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COMMENTS TO THE CONCEPT OF THE DEVELOPMENT OF CIVIL SOCIETY IN MONGOLIA

May 4, 2016

The European Center for Not-for-Profit Law (ECNL)¹ appreciates this opportunity to provide its comments to the draft Concept of the Development of Civil Society, translated version received on April 20, 2016 (hereinafter: “Draft Concept”). We would like to commend the undertaking of developing the first framework document to promote the development of civil society in Mongolia. This move is in line with the general tendencies in other countries, where policy documents for cooperation (strategies, concepts, compacts) were or are being adopted, e.g. Bulgaria, Croatia, Estonia, France, Macedonia, Montenegro, Moldova, Latvia, United Kingdom, The Philippines, Kyrgyzstan and others. ECNL carried out comparative researches² and actively contributed to the development and implementation of several policy documents (e.g., in Moldova, Bulgaria, Macedonia, Iraq and Georgia). The current comments are based on these comparative experiences on policy documents for cooperation in Europe and beyond. The comments are divided into two main parts:

- 1) General comments that highlight the main, conceptual issues; and
- 2) Detailed comments and recommendations on how to further improve the Draft Concept.

ECNL remains committed to provide further support to local stakeholders in the process of finalizing the Concept and launching its implementation.

I. GENERAL COMMENTS

In light of the prescribed international good standards for regulation of freedom of association, **we would like to welcome the following positive aspects of the Draft Concept:**

- The Draft Concept establishes the framework for cooperation with and development of civil society sector;
- The Draft Concept recognizes the role of a capable, strong and independent civil society in democracy;
- The Draft Concept regulates a comprehensive set of values and principles that will guide the cooperation between the State and Civil Society;
- The Draft Concept puts forward concrete measures to enhance citizen participation, improve the policy and legal environment for CSOs and support their sustainable development;
- The Draft Concept foresees the creation of some institutional mechanisms for the implementation of the Concept.

¹ The European Center for Not-for-Profit Law (ECNL) is a leading European resource and research center in the field of civil society law, based in Budapest. It aims to promote an enabling legal and fiscal environment for civil society in Europe and convey European experiences to other parts of the world.

² For example: Katerina Hadzi-Miceva Evans: European Practices on Implementation of Policy Documents and Liaison Offices that Support Civil Society Development. ECNL and ICNL, 2009. Available at: <http://www.icnl.org/research/resources/ngogovcoop/paperpol.pdf>



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We also would like to suggest the following issues for further discussion:

- The Draft Concept includes some overlapping values and principles that could be simplified to keep the document more focused;
- There is a need to focus the document on specific measures in order to make it more concrete and practice-oriented;
- The Draft Concept should also pay special attention to the part related to implementation and establish additional mechanisms guaranteeing that all institutions involved will have clear responsibilities and will follow-up on the listed actions.

In the following section we elaborate on these and some other issues based on good European regulatory practices.

II. SPECIFIC COMMENTS AND RECOMMENDATIONS

1) General Provision

Issue: Chapter 1 should state clearly that the primary objective of the document is to create better environment for civil society. Below we suggest how to restructure better the Chapter.

Discussion: The Draft Concept follows the logic and structure of similar policy documents through identifying principles and values, setting objectives and measures on strategic areas of state policy and establishing the implementation mechanism. The introduction (preamble) of policy documents generally includes several important components: background to the document's development, short analysis of the state of civil society, the process of concept development and the aim of the document. All these components provide context, legitimacy and statement of representation for the Concept. It may also support the implementation of the document in case there is any political change of the government, as it thoroughly explains the processes behind the policy. While the current Draft Concept is well composed, we think it can be further strengthened through the following amendments:

1. We suggest that you spell out **the purpose of the Concept and the goals it aims to achieve** separately and prominently. As we understand this is partly covered in section 4 of the General Provisions and the first section of Chapter 4 (Policy framework for realization of values and principles) but we believe it should come at first in this document. In many countries a separate chapter is dedicated to the objective and aims, including policy documents of Latvia (Cooperation Memorandum between Non-governmental Organizations and the Cabinet of Ministers³), Macedonia (Strategy for Cooperation of the Government with Civil Society (2012-2017), Canada (Accord⁴) and others.
2. Section 7 of the General Provisions confirms *“that a capable, strong and independent civil society is an expression and a guarantee of democracy in Mongolia and a collaborator with the State in development work”*. This is a very important point and one of the key messages. Therefore you may want to consider moving it to the beginning of the General Provisions.

³ Available at: <http://www.icnl.org/research/library/files/Latvia/memo.pdf>

⁴ Available at: http://www.vsi-isbc.org/eng/relationship/pdf/the_accord_doc.pdf



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3. The last section of the General Principles shortly describes the **content of the Concept**. The authors may want to expand this section and provide more details about the document.
4. Finally, the General Provisions do not yet describe the **legal nature of the Concept**. We suggest to add this, too.

Recommendation: We recommend to restructure the General Provisions in order to separately and prominently regulate the purpose of the Concept. In addition, we suggest to move section 7 to the beginning of General Provisions and provide more details on the content of the document.

2) Concepts related to civil society

Issue: The Draft Concept complies with good practices in defining the concept of civil society under chapter 2. However, it does not provide clarity on what the term “civil society organization” entails.

Discussion: Chapter 2 of the Draft Concept defines civil society at international level, its relationship with the state and its key features. It also refers to “civil society organizations”, however, it is not defined anywhere what is meant under this term for the purposes of the Concept. It would be important to clearly define “CSOs” as the values and principles and the measures apply mostly to this part of civil society. As a matter of good practice the term CSO or NGOs is defined by policy documents. Examples include the Slovenian and Macedonian Strategies. The Draft Concept recognizes that civil society entails formal and informal groups, too. Civil society organizations should as well include both formal and informal groups. Therefore we recommend to remove reference to “other formal and informal groups” from Article 2.4. of the Draft Concept.

Another comment relates to one of the common features of groups and associations that make up civil society, as defined in point 2.3.1. According to this, they “*rely on a certain degree of volunteerism in their activities*”. While in many cases CSOs are indeed relying by volunteers but it is not always the case. Therefore we suggest to replace it with reference to the “voluntary” nature which is usually part of the definition of NGOs/CSOs in national laws.

Recommendation: We recommend to define the term “civil society organization” for the purposes of the Draft Concept. Also, we recommend to replace the requirement to “rely on a certain degree of volunteerism” with the reference to the voluntary nature of civil society organizations.

3) Shared values

Issue: Chapter 3 of the Draft Concept lists a number of important values that are also covered in similar policy documents. Some of the values seem to overlap and could be merged, such as Diversity and inclusiveness (3.1.4.) and Tolerance (3.1.5.). In addition, the authors may want to add other values based on comparative practices.

Discussion: Article 3.1. of the Draft Concept lists 7 values. Diversity and inclusiveness (3.1.4.) and Tolerance (3.1.5.) seem very similar and authors may want to consider merging them.

In addition, the authors may want to enrich the existing list of values with some other values based on comparative practices, such as democracy, active citizenship and quality service.



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1. **Democracy or democratic society:** Democracy is mentioned several times in the Draft Concept but it could be singled out as a separate value, too. The Scottish Compact⁵ recognizes democratic society that “*acknowledges the value of voluntary sector activity and upholds the right of individuals to associate freely with one another in pursuit of a common purpose within the law.*” Similarly, the Canadian Accord includes the value of democracy as “*upholding the right to associate freely, to express views freely and to engage in advocacy*”.
2. **Active citizenship:** The authors may want to add the value of active citizenship which provides the basis of the principles of policy dialogue and meaningful participation. According to the Scottish Compact, it is “*involving the widest possible participation by people in the lives of their national and local communities*”. According to the Canadian Accord, active citizenship means “*welcoming the active involvement or engagement of individuals and communities in shaping society whether through political or voluntary activity or both*”.

Recommendation: We recommend to merge the values of Diversity and inclusiveness and tolerance and consider to add other values such as democracy/democratic society and active citizenship.

4) Principles assuring the Values

Issue: Article 3.2. of the Draft Concept lists important principles some of which, however, sound more like objectives or measures. Also, some principles are repetitive and could be merged. We also recommend some changes to the principle of efficiency.

Discussion: Principles usually state conditions for implementing the vision of the policy and the common values which should describe the relationship between the sectors. They can serve as guidance in developing objectives of the action.

The way some principles are currently phrased in the Draft Concept sounds more like objectives or measures. For instance:

- principle of policy dialogue (3.2.5.), “*State and civil society will establish and maintain standing mechanisms of policy dialogue at local, regional and national levels...*”
- principle of meaningful participation (3.2.6.), “*Public body and civil society organization will have a duty to provide the participating parties with adequate opportunity to receive information pertaining to the issue(s) at hand and prepare and table their inputs.*”

The principles of Equal opportunity (3.2.1.) and Promotion of diversity and inclusiveness (3.2.3.) are also very similar and could be merged. Moreover, diversity and inclusiveness is already listed as a value and while its promotion is important, the promotion of all other values is equally important.

In addition, the authors may want to consider combining the principles of Transparency (3.2.7.) and Accountability (3.2.8.) as they are closely interrelated and the description of accountability focuses on transparency, too. When speaking of meaningful participation we would focus on the fact that state should try to involve CSOs and consider their opinions. Equal access to everyone in the process is covered by the principle of equal opportunity already.

⁵ Available at: <http://www.gov.scot/Resource/Doc/47210/0025541.pdf>



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The principle of efficiency addresses an important issue, sustainable development. The authors may want to consider rephrasing this principle so it will by no means interfere with the right of CSOs to freely determine their internal governance (i.e. they shall apply “limited” resources). As an example, the principle of sustainable and balanced development can be also found in the Moldovan Strategy for Developing the Civil Society for 2012-2015⁶. According to this, *“In their activities and within the cooperation, CSOs and the public authorities start from the principle of sustainable and balanced development.”*

Recommendation: We recommend to 1) rephrase the principles so they don’t sound as measures; 2) combine the principles of Transparency (3.2.7.) and Accountability (3.2.8.) and the principles of Equal Opportunity (3.2.1) and Diversity and Inclusiveness (3.2.3); and 3) rephrase the principle on Efficiency.

5) Policy framework for realization of values and principles

Issue: The chapter starts with the description of the ultimate goal of the Concept which could be part of a separate chapter, as described earlier. The authors may want to consider removing the entire Article 4.1. or integrating it into the description of values and principles as many arguments have been already described there.

Discussion: According to the first section of Chapter 4, *“The **ultimate goal** of the state policy on civil society is to promote public interest by way of increasing the potential of civil society and civil society organizations and strengthening cooperation between State and civil society.”* As described earlier under the General Provisions, it is important to separately and prominently describe the aim of the Concept and this should be done at the very beginning of the Concept.

This chapter of the Concept aims to provide more concrete measures on how the principles and values should be implemented. However, Article 4.1. describing the **concepts of social capital, social innovation and social economy** seem to be out of place. A lot of arguments mentioned in this article have been already raised in previous parts of the Draft Concept and their repetition does not make a stronger case. It actually looks as if the arguments listed above are not sufficient and there is a need to continue proving why civil society is important. Therefore the authors may want to review how these definitions could fit under the general provisions or the values and principles.

The Draft Concept continues with outlining the **3 strategic areas of state policy**, including the promotion of democratic political culture; expansion of citizen participation; and strengthening of cooperation between State and civil society. It is commendable that the Draft Concept is organized based on broad topics, specific commitments and in some cases also includes concrete measures. Many of the commitments also highlight the objective it aims to achieve. We recommend that you make the objectives under each strategic areas more visible and organize the specific commitments under the objectives to ensure that they are put into practice. For example, see how the Moldovan Strategy is organized:

⁶ Available at: <http://www.icnl.org/research/library/files/Moldova/mdstrat.pdf>



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Overall goal:

The Strategy aims at creating a favorable framework for developing an active civil society, capable to contribute progressively to the development of the democratic system of Moldova, to stimulate its social cohesion and to develop its social capital.

The goal is followed by general objectives:

1. *Strengthen the framework of participation of the civil society in developing and monitoring the implementation of public policies.*
2. *Promote and strengthen the financial sustainability of civil society.*
3. *Develop the active civic spirit and volunteering.*

The first general objective is further specified:

- 1.1. *Develop institutional mechanisms for the cooperation between the public authorities and the civil society*
- 1.2. *Strengthen the capacity of state officials and of CSOs of cooperation in developing and monitoring implementation of public policies*
- 1.3. *Improve the existing mechanisms and adopt new measures to guarantee the transparency of the activity both of the legislative and executive branches of all levels, from the Parliament and Government to district and local councils and mayor's office.*

Based on this structure of the Strategy, Moldovan parliament drew up an action plan, where each action consists of several activities to be completed in order to ensure implementation of the general and specific objectives.

In addition, we would like to share some comments to some of the objectives:

1. **4.2.1.b.** regulates the commitment to provide citizens with the opportunity for **free participation and fair competition in the market**. While most of the commitments focus on civil society organizations this one is not specifically related to them. The authors may want to discuss the need to include such a measure in its current form as it is not directly related to CSOs.
2. **4.2.1.e commits to uphold the right of citizens to independent media**. We agree with the importance of this commitment but it is a very big area that may require a larger set of measures and possibly, a separate strategic document.
3. **4.2.2.d. requires CSOs to develop and establish procedures ensuring meaningful participation of members, constituencies and citizens** in their decision-making activities. We believe that this is a matter of internal affairs of CSOs and such requirement would be an interference to their internal governance. Therefore we recommend to remove this article from the Draft Concept.
4. **4.2.3. presupposes commitment, business-like approach and institutional capacity** on both the sides of State and civil society. While it is a legitimate requirement on the side of the State, business-like approach and institutional capacity cannot be expected from all CSOs. CSOs are working on a voluntary basis, oftentimes with limited financial and human capacity so the existence of institutional capacity should not be taken for granted. Therefore it is important to take this into consideration when defining policies on cooperation (e.g. provide sufficient time for CSOs to submit comments to draft laws etc.). Also, it is unclear what business-like approach entails and how it is compatible with the special nature of CSOs.



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5. **4.2.3.a. 1.c/ regulates the accreditation of CSOs by public agencies.** It would be important to add that the principle of equity should apply to accreditation and CSOs should not be subject to more requirements than companies and other legal entities.
6. **4.2.3.c obliges the state to implement a consistent policy aimed at continually improving the quality and scope of the activities undertaken by citizens and CSOs.** This sounds as if the state would be excessively involved in what a CSO should do. While we are sure that this was not the intention of the authors it may interfere with the independence of CSOs. Therefore we suggest to rephrase this section so that the state policies support the CSOs to improve the quality and scope of their services.
7. **4.2.3.c.1. regulates direct and indirect support to CSOs.** According to point 1, indirect support aims at promoting public benefit activities. Based on best comparative practices, the tax regime of CSOs supports not only the public benefit activities of CSOs but also economic activities or the activities of mutual benefit organizations that serve only their members. Also, the beneficiaries of various tax benefits (income tax, VAT etc) may differ. Therefore we suggest to take a broader approach and not limit this commitment only to promote public benefit activities.

Recommendation: We recommend to describe the goal of the Concept prominently in the beginning of the document. The authors may want to integrate Article 4.1. into previous chapters to keep this chapter more specific and practical. In addition, we recommend to 1) consider rephrasing or removing article 4.2.1.b; 2) consider rephrasing or removing 4.2.1.e; 3) remove article 4.2.2.d.; 4) rephrase 4.2.3. so the special nature and limited capacity of CSOs are considered; 5) complement 4.2.3.a. 1.c/ with the requirement of equity; 6) rephrase 4.2.3.c so that the state policies shall support CSOs in improving the quality and scope of their services; and 7) extend the scope of indirect and direct benefits under 4.2.3.c.1.

6) Implementation of the Concept

Issue: The Draft Concept corresponds with good practices in regulating the Implementation systems. We provide some suggestions how this section could be further strengthened to ensure the successful implementation of the Concept.

Discussion: One of the major challenges with policy documents for cooperation is to ensure their implementation. Therefore implementation issues shall be considered as early as the development of the Concept. The Concept addresses this concern through regulating the implementation systems under Article 5.2. According to this provision, *“Responsibility for civil society issues will be legally established within the law-making and executive branches of state power and units in charge of matters relating to cooperation between government and civil society organizations will be set up at central and local government agencies and local self-governing bodies of all levels”*. In addition, Article 5.2.2. foresees the establishment of a joint structure by CSOs that will be responsible for oversight, coordination and capacity building functions.

We commend the authors for recognizing the importance of a stable implementation mechanism and created its framework within the Draft Concept. This is consistent with good international practices that dedicate a separate chapter to the implementation. Examples include the Estonian Concept, the Macedonian, Moldovan, Croatian and other strategies. These strategies often regulate the two strongest guarantees of successful implementation:



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- 1) Institutional mechanism for coordinating and monitoring the implementation; and
- 2) the Action Plan that ensures that the commitments are put into practice.

1. Institutional mechanism for coordinating and monitoring the implementation

It is important to coordinate the implementation of the policy documents at all level to ensure that it is applied consistently and implemented successfully. We commend the authors to foresee the establishment of units that will be in charge of matters related to CSO-government cooperation. However, the Draft Concept remains silent on the role these units would play in the implementation of the Concept. We suggest to **regulate the key roles and responsibilities of the units** within the Draft Concept itself and the details can be unfolded in secondary legislation. The role of such units can be: implementation of the respective actions under the Concept; organization of public consultations; serving as a contact point for CSOs and so on.

It is important to also think of establishing a **single organ that oversees and coordinates the implementation of the Concept** on a permanent basis. Based on comparative practices this function is often delegated to an Office or Unit for cooperation with civil society within the Government or Parliament. The Units do not serve only as liaison bodies but they can be powerful leaders in providing strategic directions for the state as to civil society needs and fields it should support and in ensuring participation of CSOs in policy and law-making processes. Examples include Croatia (Office for Cooperation with NGOs), Macedonia (Government Unit for Cooperation with NGOs), Serbia (Government Office for Cooperation with CSOs), Montenegro (Office for Cooperation with NGOs) and others. Such offices/units can play a key role in developing strategies and action plans, coordinate and monitor their implementation. Besides, they are responsible for drafting and managing the process of consultation concerning laws that affect the sector; contributing towards the policy of ensuring the financial sustainability of the sector; distributing government funding or providing support to bodies which distribute such funds; coordinating different ministries, which are responsible for nurturing cooperation with the sector; the training and education of civil servants concerning government policies towards the sector and their implementation; encouraging civic participation, open governance, and social dialogue; promoting the activities of the sector; philanthropy and promoting partnerships on the regional and local level.⁷

In addition, **Article 5.2.2.** foresees the implementation of a **civil society body with oversight, coordination and capacity development functions**. Comparative practices show that the participation of CSOs in the implementation of strategies can help guarantee more successful monitoring and enforcement of strategies. Therefore in many countries, cross-sectoral councils and committees are established with the participation of state authorities and CSOs that are responsible for monitoring the implementation of policy documents. Best practice examples include the Joint Committee for the supervision of the Estonian Civil Society Development Concept (EKAK) in Estonia, the Council for Civil Society Development in Croatia and the Government Council for Cooperation with NGOs in Montenegro. Therefore we recommend the authors that the body foreseen in Article 5.2.2. includes both CSOs and the government which would be a practical example how CSOs and the government can

⁷ See further information in the comparative paper Dragan Golubovic, Eszter Hartay, Katerina Hadzi-Miceva Evans: "Keeping up the Momentum: Improving Cooperation between Public Institutions and Civil Society in the Western Balkans and Turkey". ECNL, TACSO, 2012. Available at: http://ecnl.org/dindocuments/439_Keeping%20up%20the%20Momentum_TACSO%20research.pdf



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work together. This would ensure direct participation of CSOs in the evaluation of implementation of the Strategy, in line with principle described under 5.1.5. The coordination of its work and financial capacity could be provided by the government (e.g., through the office for cooperation if such is established). It is important that the NGO members of such joint body is selected through an open, transparent and participatory process which is regulated by secondary legislation.⁸

Also, it is important to **regulate how the results of the implementation will be reported to the Government, Parliament and the public at large**. Reporting is important to show progress in achieving the objectives, hold stakeholders accountable, promote examples of successful implementation and adjust to changing circumstances. As an example, in Macedonia the ministries shall develop an Annual report on the implementation of the Strategy based on which the Unit for Cooperation develops a comprehensive report to the government about the performed activities and accomplished objectives. They developed a Plan for Monitoring and Evaluation of Implementation of the Strategy that includes the templates of the reports. In addition to the reports, in several countries, including Estonia and Moldova, a public hearing is organized in the Parliament on the implementation of the strategies where the NGOs and state authorities discuss the report (bi)annually.

2. Action Plan

Comparative practice shows that the other guarantee of successful implementation of policy documents is the adoption an Action Plan that ensures that the commitments are put into effect practically. The Action Plans usually include specific measures and activities under each commitment, identify the responsible bodies, set certain deadlines for the implementation and put forward indicators to measure progress. Such Action Plan complements the strategies in Macedonia, Moldova, Montenegro, Bulgaria and others. We suggest to regulate this requirement also under the Implementation systems and specify which body will be responsible to adopt the Action Plan and by when. This may fall under the competence of the joint body or the unit/office for cooperation. Action Plans can be adopted annually or for the period of the validity of the Strategy (Moldova: 4 years, Croatia: 5 years, Macedonia: 6 years).

Finally, it is crucial to provide sufficient financial resources for the implementation of the Concept. Some strategies specifically include commitment on this. As an example, the Macedonian Strategy declares that *“For the purposes of implementation of this Strategy’s measures, the Government and state administration bodies will plan funds in the Budget of the Republic of Macedonia, in the part pertaining to the budgets of the Government and state administration bodies. State administration bodies will integrate the measures in their strategic plans and allocate funds for their implementation.”*

Recommendation: Based on the above we recommend to further discuss the following questions:

1. **How the oversight and coordination of the overall implementation of the Concept could be guaranteed? Should a single organ appointed for this?**
2. **Whether a joint CSO-government structure should also be established?**

⁸ See further information on the selection of cross-sectoral bodies in this comparative research: Emina Nuredinovska, Katerina Hadzi-Miceva Evans: Criteria and Procedures for Selection of Civil Society Organizations in Cross-sectoral Bodies. OSCE, MCIC, ECNL, 2011. Available at:

http://ecnl.org/dindocuments/414_Criteria%20and%20procedures_EN.pdf



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3. **Who will provide the financial and human capacity for the permanent operation of a joint CSO-government structure? What would be the powers of this body?**
4. **What will be the form of reporting on the implementation of the Concept (annual report, public hearing, both, other)?**
5. **How concrete measures and activities will be regulated to put the commitments of the Concept into effect?**

7) Final provisions

Issue: The Final Provisions regulate the formulation and adoption of the Concept that we suggest to move to the beginning of the Draft Concept. Compliance with values and principles are also important commitments that can be considered to regulate earlier, too. The section on the Amendment of the Concept could include more details on how the process can be initiated and who is entitled to amend the document.

Discussion: We commend the authors for recognizing that the Concept is a living document that may need to be revisited and amended from time to time. Revisiting the document is in itself part of good-faith implementation as it expresses the commitment to continue improving the relationship between the state and civil society sector under changed circumstances. As a good practice, policy documents include provisions on their institutionalized review and modification. This mechanism ensures that the policy documents and their implementation plans will be reviewed periodically and also in case of rapid changes in the environment. The Draft Concept does not yet provide guidance on how the review and amendment process will be initiated. Also, it is important to add that the document shall be amended through the same process it was adopted.

Recommendation: We recommend to move Article 6.1. and 6.2. to the beginning of the Draft Concept and complement the section on the amendment of the Concept on the process.