

SECTION 4: ARTICLES

NGO SERVICE PROVISION TO THE PUBLIC: IMPACTS ON CIVIL SOCIETY AND DEMOCRACY

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INTRODUCTION

The steady increase in service delivery NGOs in Central and Eastern Europe (CEE) and Eurasia¹ has provided additional means and methods to assist vulnerable populations in the region. More NGO opportunities to engage such populations, however, have not necessarily corresponded to an enhanced civil society or a sector empowered to further democratization. While the role for NGOs focused on providing services to the public has grown, their ability to set agendas and influence societal and governmental efforts has not grown proportionately and, in some countries, may have become more diluted.

More civil society action, at least of the service delivery variety, is not necessarily a sign of higher levels of democratization, even in the most consolidated democracies of the region. Unbundling the reasons for why the service delivery growth and democratization reform trajectories correspond less than might be anticipated requires a closer look at both the manner and means by which service delivery organizations have developed and engaged with their governments.

The trends throughout the region are sobering. The twenty-nine countries of the study have vastly different democratic environments; however they all share broad concerns which are manifested in different ways. The ability of service delivery organizations to set agendas, retain independence from their governments, and achieve some level of financial sustainability is thwarted to different degrees by the current legal and funding environments of the countries under review. From the EU to Eurasia, service delivery organizations continue to grow in offerings and potential while being circumscribed in practice.

THE NATURE OF SERVICE DELIVERY

Service delivery civil society organizations generally tend to be humanitarian in nature. They provide a concrete service to the population on behalf of the government or in some places in lieu of the government. Such organizations can fill in important gaps in a government's program of providing social services to vulnerable populations; as well as initiate new and innovative types of programs. As a result, NGOs receive a certain amount of societal acceptance and even support for their activities.

Service delivery itself is a difficult term to accurately describe. Throughout the country studies in this volume, the term is used to describe a broad set of activities and types of organizations. For example, service delivery can be the provision of free legal services, as noted in Slovenia's country report; or the contracting out of expert services to government institutions through consulting departments of NGOs as in Kosovo or Latvia. In other contexts, service delivery is seen more strictly within the traditional realm of social welfare provision and deals with issues such as homelessness in Russia, domestic abuse in Czech Republic, or education services in Azerbaijan. The trends described in this essay, primarily but not

¹ This includes all Commonwealth of Independent States (CIS) of the Former Soviet Union except the three Baltic States that are now EU Members.

exclusively, refer to this more traditional set of services that benefits the public directly. These services include health, education, housing assistance, legal aid, vocational and life skills training, and the like.

CONFLUENCE OF SERVICE DELIVERY AND DEMOCRATIC GOVERNANCE

The link between civil society and democratic governance is thought to be complementary, but not entirely linear. More of the former is thought to contribute to more of the latter; however, how this breaks down in terms of types of civil society activities and sub-sectors, and their influence on the larger democratic governance process, is less clear. For service delivery, the relationship is even more complex as it touches less on traditionally understood civil and political rights allowed and protected by the state than on the nexus between state capacities, legitimacy, and its relative level of democracy.

As increasing attention has been focused on how states function, or fail to function, state capacity has become a clearer component of democratic government. At a basic level, a weak state that cannot provide essential protection or services to its population is unlikely to have the ability to build a democratic state. The growing number of fragile and failing states in the world, including a number of fragile states in Eurasia, has drawn attention to the need to build governance and state capacity alongside support for democratic procedures and institutions. Governments that fail to provide services through lack of capacity, or hijack public resources for private gain, will lose legitimacy, potentially weakening their position further. Governments most clearly achieve legitimacy by providing for their populations.

The legacy of socialism, manifested in different ways throughout the region, suggests that citizens continue to closely associate the legitimacy of their governments with the latter's ability to function through the provision of basic services such as health care, education, and public sanitation. Such expectations increase both the risk and the reward that governments, and consequently civil society organizations, can expect if they can or cannot "deliver the goods." Both for governments that enjoy EU membership and those that struggle to maintain basic functions, the provision of social services is an essential measure of success and legitimacy.

The process is as important as the product. Service delivery organizations are the "face" of what the general public understands civil society organizations to be in many of the countries of the CEE and Eurasia region. How they conduct themselves helps set the standard and the expectations of the public in terms of its civil society and its government. Shoddy service delivery reflects on civil society as a whole; similarly, unclear relationships between service delivery focused organizations, government institutions, and donors do little to promote transparency and accountability practices either in the government or in the civil society. Consequently, the interaction between the sector and the government both reflects and shapes the levels of democratic governance present in the states of the region.

TRENDS IN EURASIAN CIS STATES: MORE PARTNERSHIPS FOR THE "RIGHT" TYPES OF SERVICE DELIVERY NGOS

Service delivery civil society organizations, in a good portion of the countries of the former Soviet Union, exhibit growth trends. Despite less than enabling legal environments, and lack of clear commitments for partnership from government institutions, service delivery by civil society is expanding. Overall, in terms of its development and sustainability, this sector has slightly improved in 2008. Yet it is unclear if the increased willingness of the national and regional governments to work with these civil society organizations serves to enrich either the provision of services to specific populations or the larger civil society sector.

For organizations and their beneficiaries, the immediate benefits of governmental partnerships cannot be disputed; particularly when organizations manage to address the needs of vulnerable populations or

respond to other needs left uncovered by the government. Still, in many Eurasia countries, these partnerships are primarily on projects the governments deem socially appropriate. When shifting to issues that are more sensitive for the state, such as homelessness and family violence, service delivery organizations have difficulty gaining either the work space or funds needed to support these activities. Ideally, the implementing organizations would also help shape the nature of the services and advocate on behalf of their constituents, but such opportunities are still rare in the countries of the region.

Even when civil society and government partnerships exist, the long-term effects of such relationships remain a concern. Often unclear procedures for public procurement processes and cumbersome laws limit opportunities for NGOs to take on other social entrepreneurial activities. Consequently, organizations find themselves straying from their civil society oriented missions only to end up as government subcontractors, following government priorities and agendas in order to secure funding. These rather restrictive partnerships limit financial sustainability and independence; they also constrain the ability of organizations to prioritize and advocate for constituent interests, which might be different than those of the government. As a result, any effect that service delivery NGOs might have on defining public space is largely muted.

“Government service delivery organizations” is one description for the emerging set of civil society organizations that work on service delivery issues in many Eurasia countries.

To some extent, all service provision organizations follow a larger set of strategies put forth by government agencies. However, the fine line between delivering government services and playing a substantive role in developing and implementing innovative service delivery programs appears to be increasingly blurred. This conflation might be due in part to the public’s perception of jurisdiction and ownership of social issues: the government is ultimately responsible for taking on social welfare issues, and as described in this year’s Russian report, the public is generally quite pessimistic about the NGOs’ abilities to tackle social problems.

The availability of funds perhaps most clearly shows the continued convergence of civil society and government roles. The substantial increase in domestically generated funding opportunities provides optimism that the significant efforts of international donors to encourage domestic philanthropy and partnerships have taken hold. Further, the establishment of national foundations in Kazakhstan, Azerbaijan, and Russia, for example, indicates that governments recognize NGOs as a significant societal fixture. Efforts to allocate resources to grant schemes at national and regional levels represent a positive development despite the lack of notable progress in designing public procurement systems that take advantage of the service delivery benefits that the sector could provide. Even in Ukraine, laws remain remarkably complex and cumbersome and often thwart all but the most determined or potentially connected service delivery organizations from participation in the public tenders.

Even when service delivery is a possibility, NGOs face the daunting task of delivering services with insufficient funds, which are often not reimbursed by governments until later. Filling financial gaps with fee-based services is also a difficult strategy, partly due to legislative frameworks, but also due to public perceptions that such services should be provided on a pro bono basis. In Georgia or Moldova, for example, public attitudes towards fee-based services are decidedly negative; and in Eurasian countries, where civil society is even less visible, the public likely has a similar view towards such “self-financing” means of sustainability for service delivery organizations.

An exception to this trend appears to be the emergence of service delivery partnerships in several mid-sized cities and regions in Armenia. During 2008, the Armenian Government signed five service agreement contracts with civil society organizations that allowed these organizations to either take over, or take on, specific services that had previously been provided by municipal authorities. An additional six

cities have planned to sign contracts in 2009. The relative success of these efforts appears to have encouraged local and regional government interest in civil society cooperation. Whether this local government initiative was designed to improve the overall government – civil society relationship, which deteriorated in 2007-2008 due to disputed election results and subsequent government crackdown on opposition and civil society, or whether the regions are exceptions, is difficult to gauge at this stage. But such government offers do provide additional vehicles for both funding and cooperation.

At the same time, the extension of funding opportunities, whether from government or the private sector, often appears to come with strings attached. Even when domestic private businesses provide resources for, or partner with, service delivery organizations, service delivery fund objectives tend to be set by the state, rather than multiple actors. The connection between large private businesses and the state in many Eurasia countries is a complex one; as a result, it is not surprising that businesses would look to state institutions for guidance on how exactly to implement their “charity” work or at least how not to go against state wishes.

An additional trend complicating the funding picture for service delivery organizations is the increasing practice of private businesses funding and administering their own service delivery projects, whether through private foundations or directly to recipients. For example, the Center for Social Programs, established by Rusal Company in southern Ukraine, has begun its own small grants competition for NGOs for the city of Zaporizhzhia. Similarly in Russia, the railways have created the Russian Railways Fund for Social Assistance to Children. Both the Rusal Company and Russian Railways have developed substantial programs that service the target population. Allocating resources toward social services or local NGOs can only be a plus. However, given the often unclear relations between businesses and government in many of these countries, the role that such private foundations actually play in identifying and advocating for their constituencies or in expanding the space for independent civil society organizations to operate and engage with government is unclear.

In other words, service delivery in many of the Eurasia countries is by and large an exercise in state control via different means. Civil society organizations that engage in service delivery as their primary mission find themselves with more sponsors, but with surprisingly similar faces. The “management” of civil society in less democratic environments is not particularly surprising. What is noteworthy, however, are the increasing lengths to which governments go to ensure a “well-rounded” civil society. Such a society includes the requisite set of social welfare and related organizations that either complete or smoothly continue the government system of service provision. Until recently, conventional wisdom has been that such service delivery organizations, and international donor support for their development, was a rather practical way to address the twin concerns of general civil society development and gaps in social services. Good practices in civil society organizations carrying out service delivery would in turn encourage good governance practices in government agencies.

However, the trend of consolidating and creating these organizations around state institutions suggests that service delivery has also become “high politics,” in attempts by governments both to burnish their democratic credentials and to manage the international donor funds which go to such organizations. Belarus’s Department of Humanitarian Aid might be one of the most blatantly named government offices; but it is probably not the only example of how foreign donors must work with government institutions in order to engage with service provision organizations. The manner in which many of the Central Asian countries engage with donors and use international donor funds for social service provision is highly controlled. Even if NGOs are the ultimate distributors and beneficiaries of such international funds, the likelihood that these organizations are strongly linked to, or greatly limited by, the government is high.

The situation in Uzbekistan illustrates the nature of this problem. According to the Uzbek report, fewer independent organizations are allowed to register and secure legal status every year. This diminishing

trend of independent legal entities is in contrast to the continuing growth of government-organized NGOs (GONGOs).² Since international donors such as UNICEF and UNDP are not allowed to fund “illegal” organizations, their funding is limited to roughly ten organizations that can receive and use these funds. It is unclear if all of these are engaged in service delivery, but it is likely that those service delivery funds that are eventually distributed are done in a manner closely in line with government policies.

Countries with acute economic shortcomings that lack basic social safety nets rely heavily on the resources of the international community. Few would argue with the need to target resources towards basic water or health programs in Tajikistan, or maternal health in Uzbekistan. Still, if governmental incomes depend on a substantial amount of social welfare funding from international donors, their increasing ability to manage these funds should be reviewed. Clearly, international funding has the potential to strengthen the organizational capacities of governments, which is a desired goal for many countries.

The manner in which money is given and its levels of conditionality matter. Too often, international donors can unintentionally become actors in the managing of civil society and its democratic credentials.

A number of the fragile Central Asian countries are also increasingly authoritarian, which raises the larger question of whether the short-term gains in international support for specific service delivery opportunities outweigh the long-term risks of consolidating regimes rather than strengthening states. In other words, does the support of the service delivery NGOs that are allowed to function have any impact on improving the overall environment for civil society specifically, or for democratic practices, in general?

To some extent engagement of any kind is important. Openings to work with government agencies and government-affiliated organizations are often a first step in what is hoped will be a gradual opening of space for more civil society. Whether it is invitations to work with the Turkmen government to begin the process of analyzing and reforming NGO legislation, or permitting access to isolated populations, being present and attempting to influence the process is arguably useful. In addition, through this engagement, international donors and organizations have learned some lessons in how to minimize their legitimization of practices and authoritarian governments which they engage.

But such governments have also learned a trick or two; and often international pressure to “do something for the sake of humanitarian concerns” can easily outweigh donor unease at the effects such engagement might have. Short of egregious misuse of funds, or blatant human rights violations, the governments can almost guarantee some level of funding for their population and their legitimacy. More social provisions are clearly better than fewer, and a population at risk is likely to be grateful for any assistance regardless of the politics. But this formula does little for expanding opportunities for civil society development or democratic reform, at least in the short or even medium term.

² See last year’s NGOSI for an essay on GONGOs.

Legal Framework for NGOs and Service Delivery

New EU states: The legal framework still does not enable NGOs to ensure financial sustainability by maximizing income revenue potential via beneficial taxing, volunteer-related legislation, uniform public procurement procedures, or even in some cases, clear laws governing types of NGO entities. New EU members are challenged by the need to manage massive amounts of EU Structural Funds that make use of NGOs to provide services, while at the same time ensuring that these NGOs remain independent of state influence, financially viable over the longer term, and less dependent on short-term EU funds. NGO service delivery is broad in scope and diverse in its manners of engagement ranging from domestic abuse hotlines, to Roma assistance programs, to partnerships with local governments on provision of legal aid services.

Eurasia countries: In many Eurasia countries, the legal environment is a more overt tool used by the government to control the civil society sector. Registration of organizations is often a problem; tax laws are often far from accommodating towards service delivery income generation, and general distrust between civil society actors and government institutions creates a relationship of animosity toward the state, as opposed to a potential partnership. Funding issues reflect this legal environment dynamic. Massive outside funding, which is still available in a number of countries, poses less of a problem than working with recently available government funds in a manner that preserves some level of independence and initiative. However, even outside funds are increasingly funneled through government institutions. Service delivery organizations primarily focus on traditional social welfare issues, such as homelessness.

Southeast Europe (SEE) countries: In many SEE countries, legislation is in the process of harmonizing with EU standards, but it is still a mixture of laws that regulate the civil society sector. Similar to some CEE countries, lack of complementary tax laws, income generation-related standards, and clear public procurement processes vexes the development of service delivery partnerships with governments. Funding continues to grow both from a pre-EU set of funds as well as domestically; growth in both types of funding increases funding opportunities but in a way that appears to continue the process of subcontracting rather than partnering to determine and address social challenges. Services range from traditional to more diverse, for example, assistance for trafficked people as well as human rights counseling.

EU COUNTRIES: MORE FUNDS, MORE REGULATION, AND MORE BLURRING OF CIVIL SOCIETY/GOVERNMENTAL SPACE

The environment for service delivery in the new EU member states of Central and Eastern Europe is significantly better, and the stakes may be arguably lower in terms of potential impact on vulnerable populations; however, service delivery-government relationship concerns are still present.

Service delivery organizations enjoy a considerably more open environment in which to conduct their activities. Most EU countries have introduced a predictable pattern of service delivery tenders and contracts; however, few, if any, have adopted a comprehensive legislative framework that ensures an idealized operating environment. A number of new EU countries still have confusing or incomplete legislation regarding civil society in general, and service delivery organizations in particular, as well as unclear public procurement procedures.

Perfectly compatible legislation and clear legal environments for service provision are difficult to achieve, even in the most established and democratic countries. This difficulty is partly due to the growing amount of legislation needed to regulate the relationship between the civil society sector and the government. It also reflects the underlying unease that governments might have in releasing control of basic social welfare services to civil society organizations, as well as the public's expectation that the government will

continue to provide. The Czech Republic report describes this relationship in patrimonial terms suggesting that the public – state expectations have changed little since the beginning of the democratic and economic reform in the early 1990s.

As the numbers and levels of service provision opportunities have grown at the local, regional, and national government levels, the ability of organizations to set their own agendas appears to have been reduced. Paradoxically, greater EU integration and direct public funds also appears to have weakened the decision-making powers of domestic service delivery organizations. In Poland’s 2008 report, for example, NGO analysts express a concern that dependence on public funds, whether from local, national, or EU sources, has had a negative impact on NGO – constituent relations; citing that Polish service delivery organizations are growing increasingly distant from the constituencies they claim to represent. According to the most accurate statistics available for Poland, organizations delivering social services and health care represent at least 19 percent of the sector; and catering to the government as opposed to the constituency certainly has an effect on both the types and quality of services presented to the population. In Hungary, the influence of public funds is even starker, as approximately 80 percent of government contracted services go to GONGOs.

Funding opportunities continue to increase; however, the complexity of accessing the funds and maintaining organizational independence is also increasing in a manner that has created both high entry costs and cozy NGO - government relations in the new EU states.

EU Structural Funds appear to have raised the attractiveness of being a service delivery organization. Accession to the EU has opened up a number of lucrative funding channels to the countries of the CEE. International and private donor funding, before accession, attempted to spread funds throughout the civil society sector from human rights organizations to those of a service delivery variety. These funds provided a good base for some organizations to become established, but the bonanza of funding earmarked specifically for service delivery organizations arrived with the first set of EU Structural Funds released from 2004–2007. These funds have had an impact on the growth and attractiveness of this portion of the civil society sector. In Bulgaria, for example, the ending of PHARE³ funds and the beginning of EU Structural Funds has increased discussions of whether service delivery organizations could actually overtake municipal authorities in their provision of services. In the case of Romania, some public institutions have realized that partnership with service delivery organizations that have previous experience with EU funds is useful for accessing Structural Funds.

As a result, EU funding, as well as other external funding through the Norwegian or the European Economic Area (EEA), have become some of the most important sources of funding for service delivery organizations. Yet the funding programs that were designed to infuse more funds into new member states, raise overall socioeconomic standards, and enhance civil society and dialogue with government have somewhat contributed to the weakening of civil society independence in what have become relatively democratic states.

This shift is due in part to government and EU perceptions of service delivery NGOs. From the EU standpoint, service delivery organizations can provide a lower cost mechanism for increasing service delivery breadth and depth in member countries. A byproduct of this cooperation is the added effect of strengthening the civil society sector, as NGOs are forced to increase their organizational capacities in order to take on the project. From the government standpoint, civil society is welcome to assist when funding is available, particularly if involvement from NGOs minimizes government costs, but many NGO

³ PHARE (Pologne et Hongrie - Aide á Restructuration Economique) was the EU program originally started in 1989 to provide Poland and Hungary aid and economic reconstruction assistance. It then expanded to include the other CEE states until their EU Accession.

practitioners still sense a lack of true NGO – government partnerships as NGOs tend to be viewed more as subcontractors than partners.

The means by which EU Funds are distributed, first to governments and then to service organizations through a tendering process, also affects the ability of NGOs to set their own agendas. NGOs must comply with EU and governmental regulations, objectives, and priorities which leaves them very little flexibility. Similarly, even direct EU funding of service delivery organizations in the new member states tends to create a business contractual relationship of deliverables, rather than an opportunity for organizations, particularly those that are new, to either inform or influence service provision priorities.

The viability of such service delivery organizations is directly correlated to funding distribution procedures. Few service delivery NGOs have the cushion to take on financial obligations without a clear repayment schedule. Unlike businesses, most NGOs cannot take out loans to cover gaps in funding or slow donor/government reimbursement schedules. Moreover, in many countries, conflicting regulations regarding income generation prevent organizations from financing their service delivery sufficiently through fees. The Slovak government's attempt to limit self-financing activities through its amendment to the Law on Associations, introduced in early 2009, was "frozen" for the rest of the year after substantial civil society outcry. However, the government's ability to threaten to institute such a law in Slovakia, or in other countries of the region, combined with the gray area of laws or multiple interpretations over what is allowed for social enterprise, fee generation, and other financing mechanisms, puts financially fragile service delivery organizations at a disadvantage. In one sense, vague laws allow some level of "maneuverability." But unclear laws and their expectations of NGO accounting practices also mean that government agencies have a right of interpretation as they like. Such ambiguity does little to encourage transparency on either side.

Service delivery NGOs are particularly vulnerable if they are small and operate in regions where understanding of these complexities among local government administrators is even less common. Even NGOs that have a practice of collecting service fees find that such funds are insufficient to cover implementation costs, particularly those related to overhead and administration. Paradoxically, even EU funds like the EQUAL Community Initiative,⁴ which have specifically been designed to assist the social economy, do not allow the selling of products or services produced with these funds.

At the same time, neither the governments nor the EU has strict guidelines regarding funding procedures. For example, in Hungary, the decision-making processes on service delivery grants can take six to twenty months. Reimbursement for services rendered can also be much slower than anticipated; such as in Slovakia, where overall government attitudes towards civil society has grown decidedly more wary. These issues have an adverse effect on the growth of the civil society sector, as the number of eligible service delivery organizations, and the innovative ideas that accompany them, narrows.

These financial challenges appear to be increasingly difficult to overcome as a number of the new EU countries have begun creating new legislation designed to improve regulation of service provision. In practice, these laws often constrict the space of service delivery organizations. For example, in 2008, both Slovakia and the Czech Republic have introduced new social service laws which appear to create higher costs of entry for organizations to engage in service delivery rather than regulate the sector. Similarly, the increasing overregulation of the NGO sector in Hungary is seen as doing little to improve sector standards and performance. In Lithuania, a new public procurement law, which passed in 2008, does little to empower procuring agencies to set their own standards and instead keeps most standards based on the procurement practices set for the business sector. Still, there are some examples of

⁴ EQUAL is the 'Community Initiative' within the European Social Fund (ESF) of the European Union. It was developed to address labor market challenges and social inclusion concerns of the EU Member states.

governments improving legislative environments to create additional opportunities for service provision relationships with governments. For example, Latvia's regional reform program, which will start in 2009, should increase local government control, in place of centralized control, over basic social services. This should presumably expand service provision opportunities at the local level. But these are still in the early stages and as of yet have provided few models of emulation.

The complexity of the EU tendering system is also a factor. While the process of using EU Structural Funds has contributed to professionalization of the service delivery civil society sector, it also has limited the sector's expansion. The need to have standardized accounting and management practices and to engage in evaluation and monitoring of the impact of service delivery has resulted in more service delivery organizations improving their standards. Yet the complexity has created exclusionary clubs of service delivery providers. Inevitably, every industry, even civil society, has growth trends and consolidates around the most successful organizations. However, it is unclear if this core group of EU implementers accurately reflects the priorities of the civil society or is just good at writing and implementing complex proposals.

The Slovenian government has partnered with a local NGO to implement a project focused on informing and assisting NGOs to understand the complexity of the EU tendering system so that more NGOs might qualify for EU funds, thus increasing competition and diversity of groups applying.

Perhaps most useful to remember when reviewing the impact of EU funding mechanisms on civil society is the fact that most such funds are still implemented by member states. For example, the previously mentioned EQUAL funds for social and economic inclusion are received after a government negotiates with the European Commission and comes to an agreement on priority areas of action. Consequently, the diversity of funding for service delivery organizations that had been thought to accompany the increase of EU funding mechanisms is partly lessened by the actual manner in which the funds are disbursed from Brussels. Detailed instructions and evaluation points for distribution and implementation of funds generally curb major misuse, but accurately spending and accounting for such funds do not ensure that they are distributed in a manner which really corresponds to social priorities. In an ideal world this should not matter; but in the context where few governments are above playing politics and new member states are still struggling to reform and retain legitimacy, the control of larger purse strings effectively creates greater, if diffused, state power over civil society service provision organizations.

Finally, the other financial factor at play is the already noted and anticipated trend of reduced corporate giving for the CEE region. Significant inroads into establishing corporate social responsibility partnerships with domestic and international firms in these countries have contributed to the growth and output of service delivery organizations. But leaner financial times, particularly in countries like Hungary, Latvia, and Estonia, have already resulted in a squeezing of corporate funds available to service delivery organizations. Consequently, dependency on public and EU funds is expected to increase in the near future.

Overall, these financial factors have created a sector that is much less straightforward, independent, and diverse than it might first appear. All of these factors have resulted in a somewhat worrisome blurring of the lines between civil society, government, and external actors which fail to adequately take into account the actual needs and interests of the constituents that civil society organizations represent. Although public trust in civil society is slowly growing, in many of these countries, trust in government is still lacking. Government control over service delivery organizations perpetuates perceptions of questionable deal-making, which thwarts public confidence in institutions and civil society organizations.

THE STATES OF SEE – BETWEEN THE EU AND THE EAST

Countries of Southeast Europe (SEE) have already had extensive experience with EU mechanisms as part of their post-conflict or post-transition packages. This experience combined with lingering, or still very present, pathologies of socialist or authoritarian governance structures has created a general environment for service delivery organizations where possibilities for growth are good and increasing, but the process of engaging and implementing service provision activities is still quite messy.

The new “EU Instrument of support to the Western Balkan countries” is as complex as it is wordy, posing numerous challenges to effective civil society engagement in service delivery areas.

The nexus between funding, environment, and capacity determines the success of the service delivery sector and its sustainability. As SEE countries attempt to adopt good governance practices and get in line for eventual EU accession, they are learning the lessons of how to set up service provision enabling environments and funding platforms.

However, it is unclear whether SEE countries will have learned from the mistakes of the new EU member states and will be able to avoid some of the pitfalls faced by service delivery organizations in these states. It is also unclear whether the EU itself has fully considered these lessons, or the special post-conflict and state-building circumstances of the countries. For countries that are in the pre-accession stages, such as Bosnia and Herzegovina, there have been few changes to the funding package options to reflect SEE specificities. Post-conflict and new state formation contexts of the Balkan region are noted in the EU integration strategies, but not particularly factored into the actual funding mechanisms. This raises a number of questions and concerns regarding the ability of each SEE country to develop a civil society sector with vibrant service delivery components.

NGO legal frameworks throughout the region are steadily developing to establish permissive civil society environments; governmental funds for civil society, experimental contracting of specific social services and the aligning of legislation to allow fee for service is common throughout the region. However, growing pains of state-building while simultaneously implementing massive amounts of reforms geared towards EU integration processes often result in only partially completed legislation. This legal limbo affects both current and future abilities of service delivery organizations to operate as they would like.

For example, many of the governments have not reconciled tax and civil society legislation. Serbia, while working on a draft in 2008, still had neither a framework that legally defined civil society organizations, nor a tax framework that allowed income generation without business level taxes. In Albania, legislation exists for taxation of NGO income generation, but it is not consistently enforced; while in an amendment to the tax law, NGOs will also be subject to a 20 percent VAT, apparently both on grants and services. In Montenegro, a 2007 amendment to the Law on NGOs, limits tax exemption status to organizations with a total income (not profit) of up to €4,000.

Modifying and aligning laws to ensure domestic consistency, as well as adherence to EU accession requirements for an optimal NGO working environment, will take time. In the meantime, given the unstable financial environment, in which government contracts and EU funds tend to be neither timely in payment nor as large as needed, service delivery organizations will likely feel an increasing financial pinch at a time when they should be expanding their services.

Laws governing the area of social services are becoming more common. In 2008, Macedonia passed a social protection law that allows NGOs to engage in delivery of social services, and Albania has included budget provisions for NGOs to provide these services in its 2009 budget. Nevertheless, governments still lack processes for public procurement and quality assurance. Even in Croatia, where the right of NGOs to

compete for such social service contracts has already existed for a few years, still there is not a systematic method for either contracting or monitoring service provision processes that would ensure transparency and quality control. Similarly, in Montenegro, service provision organizations must have government certification in order to receive government funding; however, the government lacks a licensing system for new providers and a control monitoring system for existing service providers.

Developing a legal environment that supports the growth of civil society is especially difficult in the SEE region, where a history of violent conflicts further complicates both the political and public spheres. This history helps explain why, for example, some social services are more political than others. In Bosnia and Herzegovina (BiH) veterans' organizations receive a significant portion of the government's funding for civil society. The government's interest in funding veterans' organizations and their potential service provision is part of a complex balancing act that the state engages in to balance out ethnic constituency representation and access to resources of the state. Supporting various organizations associated with the three primary ethnic groups helps to cement together various social interests and thereby contributes to both the preservation and the development of state structures. Having such preferential targeting of resources to select service delivery NGOs is less about government influence on NGOs than such organizations' ability to actually reinforce government state-building efforts. Not funding such organizations could be construed as a hostile act and quickly take on dimensions of very high politics.

Complex political systems further complicate already ambiguous legal environments. In BiH, efforts to pass laws on personal and company taxes are being considered in the Federation, while Republika Srpska adopted a Law on Volunteerism in 2008. Both entities, however, do not necessarily have similar or complementary laws. Similarly, in Kosovo, the parallel governments within many Kosovo Serb-dominated municipalities make the issue of service provision fraught with political as well as basic logistical challenges. With whom do NGOs contract? Likewise, how does this environment affect NGOs comprised primarily of another ethnic group? At the very least, Kosovo Serb civil society organizations that engage in service delivery often have to engage in at least two sets of bookkeeping systems in order to comply with their various government requirements.

Another contextual issue that needs to be considered is the legacy of civil society versus the state. Civil society's role in bringing about eventual democratization is not unique to SEE. Throughout CEE, civil society has played a vital role in the democratization process of society and the governments. Efforts to play a similar role have been more difficult in many of the Eurasian countries, but the intent has been similar, with a few of the countries seeing a markedly influential role played by civil society.

What sets SEE apart in this positioning is the *degree* to which civil society played a part in the democratic transformations and the *freshness* of its effects on the still reforming governments also attempting to recover from war legacies and shape national identities. Civil society had significant resources and actors, particularly in the areas of civil and political rights, and maintained a high, if controversial, profile. Views of human rights groups in Serbia, Croatia, BiH, Macedonia, and other states within the region often contradicted those of their governments on such essential topics as the justification for war and the (re)construction of national identity. As such, civil society organizations were branded, and to some extent are still perceived, as being in opposition not only to the government, but to the state itself.

This reputation has created a certain amount of reservation, even among reform-minded governments and institutions, about the role of civil society. Competition to dominate the public consciousness is ongoing in many of these countries and civil society organizations, even those that focus on very concrete socio-economic issues and provisions are still somewhat seen as "competition" for the state. Even when service delivery results reflect positively on the government, or when both the government and civil society are framed in a pro-Europe light, governments have a lingering concern over allowing civil society actors

(even service delivery organizations) to become too popular in an environment where governments have low public satisfaction and history still tends to dominate the present.

On a more positive note, relationships between service delivery organizations and private business seem to be less affected by the recent history. By partnering with the private sector, NGOs in Macedonia, for example, have managed to separate themselves within an increasingly partisan NGO environment. While businesses are also likely to have their political interests, the link between businesses and government parties or interests is not nearly as strong as in places further to the east. Concerns clearly remain over both government and corporate interests in supporting NGOs in countries like Serbia; but an increasing number of NGOs, including service delivery organizations, are learning to distinguish which common interests to pursue.

FURTHER CONSIDERATIONS AND CONCLUSIONS

Civil society service delivery organizations have grown in importance as they have grown in numbers in CEE and Eurasia. Their influence on society goes beyond the specific services that they deliver. Whether considered more efficient means of targeting vulnerable populations; procurers of innovative programming; useful for diffusing socio-economic tensions in societies; or even as good business opportunities, service delivery NGOs have become significant players, partners, and pawns in governments' efforts to provide basic services to their populations and gain or maintain their legitimacy as democratic governments.

Even in the most democratic countries of the study, civil society organizations that engage in service delivery face continuing challenges in carrying out their missions in a manner that maintains independence, represents constituents, and addresses financial sustainability concerns. Manifestations of these challenges are different, but concern over the independence of such agencies is only slightly less marked in Hungary than it is in Armenia.

This suggests a number of things:

First of all, with new circumstances come new challenges. The rise of EU Structural Funds and related funding is positive, but the manner in which they are distributed in these newly developing societies is not always straightforward and free of error. The opportunities for civil society organizations to engage in service delivery have grown tremendously, but these opportunities contain nearly as many challenges to retain independence as they provide to increase and improve service provision.

These challenges also affect donors. For those donors committed to developing civil society without a heavy donor-driven footprint, the manner of engagement is just as important as the distribution of funds. Whether it is strategizing to improve Roma children's access to schooling in Slovakia, or enhancing community medical services in Tajikistan, donors need to ensure that their funding mechanisms and social service provision objectives encourage as much local ownership as possible.

On the whole, civil society development strategies require some reexamination. Most civil society proponents encourage governments to partner with civil society organizations in some key service delivery areas. Similarly, most strategies for general civil society sustainability and service delivery organizations, in particular, reveal the need for government support of the sector. The slightly paradoxical nature of this strategy – to become an independent and vibrant civil society while diversifying funding that likely includes substantial government and/or EU funds – is wrought with contradictory tendencies, perhaps most sharply in service delivery. A discussion of the potential impacts of public funds, outside donor funds, self-generating funds, and social partnerships will help bring more clarity and honesty to the

sector. A clearer picture of what is both possible and probable will assist civil society organizations, donors, and governments to position themselves accordingly.

Finally, the balance between civil society and government is never perfect. Legal and funding environments are the most obvious determinants, but these only reflect a greater tension at play in the ever evolving relationship between civil society organizations that engage in social service provision and their governments. Tensions will exist as long as both claim to speak on behalf of somewhat similar constituencies and share funds from similar pots. Service delivery is no longer a straightforward exercise in humanitarian assistance, if it ever was; it increasingly reflects the power relations that govern civil society and governments. The quest for legitimacy – be it of a democratically defined variety or in terms of power to run the state – inevitably comes into contact, and to some extent clashes, with expectations of service provision, rights of representation, legitimacy of actions, and government capacities to perform. This tension is unlikely to disappear even in states that have “made it” to becoming consolidated democracies.

The effects of the global economic downturn are apt to exacerbate some of these tensions. Even in relatively wealthy states of the region, tighter state budgets (Latvia already has instituted a 10 percent across the board cut) and increased pressure on governments to provide services to larger vulnerable populations will cause actors on both sides to try to do more with less. For the countries where social safety nets have been far from adequate for many years, the stakes in procuring and delivery social services will grow. Incapable or chronically corrupt governments will have less latitude on spending than in the past, and the threshold for public discontentment in the more authoritarian states of the region is likely to fall.

The stakes for service provision to the public, consequently, can only increase. Whether service delivery NGOs and their supporters can take up the challenge will depend on their ability to clarify both the obstacles and opportunities such dynamics provide. Civil society prospects to expand and improve such services will continue to grow; how this will correspond with increased vibrancy in civil society or encourage greater democratization efforts is uncertain.