ECNL ASSESSMENT REPORT ON THE LEGAL ENVIRONMENT OF THE CIVIL SOCIETY IN THE REPUBLIC OF MOLDOVA

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EXECUTIVE SUMMARY

This Report aims to provide an initial assessment of the immediate needs to advance a coherent approach to the legal framework for CSOs in the Republic of Moldova. It also aims to set out areas for strategic considerations by all stakeholders to better advocate for a more enabling environment for civil society in Moldova. The Report seeks to highlight the key considerations and propose possible ways to address them within the framework of the Moldova Civil Society Strengthening Program implemented by FHI 360 and the European Center for Not-for-Profit Law (ECNL) with the generous support of the United States Agency for International Development (USAID).

Similarly, the paper aims to assist the Government in paving out the priorities for the draft Action Plan of the *National Strategy for Civil Society Development 2009-2011.* While the principles and priorities defined by the National Strategy are impressive, much will depend on its implementation, including legislative reform efforts that follow from the priorities. **Further dialogue with the Government is therefore of primary importance to ensure proper implementation of the National Strategy in a joint effort to promote a more enabling environment for CSOs.**

The assessment report reflects on **general, or cross-cutting needs** identified:

- **Institutionalized cooperation in policy development affecting the CSO sector is needed for an effective process in legal reform.** ECNL recommends establishing one or more cross-sectoral, so-called Public-Private Working Groups to take cooperation between government and CSOs to the next level. Further, Memoranda of Understanding could be concluded with the NGO Council, the Ministry of Justice, the Ministry of Finance and the Ministry of Economy, to provide a framework to their contributions in the project.
- **Targeted assessment of the legal background, social-economic context and the capacity of the sector is important for understanding and promoting reform.** ECNL recommends to undertake evidence-based policy research in several of the priority issues, including e.g. tax designation mechanisms, philanthropy and public funding of CSOs.
- **Increased understanding of the policy and legal issues affecting civil society among all stakeholders is required for high-impact reform.** ECNL recommends to provide training on policy and legal reform affecting CSOs to a select group of lawyers and non-lawyer stakeholders from both CSOs and government, who are interested and willing to take initiative in promoting the foregoing reforms over the course of the project.

In addition, the Report addresses the following **specific reform priorities**: (1) the review of the Law on Public Associations; (2) the provisions on public benefit status (or public utility status); (3) fiscal framework for CSOs; (4) potential enactment of the "percentage" law; (5) government contracting of services; and (6) volunteering. Main recommendations include:

- Engaging with stakeholders in determining the best way forward in adopting the draft Law on Public Associations and related provisions on the public utility status;
- Assisting the government and CSOs to streamline the registration process and overcome practical problems of the new system;
- Promote legal reform related to a tailored and simplified accounting system for CSOs;
- Engage in further policy research related to government financing of CSOs, philanthropy, and the percentage designation mechanism;
- Promote the adoption and implementation of the draft Law on Volunteering.

INTRODUCTION

The legal environment for CSOs and civil society in Moldova may be described as a generally enabling one, however, with a clear need to enact further enabling legislation and with serious challenges confronting stakeholders in the implementation of the already adopted laws. As stated in the 2008 NGO Sustainability Index, "Overall, NGO legislation remains vague, which allows government officials to apply provisions of the law arbitrarily."[1] The law as written provides a basic enabling legal framework for CSOs to freely establish and operate, and to engage with governmental and other stakeholders in the course of their work. However, due to the lack of specific legislative tools and guiding regulations, as well as issues of capacity and resources, there are numerous challenges on the way of implementation of the legal provisions. In one of the interviewee's opinions, inconsistencies in implementation derive from the fact that there is no agreement on the policy regarding CSOs between the Parliament and the Government (and even within the Government among various Ministries). For example, the Parliament adopted the *Civil Society Development Strategy for 2009-2011* (see below), the implementation of which, however, is slow due, among other factors, to a lack of a clear position of the Government on the issues raised in the Strategy. Generally, therefore, there exists a need to develop an overarching and harmonized CSO policy – which could be achieved through systematic and coherent legal approach to the sector's needs.

This Report aims to provide an **initial assessment of the immediate needs** to advance a coherent approach to the legal framework for CSOs in the Republic of Moldova. It also aims to set out areas for the **strategic consideration of stakeholders** to better advocate for a more enabling environment for civil society in Moldova.

The Report seeks to provide a general overview of the legal framework for CSOs; however, it does not go into a detailed legal analysis on each issue. Rather, it aims to highlight the key considerations and propose possible ways to address them within the framework of the Moldova Civil Society Strengthening Program implemented by FHI 360 and the European Center for Not-for-Profit Law (ECNL) with the generous support of the United States Agency for International Development (USAID).

Similarly, the paper aims to assist the Government in paving out the priorities for the draft Action Plan of the *Civil Society Development Strategy for 2009-2011,* which was adopted by the Parliament on December 11, 2008. However, its implementation was postponed due to the political developments in 2008-2009. The National Strategy identified a number of strategic priorities that are pivotal for the development of civil society. It set tangible goals for the period 2009-2011 and provided recommendations for action in the fields of public participation, financial sustainability for CSOs, and enhancing citizen participation and volunteering. The Strategy also addressed issues of transparency, the possible introduction of income tax designations to CSOs, research on the possible establishment of a National Civil Fund, social service contracting, regional development, volunteering, philanthropy, and foundations.

While the principles and priorities defined by the National Strategy are impressive, much will depend on its implementation, including legislative reform efforts that follow from the priorities. **Further dialogue with the Government is therefore of primary importance to ensure proper implementation of the National Strategy in a joint effort to promote a more enabling environment for CSOs.** It is important to note that the political scene in Moldova is still subject to change before achieving stability. The project will inevitably be

[1] 2008 NGO Sustainability Index for Moldova is available at:
http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2008/moldova.pdf

affected by political developments. Among other challenges stemming from possible political change, the project will need to ensure proper relations with the current as well as the expected next government and legislative body; it will need to consider potential political changes in the composition of PPWGs (see below), and aim to ensure continuity in political commitments regarding NGO law reform.

The assessment report reflects on general, or cross-cutting needs identified and in its main section, it primarily addresses the following reform priorities: the review of the Law on Public Associations; the provisions on public benefit status (or public utility status); fiscal framework for CSOs; potential enactment of the "percentage" law; government contracting of services and volunteering. The possible strategic solutions for each area fully rely on ECNL's methodology of work that emphasizes the core values of any legislative process: adherence to international standards and European norms, public participation, transparency and local ownership. We believe that to support a legal reform it is necessary to involve partners in all sectors, including CSOs, Government, Parliament, business sector and academia. We believe that process and content of reform are equally important for establishing a comprehensive and enabling CSO policy.

The paper is prepared based on the available laws and draft laws, as well as the assessment trip to Chisinau that took place in early November 2009, meetings with representatives of the local CSO sector, international organizations and government's officials. For the full list of references, please, see Annex I.

A. General needs

Public-Private Working Groups - **Institutionalized cooperation in policy development affecting the CSO sector is needed for an effective process in legal reform.** Prior to 2005, there has been no well-developed institutional mechanism by which the Parliament, Government and CSOs could create joint platforms and influence policy action affecting civil society. In December 2005 the Parliament adopted the Concept of Cooperation with Civil Society, which laid out minimum standards of cooperation between the government and the civil society. This legislative initiative served as a foundation for creating the Civil Society Development Strategy for 2009-2011 and with the formation of the NGO Council in late 2008, the process of institutionalization of government-civil society relationships has begun to materialize. The Council is seen as a legitimate actor on behalf of civil society towards the legislator and the executive branch of the state. The political turmoil led to a pause in the further development of these relations, which were renewed with the Law on Transparency in Decision-Making and Regulations on Procedures for Public Consultation in Decision-Making and Organization of Public Meetings. (These legal initiatives were supported by USAID under the Strengthening Civil Society Monitoring Capacity in Moldova (SCSMCM) Program implemented by AED.) Based on examples from other countries in the region, as well as other initiatives in Moldova, we recommend establishing one or more cross-sectoral, so-called Public-Private Working Groups to take cooperation in NGO law reform to the next level. Such PPWG, with expert representatives from all sectors, would be able to operationalize the policy level recommendations by joining forces in developing concepts and drafts of laws as well as helping implementation of adopted laws. Further, Memoranda of Understanding could be concluded with the NGO Council, the Ministry of Justice, the Ministry of Finance and the Ministry of Economy, to provide a framework to their contributions in the project.

Policy research - Targeted assessment of the legal background, social-economic context and the capacity of the sector is important for understanding and promoting reform. The most recent comprehensive overview of CSO sector in Moldova took place in 2007 with support from the United Nations Development Programme and Soros Foundation

in Moldova. As the result the "Study on Development of Non-Governmental Organizations in the Republic of Moldova"[2] was published; this provided important insight into the basic institutional and financial characteristics of CSOs. However, further in-depth research may be needed when looking at concrete proposals of laws and their potential impacts. For example, to advocate for a proper financing mechanism for CSOs undertaking social services, data on how many people receive and could receive CSO services, what are tangible benefits for the state in involving CSOs, how will CSOs manage risks associated with increased responsibilities etc. would be important to obtain. ECNL recommends to undertake such policy research in several of the issues raised below, including e.g. tax designation mechanisms, philanthropy and public funding of CSOs.

Legal capacity - Increased understanding of the policy and legal issues affecting civil society among all stakeholders is required for high-impact reform. Although CSO law may look like a relatively narrow area of law, in fact it encompasses a complex and multi-disciplinary set of policies and legislation, ranging from tax to accounting to public financing and international conventions and best practices. During the assessment trip it was found that there may not be an immediate need to support pro-bono legal assistance to CSOs, but there is a clear need to increase capacities of local stakeholders in understanding the range of issues involved in CSO law. Therefore, ECNL recommends to train a select group of lawyers as well as non-lawyer stakeholders from both CSOs and government, who are interested and willing to take initiative in promoting the foregoing reforms over the course of the project.

B. Specific needs related to the priority issue areas

I. The Law on Public Associations

The Law on Public Associations of the Republic of Moldova was last amended in 2007, as part of the effort to bring the original Law on Public Associations of 1996 in compliance with the 2002 Civil Code. While the amended law provides a clear regulatory framework for public associations, it leaves outside its scope some forms of non-profit organizations, e.g. institutions. Foundations are regulated under a separate Law on Foundations of 1999. The amended Law on Associations provided a revised notion of "a public association"; clarified the permissible goals of public associations including both public benefit and mutual benefit purposes; allowed non-citizens to be founding members; reduced the number of founders necessary for registration; outlined principles of associational activity and included a provision that organizations are "free to determine their internal structure, aims, forms and methods of activities." Overall, the law is supportive of CSOs and does not restrict establishing and running CSOs.

The amended law, however, raises concerns regarding exclusion of certain forms of associations from its scope, restrictions for legal persons to act as founders of public associations; restrictions on citizenship for board members; some provisions that could be subject to arbitrary decision-making. These issues are further described in detail in the article "Legal Framework for Associations in Moldova: An International Perspective" prepared by ECNL in December 2008. The article was published in the guide on associations "What For and How CSOs Are Created: A Guide on CSOs" prepared in cooperation with "Eco-TIRAS" and supported by the European Commission's project on Strengthening the Legal Framework for Citizen Action through Freedom of Association in Moldova.

<u>A. Revision of the Law on Public Associations</u>

[2] The Study is available in Romanian at: http://www.undp.md/publications/doc/Studiu_DSC.pdf

Realizing the shortcomings of the existing Law, under the auspices of UNDP a new draft law on Non-Commercial Organizations was prepared to supersede the present Law on Public Associations. A group of lawyers were contracted to prepare a draft Law on Non-Commercial Organizations (NCOs) and a draft Law on NCOs with a Public Utility Status. The drafts were developed by the authors without involving a larger group of stakeholders and consulting the CSOs themselves. This approach was then criticized by CSOs during meetings in Chisinau and in the regions, when the drafts were introduced. On the basis of these public consultations, it was suggested to amend the existing Law on Public Associations rather than promoting the already developed drafts. The new amendments were supported by CSOs to a larger extent. According to Vlad Melnic, the former UNDP program coordinator, the majority of the ministries also announced their support of the amendments to the Law. The Ministry of Justice started consultations with the Parliament on the submitted drafts at the end of 2008. As part of the consultation process, two meetings were held with the Legislation Committee of the Parliament, but there was no final agreement on how to proceed with these legal initiatives. The process was further complicated by the political crisis that endured in Moldova in late 2008 - early 2009.

The political and social events of 2008-2009 resulted in stronger voices of CSOs being heard and recognized by the Parliament and Government. Parliament's recent decisions, e.g. adoption of the Civil Society Development Strategy for 2009-2011 and several other legal initiatives to ensure participatory decision-making[3], provide leverage for CSOs to substantially contribute to the review of the present legislation on public associations. According to Mr. Serghei Ostaf of CREDO, who among others was involved in the public discussions of the UNDP drafts, it is worth revisiting the previously prepared documents to assess whether they still conform to the present situation and political realities and, thus, to the new CSOs' demands.

Among other points to consider is the status of public and private institutions that is not regulated under the current legislation, though in practice some institutions are registered under the Law on Public Associations. It will be important to carry out consultations with the Ministry of Justice on whether they see a necessity to develop a separate Law on Institutions and Movements or, alternatively, to prepare amendments to the new Law on Associations that would include all organizational forms.

Recommendations:

In order to revisit the draft amendments to the Law on Public Associations, it will be important to resume discussions on the revision of the Law on Public Associations with all stakeholders through:

- Coordinating with the Council of NGOs the most appropriate reform strategy, in light of the new political situation and the priorities of the sector itself. Key goals of any law reform initiative would be to clarify and streamline registration procedures; to ensure that registration decisions are made with greater objectivity and consistency, and independently of political influence; and to build in appropriate procedural safeguards for applicants;
- Carrying out consultations with the Ministry of Justice on the potential necessity to develop a separate Law on Institutions or to prepare a new Law on Associations that would include all organizational forms and indentifying other priority issues for revisions;

[3] E.g, Law on Transparency in Decision-Making and Regulations on Procedures for Public Consultation in Decision-Making and Organization of Public Meetings.

- Defining whether the existing law should be amended or a new draft should be developed, considering other pending initiatives, such as the revision of the regulatory framework for the public benefit organizations;
- Establishing a cross-sector working group (Public Private Working Group) for developing the revisions to the law;
- Preparing a legal analysis of the suggested changes through the prism of international good practices;
- Carrying out wide public discussion with participation of all stakeholders on the reform of the Law on Public Associations.

B. Public Benefit Organizations

The public benefit status is currently regulated by the Law on Public Associations Art.30-33 that provide a definition of the public benefit status and detail the certification process for qualifying organizations. However, a number of gaps and weaknesses still exist in these provisions. That's recognized by the fact that the review of the legal basis for public benefit status was included in the draft Action Plan on Implementation of the Civil Society Development Strategy 2009-2011 prepared by the Government. The revision process was supposed to be carried out at the end 2009. However, due to political circumstances the Action Plan for implementation of the National Strategy has not been approved yet and, as a result, the review process has not started.

After some consideration the law experts of the UNDP project decided to address the issue of public benefit organizations within the revised Law on Public Associations. The proposed draft provisions suggest changes into the composition of the Public Benefit Certification Committee to ensure inclusion of the CSO sector representatives to a larger extent. The draft also provides further clarifications on the benefits connected to the status. According to Vlad Melnic, most of the ministries agreed with these suggestions and they were also widely discussed in the Parliament. It could be addressed through a separate Law on Public Benefit Organizations to ensure that it embraces all non-profit organizational forms, not just associations. One of the concerns expressed by CSOs is that the public benefit status should be available for all forms of non-commercial organizations: associations, foundations and institutions. This might be challenging to address within the scope of mere amendments to the Law on Public Associations, unless the Law embraces all other organizational forms of CSOs.

Beyond the technical issue of which law should incorporate the public benefit status, it is also necessary to review the existing and recommended standards for obtaining, maintaining and terminating public benefit status according to the good international practices and develop a uniform and non-arbitrary approach in the award of the public benefit status. Furthermore, the system of fiscal benefits needs to be consolidated with a view to current and upcoming government priorities (for instance, if the percentage law is later adopted only organizations with public benefit status could benefit from this legal instrument); and the concept needs to be assessed in light of international and European best practices (e.g. it seems as though under the current drafts the public benefit status might be a precondition to access any type of government funding at all, which is not a practice in most other countries).

<u>Recommendations:</u>

In order to promote changes into provisions on the public benefit status, it will be important to consider:

- Whether the public benefit status will be applied to various organizational forms;

- What benefits this status will provide and what obligations it will impose on organizations;

- Reviewing the existing amendments on public benefit status or developing new ones in consultation with the civil society and government;

- Including the review of provisions on public benefit status in the agenda of the working group that will be working on the amendments to the Law on Public Associations or establish a new cross-sector group on public benefit status that will include representatives from ministries and civil society .

C. CSO Registration

In terms of implementation, the CSO registration process in Moldova remains problematic and continues to appear to be based on arbitrary practices. As a tool to assist implementation, in mid 2009 the UNDP project in cooperation with the MoJ developed and introduced in practice a public registry for CSOs. The registry represents a public online database of the CSOs registered at the national level. Its aim is to simplify and unify the registration process for CSOs through the uninterrupted exchange of information between different public offices, e.g. Ministry of Justice, tax authorities, Ministry of Information and Development. Nevertheless, the database does not provide exhaustive information on CSOs registered on the local level, as the municipalities were not required to provide complete data for the registry. Although the local authorities have access to the registry, they lack knowledge, skills and technical capacity to be able to sustain and update the database on a regular basis.

In addition, there were numerous complaints from CSOs regarding re-registration issues in the last two years. As the result of the 2007 amendments to the Law on Public Associations, institutions and movements were requested to change their charters, so that they do not refer to themselves as associations anymore. When some organizations applied for re-registration, the MoJ requested a number of arbitrary documents that were not prescribed by law, e.g. full list of members, confidential data about the founding members and other, which CSOs found as excessive. Therefore, it proves important to document the difficulties with the registration that CSOs experienced in the last two years, to provide good practices on registration which fit into Moldovan context, to discuss the registration issue with MoJ and CSOs and provide a specific plan for changes in the present registration procedures. These needs were affirmed at the meeting with the representatives of the Ministry of Justice, who also mentioned CSOs' lack of basic knowledge on the matters of registration, CSO policy documents, internal governance and PBO status. De-registration of CSOs stays a burdensome procedure under the present law.

At the same time, the current MoJ acknowledges further problems existing with registration, including technical challenges of the application of the internet-based database as well as the lack of capacity of the Ministry to address CSO inquiries (until last year, UNDP financed some persons to be attending the "registration hotline", which received a lot of calls from CSOs; this has been discontinued but the need is clearly still there). The Ministry has embraced the idea of simplifying registration procedures, but they have difficulties putting this into practice. E.g. when they provided a template (a model sample) of registration to CSOs, organizations simply copied those, they did not even chose between the options given in the template (e.g. the legal representative of the organization is the President/CEO).

The Ministry is open to solutions recommended by experts and the CSO sector, especially if those help address the very practical problems in the implementation of the law.

Recommendations:

To address the issues pertinent to the registration, we suggest the following:

- In cooperation with the MoJ, to identify the practical problems with the current CSO registration process through consultation with CSOs (as part of the PPWG and otherwise if deemed necessary); and analyze the ways they can be addressed;

- To prepare and distribute a client-friendly manual for CSOs on how to register a non-profit organization. The manual should include samples of founding acts and governing documents to facilitate the process of establishment, registration, re-registration and deregistration of associations;

- To carry out trainings for civil society and lawyers, especially in the regions, on the issues of CSO registration;

- To carry out trainings for government officials on critical provisions of the Law, binding international standards and case law pertinent to Freedom of Association, including rules governing registration;

- To review the necessity of simplifying the process of deregistration.

II. Percentage Law

As part of the UNDP initiative, a draft percentage law was developed that allowed for individual and corporate donors to designate 2 % of their tax payment to CSOs holding public benefit status. The draft was primarily based on the Hungarian and Slovakian models and was complimentary to the Law on Public Associations to be adopted at the same time. There is, apparently, substantial interest and support for the initiative generated within the Council of NGOs and CSOs. However, we would like to encourage further research on the issue of tax designations in order to assess its viability in the Moldovan context.

Further research on the mechanism of income tax allocation for CSOs was actually included in the Government's Action Plan to implement the Civil Society Development Strategy for 2009-2011. However, the draft found little support or understanding from the Ministries of Finance and Economy based on a number of reasons, including the financial crisis and political instability. Moreover, the draft law falls short of describing specific procedures for implementation, thus making the ministries even more resistant to the initiative. In the times of the economic crisis and political uncertainty the ministries seem to restrain not only from adopting this legal initiative, but even from further discussions.

It would be essential to carry out a feasibility assessment of the percentage law initiative in Moldovan context combined with an overview of international experience in application of percentage laws. The most important part is to ensure the stakeholders do not consider the legal initiative as "silver bullet" for the sector's sustainability, but as an additional source of revenue for CSOs' institutional development. In some countries the introduction of the percentage law resulted in revocation of tax benefits for donors to CSOs that in aftermath did not necessarily contribute to the overall sector's financial sustainability. All risks and opportunities in relation to the law need to be carefully calculated and considered before further proceeding with the legal initiative.

Central to this assessment would be estimating the amount of tax designations and the cost of introducing the system, challenges of administration and running costs, e.g. whether the tax authorities have a proper computerized system to ensure smooth operation of designations. Among other criteria to consider will be the overall number of taxpayers, the likely percentage of those who would take advantage of such a mechanism, the number and

types of CSOs likely to benefit etc. The current justification for the draft law includes only broadly laid out benefits for the citizens, the government and the CSOs but without contemplating the complexities of such mechanism.

In case the CSOs and ministry officials come to a consensus to support the enactment of the law, ECNL stands ready to provide technical assistance in the review of the draft. It will also be important to provide relevant training on the application of the percentage mechanisms to the officials from the ministries in order to mitigate the risks of misinterpretation of the concept. The CSOs will also need to receive additional training on the opportunities provided by the Law.

Recommendations:

Thus, the recommendations regarding tax designations to CSO are as follows:

- To prepare a feasibility assessment of introducing a percentage law based on cost-benefit analysis relevant for Moldovan context;
- To review international practices and impact assessments in application of similar legal initiatives;
- To hold an expert round-table to discuss the results of the feasibility assessment and, in case, further work on the legal initiative is justified, then to discuss the draft law with general public;
- To prepare an information campaign targeted at CSOs on the possibilities presented under the Law;
- To hold educational seminars for CSOs and possibly businesses on the new opportunities presented by the Law.

III. Volunteering

The current legal framework does not encourage use of volunteers' contribution to CSOs, nor recognizes the value of their contribution to the society. 2011 was announced the year of volunteering by the EU, which gives a good opportunity for Moldova to set a tentative deadline for adopting a comprehensive policy and legal framework for volunteering based on good European practices. Indeed, the topic of volunteering has been singled out in the National Civil Society Development Strategy for 2009-2011 and was further developed in the draft Action Plan for Implementation of the Strategy. The draft law on volunteering was indicatively supposed to be adopted at the end of 2009 and the secondary legislation to be developed in 2010 by the Ministry of Education and Ministry of Social Protection and Family.

The background for a new Law on Volunteering was laid out, among others, by a cost benefit analysis prepared by CREDO. The cost-benefit analysis provided extensive arguments in favor of the law. A coalition of CSOs in cooperation with the Ministry of Education and Youth prepared a draft Law on Volunteering. The draft law outlines the rights and responsibilities of the parties, addresses issues of liability and prescribes certain incentives for volunteer activities. During 2007-2009 the draft Law was discussed at 11 public meetings, e.g. with member organizations of the Social network, with representatives from the youth groups of the political parties, ministries representatives, etc. CSOs held a number of promotional activities on volunteering to bring broader public attention to the issue. As part of the consultation process, the draft Law on Volunteering has been submitted for comments to the following ministries: Ministry of Healthcare, Ministry of Labor, Social Protection and Family, Ministry of External Relations and European Integration, Ministry of Education, Ministry of Youth and Sports, Ministry of Finance and Economy. The ministries provided their substantive feedback and comments to the draft.

In early December 2009 ECNL reviewed the draft against good European and international practices and provided its comments from a comparative perspective to ensure that the law

reaches its objectives, is in line with European practices and fully and appropriately responds to the local needs and opportunities. ECNL identified potentially problematic areas and definitions and provided examples of international regulatory practices for these thematic areas. Part of these related to the unclear institutional arrangements between the so-called host organizations, CSOs, volunteers and their beneficiaries (e.g. who is to conclude the volunteer agreement); another part related to clarification of the various incentives envisioned by the draft. On the basis of ECNL's comments, the CSO partners reviewed the law and included the changes they deemed important. The draft law was later presented to the Moldovan parliament and is currently pending for approval.

Recommendations:

To further develop and promote the draft Law on Volunteering:

- Upon stakeholders' request, ECNL will review the new version of the law and submit its comments to the Parliament.
- It will provide continuous technical assistance to the government in adopting secondary legislation in connection to the Law on Volunteering.
- After the draft is approved, the law should be promoted to a larger public. The stakeholders will be informed of the new legal framework through a number of educational seminars on their rights and responsibilities under the Law.
- A client-friendly publication on volunteering will be prepared in cooperation with the local partners. The publication will facilitate CSOs' compliance with the new law and will contain samples of relevant documents, e.g. volunteer agreements and others. The publication will be spread through networks of local partners in Moldova.

IV. Fiscal Framework for CSOs

A. Accounting and Tax Reporting for CSOs

Improvement of the fiscal framework for CSOs remains one of the priorities for the sector. The existing tax reporting and accounting requirements complicate financial procedures for CSOs and are subject to arbitrary interpretation by the tax inspectorate. In addition, the application of current accounting and tax reporting standards to both for-profit and non-profit organizations often leads to confusion and unfavorable decisions. The importance of developing CSO specific regulations on accounting and tax reporting is also emphasized in the National Civil Society Development Strategy that was adopted by the Parliament in December 2008.

Draft National Standards on Accounting and Tax Reporting for CSOs were developed by Ms. Tatiana Prisacar, a CSO expert and licensed auditor within the framework of the European Union supported project on Freedom of Association. The package of materials includes (1) a briefer which outlines the necessity of adopting special regulations on accounting and tax reporting for CSOs, (2) draft Regulations on Accounting Standards for Non-profit Organisations as a framework document, (3) a draft policy on accounting and tax reporting for CSOs that deals in detail with the specifics of CSO accounting and includes expert commentaries, and (4) proposed amendments to the existing National Accounting Standards to harmonize them with the above mentioned documents. Template forms for financial and tax reporting for CSOs were also elaborated and included into the package. The documents were prepared in close consultation with CSO accountants and tax inspectors. They were also submitted for a review and improved by the CSO accountants who participated in a seminar held on CSO accounting in March 2008. The finalized drafts were submitted for review to the Ministry of Finance. A short overview of the draft National Standards on Accounting and Reporting for CSOs can be found in the article by Ms. Tatiana Prisacar on

"Specifics of Accounting in CSOs" included in "What For and How CSOs Are Created: A Guide on CSOs", published in Chisinau in December 2008.

As part of harmonizing its accounting practices with the European standards, Moldova committed to developing new accounting standards, including those for CSOs by 2011. That's one of the reasons why the suggested draft is still pending, as the Government most likely anticipates the upcoming changes. However, the Ministry of Finance may consider adopting the draft policy document as recommendations, which will still achieve the aim of simplifying the existing accounting and tax reporting procedures for CSOs. Ms. Prisacar is now the member of the Methodological Council of the Ministry of Finance and as such, is in a good position to advocate for the recommendations. Nevertheless, other avenues of advocacy should be explored, not the least to include this topic in the MoU to be concluded with the Ministry of Finance.

Recommendations:

- To promote the Accounting and Tax Reporting Standards for CSOs to be approved by the Ministry of Finance as Instructions.
- Once the Recommendations on Accounting and Tax Reporting are approved by the Ministry of Finance, to carry out educational seminars for CSOs on application of the policy document.
- Prepare and disseminate a brochure on tax and accounting standards for CSOs.

B. Improving Legal Climate for Philanthropy

Under current tax law, both individuals and donors may claim a tax deduction for donations to qualified CSOs up to 10% of their taxable income. The deductibility limit is relatively enabling, based on European standards, at least as it exists on paper. In practice, however, few individuals or businesses take advantage of this incentive; philanthropy remains underdeveloped in Moldova. This results, at least in part, from the shortcomings of the existing Tax Code that hinder individuals and businesses from receiving tax incentives. The burden of compliance with administrative requirements is such that many businesses prefer to donate informally, rather than to comply with Tax Code requirements to claim the available deduction. Individuals have reportedly tried to donate and claim deductions, but have been told by the Ministry of Finance that the tax incentive is not available for individual donations. In addition, as practice shows, businesses are not well informed about the benefits of philanthropy and have not developed any giving strategy. Moreover, there is low legal awareness among CSOs as well.

It will be important to assess and consider the impact of introducing a 2% tax designation scheme on the currently existing philanthropic giving practices, and any legal implications as well (in some countries such tax incentives were withdrawn at the introduction of the percentage mechanism).

Recommendations:

To help address these problems, ECNL will work with local partners on the following activities:

- Assessment of Existing Barriers to Giving. Before launching a reform initiative, it is critical to understand the problem, which in this case would include both legal and non-legal impediments to philanthropy. We referred to several issues in the paragraph above, but the assessment would examine the problem more systematically. ECNL will commission a local partner to conduct this research and prepare a report, which could be later available for dissemination and discussion;

- Preparation of Proposed Amendments to Tax Code. Based on the assessment, ECNL will provide technical assistance to local partners in preparing proposed amendments to the Tax Code, in order to facilitate private giving to CSOs. The proposed amendments would seek to eliminate barriers to giving, simplify and streamline the process of giving, and encourage giving through easy-to-claim deductions;
- Roundtables on Tax Reform. In cooperation with local partners, ECNL will conduct roundtable discussions on the existing problems and proposed amendments to the Tax Code. The goal of the roundtables will be to raise awareness of the tax reform initiative, and to solicit feedback from key stakeholders. To support the roundtables, ECNL will make available the assessment report and proposed amendments. These roundtables will help ensure that the drafting process is more fully inclusive and participatory.

V. Social Contracting of Services

At present there is no legal framework or uniform practice for government contracting for services. The Ministry of the Ecology and Natural Resources, the Ministry of Social Protection, and the Ministry of Culture, for example, each use their own procedures, which we have not found described clearly. Social organizations especially are frustrated by the lack of clarity and predictability in the contracting process. While there is an existing Law on Government Procurement, the Law does not specifically address contracting with associations. Moreover, there are no implementing regulations or guidelines to ensure clearly implementable procedures, and to ensure greater consistency and predictability of funding among government ministries.

In fact, it seems that in most cases the lack of a clear procedure to finance CSOs for providing government services amounts to a de facto prohibition of such funding. A notable example is that of a UNDP project, which financed (with support from USAID and OSI) ten Regional Reintegration Centers run by CSOs that provided much needed services to the population. The Regional Governments were satisfied with their work and agreed to take over the financing of the services beyond the donors' commitments; however, they found no legal basis for providing financial support to CSOs for the same service that, if undertaken by a government agency, can be fully financed. As a result, the only way to ensure sustainability of the services has been to transform the CSOs (the services) into public institutions (quasi-governmental bodies) that are under the control of the local authorities.

Despite the absence of an enabling legal framework, there are cases of awarding CSOs with public grants. While there is no term of 'grant' in the law, sometimes grant awards happen under the Law on Public Acquisitions. For instance, some CSOs get funding from the Ministry of Labor through establishing a public institution in cooperation with the local authorities. While this encourages cooperation between the sectors, its transparency is as yet questionable. In addition, local authorities can support associations from the local budget. However, since they have only limited resources to provide funding to CSOs, i.e. local taxes or income, this support is not sufficient to ensure sustainability of CSOs.

The current system of social assistance provision is very much centralized, which is recognized on the government level as well. In fact, the Ministry of Social Protection adopted a Strategy on decentralization for 2008-2011 in order to create mechanisms for delegating the distribution of some social services to local authorities. Cooperation with CSOs in social services provision is widely envisioned in this Strategy, so its implementation process will be of central importance for the sustainability of CSO-run social services.

To achieve this goal several laws would need to be reviewed and likely amended, such as the Law on Social Protection, Law on Budgetary Procedure, Law on Public Authorities, Law

on Public Local Finances. In addition, the draft Law on Certification of Social Services and the draft Law on Social Entrepreneurship have been prepared, but the status of the drafts stays unclear. Potential synergies on the topic of social contracting can be explored with UNDP as well as with the World Bank project focusing on public financing.

Recommendations:

- An in-depth assessment of existing regulatory framework should be carried out to review of the Law on Government Procurement and to analyze existing government contracting practices. As a springboard for any reform initiative, it will be crucial to conduct appropriate background research. ECNL will work with one or more local partners to conduct this research and prepare a report, which could be later available for dissemination and discussion;

- Based on the research results, the improvement of the regulatory framework should be continued through amendments to the Law on Government Procurement, or a separate Law on Social Service Contracting, and/or implementing rules that apply to all government ministries. ECNL has conducted in-depth research on government funding and contracting practices in European countries, and will share alternative regulatory approaches with partners in Moldova to help determine the appropriate end goal of the reform initiative;

- Following law reform, implementation will be a huge challenge. To change government practice in this area has proven extremely slow and difficult in some of the new EU Member States. ECNL will draw on the experiences and lessons learned from Poland to Hungary to Bulgaria and provide assistance to facilitate the learning process among government implementers in Moldova. Concretely, ECNL will assist government ministries and departments to plan and implement calls for competitive applications, transparent review and decision-making on applications, contracting and monitoring. We will work with local partners to develop forms, to provide training for government implementers, and to educate CSOs on their rights and responsibilities as part of the contracting process;

- Potential synergies with UNDP and the World Bank project will be explored on the topic of social contracting.

VI. CONCLUSION

Hereby we would like to summarize the key recommendations of the Report in terms of their urgency according to political and other factors. We would like to note that recommendations laid out in this report will be turned into concrete actions in the annual Implementation Plans and quarterly workplans.

Short term priority areas (to be achieved by the end of Project Year One):

- Establishment of PPWGs and concluding MoUs with CSO and government stakeholders (next quarter)
- Technical Assistance regarding draft Law on Volunteering
- Support in improving registration practices
- Stakeholder engagement and technical assistance regarding general NGO legal framework (i.e., draft Law on Public Associations and draft Law on Public Utility Status)
- In-depth legal assessment on government financing of CSOs and social contracting

Mid-term priority areas (to be achieved by the end of Project Year Two):

- Stakeholder engagement and technical assistance regarding financial issues and social contracting (i.e., accounting regulations, 2% tax designations, social contracting etc.)
- Building capacity among select stakeholders regarding policy and law affecting CSOs
- Percentage law feasibility assessment
- Adoption of CSO accounting and tax provisions
- Assistance in implementation of Law on Volunteering
- Assistance in implementation of Law on Public Associations and Law on Public Utility Status

Longer term priority areas (to be achieved by the end of Project Year Three):

- Policy and legal research regarding philanthropic giving; followed by legal recommendations and technical assistance
- Ongoing technical assistance regarding government financing of CSOs
- Ongoing technical assistance in the implementation of the NGO legal framework.

ECNL is thankful for the opportunity to conduct this initial legal assessment and looks forward to working with FHI 360, USAID and local stakeholders in further exploring and addressing the needs.

ANNEX I

Comments, Studies, Publications

Comments by Moldovan NGOs to the Draft Law on Non-Commercial Organizations

Comments by Moldovan NGOs to the Draft Law on Non-Commercial Organizations of Public Utility

ECNL, Comments by the European Center for Not-for-Profit Law to Draft Law on Volunteering of the Republic of Moldova, 2009

ECNL, Comments to the Hungarian Ministry of Foreign Affairs on Moldova Country Strategy for Official Development Assistance, 2008

ECNL, Legal Framework for Associations in Moldova: An International Perspective, 2008

Eco-TIRAS, What For and How CSOs Are Created: A Guide on CSOs, Chisinau 2008

Radoi Alina, Comments on the draft Law on Non-Commercial Organizations and the draft Law on Non-Commercial Organizations of Public Utility

Summary of the Cost-Benefit Analysis of the Draft Law Concerning Volunteering

UNDP, Study on Development of Non-Governmental Organizations in the Republic of Moldova, 2007

USAID, NGO Sustainability Index on Moldova, 2008

Moldova Laws, Draft Laws and Legislative Acts

Action Plan on Implementation of Civil Society Development Strategy 2009-2011 (draft)

Civil Society Development Strategy for 2009-2011

Information Note on the Draft Law on Non-Commercial Organizations

Information Note on the Draft Law on Non-commercial Organizations of Public Utility

Information Note to the Draft Law on Public Use of 2% of Income Tax of Individuals and Legal Residents of the Republic of Moldova

Information Note on the Draft law on Volunteering

Law for Amending Law nr.837-XIII of May 17, 1996 on Public Associations (draft)

Law on Non-Commercial Organizations (draft)

Law on Non-Commercial Organizations of Public Utility (draft)

Law on Public Acquisitions

Law on Public Use of 2% of Income Tax Individuals and Legal Residents of the Republic of Moldova (draft)

Law on Transparency in Decision-Making

Law on Volunteering (draft)

National Strategy on the Development of an Integrated System of Social Assistance Services (draft)

Regulations on Establishment of the National Council for Participation (draft)

Regulations on Procedures for Public Consultation in Decision-Making and Organization of Public Meetings (draft)

List of meetings at Assessment Trip

Ilya Trombitsky, Executive Director Eco-TIRAS
Serghei Ostaf, Executive Director CREDO
Neicovcen Serghei, Executive Director CONTACT
Antonita Fonari, Executive Director “Tineri si Liberi” (via phone)
Elena Gritsko, Director of the NGO department, and Aide to the Minister of Justice
Angela Vacaru, Executive Director “CICO”
Vlad Melnic, Eurasia Partnership Foundation
Veaceslav Balan, Project Manager Electoral Support to Moldova, UNDP, Amnesty International Board.
Doina Munteanu,Programme Analyst Civil Society and Transnistria UNDP
Viorel Albu, Project Manager Better Opportunities for Youth and Women, UNDP
Ruslan Harea, Economic Consultant Better Opportunities UNDP
Gheorghe Stamate, Project Manager European Union Delegation of European Commission to Moldova
Tatiana Prisacaru, Accounting consultant