

A stylized world map composed of a grid of dots in various shades of gray, with several dots highlighted in red. The map is centered on the page, behind the title and author information.

In Search of Sustainability

Civil Society in Ukraine

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- In terms of number and variety of organizations, as well as levels and range of activities, civil society and free media in Ukraine are the richest in the former Soviet Union, despite difficult institutional conditions and irregular funding.
- The strength of civil society in Ukraine has been tested by time. Confronting historical socio-political challenges, ranging from political impasse, internal civil war-like conditions to external threats and aggression, from the Orange revolution in 2004–2005 to the Euro-Maidan uprising that started at the end of 2013, civil society in Ukraine is marked by spontaneous unity, commitment, and speedy mobilization of resources, logistics and social capital. It benefits from a confluence of grassroots activism, social networks and formalized institutions.
- Despite its resilience in crisis, however, Ukraine's civil society is yet to develop sustainable interaction in policy dialogue and to have the desired impact on changing people's quality of life. State institutions lay down the terms of cooperation with civil society and not vice versa. In the current economic crisis, political turmoil and corruption, civil society has yet to become a systemic tool in policymaking, relying on outreach through grassroots communication, social and new media networks.
- Ukraine's civil society has campaigned mainly with non-violent means. Now, after the Euro-Maidan experience it is well placed to face the post-crisis development challenges; namely more transparency, overcoming social and political polarization and establishing a human rights-based approach to heal the broken social fabric. This will be successful only if, in parallel, genuine reform of the law enforcement and the judicial system is undertaken, with more assistance from the international and especially the European community.



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List of Abbreviations and Acronyms

CBO	Community based organizations
CIS	Commonwealth of Independent States
CSO	Civil society organizations
CSR	Corporate social responsibility
EC	European Commission
EaP	Eastern Partnership
EU	European Union
EURO-2012	European football championships co-hosted by Ukraine and Poland in 2012
FARE	Football against Racism in Europe
FES	Friedrich-Ebert-Stiftung (Friedrich Ebert Foundation)
NGO	Non-governmental organization
OSCE	Organization for Security and Cooperation in Europe
UAH	Ukrainian Hryvnia (national currency)
UEFA	Union of European Football Associations
UN	United Nations

1. Introduction

Civil society in Ukraine has evolved slowly but steadily in the past 23 years, increasingly enabling citizens' participation. From the early days of a post-totalitarian society when the concept and role of civil society in a democracy was poorly understood to the present day upsurge of what has come to be known as »Euro-Maidan« (literally »euro-square«), designating a wave of demonstrations and civil unrest in pursuit of human dignity starting at the end of 2013, there have been dramatic developments. In the first years of independence, most people perceived civil society to be synonymous with the new NGOs set up after the collapse of the totalitarian system. The old Soviet institutions – trade unions, professional groups and other interest groups enjoying wide membership, networks and infrastructure – fell by the wayside. Another notion emerged that any civil society organization must be opposed to the state sector. Therefore, until almost 2004, any NGO receiving funding from the state was regarded as a mouthpiece of the state and not a provider of socially important services. This has changed but the notion of civil society being synonymous with NGOs and charity foundations still dominates. This narrow definition also refers to institutions funded by external and internal donors, predominantly NGOs and charitable foundations.

Since 2000, awareness of civil society within a democratic state has grown. Experts from various fields use the term »civil society« to include political parties and the media, community groups, including those of minorities, cultural associations, as well as trade unions. Religious or faith-based organizations are slowly entering this realm as well. The problem of definition had an impact on the first stage of civil society development; namely the legislative framework, taxation policies, overall state policy towards civil society and statistical accounting in Ukraine. On the other hand, since 2004, the spontaneous organizing skills and community-level mobilization of the Ukrainian people have surpassed this institutional framework, demonstrating phenomenal activism in the context of twenty-first century eastern Europe and a post-totalitarian society. Participation in mass actions and movements for change has raised awareness that the realization of fundamental rights is possible through civil society initiatives.

This paper draws on previous work undertaken within the framework of preparing the OSCE report *Integration of Migrants in Ukraine. Situation and Needs Assessment*.¹

We attempt to show that while in the first decade, issues of statistics, funding, level and degree of participation, state policy towards civil society and their impact on decision-making were determined by the connotations and understanding of civil society, certain processes developed in parallel, such as interaction of civil society with businesses, the media, religious organizations and trade unions. Mass activism, informal networks and mobilization were also crucial in the second decade. All these factors enriched and deepened people's understanding and, taken together, shaped the critical legislative and regulatory framework for civil society development.

Apart from the available literature, documents and legislation on the subject, extensive use has been made of empirical data, information from social networks, numerous interviews and ongoing monitoring of events in Ukraine.

2. Evolution of Civil Society – Main Stages since Independence

For purposes of analysis the stages of the evolution of civil society can be divided into five periods: 1992–2000, 2000–2004, 2005–2009, 2010–2013 and end of 2013 until the present. The period from 1992 to 2000 was marked by the adoption of the Law on civic associations on 16 June 1992, which legalized many organizations formed during the early 1990s and reformed the old Soviet institutions, especially the trade and professional unions and societies. These old institutions provided stable linkages between individuals and organizations based on voluntary activity and citizens' enterprise. This period of reform shook up the existing social capital, a process that became particularly dynamic after the attributes of statehood began to fall into place: adoption of the Constitution in 1996, the Law on Local Self-government in 1997, introduction of the national currency in 1996 and other things. During this period several changes and amendments were made to the Law on Civic Associations, in 1993, 1998 and 1999 respectively.

During the second period, 2000–2004, further institutional development, as well as improvement and amendment of legislation followed. Importantly, the

1. Background paper. Civil Society in Ukraine. Online at: http://diversipedia.org.ua/db_files/Background-paper-Civil_Society_in_Ukraine_M.Ghosh.pdf

adoption of the Law on Political Parties in 2001 made a clear differentiation between NGOs and political parties. The Law on Civic Associations underwent amendments in 2000 and 2001 and two amendments in 2003 alone. Support from international donors to this sector increased consistently. Raised awareness, expertise and know-how grew considerably among those involved in civil society. In parallel, state institutions faced higher expectations and public demands. The media was largely privatized. Awareness among journalists of freedom of speech also grew. However, cooperation between this vibrant civil society and the state sector was not sufficient during the years 2000–2004. People's unmet expectations led to growing outrage directed towards democratically elected leaders, which culminated in the »Orange revolution« of November 2004 following allegations of election fraud.

The post-Orange revolution period of 2005–2009 witnessed further qualitative and quantitative shifts in civil society, from the tightly state-controlled Soviet-type social organizations, to independent citizens' initiatives at the grassroots level. Legislative improvements led to amendments of the Law on Civic Associations in 2005, 2006, 2008 and 2009. The Law on Political Parties underwent amendments each year during 2005–2009. The number and variety, levels of registration and scope of activities in civil society and the free media in Ukraine made them among the most vibrant and diverse in the former Soviet Union countries. Public councils were established in several ministries involving the institutionalization of civil society organizations, aimed at improving policy dialogue. However, this did not necessarily have a deeper and long-standing imprint on the policymaking process and had less than the desired effect on improving quality of life. Even though Ukraine has fared better than other CIS countries, its civil society was yet to emerge as a robust tool for defending rights and interests, due to a number of perennial problems. To start with, the public councils with NGO/CSO representatives set up in ministries functioned at the national level. At local level civil society organizations were involved as partners only on the whim of local government representatives. Thus dialogue at national level did not permeate to local level. Independent growth of civil society organizations was impaired for several reasons: (i) the ambiguous connotations of the term »civil society« restricting it to NGOs; (ii) cumbersome registration procedures; (iii) statistical confusion, omitting grassroots initiatives from the orbit

of civil society; (iv) problematic development of the middle class, which provides the backbone for civil society organizations; (v) state policy of paternalism and control with regard to civil society; (vi) funding and staffing problems; (vii) relations of dependency with other non-state entities, such as business, religious organizations and the media; and (viii) dependency on donors and a low level of acceptance by society in general.

The period 2010–2013 saw positive strides in terms of liberalizing legislation, easing registration, reporting, electronic submission of accounting and tax reports. This process addressed most of the grievances brought forward by civil society to various state bodies. Legislation was also improved in consultation with NGOs. A policy document on state policy in the area of forming civil society organizations dated 1 July 2010 outlined more public oversight and regular interaction with CSOs. The document also laid down that legal environment and institutional development should follow the Ministerial Committee of the Council of Europe's standard recommendations to member states with regard to the legal status of NGOs in Europe (No. CM/Rec 2007), as well as Ukraine's international human rights obligations and decisions of the European Court of Human Rights. Growth of civil society organizations was also boosted through the development of social networks, volunteer groups and citizens' alliances during 2010–2011, prior to the European Football Championships (UEFA EURO-2012) in June 2012. Even though a law on volunteer activities passed in 2011 imposed licenses for volunteer training and activities, local governments in the four host cities of Kyiv, Kharkiv, Lviv and Donetsk organized and trained volunteers in cooperation with local and national level NGOs as part of a grand capacity-building initiative.

A new Law on Civic Associations, adopted in 2012 and entering into force on 1 January 2013, was a step forward in many ways. Harmonizing legislation on civil society organizations was a prerequisite for the Association Agreement to be signed between Ukraine and the EU and also one of the criteria for developing the EU Eastern Partnership programme. However, this period also saw a strictly formal and/or selective approach leading to intimidation of oppositional civil society organizations by the authorities, selective justice and use of a corrupt court and law enforcement system. The growth of government-organized NGOs (»GONGOs«) or pro-government NGOs during this period took place not only in the

social sphere in schools and charity work, but also in the area of policy analysis, sociology and media. Officially, however, they were funded by private sources.

Civil society organizations were also divided over whether to pursue closer integration with the EU or to join the Eurasian Customs Union with Russia and other CIS countries. Increased Russian funding for NGOs, youth groups, media clubs and university seminars, which acted as lobby groups, was seen during this period. One of the biggest such groups was Ukrainskiy Vybir («Ukrainian choice»²). In parallel with this, the process of European integration drew many pro-EU civil society organizations together over several years, until on 29 January 2011 the Ukrainian National Platform of the Eastern Partnership Civil Society Forum (UNP-EPCSF)³ was established in Kyiv, uniting NGOs for advocacy and analytical activities in the implementation framework of the Eastern Partnership programme. Apart from consultation on the road map to an EU Association Agreement and EaP, the UNP-EPCSF was helpful in articulating the urgent need for better anti-corruption rules, visa policy, human rights and participation issues. Particularly noteworthy in this context are the results of a working group, «Ukrainian Democratic Barometer – 2013», which showed that while the majority of Ukrainians see democracy as the most desired type of polity for Ukraine, around 60 per cent are not satisfied with the way democracy is functioning at present. Social dialogue activities showed a distorted image: instead of seeking a balance of interests and compromise, employers' organizations are often controlled by large business and political interests backing the state, and focus on lobbying and echoing government positions.⁴

The period from the end of 2013 until the end of February 2014 presents a watershed for the further development of civil society organizations in Ukraine. On 21 November 2013, the government's decision to cease negotiations on signing the EU Association Agreement triggered a broad-based movement. Spontaneous protests by students, journalists, professionals and small and medium entrepreneurs reached a high water mark during this period. Lasting for three months, this move-

ment – called the Euro-Maidan (Euro-square) – involved unparalleled mobilization of a wide section of society, from the capital Kyiv and the western and central regions of Ukraine. The south and the east of Ukraine also experienced activism: even though a sizable section of the population in the latter regions incline towards Russia, they joined the other regions in their commitment to fighting corruption. This movement was initially non-violent but on 30 November–1 December police violence erupted and later on, on 19–22 January and 18–20 February, heavy fighting left 105 dead and thousands injured. The movement finally led to the then President fleeing office, together with his top aides and law enforcement ministers. An interim government was elected by the Parliament. For the first time in the history of Ukraine, many prominent CSO activists were invited to hold positions in the interim government.

The core issue of this large-scale public mobilization was the perennial problem of corruption and abuse of power by officials. To continue the grassroots work, a non-political platform bringing the civil society organizations together was established to tackle corruption, to unite the country and to promote democratic identity and European values. On 25 February 2014 this platform, named «Democracy for Ukraine»,⁵ was launched in Strasbourg by Ruslana Lyzhychko, Ukrainian singer and face of the Maidan civil protest movement, and Henri Malosse, French president of the European Economic and Social Committee. The agenda of this platform was – investigation of human rights violations in Ukraine in order to bring the perpetrators to justice, detecting and fighting corruption and reform of the police, prosecution and judicial systems.

Despite these positive developments, an unanticipated turn for the worse took place in Ukraine from end of February until end of March 2014 with the occupation and annexation of the Autonomous Republic of Crimea by Russia and the ongoing separatist unrest in the southern and eastern parts of the country. Crimean pro-reformist, pro-European civil society organizations could not exercise much influence, being few in number and low in technical capacity. Russian funded civil society organizations around the Orthodox Church of the Moscow Patriarchy and the Sebastopol based Russian navy units played a greater role in mobilizing people in favor of a

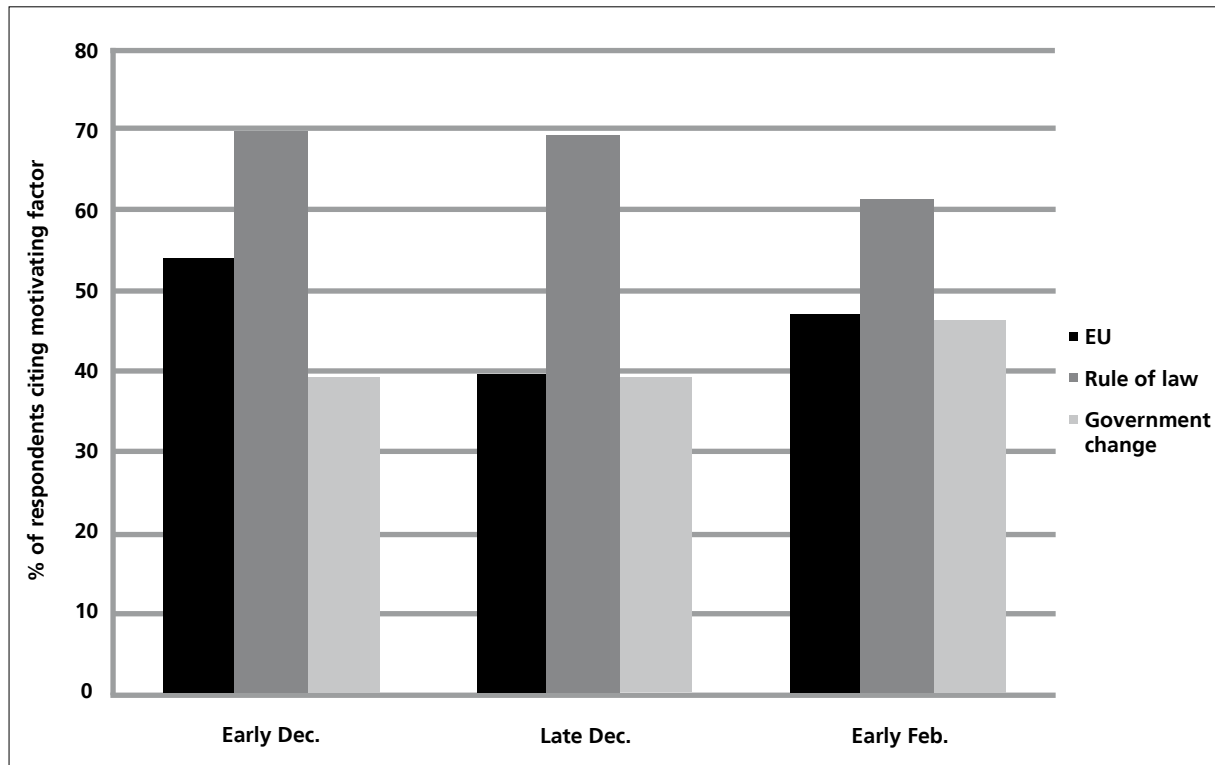
2. Online at: <http://www.chathamhouse.org/research/current-projects/russia%E2%80%99s-influence-civil-society-ukraine-armenia-and-moldova>

3. Online at: <http://www.eap-csf.eu/en/national-platforms/ukraine/>

4. Ibid.

5. Online at: <http://www.eesc.europa.eu/?i=portal.en.press-releases.30933>

Figure 1: What motivated you to go to Maidan?



Source: Euromaidan Facebook/Twitter page, survey by volunteers; giving more than one answer was allowed. December 2013–February 2014.

referendum, held under the influence of Russian armed forces. The referendum was held in violation of the Ukrainian Constitution and is not recognized by the UN or the EU. However, international pressure was unable to persuade Russia to withdraw from Crimea. Among the groups that have resisted this development are the Crimean Tatar community, Ukrainians and representatives of peoples formerly deported from the peninsula by Stalin in 1944 and other minorities. Their methods included boycotting the referendum, non-compliance with Russia with regard to citizenship and non-cooperation on other issues of civic participation. Offering assistance to these groups, especially to the Crimean Tatars for their legitimate rights as the indigenous people of Crimea (the Ukrainian Parliament ratified the International Convention on indigenous peoples to this effect, making all decisions taken on the territory of Crimea without the consent of the Crimean Tatars null and void). Ukraine's response to the Crimean occupation has centred on the Crimean Tatars, supporting social and political needs of thousands of internally displaced people. Setting up a Ministry for Crimean Affairs has also been proposed for institutional back-up. Donor support to Crimea is difficult

under the current Russian legislation on foreign agents, which is in force in Crimea as a Russian territory. Thus civic participation is the key to resolving the Crimean question.

This stage of civil society development is also marked by the further polarization of the eastern and the southern parts of Ukraine and the emergence of divisive separatist forces favoring unification with Russia. Reports of human rights abuses, kidnapping and disappearance of international observers, journalists and activists are widespread. Separatist sentiments and unification with Russia are supported by no more than 15 per cent of the population, however, as demonstrated by a poll by the Kyiv International Institute of Sociology in April 2014.⁶ This poll also shows that communities in these regions are more concerned with issues of local empowerment, lack of law and order and economic difficulties (here they differentiate clearly between the interests of ordinary people and those of big business) and are less concerned with language and cultural issues. Several internal and external

6. Online at: <http://www.kiis.com.ua/?lang=eng&cat=news&id=258>

factors have contributed to these developments and have encouraged the separatists to move ahead with their demands: (i) rejection by vested interests and big business of the policies of the interim government, which pledged to put an end to corruption and non-transparency of relations between business and the state; (ii) lack of trust among ordinary people in the interim government with regard to whether their real needs will be addressed in these regions; (iii) insufficient pro-reform civil society organizations to articulate people's real needs; (iv) aggressive propaganda by Russian state media; (v) difficulty faced by law enforcement in obtaining support of the local population; and, above all (vi) weak CSO infrastructure in the region, which is unable to balance the interests of the state and the private sector.

The socio-cultural characteristics of the predominantly Russian-speaking eastern and southern parts of Ukraine and of the western and central parts must be distinguished. The southern and eastern parts of the country were in the Russian empire and then the Soviet Union from the outset. Many people migrated to these regions from Russia and maintain deeper personal, economic (small and medium business), social and cultural ties with Russia. Tense relations with Russia have caused a lot of concern among the local population. In terms of participatory governance, these regions demonstrate a heavier reliance on state paternalism. The western regions of Ukraine became part of the Soviet Union only after the 1939 Molotov-Ribbentrop Pact, having previously been part of the Austro-Hungarian empire, as well as the Polish and Romanian states. Throughout history, self-reliance and not expecting too much from the state have been part of civic life in these regions. It is noteworthy that labor migration to Europe and Russia has been highest for the past 23 years from these regions in search of a better life.

At the same time, this picture of a divided Ukraine is more apparent than real; the differences are highlighted more in the media and by politicians, while many civic, people-to-people initiatives are trying to bridge the differences. As already mentioned, surveys show that only 15 per cent of people in the east and south of Ukraine want to join Russia.⁷ Ukraine will be strengthened and unified on these unified platforms, based on cooperation between civil society organizations.

7. Ibid.

A final remark about this stage is the radicalization of the far right and the far left groups, the football fans and the ultras, which has affected youth participation. Some radical right-wing extremists have entered the »Right Sector« and have supported the Euro-Maidan revolution. Without using their usual extremist rhetoric, they have attempted political legitimization. The same is true of the Ultra football fans. Their advocacy of violence, propaganda in favor of arms and clashes with the separatists led to escalation in Kharkiv and Odessa, with several casualties. As a result, the sympathy earned by the extreme right from apolitical Ukrainians during Euro-Maidan has declined significantly. In the medium and long term, it is expected that with the strengthening of the armed forces and law enforcement, whose task it is to deal with separatism and unlawful acts, Ukrainian society, fatigued with constant unrest and escalation, will opt for peaceful civic participation, while radicalism will have minimal support. Here again, the role of civil society can hardly be overestimated.

3. Functioning of CSOs in Ukraine: Main Indicators

Comprehensive indicators concerning civil society organizations are provided by the USAID CSO Sustainability Index Report⁸ for all countries of the CIS, eastern Europe and Central Asia. According to the 2012 assessments of this report, Ukraine's rank is medium overall, but in comparison with the countries of Caucasus – Russia, Belarus and Moldova – it is high, at 3.4 (the index ranges from 1 to 7, 1–3 indicating »sustainability enhanced«, 3–5 »sustainability evolving« and 5–7 »sustainability impaired«). The highest score for Ukraine is in advocacy (2.5), while most of the other indicators are in the same range, namely legal environment (3.5), organizational capacity (3.4), service provision (3.3), infrastructure (3.4) and public image (3.6). Ukraine's lowest score is in financial viability (4.3). Civil society organizations have increased in number over the years, as shown in Table 1.

The low financial viability of civil society organizations in 2012 reflects a funding decrease for 66 per cent of NGOs, and increases for only 23 per cent. CSOs are

8. 2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia, 16th Edition, June 2013, p. 209.

Table 1: Growth of Selected categories of CSOs in Ukraine 2008–2013 (as of January 2013)

CSO category	2008	2009	2010	2011	2012	2013
NGOs	54862	59321	63899	67696	71767	77366
Trade and professional unions	20405	22678	24649	26340	27834	30098
Charity organizations	10988	11660	12267	12860	13475	15065
Union of apartment-owners in multi-storeyed housing	6848	8549	10329	11956	13872	16283
Self-organized bodies	–	–	1152	1210	1306	1506

Source: State Committee for Statistics of Ukraine.

heavily dependent on external donors, the state and local budgets give only 8 per cent of total funding. In 2005, 34 per cent of NGOs implemented no state projects and only about 25 per cent implemented some at regional and local level.⁹

State funding of civil society organizations poses a number of problems. First, it is insufficient. In 2009, UAH 151.6 million was allocated to civil society organizations, 25 per cent less than in 2008. State funding for CSOs is not transparent, unstable and legally complicated. It also provides non-competitive funding for several categories of organizations, the handicapped, veterans, developing relations with diaspora and foreign states, sports and youth organizations. It also does not provide equal access and due oversight of the use of public funds; public reporting on use of funds is not obligatory. More than 44 per cent of direct budget funding of CSOs in 2009 went to eight organizations. Only nine out of 65 central executive bodies and 14 out of 465 towns organized competitive funding tenders in 2009. Participation in these tenders is difficult with regard to territorial status, initial funding from the bidder, as well as state certification of specific services, which most NGOs do not have and even obtaining such licenses or participation in tenders may cost them their non-profit status,¹⁰ which is difficult to appeal against in a court of law. Only three registered CSOs in 2009 (less than 0.004 per cent) won state tenders, in the amount of a mere UAH 2.96 million, compared with 26,000 businesses (5 per cent of the total number of registered companies) that received UAH

100 billion in state funds. Think tanks do not carry out state projects; the state uses the services of the National Academy of Sciences. The role of civil society is thus not high profile and this poses a serious obstacle to the effective performance of its statutory functions.¹¹

Apart from these quantitative criteria, people's participation is a sine qua non for the development of civil society organizations. In particular, the active voice of all people, manifested through participation in elections, local self-government and organization of campaigns forms the social basis for civil society. The 2001 Annual Report on the State of Civil Society compiled by the London School of Economics showed that only 14.2 per cent of Ukrainians had ever signed a petition, 18.9 per cent went to demonstrations and 9.1 per cent took part in protests. This apathy and low participation lasted till November 2004, as shown in research by the Razumkov Center, a Kyiv-based think tank: in 2003, 82.6 per cent said that they had never taken part in any civil action. Participation increased during and after the Orange revolution: 61.1 per cent spoke in favor of active civic engagement in 2008 as against 50.7 per cent in 2005; 57.2 per cent in 2008 supported democratic values against 49.6 per cent in 2005. At the end of 2011, 52 per cent were ready to protest.¹²

However, the high level of approval of civic engagement contrasts with a relatively lower level of trust in CSOs.¹³ Institutional membership in CSOs is low, 80 per cent are

9. Ibid.

10. Article 2 of the Law of Ukraine on Procurement of Goods, Services and Works at State Expense, No.1490 dated 20.02.2000.

11. Financing of NGOs in Ukraine: Analytical Research/Institute for Civil Society. Kyiv, 2005, p. 32.

12. Hromadska dumka pro pidsumky 2011 roku, online at: http://razumkov.org.ua/ukr/news.php?news_id=386

13. Shangina, L., Civil Activeness of the Ukrainian Middle Class, National Security and Defense, No. 7 (101), 2008, p. 37.

membership-based, but 24 per cent have only 11–30 members.¹⁴ The activities of civil society organizations are concentrated in lobbying and advocacy, which grew steadily to 44 per cent in 2005, and the target groups are young people (45 per cent), children (25 per cent), members of organizations (30 per cent), students and the public (23 per cent each).¹⁵

Participation and cooperation among various types of civil society organization, such as religious institutions, community-based organizations, political parties and the media enhance social cohesion. Religious organizations seldom cooperate with other civil society organizations. In Ukraine, stronger religious affiliations do not always lead to more social cohesion but rather divisiveness. The prevailing Orthodox Christianity has deep schisms, including the Ukrainian Orthodox Church Moscow Patriarchy (UOC-MP), Ukrainian Orthodox Church Kyiv Patriarchy (UOC-KP) and the Ukrainian Autocephalous Orthodox Church (UAOC), jeopardising the integrity of Ukraine, leading to regionalization and separatist tendencies. However, this divisiveness was muted during the Euro-Maidan uprising and various churches cooperated with each other; on some occasions even the UOC-MP cooperated with the others.

By contrast, political parties have developed formalized one-sided cooperation with civil society organizations, supporting and funding them during and after the elections. Political parties also set up their own ideological women's, youth, children's, environmental, cultural and other organizations, which operate as satellites. Cooperation with the media is different. Media organizations are mainly: (i) commercial projects funded by big business; (ii) media outlets of political parties or blocs and/or interest bodies, aimed at disseminating propaganda; or (iii) independent, ready to communicate with citizens in general. In the first and second cases, which are commercial or politically linked, the media does not interact with the community, but seeks to shape public opinion to its own ends. In the third case, inclusion and civil society organizations' cooperation with the media have brought in opinions from all sides and walks of life, with coverage of citizens' movements and other success stories. »Citizen's journalism«

14. State and dynamics of development of non-governmental organizations in Ukraine, 2002–2005. Counterpart Creative Center. Kyiv: Makros Publishers, 2006.

15. Ibid.

is not yet a popular phenomenon in Ukraine, but the media as a tool for increased citizens' participation is slowly emerging, as is evident from the experience of Hromadske TV, Hromadske Radio, Spilnobachennya TV, Istorychna Pravda, independent streamers telecasting events directly, numerous social media networks, portals and sites.

4. Fostering a Favourable Environment for Civil Society Development

For developing civil society organizations in nascent societies in transition from a totalitarian system to democracy, such as Ukraine, a liberal regulatory framework and sustainable finances are the most important issues. The adoption of a new Law on Civic Organizations on 19 April 2012 was a positive step. The new law, which came into force on 1 January 2013, removed many inconsistencies in the previous legislation.

The process for registering civil society organizations is now simpler; it should not take more than seven days and there are fewer grounds for rejection. Another important consideration is that registration is free. Fees are charged only for issuing duplicate certificates and recording changes in statutory documents. Second, territorial limitations on civil society organizations have been lifted; they can now function all over Ukraine. Previously, to obtain national status, a civil society organization had to have branches in more than 14 oblasts (regions) and have no fewer than 40 founders; in order to be international, there had to be a foreigner among the founders. Registrations were sometimes annulled; emergency aid to a particular region affected by a disaster could be given only by an organization registered to function in that region. Third, commercial activity for to cover costs and to perform statutory tasks for civil society organizations is now allowed. Earlier, the law required CSOs to set up commercial companies, even for the sale of their literature. By contrast, political parties were always allowed to sell items for fund raising, but paradoxically, they never engage in direct commerce and enjoy more financial sustainability from sponsors than community-based organizations or NGOs. Fourth, civil society organizations are also entitled to obtain funds from national and local budgets. Fifth, the earlier requirement that CSOs function for the fulfillment of their members' needs has also been dropped, which allows civil society

organizations to engage in ecological, educational and legal protection activities. Up to 1 January 2018, all civil society organizations have to harmonize their statutes and other documents with the new law and any changes made in the course of such harmonization will be registered free of charge.

International bilateral and multilateral donors have provided the lion's share of assistance to CSOs. Some analysts contend that dependency on external donor funding has led to an »NGO-crazy«, in which »professional leaders use access to domestic policymakers and Western donors to influence public policies, [although] they are disconnected from the public at large«. ¹⁶ On this view, NGOs are not sustainable and the same NGOs and groups repeatedly receive funding from donors. It should be mentioned, however, that international aid has been critical to the survival of the third sector and has created enormous capacity that may be tapped in the future. By contrast, due to their post-Soviet conservative thinking and paternalist attitudes towards all things not belonging or affiliated to the state, some state representatives, influenced by the recent Russian policy of flagging and obstructing international aid, view donor-funded NGOs as serving the interests of the West. Following precedents in Russian legislation, on 16 January 2014 an attempt was made by the Ukrainian Parliament (*Verkhovna Rada*) to restrict the functioning and funding of NGOs by passing the so-called »foreign agents law«, along with other laws curbing basic freedoms of speech and assembly. Public outrage erupted immediately and the Maidan uprising turned violent on 19 January 2014, leading to the first casualties among activists. As a result of these developments and international pressure the laws were annulled on 28 January 2014.

State funding of civil society organizations is also envisaged, in accordance with Cabinet of Ministers Decision No. 1049 dated 12 October 2011 »On conducting tenders for funding programmes (projects, events) implemented by NGOs and creative unions«. ¹⁷ Funding is provided for youth and children's NGOs at national and local level, as well as for NGOs within the framework of regional CSO development programmes, together with

mini-grants for city level cultural and social projects, competitions for self-organized bodies and organizations of tenants of multi-storey housing at city and regional level. Moreover, from 2014 onwards, state and local budgets were allocated sums to involve more NGOs and community-based organizations. Competitive bids are optional for local self-government bodies, but for all other categories they are compulsory, unless not waived by a local council decision.

In view of limited state funding, support from businesses in the form of philanthropic donations is possible. Links between businesses and CSOs have two forms: businesses support independent CSOs, or businesses themselves open smaller institutions or business associations, which are formally registered as CSOs, implementing marketing and training programmes, international co-operation and so on. Entrepreneurs also support non-profits to directly or indirectly engage in politics; this is particularly noticeable before and after elections. Local businesses and local CSOs more actively communicate through campaigns. On the national level, large foundations have been set up by the biggest industrial groups and by other wealthy and eminent persons in Ukraine. Their charitable activities are slow and small, but in the past few years have been growing steadily. On 16 June 2010 in Kyiv, a Memorandum of the Charities in Ukraine was signed in support of draft laws on charities and charitable organizations (No. 6343) and on Amendments to Certain Laws of Ukraine (to decrease taxation on recipients of charitable donations) (No. 6344) by the leading foundations: East Europe Foundation, Rinat Akhmetov's Foundation »Development of Ukraine«, the International Renaissance Foundation (George Soros), the Victor Pinchuk Foundation, the Olexander Feldman Foundation, the Charity Foundation »Ukraine 3000«, the »Open Ukraine« Foundation, the Olena Franchuk »nti-AIDS« Foundation, the Klitchko Brothers' Foundation, Caritas Ukraine, the Svyatoslav Vakarchuk Foundation »People of the Future« and others. The Ukrainian Charities Association unites many of the above. However, they represent large business groups and fund pet sectors, while real needs are not necessarily addressed. By contrast, recent precedents of collecting donations from the general public (crowd-funding) for the development of Hromadske TV, a public television network, Hromadske Radio, a public radio station, as well as some social media Euro-Maidan support networks obtaining donations from an online

16. Lutsevych Orysia. How to finish a revolution: Civil Society and Democracy in Georgia, Moldova and Ukraine. Chatham House Briefing paper. – January 2013.

17. Pro stan rozvitku hromadyanskoho suspilstva v Ukraini. Dopovid. Nationalny Institut Stratehichnikh Doslidzhen. Kyiv 2012, p. 23.

fund-raising facility »Spilnokosht« are commendable. This has broken the ice and the public has donated to media and educational projects.

Inclusion in decision- and policymaking process also enables civil society organizations to develop. Since 2004, several rules have been implemented to facilitate this process. The Law on the Bases of State Regulatory Policy in the Economy obliges compulsory publication of draft decisions, analysis of their impact in public hearings and only then finalization. A Cabinet of Ministers Resolution on Certain Issues of Public Participation in Formulating and Implementing State Policy, dated 15 October 2004, outlines public hearing procedures, opinion polls and annual consultations with the public.

The main organizers of such consultations are the public or civic councils in ministries and oblast (regional) level administrations, established by a Presidential Decree on Providing Conditions for Wider Participation of the Public in Formulating and Implementing State Policy, No. 854/2004, dated 31 July 2004. Further empowerment was made possible by Cabinet of Ministers Decision No. 996 of 3 November 2010, which stipulated taking into account all criticisms of civil society organizations and renewing the composition of councils. As of 1 January 2011 out of the 608 public councils needed 566 had been formed – 93 per cent – including various types of CSO (human rights, ecological, youth, social service, think tanks), as well as business associations, religious groups, trade unions and non-state pension funds. As of September 2011, 39 per cent of public council members in central executive bodies were NGO representatives, 32 per cent professional and business associations and 7 per cent charities. At oblast (regional) level, 67 per cent of public council members were from NGOs. In addition, there are the Law on Citizens' Appeals, dated 2 October 1996, and the Law on Access to Information empowering individuals to seek information and/or appeal against decisions or present proposals to authorities. The authorities are supposed to respond within a fortnight.

Overall, there are about eighteen laws that affect civil society.¹⁸ An online resource portal for CSO/government dialogue has been launched, within the framework of which legal, administrative and many other issues, news

and announcements are shared with all NGOs and civil society organizations.¹⁹ Laws facilitating and affecting community development include: the Law on Local Governance and the Law on Self-Organization Bodies. Voicing public opinion through national and local referenda is another method of participation. However, local referenda, which are possible only on local community issues, have not yet become a viable instrument of modern democracy. From 1991 to 2009, out of 150 such referenda, 55 were on administrative territorial issues, 36 renaming of places, 34 institutional issues, ending the term of office of local self-governments, 12 maintenance of locales, 12 land issues and 9 miscellaneous.²⁰ A local referendum could not be used in the case of the secession of Crimea because a court ruling clearly stated that local referenda are limited to local community issues and not national questions affecting territorial integrity.

Another enabling mechanism is the Law on Social Dialogue, 23 December 2010, facilitating joint decisions and consensus among parties representing employees, employers, the central executive and local government on issues of regulating labor, social and economic relations.

Social media and information as an enabling environment are manifested in several portals. While KrymSOS, EuromaidanSOS and Maidanua.org helped with human rights, displacement, kidnapping and tracking missing individuals, portals such as the www.civicua.org Gurt resource center were started a decade ago and function as a resource for fund seekers. A major grassroots fund raising initiative www.biggggidea.com has attempted to take fundraising and public relations to grassroots level. ATR, the Crimean Tatar TV channel, Hromadske TV, got funding from this portal. Interestingly, 53 per cent of the target audience of this portal are 25–34 years of age and 75 per cent have higher education. However, its audience is restricted to Kyiv (56 per cent), followed by Lviv (15 per cent). Coverage is low in Kharkiv (4 per cent) and Odessa (3 per cent) and not impressive at all in Simferopol and Donetsk (2 per cent each). The situation with regard to CSO empowerment is understandable, as is the deep divide in Ukraine.

19. Online at: http://civic.kmu.gov.ua/consult_mvc_kmu/news/article

20. Tsoklan V. I. Systema suchanykh dzerel constitutsiynoho prava Ukrainy: monograph / V. I. Tsoklan, V. L. Fedorenko. Lira, 2009, pp. 312–393.

18. Online at: http://civic.kmu.gov.ua/consult_mvc_kmu/news/article/1st/56

5. Current Crisis and Key Issues

The current political crisis has left Ukraine ravaged by rivalries between political camps. The disparities between the east and west, south and north of the country have been deepened by external interference from Russia and the constant threat to Ukraine's territorial integrity. Two diametrically opposed outlooks have collided: one favoring the paternalistic state, the other an empowered society, in which individuals are not given paternalistic support, but are ready to make their own choices. Although the latter has prevailed over the former so far, the situation has not yet achieved stability.

The political part of the Association Agreement with the EU has been signed, forming the basis of the interim government's agenda for change, which includes dealing with emergency threats to Ukraine's sovereignty, security, safety, law and order and the presidential elections. These are to be followed by changes in the Constitution. Meanwhile, decentralization by giving more power to the regions potentially will make room for a bigger role for civil society organizations as service providers and foster horizontal linkages.

Despite economic austerity, economic reforms are on the way and taxation is being modified. It is expected that small and medium-sized businesses will receive economic stimulus via the aid package from the EBRD and the IMF. Civil society organizations' roles should be strengthened in this context.

The key issues and risks for the sustainable development of civil society in Ukraine are:

- (i) external threats to the territorial integrity of Ukraine;
- (ii) polarization of CSOs on the use of violence and continuation of the »Maidan inertia«: informal armed youth groups raises the risk of a deepening of extreme right ideologies among these groups;
- (iii) insufficient material and financial resources at the disposal of the sector;
- (iv) shifts and/or reversals in progressive pro-CSO policy, slow implementation of administrative reform and reform of local governance;

- (v) preservation of the existing imperfections in the legislation regulating CSOs, preventing them from becoming full partners in development;
- (vi) failure to attend to the regional disparities between the east and the west of Ukraine with the help of civil society organizations;
- (vii) inclusion of the issue of Crimea and its inhabitants in all government programmes and addressing them by means of CSOs, ranging from help for displaced people to protecting the legitimate rights of Ukrainian citizens in Russian-occupied Crimea. These will include access to Ukrainian educational and capacity-building programs by CSOs operating in Crimea prior to the occupation.

6. Conclusions and Recommendations

Of all the countries of the CIS, Ukraine has the most vibrant civil society by international standards, developed over the past two decades. In terms of number and variety of organizations, as well as levels and range of activities, civil society and free media in Ukraine are the richest in the coalition of the former Soviet Union, despite difficult institutional conditions and irregular funding.

The strength of civil society in Ukraine has been tested by time. Its fight against rights violations and corruption has often experienced intimidation from law enforcement agencies. Confronting historical socio-political challenges, ranging from political impasse, internal civil war-like conditions to external threats and aggression, from the Orange revolution in 2004–2005 to the Euro-Maidan uprising that started at the end of 2013, civil society in Ukraine is marked by spontaneous unity, commitment, and speedy mobilization of resources, logistics and social capital. It benefits from a confluence of grassroots activism, social networks and formalized institutions.

Despite its resilience in the crisis, however, Ukraine's civil society is yet to develop sustainable interaction in policy dialogue and to have the desired impact on changing people's quality of life. State institutions lay down the terms of cooperation with civil society and not vice versa. In the current economic crisis, political

turmoil and corruption, civil society has yet to become a systemic tool in policymaking, relying on outreach through grassroots communication, social and new media networks.

Ukraine is a European country characterized by severe inequality. Concentration of resources in a few hands had been the legacy of two decades of post-Soviet development. While approaching this issue of concentration of wealth, the international community has been less attentive to fair employment practices and adherence to labor laws on the part of big business. To them, CSR reporting, grants to philanthropic charities and cultural projects conducted by oligarchs have been more important than developing fair trade and reinvestment practices, favorable labor laws and allowing trade unions to set up in enterprises. This has led to disenchantment among the activist community and the weak left of the political spectrum.

International donors have also paid insufficient attention to the overall framework of governance in the country, informal networks and almost century old Soviet practices, giving rise to the current enormous corruption. The Euro-Maidan movement's activism has been the tool of the new generation, unbiased by these Soviet realities. Along with them came the older generation from the west and center of Ukraine – which was swallowed up by the Soviet Union only in 1941 – who remember the political underground.

Priorities for civil society development in Ukraine include the following:

1. To cope with possible policy reversals, the level of activism and engagement should be kept high through participation and decentralization, free speech and assembly. Thus, fundamental freedoms and human rights remain the top priority for civil society for the coming few years.
2. To mitigate the political radicalization of youth participation, reference to the positive role of the CSOs should be made in a historical perspective and memory is an important component to revive the best traditions of civil society organizations present in Ukraine from the eighteenth and nineteenth centuries until the crisis of 2013–2014. This will help pre-

vent »creative« interpretation of history from the far right, as well as by some separatist circles of vested interests seeking political legitimacy.

3. To improve the quality of rights protection by stimulating growth in the number of organizations and the number of people covered by them.
4. To widen the spectrum of social services to be provided by civil society organizations and to empower them with appropriate national and local budgetary allocations.
5. To widen the participation of civil society in decision making and oversight. To achieve this, the Law on Information should be amended, widening public access to information and limiting the scope of information that may be deemed classified by the state.
6. To develop philanthropy, set up development funds increasing state and private funding of civil society. Amendments to the Law on Taxation of Enterprise Profits, the tax laws on physical entities and fund raising are necessary to achieve this.
7. To develop local governance and democracy at the grassroots level and encourage the formation of communities and neighborhoods.
8. Donor strategies should be more sensitive to the changes taking place in Ukraine and avoid repeat funding for the same NGOs. Donors should also encourage the use of endowments and other facilities and allow the recipients to take decisions on their funds.

Ukraine's civil society is uniquely experienced in non-aggression and using non-violent tools for making civil demands, even though strikes and economic blockades are not yet common practice. It is well placed to face the post-crisis development challenges: more transparency, overcoming socio-political polarization and establishing a human rights-based approach to heal the broken fabric of a fragmented community. This will be successful only if, in parallel, genuine reform of the law enforcement and the judicial system is undertaken, with more assistance from the international and especially the European community.



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