



*ELEMENTS FOR SUCCESSFUL CSO LAW REFORM
INITIATIVES
The case studies of Honduras, Iraq and Macedonia*

**European Center for Not-For-Profit Law
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Foreword

Partnerships with civil society organisations have long complemented the work of UNDP with governments in essential ways. Civil society is both a vital resource and a critical constituency for UNDP in a world characterized by increasingly complex development challenges. A strong civil society serves to strengthen democracy, build public confidence, enforce public accountability, and ensure that the voices of traditionally excluded actors are heard.

A critical factor for civil society organizations to work in a country is the legal and regulatory framework allowing and governing their establishment, space and scope to function in public life. The success of development and participatory governance depends on both a robust state and an active civil society with healthy levels of civic engagement.

In recent years a growing trend towards restrictions on civil society has been reported. While there has been growing attention to these restrictions and its consequences, successful efforts to improve the legal environment have received less attention. This paper on successful efforts in legal reforms affecting civil society, commissioned by UNDP from the European Center for Not-for-Profit Law (ECNL), seeks to fill this gap. It focuses on the elements of successful reform initiatives in three countries, Honduras, Iraq and Macedonia, where they have resulted in improvements to the legal framework for civil society.

The objective of this paper is to advance the discussion and identify UNDP entry points for mechanisms at global and country levels to foster an enabling environment in which civil society can operate freely and contribute to development. We hope that the experiences captured in this paper will prove instructive for colleagues and partners who deal with this important and often sensitive issue.

This paper also complements a UNDP primer on civil society legal reforms, developed by the International Center for Not-for-Profit Law (ICNL) in 2009, which provides colleagues in Country Offices and regional centres with comprehensive guidance on the subject.

We are grateful to the author of this paper, the European Center for Not-for-Profit Law, which specializes in this area and works with governments and civil society organizations in a number of developing countries to help draft progressive laws for civil society.



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I. INTRODUCTION

In recent years, much attention has been given to the regulatory backlash against civil society – that is, the use of law to constrain civic space and impede the important work in which civil society organizations (CSOs) are engaged. Successful efforts to improve the legal environment for civil society are often overlooked. Whether measured in terms of the enactment of more enabling legislation or in terms of the improvement of regressive draft laws prior to enactment, “success” in legal reform can and does occur. The key elements or learning points of successful reform initiatives have not, however, been closely examined.

This research paper seeks to fill this gap by focusing on the elements of successful reform initiatives. The paper comprises two sections.

First, the paper presents case studies from three different countries, where reform efforts have resulted in improvements to the legal framework for civil society. In two of the countries, Iraq and Macedonia, the Parliaments enacted enabling laws for CSOs in 2010. In Honduras, the process is ongoing. However, the example of Honduras was included to show how CSOs can lead the way and advocate for an enabling law reform and also avert potential regressive drafts in politically deteriorating environments. The case studies are developed with consideration of the social and legal context confronting civil society, that is, the nature of the legal threat or opportunity; the objectives of law reform initiative; the drivers of the reform initiative; the strategic steps undertaken by governmental and civil society actors to further law reform; the results of the reform efforts; and the lessons learned from the reform process.

Second, the paper provides an analysis of the elements of successful reform initiatives. While recognizing that every context is unique, the paper identifies transferable learning points – i.e., common denominators of success – that can inform and guide reform efforts in other countries. To help further illustrate and support the learning points, the paper also includes examples from recent initiatives to respond to regulatory threats in other regions (sub-Saharan Africa and the former Soviet Union).

The paper is based on input provided by the key actors leading and participating in the reform initiatives in the three countries. Information was collected from papers and reports developed by these reform participants, as well as research prepared by the International Center for Not-for-Profit Law (ICNL) and the European Centre for Not-for-Profit Law (ECNL).

We are grateful for the support of the United Nations Development Programme (UNDP) in making this research possible.

II. PRESENTATION OF COUNTRY SPECIFIC LAW REFORM INITIATIVES

This section will provide a general overview of two countries where law reform initiatives affecting CSOs have resulted in improvements to the legal framework (Iraq and Macedonia) and one country where the process is still ongoing (Honduras). The description of the three reform initiatives will be organized around the following issues: the need for reform; the characteristics and methodology of the reform process; and the results and implementation steps that have been undertaken since enactment.

HONDURAS¹

Honduras has a slow growing economy, uneven income distribution among the population, and weak governance. In June 2009, Honduras experienced a political and constitutional crisis, which hampered the development of the country, and soured international relations. The dispute was stirred over a popular referendum to authorize the sitting president, Manuel Zelaya, to run for reelection, which is prohibited by the constitution. On the morning of the scheduled referendum, President Zelaya was overthrown by the military. After the elections, the new President, Porfirio Lobo, was sworn in; however, many in the international community refuse to recognize him.

Civil society expanded in the 1980s and 1990s. This was triggered mainly by the need for relief and disaster response after Hurricane Mitch. Civil society does not yet shape the public discourse, but CSOs are increasing their engagement with the executive and legislative branches. Several CSO networks exist but the networks do not necessarily cooperate with each other. The 2009 constitutional crisis polarized the sector; some CSOs are allied with the Resistance Movement against the current Government, which impacts the way the Government approaches the regulation of the sector. Furthermore, in March 2009 the Congress proposed a draft CSO Law that would have severely restricted the sector's legal space. Because the de facto president who succeeded Zelaya had promoted the restrictive draft law as president of Congress, conditions during the crisis were far from favorable for CSO legal reform.

The law reform process was launched in 2003 by a federation of CSOs. This initiative is important because it resulted in a comprehensive proposal for reform based on a participatory process engaging CSOs nationwide. It also increased the capacity of leading CSOs to undertake law reform initiative and raised awareness and support around the law reform process. During this time, CSOs had to face the challenges of political instability and undertake advocacy efforts to prevent regressive legislation concerning CSOs from being enacted. The changing circumstances required modifying the reform strategy to respond to the emerging challenges and opportunities.

Honduran CSOs continue to face obstacles in promoting an enabling law governing CSOs, and it is still possible that no law – or even a restrictive competing draft – may be enacted. Nevertheless, the history of the CSO law reform in Honduras is an inspiring case of concerted efforts by CSO to advocate for improvement of the legal framework in politically changing environment.

¹ The section was developed in collaboration with Jocelyn Nieva, ICNL Latin America Legal Advisor. It is based on the *Final Evaluation Report of the Partners for Enabling Environment Reform – Honduras project*, developed by Anabella Bruch & Martha Cecilia Villada, 2010 and the NGO Law Monitor: case of Honduras, January 2010, developed by ICNL and available at www.icnl.org

1. The need for CSO law reform

Before the drafting process was launched, the CSO coalition, led by the Federation of Organizations for the Development of Honduras (FOPRIDEH), identified the following problems:

- The lack of a framework law providing for recognition and regulation of CSOs hindered the development and optimal functioning of the CSO sector (CSOs had difficulty registering their organizations, and the authorities exercised discretion over registration and reporting requirements).
- The lack of appropriate tax incentives and benefits.
- Poor government-CSO relations and non-transparent funding schemes which favour CSOs close to government.
- The lack of CSO capacity to undertake reform.
- The negative public image of civil society.

As described below, CSOs undertook efforts to develop a draft which would respond to these challenges. The main aims of the reform were to:

- Create a regulatory framework that legalizes operations and promotes organized civil society participation;
- Strengthen CSOs' independence in their operations and the management of their funds;
- Clarify the rights and responsibilities of CSOs, including issues of economic activity and sustainability;
- Improve governance of the sector and reduce the possibilities of mismanagement;
- Increase the sense of legitimacy;
- Clarify the establishment, registration, structure, governance and termination of CSOs;
- Strengthen relations between CSOs and the government;
- Promote the complementary, rather than competitive, nature of CSOs vis-a-vis the government.

The draft CSO Law has been subject to numerous revisions and has been introduced in Congress three times.

2. The process

Efforts to improve the legal environment for CSOs date back to 1993. However, it was in 2003 when the local CSOs, led by the Federation of Organizations for the Development of Honduras (FOPRIDEH), undertook a more comprehensive and structured approach. As a result, the process benefited from a defined strategy, methodology and structure, resulting in the development of a first draft law and advocacy techniques to ensure that the law was included in the Congressional agenda.²

² The work of the CSOs on the law reform process was conducted under the Partners for an Enabling Environment Reform (PEER) project implemented in collaboration with ICNL. PEER was designed to address a weak legal and regulatory framework that constrained and undermined the ability of Honduran CSOs to deliver services. It also aimed to improve the organizational capacity of FOPRIDEH which undertook the role of reaching to a large number of CSOs and leading the legal reform initiatives.

During the past seven years, the law reform process faced various challenges and opportunities (including several rounds of presidential and Congressional elections, and a constitutional crisis) that required the changing of strategies and approach. Nevertheless, the effort managed to maintain a highly participatory and inclusive approach – which ensured that it was responsive to local needs.

The process is marked by three important features:

1. ***Creating strong CSO support for the draft law.*** FOPRIDEH, as a network of organizations, undertook extensive efforts to include its own members in the drafting process – by consulting them and gathering support in the advocacy efforts. In addition, it reached out to other CSOs networks and secured cross-sector support of the process which enabled them to advocate for adoption of the draft law and to prevent a regressive law from being adopted.
2. ***Use of expertise.*** FOPRIDEH relied on extensive comparative and domestic expertise and analysis to create solid legal arguments. The expertise and research was essential in developing comments to the law and in presenting various legislative models and experience from other countries to feed into the local deliberations.
3. ***Advocacy campaign.*** FOPRIDEH engaged in a well planned and extensive advocacy campaign to promote the CSO-developed draft law and to prevent the regressive Governmental draft law from being adopted. They developed own advocacy materials that were distributed to various stakeholders. The campaign required broadening the group of stakeholders, talking to all political parties in the Congress, and reaching out to the media and local branches of international CSOs.

The CSO law reform process can be categorized around the following stages:

- garnering support for CSO law reform and developing the draft law supported by CSOs;
- advocating for its adoption;
- advocating against regressive draft legislation proposed by a faction in Congress;
- maintaining focus and neutrality during a constitutional and political crisis; and
- reviving the CSO law reform process in the post-crisis environment.

Preparation of the draft law and submission to the Congress

To support the drafting process the lead CSO – FOPRIDEH - conducted a survey of the CSO sector to map the needs on the side of CSOs and a legal assessment of whether the laws affecting CSOs comply with best practices for CSO regulation. This checklist was also used to assess the draft CSO law submitted to the Congress.

The results from the survey and the assessment helped FOPRIDEH develop a draft CSO law which was circulated amongst its members for input and later open for discussion with a broader group of CSOs. The consultation process included discussions with CSOs and meetings with members of the Ministry of Finance and Justice. FOPRIDEH managed to get the law on the agenda of the Congress through a Congressional ally in 2006. However, the law was not scheduled for debate due to the lack of support within Congress.

Revising the strategy and further improving the law

The CSOs realized that they would need a more effective advocacy strategy in order to get the law passed in the Congress. Therefore they decided to target 'power brokers' and strengthen alliances with other groups in society (church, academia). The CSO coalition led by FOPRIDEH reached out to members of the Government and Congress (both from those in the governing party and the opposition), academics, and international CSOs. They organized consultation meetings with these groups, improved the draft CSO Law to address all issues that the reform aimed to address (see above) and succeeded in reintroducing it to the Congress in 2008.

While the law was in the Congressional process, FOPRIDEH undertook a very proactive advocacy campaign. Namely, it:

1. met with representatives of all political parties;
2. promoted deliberations of the draft CSO Law in Congressional committee level;
3. visited key legislative contacts; and
4. promoted its prompt consideration.

Advocacy to prevent regressive law from being adopted

In March 2009, in response to one CSO report which criticized several Congressman by name³, the Congress produced a revised and restrictive draft law. Specifically, the Congressional bill contained: (1) a required minimum number of 15 founders for a CSO to obtain and maintain legal personality; (2) vague wording that gave the Government discretion to prohibit CSO engagement in policy and advocacy activities, (3) a restrictions on the freedom of non-Honduran citizens to associate (for every legal foreign resident member of an CSO, the organization must have at least three Honduran citizen members), and (4) provisions which gave the Government vast discretion to forcibly dissolve CSOs.

³ See the report "Legislative Results 2008" (Balance Legislativo 2008) by the Center for Research and Promotion of Human Rights (Centro de Investigación y Promoción de los Derechos Humanos). The report highlighted absences, strengths and weaknesses of representatives, the poor use and non-transparent distribution of the Congressional funds.

The CSO led coalition engaged in an impressive advocacy campaign which effectively mobilized hundreds of CSO representatives and their own beneficiaries, and included the media and key political leaders. It also cultivated support from the international CSOs in Honduras, which understood how the law may affect their activities and therefore gave full support to the CSOs and stood openly against the Congressional draft. As a result the regressive draft law was not adopted.

The advocacy strategy of FOPRIDEH included the following activities:

1. ***Broad dissemination of comments and advocacy materials*** to the Congressional bill to the Congress and the CSOs;
2. ***Open meetings*** with representatives that were part of the Special Commission of the Congress responsible for drafting the bill, the leaders of the political parties and other representatives to demonstrate the impact the new law could have;
3. ***Uniting the CSO sector***, by mobilizing 400 CSO employees and beneficiaries to support the sector in Congress (e.g. they organized buses and caravans to bring the supporters to the plaza in front of Congress and the chamber where deliberations were taking place).
4. ***Increasing alliances*** with other CSO networks and obtaining support from international donors, the academic sector and the churches by sharing analysis and legal materials;
5. ***Media involvement:*** turning the debate in the press from generally critical of the sector to generally supportive through an effective media campaign (e.g. FOPRIDEH convened 40 reporters to a press conference, which was covered by multiple newspapers across the country and several radio stations; key opinion leaders published articles about the CSO law; the sector issued a unified manifesto).
6. ***Outreach to and denunciation of the revised bill to government entities.*** The CSOs met with several representatives of the government and tried to explain the negative impact the Congressional bill will have on the society.
7. ***Negotiating with Congress*** to make significant improvements to many of the

As described, FOPRIDEH developed convincing legal arguments against the draft and it undertook a successful advocacy campaign. This enabled them to obtain commitment from group of members of the Congress to leave the floor and halt debate if FOPRIDEH determined that the proposed bill was not sufficiently revised to eliminate its most restrictive provisions. Even though it did not use it, the local leaders of FOPRIDEH felt that this is a power that the coalition had never had before.

Managing the constitutional crisis

The constitutional crisis in June 2009 furthered the polarization of the country and obviously distracted attention from CSO law reform. During the crisis, FOPRIDEH decided to adopt a strategy and position of neutrality. It continued to promote the need for reform and the draft CSO bill among all CSOs (regardless of their position on the crisis). It reached out to other CSOs networks and contacted candidates for the Presidency and the new Congress.

The technical and relatively apolitical nature of the law reform process helped maintain existing partnerships. As a result, the process could resume once the new Congress was established in January 2010.

Reviving the CSO law reform process in a post-crisis environment

Following the January inauguration of Honduras' new President and installation of a newly elected Congress, FOPRIDEH was able to create a more open partnership with the new Congress and to influence the selection of members of the Congressional committee responsible for reviewing the CSO bill, and to secure support from the President of the Congress.

The focus of the FOPRIDEH led coalition was on highlighting the benefits and importance of adopting the law, not only from the perspective of the CSOs, but also from the perspective of the state and the citizens. After the crisis focus was placed on two issues. First, decentralization of education, health and other social services were a priority of the Government and CSOs were seen as a strong partner that needed to be supported and regulated. In addition, Honduras needed to get back the international funding that had been suspended during the constitutional crisis, a situation that exacerbated the economic problems. The Congress saw the international community and the CSOs as important partners in addressing these issues and welcomed their input in the process of reconstruction of the country.

In the summer of 2010, FOPRIDEH and a delegation of other CSOs (including CSOs allied with the Resistance Movement which does not recognize the current Government as legitimate) jointly presented their draft law to Congress. This is perhaps the only example of collaboration on legislation between resistance and non-resistance CSOs and, consequently, the position of CSOs in the process was strengthened.

Responding to a new setback

During the autumn of 2010, intensive talks about the CSO draft law took place in the Congressional Commission responsible for the draft CSO law. However, in November 2010, the Ministry of Interior and Population presented to Congress its own, highly restrictive, draft law, developed without input from civil society. If passed, the Ministry's bill would grant the Government vast discretion to deny CSO requests for legal personality or to dissolve CSOs, and would only permit CSO activities if they were "in harmony" with the National Development Plan of the country.

The CSOs tried to address this challenge by working with their allies in the Congress to convince them to review the law, highlighting the problems with the draft, bringing in legislative assistance from international experts (specifically ICNL) and promoting the past efforts and all activities undertaken to develop the draft law adopted by the CSOs. In January 2011, Government and Congressional leaders encouraged the Ministry and CSOs to develop a consensus law based on the CSO draft. Negotiations on a consensus draft were underway through February 2011; the final version of the proposed law to be submitted to Congress is as yet undefined.⁴

⁴ For further developments on this initiatives please visit the web site of the NGO Law Monitor: case of Honduras, developed by ICNL and available at: www.icnl.org/knowledge/ngolawmonitor/honduras.htm

3. Current results of the reform efforts

The National Congress passed the NGO Law in March, 2011. The law contains the key provisions that the NGOs were advocating for during the drafting process (see ICNL's [NGO Law Monitor](#) website for more information). The case of Honduras presents a valuable example of how, with persistent efforts, a coordinated approach and a long-term strategy, the CSO sector can contribute toward the process for reform of the legal environment that affects them.

The CSO led draft law was developed through a participatory process and enjoyed wide support and endorsement. The participatory process ensured that the law addressed the key issues that require reform and that its provisions reflect best practices. The process also increased understanding about the need for reform, the issues that should be addressed, and how a better legal framework will benefit society as a whole.

Efforts were made to include other parties and ensure longer term sustainability of the reform. For example, the academic community was encouraged to incorporate CSO law into the curriculum so as to build a network of young lawyers with knowledge about the subject. Law school directors were offered fellowships to develop CSO law instructional programs.

Importantly, the process strengthened the coalition of CSOs led by FOPRIDEH and enabled them to maintain partnership and influence the work of the Congress in the development of the law. From this foundation of partnership the CSO coalition is well positioned to continue pushing for enabling legal reform.

IRAQ⁵

Iraq witnessed turbulent political and economic situations in the last decade. The 2003 US-led invasion overthrew the Ba'ath party and established the Coalition Provisional Authority (CPA) to govern Iraq. Government authority was transferred to the Iraqi interim government in 2004 and a government was elected in 2005.

Independent CSOs started to emerge and assume a role in society during the invasion. Before that most of the organizations were controlled by the Ba'ath party, and therefore they were highly politicized, with the exception of CSOs in the Kurdish region.⁶ The first regulation governing CSOs after the invasion was adopted in 2003: the Coalition Provisional Authority (CPA) issued Order 45 on Non-Governmental Organizations.

After 2004 the need for improving the legal framework became more evident, as the CPA Order 45 imposed burdens on the sector (e.g., it emphasized security issues to the detriment of freedom of association). The newly emerging civil society leaders therefore launched a process of CSO law reform which lasted six years. The new Law on Non-

⁵ The section was developed based on interviews with Kareem Elbayar, ICNL Legal Advisor – Middle East/North Africa and the findings from the following publications: *Civil Society Law in Conflict and Post-Conflict Settings, A Study of the Legal and Regulatory Environment for Civil Society in Iraq, Palestine, Lebanon, Somalia, Sudan, and Yemen*, developed by ICNL, 2010; *Global Trends in NGO Law: Enabling Reform: Lessons Learned From Progressive NGO Legal Initiatives*, Volume 2, Issue 3, by ICNL, NGO Law Monitor: case of Iraq, updated November 2010, developed by ICNL and available at www.icnl.org

⁶ After the 1991 Gulf War, CSOs in the Kurdish region became increasingly active in that region. These CSOs (as well as Kurdish officials familiar with the concept of civil society) proved extremely helpful during the federal law reform process.

Governmental Organizations (Law 12 of 2010) was adopted in January 2010, replacing the CPA Order 45.⁷

In a post-conflict society there can be potential for CSOs to become stronger. The Iraqi Law 12 of 2010 has the potential to help CSOs flourish. It is considered to be one of the most enabling laws of the Middle East and Northern Africa (MENA) region, as it addresses local needs comprehensively and incorporates best regulatory practice approaches to several, though not all, areas of law. The process of developing the law serves as an example of techniques which can lead to a successful adoption of a law and can strengthen the sector and the organizations engaged in reform. CSOs in Iraq embarked on an impressive campaign to advocate for the adoption of the law and fight against a restrictive counter-proposal backed by the Government. They also strengthened their position in society and were able to continue working on other reforms. The highly participatory process and progressive content of the law are among only a few such examples in the MENA region.

1. The need for CSO law reform

As noted above, the CPA Order 45 was developed from the perspective of ensuring security rather than promoting freedom of association. For example, registration was mandatory, and the Order introduced heavy administrative burdens which made registration difficult. In addition, after the 2004 handover, the law was implemented in an inconsistent manner. In short, the Order was not responsive to the needs of those seeking to gather together and undertake common and publicly beneficial activities.

Law 12 of 2010 introduces important changes from CPA Order 45 which reflect international best practices: individuals can associate and be active without the need to establish a formal legal entity⁸; the registration process is simplified; government discretion during registration and operation is limited; CSOs can engage in activities to generate profit and to fundraise from domestic and foreign resources to sustain their operation. The law also explicitly recognizes the right of CSOs to be able to network internationally.

While it represents an extraordinary achievement for Iraq and the region, Law 12 of 2010 is not without flaws. Namely, it includes several restrictions on the right to associate of non-Iraqi citizens. For example, foreign citizens who are non-residents are prohibited from founding a domestic CSO in Iraq, and foreign citizens who are residents may not, in most cases, compose more than 25% of the members of an Iraqi CSO. Branches of foreign organizations, unlike domestic CSOs, must provide detailed lists of the names and contact information of their staff, a requirement that has been criticized as potentially endangering the staff of organizations working in sensitive areas such as protection of human rights. Further, branches of foreign NGOs that seek to register in Iraq must provide a copy of the Iraqi nationality certificates and civil identity cards of their Iraqi staff as well as copies of the passports and residence documents of their foreign staff.

⁷ The Kurdistan Regional Government is moving forward with a draft CSO law that will replace Kurdistan National Assembly Law 15 of 2001 (Kurdish CSO law for all districts except Sulaimaniya) and Sulaimaniya Governorate Decision 297 of 1999 (Kurdish CSO law in force for Sulaimaniya district only). UNOPS, ICNL, and a coalition of Iraqi and Kurdish CSOs are working with the Kurdistan Regional Government to provide comments and technical assistance on the draft law.

⁸ The Council of Ministers has issued a decree stating that registration is mandatory. This rule is being challenged by Iraqi NGOs, especially in light of the fact that the Parliament removed the mandatory registration provision from the law during its deliberations.

2. The process

The process that led to the passage of Law 12 of 2010 began before the dissolution of the Coalition Provisional Authority in June 2004 and continued until the end of the first post-war Iraqi parliamentary session in January 2010. The process was initially launched by a number of emerging Iraqi CSO leaders with the support of international organizations, including ICNL and the United Nations Office of Project Services (UNOPS), but took on new urgency when the Iraqi Ministry of State for Civil Society Affairs proposed a restrictive draft law in early 2009. The coalition of CSOs that emerged in response to the restrictive draft eventually grew to more than 6,000 organizations. A core group of about a dozen Iraqi CSOs and international organizations, including the Iraqi al-Amal Association, ICNL, and UNOPS, engaged ministries, members of Parliament, and reached out to the media and other stakeholders during the advocacy efforts.

The CSO law reform process can be categorized around the following stages:

- garnering support for a CSO law reform and developing the draft law supported by CSOs;
- advocating for its adoption;
- advocating against regressive draft law proposed by the Ministry of State for Civil Society Affairs;
- technical assistance and advocating for an adoption of a widely supported CSO law.

The process is marked by three important features:

1. ***Creating a coalition for support of a law reform process.*** The Iraqi CSOs started communicating through ad-hoc and informal meetings, and gradually they formed a more formal network of over 7000 members. The members were instrumental in developing the draft law and in advocating for adoption of a progressive law.
2. ***Use of technical assistance.*** The Iraqi CSOs relied on technical assistance in devising their strategies for engaging the local and international communities and the Members of Parliament (MPs). In addition, the available comparative expertise was used to demonstrate that the draft failed to conform to the international 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.
3. ***Advocacy campaign.*** The CSO coalition organized a broad advocacy campaign to respond to the regressive draft law proposed by the Government. The campaign including meetings with MPs, developing comments to the draft law, public and media outreach. They also had a 'champion' of the process in the Parliament – MP 'Ala Talabani – who helped them in their campaign and was instrumental in enacting the law.

Preparation of the draft law and building a coalition for support

Iraqi CSOs started developing the CSO law in 2004. However, the period of 2004-2008 was marked by instability and lack of political will to adopt a new CSO law. During this time local CSO leaders, in close cooperation with international organizations, launched activities to prepare the ground for a successful law reform process. UNOPS organized a

Roundtable Conference in 2008 to raise awareness about the need for a new law, to identify the problems in implementation of CPA Order 45, and to foster consensus around an outline of principles that the new law should contain.

With the expertise and funding support from ICNL and UNOPS, the Iraqi CSO-led coalition began to have more formal meetings and informal consultations with a wide range of groups and organizations to seek their input on the issues that need reform and the outline of the new draft law. The meetings were organized throughout the country. In fact, the CSOs slowed down the process to give more time for education and consultation and to ensure that there is common agreement about the main issues that the law should regulate. During this time, the CSOs leaders were exposed to training as to how to engage in effective advocacy reform.

Efforts to advocate against a regressive law

Though the Ministry of State for Civil Society Affairs participated in the Roundtable conference in 2008, it issued a restrictive draft law in March 2009 which was seen as a step backward. The March 2009 law was restrictive in several ways: (1) it prohibited Iraqi CSOs from receiving foreign funding or from “affiliating” with any foreign entity without prior approval of the government; (2) an application for registration could be rejected for any reason; (3) it contained harsh criminal penalties, including imprisonment for up to three years for being a member of an improperly registered CSO; (4) it gave discretion to audit or inspect a CSO's office at any time and for any reason; and (5) suspension of an CSO and confiscation of its property could have been made at the discretion of government authorities.

This proved to be a defining moment, which strengthened the sector even further. UNOPS and ICNL assisted local CSOs by serving as a convener, organizing multiple meetings between government officials, members of parliament and CSOs to allow them to learn about comparative best practices with respect to CSO laws and provide them with a forum to discuss concerns with the draft.

Specifically, a second Roundtable Conference, co-sponsored by UNOPS and ICNL, was held in May 2009 to help mobilize a law reform campaign that would oppose the restrictive draft law and put forward more enabling legislation. As a result of the second conference and the substantial advocacy campaign put in place in the wake of the May 2009 conference, the Parliamentary Committee on Civil Society Affairs rejected the Ministry's restrictive draft in favour of an enabling draft put together by Iraqi CSOs and their partners in the international community. The more enabling law was the one that was ultimately passed in January 2010.

The coalition also benefited from comparative information and expert comments, which helped demonstrate that the Government draft failed to conform to international protections on freedom of association.

Simultaneously, the CSOs engaged in major advocacy efforts, many of which were funded by ICNL and UNOPS.

The advocacy efforts of the CSOs included:

- ***Raising awareness in the Government and Parliament.*** A roundtable conference was organized for representatives of the Iraqi Council of Representatives, all major Iraqi ministries, Iraqi and international CSO leaders, and representatives of the US, EU, Canadian, and other governments. The conference served as a venue to discuss the March 2009 draft and analyze it in light of international law and best practices. The roundtable conference was an important first step in the process of building relationships between Iraqi CSO leaders and government officials and helping to influence decision makers in the parliament.
- ***Engaging with the Parliament.*** Iraqi CSO leaders in addition held dozens of meetings with MPs to urge reconsideration of various provisions.
- ***Public outreach and involving the media.*** The CSO coalition launched a massive public education and outreach campaign to put pressure on MPs to support the adoption of a more enabling CSO law. The media campaign included TV, radio, and newspaper debates; the distribution of publications and brochures explaining the value and purpose of civil society in post-war Iraq; and the filming and distribution of documentaries on civil society law best practices.
- ***Building support among international actors.*** CSOs in collaboration with the international partners 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.

Perhaps a defining factor in the process was the support of MP 'Ala Talabani, head of the Council of Representatives' Civil Society Affairs Committee, who understood the importance of the law and undertook to make it a top priority issue. She therefore emerged as a 'champion of the CSO law'. She was a key leader who helped channel the CSO input and guide CSO involvement in the work of the Council of Representatives during the development of a new law for CSOs (which replaced the Government proposed draft). She relied on reports and comments developed by the CSO coalition, held meetings with different MPs to discuss the importance of an enabling CSO law and worked very closely with Iraq's civil society leaders and participants in the roundtable conference to adopt a progressive draft law in the Council of Representatives.

Importantly, CSOs focused their efforts to highlight the importance of a progressive CSO law for Iraq and the role that a strong sector can have in rebuilding the country and attracting foreign funding to support local development. They were particularly careful not to politicize the process so they tried to speak to all members of the Council regardless of their political affiliation. In addition, they tried to understand the concerns of the MPs and find solutions which would benefit all.

As a result of the CSO advocacy efforts the draft proposed by the Ministry of State for Civil Society Affairs never made it out of the Civil Society Affairs Committee of the Parliament. Instead, the draft that was passed to the full parliament was a substantially improved version authored by Iraqi CSOs and their partners in the parliament.

The enactment of the CSO law

After the submission of the Ministry draft to Parliament, the Council of Representatives' Civil Society Affairs Committee developed a new draft CSO law. The Committee developed the draft based on the previous version developed by the CSOs. The draft law was discussed during a second reading of the Council and was sent back for further revision and for procedure into a final reading. However, as the Council of Representatives prepared for elections in 2010, it appeared that the revised draft would not come up for a vote before the elections.

CSOs realized that it would take time to form a new government and to set up the new council after the elections. This was going to be a serious set-back to the concerted efforts to adopt a progressive CSO law. Realizing that they may lose important momentum, the CSO coalition and their international allies made a final effort to lobby the Council of Representatives to schedule a vote on the revised law. The coalition recognized the importance of the support from the international community in Iraq and they reached out to the US, UN, EU and foreign governments, who sent an international delegation to the Speaker of Parliament urging him to schedule a debate that could lead to a final vote on the law.

Iraqi and international CSO leaders also met with the Presidency Council, MPs, and party leaders from all the major political party blocks in an attempt to build a groundswell of support for the revised law. These activities resulted in the vote on the new law being scheduled on the very last day before the outgoing parliament was dissolved. The new law passed the Council of Representatives by an overwhelming majority on January 25, 2010.

3. The results of the process

As elaborated above, the Law 12 of 2010 went through several phases before it was enacted. Each phase required different strategic approaches and was a success because of the widely participatory process led by key leaders in the sector. The impact of the process can be seen in the content of the law and the contribution it made to the sector.

First, as noted above, the enacted law is one of the most progressive CSO laws in the MENA region. The law is endorsed by the organizations which are regulated by it, addresses their needs, and complies with international best regulatory practices.

Furthermore, the drafting process strengthened the position of the sector as a whole, and the CSO coalition in particular. They developed the capacity to engage in public policy issues and influence the development of the country. For example, the same CSO coalition which worked on the CSO law remained connected and initiated a process to force the Council of Representatives to go into session.⁹

4. Implementation steps

Immediately after the CSO law was passed, the Iraqi Council of Representatives was dissolved ahead of March 2010 elections. Unfortunately, no new government was formed in Iraq until almost a year later, in November 2010. Since there was a delay in forming the government after the elections, the implementation of the law was also delayed and therefore few CSOs have been registered to date. A "temporary implementing

⁹ The CSO coalition launched a complaint in front of the Constitutional Court about the inactivity of the Congress. The Court upheld the complaint and forced the Congress to hold a session.

regulation” for Law 12 of 2010 was approved by the caretaker Council of Ministers in August, and permanent implementation rules became the focus of discussion.

To facilitate the process of development of implementing regulations, Representatives of the Iraqi Council of Ministers Secretariat (CoMSec), several Iraqi Government Ministries, outgoing Chair of Iraqi Council of Representatives’ Civil Society Committee, and Iraqi and International CSOs, agreed on recommendations to guide the implementing regulations for the law. The recommendations were developed through a three day roundtable discussion in July 2010. The discussion was organized by UNOPS and ICNL, and with funding from the US Department of State, the European Union, the Government of Finland, and donors through the UNDG Iraq Trust Fund.¹⁰

Most recently, the Council of Ministers announced that the “temporary implementing regulation” is permanent. Recognizing that there are a number of problems with the implementing regulation, however, Iraqi NGOs are pushing back and seeking changed rules. The outcome of these efforts is uncertain.

MACEDONIA¹¹

Macedonia is a country in the Western Balkans which gained its independence in 1991 and received European Union (EU) candidate status in 2005. The Macedonian economy and political system are still struggling, especially in recent years during which the political parties have become increasingly polarized.

As USAID Macedonia reported: "The political climate in Macedonia in 2009 grew increasingly tense with the economic recession and with delays in progress toward Macedonia's NATO integration and EU accession. These factors exacerbated social and political divisions in society and limited the space available for government-non-governmental organizations (NGOs) cooperation, affecting the functionality and sustainability of the NGO sector."¹²

Civil society existed before independence, but started to develop more meaningfully after the adoption of the Law on Citizens’ Associations and Foundations in 1998. Since then CSOs have taken a more active role in the society. There remains, however, a lack of political will and reliable process for participation of CSOs in public policy and law making processes. Hopes that CSO-Government relations would improve were raised with the establishment of the Government Unit for Cooperation with Non-Governmental Organizations in 2004 and the adoption of the Government Strategy for Civil Society Sector in 2007. In its Strategy, the Government highlighted the need for adoption of a new Law governing the sector.

When the 1998 Law was adopted, it created the basis for registration and functioning of CSOs. However, the Law provided an inadequate framework for the sector’s sustainability, and a maturing sector required revision of the law. The reform process supporting the new law took over six years. During the process there were several

¹⁰ See UNOPS Press Release from July 5, 2010 at: [www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/FERB-873HAH-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/FERB-873HAH-full_report.pdf/$File/full_report.pdf)

¹¹ The section was developed with the support of Emina Nuredinoska, Macedonian Center for International Cooperation (MCIC).

¹² 2009 USAID NGO Sustainability Index for Central and Eastern Europe (http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/macedonia.pdf)

parliamentary elections and government reshufflings. In addition, CSOs had to re-direct their efforts from the drafting process to prevent the Parliament from enacting regressive amendments to the CSO law. The revised Law on Associations and Foundations was enacted on April 12, 2010.

The case of Macedonia demonstrates how a lengthy reform process can be completed successfully if the focus and main goals are agreed to at the outset and there is a group of committed organizations which lead the way.

1. The need for reform of the law

At the time when it was adopted the 1998 Law was one of the most progressive laws in the region and paved the way for the growth of CSOs in Macedonia. However, the implementation of the law revealed inconsistencies in the registration practices, as judges were interpreting some of the provisions in a discretionary manner. Furthermore, the growing need of CSOs to be able to diversify their funding (and thus increase their sustainability) became more pressing as the foreign donors started to leave the country while the government funding of CSOs remained limited to a small amount which was not distributed transparently. CSOs were not able to conduct activities to generate their own income without establishing a separate company, a requirement which demanded resources and energy that was largely ignored. Finally, CSOs did not enjoy a wide pool of tax benefits, and the government has not shown a willingness to introduce them without a certain guarantee for more accountable spending by the sector.¹³

After Macedonia received European Union candidate status, the Macedonian Government recognized the law as a priority law, requiring harmonization with EU regulations and best practices. With the 'EU flag' attached to the reform, CSOs and experts were able to advocate more effectively in support of critical provisions and to move the process forward at crucial junctions.

The 2010 Law harmonized the Macedonian legislation with international and European standards and best regulatory practices. Most importantly: (1) CSOs have the right to engage directly in economic activities related to their purposes; (2) legal entities and foreigners are permitted to form associations; (3) the provisions on CSO governance are strengthened and the roles of governing and management bodies are clarified, (4) the law introduces the concept of "public benefit status" as a prerequisite for receiving tax benefits.

A potential shortcoming of the law relates to the provisions which grant the power to decide on public benefit status to the Cabinet of Ministers. This may politicize the process. The decision of the Cabinet of Ministers will be informed by recommendations of a Public Benefit Commission composed of members of different ministries and two representatives from the CSO community.

2. The process

The drafting process was launched in 2002, and was carried out by several working groups established by the Ministry of Justice. At first the focus was on developing amendments to the 1998 Law; after the Parliament enacted some amendments to the Law in 2007, however, the process shifted to replacing the entire law with a new law.

¹³ The tax reform remains pending, and so the tax benefits are still not available.

The reform process witnessed Parliamentary elections and several reshufflings of the Government. While there was no formal coalition led by the CSOs, several major CSOs were involved in the reform process from its inception until its conclusion. This helped ensure continuity and to preserve the main objectives of the process.

The CSO draft reform process was led by local CSOs, namely the Macedonian Center for International Cooperation (MCIC) and the Foundation Open Society Institute Macedonia (FOSIM) in collaboration with other local organizations. The process was funded by resources from the local CSOs generated through various funders (for example, most of the funding for MCIC was from the Evangelischer Entwicklungsdienst in Germany). ICNL and ECNL were closely involved from the outset as experts and members of the working groups under projects supported by the United States Agency for International Development USAID.

The process is marked by four important features:

1. ***In-depth assessment of needs and broad consultations.*** The draft texts which were the basis for developing the 2010 law were a result of a thorough assessment of needs and implementation practices, repeated consultations with stakeholders and comparative and domestic analysis. Therefore, when the law was enacted, it incorporated the most important issues that required reform.
2. ***Participation of CSOs and international experts in the Ministry working group.*** The commitment of the Ministry of Justice staff and the expertise and financial support from the participating CSOs and international expert (ECNL) in the working group, were the engine that moved the process forward and ensured that it addressed CSO needs and reflected best practices. The CSOs and international experts organized over 10 meetings and retreats for the working group, separate meetings of the key drafters, and a study visit. They also provided numerous comments and alternative draft provisions before the draft was finalized.
3. ***Advocacy campaign:*** The CSOs conducted an extensive campaign against amendments proposed by the Government which were not developed with their agreement. In a short time they were able to reach out to a support group, and mobilize MPs and the media, in order to highlight the issue. They worked to develop proposals for improvement of the amendments.
4. ***Awareness raising and education.*** The CSOs organized several activities in order to raise awareness of the importance of amending the law, and to address the concerns by the Government which inhibited its adoption. They organized in-person discussions, roundtable meetings, produced comparative materials to support deliberation over the key disputed issues and a study visit to directly expose government officials to regional best practices.

The CSO law reform process can be categorized around the following stages:

- Assessment of the needs for legal reform and identifying priority issues for reform;
- Drafting and consultations of amendments to the 1998 Law;
- Advocating against regressive draft law amendments by the Government and for enactment of improved text; and

- Drafting of a new law and advocating for enactment of the progressive draft.

Preparation for reform

During 2003-2004 the two local CSOs, MCIC and FOSIM, in collaboration with ICNL and ECNL, organized several activities in order to identify the problems in implementation of the law and highlight the priority issues which require reform. As a first step, an assessment of the needs was conducted which included: sessions for judges and CSOs; a survey of needs of CSOs; and in-person consultations with experts, CSOs, Ministry of Justice and Finance representatives. The results from these discussions were integrated in an outline of amendments to the 1998 Law, developed by two lead experts and co-drafters of the 1998 law.

The drafting process until 2007

During 2004-2007 the drafting of amendments continued under the auspices of a cross-sector working group established by the Ministry of Justice. The proposed amendments to the law were discussed at several roundtable discussions co-organized by the Ministry and different CSOs. Meetings were organized separately with various stakeholders and coalitions of CSOs (e.g. the Macedonian Civil Platform, the coalition of associations for the rights of people with disabilities). Almost all draft versions of the text were commented on by domestic and international experts. The Ministry of Justice remained supportive and the Minister submitted the law for Government adoption in 2006. However, the Government did not adopt the law but returned it for further consideration in the Ministry.

The lead CSOs understood the importance of further educating the responsible people in the Government committees about why the amendments are in line with the European practices and how they will improve the legal system affecting CSOs. They developed targeted briefs which discussed the concerns by the Government and shared them with the CSOs, the Ministry of Justice and relevant members of the Government committees. In addition, they organized consultations with CSOs and in-person meetings.

Advocating against the 2007 Government amendments

In 2007 the Government submitted to the Parliament amendments to the 1998 Law which were not developed in collaboration with CSOs. CSOs were caught by surprise. The Government argued that the proposed amendments sought to harmonize all registration practices under one system. However, it proposed other amendments beyond the scope of registration (relating to termination, governance and property dissolution) which could potentially harm the sector. Local CSOs, with support from international partners, drafted comments to the Government proposal, developed alternative provisions which would improve the Government amendments, and devised a strategy to advocate for their improvement. The efforts were led by the Macedonian Civic Platform, which mobilized around 50 CSOs. The coalition also highlighted the importance of revising the issues which were addressed in the drafting process over the previous years and which were more pressing and important for the sector.

The advocacy efforts of the Macedonian Civic Platform included:

1. ***Utilizing expertise.*** The coalition relied on comparative and domestic expertise to develop comments to the Government draft amendments and produce their own revised and improved version of those provisions. They also submitted the package of amendments that was developed in the past years.
2. ***Engaging with the Government and Parliament.*** The CSOs organized meetings with the Ministry of Justice, and different MPs. To ensure a hearing by key decision-makers, they sent a joint letter to all Members of Parliament, the Prime Minister, and Ministry of Justice expressing their concern.
3. ***Utilizing structures and bridges to reach the Parliament.*** CSOs used the premises and linkages of the CSO led Office for Cooperation with the Parliament to organize meetings with MPs from all political parties, to circulate their proposal for improved text and attend the Parliamentary Committee hearings.
4. ***Public outreach and involving the media.*** The CSO coalition reached out to a number of CSOs to solicit their support and also organized meetings with journalists to explain the issues. One of the news magazines features a comprehensive article explaining past efforts and current set-back.

During this time, the MPs from the opposition submitted the package of amendments developed in the pre-2007 period and lobbied extensively against the Government draft. This politicized the process and CSOs had to invest additional efforts to maintain a neutral position. As a result of their concerted and collaborative efforts, the Parliament adopted an improved text of the amendments. In addition, the Ministry of Justice agreed to continue work on the amendments which were not addressed in this legislative process.

The drafting process of the new law

The Ministry of Justice set up a new working group to continue with the revision of the 1998 law and the 2007 amendments, with the participation of MCIC and FOSIM (as representative of the Macedonian Civil Platform) and international experts (ECNL). The working group used as a basis the draft amendments developed before the 2007 set-back, which was important as the main provisions developed in consultation with the CSOs remained in the text. Subsequently, the working group developed several draft versions of the law. In addition, a study tour was organized for the working group to expose them to regional best practices and to facilitate the drafting process.

In January 2010, there was another surprise: the Government decided to expedite the process and unexpectedly adopted the draft law. Only the CSOs which were members of the working group were consulted on the text prior to the Government decision. The adopted draft reflected the working version which was developed with the CSOs but also contained new regulatory solutions.

During the debates in the Parliamentary Committees, the Ministry organized two discussions with a broader audience, while the CSOs also worked together to develop a common agreement on the issues that needed to be improved in the Government adopted draft. The CSOs submitted separate sets of proposals for amendments to all political parties represented in the Parliament, attended hearings of Parliamentary Committees, and tried to generate support for their proposals through their allies in the Parliament. In addition, some CSOs reached out to international CSOs in the country and

explained how their position may be affected; as a result the international CSOs sent a letter to the Ministry of Justice and Parliament expressing their support for the CSO efforts.

The CSOs managed to influence the process, in that the final enacted version of the law reflected most of their comments.

3. The results of the process

The new law is appropriately enabling and is expected to contribute to the further development of the sector. This is a result of efforts of CSOs to reach a consensus as to the main issues that require reform and to ensure that those issues were included in all stages in the drafting process. The comparative expertise made available throughout the reform process ensured that the law incorporates regulatory best practices and international standards. While the law also has shortcomings (especially in relation to the granting of public benefit status), the CSOs were able to raise awareness about the importance of monitoring how these provisions will be implemented.

The ongoing engagement and investment in the drafting process by all stakeholders, and importantly the long-term education of the law drafters, ministry officials, judges, experts and key CSOs, ensured that the results of the reform process were positive, despite the complex political context.

4. Implementation steps

During the drafting process, the working groups placed serious consideration on the issues to be regulated in the law, and those that can be further addressed in the implementing regulation. As a result, the law included specific reference to implementing regulations that need to be developed (e.g. relating to maintaining CSO registries and establishing the Public Benefit Commission). The responsible state bodies have already adopted the implementing regulations, however, without consultation with the sector. While the regulation on the establishment of the Public Benefit Commission was developed promptly, the Commission itself is not yet established. Thus, CSO advocacy needs to be directed toward proper implementation of the important provisions of the law.

Significantly, local CSOs managed to secure funding to support the implementation of the law. Activities planned include:

- Raising awareness about the new provisions and educating CSOs widely about their rights and opportunities;
- Publishing a client-friendly commentary to the law;
- Developing a guide to facilitate the re-registration process; and
- Developing a mechanism to monitor the implementation of the law, especially the public benefit status provisions.

Indeed, local CSOs were able to organize educational events about the 2010 law immediately after its enactment. This was important as CSOs are currently undergoing a re-registration process to harmonize their internal documents with the new law. In addition, local CSOs organized a study tour to Serbia (which has a similar legal system and also enacted a new law on associations recently) for ministry and registration officials, in order to expose them to implementation practices in a country with similar experiences and challenges.

III. ELEMENTS OF SUCCESSFUL CSO LAW REFORM INITIATIVES

This section provides a brief analysis of the elements that help complete a successful reform initiative. As the case studies show, every context is unique and the law reform process is shaped by the specific circumstances that surround it. However, there are several common denominators for success and transferable learning points that can inform and guide reform efforts in other countries. Below we outline the strategies and tactics that have proved successful in the countries discussed in this paper, as well as challenges to those approaches. To help further illustrate and support the learning points, this section also considers reform initiatives in Kenya, Rwanda¹⁴ and Kyrgyzstan.

An overall recommendation is that reform process should be participatory and based on thorough domestic and comparative analysis for the law to reflect the needs and address priority issues in the best possible way for the community.

A participatory process legitimizes the result: it strengthens the improvements introduced by the law and helps ensure that it will be implemented in an apolitical and consistent manner. A participatory process supports the longer-term sustainability of the results. During the drafting process, participants may provide information, knowledge and resources that would be otherwise unavailable to the decision-makers. Through such contributions, CSOs and other reform supporters are able to establish a more trusting relationship with law and policymakers. Following enactment of the law, the key responsible government officials are better equipped to provide guidance to those who will implement it (judges, financial officers, registration bodies) and the leaders of the CSOs are able to help transfer the knowledge, increase learning and monitor the implementation. The participatory process in all 3 countries in this paper was based on a domestic analysis of needs and comparative best practices, which helped CSOs to justify their proposals and ultimately enabled them to receive support from a broader pool of CSOs and some decision-makers. Furthermore, in both Iraq and Macedonia, the extensive consultations on drafts of the respective laws resulted in laws that are generally consistent with domestic and international requirements

However, a participatory reform process needs time. In order to make an appropriate assessment and develop the most desirable solutions, extensive surveys, analysis, and discussions are necessary. The process of public consultations on draft laws, of revising drafts based on feedback and then soliciting input on the revised draft, is a laborious and time-consuming one. Often CSOs lack the resources to support comprehensive participatory processes. In such cases, international organizations can play a vital role in supporting participatory reform.

At the same time, it should be recognized that long-term participatory processes are prone to certain 'surprises' and unexpected occurrences (as happened in all three countries). To guard against the potential negative impact from such occurrences, it is crucial to maintain contact with key reform supporters in the Government, Parliament, and the CSO sector throughout the process. Engaging key parliamentarians and party leaders, as well as ministries, in the development of the legislation will help ensure that

¹⁴ The references on the initiatives in Africa were developed with the support of Stephan Klingelhofer, Senior Vice President, ICNL. For further information on the initiatives in these two countries please visit the NGO law monitor: <http://www.icnl.org/knowledge/ngolawmonitor/index.htm>

the draft law is prioritized by the policymakers. Even in cases where certain state officials attempt to introduce more regressive legislative provisions or initiatives, working with a range of stakeholders can help answer that challenge (as in the case of Honduras and Iraq, where Congressional support was critical to overcoming ministerial attempts to introduce regressive regulatory approaches).

To support a participatory methodology for reform, the following key elements should be considered:

1. Plan for reform

CSO law reform initiatives benefit from clear objectives and strategic plans. Advance planning of the entire process helps all parties involved reach consensus about the required reform steps, methods available to ensure participation, and timing. Advance planning helps to focus attention on the key decision-makers, available supporters and those likely to be opposed (and why). Advance planning helps determine the potential obstacles that the process may face (economic situation, political priorities, elections) and how to overcome them. A plan for the reform should serve as guidance and provide benchmarks, which can be modified as the process evolves and the opportunities and challenges arise. The advanced planning in Honduras was critical in ensuring that the reform process stayed on track regardless of the setbacks.

Ensuring that the law addresses the critical needs

Successful reform initiatives must be responsive and relevant to local needs. To help ensure this, as part of the reform plan it is essential to conduct a needs assessment and to build a common understanding of the main principles and priorities to be included in the law. There are several ways that the reform leaders have assessed local needs, including through: (1) surveys of needs among CSOs, legislators, judges, ministry officials, registration officials; (2) in-person consultations; (3) focus group discussions; and (4) seminars and workshops during which such needs are outlined. An assessment should cast its net broadly to maximize input. Distributing information through internet portals, CSO networks, and roundtable discussions in cities outside the capital are all potential means to reach a broader audience. It is therefore important to target diverse groups of organizations representing different interests and viewpoints. This approach helps ensure that emerging needs are identified and addressed in the reform process.

Identifying stakeholders

Identifying the key decision-makers responsible for the law and educating them on the importance of reform is also fundamental. First, understanding the concerns of legislators early on is important in order to address those concerns adequately and to secure the legislators' backing for the adoption of the law. This may not be possible in all circumstances, but efforts to speak to *legitimate* government interests helps to establish trust and credibility. For example, it was only after the law was submitted to the Government in 2006 that the Macedonian working group learnt about the concerns of those in the Government committees. Not surprisingly, therefore, the law did not have governmental support and was not adopted. The Ministry working group subsequently focused on understanding governmental concerns and successfully addressed those concerns in its draft law. Acknowledging different concerns and taking time to address those increases prospects for success. In environments where trust is yet to be built, this approach can encourage such trust building and can leave a lasting impact for collaborative relationships to be maintained.

Second, efforts to educate the key decision-makers during the drafting process can convince them of the importance of the reform and secure their support in the legislative process. This can be accomplished by highlighting best practices, sharing regional materials, emphasising the benefits of certain legislative solutions, and through in-person consultations and support in developing arguments particular to the local context. Furthermore, mapping out and involving stakeholders early can also be instrumental in identifying a 'champion' of the reform initiative (as in Iraq), who guides CSOs through the government or parliament process, uses his/her position to negotiate with all parties and ultimately increases the chances for enactment of a progressive law.

The case of Iraq also demonstrates that international organizations and diplomatic missions can sometimes be instrumental in helping to ensure the process moves forward. The degree to which it is appropriate to rely on international organizations and diplomats will of course depend on local circumstances. In general, efforts to alert them to the reform process, to identify areas of potential impact of the reform on the work of international organizations, and to provide regular updates may be a helpful first step. Some international organizations may also be interested to provide financial support to civil society participants in the process and/or to bring in international expertise.

Developing an advocacy strategy

Developing a plan and strategy for advocacy to support an adoption of a law should be part of the reform process. Advocacy for adoption of a law can expedite the reform process if it is planned in advance, and can also guard against unwanted surprises on the road to reform. Advocacy plans should be developed in advance and can be modified to respond to changing circumstances. Advocacy tools might include awareness raising events, information leaflets and brochures, education, and meetings with key decision-makers.

Experience from the case studies demonstrates that often CSOs must mobilize advocacy efforts quickly to prevent a potentially regressive draft law from being enacted. In such circumstances, the CSOs successfully relied on the following advocacy techniques:

- distributing comments on the draft law;
- providing comparative international and domestic expertise;
- mobilizing CSOs and other interested stakeholders;
- identifying allies in the parliament;
- using institutional mechanisms that ensure CSO participation in parliamentary committees;
- media involvement and outreach towards the whole public;
- reaching out to international organizations and diplomatic missions.

International CSOs can also play a role in such advocacy efforts when time is limited. In Iraq, the UN and EU representatives met directly with decision makers. In Azerbaijan and Kyrgyzstan, ICNL supported the CSO community by preparing a detailed analysis of the draft laws and a summary highlighting the most restrictive provisions of the drafts and distributed them to parliamentarians, members of the presidential administration and international and local CSOs, as well as to foreign diplomatic missions.

One of the challenges of the advocacy process is to avoid political partiality when the process can be politicized by the opposition party or different interest groups. CSOs have

managed to pre-empt or overcome such challenges by: trying to understand the rationale for submission of regressive text and to address those concerns; remaining open to talk to all parties and stakeholders; distributing comments and proposals to everybody; and by highlighting why the new law will benefit all and contribute to the development of the country.

2. Dedicated core leadership group

A second element of the CSO reform process is identifying a dedicated core leadership group of CSOs which can help ensure that the process remains focused on its main objectives. This CSO leadership group can be a source of expertise, a convenor, and an information-provider, and can alert interested parties when problems arise. The examples of Iraq and Honduras show that participatory processes can also increase the capacity of the leaders themselves.

The core group may expand (or even contract) over time, and should serve as the vehicle for broader participation at various stages of the process.

The core group can also facilitate coalition building among the CSOs. The examples of Iraq and Honduras, where civil society is still emerging, reveal that with the appropriate strategy and clear objectives, it is possible to generate substantial support for the CSO reform position. In Honduras, the CSO reform efforts were led by FOPRIDEH, who, during the constitutional crisis, successfully managed to navigate a politically divided environment and bring together CSOs, regardless of their affiliations.

The positive effects of CSO collaboration

CSO collaboration and coalition building can be critical to the success of any CSO law reform process. A collaborative effort is more likely to help CSOs to prevent the parliament from enacting a regressive law. In the longer term, it can strengthen the CSO position in developing and implementing other law reform processes, and in shaping democratic society in general. As the example of Iraq shows, the coalition that was formed during the CSO law reform process was instrumental in forcing the Council of Representatives to commence work after the post-election period.

At the same time, however, a formal coalition need not be established for CSOs to succeed. In Macedonia, for example, the CSOs acted in concert when the Government proposed amendments which may have harmed the sector and joined together in an informal coalition which helped them improve the proposed draft. In Kenya, coalition building developed gradually over time, with concentric circles of engagement, starting with a small core group (which remains as coordinator of the reform process), and expanding through deliberate consultations and careful information flow through existing umbrella organizations.

Similarly, in Rwanda, during the CSO law drafting process, links were formed among various types of groups and organizations around the country, as well as sub-sectoral networks. Specifically, the INGO Network, a committee representing international organizations, took the lead to advocate on behalf of its membership for provisions in the draft governing international organizations. Simultaneously, efforts were made to ensure that local CSOs were actively engaged in the drafting and legislative process as well, and a committee of local CSOs was established to facilitate a broad participatory method; the

work of this committee led to an improvement of the draft law governing national organizations.

3. Engaging the government and the parliament

Engaging the government and the parliament can be instrumental in ensuring that the enacted law contains priority reform provisions and that there is a support among decision-makers for the provisions proposed by CSOs.

Collaborating with the government

A key strategy to ensure meaningful participation of government officials is the creation of cross-sectoral working groups.¹⁵ It is at the working group level that relationships between the sectors are formed which can enable collaboration throughout the reform process. Working groups can serve as the primary focal point for communication between the CSOs and the government; they can be a vehicle for information sharing with the broader CSO community; and can ensure that necessary substantive adjustments to the draft law are made throughout the reform process. Attempts by CSOs to push for changes of government drafts made available at the end of the drafting process may be impossible to achieve. Of course, the membership and leadership of a working group is fundamental to how it operates. In Honduras and Iraq, the working groups were led by the CSOs but aimed to include and involve governmental representatives; the working group process was generally open and transparent. In Macedonia, the working group operated under the auspices of the Ministry of Justice, which decided to release the draft law only when the working group was comfortable with the text, while the CSOs would have preferred to have a more open, consultative process throughout.

Involving the Parliament

Members of Parliament have proven to be powerful allies to the CSOs in cases where government proposes a regressive law or amendments to law for enactment. In each of the three case studies, CSOs worked with the Parliament to reach their goals: they held meetings with MPs, circulated comments to regressive laws, provided their own recommendations for improvement, and attended parliamentary committee sessions. Most notably, in Iraq, the head of the Council of Representatives' Civil Society Affairs Committee emerged as a key "champion" of the coalition to improve the March 2009 draft law. She collaborated with CSO leaders to submit an improved draft to the Parliament, mobilized support among her parliamentary colleagues regardless of political affiliation, and made efforts to ensure that the law was scheduled for the third and final reading, which resulted in its enactment. In Rwanda, where CSO legislation was pending in both houses of Parliament, CSOs met with MPs and provided testimony to relevant legislative committees. The CSOs who carried the message were prepared with peer-developed talking points and clear objectives. As a result, the specific provisions which the CSO sector had objected to were removed from the bill.

4. Involving the media

As noted above, the media can play a tremendously important role in supporting advocacy efforts. In Macedonia, for example, informal information sessions with interested journalists were held in order to raise awareness of the upcoming reforms and to identify allies willing to cover the issue when public outreach was needed. During

¹⁵ We recognize, of course, that the formation of working groups will only be possible in certain country contexts, where there is a basic level of political openness and political will to engage in dialogue with CSOs. In reform-resistant countries, the formation of working groups is likely to be difficult, or impossible, to achieve.

subsequent advocacy efforts, CSOs held discussions with local journalists who featured articles highlighting the importance of the reform and the proposed provisions. In Honduras, the use of media during the advocacy campaign helped to shift the position of the press from generally critical of the sector to generally supportive. Local CSO leaders used various techniques to achieve this, the most effective being convening reporters at a press conference, which was covered by multiple newspapers across the country and several radio stations. In addition, key opinion leaders published articles about the CSO law.

5. The importance of implementation plans following the enactment of the law

The quality and content of implementation is as important as the actual legislation. The government and CSO buy-in on the legislation is critical for its successful implementation.

Implementation steps are often neglected or considered only at the end of the process. However, in those countries (e.g. Macedonia) where follow up plans were considered during the process, the key actors were able to raise funds and launch activities to increase awareness about the existence of the law, to alert CSOs about their opportunities (but also obligations), and to inform implementers about the issues that need to be considered when applying the law. In Macedonia it was important to educate CSOs about the law because it required re-registration and harmonization of CSO internal documents with the new provisions in the law. In Kenya and Rwanda, the drivers of the reform are planning to assist in trainings of trainers, and possibly work with government officials in the implementation, compliance, and enforcement of the new legislation.

Participation of CSOs is also important at the stage of developing implementing regulations for the same reasons their participation is essential in the drafting process. However, often times the CSO role in this is neglected by the government or CSOs do not invest additional efforts to remain engaged.

6. The role of international organizations

The international community can play an important role in alerting CSOs about the need or opportunities for reform and by investing resources and expertise to support the active participation of CSOs in the process.

During the reform processes described in this paper, ECNL and ICNL undertook multiple roles, including:

- Support for CSOs in identifying the reform needs;
- Assistance in developing a coordinated approach and priorities for reform;
- The provision of analytical comments on proposed provisions, written from a comparative perspective and recommending alternative solutions;
- Capacity building support for local CSO leaders, government and parliamentary officials to better understand the issues and develop strategies for leading the reform process (through in-person consultations, fellowships, study visits, tailored consultancies); and
- The provision of information alerts to and coordination with international organizations and diplomatic missions regarding the reform process.

ECNL and ICNL were also instrumental in supporting local advocacy. They alerted interested parties to the strengths and weaknesses of the proposed draft laws and raised awareness of how the law may affect the sector and society more broadly. In addition, they empowered local reform advocates (including CSOs, government representatives and members of parliament) by providing assistance in drafting improved provisions. As an illustration, when the Kyrgyz Parliament attempted to introduce a restrictive draft law, ICNL, upon request by local partners, reacted quickly and prepared a detailed analysis and summary highlighting the most problematic provisions of the law; the analysis was then distributed to Parliamentarians, members of the President's administration, and international and local CSOs, as well as donors and other stakeholders. ICNL gave presentations at a series of roundtables and meetings to present its findings to CSOs, government officials, Parliamentarians and other stakeholders. ICNL also assisted other organizations, including Human Rights Watch and CIVICUS, with their petitions urging the President to reject any arbitrary and unlawful limitations on civil society.¹⁶

ECNL and ICNL recognize that the role and approach of each international player depends on its internal priorities and policies in a given country. Therefore, we provide an illustrative list of potential roles of international organizations based on the experience drawn from the three case studies in this paper and discussions with local partners:

- Facilitate information sharing on the regional developments, international best practices and need for reform in the national context;
- Provide financial support to leading CSOs to undertake law reform initiatives;
- Provide assistance in developing legal arguments in support of enabling legal provisions;
- Serve as platform to convene stakeholders and provide space to discuss the issues, strategies and positions;
- Serve as messenger on issues where the Government/Parliament is more open to international actors;
- Publicly support steps toward enabling legal reform; and
- Organize in-person meetings with key legislators to help move the reform process forward, especially at critical moments in the reform process.

¹⁶ As described by Natalia Bourjaily, ICNL Vice President - NIS

FURTHER READING

Anabella Bruch & Martha Cecilia Villada, *Final Evaluation Report of the Partners for Enabling Environment Reform – Honduras project*

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