”

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<sup>39</sup> Human Rights Watch, “Egypt: Margins of Repression.”

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Agati.

after the looting that took place during the American invasion in 2003.<sup>44</sup> The formerly thriving NGO had been deprived of all of its computers, and the office was now unusable. Despite the government harassment, Dr. Ibrahim and his group decided to push forward and to continue on with their work. Dr. Ibrahim recently described his ordeal in the *Washington Post* and spoke out against the repression of Egyptian NGOs: “My real crime is speaking out in defense of the democratic governance Egyptians deserve.”<sup>45</sup> With deteriorating health and as a target of the Egyptian government, Dr. Ibrahim has been warned not to return to Egypt. He describes the current situation: “My family is worried, knowing that Egypt's jails contain some 80,000 political prisoners and that disappearances are routinely ignored or chalked up to accidents. My fear is that these abuses will spread if Egypt's allies and friends continue to stand by silently while this regime suppresses the country's democratic reformers.”<sup>46</sup>

### *Extralegal Measures of NGO Pushback*

As articulated in the section on legal restrictions, Law No. 84/2002 does not explicitly describe a role for the security services concerning the application and registration of NGOs. Those organizations that continue to operate without direct approval from the Ministry of Cultural Affairs of all logistical and financial actions run the risk of being closed down by security services.<sup>47</sup> Thus, in Egypt, the actions of NGOs and the boundaries of their activism are influenced by the ever-present fear of security services.

By and large, Egypt boasts the largest overall security sector in the Middle East. However the majority of its spending and training is not devoted to the development of the armed forces, but rather to the larger and more numerous internal security services. These agencies include the General Intelligence and Security Service, the Military Security Service, the General Directorate of State Security Investigations, and the State Security Service.<sup>48</sup> Together, these agencies have worked to curtail NGO operation through a variety of methods. The most publicized aspect of Egypt's internal security apparatuses is their record for arbitrarily arresting, beating, and torturing civil society actors. Examples include unwarranted arrests of reporters, public beating of protestors, and the torture of prisoners. Many asylum-seekers who have fled to other countries have been tortured upon returning to Egypt, as have many political activists who have demonstrated to express their dissatisfaction with the Mubarak regime.<sup>49</sup>

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<sup>44</sup> Open Society Institute's Central Eurasia Project. “Freed Reformist Sees Hopes for Islamist Democracies.” Open Society Institute, 5 May 2003. Accessed 18 Mar 2008. <[http://www.soros.org/initiatives/cep/events/egypt\\_20030505/summary](http://www.soros.org/initiatives/cep/events/egypt_20030505/summary)>.

<sup>45</sup> Ibrahim, Saad Eddin. “Egypt's Unchecked Repression.” *Washington Post* 21 Aug 2007: A15. Accessed 18 Mar 2008 <<http://www.washingtonpost.com/wp-dyn/content/article/2007/08/20/AR2007082001500.html?referrer=emailarticle>>.

<sup>46</sup> Ibid.

<sup>47</sup> Human Rights Watch, “Egypt: Margins of Repression.”

<sup>48</sup> See Federation of American Scientists. “Egypt: Intelligence Agencies.” Federation of American Scientists, last updated 10 Jun 2008. <<http://www.fas.org/irp/world/egypt/index.html>>.

<sup>49</sup> See Human Rights Watch. “US: Halt Deportation to Torture in Egypt.” Human Rights Watch, 1 Jun 2007. Accessed March 2008 <<http://www.hrw.org/english/docs/2007/06/01/usdom16055.htm>>. See also Physicians for Human Rights. “Egypt: Torture of Anti-War Demonstrators Continues; Urgent Independent Investigation Needed.” Physicians for Human Rights, 26 Mar 2003. Accessed March 2008 <<http://physiciansforhumanrights.org/library/2003-03-26.html>>.

Although NGOs and democracy activists frequently find themselves in the crosshairs of the Egyptian state when making demands for greater political power, the state's internal repression is aimed at other social currents as well. One of these other targeted groups is the Egyptian Muslim Brotherhood, publicly outlawed since 1954. The Brotherhood has agitated for recognition by the state as a legal political party and religious social movement for years; however, the state has demonstrated its intransigence in a number of ways, most notably during the early 1990s when a sub-war raged between the state security services and various militant factions within the Brotherhood.<sup>50</sup> The state's campaign to quash their activities influences NGO pushback because it serves as a pretext for the Egyptian security services to do everything necessary to maintain social order. With this rationale, NGO activists can be arrested and detained on legal grounds developed in response to prosecuting violent saboteurs and terrorists.

The toll exacted by the internal security services on Egyptian society has been well documented. Last year, the Egyptian Organization for Human Rights confirmed that at least 500 cases of police abuse took place since 1993, 167 of which resulted in death.<sup>51</sup> Also, reports have shown that Egypt's national budget overwhelmingly emphasizes internal security before other areas of public spending, such as healthcare.<sup>52</sup> The state's broad definition of "public order" has consistently been applied as an attempt to legalize any action by the security services, whose extralegal harassment, torture, and detention of NGO personnel has been exceedingly difficult to prosecute due to state anti-defamation laws and a byzantine network of legal rules protecting security personnel in the military courts. The imprisonment of Saad Eddin Ibrahim and the closing of the Ibn Khaldoun Center for Development Studies between 2000 and 2003, and the simultaneous rollercoaster of legal appeals that eventually granted him freedom, demonstrate the willingness of the security services to stifle inquiry into the problems that currently face Egyptian society and the economy in a difficult age of reform.

More recently, Egyptian bloggers who have written critically of the government have been targeted in much the same manner as Ibrahim—tried under anti-state defamation laws and imprisoned with minimal resources for legal defense. "Sandmonkey," also known as Abdel Kareem Nabil, was arrested and jailed for four years for "insulting Islam and Egyptian president, Hosni Mubarak, on his blog."<sup>53</sup> As in other countries like Syria, China, and Russia, the Internet is increasingly subject to censorship by the Ministry of Information and the various security networks in Egypt.<sup>54</sup> Yet the community of bloggers has shown that it can effectively aid opposition leaders and democracy activists in orchestrating anti-government protests, and also influence the dialogue about how best to express their dissatisfaction with the current political

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<sup>50</sup> Owen, 185.

<sup>51</sup> Paraphrased in Ibrahim.

<sup>52</sup> Ibid.

<sup>53</sup> Levinson, Charles. "Egypt's Blog Rebels Silenced by Jail." *Sunday Telegraph* 7 May 2007. Accessed March 2008 <<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/05/06/wblog06.xml>>.

<sup>54</sup> For the first instance of Russia charging blogger with "inciting hatred and enmity," see "Russian Blogger Heads to Court After Fiery Comment." *The Other Russia* 13 Mar 2008. Accessed March 2008 <<http://www.theotherussia.org/2008/03/13/russian-blogger-heads-to-court-after-fiery-comment>>. For Syrian instance, see "Civil Society News from Around the Region: Syria." *Civil Society and Democratization in the Arab World* (Aug 2007): 2.

climate.<sup>55</sup> In the 2005 election cycle, members of the blogging community demonstrated, through new technologies such as text-messaging and the Internet how to mobilize support for political movements like the Muslim Brotherhood and the *Kefaya* movement (a group of anti-government civil society actors agitating for greater civic inclusion and freedom, whose name means “enough” in Arabic).<sup>56</sup>

Ultimately, the Egyptian government wastes valuable time, resources, and human energy by harassing NGO personnel and detaining their members. Not only is the Egyptian government under-concerned with the structural problems facing the country, but the active campaigns carried out by the security services indicate government willingness to see the country suffer an intellectual stagnation. By employing extralegal measures to limit the activity of civil society actors, the Mubarak regime ensures that its top-down reforms can be carried out with as little internal criticism as possible. Without the advantage of other voices in the domestic dialogues over what to reform and how to reform, the government is unable to construct many meaningful relationships within Egyptian society that favor public accountability and efficiency in its development goals.

### *Regional Implications*

When examining the role and repression of civil society in Egypt, it is illuminating to compare the Egyptian situation to that in other countries of the Middle East. Augustus Richard Norton, in the introduction to his compilation on civil society in the Middle East, describes the regional situation: “Intolerant of peaceful political opposition and suspicious of independent political activities, the region’s governments have persistently moved to squash those political voices resistant to co-optation or intimidation.”<sup>57</sup> In terms of repression of civil society and political dissent, Egypt is on par with its peers and acting in a manner that seems to be normal in the region. Civil society in the Middle East as a whole “enjoys less autonomy than civil society in the West, and is therefore likely to be less vigorous and less efficacious in interaction with government institutions.”<sup>58</sup> Of potential interest is the fact that a human rights movement has emerged in the Middle East, a movement that has also been observed in Egypt.

As the hobbling of civil society has left a gap in the realm of popular expression in the Middle East, many countries, Egypt included, have seen the rise of a new ideology to fill that void— Islamism. While the government in Egypt may not like the fact that that this movement has taken hold through such groups as the Muslim Brotherhood, Norton argues that “even when the governments have not purposely assisted the Islamists, the governments have aided the Islamists indirectly through limitations and restraints on associational life.”<sup>59</sup> Growth in popularity of Islamist parties and movements has been noted in all Middle Eastern countries. However, Egypt has tried to work through the use of its Emergency Law and its NGO Law, Law

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<sup>55</sup> See Levinson, Chris. “Egypt’s Growing Blogger Community Pushes Limits of Dissent.” *Christian Science Monitor* 24 Aug 2005. <<http://www.csmonitor.com/2005/0824/p07s01-wome.html>>.

<sup>56</sup> See Stack, Liam. “Democratic Reforms Missing from Egypt’s Political Debate.” *The Daily Star*. Beirut, Lebanon. 13 Oct 2006.

<sup>57</sup> Norton, Augustus Richard. *Civil Society in the Middle East*, Volume 2. New York: Die Deutsche Bibliothek, 1996.

<sup>58</sup> *Ibid.*, 1-16.

<sup>59</sup> *Ibid.*



84/2002, to prevent Islamic activists from rising to political power.<sup>60</sup> The role of Islamism in Egypt in the future will be of great importance, however, as more Islamist movements seek expression of their aims through civil society.

Although Egypt seems to follow the Middle Eastern trend with regard to limitations on civil society, it has a few features that make it a unique case. Egypt is an authoritarian state (like many in the region) that has seen a growth of the popularity of Islamism. However, Maha Abdel Rahman argues that a backlash against the Islamist movement and the repression of religious groups are increasingly emerging not just from direct orders from the government, but from secular civil society groups themselves. Competition within the civil society sphere for much-needed domestic funding that is not subject to Law 84 pits some civil society actors against one another, often in a conflict between secular and religious groups. This phenomenon has been termed “the privatization of repression.”<sup>61</sup> Exacerbating the tensions are the non-secular intellectuals who hope to take power entirely away from secular groups by allying themselves with the government. While the motivations of the secular intellectuals may be diverse, one common reason for their repression of the Islamists is rooted in their fear that “if the Islamists come to power, there is no guarantee that they would abide by the rules of democracy.”<sup>62</sup> And like other states in the region that have recently held elections — notably Palestine, Lebanon, and Iraq—there is a common precedent to limit the participation of religious actors in the political process.

#### *Policy Recommendations*

While the Egyptian government often boasts of the growth and number of NGOs that populate its civil society, that growth has been tempered with repression. The freedoms of speech and press that are necessary for a flourishing and productive civil society have largely been replaced in Egypt with administrative hurdles and harassment from the security services. The government is able legally to prevent the registration of NGOs that have aims or goals which it believes to be compromising to Egyptian “security.” Article 11 of Law 84 is so broadly and vaguely worded as to allow the Ministry of Social Affairs near-ultimate authority in rejecting any NGO application that may be construed as “threatening” to the regime. The threat of penalties, fines, and even dissolution puts NGOs in the position of trying to follow rules which they are bound to break, or trying to fly under the radar with their activity. Those who are caught face an uphill legal battle, as did Dr. Ibrahim of the Ibn Khaldun Center of Cairo. Additionally, the extralegal role of the security services guarantees that those who are caught breaking the laws will meet the heavy hand of punishment and harassment.

Legal reforms are needed in Egypt to in order produce a productive and flourishing civil society in which NGOs can operate. NGOs and other civil society members need to be thoughtfully and legitimately incorporated into the lawmaking process to produce a new NGO law which will make many of the administrative hurdles less daunting. The registration process

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<sup>60</sup> Yet these modes of repression do not guarantee total control of the political situation. In the 2005 elections, Muslim Brotherhood members registered as independents captured roughly 20% of parliamentary seats. See Otterman, Sharon. “Muslim Brotherhood and Egypt’s Parliamentary Elections.” Council on Foreign Relations, 1 Dec 2005. Accessed March 2008 <<http://www.cfr.org/publication/9319/#1>>.

<sup>61</sup> Rahman, Maha Abdel. “The Politics of unCivil Society in Egypt.” *Review of African Political Economy* 29.91 (2002): 21-36. Accessed 18 Mar 2008 <<http://www.roape.org/cgi-bin/roape/show/0091.html>>.

<sup>62</sup> Ibid.

needs to be streamlined with the rules for rejection or acceptance of the application of an NGO more clearly defined. There also needs to be a simplified appeals process in which the Ministry replies within allotted deadlines and gives concrete reasons for rejecting the application of an NGO. The process for obtaining funding should be made simpler as well. Many NGOs need more readily available funds in order to keep their organizations afloat. The government should decide whether to allow foreign funding in a timely manner so that NGOs can assess their financial needs more quickly.

Changes also need to be made within the government bureaucratic apparatus itself. The role of the Ministry versus the role of the security services needs to be clearly defined. As it stands, the security services have no legal role with respect to NGO registration and operation. However, the security services often decline NGO registrations. The two organizations need to be disentangled, and the NGO registration process de-politicized. Additionally, government bureaucrats need to be educated about the laws under which they operate. Some have even enforced the old NGO law from 1974. Ministry employees need to know thoroughly the laws that they are enforcing and carry them out across all the regions of Egypt equally. Most importantly, efficiency and transparency should be increased in all actions in order to make the regulation of Egyptian civil society more legitimate. NGOs are often at the mercy of the Ministry in terms of registration, funding, and appeals. The rules need to be adhered to in all processes, and time frames should be enforced and respected.

Finally, changes need to occur within the Egyptian community itself. NGOs will continue to face an uphill battle if they are perceived by the government and by the community at large as rich affiliates of foreign governments. Within the realm of the law, NGOs face the challenge of changing their perception. While their options are limited given the ban on political campaigns, through their persistence in their work and through good governance practices they should be able to help the community slowly see that they can be a force for good and for change. Additionally, if the laws are adjusted to shift punishments away from the collective and toward the individual, Egyptians may feel inclined to get involved with the work of NGOs and help build a more inclusive and democratic civil society.

**ARTICLE**

# **Legal and Institutional Mechanisms for NGO-Government Cooperation in Croatia, Estonia, and Hungary**

**Katerina Hadzi-Miceva<sup>1</sup>**

## **I. INTRODUCTION**

The cooperation between the state bodies and non-governmental organizations (NGOs)<sup>2</sup> in Central and Eastern Europe (CEE) has increased significantly in the past several years. There is a well-recognized tendency among the countries to expand the scope of applicable areas of cooperation, to increase the available forms and mechanisms for cooperation, and to institutionalize the partnership so as to ensure continuity and sustainability.

The forms of cooperation include a wide range of tools and mechanisms. Primarily, governments have supported the civil sector through enacting a favorable legal environment for establishment, operation and sustainability (e.g., by creating mechanisms to enable NGO to utilize diverse sources of funding). Governments and NGOs have improved partnership in the delivery of social services, and governments have increased support to NGOs through grants and subsidies. Importantly, some governments have adopted mechanisms to financially support the development of the sector (e.g., Croatian National Foundation for Civil Society Development and Hungarian National Civil Fund).

Parallel to the financial relationship and partnerships in meeting social needs, governments and NGOs throughout CEE have recognized the importance of having continuous dialogue and longer term strategies for cooperation and support to the development of the sector. Therefore, some governments have established separate units, offices or departments to institutionalize the cooperation with NGOs (e.g., Croatia, Hungary, Macedonia, Slovakia, Czech Republic). The role of these offices includes furthering democracy and strengthening cross-sector relationships, developing and implementing cooperation agreements, fostering dialogue,

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<sup>2</sup> In this article, the term *NGO* will refer to associations, foundations, and other legal forms or informal type of organizations which are recognized in the selected countries.

enhancing NGO participation in decision-making and supporting the development of coherent policies for the development of the sector.

Furthermore, public authorities throughout the region have adopted policy documents, such as programs for cooperation or targeted strategies (e.g., Estonia, Hungary, Croatia, Latvia and Macedonia) which help strengthen the cooperation and support. These documents differ in terms of purposes and goals; however they all outline the basic principles of the cooperation and promote active measures that should be undertaken by the government to support the development of the sector and foster cooperation. Estonia and Hungary have already implemented the first strategies and have been able to draw lessons from the process, which serve as a base for the development of follow-up documents. On the other hand, Croatia and Macedonia have just developed their strategies and are in the first phase of their implementation.

Although there are many positive developments in the cooperation between CEE governments and NGOs, the process of the development of partnership carries many lessons to be learnt and shared with other countries. While the mechanisms or tools for cooperation might be similar, the processes are different in terms of the purposes and motivations, the initiators of the mechanism, the challenges and negotiations in the process and finally in terms of the results that have been achieved.

This article will provide an overview of the development of legal and institutional mechanisms to strengthen the cooperation between governments and NGOs in three countries of CEE: Hungary, Estonia, and Croatia. The Hungarian legal and institutional framework for cooperation can be regarded as one of the most advanced in the region. The Croatian “model for civil society development” which features three state bodies as promoters of the development process is an excellent example of a local needs-driven initiative, which aims to foster partnership in the fields of consultation, participation and funding. Estonia is the first country to develop a policy document for cooperation in the region and is currently developing a new mechanism for government funding for the overall development of the sector.

The article will cover the following issues:

- (1) The basic regulatory framework that supports the establishment and operation of NGOs and an overview of government efforts to ensure financial sustainability of the NGOs through creating tax benefits for utilizing income from self-generating activities and private donations (philanthropy);
- (2) Analysis of the innovative mechanisms for government funding to support the development of the sector;
- (3) Institutional cooperation between government and NGOs;
- (4) Policy documents for cooperation and development of the sector; and
- (5) Involvement of NGOs in policy and decision-making processes.

By providing a comparative analysis and highlighting the successes and challenges of the development of cooperation and the innovative examples from these countries, the article will aim to facilitate cross-border learning and enable governments and NGOs to select the appropriate models to foster their cooperation.

## **II. ENABLING LEGAL FRAMEWORK FOR DEVELOPMENT OF CIVIL SOCIETY**

An enabling legal environment for the development of NGOs presupposes the right of citizens to associate freely in order to achieve common interests and needs. An enabling legal environment sets a protective framework for NGO activities and limits the ability of governments to interfere with NGO basic rights to be established and operate freely.<sup>3</sup> It also requires clear and well defined rules that support NGO sustainability and functioning. Equally important, an enabling legal framework contributes towards the development of cross-sector(al) partnerships between NGOs, government, commercial corporations. For example, assume a ministry decides to contract with an NGO to provide services in a certain field (e.g., establishing and operating shelters for homeless people), allocates funding to support partially the provision of those services, and requires the NGO to match the ministry funding and use other resources to provide the service fully. The laws can support this relationship (and the provision of the services) in several ways. First, the law could allow NGO to generate its own income (e.g., sell publications on housing issues) and could exempt such income from taxation. Second, recognizing the importance of attracting private resources, the law could encourage the NGO to reach out to individuals and corporations and seek their donations, through prescribing tax benefits for individual and corporate donations to the NGO. Third, the NGO may want to rely on volunteers in the implementation of its activities (e.g., volunteers can organize some activities for the homeless people during the day). By removing the obstacles to volunteering (e.g., exemption from taxation reimbursement of expenses to volunteers such as travel to the shelter and food), the law can support citizen involvement in publicly beneficial activities, such as the provision of social services.

### **1. Laws Governing the Establishment and Operations of NGOs**

The basic NGO laws create frameworks for the overall operation of NGOs, by regulating the basic lifecycle of the organizations from registration to dissolution, including the type of activities they can engage in (e.g., political activities, economic activities, and participation in policy or legislative processes), the status of public benefit (see below), internal governance structure, and the ability to join unions or umbrella groups. The Croatian, Estonian and Hungarian Governments have all enacted generally supportive laws for the establishment and operation of NGOs.

For the last decade, Hungary has been considered a leader in legislation affecting NGOs. The first laws regulating associations and foundations were adopted in 1987, which provide a framework for the establishment, governance and operation of these organizations. In 1997 Hungary adopted the Act on Public Benefit Organizations (PBOs), thus distinguishing those organizations that are implementing activities which benefit the general public, and setting the basis for tax deductions and other benefits for these organizations. The Estonian Laws on Associations and Foundations came into effect in 1996, and relatively few amendments have been made since. An important development for Croatia was the enactment of the 2001 Law on Associations, which replaced the much criticized 1997 Law on Associations. The 2001 Law

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<sup>3</sup> Hadzi-Miceva, K., "A Supportive Financing Framework for Social Economy Organizations," paper developed for and presented at a conference on Social Economy in CEE: Emerging Trends of Social Innovation and Local Development, organized by OECD and LEED Program (2005).

largely complies with international standards and regional best practices.<sup>4</sup> Importantly, the enactment of the law resulted from collaborative efforts that included government officials from the Ministry of Justice and the Government Office for Cooperation with Associations, representatives from local NGOs, and experts from international organizations.

All three countries recognize the two basic forms of NGOs: associations and foundations.<sup>5</sup> The foundations in Estonia and Hungary can be grant-making or operating. Foundations in Hungary can only be established for public interest purposes; however, the Hungarian Government is currently proposing amendments to the Civil Code, which would allow for the existence of private-purpose foundations.

Unfortunately, the Croatian Law on Foundations and Funds from 1995 prescribes regressive conditions for the establishment of foundations and gives the registration authority (Ministry of Justice) unwarranted discretionary power over the establishment and internal governance of foundations.<sup>6</sup> As a result, only some 75 foundations have been registered in Croatia to date (compare with more than 30,000 registered associations under the enabling Law on Associations).<sup>7</sup>

In addition to associations and foundations, Hungary also introduced a third organizational form - the non-profit company. Under this form, any for-profit legal form (out of the six types which currently are recognized in the Hungarian Company Code) can assume a non-profit status and seek public benefit status under the same conditions as associations and foundations. Furthermore, the Croatian legal system recognizes the “fund” as a third organizational form, which is defined as a foundation, except that a fund can pursue its purposes only on a temporary basis (i.e., for less than five years).<sup>8</sup>

As mentioned above, only Hungary has a separate law which defines public benefit status. Public benefit status distinguishes between organizations that are established for the private interest of the members, such as bridge clubs, from those whose activities benefit a larger community. Public benefit status is fundamental to the sustainability of NGOs because most countries in the CEE region use this status as a conceptual prerequisite to granting tax benefits (exemptions or deductions) or other types of state financial support (e.g., in Poland only organizations which are of public benefit can receive allocations through the percentage

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<sup>4</sup> Among others, the new law allowed informal associations to be able to exist (by abolishing the mandatory registration), minimized the number of founders from 10 to 3, allowed foreigners to be able to establish an association, minimized discretionary power of the state during registration, it empowered the court to decide on prohibition (instead of the registration authority) and returns to associations property that was nationalized under the prior framework.

<sup>5</sup> The Estonian and Croatian laws also allow informal, unregistered organizations to operate in the form of civil law partnerships. In Estonia, these organizations can be eligible for some small project grants.

<sup>6</sup> For example, the Ministry may deny registration even if a foundation’s statutory goals are perfectly legitimate, if it does not deem the establishment of such a foundation to be necessary. According to the Ministry, registration of a foundation, provided that all submitted documents are in order, may take up to six months.

<sup>7</sup> The Government, with the support of the Government Office for Cooperation with Associations, the National Foundation for Development of Civil Society, international experts and NGOs developed a draft law to improve the existing legal framework however it has not yet been finalized and submitted for enactment.

<sup>8</sup> The draft Law on Foundations, which, if enacted, would replace the 1995 Law on Foundations and Funds, would also eliminate the “fund.”

mechanism<sup>9</sup>). The Hungarian Act on PBOs is interesting in that it introduced two tiers of public benefit status: basic and prominent. Organizations can obtain the status of “prominent public benefit organization” if they undertake state or local government responsibilities (usually by having a contract with a state body). Although only about 6-8% of Hungarian NGOs have this status, they represent good examples of NGO-government partnership in the implementation of projects for the interest of the community that rarely existed before this mechanism was introduced in the system.<sup>10</sup> In addition, prominent public benefit organizations receive higher tax benefits than NGOs who do not have this status or than those organizations with basic public benefit status (see below).

There is no separate public benefit status as such in Croatia or Estonia. In Croatia, the public benefit concept does exist in various laws, but is not consistently defined or applied. In Estonia, as you say, there is a tax-exempt status which is the functional equivalent of public benefit status. Only the organizations that are included on a government list are entitled to tax benefits. The Income Tax Act defines the criteria according to which organizations can be included in that list.<sup>11</sup> There are approximately 1,600 organizations in this list.

The decision as to whether an organization can be entered on the list is made by the Tax and Custom Board). However, the law also provides for the establishment of a Committee of Experts, which should provide recommendations to the Tax and Custom Board on every application. The Committee consists of 9 representatives of NGOs, mostly from umbrella organizations from different fields of activities. They are appointed by the Ministry of Finance after consulting with the NGOs. This expert committee was established at the beginning of 2007 and it has met twice so far. The existence of such a committee was considered a positive development, because it aims to provide guidance in defining what public benefit is. So far however, there are two challenges in its work: (1) it faces difficulties in defining public benefit as this concept is still new in the society and there is much “grey zone” around it and (2) the Tax and Custom Board and Ministry of Finance are not receptive to the suggestions of this committee

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<sup>9</sup> The percentage mechanism allows taxpayers to allocate a certain percentage of the personal income or profit taxes that they pay, to organizations that fulfill the criteria prescribed in a law. This mechanism will be discussed in more detail below.

<sup>10</sup> Bullain, N., “Mechanisms of Government-NGO Cooperation in Hungary,” (<http://www.efc.be/publications/sealabstract.html>).

<sup>11</sup> Income Tax Act, article 11 prescribes that an organization (association or foundation) can be entered to the list of associations or foundations benefiting from tax incentives, if it: 1) operates in the public interest; 2) is charitable, that is, offering goods or services primarily free of charge or in another non-profit seeking manner to a target group which, arising from its articles of association, the association supports, or makes support payments to the persons belonging in the target group; 3) does not distribute its assets or income, grant material assistance or monetarily appraisable benefits to its founders, members, members of the management or controlling body, persons who have made a donation to it or to the members of the management or controlling body of such person or to the persons associated with such persons; 4) upon dissolution of the association, the assets remaining after satisfaction of the claims of the creditors shall be transferred to an association or legal person in public law entered in the list; 5) the administrative expenses of the association correspond to the character of its activity and the objectives set out in its articles of association; 6) the remuneration paid to the employees and members of the management or control body of the association does not exceed the amount of remuneration normally paid for similar work in the business sector.

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40007K11&keel=en&pg=1&ptyyp=RT&tyyp=X&query=tulumaksu> Professional organizations, trade unions, organizations established by a public institution and political parties (as well organizations that support them) can not qualify for this list.

as these recommendations are not binding for them. It is anticipated that in time, with some legislative clarifications, the situation could be improved.<sup>12</sup>

## **2. Support for Development of Own Income and Philanthropy**

Generally, NGOs can benefit from three domestic sources of income: economic activities, or other self-generating income (rent, passive investments), from direct government financing, and from philanthropy (understood as donations in time and money). Hungary, Croatia and Estonia follow a positive trend in providing tax benefits to NGOs to enable them to generate their own income to support their activities. Also the legal frameworks provide incentives to help NGOs to engage supporters and receive financial contributions.

### **▪ Economic activities and tax exemptions**

First, all three countries allow NGOs to engage directly in economic activities, which can be defined as “regularly pursued trade or business involving the sale of goods or services.” Income from donations, gifts, passive investment, occasional activities which can also generate income, such as fundraising activities, usually do not fall under the definition of economic activities as described above, because these are not conducted through a market-type transaction.<sup>13</sup>

In Hungary, NGOs can also engage in entrepreneurial or commercial activity which is defined as economic activity aimed at or resulting in obtaining income and property. The law provides that the following is not considered as entrepreneurial/commercial activity: (1) public benefit activity, or in the case of a non-PBO, activity according to the statutory purposes; (2) revenue received from selling goods and inventory serving solely the public benefit purpose or in case of a non-PBO, the statutory purposes; (3) part of the interest received from the credit institution or the issuer of securities, or part of the yield of state bonds, based on the proportion of the percentage of revenue from public benefit or statutory activity of the whole revenue.<sup>14</sup>

The reform of the Hungarian tax framework affecting NGOs has resulted in a favorable fiscal environment that supports financially the development of the sector and stimulates philanthropy. In the mid-90's, several provisions were adopted which exempted all NGOs from paying tax on income from mission-related economic activities. For example, all NGOs, regardless of whether they have public benefit status or not, may benefit from tax exemption on the income from commercial activities which does not exceed 10% of total income or 10 million HUF (approx. 39,946 Euro). Further, organizations that have acquired public benefit status are exempt for commercial income that does not exceed 10% of total income or 20 million HUF (approx. 79,892 Euro), and those that have obtained the status of prominent public benefit organizations are exempt up to 15% of total income.

Estonian NGOs are treated in a manner similar to business organizations in that they do not pay taxes on their income, but on certain distributions. Generally, they are permitted to engage in any activity that corresponds to the purposes stated in their statutes and are not taxed

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<sup>12</sup> As described by Urmo Kübar, Executive Director of NENO, Estonia.

<sup>13</sup> Hadzi-Miceva, K., A Supportive Financing Framework for Social Economy Organizations, paper developed for and presented at a conference on Social Economy in CEE: Emerging Trends of Social Innovation and Local Development, organized by OECD and LEED Program (2005).

<sup>14</sup> Art.1.1. Act LXXXI of 1996 on Corporate Taxes and Dividend Taxes (CTDT Act) .



on income from such activity. However, if an organization is engaged in business as its principal activity or uses business income for purposes other than those specified in its statutes it cannot be entered into the government list and will therefore not be entitled to the tax benefits.<sup>15</sup>

In Croatia, an organization's income from economic activities is considered taxed exempt only unless the exemption will give the organization an "unjustified privileged position in the market." The Tax Administration, on its own initiative or upon the request of a taxpayer or other interested person, may determine on a case by case basis whether to tax income generated from an NGO's economic activities. It is not yet clear how the Tax Administration will interpret the "unjustified privileged position in the market" language of the law, and what types of activities will be considered to afford such a position to an NGO. An organization that is found to have an "unjustified privileged position" is taxed at the regular business rate of 20%.<sup>16</sup>

▪ **Tax incentives for donations**

Hungary provides for tax deductions only for donations given to PBOs. Businesses may deduct 150% of the amount of all donations up to 20% of pre-tax income if they donate to "prominent" PBOs, which perform governmental services. For other PBOs, companies can deduct the whole amount of donations up to 20% of pre-tax income. Hungary also prescribes a combined aggregate limit of 25% of pre-tax income if the donor gives to both types of PBOs. An individual may take a tax credit equal to 30% of the donation to a public benefit organization or public interest commitment<sup>17</sup>. The credit may not exceed 50,000 HUF (approx. 200 Euro). In the case of donations to prominent public benefit organizations, the tax credit is 30% of the donation, up to 100,000 HUF (approx. 400 Euro). As of 2006, however, taxpayers above a certain level of income may not claim any tax benefits (including those relating to donations).

In Estonia, income tax is not charged on gifts and donations made to persons included in the government list or to a person who owns a hospital, to a state or local government, to a scientific, cultural, educational, sports, law enforcement or social welfare institution, to members of the "church-register" or to a manager of a protected area, up to 3% of the amount of the payments subject to social tax made by the taxpayer during the same calendar year or 10% of profits for the last financial year of a taxpayer dissolved as of January 1.<sup>18</sup> In Estonia, individuals

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<sup>15</sup> Article 11 of the Estonian Income Tax provides that The act further defines that a principal activity of an association will be treated as business if over a half of the income of the association is received from business, unless at least 90 % of the business income minus the expenditure related to business are used in the public interest. Further the law states that the following will not be considered as business: 1) activities directly related to the objectives set out by the articles of association (for example publication of printed matter, training, information exchange, organization of events); 2) activities for the sale of donated capital; 3) organization for lotteries and auctions for charitable purposes, and other such activities for collecting donations unless such activity is the principal activity of the association; 4) receiving financial income which results from the principal activity.

<sup>16</sup> "Survey of Tax Laws Affecting NGOs in Central and Eastern Europe" published by the International Center for Not-for-Profit Law (second edition, 2003, [www.icnl.org](http://www.icnl.org)).

<sup>17</sup> A "public interest commitment" is a particular fund established with the aim of raising money for a specified purpose (family opening an account to receive funds from the public for an operation for their child who needs a medical treatment).

<sup>18</sup> Estonia eliminated the system of taxation of profit, and replaced it with the system of taxation of profit distribution. Based on this system, all legal entities pay taxation on the distributions in the form of salaries, fringe benefits, gifts, charitable contributions, dividends etc. For a more detailed overview of this system see: "Survey of Tax Laws Affecting NGOs in CEE" published by the International Center for Not-for-Profit Law (second edition, 2003, [www.icnl.org](http://www.icnl.org)).

may deduct up to 5% of taxable income for documented gifts and charitable contributions to the same recipients as businesses can donate to, including also public universities and political parties.

In Croatia, donations made by corporations or individuals to organizations pursuing cultural, scientific, educational, health, humanitarian, sports, religious, and other activities are deductible up to 2% of the donor's income generated in prior calendar year. The established threshold may be exceeded upon approval of the competent ministry. The Government Office for Cooperation with NGOs, the National Foundation and NGOs have initiated discussion around the concept of public benefit status and the necessity of clarifying the legal framework, in order to expand the list of activities that may benefit from tax deductible donations.

▪ **Legal framework for volunteering**

Volunteers are critical to the success of civil society initiatives around the world. They contribute to humanitarian relief efforts, service delivery to underserved populations, advocacy efforts representing those with limited or no voice in public affairs, and provide other needed services. The Croatian and Hungarian Governments and NGOs have come to recognize the value of volunteering and they have launched programs to support and promote it. In addition, they have also undertaken efforts to remove legal obstacles to volunteering and create a favorable legal environment for citizens' engagement and social contribution. Hungary adopted the Act on Volunteering in Public Interest Activities in 2005, while Croatia adopted the Law on Volunteering in 2007. The Hungarian Act created new opportunities for citizens' activism by establishing a new legal relationship<sup>19</sup> and attaching tax exemptions and other benefits to it. It regulates the provision of "public interest voluntary activities"; however it limits the scope of public interest volunteerism only to volunteering with public benefit organizations, governmental institutions, and public or private service providers in the social, health, educational, cultural, and minority fields. While the law explicitly stipulates that it leaves intact volunteering in other types of organizations or fields of activities, this implies that the extensive benefits and protections do not extend to other types of volunteering. Because over half of registered NGOs do not have public benefit status, this law does not cover the majority of NGOs and their volunteers. In addition, the law requires those organizations that work with volunteers to register with the competent Ministry; and it outlines a detailed and bureaucratic procedure of registration as well as conditions under which registration might be refused.<sup>20</sup>

In Estonia, a Development Plan for Volunteering was developed by the Tartu Volunteer Centre with the participation of several NGOs in 2006 and it was adopted by the Joint Committee for implementation of the Estonian Civil Society Development Concept - EKAK (see below). The goal of this plan is to define common understandings and activities in supporting and developing volunteering in Estonia for the period of 2007-2010. The Ministry of Interior is responsible for implementing this Development Plan. However, in 2007 the implementation was supported only with 265 000 Estonian kroons (approx. 17 000 Euros), because the plan was finalized after the state budget for 2007 was approved. Due to lack of funding only limited activities are planned for implementation in 2007.

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<sup>19</sup> The new legal relationship of volunteering is clearly distinguished from the employment relationship as well as from the relationship of a paid contractor.

<sup>20</sup> Hadzi-Miceva, K., "Comparative Analysis of the European Legal Systems and Practices Regarding Volunteering" (2007), *International Journal for Not-for-Profit Law*, Volume 9, Issue 3.

### **III. DIRECT GOVERNMENT FINANCING**

The government approach towards strengthening partnership with and supporting the growth of NGOs can be also analyzed through the financing policies it has developed. The issue of government funding for NGOs is a significant part of the efforts to conceptualize, rationalize, and organize the government-NGO relationship.<sup>21</sup> Toward that end, all three countries studied in this article have designed a policy document (program for cooperation and/or strategy) which outlines the core principles of good partnership between the state and the NGOs, including the commitments in terms of government funding opportunities. The core values embedded in the cooperation documents subsequently served as a basis for more specific and detailed pieces of regulation. For example, the Hungarian Government, in its Strategy Paper for Civil Society in 2002, pledged to increase the amount of state funding to NGOs and create the National Civil Fund. Indeed, in Hungary, direct financing as a source of income for the non-profit sector has increased significantly in the past 10 years, and in 2003 reached the target of representing 42% of the sector's total income (whereas in 1993 it amounted to only 16% of the total income).<sup>22</sup>

Government funding can be distributed through several traditional forms, amounting to three main types of financing: support (usually through subsidies or grants); procurement (usually through service contracts); and third party payments (per capita fees or vouchers).<sup>23</sup> These funds may be distributed from the central level budget (through the parliament, ministries, lotteries, privatization proceeds, public funds and foundations) or through budgets of local governments.

Of all forms and sources, however, it is worth highlighting the current mechanism of government support to NGOs through the percentage tax allocation mechanism in Hungary, the Hungarian National Civil Fund, the National Foundation for the Development of Civil Society in Croatia and the new initiative in Estonia to create an Endowment Fund. What is important in all these initiatives is that they provide an opportunity for NGOs to gain access to funds which can support their institutional, core costs – funds which are hard to obtain otherwise. With the exception of the percentage mechanism, all other mechanisms have been created following demands by NGOs that there is a need for a more targeted and transparent and – indeed – creative policy for the support of the civil sector as a whole.

The procedural aspects of granting government funding deserve particular attention. In most CEE countries the mechanisms for distribution of government funding lack sufficient levels of transparency and accountability, and clear procedures. To respond to these challenges countries have undertaken initiatives introduce principles of good government funding in codes or regulations. For example, in Estonia a “Code of Good Practice on Funding,” an initiative led by the Network of Estonian Nonprofit Organizations (NENO), is currently the focus of consultations between the public sector and NGOs, and is expected to be finalized by the end of 2007. This forthcoming agreement will serve to harmonize the principles of public funding processes (e.g. determining the form and setting the objectives of funding, eligibility criteria,

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<sup>21</sup> Hadzi-Miceva, K., and Suplisson, F., (2007) “Overview of State Funding Schemes for Civil Society Organizations, research paper,” [www.ecnl.org](http://www.ecnl.org).

<sup>22</sup> Source: Civil Society Development Foundation, Hungary, 2005.

<sup>23</sup> Bullain, N., and Toftisova, R., “A Comparative Analysis of European Policies and Practices of NGO/Government Cooperation” (2005), *International Journal of Not-for-Profit Law*, Vol. 7, Issue 4, [http://www.icnl.org/knowledge/ijnl/vol7iss4/art\\_1.htm](http://www.icnl.org/knowledge/ijnl/vol7iss4/art_1.htm).

grant tendering and application processes, selection criteria, contracting and payments, and reporting, monitoring and evaluation). Croatia also adopted a similar code (described below) and is currently assessing its implementation in order to improve the procedural processes.

▪ **Percentage mechanism**

The percentage mechanism was introduced for the first time in Hungary with the enactment of the Act CXXVI of 1996 on the Use of a Specified Portion of the Personal Income Tax (the “one-percent law”). It is a form of tax allocation, which allows taxpayers to designate a portion of the tax they need to pay to a specific organization. The initial idea of the “one percent law” was brought into the political debate in the context of church financing, when in the early 1990s the restitution of churches required a solution regarding their public support. However, in addition to this, the issue of financing of NGOs was entering the government agenda. All Hungarian government coalitions in the past few years found it important to stress their commitment to the strengthening of this sector by targeting two problems: (1) Hungarian NGOs received proportionately less foreign support than NGOs in other CEE countries and (2) the distribution of state funding to NGOs was over-politicised. The central notion of the “one-percent law” thus became the possibility for party-neutral public financing of NGOs through a tax designation mechanism.<sup>24</sup> The percentage mechanism in Hungary enables individual taxpayers – natural persons – to designate 1% of their paid income taxes to a qualifying NGO and another 1% to a church (in addition to NGOs, there is also a list of budgetary institutions, and as an alternative to a church, a special budgetary priority objective is named each year). Taxpayers may make the designations on special forms enclosed in the tax return. The tax authority transfers the amounts designated after the beneficiary proves its entitlement, and the designators remain anonymous.<sup>25</sup>

After Hungary introduced the so-called “1% Law,” Lithuania, Poland, Slovakia and Romania have adopted similar legislation. Hungary has witnessed over 9 years of implementation of this law. Therefore, one can draw some lessons learnt from its experience.<sup>26</sup>

In addition to the reasons mentioned above, there are two other overarching objectives behind introducing such mechanism: (1) increasing the pool of resources available to NGOs and (2) helping to develop a philanthropic culture among taxpayers. However, there are several concerns expressed by policy makers, NGOs and experts in terms of whether and to what extent the mechanism meets these objectives. First, the potential group of “donors” is limited as only taxpayers, and furthermore, only individual taxpayers can designate the percentage<sup>27</sup>. Second, it allows only a limited amount (i.e., 1% in Hungary) to be designated which in terms of revenues may be quite small compared to other resources available to the sector (e.g., donors under the traditional scheme of tax deductions are not limited as to how much they can/want to give to the

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<sup>24</sup> Bauer Tamás, “Hungary’s 1% Law: A Brief History,” <http://www.efc.be/newsletters/seal/contentsseal2004.html> .

<sup>25</sup> For details see: Bullain Nilda, “Percentage Laws Explained: Percentage Philanthropy and Law” ([www.ecnl.org](http://www.ecnl.org)).

<sup>26</sup> Some of the lessons learnt described here have been taken from two previously developed papers which addressed the topic: Hadzi-Miceva, K., “A Supportive Financing Framework for Social Economy Organizations” (2005), and “Cooperation Between the Government and Civil Society Organizations in Hungary,” report prepared for the British Council by ECNL (2006).

<sup>27</sup> Except in Slovakia where corporate taxpayers can also designate 2% of their profit taxes.

NGOs). Consequently, contrary to philanthropic giving, the “percentage cake” available to the NGOs has a finite size and cannot be increased. Thus, it is not only that the amount of available funding is limited, but also the receipt of a larger portion by one NGO reduces the amount available to others. It seems that in the end a small cluster of organizations (e.g. those who run the best marketing campaigns) benefit disproportionately from the mechanism. In addition, the overall amount may be quite small compared to other sources of revenue as the economy develops. In Hungary it was found to be less than one percent of the total revenue of the sector<sup>28</sup>. Although all taxpayers can designate the funds with no cost to them, only 35% in Hungary use this opportunity. Finally, the effect of the mechanism on philanthropy cannot be easily assessed, as there are no comprehensive research results, which can show whether the law has achieved its second objective. Individual giving has not increased significantly in Hungary. One study shows that those who regularly designate their 1% also give donations in higher amounts or more frequently. However, this may also mean that those who are more philanthropic also designate their tax percentage more often as this is the higher income and higher educated group of taxpayers. This raises the question of whether their philanthropic behavior would be the same regardless whether the percentage mechanism exists or not, given that they are more socially sensitive and active anyway.

Despite the above challenges, this mechanism does have certain advantages. Specifically, it has proven to be a good resource for local and smaller NGOs, because it is easier for them to mobilize local support (although in terms of the actual amount of funds it has a bigger impact on the larger NGOs who champion popular issues such as children’s care or animal shelters). It creates competition among NGOs, thus contributing to increased professionalism, better communications and improved image. Most importantly this was the first and major reason why NGOs in Hungary started to communicate with their constituencies rather than with the government grant departments. As a result NGOs have become more embedded in their local communities. In addition, the mechanism gives the possibility to taxpayers to decide on how a certain percentage of their tax money is spent (decentralizing and de-politicizing the decision making process), increases awareness about the importance of civil society and sends signals about needs they find important to be supported. The government also benefits as it is able to monitor the preferences of society and regain part of the “lost revenue” through other taxes, e.g., VAT.

▪ **National Civil Fund, Hungary**<sup>29</sup>

In 2003, the Hungarian Government established the National Civil Fund with the aim to provide a mechanism for institutional support to NGOs.<sup>30</sup> The idea behind this mechanism came

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<sup>28</sup> Central Statistical Office, 2002.

<sup>29</sup> For details see: Hadzi-Miceva, K., “A Supportive Financing Framework for Social Economy Organizations, 2005 ([www.ecnl.org](http://www.ecnl.org)).

<sup>30</sup> The National Civil Fund was established to support: operational expenses of civil organizations; public benefit activities of civil organizations; anniversaries, festivals, domestic and foreign events involving civil organizations; ensuring the presence of Hungarian civil organizations in international civil relations; scientific research related to the civil sector; supporting monitoring activities and tasks related to registration; educational, service, advisory, development and assistance activities and institutions related to the civil sector; promotional materials introducing the civil sector, supporting electronic and written media specialized in this field; civil organizations to raise their own contributions for tenders; grantmaking organizations based on the decisions of the Fund Program Council and the Colleges, such decisions pertaining to automatic provision of resources determined

from the need to provide state support for NGO operational costs beyond the existing percentage mechanism. Thus, the National Civil Fund supplements the mechanism of percentage allocation in that the government matches the amount of funds that are designated to NGOs through the percentage system<sup>31</sup>. 60% of the resources of the National Civil Fund are allocated to NGOs to support operational costs. In addition, funds from this source also support development programs (research, education, international representation). Elected NGO representatives sit on committees tasked with deciding on the distribution of the funds. Specifically, the Fund is administered by a Council and a number of regionally based Colleges. The Council is the strategic decision-maker, which sets the priorities, divides up its resources among the various purposes, and develops its other rules. It consists of 17 members (2 representatives of the Parliamentary Committee on Civil Society; 3 representatives of the Ministry; and 12 representatives of civil society: 5 elected from national organizations working in various fields, 7 elected on a regional basis). The Colleges are the operative decision-makers, deciding about concrete grant proposals. They are organized both on a regional and a professional basis; however, their exact number and composition is still to be decided. Colleges have 5-11 members, the majority selected from NGOs.<sup>32</sup> In the first year a total of 28 million Euros was distributed to support the operational costs of over 3,500 organizations.

The introduction of the National Civil Fund was accompanied by great enthusiasm from NGOs. However, the first couple of years of distribution of the funds faced many challenges, which raised concerns over its real effect. This was due to the lack of carefully planned implementation mechanisms on the side of the government. It revealed that in conceptualizing the National Civil Fund the Government did not consider a concrete overall strategy to develop the sector. Even the uniquely designed NGO participation in decision-making bodies raised controversies over conflict of interest issues.<sup>33</sup>

Specifically, the implementation of the National Civil Fund was based on application requirements which appeared to be too burdensome and rigid. As a result of complicated and not clearly drafted application forms, approximately 70-90% of the applications were rejected. The responsible Ministry for overseeing the distribution needed to intervene to allow for a broader interpretation of the strict formal requirements so as to permit a higher number of applications to be considered. Consequently, the decision on the distribution of the funds came later than expected, leaving NGOs with only a month to spend the allocated funds, which originally were designed to cover costs for more than a year. At the same time, the substantive requirements were rather broad and lacked strategic focus. Thus, it is questionable whether the implementation

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by unified principles; covering the expenses related to the operation and administration of the Fund Program; supporting activities of civil society representation.

<sup>31</sup> I.e., the government will provide from the budget the same amount to the National Civil Fund as was designated (in total) by taxpayers to NGOs in the preceding year and the law states that in no case the fund will contribute less than the 0.5% of personal income taxes collected.

<sup>32</sup> HEPF, ICNL, Editors of SEAL, "Hungary's National Civil Fund: Building on the 1% Law," in *Social Economy and Law (SEAL)*, Autumn 2003.

<sup>33</sup> In fact, the Minister herself made a statement to call the attention of the Council (highest governing body of the Fund) to such controversies. Tényszerűen a Nemzeti Civil Alapprogramról - Göncz Kinga sajtóközleménye 2005. augusztus 30. (Factually about the National Civil Fund - press release of Kinga Göncz, Minister of Youth, Family and Social Affairs, August 30, 2005).

of the National Civil Fund indeed supported NGOs to reform and to strengthen institutionally.<sup>34</sup> In September 2006 the State Audit Office found that the Fund faced serious transparency and accountability challenges as well. The implementation of the mechanism revealed that the Minister and the Council did not elaborate an overall strategy to develop the sector, did not elaborate performance indicators, and the criteria for support remained unclear.

Although, the funding potential of this mechanism is considerable, its impact on general financial sustainability in the longer term largely depends on the willingness of the government and the Governing Council of the Fund to learn from the challenges of the first few years and to revisit the goals, in order to improve the effectiveness of the system. For example, for the second year of operation, the Council successfully developed a more clear and user-friendly application system but did not address other issues which could help the Fund achieve its purpose, such as criteria and types of projects that should be supported.

▪ **National Foundation for Civil Society Development, Croatia**

Until 2003, the Government Office for Associations (see below) was the main actor that distributed public funds to NGOs. It used to channel funds to all areas of work of NGOs, from human rights, education of youth, health, development of civil society, unemployment, etc. Independent experts' working groups were created to review and assess the projects and programs submitted for public funding. Although Ministries had certain funds to support projects of NGOs, this was not practiced widely and the cooperation in program implementation and funding became more centralized and focused mainly on the relationship between the Office for Associations and the organizations. In 2003 the Government established the National Foundation for Civil Society Development (National Foundation)<sup>35</sup> as a public foundation, with the basic purpose of promoting and developing civil society in Croatia and decentralizing the cooperation between the government and NGOs (for a more detailed description of the model and relationship between different state bodies, see below).<sup>36</sup>

The establishment of the National Foundation was the culmination of a 24-month process led by the Government Office for Association. The first step was developing a proposal for amendment of the Law on Games of Chance and Competitions, which would create the material basis for the establishment of the National Foundation. According to the Law on Games of Chance and Competitions, which was enacted in 2002, 50% of the moneys collected through games of chance are allocated for civil society organizations in Croatia.<sup>37</sup> Out of the 50%, 14.5% are allocated to the development of civil society. 96.55% of the 14.5% allocated to development of civil society are allocated through the Government Office for Associations to the National Foundation, which then distributes them for the program "Our contribution to the community."

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<sup>34</sup> See USAID 2004 *Sustainability Index for Central and Eastern Europe and Euroasia*, [www.usaid.gov](http://www.usaid.gov).

<sup>35</sup> Official Gazette of Republic Croatia, no.173/03.

<sup>36</sup> The factual information about the work of the Foundation in this article has been drawn from the website of the Foundation and its annual reports. For more see: <http://zaklada.civilnodrustvo.hr/>.

<sup>37</sup> Every year the Government adopts a "Decree on the Criteria for the Distribution of the Lottery Proceeds." According to the decree from 2007, the 50% of the allocated funding were distributed to the following fields: 30.5% sport, 8% fight against drugs and other types of addiction, 4% social and humanitarian activities, 28% problems and needs of people with disabilities, 6.5% technical culture, 5% culture, 3.5% out of institutional education and upbringing of children and youth and 14.5% development of civil society. The funds are distributed through responsible Ministries listed in the Decree.

The remaining 3.45% are distributed through the Ministry of Foreign Affairs and European Integration for international cooperation programs.

In addition to the funds from the lottery proceeds, the National Foundation is financed through private donations, income from economic activities and other sources. The Foundation aims to promote the sustainability of the sector, cross-sectoral cooperation, civic initiatives, philanthropy, and voluntarism. Core activities include: (1) education and publications, (2) grantgiving, (3) public awareness campaigns, (4) evaluation services, (5) research and (6) regional development. Importantly, the Foundation is to be governed by a Management Board composed of 3 representatives from the Government, 1 from local governments and 5 from NGOs.

The establishment of the National Foundation was seen as a critical step towards improving the system of public financing for NGOs. As noted above, it marked a shift from a highly centralized system, in which the Government Office for Associations played the critical role, into a more de-centralized system. Accordingly, the role of line ministries was emphasized and they remain responsible for the funding of and cooperation with NGOs within their own jurisdiction. In the same time, the Foundation focuses on supporting grass-roots initiatives and programs that do not necessarily fall within the competence of any particular ministry. In this way a more equitable distribution of responsibility among government stakeholders was ensured.<sup>38</sup>

To guarantee that grant-making decisions, whether made by the National Foundation, the ministries, or the local governments, are made according to established standards of transparency, a “*Code of Good Practice, Standards and Criteria for Providing Financial Assistance to Programs and Projects of Associations*”<sup>39</sup> was adopted by the Croatian Parliament in 2007. The Code establishes the basic standards and principles for granting financial assistance from the state budget to associations. It applies to all state authorities and offices of the Government, which support the implementation of programs and projects which are of special general/public interest in Croatia. In addition, the National Foundation distributes funds based on the “*Ordinance on the Conditions and Procedure for the Allocation of Funds used for the Fulfillment of the Foundation's Purpose*.”<sup>40</sup>

The Foundation supports several types of programs related to its strategic objectives, including the institutional support program, which supports the organizational development or stabilization for a period of three years, but only for those associations registered in Croatia. A grant is provided to help further the activities of the association and for the performance of its primary activity. Importantly, the Foundation also supports multi-annual grants (2004-2007), which are approved within the program, in the program area of institutional support and stabilization of associations for the program related to the linking of associations. The National Foundation also supports separate projects and programs to foster research, cooperation and development of civil society on national and local level. The total annual income of the National

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<sup>38</sup> From Vision to Change: A New Model for Civil Society Development in Croatia, by Cvjetana Plavsatic and Katerina Hadzi-Miceva, published in Social Economy and Law (SEAL), Winter 2003-Spring 2004.

<sup>39</sup> Official Gazette of Republic of Croatia, no.16/2007. The English and Croatian version of the code are available on: [www.ecnl.org](http://www.ecnl.org).

<sup>40</sup> [http://zaklada.civilnodrustvo.hr/eng/natjecaji\\_postupak\\_odobranja.php](http://zaklada.civilnodrustvo.hr/eng/natjecaji_postupak_odobranja.php)



Foundation for 2006 was 31.736.477 kuna (approximately 4,346,270 Euro). The Foundation granted 12.943.80 kuna (approximately 1,772,657 Euro) for the operational support programs of 2004-2006.

During the first year of operations, the National Foundation faced criticism about its process of grant giving. The criticism was triggered by the fact that the body which decides on the grant recipients is also composed of NGO representatives, so questions about impartiality and conflict of interest were raised. As a result, the National Foundation adopted a more clear principle on conflict of interest in the above mentioned Ordinance. The National Foundation has also developed evaluation grids for the tenders that guide the NGOs, but also the evaluators in the process of deciding on the grants. Importantly, to further remedy the problem of conflict of interest, the National Foundation introduced a register of the potential conflict of interest situations which is not a public document but upon request it may be presented for inspection to the representatives of authorized bodies.<sup>41</sup> NGOs have highlighted another shortcoming in the rules of distribution of institutional grants. According to the current rules an association which has received institutional support is not eligible to apply to any other separate project or program tender in the course of implementation of such institutional support grant. Further, they cannot apply for another institutional support within 3 years after their grant has expired. NGOs feel that this presents an obstacle for those associations which would otherwise be able to offer more good quality projects under different tenders opened by the National Foundation. In addition, since only a few NGOs are in practice able to fulfill the criteria, the number of NGOs who can actually use this opportunity is limited.<sup>42</sup>

▪ **Proposal for Creation of Civil Society Endowment, Estonia**

Although the idea for the creation of a Civil Society Endowment is still in the formative stages, it is worth mentioning as it promises to be yet another creative initiative to support the operational costs of NGOs. The Endowment was one of the proposals made in a political manifesto of NGOs prior to the parliamentary elections in 2007 that made its way to the Government's Program. The concept was created by the NENO through a participatory process whereby several seminars and meetings with umbrella organizations and experts were held and supplemented by Internet consultations. Currently ministries are studying the concept to provide feedback.

The proposal envisions that the endowment will receive around 20 million Estonian kroons (approx. 1,3 million Euros) from the state budget annually. According to the concept, the new Endowment will focus on 1) funding the operational costs of public benefit NGOs, 2) supporting projects that create a more favorable environment for NGOs, and 3) local projects that promote civic participation and cooperation between NGOs. According to the proposal the Endowment would be managed by a Board consisting of 3 representatives from the government and parliament and 6-8 members who will be nominated by NGOs and selected by the Joint Committee between the government and NGOs for the implementation of EKAK.

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<sup>41</sup> Article 9: Protective Measures to Prevent Potential Conflict of Interest, Ordinance on the Conditions and Procedure for the Allocation of Funds used for the Fulfillment of the Foundation's Purpose.

<sup>42</sup> Around 30 NGOs a year are receiving three types of institutional grant support: maximum, middle and minimum for a three-year period. As described by Vanja Skoric, GONG.

#### **IV. FRAMEWORK FOR COOPERATION BETWEEN GOVERNMENTS, PARLIAMENTS AND NGOS**

The framework for cooperation between governments and NGOs has been institutional through the establishment of different liaison offices for cooperation and communication as well as adoption of policy documents on national level. In addition, in some countries (such as Estonia and Hungary) the Parliament has also played a role in developing cooperation with NGOs and setting an overall example for a progressive state approach to supporting the development of NGOs and encouraging cross-sector dialogue.

##### **1. The institutional framework for dialogue with and support to NGOs**

###### **▪ Hungary**

Over the years, the system of communication and cooperation with NGOs has become institutionalized across the government, both horizontally and vertically. It started with the introduction of special departments dealing with NGO support in the line ministries. In some ministries (e.g. social and employment), special councils or working groups have also been set up (with NGO participation) to advise the minister on professional issues and strategy development. Currently, there are also a number of offices, which promote cooperation between the state and the NGOs.

First, in 1998, a Department for Civil Relations was established in the Prime Minister's Office, which now operates under the Ministry of Labor and Social Affairs. The Department was established by government decree, without any participation of civic organizations in the process. However, its first leader was recruited from the NGO sector and thus, from the very beginning the staff of the Department was aware and responsive to the needs and concerns of NGOs. The Department is responsible for initiating laws for the development of the third sector (e.g., in 2005 it was closely engaged in the drafting of the Volunteering Act) and facilitating dialogue with NGOs. It was responsible for drafting the Government strategies towards civil society (see below). The Department also provides information about available European Union funds and supervises the implementation and work of the National Civil Fund. It is currently working to develop a nationwide database system for NGOs, which is lacking in Hungary.

More recently, a special department was set up in the Ministry for Local Governments and Regional Development, which also houses the National Development Agency (responsible for implementing the European Union National Plans and Structural Fund Programs), called the Department for Social Dialogue, which is responsible for coordinating involvement of NGOs and other social partners in the development, implementation and monitoring of European Union instruments in Hungary.

Furthermore, practically every Ministry has by now set up a contact office or at least a person responsible for liaising with civic organizations. As ministries engage in more and more intensive working relationships with NGOs, they each develop their own internal rules and systems to support NGOs and involve them in decision-making processes.

Regarding the Parliament, a Parliamentary Committee for the Support of Civil Organizations existed from the early 1990s until 2006. It used to grant budget subsidies to national associations and with the institutionalization of the National Civil Fund, which overtook the grant giving role, this Committee took on the responsibility for legislative policy concerning

the sector. In 2006, however, it was merged with the Committee on Human Rights, Religion and Minorities.

In addition, a Civil Office of the Parliament also continues to exist, which fulfils an informational role; e.g. maintains a database of NGOs to which it sends out the Parliament's legislative agenda sorted by area of interest (e.g. if an NGO wants to receive the legislative plans on environment related laws, they can sign up for such option); answers NGO inquiries; coordinates and arranges NGO participation in the various Committee meetings etc.

▪ **Croatia**

The institutionalization of the NGO-Government cooperation in Croatia commenced with the establishment of the Government Office for Associations, a centralized NGO liaison office on the Government level. Subsequently, the Government established the Council for Development of Civil Society (the Council) which works in partnership with the office. The cooperation between the two sectors proved to be a vibrant process that was flexible to adjust to the current needs of the two sectors. In 2002, the Government promised to submit a proposal for financing NGOs to the Croatian Parliament.<sup>43</sup> The Government Office for Associations immediately embarked on this initiative and developed plans for a decentralized system of funding and cooperation. As a result, the framework of the New Model of the Organizational Structure for Civil Society Development in Croatia ("the new model") was established. This model consists of three bodies: the Office for Associations, the Council and the National Foundation for Civil Society Development (described above). The model also envisioned the creation of a Strategy for the Development of the Civil Society (which was adopted in 2006) and harmonization of the state funding process.

As mentioned above, the introduction of this model was triggered by the need to support direct communication between various Ministries and NGOs, in order to enhance their cooperation in addressing particular social needs. Until then, the NGO-Government cooperation was mainly centralized and was functioning effectively only between the Office for Associations and NGOs. The relationship with the other state bodies was not so developed. The new model also opened the possibilities of diversifying funding sources for NGOs and of tapping alternative and matching funds for joint NGO-government activities. The new model increased the cooperation between different ministries and NGOs and it encouraged Ministries to designate a person or unit responsible for fostering cooperating and dialogue with NGOs.

The Government Office for Cooperation<sup>44</sup> with Associations was established in October 1998 by the Act of Government of Republic Croatia. The Office for NGOs was primarily entrusted with the task of building confidence and developing cooperation through financing, consulting, educating and information sharing. It also coordinated working groups on various legislative initiatives affecting NGOs, such as the Law on Associations, the Law on Income from Games of Chance and Competitions, the Law on Volunteers etc. Most importantly, the Office for Associations achieved remarkable results in drafting and implementing a transparent national program for public financing of NGOs. The Office for Associations channeled funds in all areas of work of NGOs, from human rights, to education of youth, health, development of civil

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<sup>43</sup> Government of Republic of Croatia, Program of Work for 2000-2004 (as cited in "From Vision to Change," publication by the Government Office for Associations, 2003).

<sup>44</sup> [www.uzuvrh.hr](http://www.uzuvrh.hr).

society, unemployment, etc. Working groups of independent experts were created to review and assess the projects and programs submitted for public funding. During the period 1999-2003, 1,997 programs and projects were funded in the total amount of approximately 13,830,004 Euros. With the opening of the Office for Associations, a new era began in the relationship between the Government and NGOs and a new incentive was given for the further development of cooperation.

A further step in the advancement of collaboration between the government and NGOs in Croatia was the establishment of the Council for the Development of Civil Society as a governmental advisory body in 2002. The Council is composed of 10 representatives from the Ministries and 14 representatives of civil society (elected by the NGOs themselves). The Council focuses its activities on the implementation of the Strategy for the Development of Civil Society and harmonization and oversight of financial support provided from the State budget for financing NGOs programs/projects. The role of the Council is to provide advice to the Government regarding NGO development and policies, as well as to coordinate efforts in realizing goals and action plans developed in the “*National Strategy for Creating Supportive Environment for the Development of Civil Society.*” The Council has no veto power over Government’s decisions, but can initiate different discussions important for civil society development and oversee the implementation of policies and strategies. In past years it was proven that the work of the Council seems to depend greatly upon the motivation of its members and, especially its President.

As mentioned above the third body in this model is the National Foundation for Civil Society Development. In addition to grant mechanisms, it also runs educational, training and research programs. Its goals focus on (1) the encouragement of public action, inclusion and participation in community development, (2) building capacity of civil society organizations, (3) the development of inter-sectoral cooperation and cooperation between civil society organizations, (4) increasing public influence and the visibility of the work of NGOs, (5) the development of social enterprise and employment in the not-for-profit sector and (6) increasing the influence of the civil society in the process of adoption of public policies.<sup>45</sup> The National Foundation cooperates with all three sectors of the society: public authorities, business and NGOs. In 2007, the National Foundation selected, through a public competition, three organizations and their network of organizations, located in three major regions in Croatia, with whom it will cooperate in the process of financing, regional development and capacity building of the third sector. This initiative was one of the efforts of the National Foundation to decentralize further the cooperation and financing schemes. The National Foundation has participated in many legislative drafting initiatives aiming to improve the legal framework for NGOs and conducted significant research on issues relevant for the Croatian NGOs.

In addition, with property granted by the Government, the National Foundation established the *European Centre for Cross-Sectoral Partnerships (IMPACT)* in Zadar, which aims to become a European center of excellence in education and training for representatives of

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<sup>45</sup> Operational Strategy of the National Foundation for Civil Society Development 2004-2007 ([http://zaklada.civilnodrustvo.hr/index.php?p=eng\\_o\\_zakladi&s=32](http://zaklada.civilnodrustvo.hr/index.php?p=eng_o_zakladi&s=32)).

all three sectors in society, for innovative and sustainable programs of inter-sectoral cooperation.<sup>46</sup>

▪ **Estonia**

In Estonia, the Minister of Regional Affairs who works in the Ministry of Interior is responsible for the development of civil society (together with his other duties that include public services and regional policy). The Minister's staff in the field of civil society is limited to two full-time officials dealing with civil society issues and two political advisers. Although the Minister has declared a plan to form a department for civil society, the concept of such department has to date not been developed. Other Ministries cooperate with NGOs as well; however the extent of this co-operation can vary considerably. Notable examples include the Ministries of Foreign Affairs, Economic Affairs, Culture, Finance, Education, and Social Affairs.

In addition, the Government Communication Office at the State Chancellery is also engaged actively with fostering the culture of public participation among public authorities. In addition, in 2007 each ministry named an official who is responsible for organizing public involvement in law-making processes.

A parliamentary group for the support of civil society is also formed in Riigikogu (Estonian parliament) that includes representatives from all political parties in the Parliament. More than one-third of MPs belong to this group, thus making it the biggest parliamentary grouping in Riigikogu. The group perceives its role to be discussion of the situation and initiation of necessary legislation for support of civil society development. However, they have not made legislative initiatives or statements so far.

**2. Policy Documents on Cooperation with NGOs**

Policy documents on cooperation with NGOs express the position of public authorities on the role of NGOs in society and the commitment for future constructive interaction with them. Such documents outline the principles of cooperation, they provide for a means for NGOs to receive increased support for their work and hence, to expand the areas of their activity in the interest of society and opportunities for partnerships in initiatives for addressing common needs. Since they all aim to promote partnership and dialogue, it is also important that all of them are developed through a highly participatory process and the involvement of NGOs.<sup>47</sup> All three countries analyzed in this article have developed such policy documents, and all of them have been able to evaluate their implementation.

▪ **Croatian Program of Cooperation and Strategy**

The first document between the Croatian Government and NGOs was the “Program of Cooperation between the Government of the Republic of Croatia and the Non-Governmental,

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<sup>46</sup> The principal activities of the of IMPACT are: (1) study and educational programs implemented continuously in cooperation with international and national partnership organizations (2) organization of public debates on the subjects of cross-sector cooperation and partnership, (3) public advocacy of cross-sector cooperation and partnership, (4) interdisciplinary research, (5) technical assistance and counseling and publishing. In addition to educational services, the Centre will offer, on its premises of almost 1,500 m<sup>2</sup>, 20 accommodation units, a multimedia centre, a convention room, an exhibition room and a library.  
<http://zaklada.civilnodrustvo.hr/eng/impactENGvise.php>.

<sup>47</sup> “A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation,” report by Nilda Bullain and Radost Toftisova ([www.ecnl.org](http://www.ecnl.org)).

Non-Profit Sector” which was signed in 2001.<sup>48</sup> The Program of Cooperation is based on “common values of modern democracy and the values of civic initiatives founded on social changes, cooperation, solidarity, social justice, transparency, personal ability and responsibility, participation in decision-making, consideration for personality, self-organisation, consideration for organizational diversity and continuous learning. It aims to create effective mechanisms that will enhance the communication between the Government and the Sector.” Although the Program for Cooperation listed the obligations of the Government and NGOs, it was not perceived as a legally binding document. The Program was conceived as a living document – “a starting point, not a conclusion” – with an “authority evolved from the confirmation” given by both sides. Additionally, the Program of Cooperation anticipated the creation of local and regional compacts so as to decentralize cross-sectoral cooperation. The implementation of the Program of Cooperation has been evaluated positively. It led to legislative reforms benefiting NGOs, including the new Law on Associations, the Lottery Law, the Law on Volunteerism and draft Law on Foundations, the Code of Good Practice in Grant-Giving, tax law amendments providing deductions for donations to NGOs, and the creation of local compacts in cities throughout Croatia.

Following the successful implementation of the Program for Cooperation, the Croatian Government adopted in 2006 a “National Strategy for Creating Supportive Environment for the Development of Civil Society.” The Strategy outlines the goals and measures that should be accomplished by 2011 in order to increase and strengthen the legal, financial and institutional framework for the support of civil society. Specifically, the Strategy contains targeted objectives and measures in the fields of participation in decision-making, the legal and tax framework for NGOs, the institutional framework for cooperation, financing of NGOs through contracting, development of social enterprises, development of philanthropy, volunteering and foundations, social cohesion, and the role of NGOs in the process of European Union integration. The Strategy was developed through a highly consultative, collaborative and participatory process by NGOs and government officials. Upon the adoption of the Strategy the Office for Associations developed an Operational Plan for Implementation of the Strategy which was adopted by the Government in February 2007. The Operational Plan clearly outlines all the measures necessary to support the implementation of the Strategic goals, the deadlines and the responsible ministries or state bodies.

▪ **Strategy Paper of the Government of Hungary on Civil Society**

In 2002, the Department for Civil Relations led the process of development of a Strategy Paper of the Government of Hungary on Civil Society. The Strategy was initiated as a result of the fact that the then newly-elected government made cooperation and communication with civil organizations a priority objective. The elaboration of the policy document and consequent legislation was put on the fast track and its development was – though contentious - highly participatory. Comments from the NGOs were considered and mostly integrated into the final document. Initially, the government actually envisioned the signing of a “real” compact type agreement with the representatives of the NGO sector, which would have required a single representative body of the NGOs to sign it. Since there was strong resistance among civil society

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<sup>48</sup> Available at <http://www.uzuvrh.hr/>.

organizations against such a notion of a single representative body of NGOs, the government had to abandon this idea.<sup>49</sup>

In terms of its implementation, the Hungarian Government has accomplished the central idea of the Government Strategy, that being the establishment of the National Civil Fund and also has made progress in its legislative plans, especially by adopting the Law on Volunteering.

In 2006 the Government launched a process of developing a new strategy for its partnership with civil society. At this time, however, instead of developing one central strategic document for the whole Government, the Ministries were entrusted with developing their own separate strategies, to help decentralize the cooperation and make it more effective. Besides the Ministry documents, a second Governmental Strategy was also developed and adopted in 2007.

▪ **Estonian Civil Society Development Concept and Civic Initiative Support Development Plan**

The Estonian Civil Society Development Concept - EKAK is perhaps the only policy document adopted by a Parliament in CEE. EKAK was adopted in 2002 and a joint committee for its implementation was created in order to advance the implementation goals of EKAK. EKAK reflects the following priorities for development of the sector: sustainability, accountability, and transparency mechanisms for civil society. The national priorities are reflected in EKAK activities, which are designed to address issues of great concern to both the public and voluntary sectors, including legislation regulating citizen initiatives, involvement of citizens and citizens' associations in decision-making processes, financing of citizens' associations, compilation of statistics on the NGO sector's size and activities, civic education, and public awareness.<sup>50</sup> The Estonian EKAK has its own Implementation Plan, and the implementation schedule is followed strictly by both parties. The EKAK implementation plan formulates goals, activities to achieve each goal, and specific indicators to measure achievement. It allocates responsibilities and contains a fixed schedule. Although the implementation plan was drafted in pursuit of the EKAK's short-term priorities, it also came as a result of the government's and the non-profit sector's joint efforts and understanding of the essential aspects of civic, legislative, and economic life in the country and the importance of adopting a comprehensive approach to solving problems in these areas.<sup>51</sup> The Estonian EKAK resulted from bilateral initiatives and nationwide public discussions.

*"The process of writing, rewriting and once again rewriting the document also became an international success story. Kristina Mänd, executive director of NENO, recalls how an Indian rose from his seat at a meeting in Canada, which the country's NGOs, politicians and public officials had summoned, slapped his fist on the table and told Canadian officials: "If you can't do it like Estonians, don't do it at all!" Unlike the Estonians, the Canadians felt that they had been pushed too far into the background when a similar Canadian document, the Accord, was discussed. Indeed, even before the*

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<sup>49</sup> "A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation," report by Nilda Bullain and Radost Toftisova ([www.ecnl.org](http://www.ecnl.org)).

<sup>50</sup> Toftisova, R., Implementation of NGO-Government Cooperation Policy Documents: Lessons Learned, IJNL, volume 8, issue 1 (2005) [http://www.icnl.org/knowledge/ijnl/vol8iss1/special\\_2.htm](http://www.icnl.org/knowledge/ijnl/vol8iss1/special_2.htm).

<sup>51</sup> Toftisova, R., Implementation of NGO-Government Cooperation Policy Documents: Lessons Learned, IJNL, volume 8, issue 1 (2005) [http://www.icnl.org/knowledge/ijnl/vol8iss1/special\\_2.htm](http://www.icnl.org/knowledge/ijnl/vol8iss1/special_2.htm).

*concept was adopted by the Riigikogu, Estonian NGOs had talked about the paper in the USA, Canada, Japan, Hungary, Ukraine, Australia, Denmark, the Czech Republic, Germany, Poland, Russia, Latvia, Lithuania, South-Africa, Brussels, Strasbourg... Everywhere it became a "best practice" and was cited with excitement. According to program manager Daimar Liiv, who coordinated the completion of the document, it is the first cooperation document of its kind approved by a country's parliament. "It demonstrates to the world that a political agreement has been reached in Estonia between the NGO sector and the state over how to enhance cooperation," Liiv says. Writing the document and seeing it adopted by the parliament gave the national NGO community a boost of self-esteem."<sup>52</sup>*

A Joint Committee was established in 2003 composed of representatives of each ministry and civil society. Among other things, the Committee was assigned to evaluate the degree to which the parties have fulfilled the commitments they undertook in the EKAK, as well as to develop an Implementation Plan for future action. Thus, while created in execution of the EKAK, this body has served as a link between various stages of the adoption and implementation processes.<sup>53</sup> Importantly, the work of the Committee enabled the two sectors to reach a higher level of collaboration.

In the years following the establishment of the Committee, membership increased to 30, which slowed down the efficiency of the work of the Committee. At the end of 2006, NENO<sup>54</sup> conducted an audit for the joint committee that identified three main problems in implementing EKAK: (1) lack of political interest; (2) poor quality and implementation of activity plans caused by insufficient financial and human resources<sup>55</sup>, and (3) unclear role and responsibilities of both the committee and its members, especially from the side of public sector (the ministries were represented by officials who usually didn't have the power to make decisions in the name of the ministry). In order to solve these problems, NGOs recommended the revision of the principles and membership of the Joint Committee and formation of implementation units in both the public sector and NGOs.<sup>56</sup> During the summer of 2007, the principles and membership of the Committee were revised, and as a result the new committee is smaller in number, but composed of higher level officials. It includes representatives of 10 umbrella organizations, business and trade unions, as well as chancellors (the highest state officials in Estonia) of the ministries of Finance, Social Affairs, Education, Culture, and Economic Affairs, and the deputy-chancellor of the Ministry of Interior. The Minister of Regional Affairs chairs the Committee. In addition, a representative of the Estonian Parliament and two government foundations (Enterprise Estonia and Non-Estonians' Integration Foundation) also sit on this Committee.

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<sup>52</sup> Ruus, K., "Change of mindset underway as Estonian parliament adopts agreement on civil society," <http://www.policy.lv/index.php?id=102558&lang=en>.

<sup>53</sup> Toftisova, R., Implementation of NGO-Government Cooperation Policy Documents: Lessons Learned, IJNL, volume 8, issue 1 (2005) [http://www.icnl.org/knowledge/ijnl/vol8iss1/special\\_2.htm](http://www.icnl.org/knowledge/ijnl/vol8iss1/special_2.htm).

<sup>54</sup> [www.ngo.ee](http://www.ngo.ee).

<sup>55</sup> The budget for the Joint Committee was allocated from a supplementary budget of 2-3 million Estonian kroons a year (approx. 130 000-190 000 Euros).

<sup>56</sup> The discussions over the formation of implementation units are still in process. NGOs have stated that they find it inevitable to have such units with stable funding from state budget in both public sector (for example the future department of civil society by Minister of Regional Affairs) and nonprofits (administered by one NGO) to perform day-to-day activities and being responsible in taking EKAK forward.



Further, in June 2006 the Civic Initiative Support Development Plan, known as KATA in Estonian, was approved. KATA is one of the results of the Estonian Civil Society Development Concept (EKAK), and it serves to standardize the government's approach to nurturing civil society. Essentially it is a document that brings together information about all the activities from the development plans of the various ministries that are connected with civil society. KATA also aims to replace the activity plan for implementing EKAK as of 2007. The new development plan sets five goals for the next three years: (1) to raise the administrative ability of the public sector in communicating with citizens and NGOs/NPOs; (2) to bring into order the system of financing the NGOs/NPOs; (3) to engage NGOs/NPOs consistently and successfully in the decision-making processes; (4) to raise awareness and develop cooperation between the public, private and the nonprofit sectors and (5) to develop and support civic activism.

NGOs have criticized KATA because they feel that this document does not bring any new ideas. Instead it only reinstates the activities which are already taking place. They feel that KATA failed to provide the qualitative leap in the development of civil society and its cooperation with the Government.<sup>57</sup> For example, as mentioned above, the aim of KATA was to gather information from all ministries' development plans (which are essentially sub-sectoral strategies) on what they are doing in the field of civil society (for example, what does the Ministry for Environment do to support environmental organizations, or the Ministry for Education to support youth and educational NGOs). The main problem however, is that KATA does not perceive civil society as a whole (as EKAK does) but as a sum of specific activities particular to one sector. Therefore, its focus is not on the cross-sectoral issues, e.g., sustainability of NGOs. Further, NGO participation in the development of KATA is also limited, because of the fact that it relies predominantly on the ministries' development plans. To remedy this problem, NGOs are lobbying for the establishment of an implementing unit called the EKAK bureau, which would help the nonprofit sector in taking the ideas and commitments of EKAK forward.<sup>58</sup>

## **V. NGO INVOLVEMENT IN POLICY AND DECISION-MAKING PROCESSES**

NGO involvement in policy and decision making processes has been understood to include, among others, the possibility and rights for NGOs to have access to information about the process of policy making and law drafting, to be consulted about issues under consideration, and to take active part in defining the process and policy or law in question.<sup>59</sup> Public participation in policy making can be supported through various mechanisms, including: information about the launch of the process, the plans and timelines, sharing early versions of drafts for consultation with NGOs and other stakeholders, including NGOs in working groups which develop the concept of the policy and the draft law from the outset. Participation in decision making processes, on Parliament level, can be realized through allowing NGOs to take part in discussions in Parliamentary Committees or developing reports on the consultation process which would reflect on the input given by NGOs and stakeholders. Opening the processes for participation of NGOs and stakeholders can have many benefits. Primarily, the process can result in fair policies/laws which are reflective of the real needs and are enriched

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<sup>57</sup> <http://www.ngo.ee/10217> .

<sup>58</sup> As explained by Urmo Kübar, Executive Director, NENO.

<sup>59</sup> "Citizens as Partners: Handbook on Information, Consultation and Public Participation in Policy-Making," OECD, 2001, [www.oecd.org](http://www.oecd.org).

with additional experience and expertise. The participatory process can also facilitate dialogue and consensus on issues, can ensure legitimacy of adopted solutions and guarantee compliance. Participation in the process of developing policies and laws can also increase the feeling of ownership among stakeholders and responsibility for the implementation of the provisions.

The three countries discussed in this article have worked towards analyzing the challenges posed for successful partnership and participation in policy making and integrating the best practice principles into such processes. Out of all three, only Estonia has adopted a Code of Good Engagement which outlines the basic principles of participation while Croatia has initiated a process for drafting such a code.

#### ▪ **Hungary**

The issue of NGO participation in policy and decision-making processes in Hungary has been a sensitive issue, as governments have not always been open to the involvement of NGOs in such processes. However, the basic principle to enable NGO participation has existed since the change of the political system embodied in the Constitution. Further, there is no one piece of legislation that would detail NGO involvement in policy and decision making processes. Rather, this issue is addressed in various laws and regulations on national or local level.

There is one relevant provision in the Constitution<sup>60</sup> and also in the Act on Legislation,<sup>61</sup> which establish the broad basis for NGOs to participate primarily in the governmental (as opposed to Parliamentary) process on policy-making and law drafting. Although the Act on Legislation contains some specific provisions on NGO involvement, those have not been supported by implementing regulations which leaves them open to various interpretations. In 2005, Hungary made a big step towards public participation when the Parliament adopted the Law of Freedom of Electronic Information<sup>62</sup>, which is the most relevant legislation from the access to information and consultation point of view. This law obliges both national and local governmental bodies to make available on the internet data of public interest. Such data, according to the Protection of Personal Data and the Publicity of Data of Public Interest<sup>63</sup> and also in accordance with some decisions of the Constitutional Court, include not only drafts of laws, but also concepts and other preparatory materials. The law details deadlines, methodology and procedures for publishing such information and reacting on it to give feedback to the public. Further, there are some other mechanisms that depend on Ministry level regulations, such as the various Councils (elderly, youth, social etc.) which also have their own procedures for the involvement of NGOs.

There are also some mechanisms which ensure NGO participation in decision making processes on the Parliament level. The Civil Office (mentioned above) maintains a Parliament

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<sup>60</sup> Section 36 of the Constitution states that while performing its duties, the government shall cooperate with the civil organizations concerned. For the obligatory character of this provisions on policymaking bodies, see the discussion on the Constitutional Court decision in "Civil Organizations in the Legislative Process," edited by Judit Fridli and Ildi Pasko, a Publication of the Hungarian Civil Liberties Union, Budapest, April 2000 (on file with ECNL).

<sup>61</sup> Art. 20 of Act on Legislation provide that civil organizations shall be involved in drafting those regulations which "pertain to the interests or affect the social conditions which they represent and protect."

<sup>62</sup> Law XC of 2005.

<sup>63</sup> Law 63 of 1992.

“lobby list.” NGOs who register on the list are informed and involved in the work of the Parliament. Hungary also adopted a Law on Lobbying in 2006, which caused some controversy. Essentially the law does not apply to NGOs but states that only those entities formally registered under this law may conduct lobbying activities. Therefore, in theory, if the law is interpreted restrictively, it would mean that NGOs are not allowed to lobby in Hungary today. Nevertheless, the practice is different - NGOs are still able to directly contact government officials and MPs about legal reform.<sup>64</sup>

In recent years, NGOs have made successful efforts to influence legislation concerning the sector (e.g. in the case of the National Civil Fund, the Act on Public Interest Volunteering), and more and more results have also been seen in legislation in different fields (such as the environment, disabled rights or women's rights). In addition to cooperation in the legislative process, NGOs and the government have also cooperated with respect to European Union accession issues. The two sectors have also launched partnerships for providing public services (e.g., the Ministries of Health, Social Affairs and Family, Education, and Culture), and they have worked together on processes for determining direct and indirect (delegated) civil representation in European Union institutions.<sup>65</sup> Finally, NGOs also are actively involved in working groups on Ministry levels and they sit on the bodies of the National Civil Fund.

▪ **Estonia**<sup>66</sup>

In Estonia, consultations with NGOs are mentioned in a governmental decree adopted in 1999 which provides that the explanatory letters of draft laws should also include the opinions of NGOs. In 2005, a “*Code of Good Practice on Involvement*”<sup>67</sup> was developed by representatives of the public sector and NGOs (based on the EKAK)<sup>68</sup>, elaborating the key principles that should support active and meaningful participation of NGOs. The Code aims to be applied by administrative agencies in the preparation of at least the following documents: drafts of laws and their amendments; drafts of the regulations and directives of the Government of the Republic; drafts of Ministers’ decrees; documents, concepts, policies, development plans, and programs that are important to the country’s development; drafts of legislation of European Union institutions and other strategic documents (i.e. green and white books); instruction and procedures for rendering public service; conventions and international agreements, as well as the documents that are worked out within their framework, and that influence the society.

Several studies have shown that civil servants have an increased awareness about the need for civil society involvement. A study conducted in 2006 showed that 92% of civil servants find NGO involvement to be necessary for better results in lawmaking.<sup>69</sup> A more recent

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<sup>64</sup> Companies, on the other hand, need licensed lobbyists to proceed with such activities.

<sup>65</sup> “The Liaison Office as a Tool for Successful NGO-Government Cooperation: An Overview of the Central and Eastern European and Baltic Countries’ Experiences” by Maria Gerasimova (<http://www.icnl.org/knowledge/ijnl/index.htm>).

<sup>66</sup> This section of the article has been developed with significant contribution by Urmo Kübar, Executive Director of NENO.

<sup>67</sup> [www.ngo.ee/11583](http://www.ngo.ee/11583).

<sup>68</sup> NGOs expect the Code to be adopted by the Government in October 2007, and thus become a legally binding document.

<sup>69</sup> <http://www.riigikantselei.ee/?id=6473>.

qualitative study by Tallinn University showed that civil servants who have permanent contacts with NGOs view the cooperation much more positively, while the lack of experience gives rise to unrealistic expectations, disappointment and prejudice.<sup>70</sup>

The involvement of NGOs in consultations of draft laws and their participation in different working groups and steering committees is increasingly common. The infrastructure of NGOs is well established in Estonia and there are well known umbrella organizations for different sectors in addition to NENO which represents the cross-sectoral advocacy body on behalf of nonprofit sector.

Although NGO participation and consultation is improving, there are still many challenges on the side of both the public and nonprofit sector. The challenges on the side of the public sector are: (1) insufficient knowledge about potential partners (therefore the consultations are often limited for stronger and more known umbrella organizations instead of wider involvement of other types of groups or organizations); (2) insufficient knowledge about the processes of involvement, which makes the consultation process often formal without any real effort to ensure meaningful input from NGOs; (3) poor quality of drafts laws (since they are often very long and complicated texts, that NGOs are not capable to deal with); (4) poor planning of time and short deadlines (The time given to organizations for sending their feedback to draft laws is usually 2-3 weeks, which is often not sufficient when organizations want to gather their members' or constituencies' options first, especially if they are not informed in advance about forthcoming consultation processes. Thus NGOs are often involved only in consultations about ready-made draft laws instead of involving them in the stages of needs assessment and development of the draft); (5) poor capacity in giving feedback to organizations who have contributed to the law-making processes with their proposals.

On the other side, NGOs face the following challenges (1) lack of resources (both human and financial) to make meaningful contributions to policymaking; (2) lack of competence to comment on legal texts; and (3) lack of ability to consult and involve their members and target groups when they formulate the organization's position towards a policy or law. The solutions to these problems are being sought through trainings (e.g., NENO's annual summer school in 2007 concentrated on involvement and participation issues, bringing together NGOs and officials to discuss and exchange experiences on how to implement public involvement procedures to achieve the best results) and better funding mechanisms for NGOs (e.g., operational costs for advocacy organizations through the future Endowment).

A further interesting initiative is the new participation portal [www.osale.ee](http://www.osale.ee) ("participate" in Estonian), which was launched by the State Chancellery in summer of 2007. The portal allows civil society groups and individuals to post comments about the ongoing consultation processes, while the ministries can provide the public with draft laws, background materials as well as post polls. In the future, the users will also get the opportunity to initiate legislation and comment on the needs and shortcomings in the society that can currently be done through another portal, "Today I decide."<sup>71</sup> In the first few months the input from public sector has been low, while the feedback from NGOs has been moderate. Nevertheless, the portal has good potential to facilitate the consultation processes.

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<sup>70</sup> [www.ngo.ee/uuringud](http://www.ngo.ee/uuringud)

<sup>71</sup> Or TOM in Estonian, [www.eesti.ee/tom](http://www.eesti.ee/tom).

▪ **Croatia**

In Croatia,<sup>72</sup> NGO involvement in policy-making and decision making process is still undergoing an initial phase of developing tools and mechanisms for more systematic engagement. Currently, there are no special regulations in Croatia that would guarantee NGO participation at any level of government or parliamentary decision making. Government's Rules of Procedure prescribe that ministries and other governmental bodies should, when appropriate, forward proposals and opinions to (professional) associations which deal with the issue in the proposal or opinion.<sup>73</sup> However, this provision is not being fully respected and there are no statistics to confirm the efficiency of such an approach. The Parliament's Rules of Procedure provide that "external members of the Parliament's committees" who are nominated from various expert groups, universities and associations, can give opinions on draft proposals without the voting right. However, only 11 out of 25 different Parliamentary committees can use the option of nominating external members and the procedure of appointment is not transparent.

Due to the lack of systematic involvement of NGOs in the decision-making processes, representatives of NGOs and Government dedicated a special chapter on participation of NGOs in the newly adopted "*National Strategy for Creating Supportive Environment for the Development of Civil Society.*"<sup>74</sup> The Strategy indicates the need for the development of unified standards and a mechanism at the national and local level to provide NGOs the opportunity to participate in the drafting, implementation and evaluation of public policies and decisions. Accordingly, the Council for Civil Society Development and Government's Office for NGOs have formed a working group tasked with drafting several possible mechanisms and tools for NGO consultations, such as a Code for NGO Consultations.

Most of the current practice of NGO involvement includes *ad hoc* reactions through the media pressure, advocacy coalitions and direct lobbying after the certain draft proposal (policy or law) has been published. The consequences of this approach are firstly, a significantly low level of access to information about the drafting process (usually conducted in the national or local Government's body) followed by the late publication of the drafts, and secondly, the need for a quick and targeted reaction of NGOs, which does not allow for elaborate comparative analysis or public discussions. Some NGOs have already established a database of comparative research relating to their main focus of interest and are able to react quickly and produce policy analysis in very short time.

In addition, the process of decision-making, especially on the parliamentary level, is still based on a daily schedule which is constantly subject to change. There is no systematic approach to setting the agenda and thus NGOs face limited possibility and time to prepare meaningfully for the discussions. Moreover, over 80% of legislative drafts are being adopted under so-called

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<sup>72</sup> This section of the article was written with significant contribution by Vanja Skoric (Legal Advisor, GONG).

<sup>73</sup> Article 27 para 5 of Government's Rules of Procedure, Official Gazette 6/02, 91/03 and 58/04.

<sup>74</sup> Chapter 4 of the National Strategy for Creating Supportive Environment for the Development of Civil Society.

“urgent procedures,” which in theory should be used only in limited situations. This practice limits the ability of NGOs to participate in decision-making processes.<sup>75</sup>

A more systematic approach to NGO involvement is rare but successful on both the national and local levels. Usually this includes forming a working group for a draft law or policy; the working group is initiated by a governmental body but also includes members of NGOs.<sup>76</sup> Frequent meetings and open discussion and inputs of NGO members helped bridge the gap between drafting and implementation of certain laws and policies. However, these examples depend on the personal motives and openness of each governmental office. The main body established by the Government that represents NGOs is the Council for Civil Society Development (described above). In addition to the Council, 53 NGO representatives and experts from the academic sector are involved in the negotiations of Croatian accession to the European Union. Moreover, the Government initiated the establishment of a Joint Consultation’s Committee between European Economic and Social Council and Croatia, with two participants nominated by the NGOs participating in its work. Finally, in late 2007, the Government initiated the establishment of the National Council for Promotion of Voluntarism which will include representatives of NGOs.

## **CONCLUSION**

Cooperation between governments and NGOs in the three countries analyzed in this article has taken many creative forms. In all three countries, the governments have adopted the basic framework laws which would enable NGOs to operate and sustain their activities. With the exception of the Croatian Law on Foundations and Funds, all of them reflect good practice principles. The tax laws also follow this trend and all three countries have introduced exemptions on income tax and tax benefits for donors which would motivate NGOs to generate their own income and turn to their local communities to gain financial support for their activities. In addition, the volunteering laws in Hungary and Croatia, and the development plan in Estonia aim to create a supportive environment for citizen engagement in the activities of NGOs and social life.

Governments and NGOs have also been innovative in developing mechanisms to improve the financial viability of the sector, especially to address the most common challenge of lack of funding for NGOs’ institutional costs. The models described in this article show that there are many creative ways in which governments and NGOs can try to address this problem if they make an assessment of the local needs and opportunities. Each model depends on a distinct source of funding (lotteries, percentage mechanism).

Importantly, the state bodies and NGOs have been able to explore different avenues to increase dialogue and cooperation. They have set up central offices at governmental and parliamentary levels, which are responsible for liaising with NGOs, soliciting their input, working jointly on initiatives of common interest and ensuring their participation in the policy and decision-making processes. The establishment of different departments at ministries tasked

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<sup>75</sup> Article 159 of Parliamentary Rules of Procedure. According to the official web site of the Parliament, [www.sabor.hr](http://www.sabor.hr) and their Information and Documentation Service, in the period January 15 – July 13 2007, a total of 115 laws have been adopted, 81 of them according to the “urgent procedure.”

<sup>76</sup> Law on Voluntarism, adopted in 2007, is a good example of including NGOs in draft law working group. Example on local level includes working group for adopting City Program for Youth in the town of Zadar.

to liaise with NGOs ensures that the cooperation is not limited to only one public body but is decentralized and allows for direct partnerships on issues which are close to the parties involved. The programs for cooperation or strategies for support of the development of the sector are important as they embrace and endorse principles and commitments which guide the cooperation and ensure that the support is targeting real needs. The highly participatory processes in the development of these documents are perhaps even more significant as they have brought the public bodies, state authorities and NGOs closer together, have facilitated consensus-building on the priority issues and have created ownership and trust that increase the chances of successful implementation. Finally, the initiatives to translate the principles and rules of NGO involvement in policy- and decision-making processes into codes or regulations have elevated the importance of NGO participation and ensured that all public authorities and NGOs are familiar with the benefits of such involvement and also the obligations and opportunities that arise from it.

The Croatian, Estonian and Hungarian models of cooperation have faced several implementation challenges. The experiences gained through these innovative initiatives have served and can continue to serve as valuable examples and inspiration to other countries that are considering adopting similar approaches in their local environments.

### **BIBLIOGRAPHY**

- Bauer Tamás, "Hungary's 1% Law: A Brief History," <http://www.efc.be/newsletters/seal/contentsseal2004.html>
- Bullain, N., and Toftisova, R., "A Comparative Analysis of European Policies and Practices of NGO/Government Cooperation" (2005), *International Journal of Not-for-Profit Law*, Vol. 7, Issue 4, [http://www.icnl.org/knowledge/ijnl/vol7iss4/art\\_1.htm](http://www.icnl.org/knowledge/ijnl/vol7iss4/art_1.htm)
- Bullain, N., "Percentage Philanthropy and Law," *Percentage Philanthropy* (2004), ECNL (European Center for Not-for-Profit Law) and NIOK (Nonprofit Information and Training Center) at [www.ecnl.org](http://www.ecnl.org) and [www.onepercent.hu](http://www.onepercent.hu)
- Bullain, N., "Mechanisms of Government-NGO Cooperation in Hungary" (<http://www.efc.be/publications/sealabstract.html>)
- ECNL, "Cooperation between the Government and Civil Society Organizations in Hungary," report prepared for the British Council (2006)
- ECNL, "Tax Treatment of Non-Profit Organizations and Tax Benefits for Donors (2006)," research paper, [www.ecnl.org](http://www.ecnl.org)
- European Foundation Centre, "Foundations' Legal and Fiscal Environments – Mapping the European Union of 27" (2007)
- Fridly, J., Pasko, I., "Civil Organizations in the Legislative Process," edited by Judit Fridli and Ildi Pasko, a Publication of the Hungarian Civil Liberties Union, Budapest, April 2000
- Gerasimova, M., "The Liaison Office as a Tool for Successful NGO-Government Cooperation: An Overview of the Central and Eastern European and Baltic Countries' Experiences," (<http://www.icnl.org/knowledge/ijnl/index.htm>)
- Göncz, K., "Tényszerűen a Nemzeti Civil Alapprogramról" - sajtóközleménye 2005. augusztus 30. (Factually about the National Civil Fund - press release of Kinga Göncz, Minister of Youth, Family and Social Affairs, August 30, 2005)
- Government Office for Associations, Government of Republic of Croatia, Program of Work for 2000-2004
- Hadzi-Miceva, K., "Comparative Analysis of the European Legal Systems and Practices Regarding Volunteering" (2007), *International Journal for Not-for-Profit Law*, Volume 9, Issue 3.
- Hadzi-Miceva, K., "A Supportive Financing Framework for Social Economy Organizations" (2005), paper developed for and presented at a conference on Social Economy in CEE: Emerging Trends of Social Innovation and Local Development, organized by OECD and LEED Program
- Hadzi-Miceva, K., and Suplisson, F., (2007) "Overview of State Funding Schemes for Civil Society Organizations, research paper," [www.ecnl.org](http://www.ecnl.org)
- HEPF, ICNL, Editors of SEAL, "Hungary's National Civil Fund: Building on the 1% Law," in *Social Economy and Law* (SEAL), Autumn 2003
- ICNL, *Survey of Tax Laws Affecting NGOs in CEE*, 2nd edition, (2003), ICNL, [www.icnl.org](http://www.icnl.org)

Ivanovic, M., "Legal Framework for the Activity of Public Benefit Organisations in the Republic of Croatia - State of affairs on 31 May 2005," published by ECNL and National Foundation for Civil Society Development (2005)

National Foundation for Civil Society Development, Annual Report 2006

National Foundation for Civil Society Development, Operational Strategy 2004-2007  
([http://zaklada.civilnodrustvo.hr/index.php?p=eng\\_o\\_zakladi&s=32](http://zaklada.civilnodrustvo.hr/index.php?p=eng_o_zakladi&s=32))

OECD, "Citizens as Partners: Handbook on Information, Consultation and Public Participation in Policy-Making," (2001), [www.oecd.org](http://www.oecd.org)

Plavs-Matic, C., and Hadzi-Miceva, K., (2004) "From Vision to Change: A New Model for Civil Society Development in Croatia," Social Economy and Law (SEAL), Winter 2003-Spring 2004

Ruus, K., "Change of mindset underway as Estonian parliament adopts agreement on civil society,"  
<http://www.policy.lv/index.php?id=102558&lang=en>

Rutzen, D., Durham, M., Moore, D., (2004), "Overview of NPO Legislation in Central and East Europe," [www.icnl.org](http://www.icnl.org)

Salamon, L., Sokolowski, W., and List, R., Global Civil Society: An Overview, (2003), the John Hopkins Comparative Nonprofit Sector Project, Baltimore: Johns Hopkins Center for Civil Society Studies, [www.jhu.edu/~ccss](http://www.jhu.edu/~ccss)

Toftisova, R., Implementation of NGO-Government Cooperation Policy Documents: Lessons Learned, IJNL, volume 8, issue 1 (2005)

USAID 2004 and 2006 Sustainability Index for Central and Eastern Europe and Euroasia, [www.usaid.gov](http://www.usaid.gov)



**Article**

## **501(c)(3) Money Laundering Deterrents Off Target**

**Donald Morris<sup>1</sup>**

*The potential use of charitable organizations to provide cover for financial dealings of a less-than-charitable nature is a concern, whether in the context of international terrorism or domestic corruption. The IRS notes that investigative and law enforcement initiatives have identified situations in which charitable organizations have been a significant source of terrorist funding. One measure used to detect money laundering is the Internal Revenue Code reporting requirement when cash received exceeds \$10,000. Two problems posed by the IRS cash reporting requirements affect 501(c)(3) organizations. First, the cash reporting rules do not apply to donations to a 501(c)(3) organization. Second, the cash reporting rules cause potential liability problems for legitimate charities that fail to recognize and understand their exposure. This is particularly true for trade or business transactions undertaken by exempt organizations, as this concept is considerably broader than that of unrelated business taxable income.*

The recent federal money laundering indictment of former U. S. Congressman Mark D. Siljander (R-Mich.) and officers of the Islamic American Relief Agency (IARA), a 501(c)(3) organization, is a reminder of the variety of fronts behind which terrorist-based activity may appear.<sup>2</sup> The charity was accused of funneling money to Iraq in violation of the Iraqi Sanctions Regulations (Title 31, CFR, Sec. 575). This U.S. Executive Order prohibits the unauthorized transfer of funds to the Government of Iraq or to any person in Iraq. Officers of the Islamic American Relief Agency were also accused of using IARA's tax-exempt status "to solicit donations from the public by representing that the donors' contributions were tax deductible" (U.S. Dist. Ct. West. Dist. MO). The indictment also charges IARA with hiring Mark Siljander to advocate for the charity's removal from the United States Senate Finance Committee's list of §501(c)(3) organizations suspected supporting international terrorism.

The potential use of charitable organizations to provide cover for financial dealings of a less-than-charitable nature is a concern, whether in the context of international terrorism or domestic corruption. According to the IRS, "Investigative and law enforcement initiatives have identified situations in which charitable organizations have been a significant source of terrorist funding" (IRS Ann. 2003-29). In another recent Department of Justice indictment, an Alabama

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<sup>2</sup> In addition to charges of money laundering and conspiracy to commit money laundering, the grand jury indictment includes conspiracy to violate the International Economic Powers Act and the Iraqi Sanctions Regulations, theft of public money, obstruction of justice and obstructing or impeding administration of Internal Revenue Laws. Case No. 07-00087-01/07-CR-W-NKL, United States District Court for the Western District of Missouri.

state senator and a former Baptist pastor allegedly conspired to employ a nonprofit corporation, the Heritage to Hope Foundation, Inc., to launder \$300,000 in grant funds intended for GED training and a senior citizens home to the senator in the form of bribes (Department of Justice 2008). Of such ill-conceived exempt organizations, one observer notes, “Based on their representations of chaste and unadulterated adherence to charitable missions, the U.S. government granted them what now appear to be unwarranted income tax exemptions” (Crimm 2004). Public perception that even a few purported faith-based organizations are using their granted status of 501(c)(3) to undermine the communities they represent themselves to champion harms the hundreds of thousands of charities that remain true to their exempt missions.<sup>3</sup>

### **Cash Reporting Requirements**

One of the tools used in the federal government’s battle against money laundering is IRC §6050I’s reporting requirement for cash received in a trade or business if the amount exceeds \$10,000.<sup>4</sup> Subject to certain exceptions and clarifications discussed below, the general rule of §6050I requires the recipient of such payments to report the amounts and payees to the IRS within 15 days using IRS Form 8300, “Report of Cash Payments Over \$10,000 Received in a Trade or Business.”<sup>5</sup>

Whereas the reporting requirements apply to trade or business activities, *including those of 501(c)(3) organizations*, they do not apply to cash donations to charities (GCM 39840). The opportunity thus exists for 501(c)(3) organizations to avoid detection of certain money-laundering activities if the cash received takes the form of charitable donations. The exclusion from cash reporting for contributions to 501(c)(3) organizations means a rogue charity is free to accept donations of cash in any amount without the application of IRC §6050I.

### **Trade or Business Activity Not Equivalent to Unrelated Trade or Business Activity**

Trade or business transactions in this context include certain fundraising activities typically carried on by charities, such as the sale of merchandise. But it is not limited to profit-oriented trade or business transactions subject to the unrelated business income tax (§511).<sup>6</sup> This point may be overlooked by some charities. Thus, to the extent charitable organizations employ fundraising activities involving the receipt of cash—while failing to realize that such activities

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<sup>3</sup> To promote the non-profit sector and help 501(c)(3) organizations perform their missions more effectively, the White House, through Executive Order 13199, “Establishment of White House Office of Faith-Based and Community Initiatives,” offers specific assistance such as grant writing and other administrative training for non-profits. Executive Order 13397 outlined the responsibilities of the Department of Homeland Security with respect to faith-based and community initiatives. On the harm done to the non-profit community by the actions of ill-intentioned 501(c)(3)s, one observer notes, “Some well-intentioned donors reportedly now are reticent to make charitable contributions to domestic charitable organizations. Law-abiding Muslim charities have documented a decline in contributions received, and charitable organizations are struggling to maintain their pre-September 11 levels of commitment to global philanthropy” (Crimm 2004).

<sup>4</sup> Title 31 U.S.C. §5331 requires the same reporting and employs the same form, except that Form 8300 is filed with the Financial Crimes Enforcement Network (Fin CEN). For a thorough discussion and analysis of the federal government’s legal resources for combating international terrorism, including money laundering activities, see Crimm (2004). For a discussion of cash reporting from the accountant’s perspective, see Knight and Knight (1995).

<sup>5</sup> Organizations exempt from federal income tax under section 501(a) of the Code are “persons” as defined in section 7701(a). Notice 90-61, 1990-2 CB 347.

<sup>6</sup> References are to the *Internal Revenue Code of 1986* as amended.

are construed as a trade or business under §6050I—the result may be inadvertent noncompliance. The records necessary for reporting cash receipts in excess of \$10,000 may not be maintained and filing Form 8300 becomes impossible. This could happen, for example, in the operation of a charity auction.<sup>7</sup> Because the items sold at auction are often donated and the auction itself is often run by volunteers, the unrelated business income tax does not apply. Even those knowledgeable about unrelated business taxable income, however, may assume that the exceptions to UBTI for sales of donated goods (§513(a)(3)) or businesses operated by volunteers (§513(a)(1)) exempts the charity's trade or business operations from the cash reporting requirements. But the cash reporting rules (§6050I) and the unrelated business income tax (UBIT) rules (§511-§513) do not take the same approach to what constitutes a trade or business activity.

*Trade or business* under the §6050I cash reporting rules has the same meaning as in §162, relating to the sale of goods or the providing of services with the intention of generating income (IRS Notice 90-61). It does not require a business to be regularly carried on or compete with tax-paying businesses. With respect to 501(c)(3) organizations, the court in *Professional Ins. Agents of Michigan* stated “any activity constituting the sale of goods or performance of services to produce income for use in the exempt function will generally be trade or business. . . . [T]he profit motive rather than the extent of activity is relevant in determining whether an activity is a trade or business.” According to the IRS, “The provisions of sections 511 through 514 [relating to UBIT] of the Code does not control whether the activity constitutes a ‘trade or business’ within the meaning of section 162” (IRS Notice 90-61). Thus the problem for a charity extends beyond the unrelated business income question when considering its responsibility for reporting cash transactions in excess of \$10,000. The fact that the activity is not “regularly carried on” (§512(a)(1)) is not relevant to cash reporting.<sup>8</sup> The same factors may cause a charity receiving cash rental income, which is specifically excluded from UBIT, to presume the cash reporting requirements are not applicable as well. This is not the case, however. According to the IRS, a 501(c)(3) organization receiving a cash payment in excess of \$10,000 for the rental of part of its building is required to file Form 8300 (IRS Notice 90-61).

### **Clarifying Cash Reporting**

Because of the potential for assuming that UBIT rules coincide with cash reporting rules for charities, the need arises to clarify cash reporting requirements for 501(c)(3) organizations. The demand for a precise understanding of a charity's reporting requirements for cash receipts is not limited to contexts where fundraising takes the form of a trade or business. Even the notion of what constitutes a contribution to a charity—and thus whether the payment is subject to the cash reporting rules—is a contentious issue. In challenging the IRS on the substance of what constitutes a charitable donation, for example, members of the Church of Scientology—a 501(c)(3) organization—have lost the argument that payments made to the church for personal audit sessions were donations deductible under §170. The court agreed with the IRS that these payments were directly related to specific services provided by the church rather than for

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<sup>7</sup> Charity auctions employing the Internet may add new potential for money laundering. For an article discussing the Internet's impact on charities (though not specifically mentioning money laundering) see Anderson and Wexler (2005).

<sup>8</sup> “‘Trade or business’ is one of the most frequently used phrases in the Internal Revenue Code (the ‘Code’), appearing in over two hundred sections and nearly three hundred and fifty subsections.” Olson (1986).

intangible religious benefits.<sup>9</sup> Quid pro quo payments to a 501(c)(3) are not charitable donations. If they are in cash, this places them under the reporting requirements of §6050I, unless construed in some other fashion.

This distinction is also important in situations where the payment to a charity is part donation and part payment for a good or service. This occurs, for example, where a donor pays \$500 for a charity dinner receiving a meal worth \$35. In such a situation, for purposes of §6050I, the charity needs to allocate cash received as part donation and part payment for goods or services, just as the donor bifurcates her payment (Rev. Proc. 90-12). This may result in part of the cash receipt being classified as a payment in connection with a trade or business activity, and therefore reportable if it exceeds \$10,000.

### **Cash Reporting Ground Rules**

In the Regulations and elsewhere, the IRS provides examples showing when the cash reporting requirements are applicable to any organization, taxable or tax-exempt. The following are specific ground rules and definitions for the application of the rules.

- The receipt of cash required to be reported includes currency (folding money and coins) of the U.S. *or any other country* (Reg. § 1.6050I-1(c)(1)).
- Cash reporting does not apply to the receipt of a personal check.
- To be considered cash, payments received in the form of money orders, travelers checks, bank drafts, cashier's checks, bank checks, or treasurer's checks (hereinafter referred to alternatively as money orders or financial instruments), if the amount of the instrument is *less than* \$10,000, must meet one of two conditions (Reg. § 1.6050I-1(c)(1)(ii)(B)).<sup>10</sup> First, to be characterized as cash, the financial instrument must have been received in a *designated reporting transaction*—defined as a retail sale—involving 1) consumer durables, 2) collectibles, or 3) travel and entertainment activities (Reg. § 1.6050I-1(c)(1)). Alternately, the receipt of a money order (or other like financial instrument) is considered cash “in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction” (Reg. § 1.6050I-1(c)(1)(B)(ii) to the IRS, otherwise referred to as a *suspicious transaction*.
- For the purpose of determining if money orders are cash, a *consumer durable* is an item of “tangible personal property of a type that is suitable under ordinary usage for personal consumption or use,” having an expected useful life of at least one year, and with a sales price of more than \$10,000 (§ 6050I(c)(2)). Examples include cars, furniture, boats, antiques, art works, motorcycles and jewelry.
- If payments received include a combination of money orders with a face value of less than \$10,000 (each) and cash, the total exceeding \$10,000, the receipt is reportable (Reg. § 1.6050I-1(c)(1)(ii)(B)).

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<sup>9</sup> See for example, *Graham*, 83 TC 575 (1984).

<sup>10</sup> This is the case since if the money order (or others) exceeds \$10,000 and was paid for in cash, the financial institution that issued it would already have filed a report on FinCEN Form 104.

## **Illustrative Examples**

Application of the ground rules and definitions is illustrated by the Service through questions and answers. Though the direct connection between the particular examples and the operations of charitable organizations may not be obvious in some cases, the underlying principles of application may still be instructive, as they clarify when the cash reporting rules do or do not apply.

*Several items are purchased at the same time and paid for in cash. Although none of the items is sold individually for more than \$10,000, the total of the items is greater than \$10,000. Does the cash reporting requirement apply?*

Yes. Here the Regulations state that the “transaction” is the underlying event precipitating the payer’s transfer of cash to the recipient (Reg. § 1.6050I-1(c)(7)(3). “Transactions include (but are not limited to) a sale of goods or services and may not be divided into multiple transactions to avoid reporting under section 6050I of the Code (TAM 200501016).” Caution on the part of a charity (or other taxpayer) would thus dictate that when more than \$10,000 in cash is received for several items of personal property purchased at the same time, the sales should be aggregated as one transaction. In the context of a charitable art auction, for example, one customer purchases two paintings for cash, one for \$5,000 and the other for \$6,000. The charitable organization should consider this one transaction of more than \$10,000 cash and report the receipt to the IRS.

*Does the same principle apply when what is essentially one cash transaction is paid for in two or more separate payments?*

Yes. Multiple payments related to the same transaction are aggregated to measure whether the total exceeds \$10,000 (Reg. § 1.6050I-1(b)). The question was posed to the IRS in the context of a customer purchasing several items of furniture, no one of which exceeded \$10,000, but collectively the amount of cash paid was greater than \$10,000 and the cash was paid at two or more times. According to the IRS, “The reporting requirements of section 6050I apply when a single customer purchases multiple items of personal property at the same time and pays for the purchase via a series of cash payments totaling in excess of \$10,000” (TAM 200501016).

Here two separate issues are involved. The first is the aggregation of payments for a single transaction when the total cash received exceeds \$10,000. This occurs, for example, when the customer puts \$5,000 cash down on the purchase of \$12,000 of furniture, paying the balance in cash upon delivery. The store’s responsibility is clear in such a case; it must aggregate and report both payments as one. In the non-profit context, a university or trade school receiving tuition of \$12,000 in cash installments of \$3,000 each would likewise fit the reporting requirement. The second issue is the aggregation of multiple items purchased for cash as one transaction explained above in the example of the charitable art auction. (Reg. § 1.6050I-1(c)(7)(3).

*Can the cash reporting requirements be avoided if an individual who buys goods or services signs a note or purchases items on account rather than paying cash, but later liquidates the debt using cash in excess of \$10,000?*

The IRS says no. When a loan—made in the course of a trade or business—is repaid in cash exceeding \$10,000, the recipient is required to file Form 8300. Assume that a 501(c)(3)

organization is updating its office furniture and fixtures. In preparation it sells its old furnishings to a dealer in used office equipment accepting a note for \$12,000. Three weeks later the note is extinguished with cash. The charity must report this receipt. This applies to the payment of a “preexisting debt, a contribution to a custodial account, trust or escrow arrangements or the reimbursement of expenses” (Reg. § 1.6050I-1(c)(7)).

*Is cash in excess of \$10,000 received by one person, including an agent, for the account of a second, considered a reportable transaction by the first person? For example, when a collection agency collects cash which is applied to the accounts receivable of another trade or business, is the collection agency required to report the cash?*

The Regulations say yes (Reg. § 1.6050I-1(a)(2) and (3)). A 501(c)(3) credit counseling agency acts as an intermediary for a client, for example. It accepts \$15,000 in cash from the client and applies the payment to satisfy the client’s creditor. Though the agency is acting only as an agent, it is still responsible for reporting the cash receipt.

*What about delivery companies that collect COD payments at the point of delivery? Are they required to report cash receipts in excess of \$10,000, even though the delivery company is simply the conduit for the underlying transaction between the customer and the business where the item was purchased?*

According to the IRS, the answer is again yes. The service states, “If a driver receives more than \$10,000 in currency (and coin), the receipt is clearly reportable under section 1.6050I-1 without regard to whether it was received in a designated reporting transaction (TAM 9718003).” The guidance goes on to clarify that if the payment received is composed partly of cash of less than \$10,000 and the balance in money orders (or other financial instruments) of less than \$10,000 each, the delivery company must combine the cash with the money orders (as explained earlier) and report the total on Form 8300, if the total is greater than \$10,000. A charitable art gallery selling paintings on consignment is analogous.

*How is the distinction between a retail business and a wholesale business drawn for purposes of determining whether a money order (or other financial instrument) less than \$10,000 constitutes cash?*

As noted, money orders or other financial instruments of less than \$10,000, are considered cash if received in a *designated reporting transaction*—defined as a *retail sale*—involving (1) consumer durables, (2) collectibles, or (3) travel and entertainment activities. The IRS illustrates the difference with examples of retail and wholesale automobile auctions. The distinction between cash reporting requirements for retail as opposed to wholesale customers using money orders turns on whether the money order is considered cash. The Service uses the example of a sale by a retail auto auction to a customer who pays a total of \$25,000 in the form of 50 \$500 money orders. This is a transaction requiring reporting (Chief Counsel Advice 200211046). On the other hand, when the same transaction occurs in the context of a wholesale auto auction, the result is different. Since the basis for the reporting requirement—a designated reporting transaction—is a retail sale, the fact that this is a wholesale transaction removes the money orders from the category of cash. However, the wholesale auto auction would still report the receipt of cash (currency or coin) in excess of \$10,000. In applying this provision, 501(c)(3)s must clarify for themselves whether any sales of consumer durables, collectibles, or travel and entertainment are being made to the ultimate consumer and therefore qualify as retail transactions.

In addition, reporting is required, even by the wholesale auto auction, if the recipient believes the payment of more than \$10,000 in money orders (or other financial instruments), each with a face value of less than \$10,000, constitutes a suspicious transaction (Chief Counsel Advice 200211046). This could occur, for example, where the customer initially tells the auto auction that he intends to pay in cash in excess of \$10,000. Since the auction house is required to file Form 8300 in such an instance, the auctioneer requests the customer's Social Security number. As a result of this turn of events, the customer informs the auto auction that he has changed his mind and will pay with money orders. The customer then produces a series of \$500 money orders totaling the purchase price of the car. Since this change in the form of payment could reasonably be construed as an attempt to avoid the cash reporting requirements of §6050I, it constitutes a suspicious transaction (Chief Counsel Advice 200152047). The result would be the same if the initial offer of cash was replaced with an offer to pay with a check or by some other means. Even though the payment by check is not a reportable cash transaction, a suspicious transaction is one "in which it appears that a person is attempting to cause Form 8300 not to be filed, or to file a false or incomplete form or there is an indication of illegal activity" (Chief Counsel Advice 200152047).

*In analyzing the meaning of cash receipt, what is the locus of receipt? What is meant by recipient? (Reg. § 1.6050I-1(c)(8)). A department store has many cashiers, for example, and a customer makes purchases from several different cashiers during a day, where the total cash tendered exceeds \$10,000 but no individual cashier receives more than \$10,000. Is the cashier or the store the recipient?*

In answering the question, the IRS says it depends on the facts of the case. The Regulations state that "each store, division, branch, department, headquarters, or office ('branch') (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient" (Reg. § 1.6050I-1(c)(8)(i)). In an analogous situation, where an individual places pari-mutuel wagers at separate racetrack betting windows, the separate cash wagers—in spite of the fact that they collectively exceed \$10,000 in cash—are not assumed to be received by the racetrack but rather by each betting window (Reg. § 1.6050I-1(c)(8)(iii)(2); TAM 200501016, 1/7/2005). Each window is a separate recipient as the racetrack does not maintain an account for each patron.

On the other hand, a branch (or individual cashier) that receives cash payments is *not* a separate recipient if the branch has reason to know the identity of the payer making cash payments to other branches (Reg. § 1.6050I-1(c)(8)(ii)). Thus if the customer is specifically identified by the store as she makes her purchases from several cashiers, and as a result the purchases are reflected in her account with the store, the IRS holds the store responsible to aggregate the individual cash payments though paid to separate cashiers (or branches) (TAM 200501016). Must a company's right hand know what its left hand is doing? It depends. A charitable business such as a museum gift shop with multiple sales registers or conducted both at the museum and on-line should therefore examine its particular circumstances in this light.

*Does payment to a racetrack in the form of a winning ticket plus cash totaling more than \$10,000 constitute a reportable transaction?*

The Service says no. The winning ticket is not cash, nor is it a financial instrument like a money order. The ticket may only be used at the racetrack and has no general standing as currency (Chief Counsel Advice 200012047). This fact may be important for charitable

fundraising activities involving prizes or other winnings, where a winning ticket or voucher which the recipient may “reinvest” in the same activity offers an alternative to cash payments.

### **Conclusion**

The foregoing outlines two potential problems posed by the cash reporting requirements of IRC §6050I for §501(c)(3) organizations. In the first place, as the opening discussion of Mark Siljander and the Senate Finance Committee’s list of 501(c)(3) organizations suspected of supporting terrorism indicates, money laundering by charitable organizations is not restricted to the Islamic American Relief Agency or Senator McClain. The fact that donations of cash in excess of \$10,000 to a 501(c)(3) organization is not a reportable transaction under §6050I demonstrates a weakness in the legal structure intended to thwart money laundering.

Second, §6050I causes potential liability problems for legitimate charities which fail to recognize and understand their exposure to its cash reporting requirements. This is particularly true for trade or business transactions, such as charitable auctions, where the concept of trade or business, understood in the context of §162, is considerably broader than the concept of unrelated business taxable income as set forth in §511-§513. As a result, an activity which would not normally generate unrelated business taxable income—because it is not regularly carried on or is manned by volunteers or sells only donated merchandise—may yet fall within the requirements for reporting cash receipts in excess of \$10,000.

### **References**

- Anderson, Alice M. and Wexler, Robert A. 2000. “Making Use of the Internet—Issues for Tax-Exempt Organizations,” *Journal of Taxation*, vol. 92, no. 5 (May).
- Crimm, Nina J. 2004 “High Alert: The Government’s War on the Financing of Terrorism and its Implications for Donors, Domestic Charitable Organizations, and Global Philanthropy,” 45 *William and Mary Law Review* 1341.
- Department of Justice. 2008. “State Senator Edward B. McClain and former head of nonprofit corporation charged with carrying out corrupt scheme involving over \$305,000 in bribe payments.” News release, May 29, [www.usdoj.gov/usao/ain](http://www.usdoj.gov/usao/ain).
- Internal Revenue Service. Announcement 2003-29, 2003-1 C.B. 928.
- . Chief Counsel Advice 200152047.
- . Chief Counsel Advice 200211046.
- . General Council Memorandum 39840, 3/19/91.
- . Notice 90-61, 1990-2 CB 347.
- . Rev. Proc. 90-12, 1990-1 CB 471.
- . TAM 9718003, 5/2/1997.
- . TAM 200501016, 1/7/2005.
- Knight, Ray A. and Knight, Lee G. 1995 “Reporting Cash Transactions,” *Management Accounting*, Vol. 77 (July).
- Olson, Carol Duane. 1986. “Toward a Neutral Definition of ‘Trade or Business’ in the Internal Revenue Code,” 54 *U. Cin. L. Rev.* 1199.
- Professional Ins. Agents of Michigan*, 726 F. 2d 1097, 1102 (6<sup>th</sup> Cir. 1984).
- United States District Court for the Western District of Missouri. Case No. 07-00087-01/07-CR-W-NKL.



## **“Band of Brothers”: Civil Society and the Making of a Terrorist**

**Scott Atran<sup>1</sup>**

The only way to effectively intervene in the radicalization process to violence and terrorism in a way that is sustainable in the long term is through field-based scientific research. Approaches based on “gut feelings,” or on theories that are not systematically built or tested on data from the field, will not prevent the next and future generations of youth from taking a path to political violence, no matter how effective may be law-enforcement and military measures in the short term.

Soccer, paintball, camping, hiking, rafting, body building, martial arts training and other forms of physically stimulating and intimate group action create a bunch of buddies, which becomes a “band of brothers” in a simple heroic cause. It’s usually enough that a few of these buddies identify with a cause, and its heroic path to glory and esteem in the eyes of peers, for the rest to follow even unto death. Humans need to socially organize, to lead and be led; however, notions of “charismatic leaders” and Svengali-like “recruiters” who “brainwash” unwitting minds into joining well-structured organizations with command and control is exaggerated. Viewed from the field, notions of “cells” and “recruitment”—and to a degree even “leadership”—may reflect more the psychology and organization of those analyzing terrorist groups than terrorist groups themselves (see Marc Sageman’s *Leaderless Jihad*, University of Pennsylvania Press, 2008).

Takfiris (from *takfir*, “excommunication”) are rejectionists who disdain other forms of Islam, including *wahabism* (an evangelical creed preaching Calvinist-like obedience to the state) and most fundamentalist, or *salafi*, creeds (which oppose fighting between co-religionists as sowing discord, or *fitna*, in the Muslim community). They tend to go to violence in small groups consisting mostly of friends and some kin (although friends tend to become kin as they marry one another’s sisters and cousins—there are dozens of such marriages among militant members of Southeast Asia’s Jemaah Islamiyah). These groups arise within specific “scenes”: neighborhoods, schools, workplaces, and common leisure.

Consider four examples:

1. In Al Qaeda, about 70 percent join with friends, 20 percent with kin. At a meeting organized in February by Saudi Arabia’s Ministry of the Interior, counter-terrorism officials in Riyadh showed us recent data on captured terrorists that replicated these numbers. Interviews with friends of the 9/11 suicide pilots reveal they weren’t “recruited” into Qaeda. They were Middle Eastern Arabs isolated even among the Moroccan and Turkish Muslims who predominate in Germany. Seeking friendship, they began hanging out after services at the

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Masjad al-Quds and other nearby mosques in Hamburg, in local restaurants and in the dormitory of the Technical University in the suburb of Harburg. Three wound up living together as they self-radicalized (Mohammed Atta, Ramzi Binalshibh, Marwan al-Shehhi). Their friends told us they wanted to go to Chechnya and then Kosovo, only landing in a Qaeda camp in Afghanistan as a third choice.

2. Five of the seven plotters in the March 11, 2004, Madrid train bombings who blew themselves up when cornered by police grew up in the tumble-down neighborhood of Jemaa Mezuaq in Tetuan, Morocco. In 2006, at least five more young Mezuaq men went to Iraq on “martyrdom missions.” All five attended a local elementary school, the same one that Madrid’s Moroccan bombers attended. And four of the five were in the same high school class. They played soccer as friends, went to the same mosque (Masjad al-Rohban of the Dawa Tabligh), mingled in the same restaurants, barbershops and cafes. “They gave one another courage to go to Iraq,” said another friend who dropped out, not because he thought their cause wrong but because he found a different way through community work “to help Muslims.”

3. Hamas's most sustained suicide bombing campaign in 2003-2004 involved several buddies from Hebron's Masjad (mosque) al-Jihad soccer team. Most lived in the Wad Abu Katila neighborhood and belonged to the al-Qawasmeh hamula (clan); several were classmates in the neighborhood's local branch of the Palestinian Polytechnic College. Their ages ranged from 18 to 22. At least eight team members were dispatched to suicide shooting and bombing operations by the Hamas military leader in Hebron, Abdullah al-Qawasmeh. On February 4, 2008, two friends who were members of the Masjad al-Jihad soccer team staged a suicide bombing at a commercial center in Dimona, Israel. The mother of one of these young men told us that her son “loved soccer and those boys [who had died in 2003].” Although Hamas claimed responsibility for the Dimona attack, politburo leadership in Damascus and Beirut was not aware at first of who initiated and carried out the attack. At the Knesset last month, Israeli officials told us that Mahmoud Zahar, the Hamas leader in Gaza, and Ahmed Al Ja’abri, the military commander of the Izz ad-Din al-Qassam Brigades, probably wanted to launch an operation after Zahar’s son was killed in an Israeli raid and Hamas breached the border wall between Gaza and Egypt. Al-Ja’abri, who is originally from Hebron, called upon his clan ally, Ayoub Qawasmeh, to do an operation. Ayoub Qawasmeh then tapped into the young men on the soccer team who had been earnestly waiting to do something for their comrades and their cause.

4. The “Virginia Jihad” Network involved a diverse group of twelve mostly middle-class young men based in Washington, D.C., suburbs, affiliated with an Islamic educational center in Falls Church, Virginia. Several formed a band of paintball buddies that eventually focused on waging violent *jihād* in Afghanistan, Kashmir, and Chechnya. Seven members of the network traveled to Pakistan in 2000 and 2001 and obtained military training from a *Lashkar-e-Taiba* (LET), an Al-Qaeda ally that was then waging *jihād* against Indian forces in Kashmir. Three members subsequently assisted LET in procuring advanced electronic technology for use against India. Federal prosecution resulted in the most convictions by the United States Department of Justice in any single terrorism case to date. Nevertheless, after discussing details with a former federal prosecutor in the case, it was evident that there was little investigation into sociological factors and little, if any, institutional precedent for acquiring information into the social background and personal history of how and why these people go to violence.

Most current risk management approaches to countering terrorism often assume that adversaries model the world on the basis of rational choices that are commensurable across

cultures. From interviews and psychological experiments with terrorists and those who inspire and care for them, we have learned that individuals who join the jihad, especially would-be martyrs (suicide bombers), often seem motivated by non-instrumental values and small-group dynamics that trump rational self-interest. Such “sacred” values comprise the core of cultural morality and social identity. They differ from material or instrumental values by incorporating moral beliefs that drive action in ways dissociated from prospects for success.

Field studies, including surveys designed as experiments rather than simple probes of attitudes, indicate that such values do not generate standard calculations regarding cost and benefit, sensitivity to quantity, tradeoffs across moral categories (e.g., family vs. God), or commensuration between different cultural frames. This means that traditional calculations of how to defeat or deter an enemy—for example, by providing material incentives to defect or threatening retaliation against supporting populations—may not succeed. For negotiators, policy makers and others who must interact with unfamiliar cultures, it is important to understand sacred values in order to know which social transgressions and offers for tradeoffs are likely to remain morally taboo. Planning and acting in ignorance or disregard of different value frameworks may exacerbate conflict, with grievous loss of national treasure and lives.

Our research tells us that when there is a confrontation involving sacred values, then offers to give up or exchange sacred values for material incentives is taken as a deep insult, which only increases disgust and the moral outrage that inspires violence. According to the U.S. Quadrennial Defense Review, the chief aim of counterterrorism efforts is to “minimize U.S. costs in lives and treasure, while imposing unsustainable costs on the enemy.” To a significant degree, however, terrorists do not respond to a utilitarian cost-benefit analysis. The conspirators in the summer 2006 plot to blow up airliners with liquid chemicals smuggled aboard knowingly chose the targets most watched; in fall 2007, plotters in Ulm, Germany knew they were under surveillance and flaunted this knowledge in a display of costly commitment to their cause. Committed terrorists respond to moral values, and are more than willing to die for the cause. Rather than “minimizing” the appeal and effect of Jihad by raising their costs in lives, each death inspires many more young Muslims to join the cause. Indeed, our utilitarian position actually plays into the hands of terrorists who turn it around to show that America and its allies try to reduce people to material matter rather than moral beings

Almost no prior research has been conducted investigating value judgment and decision making in the domain of political violence and terrorism that is field-based. Most speculations are extrapolated from studies of Western college students, business negotiators and politicians. Models of individual and group based choices have tended to assume that theories of bounded rationality can explain choices to commit oneself or one’s group to acts of political violence and terrorism. However, based on our research among Palestinian members of Hamas, members of radical madrassahs in Indonesia, and radical Israeli settlers, we find that decisions to commit oneself or one’s community to political violence are driven by moral intuitions rather than cost-benefit calculations of *realpolitik*, the marketplace or “business-like” negotiations. The implication is that in order to understand, model and predict terrorism and political violence we need to apply our emerging understanding of moral decision-making to a broader cross-cultural field investigation of the cognitive and emotional processes involved in decisions to engage in acts of political violence and terrorism.

**Article**

**Reflections of a Citizen Amidst Divided Lands  
on Reinventing Civil Society, Civil Liberties,  
and Governance in Post-Conflict Societies:  
Patterns, Potentials, and Challenges  
in the Globalized New Millennium**

**Shambhavi V. Murthy Gopalkrishna<sup>1</sup>**

**Introduction**

Those who take meat from the table  
Teach contentment.  
Those for whom the taxes are destined  
Demand sacrifice.  
Those whose bellies are full speak to the poor  
Of wonderful times to come.  
Those who lead the nation into the abyss  
Call ruling too difficult  
For ordinary people.

*--Bertolt Brecht*

Brecht's satiric poem aptly characterizes the world situation. The question is how to fix it. Between individuals' private lives and the activity of official governments, public interest groups (a/k/a "nongovernmental organizations") organize to improve the quality of life. The social space where they are active may be called "civil society." Some scholars define civil society culturally—that is, in terms of "social capital." Others in the European tradition define civil society "structurally" and "procedurally"—that is, in terms of conflict. Despite differences in emphasis, and perhaps like a dysfunctional family, neither of these approaches can survive without the other. Each provides essential insights.

For the past several years, I have realized my part in the world through voyeurism in civil society—NGOs and women and refugee issues. This article, based on personal experiences as much as on academic scholarship, stems from the realization that the challenges faced by countries in crises and post-conflict situations are complex and multifaceted, and they vary due to the different historical causes of conflict and the different political, social, and geographical contexts. The strategies to address these challenges and effectively support a country on a path of recovery, development, and durable peace are therefore diverse. What works in one country does

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not necessarily work in another. However, some universally shared values, principles, and key elements have been found to be sine qua non for sustainable peace. These comprise focused and committed leadership, security, solid government structures providing basic services, people's trust and legitimacy, information dissemination, sound civic dialogue, mediation, and community participation. Experience from different countries emerging from conflict has demonstrated that when a leadership sets up appropriate, transparent, and accountable management systems and tools, and then applies them properly and equitably, the key components of sustainable peace and development become more achievable. Government legitimacy and trust in national institutions are created. Economic activities can flourish and generate growth and prosperity. Difficult reconciliation can be achieved. Though the meaning of conflict has changed over the years, in this article we shall refer to conflict and post-conflict situations in the traditional senses of the terms.

Civic engagement and the role of social actors within the framework of the nation state are widely accepted in both politics and academia. The significance of civil society to international politics and in conflict settings is less agreed. The number of agencies engaged in international development policy, humanitarian aid, human rights protection, and environmental policy has increased substantially over the last two decades. A similar development is seen in the fields of conflict prevention, peacemaking, and post-conflict regeneration. However, assessments of the roles and activities of civil society actors in all these areas are contradictory and ambivalent. Controversial debates about their *capacities*, *impacts*, and *legitimacy* are ongoing among politicians, practitioners and scholars.

This article discusses these questions: What types of activities do international and transnational NGOs undertake in order to influence international politics in a way that contributes to maintaining the peace and coping with global challenges? What can actors from civil society do for war-to-peace transitions? What problems and dilemmas face the development of civil society in war-torn societies? What are the limitations of civil society's contributions and how do they relate to state-building? Finally, how does any of this impact on theoretical conceptualization of the term "civil society"? By way of elaborating on these questions, the second section of this article discusses various terms and definitions linked to debates about civil society.

In particular, the article focuses on the potential contributions of civil society actors for peace-building and conflict transformation. This includes post-conflict peace-building, early warning, prevention, external interventions, and initiatives taken by local actors. It also may include economic development, social justice, reconciliation, empowerment of disadvantaged or strategic groups, and humanitarian support. The article points out that post-conflict reconstruction issues are linked to the specific challenges facing each country. Nonetheless, the article shows that a sound mix of policies based on universally shared values and proper management systems and tools are crucial for every country emerging from conflict. The article shows the need for taking into consideration effective public policies and appropriate governance institutions that mediate relations between governmental actors, civil society, the private sector, and other regional and international partners.

***Let's begin by defining some characteristics of civil society and go on to outlining its history and possibilities.***

*'Civil society' has become a central theme in contemporary thought about philanthropy and civic activity, yet it is difficult to define, inherently complex, and resistant to being categorized or interpreted through a singular theoretical lens. The term is increasingly used to suggest how public life should function within and between societies; at the same time, it provides a way of describing the social action that occurs within the context of voluntary associations or intermediary bodies.*

Nonprofit organizations, like other groups and institutions in modern societies, operate within and are conditioned by three types of *systems*: economic, political, and social. Nonprofits themselves, in turn, give group members the opportunity to exercise three fundamental civic *principles*: participatory engagement, constitutional authority, and moral responsibility. These characteristics can be useful to nonprofit organizations in identifying the presence of civil society and gauging its strength within a particular social context, and helpful in matching organizational goals to specific civic actions that will encourage positive social change. Widespread and legitimate citizen involvement in this civic context remains a foundation for nurturing and sustaining healthy and productive societies, especially in urban settings.

The formation of civil society usually partners with an identifiable system of political governance, characterized by open, public decision-making for all community members through governmental structures that (1) permit legitimate access to and use of civic space and resources, and (2) maintain fairness within the existing political and judicial systems by promoting and protecting the welfare of the people, with particular concern for the disenfranchised.

The literature suggests that the three principles enumerated below—participatory engagement, constitutional authority, and moral responsibility—are found in all civil societies regardless of cultural context.

*Participatory engagement* means that members of the society (1) enjoy access to and governance of resources used for the common good, (2) are free to be involved in civic action and social change, and (3) are free to participate in group affiliations that provide a sense of belonging on a community level.

*Constitutional authority* protects the rights and privileges of citizens in a civil society. Under the rule of law, citizens and social groups are constitutionally legitimized and empowered to hold economic and political actors accountable for their work as community servants and trustees. Local and national decision-makers, motivated by the common good rather than self-interest, are expected to design and implement public policies that strengthen the vitality and welfare of the community.

Within this social context, all community members have *moral responsibility* to use their civil liberties in ways that do not violate the human rights of others. The practice of equity, justice, and reciprocity produces social order and stability.

As the forces of empire reconstituted themselves to reaffirm their global dominion in the guise of development, the forces of community found parallel expression through a series of popular movements that drew inspiration from earlier national liberation movements. These included the civil rights, women's, peace, human rights, environment, and gay rights movements, plus most recently the resistance to corporate globalization. Each sought to transform the relationships of power from the dominator model of empire to the partnership model of community. These movements emerged in rapid succession in response to an awakening consciousness of the possibility of creating truly democratic societies that honor life and

recognize the worth and contribution of every person. Each sought deep change through nonviolent means in the tradition of Mahatma Gandhi and Martin Luther King Jr. They challenged the legitimacy of dominator cultures and institutions, withdrew cooperation and support, and sought to create a new reality through individual and collective action. Each contributed to an emerging mosaic that is converging into what we now know as global civil society.

The reality and significance of the emerging mosaic began to come into focus at the International NGO Forum at the Rio Earth Summit in 1992. This gathering engaged some 18,000 citizens of every nationality, class, religion, and race in crafting citizen treaties articulating positive agendas for cooperative voluntary action to create a world that works for all. This was an initial step in forming the complex web of alliances committed to creating a just, sustainable, and compassionate world we now know as global civil society.

In the late 1990s, global civil society gained public visibility primarily as a popular resistance movement challenging the institutions and policies of corporate globalization. Less visible was the ongoing work of articulating and demonstrating positive alternatives. This more positive and proactive face of the movement came to the fore in 2001 at the World Social Forum in Porto Alegre Brazil, nine years after Rio. It was the first major convocation of global civil society in the third millennium and it reflected a new stage in the movement's self-confidence and sense of its historic role in light of the failing legitimacy and increasing public awareness of the failures of the institutions of empire.

The foundation of the change ahead is the awakening of a cultural, social, scientific, and spiritual consciousness of the interconnections that bond the whole of life — including the human species — into the living web of an Earth community.

A word on globalization at this juncture would be in order. Most spheres of human activity are becoming progressively altered by globalization. Communication is increasingly global. Knowledge and the news of events in one country are readily available to people in another country. Culture is rapidly transmitted from one country to another. Increasingly, our reference point is the world, rather than the nation-state. Globalization has had its most dramatic impact on economic competition. With open economies, trade becomes a global activity, and investment and technology become global commodities. Investment capital is actively sought, and flows of investment capital are global rather than national. Competition becomes global rather than national. As nations open up to the outside world, they identify promising new technologies, adapt them to local conditions, attract foreign investment, and monitor global markets for the best opportunities. The result is a global push for higher productivity, which causes employers to seek new technologies and workers who can apply them successfully. Remaining competitive under these conditions depends increasingly on the skills of a nation's workforce.

On the other hand, globalization has spawned another factor fueling change: the spread of new ideas such as the global civil society and neo-civil liberties. In an interconnected society, individuals may incur tremendous personal losses because of the failures or malicious acts of others. Individuals and persons working in small, autonomous groups may do tremendous, almost apocalyptic harm as well as innovative good. We may leave portals open to terrorism, an enemy that seems like the social studies equivalent of the HIV virus, a mechanism that feeds upon the very facilities that make society free, open, and productive.

Expressive freedom becomes meaningless in a society that doesn't have reasonable stability and security—although this statement is itself subject to elaboration later. Collective self-defense against any major enemy is a prerequisite for freedom. So society as a whole has to learn the social, political, and especially legal equivalent of 'safer sex,' analogous to the gay community's challenge since the early 1980s. Of course, it is textbook social studies to say that terrorism as a political strategy generally aims at forcing the government of the attacked society to repress its own citizens and curtail civil liberties. Yet citizens share the suffering. Terrorism is very much predicated on the idea that the world is a zero-sum game. It denies the importance of individual self-direction and conceives only of group or collective agendas, whether in terms of religion, nationality, or some other cultural idea.

Freedom and responsibility are inseparable companions, for there is no freedom without responsibility. Among all species, we humans have the greatest freedom of choice as to how we will live and the greatest impact on the life of the whole. We therefore bear a special responsibility for the health and well-being of the whole, including taking all necessary steps to avoid the use of technologies that pose a potential threat to life.

A number of national movements suggest some of the ways in which civil society might most effectively fulfill its democratic function in national political life. Of special interest are major national movements in Canada, Chile, India, and the Philippines that have forged alliances among thousands of organizations representing millions of people in the cause of articulating and advancing national visions of democratic, life-centered societies. We have much to learn from such initiatives as they are leading us to a new and more deeply democratic human era.

Global civil society manifests a previously unknown human capacity to self-organize on a planetary-scale with an unprecedented inclusiveness, respect for diversity, shared leadership, individual initiative, and deep sense of responsibility for the whole. It demonstrates a human capacity for democratic self-governance beyond anything previously known in the human experience. Its rapidly expanding capacity for mutual learning, consensus convergence, and global coherence suggests the qualities of an emergent planetary consciousness or global brain. It is a social organism new to the human experience. We are only beginning to understand its nature, let alone its full implications and potential.

### ***So, are civil liberties at risk?***

At the end of 2007 and at the dawn of 2008, 20,000 Afghan people have been shoe-horned into one camp on the Pakistan border, joining some three million of their countrymen who have already fled their homeland in terror of war, starvation, or both. Nightly, images beam into our homes of grave need and the horror of displacement. They inspire that most genuine human response, the desire to help. Western governments have pledged that aid will be forthcoming, that they will work swiftly to bring a speedy resolution to this conflict so that further human catastrophe can be avoided.

Now comes a fresh challenge to the already fragile status of asylum seekers. Before we rush for remedies we must remember the old adage: *legislate in haste and repent in leisure*—well, repent if you are outside mainstream society. And while it may be tempting to say that sacrificing some freedoms is a small price to pay if it means we can all inhabit a safer society, it is not too long since many of us were freed from the stop-on-suspicion laws. The legacy of that legislation was deep, and dreadful wounds cut into the relationship between the police and minority communities, wounds that still hurt to this day.



It is in times like these that the state must set the example. Global leaders have gone to great lengths to insist that the fight against terrorism requires more than a military coalition, that the humanitarian coalition is of equal importance. This is to be applauded, but we should start by setting humanitarian standards at home. That means addressing the chaotic dispersal policy that has seen asylum seekers shuttled around the country, housed in substandard accommodation while *'asylum barons'* rake in obscene profits. It means dismantling the voucher schemes in many parts of the world, a discredited, ineffective, and cruel operation that has deepened the misery of those in need while lining the pockets of the black marketeers. It means tackling the failure of the asylum administration system that sees people go without essential services and babies go without milk.

Ultimately balancing individual expressive liberty with general welfare and security, even given the shocking nature of the new threats, remains a matter of legal and moral principles. These principles apply even as we recognize that the enemy seems determined to exploit our openness for destabilizing kinds of evil and leverage that freedom against us with unpredictable attacks. When elucidating seemingly new legal principles that allow increased surveillance, restrictions upon expressive association, and the use of military justice, possibly even with civilian citizens, we need some convincing and principled ways to draw lines. Those boundaries would involve evidence of the presence of weapons of mass destruction or clear evidence of intention to produce mass violence or destruction for its own sake. This is not so far from how we used to view the Communist Party, when the legal definition of Communism—with the capital “C” and by contrast to socialism—included promotion of the use of violent conflict or overthrow of the government.

Every decade since World War II has had its distinctive personality along the way to a buildup of individualism and personal liberty. We have reached the crisis and catharsis. We know the theme at the start of the new millennium. We need to look in a structured way at how to draw the line against terrorism and mass destruction with respect to most individual rights issues, including free speech, search and seizure, privacy, criminal due process, immigration, and maybe even national service.

Some are forgetting that today's security measures could be the seed for tomorrow's two-tier society, with entitlement cards for those with full rights while access to services is denied to asylum seekers. Who knows what seed of a new conflict will shake the very edifice of societies? We have to learn to determine when we are playing fair with the way we set our own priorities.

***With this we move on to discuss the key elements and challenges for developing post-conflict governance structures.***

Post-conflict recovery and state reconstruction are complex challenges for the state and the society. They constitute, in fact, the major goals to be reached when a series of specific challenges have been met. *The most critical key challenges in post-conflict realities are enumerated below:*

- *Legitimacy, Trust, and Authority of the State*

When the authority of the state has collapsed—and the remaining structures of government often lose their legitimacy in post-conflict settings, thus leading to political, societal, and economic disintegration on a national and even regional level—the main task of

governments in post-conflict situations is to rebuild economic and political governance and regain legitimacy and the trust of their populace.

It is generally acknowledged that the critical determinant of sustainable recovery, peace, and development is a leadership committed to protecting human rights; ensuring rule of law and security; reestablishing and strengthening credible, transparent and, accountable public administration institutions; and reconstructing an efficient, representative public service that achieves equitable service delivery and regenerates an equitable post-conflict economy. These key areas of concern constitute the basic prerequisites of peace-sensitive reconstruction and reconciliation.

At their inception, post-conflict governments, especially transitional authorities, often lack legitimacy and trust, as they were formed through negotiations between warring parties without the involvement of the majority of the population, or they include former combatants perceived by the population as responsible for crimes. Post-conflict governments also exercise limited control over the country's assets. The development of public policy often has to be negotiated with other actors (sectarian groups or former parties to the armed conflict) that may control parts of the territory and/or national resources.

- *Political Will for Transparency and Accountability*

The fragility of post-conflict situations creates multiple openings for corruption, and the lack of a common ethos of governance undermines the political will for transparency and accountability, thus impeding the creation of robust mechanisms to deal with corruption. The absence of a shared vision and ethos of governance within the new, constituted governing group, especially when its members are drawn from former warring parties, often induces factionalism that makes different groups in government work at cross-purposes rather than for the national good.

- *Rule of Law*

Absence of rule of law, accompanied by a culture of impunity, especially affects many post-conflict situations and severely undermines the legitimacy of the state. It is likely that rule of law was weak and characterized by ineffective or corrupt institutions before the conflict. The fallout from this circumstance is especially evident in the judiciary and police, where dysfunctional institutions have over time eroded confidence in the formal mechanisms for dispute resolution and grievance management and induced citizens to resort to illicit means. There is a need to rebuild the judicial infrastructure from the lowest to the highest levels, with the most severe challenges being the physical infrastructure and capacities of the staff, and to establish and promulgate an enforceable legal and regulatory framework that will be accepted by the populace.

- *Social Capital and Social Cohesion*

Post-conflict public policies are particularly vulnerable to sectarian distortion toward particular groups, sectors, or communities, overriding national interests. The loss of human and social capital, a dearth of social cohesion, continued exclusion of targeted groups in society, and absent participatory mechanisms in public policy formulation all perpetuate a lack of trust in government and challenge the revival of legitimate local and national governance structures. Internally displaced people (IDPs), returning refugees, and unsupported youth and former child soldiers/ex-combatants, among others, are particularly vulnerable to being co-opted into illicit

activities that are counterproductive to the effective functioning of the state. The state must regenerate social cohesion through policies and programs that promote participation, equity, and inclusion. The lack of coherence between the peace consolidation process as a medium-term action on the one hand, and short-term peacekeeping actions and long-term development efforts on the other, may further destabilize efforts to achieve sustainable peace and development.

● *Economic Reconstruction and Service Delivery Structures*

Another major challenge is the need to sustain ongoing governance reform and economic restructuring programs while at the same time visibly alleviating poverty as a dividend of peace and stability. With regard to economic reconstruction, the short-term economic orientation of local actors, focused mostly on private immediate gain, often prevails in post-conflict settings. Unless concerted action to retake regulatory control of the state accompanies the cessation of violence, these parallel economies deny the state access to substantial revenues and the beneficiaries undermine attempts to rectify the situation. Within this arena, the exploitation and abuse of mineral and natural resources by illicit national and/or foreign actors, coupled with worsening terms of economic exchange, are other crucial challenges that need to be addressed to ensure a sustainable economic reconstruction.

● *Security and Cross-Border Movements*

Continuing insecurity and violence affect the provision of basic services and reestablishment of government authority and administration at local levels. A lack of institutional authorities and failure in the security sector, in particular the police forces, leads to continuing mistrust of the population in public authorities. The result is, at best, a state lacking legitimacy; at worst, a ground for unresolved conflicts to breed violence. Conflicts spilling across borders represent an additional source of continued post-conflict disintegration on both national and regional levels. Such cross-border conflict issues include the illegal traffic of small arms, light weapons, and anti-personnel mines. The fundamental issue here is how to regulate movements across borders in order to discourage illicit traffic while promoting legal and safe movements and advancing integration among countries.

***What are some governance guideposts for post-conflict peace and development?***

This section suggests a range of governance guideposts and strategies for post-conflict and peace-sustaining reconstruction within different policy areas. These guideposts rest atop shared universal values integrated with firsthand experiences in post-conflict settings. *They consider three central and interrelated governance levers: (i) the people, (ii) the resources, and (iii) the services.*

*i. Leadership and Governance*

The success or failure of post-conflict reconstruction efforts is closely linked to a solid governance infrastructure, based on well-articulated horizontal and vertical divisions of power, which is crucial to delivering political promises along with needed public goods such as security, health care, education, and infrastructure. State- or nation-building is the central objective of every peace-building operation and is dependent upon the reconstitution of sustainable governance structures. Post-conflict nation-building comprises, at minimum, the rule of law; judicial, constitutional, and security sector reform; the establishment of mechanisms of political participation and inclusive policies; the effective provision of basic services and goods; efforts to

fight corruption; and fostering a democratic culture, free and transparent elections, and local governance.

Thus, leadership is crucial. Most fundamentally, sustained peace requires a visionary leadership in a trustful, transparent, and participatory partnership with civil society.

*ii. Public Administration*

In any development context, and particularly in a post-conflict setting, the public administration must be capable of managing and implementing the whole set of government activities dealing with law, regulations, and decisions of the government, and the provision of public services. At the center of credible governance and public administration is an effective public service, whether understood as an institution, a structure of organization, a cadre of public officials, or simply the service provided by a public authority. A capable public service, with merit- and incentive-based systems, has a greater bearing on recovery than is generally recognized, in terms both of delivering aid and basic services and of rebuilding national cohesion and the government's credibility, legitimacy, and trust. The Rwandan experience demonstrates that institution-building is essential to ensure the promise of good governance and the achievement of economic and social goals. In addition, the South African experience indicates that it is impossible to transform a government and therefore a state without transforming the public service.

*iii. Legislative Power and Rule of law*

The guidepost involving legislative power and rule of law is derived from the inter-linkages of the legislative and judiciary pillars. Parliaments have a fundamental role to play in peace-building processes, including oversight of reconstruction, legislating on human right issues, and addressing post-conflict security concerns. Parliamentary strengthening is critical to allow a parliament to fulfill its constitutionally mandated role of holding the executive branch accountable for its actions and performance. It also contributes to peace-building while restoring legitimacy and trust in the legislative power. Therefore in post-conflict realities, the legal framework, judicial institutions and the penal system need to be reestablished to sustainably ensure the rule of law.

It is important to mention that an accurate revision and enactment of laws and regulations, supported by appropriate funding provisions, may be needed to promote women and vulnerable groups' participation in leadership and decision-making positions.

*iv. Participatory Development and Social Cohesion*

A decisive factor in the success and effectiveness of post-conflict reconstruction is the prior experience of a country and society in democratic processes. Where governance measures can rely on such traditions and previous experiences, the transition from violence to a peaceful and democratic political culture is greatly facilitated. Social inclusion, political participation, and social cohesion are crucial to post-conflict reconstruction, but also represent complex processes of political and social consultations. Enabling society to engage in dialogue with itself and to encourage dialogue between government and civil society need to be amongst the key goals of post-conflict reconstruction in order to consolidate peace in the long run. Supporting the establishment of civil society umbrella bodies helps to create a structure through which civil society organizations (CSOs) can collectively engage in lobbying, advocacy, and monitoring programs that help enhance the development of pro-poor development policies.

Therefore, any post-conflict development initiative must be implemented with the participation of the affected populations. This ensures correct understanding of their needs, including society transformation after conflict, local participation, and ownership, as well as responsibility for sustaining achieved results.

*v. Economic Reconstruction and Development*

In the area of socioeconomic governance, the promotion of macroeconomic reconstruction and stabilization is one key determining factor for sustainable long-term reconstruction. Regulating ownership in a post-conflict society and combating and constraining the basis of so-called “war economies” and parallel economies are priorities. In the immediate period after the end of violence, the creation of jobs through public works programs and the stimulation of small and micro-enterprises are crucial. Threatened livelihoods can easily lead to new conflicts. Reintegrating ex-combatants, refugees, and IDP into the economy represent further financial challenges to fragile post-conflict states suffering from sharply reduced revenues. Inflation might be increased by further credits; declining confidence in the domestic currency can lead to brain drain and dwindling capital, creating a spiral of continued economic failures. New macroeconomic policies and institutions, as well as capacity-building for people working in these areas, are required to encourage the development of market mechanisms that can efficiently and effectively allocate scarce economic resources. International actors should encourage governments to promote private-sector development, create economic opportunities for business and development as well as entrepreneurship training, and develop policy frameworks for small- and medium-sized enterprise development. They should also help governments establish sustainable partnerships with the private sector where the latter exists (public-private partnerships) and carefully balance interactions in this area in order to prevent polarization of interests that might undermine the benefits of the general population, hence generating renewed or even new conflict. Economic policies need to be closely aligned with peace-building components.

*vi. Security Sector*

Governance of the security sector is a precondition for stability—to provide safety and security for the populace; assure the return of IDPs/refugees and resettlement; and ensure good management of disarmament, demobilization, and reintegration processes. A well-governed security sector is a key public service and a prerequisite for stability, recovery, and development. Thus, security sector reforms need to be initiated and implemented within a wider and long-term peace-building perspective. Downsizing or reforming the security sector on the basis of international standards is not a sufficient starting point. The primary emphasis should be on determining, on the basis of dialogue among relevant stakeholders, the genuine internal and external overall security needs of a post-conflict society, and then ensuring the allocation of resources to meet these needs. The security sector has the potential to generate tremendous political good will and protect economic growth within a post-conflict country. Thus, governing authorities need to ensure security as a precondition for any further post-conflict development

*vii. Information and Communication Technologies and Knowledge Management*

Access to reliable and objective information is a vital element of democratic process and settings. Countries’ experience shows that the manipulation of information can trigger rising misunderstanding and tensions that can lead to devastating conflicts. Therefore, the promotion of exchange and dissemination of information is an important element of reconstruction efforts. It is

in the interest of governments to set up mechanisms allowing them to manage information and knowledge assets. In particular, information and communication technology can play an important role as a powerful tool for both economic and social development, allowing governments to improve efficiency and to deliver more transparent, high-quality services to citizens.

*viii. Environment and Natural Resources Management*

The consequences of violent conflicts on the physical environment and irreplaceable natural resources are obvious. In the aftermath of violence, leaders and decision-makers must pay a careful attention to environmental stewardship towards the ultimate goal of peace and sustainable development. This requires balance between reconstituting the ecosystem, the optimal management of natural resources, and equitable resource distribution to benefit all citizens.

The main strategic areas to be developed further for both conflict situation analysis and policy development are as follows:

- *Protecting biodiversity for the global environmental balance as a key element of reconstruction efforts. Governments need to implement specific policies and actions for preventing natural disasters and planning for problems such as climate change and desertification.*
- *Enhancing socioeconomic activities that reduce poverty, generate growth, and manage natural resources without further damaging the environment.*
- *Participation and commitment of local communities in the management of natural resources.*
- *Fostering an optimal resources management process based on transparency and accountability within three focal points: (a) mapping natural resource areas, such as “tele-detection”; (b) exploitation norms, including performance requirements and obligations; and (c) control, monitoring, and evaluation.*

*viii. Conflict Prevention and Peace-Building Infrastructure*

Both international and regional actors play crucial roles in peace-building as part of post-conflict reconstruction efforts. However, it is essential that they also support actions aimed at strengthening national capacities for conflict prevention. As part of these efforts, it is important to build skills and capabilities of civic and political leadership for understanding the nexus between peace and development and for enacting mechanisms for in-depth conflict analysis and prevention. Within this context, public sector managers need to be aware of mechanisms that can be accessed to support post-conflict peace building activities as well as for conflict prevention. Among the former mechanisms it is worth mentioning the Peace-Building Commission, an intergovernmental advisory body established to enact a recommendation made by world leaders at the 2005 World Summit. The need for consolidating peace-building and development efforts has been institutionalized with the establishment of this body. The role of the Commission is to marshal resources at the disposal of the international community to advise and propose integrated strategies for post-conflict recovery, focusing attention on reconstruction, institution-building, and sustainable development in countries emerging from conflict.

*ix. Successful Policy Making/Mixing*

Any post-conflict reconstruction strategy must start by determining the right entry points. The assessment of the context will point out the sectors around which strategies should be built. Based on the sectors identified as crucial, appropriate policies and management arrangements will be made with the purposes of creating coherence among different policies and making them converge toward the common goal of sustained development, prosperity, and peace.

*x. Forging Effective Partnerships*

The political and managerial leadership will learn that nothing can be done in isolation due to the number of challenges to be overcome. Effective partnerships must be made between national institutions and international community agencies, such as public donor agencies and NGOs, or between public and private sectors, including the civil society and the individual citizen at national and local levels.

***What can civil society achieve in war-torn societies?***

Civil society interfaces at the point where conflict turns into violence. In NGO discourses, civil society is seen as one of the crucial underpinnings for strengthening the capacity of societies to manage conflict peacefully. This is particularly true when individuals are members of multiple groups, each of which addresses different aspects of their issues such as their communal identity, vocational interests and hobbies, social and political values, and neighbourhood environment. Since the mid 1990s, the importance of civil society initiatives is increasingly acknowledged in peace-building discourses, especially given the failures of international intervention efforts in Somalia, Rwanda or the Balkans. Moreover, cross-cutting memberships among civil society actors are expected to create “bridging social capital”: networks that are a powerful force in integrating society and minimizing the potential for polarization along any specific divide. Civil society often is understood as a solution to social, economic, and political problems, not only by grassroots practitioners but also by international organizations. But there is a risk that this view overestimates the scope of social actors and neglects the complexity of needs in war-to-peace transitions, especially in situations where different processes of transformation overlap. This became obvious in the Balkans, where post-conflict regeneration challenges coincided with transformation of the economic and political system. Based on experiences from post-war Bosnia-Herzegovina, some dilemmas of strengthening civil society in relation to peace-building efforts can be elaborated. After the Dayton Peace Agreement that ended the war in 1995, Bosnia has become a kind of “pilot project for international governance” in the context of a “global domestic policy” which views the establishment of democracy and market economy as a prerequisite for conflict resolution and the prevention of violence.

What is crucial to civil society is that families and individuals connect with others beyond their homes and talk about matters of public relevance without the interference or sponsorship of the state. Whether such engagement takes place in association or in the traditional sites of social get-togethers depends on the degree of the state urbanization and economic development. Cities tend to have formal associations, whereas villages make do with informal sites and meetings.

When villages become towns, towns turn into cities, and cities are transformed into metropolises and megapolises, people begin to travel long distances for work, face-to-face contact is typically not possible beyond neighborhoods, and associations become necessary not

only for civil peace but also for many economic, social, and political aims and interactions. We should not insist upon associations where the need for them is not pressing or where access to them is difficult for some groups. We should instead look at the alternative civil sites that perform the same role as the more standard civil organizations. One more observation is that inter-ethnic or inter-communal engagement makes for peace, not intra-ethnic or intra-communal engagement. Inter-communal engagement leads to the formation of what might be called the institutionalized peace system. Engagement, if all intra-communal, is often associated with the institutionalized riot system.

One the whole, two links can be specified between civic life and conflict. *First*, prior and sustained contact between members of different communities allows communication between them to moderate tensions and preempt violence when tensions arise owing to an exogenous shock, such as a riot in a nearby city, distant violence repeated in the press or shown on TV, rumors planted by politicians or a group in the city, or a provocative act of communal mischief by police or some youths. In cities of thick interaction between different communities, peace committees at the time of tensions emerge from below in various neighborhoods and the local administration does not have to impose such committees on the entire city. The former better protect the peace than the latter. *Second*, in cities that have associational integration as well as everyday integration, the foundations of peace become stronger without a nexus between politicians and criminals, and as a result, big riots and killings are highly improbable.

Civil links across communities have remarkable local and regional variation. They differ depending on how different communities are distributed in local business, middle-class occupations, parties, and labor markets. When civil engagement crosses communal lines, an organization that creates tension and violence in one city or region is often unable to do so in another city and region. In the late 1990s, for example, UN organizations, research institutions, and NGOs (International Alert of the U.K., the American Council on Foreign Relations, York University of Canada, and Swisspeace) founded a Forum for Early Warning and Early Response. The Swiss research institute' Swisspeace has been a standard-setter in developing early warning methodology, monitoring programs in the Americas, Africa, and Asia. The International Crisis Group delivers regular background reports and briefings on conflict zones. CARE International has launched several community-based early warning systems in high-risk areas of El Salvador, Honduras, and Nicaragua. In Africa, the West African Network for Peacebuilding is setting the stage for a civil society-based initiative called Warning and Response Network that will operate in twelve of the fifteen member countries of the Economic Community of West African States (ECOWAS). The Institute for Security Studies (ISS) in South Africa is also a key organization in early warning analysis and crisis reporting in Africa.

Other CSOs are active in *preventive diplomacy*, for instance International Alert (UK), the Carter Center (US) and its International Negotiation Network, and the church-related Community of Sant' Egidio. Some also have participated in *peacemaking processes*. In the cases of Northern Ireland, Guatemala, and South Africa, civil society actors have effectively facilitated broader public participation in peace agreement negotiations, thus influencing such processes. Cooperation between governments and CSOs has been practiced in various conflict zones. Perhaps the best known is the cooperation between the Norwegian Ministry of Foreign Affairs and the Institute for Applied Social Science to form the "Norwegian Channel" that led to the Oslo Accord of 1994.



The international literature offers various taxonomies of a range of NGO functions in this context:

- *Establishing alternative media, war, and peace reporting*
- *Monitoring elections and state institutions and activities related to democratization*
- *Youth work, such as community-based social policy, income generation, education, and empowerment*
- *Support for education reforms and initiatives for peace education*
- *Establishing peace cultures: incentives for overcoming cultures of war via arts, music, films, and cultural events*
- *Strengthening local “peace constituencies”*
- *Initiatives for interreligious dialogue*
- *Empowerment of women and campaigns for women’s rights and against human trafficking*
- *Initiatives for demobilization, disarmament, and demilitarization*
- *Protecting endangered individuals and providing security for minority groups or refugees and returnees*
- *Reintegration of returnees and community-building*
- *Human rights monitoring*
- *Documentation of war crimes, fact-finding, and support to identify missing people*
- *Dealing with trauma and providing psycho-social support for war victims, refugees, and returnees*
- *Initiatives for dealing constructively with the past, such as fact-finding, story-telling, and reconciliation initiatives*

Civil society cannot, however, replace the state. Civil society typically depends on the security and predictability provided by an effective democratic state controlled by a government that ensures the rule of law and creates policies that respond to the needs of the population. Thus civil society and democratic states are highly complementary, even interdependent.

### ***Where do we go from here?***

This reflective article has attempted to provide an overview of peace-sensitive considerations and insights to policy and practice in the main areas of concern to post-conflict reconstruction discussions on civil liberties, the role of civil society, and governance in these processes—both overt and covert.

As the range of examples demonstrates, the performance of countries varies greatly, depending on factors such as the degree of governmental commitment, institutional capacity, the extent of corruption, and the strength of civil society. The

sobering realities of our new millennium are that as the worldwide push for greater personal and political freedom grows stronger, it is being met with increasing resistance from those who feel threatened by political and societal change. The question before us is, How far is this attack on civil liberties going to go?

Based on experience and analysis of examples from all over the world, the following conclusions may be drawn:

Civil society groups can be a factor in war as well as a force for peace. They can contribute to the mobilization and escalation of war. Intellectuals, research institutes, and religious leaders may provide the moral justification for violence. Authorities from the educational sector and the media can shape simplistic perceptions of reality, foster stereotypes, and advocate war as an answer to a complex reality. This was obvious before, during, and after the wars that brought about the dissolution of former Yugoslavia, where hardliners in governments and parliaments could rely on support from civil society actors (e.g., religious leaders, university instructors, and journalists) to fuel conflicts, promoting segregation and division. Civil society actors can also strive for democratic values, positive social change, and reconciliation. But in many countries undergoing transitions from violence to peace, civil society *per se* does not necessarily contain an emancipatory potential. This is further undermined when the civil society itself must be democratized.

Moreover, development projects have created a wide range of community-based organizations (CBOs). In areas with less NGO presence, mass-party organizations and religious groups are the main organizational structures. Citizens in Guinea Bissau are compensating for a perpetually weak state by creating CBOs in response to specific problems. A number of NGOs, mostly national, support these CBOs on a project-by-project basis, but lack resources and capacity to ensure institutional development and sustainability. Poor governance has reduced donor investments but has also shifted resources from the state to CSOs. Nevertheless, CSOs also have important governance functions. First, they improve governance from the bottom up by creating partnerships between CBOs and local governments. Second, CSOs introduce more participatory approaches to community-level decision-making. Third, CSOs can play a stabilizing and mediating role in reducing conflict.

CSO dynamics change in the transition out of conflict. The transition poses new challenges, both in terms of CSO-government relations and the new skills and capacities that CSOs need to function in a changing environment.

*First*, as conflicts end and public institutions gradually recover, the dynamics between citizens, CSOs, and government institutions change and new sources of friction may emerge. While CSOs are likely to continue to play a major development role, especially in social service delivery, the redefinition of roles and responsibilities may be subject to tension between CSOs and government, especially where rules are not clear or applied arbitrarily.

*Second*, as countries transition out of conflict and as the state is strengthened, the type of activities carried out by CSOs needs to shift from relief to development. This requires new skills and business models among CSOs, which are difficult to acquire when donor funding is tied to small, discrete projects, and CSOs have few sources for longer-term assistance in capacity-building and institutional development.

*Third*, as public institutions gradually resume responsibilities in basic service delivery, opportunities may arise for CSOs to be more active in advocacy and policy

influence, but this is an area where CSO experience and capacity is generally limited. Weak democratic traditions can constrain such activities. The paucity of institutionalized communication between government and CSOs, with reliance on ad-hoc or personal contacts, further exacerbates misunderstandings and suspicions. Legal frameworks in all three countries are unclear and rarely enforced. CSOs are subject to arbitrary restrictions not sanctioned by law. This is particularly true for advocacy organizations.

Some preliminary recommendations thus emerge. The recommendations target a broad spectrum of development partners including donors, CSOs, and governments. They can be summarized as follows:

*First*, more rigorous and systematic analysis of CSOs could help inform more effective engagement. This is particularly important in post-conflict settings, where there is likely to be little systematic information on CSOs, and their role will likely change as the country moves through the relief-to-development transition.

*Second*, longer-term financial support to CSOs would create better incentives for capacity and institutional development, strategic planning and specialization. As CSOs transition out of the emergency phase, with its less stringent requirements, they need sustained support to meet the more demanding conditions required by donors in the development phase.

*Third*, long-term partnerships between international and national CSOs could ensure transfer of capacities and improve sustainability.

*Fourth*, financial support to networks and umbrella organizations could promote more effective use of resources, cross-learning, and accountability.

*Fifth*, strengthened forums for CSO-government communication may contribute to better coordination and effectiveness, underpin more systematic government engagement with CSOs in policy formulation, and encourage clearer and more transparent rules of engagement.

*Sixth*, analysis of CSOs could be a useful precursor to Poverty Reduction Strategy Paper (PRSP) processes. More systematic and contextualized analysis of CSO dynamics and capabilities could help governments and donors identify additional sources of quantitative and qualitative information on poverty and social conditions, which is often a severe constraint in conflict-affected settings, as well as potential partners in developing and monitoring PRSPs.

It is critical for countries emerging from conflict to have engaged leadership committed to adopting strategies that establish effective, trustworthy, transparent, participatory, and efficient governance institutions capable of ensuring the delivery of basic services to the population. Institutions are therefore expected to be responsive to the critical needs of human wellbeing, such as water, energy, healthcare and sanitation, and shelter and education. Effective post-conflict leadership also requires commitment to address inequalities and social exclusion; manage diversity; and foster social dialogue, consensus, peace, reconciliation and development.

Thus civil society organizations play and will continue to play a prominent role in conflict-affected and fragile states. The challenge is provide them with effective political and legal environments to further strengthen them. This is exactly what a citizen of global civil society in century twenty-one looks forward to. Our journey in the new millennium has just begun.

## **Bibliography**

- Barber, Benjamin R. 1984. *A Place for Us: How to Make Society Civil and Democracy Strong*. New York: Hill and Wang.
- Brinkerhoff, D.W. 2005. *Rebuilding governance in failed states and post-conflict societies: Core concepts and cross-cutting themes*, *Public Administration and Development*, 25 (1):3-14.
- Berger, Peter L., and Richard J. Neuhaus. 1977. *To Empower People: The Role of Mediating Structures in Public Policy*. Washington, D.C.: American Enterprise Institute for Public Policy Research.
- Bryden, Alan and Hänggi, Heiner. 2005. *Security Governance in Post-Conflict Peacebuilding*, Geneva Center for the Democratic Control of Armed Forces (DCAF).
- Eberly, Don E. 1998. *America's Promise: Civil Society and the Renewal of American Culture*. Lanham, Md.: University Press of America.
- Lohmann, Roger A. 1992. *The Commons: New Perspectives on Nonprofit Organization and Voluntary Action*. San Francisco: Jossey-Bass.
- Putnam, Robert D. 2000. *Bowling Alone: Civic Disengagement in America*. New York: Simon & Schuster.
- Reisman, David, and Nathan Glazer. 1950. *Criteria for Political Apathy*. In Alvin Gouldner, ed., *Studies in Leadership: Leadership and Democratic Action*, 505-59. New York: Harper and Brothers.
- Sales, A. 1991. *The private, the public and civil society: social realms and power structures*, *International Political Science Review*, vol. 12, no. 4, pp. 295-312.
- Seligman, Adam. 1992. *The Idea of Civil Society*. New York: Free Press.
- United Nations Research Institute for Social Development. 2002. *The Role of Civil Society in Policy Formulation and Service Provision*. Report of the UNRISD Geneva 2000 Seminar, March, New York.
- . 2000. *Civil Society Organizations and Service Provision: Civil Society and Social Movements*. Programme Paper No. 2, October, New York.
- . 2003. *Strengthening the Civil Society – State – Market Nexus from a Social Development Perspective. A Strategy for the Africa Region*. June, Washington, DC. 25
- White, Gordon 2004. *Civil Society, Democratisation and Development: Clearing the Analytical Ground*, in Peter Burnell and Peter Calvert (eds.). *Civil Society in Democratization*. London: Frank Cass, 5-21.