

GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

Enabling Reform: Lessons Learned From Progressive NGO Legal Initiatives

Introduction

Global Trends was established to track and provide news on legal developments affecting NGOs, and particularly, legal restrictions on the work of NGOs. We have surveyed, e.g., the types of restrictions that are increasingly imposed on NGO activities and examined restraints on global philanthropy and NGO participation in public policy debates.

In recent years governments in various parts of the world have taken steps to impose increasingly restrictive laws on civil society. During a matter of weeks in November – December 2010 various countries either proposed or enacted six restrictive NGOs laws. It cannot be denied that forces opposing persons' freedom to associate and participate in public policy decision-making have been emboldened. For example, a growing and ominous trend has been the distortion by governments of measures adopted by the international community to strengthen international development efforts, such as the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action. Such measures have been used as an excuse to *restrict* independent funding and to funnel aid through government-endorsed and planned programs.

At the same time, legal constraints represent only part of the story. In several countries, NGOs and governments have worked together to make enabling reforms to the laws governing NGOs. In this issue of *Global Trends*, we examine successful legal reform strategies employed in Azerbaijan, Iraq, Kosovo, Macedonia, Mexico, Russia, and Serbia. For each country we provide a brief description of the substantive reforms and their significance, as well as highlights of the crucially important participatory process of engagement that led to reform. We conclude by examining lessons that can be learned by advocates seeking to advance more enabling laws for civil society.

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Iraq

In January 2010, the Iraqi Council of Representatives approved the *Law on Non-Governmental Organizations* (Law 12 of 2010). Law 12 of 2010 replaces both the Coalition Provisional Authority's *Order Number 45 on Non-Governmental Organizations* (CPA Order 45) and the Ba'athist-era *Law on Societies* (Law 13 of 2000) and *Law on Foreign Societies* (Law 34 of 1962).

Significance of Law

Law 12 of 2010 is a significant improvement over CPA Order 45 as well as the older Ba'athist-era laws. Moreover, Law 12 has potential to serve as a model throughout the region, because it is substantially more compatible with international law and best practices than the laws governing civil society in most countries in the Middle East and North Africa (MENA). The following are some of the significant progressive provisions of Law 12 of 2010:

- Recognizes the right to form an NGO as well as the right to associate without forming a legal entity;
- Sets forth objective rules governing registration and operational requirements. This limits the scope of government discretion to refuse registration and interfere without cause in the internal operations of NGOs, providing a secure legal basis for the continued expansion and development of Iraqi civil society;
- NGOs are permitted to engage in economic activities to sustain their programs, as well as domestic and foreign fundraising, an important reversal of the growing regional trend to restrict cross-border philanthropy;
- Explicitly recognizes the right of NGOs to "be affiliated with or join an organization, commission, club, firm, or network based outside Iraq" (Article 21);
- Does away with inappropriate criminal punishments for minor violations of the NGO law, encouraging more individuals to form and volunteer in NGOs.

It must be noted that, while it represents an extraordinary achievement for Iraq and the region, Law 12 of 2010 is not without flaws. It includes several restrictions on the right to associate of non-Iraqi citizens. For example, foreigners are prohibited under most circumstances from founding an NGO in Iraq, and from comprising more than 25% of the members of an Iraqi NGO. Branches of foreign organizations, unlike domestic NGOs, must provide detailed lists of their staff and members, a requirement that has been criticized as potentially endangering the staff of organizations working in sensitive areas such as protection of human rights.

Legal Reform Process

Iraqi NGOs worked for six years to design a basic legal framework for civil society that was consistent with international conventions on the right to associate, engaging in the process relevant ministries and others in the political structures. In March 2009, their efforts appeared to suffer a setback when the Ministry of State for Civil Society introduced into Parliament a draft NGO law containing many restrictive provisions. This proved to be a defining moment, however, as a large coalition of Iraqi NGOs, supported by international organizations, including ICNL and the United Nations Office of Project Services (UNOPS), quickly mobilized to develop and implement a legal reform strategy. This coalition engaged legislators on improving the restrictive draft proposed by the Ministry. The coalition sought expert technical assistance to support their proposed improvements to the draft, and engaged the international community where appropriate. As a result, the NGO coalition was able to convert a situation in which it was threatened with restrictive legislation into an opportunity to promote a progressive NGO law.

These activities resulted in the publication of a new draft law by the end of 2009. Nevertheless, as the Council of Representatives prepared for parliamentary elections in 2010, it appeared that the revised draft would not come up for a vote. Beginning in early January 2010 the coalition of Iraqi NGOs and their international allies made a final effort to lobby Parliament to schedule a vote, even going so far as to reach out to foreign governments, who sent an international delegation to the Speaker of the Parliament pressing him to schedule a debate that could lead to final consideration of the law. Iraqi and international NGO leaders also met with the Presidency Council, MPs, and leaders from all major political party blocks in an attempt to build a groundswell of support for the revised law.

In the end, effective NGO advocacy resulted in a vote on the new law scheduled on the very last day before the outgoing Parliament was dissolved. To the great relief of Iraqi NGO leaders, the new law was enacted by an overwhelming parliamentary majority on January 25, 2010.

As of this writing, an interim implementing regulation for the new law is in place, and permanent implementation rules are under discussion.

Kosovo

On February 17, 2008, Kosovo declared independence. The new country was faced with a need to develop new laws, in particular to replace the remaining UNMIK regulations, including the one governing the registration and operation of NGOs. The *Law on the Freedom of Association in Non-Governmental Organizations* was enacted by the Assembly in February 2009 and signed by the President on March 6, 2009. The law builds upon the enabling features of the law previously in effect – UNMIK Regulation 1999/22 on the *Registration and Operation of Non-governmental Organizations* – and establishes a more comprehensive legal framework governing NGOs.

Significance of Law

The *Law on the Freedom of Association in Non-Governmental Organizations* preserves the enabling aspects of the law governing NGOs in Kosovo. The law explicitly recognizes the right of individuals in Kosovo to associate freely. In addition, the law

- Recognizes the right to freedom of association, including the right to form an NGO as well as the right to associate without forming a legal entity;
- Recognizes two forms of organization – associations and foundations – consistent with European practice;
- Continues the registration process in existence since 1999, which puts in place simple procedures and limits government discretion to deny an application to register;
- Allows NGOs to conduct advocacy, and policy research, while limiting NGOs from participating in political campaigns or political fundraising; and
- Allows NGOs to engage in fee-generating activities to support their missions.

It is important to note that, despite its generally progressive contents, the enacted *Law on the Freedom of Association in Non-Governmental Organizations* contains problematic provisions. Most seriously, it limits the types of organizations permitted to achieve public benefit status and thus claim income tax exemption. Now, only those organizations that provide significant benefits free of charge or at less than fair market value to the disadvantaged are eligible. In most countries in the region, public benefit status extends to NGOs conducting a wide range of charitable and other socially beneficial activities.

Legal Reform Process

The law reform process was initiated by a working group organized by the Prime Minister's office in 2005 while Kosovo was still a protectorate. The new law was intended to replace the UNMIK regulation with an indigenous Kosovar Law adopted by the Assembly.

Five days before the Assembly's vote in 2005, several Assembly members proposed the addition of three restrictive provisions. These would have:

- Made registration of all groups mandatory – a provision inconsistent with the International Covenant on Civil and Political Rights Article 22, protecting the right to freedom of association.
- Required NGOs to re-register every two years, which would have burdened NGOs and introduced opportunities for the government to deny registration to unpopular groups.
- Prohibited NGOs from making “loans and . . . other issues related to giving loans for illegal profit-making.” While this provision is ambiguous, it could have been interpreted to bar microfinance organizations from lending.

The Assembly enacted the law with these provisions. However, NGOs immediately mobilized a successful campaign to convince the UNMIK SRSG not to sign the law, thus preventing its adoption. Over

100 NGOs signed a petition, and advocates submitted a critical analysis of the restrictive amendments to the UNMIK Office of Legal Adviser. They also engaged the support of multilateral institutions in their opposition to the law. As a result, the law was never adopted. When the Assembly once again considered the *Law on Freedom of Association* following independence, the NGO community joined the consultations prepared to address the Assembly's concerns.

In April 2010, the Government of Kosovo circulated proposed amendments to the *Law on Freedom of Association* that would have substantially limited the purposes for which an NGO could be registered. Only groups established for public benefit purposes, as opposed to clubs and other groups serving their members, would be eligible for legal personality. Because the proposed amendments are inconsistent with international conventions protecting the right to associate, threats to the freedom of association remain possible even in Kosovo's relatively progressive legal environment.

Macedonia

On April 12, 2010 the Macedonian Parliament enacted the *Law on Associations and Foundations* (2010 NGO Law), which replaces the 1998 Law on Citizens Associations and Foundations (1998 NGO Law) and its amendments from 2007. The law creates a basis for further reforms to strengthen the functioning and contributions of the civil society sector in Macedonia.

Significance of the Law

The new law harmonizes Macedonian legislation with the European Convention on Human Rights and Fundamental Freedoms and Recommendation CM/Rec (2007)14 of the Committee of Ministers to Member States on the Legal Status of Non-Governmental Organizations in Europe,¹ as well as regional best practices. The most important changes include:

- NGOs now have the right to engage directly in economic activities related to their purposes. This will enable them to generate income to sustain their operations without the need to spend resources to establish and manage a separate company, as previously was required.
- Legal entities and foreigners are permitted to form associations. Before, legal entities and foreigners were permitted only to establish foundations.
- The new law removed the penalty on individuals who fail to register organizations (while remaining silent as to the status of "informal" organizations).
- Improved provisions on NGO governance clarify the roles of governing and management bodies.

¹ Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies)
<https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

- The law introduces the concept of “public benefit status” as a prerequisite for receiving tax benefits, a change that for the first time permits tax exemptions for qualified NGOs on income from their activities.

The draft law contains several other provisions that will improve the legal environment and sustainability of NGOs. For example, (1) it introduces the rights of minors to be founders of associations under certain conditions, expanding the right of association to youth; (2) it eliminated the fine for organizations that do not inform the Central Registry that they have become members of a union or an international organization; and (3) it removes the requirement for foreign organizations to obtain approval from the Ministry of Foreign Affairs if they wish to establish branches.

Legal Reform Process:

The reform process for the 2010 NGO law began in 2002, and involved several working groups established by the Ministry of Justice. These working groups were composed of ministry officials and NGO representatives, and were supported by international experts, including ICNL. The working groups assessed the existing legal framework, identified the challenges presented by implementation of the prior law, and highlighted priorities for reform.

The process of drafting the law included the frequent participation and consultation of NGOs in the process, at least until 2007, when Parliament proposed 2007 amendments to the Law on Citizens’ Associations and Foundations. These amendments were made without significant input from NGOs, and consequently failed to address many issues important to the NGO community.

The NGOs quickly organized themselves to respond to this challenge. The Macedonian Civil Platform, a coalition of NGOs, gathered and launched an advocacy process to prevent the adoption of these amendments. Since the Parliament and Government were resolved to proceed with the amendments, the coalition mobilized its members and other NGOs and with their support submitted improved versions. They relied on the NGO-led Office for Collaboration between the Parliament and NGOs as a tool to circulate the coalition’s proposed text, hold meetings with selected Members of Parliament, and participate in meetings of Parliamentary Committees. To ensure a hearing by key decision-makers, they jointly sent a letter to all Members of Parliament, the Prime Minister, and Ministry of Justice expressing their concern. As a result of the focused and concerted efforts of the group, Parliament adopted some revisions to the submitted amendments, significantly improving the enacted version.

While the 2010 NGO Law is generally enabling, one potential shortcoming involves provisions relating to “public benefit” status. The power to grant or revoke public benefit status rests with the Cabinet of Ministers, with possible politicization of the process. The Cabinet of Ministers will make decisions based on the recommendations of a Public Benefit Commission composed of members of different ministries and two representatives from the NGO community.² The success of the public benefit system will

² The process and criteria for selection of the members of the Commission will be prescribed in a regulation by the Ministry of Justice.

depend on how these provisions are implemented appropriate rules and procedures will ensure a transparent, fair, and nonpolitical process of decision-making.

Serbia

In July 2009, the Serbian Parliament approved the *Law on Associations* (LoA). The Parliament's decision marked the culmination of a long effort to bring the legal framework for NGOs in Serbia in closer alignment with international law and best practices.

Significance of the Law

Before the LoA, NGOs in Serbia operated under an archaic web of laws enacted during the Socialist Federal Republic of Yugoslavia (SFRY). The 2009 LoA improved the legal framework by addressing significant flaws in the legal framework of NGOs:

- It reduced the number of natural or legal persons required to establish an association from ten to three; it allowed both foreign legal and natural persons to be founders; and it reversed the longstanding prohibition on informal associations (those which did not seek to register and thereby acquire the legal entity status) and now permits informal groups to operate.
- It establishes rules governing the establishment of branch offices of foreign associations operating in Serbia.

Legal Reform Process

Since 2000, there have been a number of initiatives to modernize the legal framework in Serbia. Until the LoA was enacted in 2009, Serbia was among the few countries in Europe whose legal framework for NGOs that had not yet undergone comprehensive reform.

From the very outset, the process of drafting the Law was largely transparent. To prepare a draft Law, the Ministry of State Administration commissioned a working group which was composed of representatives of the Ministry, legal experts, and NGO representatives. Significantly, the Minister headed the working group and actively participated.

A draft Law on Associations was prepared and refined in 2001 and 2002. During the eight years between that time and the law's enactment, NGO proponents encountered many setbacks, largely caused by macro political factors. Although vested stakeholders in the NGO community have recognized the need for reform, their ability to push for reform has waxed and waned. However, the fact that many of the reforms pertinent to NGOs are a part of international commitments made by Serbia helps catalyze the process. For example, when Serbia became a member of the Council of Europe, it had to commit to ratifying the European Convention on Human Rights and drafting a new law on association, to comply with the Convention.

In March 2006, the Ministry re-convened the working group, to present a revised version of the draft LoA, which the Government subsequently approved and submitted to Parliament. With the formation of a new Government in the spring of 2007, a further revised draft Law on Associations was revived as a priority initiative finally enacted on July 8, 2009.

Mexico

Since 2007, several changes to the legal framework governing NGOs in Mexico resulted from a successful legal reform campaign spearheaded by a coalition of stakeholders. The coalition sought improved the laws and policies that affect the growth and sustainability of NGOs, as well as increased citizen participation and expansion of philanthropy in Mexico.

Significance of Reforms:

A group of NGO leaders, academics, and other stakeholders formed a working group, and developed a legal reform strategy focused on improving the fiscal laws and policies affecting NGOs and their donors in Mexico. The working group eventually expanded to include government representatives from Mexico's tax authority, the Servicio de Administracion Tributaria (SAT), and Treasury, Ministerio de Hacienda (Hacienda). Through this unprecedented collaboration, the following improvements were made:

- The Mexican Congress included tax deductions for corporate philanthropy in its new Corporate Flat Tax, Impuesto de Contribución Empresarial de Tasa Única (IETU). In addition, the group convinced Congress that the new tax should not be applied to other sources of income of NGOs with tax exempt status.
- The universe of Mexican NGOs eligible for tax exempt status was expanded to include civic activist organizations, additional classes of legal aid providers, organizations that serve migrant and refugee communities, and gender equity groups.
- The SAT clarified that donations to Mexican tax exempt organizations are tax deductible for their U.S. donors under the terms of the US-Mexico bilateral treaty. These official statements have enabled several major U.S. donors to rely on the bilateral treaty and make qualifying donations.
- The SAT created a website intended to streamline the reporting process for tax exempt organizations, and to provide public access to information about these organizations.
- The total numbers of tax exempt organizations increased by over 6% within the first six months after the categories of eligible organizations were expanded, and
- The time for the SAT to approve applications for tax exempt status has decreased from an average of a year to an average of just one and a half months.

Legal Reform Process:

Legal reform in Mexico can be a slow and arduous process. The Mexican legal framework governing NGOs is a complex web of laws and regulations that are often not harmonious. In addition, the Mexican political environment is unpredictable. Political factors, such as immobile government opposition, political expediency, or shifting alliances, can delay or defeat adoption, or result in weakened laws. Nonetheless, incremental reforms have been achieved through the adoption of a fluid and multi-layered reform strategy.

While the reform coalition has achieved some successes in improving the fiscal framework, many other problems remain unresolved. Under the current system, applicants for tax benefits (becoming an “authorized donee”) still must first obtain an accreditation certificate from among dozens of possible Federal or State “authorizing” ministries before applying to the tax authority (the SAT) to receive tax benefits. Rules prohibit administrative expenditures over 5% of total income and limit the deductibility of any donations to 7% of net income. Finally, the Income Tax Law and other laws affecting NGOs have not been harmonized.

Azerbaijan

In early June 2009, the Chairman of the Azerbaijan Parliamentary Committee for Legal Policy and Statehood submitted to Parliament amendments to five laws³ including the *Law on Non-governmental Organizations* (Public Associations and Foundations) (draft amendments).⁴

Significance of the Law

The draft Amendments contained serious shortcomings that contradicted fundamental democratic principles of human rights and equality, and to international laws.⁵ However, the amendments adopted on June 30, 2009 in fact represent a significant improvement over the draft initially proposed to Parliament because of the successful legal advocacy strategy adopted by an ad hoc coalition of international and local stakeholders. As a result of this coalition’s advocacy campaign, many restrictive provisions were modified or eliminated. Most significantly,

- significant fines for NGO managers for infractions, and for individuals or legal entities “speaking or acting” on behalf of an unregistered NGO, were removed;
- a prohibition on NGOs from generating more than 50% of their income from foreign sources, and more than 50% from economic activities, was eliminated;

³ The four other laws are the Law on Mass Media, the Law on Grants, the Law on State Fees and the Code of Administrative Offences.

⁴ The NGO Law was adopted on June 13, 2000 and subsequently amended.

⁵ International Covenant on Civil and Political Rights (ICCPR), ratified by Azerbaijan on November 13, 1992, and European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR), ratified by Azerbaijan on April 15, 2002.

- the required registered capital for foundations was reduced from 50,000 AZN (about US\$62,500) to 10,000 AZN (about US\$12,500), and
- foreigners living in Azerbaijan retained the legal right to establish NGOs.

Legal Reform Process

Immediately after the amendments were submitted to Parliament, a coalition of international and local NGOs, donors, and other stakeholders developed a strategy to improve the draft Amendments. Members of the coalition jointly and separately petitioned the President of Azerbaijan, Parliament, and the Azerbaijani Ambassador to the United States.

On June 19, the NGO Council posted online its suggestions for improving the Azerbaijan NGO Draft Law for public discussion, drawing on expert technical analysis. The draft NGO Law had been scheduled for consideration, but because of the effective advocacy campaign of the NGO community, it was postponed to June 30th, 2009.

While over 80 per cent of the coalition’s recommendations were accepted in the law as finally enacted several restrictive provisions remain. New financial reporting requirements have the potential to on NGOs, and foreign NGOs may only operate in Azerbaijan on the basis of an agreement negotiated with a government agency, although the Law does not provide clear criteria for the agreement.⁶

Russia

On April 7, 2010, the President of the Russian Federation, Dmitry Medvedev, signed the *Law on Introducing Changes in Legislative Acts of the Russian Federation regarding the Support of Socially Oriented Noncommercial Organizations* (SOO Law). Under the new law, socially oriented organizations (SOOs), a status comparable to public benefit organizations (PBOs) in some countries, will be eligible for governmental support and preferential tax treatment.

Significance of the Law

The passage of this legislation is an important step for the NGO sector in Russia, providing not only material support, but also official acknowledgment of the sector’s importance to Russian society. Under the new law:

- Socially oriented organizations (SOOs) – a status comparable to public benefit organizations in some countries – are eligible for government support and preferential tax treatment; and
- NGOs engaged in a broad range of activities, from traditional charitable work to the provision of free-of-charge legal aid and the protection of human rights, are eligible for this status.

⁶ USAID, 2009 Sustainability Index for Central and Eastern Europe and Eurasia (2010), p. 61.

Legal Reform Process

Since 2007, NGOs operating in Russia have sought legal recognition for SOOs. An international coalition of NGOs provided informational and technical support to the local NGO advocacy initiative, including several sets of written recommendations and comparative law studies, to key governmental bodies. These documents were also posted on the internet, and were disseminated via mailing lists along with comments on the law, and a brief overview of public benefit organization status in different countries.

Although an important step, the affect of the SOO law will only be determined after implementation has begun. For now, the legal reform advocates have turned their attention to the implementing rules and regulations that will determine important issues like SOO eligibility for particular kinds of government support.

Key Common Elements of Successful Legal Reform

The experiences of these countries yield the following crucial lessons regarding a successful law reform advocacy process:

The importance of broad-based participation in a law reform campaign

Broad-based participation in support of progressive NGO legislation helps to ensure that those governed by a law will be heard by decision-makers, and will support and will comply with the legislation once it is enacted. NGOs that garner broad support, not only within their sector, but also from media, businesses, and their communities stand a better chance of convincing government officials and legislators that their positions enjoy popular support. Participation also ensures that legal and practical problems with legislation, as well as acceptable solutions, are identified before a law is enacted.

In each of the situations examined, NGOs effectively made efforts to engage a wide range of supporters.

- In **Iraq**, leaders of the campaign to improve the government's March 2009 draft engaged more than 7,000 Iraqi NGOs in support of their effort. This extensive coalition launched a massive public education and outreach campaign to pressure MPs to support the adoption of a more enabling NGO law, including debates in the media; distribution of publications and brochures explaining the value and purpose of civil society in post-war Iraq; and showings of documentaries on civil society law best practices.
- In **Kosovo**, when the Law on Freedom of Association was first proposed in 2005, the committee within the Prime Minister's office charged with drafting the law initiated engagement with the NGO community to better understand their experiences with the existing law and the need for revision. Three public hearings at various locations throughout Kosovo were organized with extensive NGO attendance. A number of the changes proposed by the NGOs were then incorporated in the draft submitted by the Prime Minister's office to the Assembly. Subsequently, several NGO sector representatives testified at Assembly hearings on the law.

When the law was revived after Kosovo's independence, the relevant parliamentary committee received NGO input on an informal basis up until the day of the laws' enactment.

- In **Macedonia**, during the early stages of drafting, the Ministry of Justice convened several working groups to work on various aspects of the draft amendments to the Law on Associations and Foundations, and frequently vetted drafts with NGOs. When ultimately time came to submit the 2010 draft law to the legislature, however, the Government unexpectedly adopted a draft without seeking NGO input, so that only the two NGO representatives who were members of the working group were consulted on the draft prior to adoption. Once the Government sent its approved draft to the Parliament, however, the Ministry organized two discussions with a broader audience. NGOs also organized discussions and meetings among themselves about the draft law. Consequently, the law was improved during the parliamentary process. This collaboration with a wider group of NGOs significantly influenced the positive results. Nevertheless, lack of full participation by the wider NGO community and other stakeholders decreased the level of trust between the Government and the NGOs.
- In **Serbia**, The Ministry of State Administration commissioned a working group to prepare a draft law, which was comprised of representatives of the Ministry, legal experts, and NGO representatives. Significantly, the Minister headed the working group and actively participated in every meeting. The primary participants in the legal reform process were local civil society organizations, with the support of international organizations. Broader stakeholder engagement and feedback was sought through the promotion of the draft law in various cities throughout Serbia. In addition, the Ministry posted the draft law on its web site and solicited comments from interested parties, and local organizations sought to educate broader public about the significance of the law through media and public advocacy campaigns.
- In **Mexico**, the working group seeking to promote civil society law reform in Mexico: (1) convened 6 expert fora (involving 150 representatives of NGOs and government) to present information, solicit input from NGOs on the challenges they face, and collectively develop participant recommendations; (2) published a report – *Definition of a Fiscal Agenda for the Development of Civil Society Organizations in Mexico* – which included information derived from these participatory sessions as well as concrete legal reform proposals; and (3) provided additional opportunities to participate through a website on the reform initiative.
- In **Azerbaijan**, immediately after the amendments to the NGO law were introduced, the NGO Council (a body established to administer state financing to the sector), the Civil Society Defense Committee (an ad hoc coalition of Azerbaijani NGOs), and representatives of international donors and NGOs met to develop a strategy to address the draft law. The participation of a diverse cross-section of stakeholders in the coalition conferred legitimacy on their legal reform goals, and made news across the globe.

Engaging the government and legislature to support progressive legislation

While commanding the support of the NGO sector for enabling NGO laws is crucial, NGOs require the partnership of government and the legislature if a progressive law is to be enacted. In each of the

countries considered, NGOs were successful in engaging the government and legislature to support their position, sometimes turning initial adversaries into proponents.

- In **Iraq**, when the government introduced a restrictive draft in March 2009, Iraqi NGO leaders recognized the importance of developing support within the parliament to reject the Government's draft and enact genuinely enabling legislation instead. The NGO coalition held dozens of meetings with MPs and provided constructive comments on the draft and technical assistance in redrafting provisions. MP 'Ala Talabani, head of the Council of Representatives' Civil Society Affairs Committee, emerged as a key "champion" of the coalition to improve the March 2009 draft. She worked closely with Iraq's civil society leaders to amend the draft in Parliament and mobilized support among her parliamentary colleagues. As the legislative session drew to a close in January 2010, she was instrumental in building support for the bill among a wide variety of political parties and ensuring that time was scheduled for the third and final reading of the draft law, facilitating enactment on January 25, 2010.
- In **Kosovo**, when the Freedom of Association Law was first proposed in 2005, the Prime Minister's office took the lead in seeking an enabling, indigenous law, and NGOs were supportive of this effort. However, activists supporting the law failed to sufficiently engage with Parliament, which added restrictive amendments to the law at the eleventh hour. When the law was revived in 2009, supporters made sure to avoid this error. They worked with the relevant parliamentary committee to ensure that Parliament's concerns were met, providing analysis and commentary on issues where MPs had questions. MPs had the opportunity to meet and learn about best practices in a retreat held in Albania, another opportunity for NGO supporters to ensure that the MPs' issues with the law were addressed. As a result, the Parliament supported a law that was genuinely progressive.
- In **Macedonia**, the Ministry of Justice initiated NGO/government working groups to draft the law, and was involved with them in drafting and consultations throughout. The Ministry collaborated with NGOs in sharing the draft with a wider group of stakeholders and organizing NGO consultations on the law. On the working groups NGO representatives contributed their expertise in developing the draft text and met frequently with the Minister to express their opinions directly. NGOs also participated in discussions in parliamentary committees during the 2007 amendment process.
- In **Serbia**, the Ministry of State Administration commissioned a working group to prepare a draft Law, which was comprised of key stakeholders. Following the successful completion of this process, the Ministry became one of the NGO sector's key allies in establishing the Government Office for Collaboration with NGOs.⁷
- The legal reform working group in **Mexico** reached out to key policy makers from the beginning of the reform process, and eventually included Government representatives. In March 2008, ICNL hosted this expanded working group in Washington. Subsequently, the participants continued to work closely with each other; building consensus among government and CSO stakeholders on ways of improving the fiscal framework for CSOs.

⁷ The Office was established on April 16, 2010 and is expected to be up and running by the end of 2010.

A sound technical approach is essential

In each of the countries considered, technical assistance on the law was a decisive factor in shaping both the progressive content and the participatory nature of the law reform initiatives. Technical assistance, including reliable analysis, comparative approaches, and constructive dialogue, enables NGOs to develop positions on draft laws that are legally sound and appropriate for achieving the NGO advocates' objectives. It allows stakeholders, both government and NGOs, to move beyond political posturing and hostility and negotiate from informed positions, leading to laws that are progressive, meet the needs of both sectors, and conform to best practices.

- In **Iraq**, NGO leaders welcomed technical assistance in devising their strategies both for engaging the local and international communities and the parliament. When the government proposed a restrictive draft, NGOs successfully opposed the government draft using technical analysis to demonstrate that the draft failed to conform to the ICCPR protections on freedom of association. They employed comparative materials that included reviews of international and regional best practices to support MPs who had developed a more progressive draft. The result was one of the most enabling laws for NGOs in the Middle East.
- In **Kosovo**, MPs considering the draft Freedom of Association Law in 2008 sought and received technical advice on a nightly basis as they considered each provision. They participated in a retreat in which international experts provided comparative information focusing on regional best practices, with consultation on key issues troubling the legislators. The MPs' resolution of their concerns, through this process resulted in legislation largely favorable to the NGO sector.
- In **Macedonia** the Ministry of Justice and MPs sought and received technical advice as they considered each provision of the draft law. The Ministry of Justice working group participated in several retreats to discuss the draft and received expert counsel from both a domestic and a comparative perspective. Almost all draft versions of the text were commented on by domestic and international experts. In addition, the working group participated in a study visit to Hungary in order to gain further understanding about regional best practices and learn first-hand experiences of Hungarian ministry officials, judges, and NGOs. As a result, the law in most respects reflects best practices and creates a sound basis for strengthening the sector.
- In **Mexico**, international NGO law experts provided objective research that demonstrated how the current legal framework governing NGOs and their donors in Mexico hinders development of a vibrant, well funded, and responsive sector. In addition, comparative research memorandums educated legislators about both international and regional best practices. After ICNL hosted a delegation of local partners that included civil society organization leaders, academics, and SAT and Hacienda officials, participants continued to work closely, building consensus among government and NGO stakeholders on ways to improve the fiscal framework for NGOs generally, and SAT practices specifically.
- In **Azerbaijan**, the stakeholder coalition reacted quickly to news of the draft amendments to the NGO Law. They developed suggestions for improving the law using an expert technical analysis that highlighted the most dangerous provisions of the law. On the day that the draft NGO Law was scheduled for consideration, the NGO Council posted the suggestions online for public

discussion. This process led to a delay in consideration of the law, and ultimately resulted in improvement of the draft.

- In **Russia**, an international coalition of NGOs (including ICNL) provided substantial informational and technical support, with written recommendations and comparative law studies, to relevant governmental bodies. This information was also posted on the internet, and was disseminated via mailing lists along with comments on the law and a brief overview of public benefit organization status in different countries. The support and public information resulted in enactment of significantly improved legislation.

The role of the international community

In order for an NGO law to meet the needs of the local community, NGO representatives and government officials must assume leadership of the drafting initiative, thus ensuring local ownership of the law that is ultimately adopted. While members of the international community should never supplant local initiative, they can nonetheless play an important supporting role. Carefully designed diplomatic intervention, providing convening services, facilitating timely provision of technical assistance – all these contributions to the participatory process are uniquely within the capacity of various elements of the international community, and they are often decisive in the effort to achieve a positive resolution..

- In **Iraq**, international organizations, including UNOPs, assisted local NGOs in their advocacy for a sound NGO law by serving as a convener, organizing multiple meetings between government officials, MPs, and NGOs to allow them to learn about comparative best practices with respect to NGO laws and negotiate their issues as to the draft. In addition, ICNL organized an email alert list to disseminate news about the draft to interested members of the international community, informing their decisions on when and how best to intervene effectively.
- In **Kosovo**, when in 2005 the Assembly added restrictive provisions to the Freedom of Association Law, the international community played a key diplomatic role by supporting NGOs' request to the SRSJ that he not sign the law. When the Freedom of Association Law was revived in 2009, international organizations served the key role of conveners, organizing consultations for the Assembly and providing crucial technical assistance.
- In **Macedonia**, the international community effectively supported of the NGO legal reform effort, especially during the effort to overturn the 2007 setbacks. International donors provided decisive financial support for activities related to the reform process (especially NGO consultations, discussions with different stakeholders, and capacity building). Leadership of the reform initiative by local stakeholders (the Ministry of Justice and NGOs) ensured ownership of the results. Nevertheless, the Ministry of Justice working group invited international experts to take part in its meetings by providing feedback on the process, working closely with the group on drafting the law to improve its provisions. Through targeted conferences and study visits, international experts and donors also supported the Ministry by exposing its team to comparative legislation and best practices.

- In **Serbia**, after the Serbian Ministry for Administration and Local Self-Government (Ministry) released a third version of the draft Law in November 2005, it co-hosted a roundtable with the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) on the draft Law. At the meeting, participants discussed with leading Serbian NGOs, academics, and human right lawyers the draft NGO Law and comments submitted by the Council of Europe.
- In **Mexico**, tax experts from the United States helped clarify an important provision of the Mexican tax code affecting cross-border philanthropy. They provided specific recommendations that led the Mexican tax authority, the SAT, to revise its regulatory publication to better enable US tax attorneys to determine the circumstances in which donations are tax deductible for US donors.
- In **Azerbaijan**, immediately after the Azerbaijani Draft NGO Law was introduced, the NGO Council (a body established to administer state financing to the sector) and the Civil Society Defense Committee (an ad hoc coalition of Azerbaijani NGOs) met with representatives of international donors and NGOs to develop an effective and ultimately successful strategy to address the draft law.

Conclusion

A state's legal framework is one of many factors that affect how conducive the overall environment is towards civil society and its organizations. An enabling legal framework is certainly no guarantee of a vibrant civil society, and a disabling or restrictive legal framework is not necessarily an insurmountable barrier for civil society engagement and participation in public affairs. However, it appears virtually certain that, in a time of almost implacable opposition on the part of many governments, civil society can have an impact on legislative developments only if it finds the support, builds the capacity, and expends the energy to insert itself into that process as a participatory force. The examples posted in this issue of *Global Trends* demonstrate how having that impact is possible.