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EXPERT OPINION REGARDING STATE CONCEPT ON CSOS' DEVELOPMENT IN GEORGIA

January 19, 2015

The European Center for Not-for-Profit Law (ECNL) provides its expert opinion on the final draft of the Concept on Civil Society Organizations' Development in Georgia (further – *the Concept*). This is the second review of the document by ECNL, our previous comments to the draft Concept were submitted to the drafting team in August 2014. Through communication with the Civil Society Institute (CSI), we closely followed the drafting process and shared relevant comparative materials from Europe.

This opinion is based on ECNL's experience of working on development and implementation of policy documents for cooperation between state authorities and CSOs in a number of countries in Europe, e.g. Hungary, Estonia, Macedonia, Moldova. The expert opinion incorporates our understanding and knowledge of the Georgian context based on the joint actions implemented together with CSI for almost a decade.

The draft Concept is a prominent document for further development of cooperation between Georgian government and civil society. The Concept builds upon earlier cooperation between Georgian Parliament and the civil society, reflected in the *Memorandum of Cooperation*. This document was signed between the Parliament and 200+ Georgian CSOs in December 2013. In line with good European practices, the Concept provides for predictable and partner-like environment between the sectors, and prescribes jointly developed targets for CSO policies in the next eight year.

The Concept is the first framework document focused on creating an enabling environment for Georgian CSOs. It aims to “foster civil initiatives, set up a development-focused environment for CSOs and ensure their real participation in the decision-making process.” The Concept has similar logic and structure to other strategic documents in Europe by setting the principles and values of cooperation between public authorities and CSOs, describing the current environment for CSOs, setting the goal and objectives of the document and, finally, addressing the two main areas for state policies with specific objectives to:

- Establish enabling institutional and financial environment for CSOs;
- Commit to CSOs' participation in the decision-making process.

Importantly, we understand that the Concept had been developed in a participatory manner and in consultations with CSOs not only in Tbilisi, but also in other regions of Georgia. Preparing and implementing a cooperation document can be a challenging and time consuming exercise that, however, shows state authorities' and CSOs' commitment, support and partnership in establishing and achieving common goals. ECNL remains ready to provide further support to ensure that the objectives of the Concept are successfully achieved in future.



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SPECIFIC COMMENTS

We commend revisions introduced to the Concept by the drafting team, based on ECNL comments from August 18, 2014. Through the following comments, we would like to draw attention to few remaining issues, which you may consider revising before introducing the final document for vote.

Principle of equality

The Concept describes principle of equality as “CSOs are equal and the state authorities set up equal environment in all potential areas of their work.”

We would like to note that the principle of equality implies not only non-discrimination, but also commitment by state authorities to respect diversity of civil society organizations.

While the legal environment for CSOs sets the general framework for registration and operations applicable to all CSOs, the state authorities may decide to introduce special regulations for promoting certain types of organizations, for example, organizations that act in public interest or represent marginalized groups. Such organizations may enjoy additional fiscal benefits or have preferential access to state funds, for example, in some countries access to state financing for performing social contracts is open to organizations with status of public benefit only. Indeed, the state authorities should ensure equal opportunities for CSOs, but this does not imply uniform treatment and environment for all types of CSOs.

Below we share two definitions of a similar principle as described in *Macedonia’s Strategy for cooperation of the government with civil society* and *Estonian Civil Society Development Concept* to illustrate possible approaches:

Macedonia, Strategy for cooperation of the government with the civil society (2012- 2017)

▪ ***Equal Opportunities and Non-Discrimination***

The Government aims to respect the equal opportunities and non-discrimination of all people in realisation of their primary rights and freedoms and their benefits from political, economic and social processes and mechanisms. The civil society by the very nature of its activities, articulates the needs and interests of different target groups, especially marginalised ones: the poor, women, Roma, persons with special needs and alike. Social cohesion, as a priority area and strategic goal of this Strategy can only be achieved if the principles of equality, equal opportunities and non-discrimination are respected.

Estonian Civil Society Development Concept, 2002

Equal treatment

Citizens' associations and the public sector respect the principled equality of all citizens and their associations to access and participate in public life.



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Recommendation: We recommend revising the second part of the principle with commitment to set up “equal environment in all potential areas” to “The state authorities commit to creating equal opportunities for CSOs while respecting diversity of organizations without discrimination.”

Assessment of the current situation

Section 3 of the document now includes detailed information on the current situation of the CSO sector in Georgia. The Concept provides background and short analysis of the CSO sector to set the context for the document.

This new section is in line with a number of other similar strategic documents, e.g. in Moldova, Macedonia. This is an important part of the Concept, as it thoroughly explains rationale behind the policy and serves as baseline for future assessment of implementation. The section is properly expanded and includes information with evaluation of the current situation in Georgia. The assessment can be further strengthened through including references to studies, indexes and other sources of information, based on which the assessment was drawn. It can make reference to specific laws, regulation, state registry of CSOs, sources of information and both to national and international evaluations of the sector.

Recommendation: We would like to recommend including references to the original sources of information, e.g. laws, charity registry, national or international independent reports and indexes.

Definition of civil society organizations and scope of the Concept

The Concept provides the following definition of the civil society organizations subject to the scope of the document.

Resolution of the Parliament of Georgia on the approval of the State Concept on CSOs' Development (Draft of December 2014)

6.1 Civil Society Organizations

For the purposes of the present Concept, a civil society organization includes:

- a) Organizations with the status of a non-entrepreneurial (non-commercial) legal entity, which perform publically beneficial work;*
- b) Organizations operating under a different legal form, whose charter-declared objective is to perform publically beneficial work or support publically beneficial initiatives;*
- c) Citizen unions and initiative groups without legal registration, which perform publically beneficial work.*

Religious unions, political parties, and the legal entities or unions established by the state and local authorities, which are directly or indirectly controlled by the state and local authorities, are not considered as CSOs for the purposes of the present Concept.

The previous draft of the Concept provided the following scope of the document:



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Resolution of the Parliament of Georgia on the approval of the State Concept on CSOs' Development (Draft of August 2014)

2.2. The Concept considers both registered and non-registered unions and entities (excluding political and religious entities), groups of people united around common interests as civil society organizations.

The rationale for this new narrower definition of civil society organizations (i.e. which perform publically beneficial work) and which are subject to the Concept is not clear to us. Given the variety of organizational forms and aims pursued by civil society organizations, which can be established both for public and mutual benefit; we find this wording very limited and exclusive for a large scope of CSOs.

As far as we are aware, currently there is not a special status for civil society organizations performing publically beneficial activities in Georgia. In this case determining the beneficiaries for objectives of the sector's support will depend on the public authorities' interpretation of what constitutes publically beneficial work and what group of organizations will benefit from new legal initiatives by public authorities. Another consideration is that even in countries with a specific legal status for public benefit organizations, i.e. the organizations performing publically beneficial work, this segment of CSOs is rather small in comparison to overall sector. For example, in Moldova where there are about 9,000 registered CSOs, CSOs with public benefit status constitute only about 1,000 organizations. Hence, any legal novelties prescribed by the Concept would only affect a limited scope of organizations and cannot be viewed as support to general CSOs' development as such.

In most European documents, which address cooperation between the sectors, there is a clearly defined group of beneficiaries, which represent civil society. This group does not embrace neither religious organizations, nor political parties, but it states rather broad definition of what constitutes a CSO.

Macedonia, Strategy for cooperation of the government with the civil society (2012- 2017)

The intention of the Strategy is to focus on the collaboration with civil society organizations referred to by the narrower definition of "a civil society organization", thus the hereinafter use of this term in the document shall apply only to those organizations currently registered according to the Law on Citizen Associations and Foundations (1998).

Estonian Civil Society Development Concept, 2002

In this document, citizens' associations are considered to be various types of organizations established on the basis of the freedom of association which do not strive for profit, such as non-governmental organizations, foundations, associations, etc. [...]

Civil society indicates to the self-initiated co-operation of people for following their interests, discussing public issues and participating in decision-making processes, also the associations, networks and institutions which enable such co-operation.



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Croatian National Strategy for the Creation of an Enabling Environment for Civil Society Development from 2012 to 2016

As far as the objectives, measures, and activities in this Strategy are concerned, the term civil society organisation primarily denotes nongovernmental organisations founded on the basis of the Associations Act, as well as foundations and funds founded on the basis of the Act on Foundations and Funds

In addition, we would like to reiterate our previous comments that the definition of the civil society organizations, which are subject of the Concept, could be provided earlier in the document. This definition in a shortened version can be part of the introduction, so that the scope of the document and the organizations that are affected is clear from the very beginning.

Recommendation: The definition of the civil society organizations should be provided earlier in the document and deleted from 6.1. We recommend the Concept provides a wide enough definition of civil society organizations for the scope of the document, which will be better reflective of the Georgian CSO sector and its needs. This can be done either through: A) providing the same definition as in the first draft of the Concept of August 2014; or B) omitting the requirement for performance of publically beneficial work or through keeping this requirement only for organizations, which do not hold a non-entrepreneurial (non-commercial) status.

Future Vision

Section 6 contains three subsections:

- 1) definition of civil society organizations;
and specific objectives:
- 2) enabling institutional and financial environment for CSOs;
- 3) CSOs' participation in the decision-making process.

Please, see our above comment on the definition of the civil society organization, which are subject to this Concept.

We suggest revising the titles of the sections 6.2 and 6.3 to make them reflective of objectives and commitments by the public authorities in fostering civil initiatives. For instance, 6.2 currently formulated as “Enabling institutional and financial environment for CSOs” can be instead formulated as “Established enabling institutional and financial environment for CSOs.” Correspondingly, 6.3 currently formulated as “CSOs’ participation in the decision-making process” can read as “Increased CSOs’ participation in the decision-making process.”

We also reiterate our comments of August 2014 on reviewing the level of commitments and drawing specific objectives for each general objective. This will further assist with drawing an action plan for implementation.



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Recommendation: Revise the titles of specific objectives 6.2 and 6.3 and refine definition of measures for each objective.

CSOs' Participation in Decision-Making Process

Section 6.3 consists of two parts. The first part refers to state's cooperation with CSOs and participation in determining and implementing states policies. The second part is related to Public Council of the Bureau of the Parliament.

As we understand, these two areas refer to different public authorities: the government and the parliament. Both areas are important for meaningful participation of CSOs in social and political life, so it would be valid to prominently feature each. This is especially the case, since the second part of 6.3 refers to a new body, its functions and mandate – the Public Council.

Recommendation: We suggest that you divide the two parts of 6.3 into subsections as was included in the previous draft of the Concept.

Public Council of the Bureau of the Parliament of Georgia

The Concept provides for setting up and functioning of an institutional mechanism of dialogue with CSOs – Public Council at the Bureau of the Parliament of Georgia.

Establishing an institutionalized cooperation mechanism is a plausible undertaking and corresponds to the European trends. Every country, where the strategic document for cooperation was adopted, either established a new governmental or joint structure (as in case of Estonia and Latvia) or vested additional functions of monitoring and supervision of implementation of the strategy within the existing public office.

The Georgian Concept follows the path of Estonian Civil Society Development Concept, which states:

Estonian Civil Society Development Concept, 2002

The Government of the Republic of Estonia and representatives of citizens' associations will establish a joint committee for launching a system of elaborating plans of action for implementing the EKAK, for fulfilment of these plans and assessing their results.

When introducing the new mechanism it is essential to define its purpose first and then describe the set up and form of the mechanism. Further details can be included in the regulations and by-laws of the Public Council to be developed through a consultative process between the Bureau of the Parliament and CSOs. However, the Concept should



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clearly state: what kind of body will that be, e.g. a joint body with participation of representatives from parliamentary committees and CSOs; what functions will it have, e.g. a consultative body with the function of monitoring of the Concept's implementation; what term of mandate will it have, e.g. for the duration of the Parliament's term or of the action plan of the Concept.

Some of the functions of the Council are already described under the final section on *Implementation and Evaluation for the State Concept on CSOs' Development*: "The Public Council of the Bureau of the Parliament of Georgia will evaluate the implementation of the State Concept on CSO Development." We suggest that you move this sentence to the subsection on the Public Council.

The Concept could further clarify that such a mechanism would not be the only channel of communication or dialogue between state authorities and CSO, nor would it replace other forms of cooperation on various levels, e.g. ministries, local governments, etc.

Recommendation: We recommend including information on the mandate of the Public Council, its composition and term of mandate into the Concept with further details to be developed in the by-laws.

Implementation and Evaluation of the State Concept on CSOs' Development

In the final section, the Concept provides that the Government of Georgia will prepare an action plan for implementation of the Concept with involvement of CSOs and interested parties.

Based on examples of European strategic documents for cooperation, which are described in ECNL's comparative paper [*European practices on implementation of cooperation documents and liaison offices that support civil society development*](#), implementation requires:

- Involvement of the government and CSOs in developing implementation plan of the strategic document;
- Commitment to allocation of specific funding to achieving the objectives;
- Coordination of the process of implementation;
- Clear and regular process of monitoring and reporting on progress with achieving the objectives of the document.

Indeed, the Government is ultimately responsible for developing and delivering the policies, hence their involvement in preparing the Action plan will require an assigned responsible person or office in the government and a committed deadline by which the plan must be developed. Currently, the resolution to the Concept provides that the Government is responsible to prepare the Action plan for 2015-2020 by September 1, 2015.



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Further on under the section on implementation and evaluation, the Concept says that

The Government of Georgia is a responsible body for implementation of the State Concept on CSO Development, which will develop an Action Plan for implementing the Concept initially for 2015-2018, and subsequently for 2018-2023.

Please note, our minor comments on the inconsistency in the suggested duration of the first action plan between the resolution and final section. There is also inconsistency in the final provisions on the years of the second action plan, which should be 2019-2023.

More importantly, the Concept should make clear how its objectives can be funded. It can state the resources which will be made available through the national budget, and also if seems opportune – external technical and assistance projects and/or other sources accepted under the Georgian law. In our experience, this is usually one of the weakest parts in implementation of policy documents for cooperation. Without proper funding, the responsible ministries may not be able to implement the objectives as described in the Concept, e.g. promotion of charity activities, allocation of state grant funding, involvement of CSOs in social contracts.

Recommendations: We recommend clarifying the timeframes for the first and the second action plans to be included in the resolution and the final provisions on implementation and evaluation. We recommend including a clear provision on commitment to allocate public funds to implementation of the Concept and its Action Plan, once adopted.