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Subgroup of the WG1 on Local Government and Public Administration Reform

*Proposal for Corleap
Bureau meeting, 30th of May 2012*

Rational

The Subgroup of Local Government and Public Administration Reform is working within the Working Group 1 (Democracy and Human Rights) of the Civil Society Forum for Eastern Partnership. It was established in 2010 and since then operated to engage our expert Civil Society Organisations in promoting local governments empowerment in the Eastern Partnership Countries and raise the focus on decentralization and administrative reform, engaging civil society and citizens.

The CSF EaP is a permanent observer of the established Corleap and participated in the launch in September 2011, in Poznan. Our members participated actively and the national level to bring proposals and to develop concrete projects to further strengthen the initiated decentralization and to strengthen the capacities of local authorities to implement their own tasks. A particular attention of the Subgroup LGPAR is to make sure the reforms will be engaged fully the citizens and will take in account their participation in decision making and implementation of future policies.

The Subgroup (LGAPR) presented in September 2011 a Position Paper to be addressed to Corleap and to the Committee of the Regions and to the local authorities of the EaP countries (and their national associations).

Assessment of the situation after the Position Paper of 2011

The Position Paper of 2011 called

- For the CoR and Corleap to bring high in the attention of the Eastern Partnership the Public Administration Reform, Decentralisation and consolidation of Local Governments in implementing the provisions of the European Charter on Local Self Government.
- For the local authorities of the Eastern Partnership (and their Association) to be engaged at the national level to further strengthen the role of decentralisation and functioning of Local governments in the agenda and priorities of the reforms undergoing at the national level.
- For strengthening the presence of civil society and citizens in the policy making, assessment, monitoring and implementation of the processes towards decentralization and public administration reform
- To support local government reform and decentralization in Belarus and Azerbaijan where the issue is particularly problematic.

The outcome of the assessment and monitoring are in the following points annexed.

However the main elements are :

- i. Minimum and not coordinated commitment of national policies towards strengthening of local government development and autonomy
- ii. Low level of involvement of civil society in practical terms (even if the legal provisions may exist in some aspects)
- iii. Lack of local government autonomy in Belarus
- iv. Improvements to be consolidated in Moldova, Ukraine and Georgia
- v. Lack of financial decentralization as a common feature shared by all the EaP countries, which prevent any development of autonomy by LGs

Proposal

The Subgroup for Local Government and Public Administration Reform of the Civil Society Forum proposes to Corleap to launch a common initiative on a single strong priority, such is **Fiscal Decentralisation**. Aware of the difficulty ahead of us, we propose to first identify it as our common priority (CORLEAP/CSF EAP) to be brought to the next Platform 1 taking place on the 7th of June 2012 and strongly lobby for a flagship initiative within the framework of the Eastern Partnership.

Fiscal decentralization remains a difficult and political orientation, which might be perceived as a long term objectives. Some the EU members States and EU representatives within the Corleap may also think that Fiscal Decentralisation remains not complete within their own country yet. We consider then even an opportunity of common work and reciprocity of joint activities between EU and EaP countries, to further work on a same “uncomplete” objectives.

The Subgroup LGAPR proposes to work jointly with Corleap on the definition of this Flagship initiative setting up targets (to be discussed within a minim threshold and then country by country, timing and action plan and methods to be adopted).

In particular, Fiscal Decentralisation could be oriented to :

- develop possibilities for local authorities to access the capitals' market
- strengthen competences to local authorities with consequent budget allocation
- identify possibility of local taxes
- identify possibility of services to be sold and technically provided by local authorities
- improvement of transfer system from the state budget to local budgets.

Annexe :

1. Update on Armenia

The degree of decentralisation, including fiscal decentralization, continues to remain very low.

Comparison of financial indicators selected and assessed with a view to evaluate relevance of LSG powers/responsibilities and financial resources with the applicable indicators in European countries shows that Armenia is still significantly behind, in particular, in terms of the shares attributed to community budget in total public expenditures (8.5%) and GDP (2.4%), as well as per capita spending vs. revenues (USD 70) and expenditures (USD 68) of community budgets.

Municipalities/communities, as units of local self-government, continue to remain extremely fragmented and weak in capacities. Despite the fact that the Government approved the Concept on Establishment of Inter-community Unions and Consolidation of Communities, there aren't any developments in this regard. The problem is complicated taking into account that there is only one tier of local self-government in Armenia.

Degree of autonomy of communities and their financial independence continues to be insignificant. No shared revenues were made available to the municipality/community budgets from any of the national taxes yet.

Municipalities/communities did not issue municipal bonds or received loans either from the state budget or commercial banks yet.

The National Assembly adopted a package of legal acts associated with local taxes, but it does not enable the community councils to establish local taxes yet because the laws on individual types of taxes have not yet been promulgated. Property and land taxes having been established as local taxes, the right to establish their rates is contained within the legislative domain as it currently stand rather than granted to local self-government bodies, as required by the European Charter of Local Self-government (Article 9.3).

Absence of legal basis for implementation of mandatory and delegated powers of LSGs poses serious problems both for the LSGs in terms of defining minimum volumes of financial resources required for their implementation, and the state authorised agencies in terms of establishing proper supervision over implementation of those powers by the LSGs.



Armenia has not recorded any serious progress towards development of local democracy last years.

Despite the fact that the law on Municipal Service is meant to promote involvement of well educated and professionally capable human resources in the municipal service, as well as to protect municipal servants against politically driven improper reshufflings, nevertheless, in real life municipal servants are heavily dependent upon situational changes.

In terms of using electronic means of communication in the communities it should be mentioned that general situation has not changed much. Many communities lack proper or reliable internet connection. Moreover, many of them lack other means of public awareness (such as newspapers, local television, in some cases even landline telephone communication

2. Update on Azerbaijan

The following are the major challenges uncovered upon assessing the current legislation of municipalities, as well as, the real situation of the establishment, running and development of municipalities against the background of European Charter's principles, requirements and recommendations:

The legally defined status and scope of competence of municipalities in Azerbaijan in the Constitution and law on "status of municipalities" do not enable municipalities either to have a status of real authority or be identified as a body part of the entire public administration;

The real scope of competence of municipalities is confined to maintaining the municipal roads, delivering social assistance to low-income citizens that are not covered by the state social programs, maintaining cemeteries and organizing funerals;

There is a problem of overlapping responsibilities in local governance of Azerbaijan in that the legislation assigns the same responsibility to a state body along with municipalities;

Municipalities in Azerbaijan suffer from extremely weak financial potential. Although a number of income sources are identified for municipalities in the legislation, a significant majority of these sources are not sustainable and do not bring in high income;

The amount of transfers for municipalities from state budget is very low. The distribution mechanism of transfers among municipalities is flawed and it is thus unclear which criteria are referred to upon distributing the transfers among various municipalities and assessing their needs for financial resources;

The fact that there is no legislation governing the relations between local state bodies and municipalities leads to the breach of the entitlement to local self-governance; Imprecise division of responsibilities between municipalities and local state executive committees, as well as, incomplete and unexceptional responsibilities of municipalities are often the source of conflicts;

Cases of executive committees hindering municipalities to dispose their budget funds independently are becoming more common;

Municipalities have not yet received documents verifying their properties including administrative buildings, as well as, their rights to these properties. Although it is 11 years since the inception of municipalities in Azerbaijan, a great majority of municipalities do not have an administrative building yet. The central apparatus of most of the village municipalities is accommodated in several rooms in the building of the representation of executive committee;

Three (urban, village and town) national associations established as municipal unions operate weakly and do not have notable operations in the field of defending municipalities interests and putting forward an advanced concept or strategy of local self-governance;

There are serious gaps and problems in the legislation governing the status and responsibilities, and rights and obligations of municipal servants;

The existing skills of personnel do not allow for the efficient organization of local self-governance. The major reason is because there is no system of training and retraining municipal personnel;

There is no clarity around the formation principles of municipalities in Azerbaijan. Since no administrative-territorial division (village, settlement, district and town) of local self-governments is considered, there is no practice of differentiation of municipal responsibilities based on the administrative-territorial division;

Although various forms of public control over municipalities are applied in Azerbaijan, they cannot be considered advanced from the standpoint of efficient organization of

municipalities' activities. There are grave problems in both intra-municipal control and public control over municipalities.

3. Update on Georgia

Conceptual basis and legislation

Unavailability of a State Concept on Public Service Reform - Amendments made to the Law on Public Service are occasional and are not based on a single consistent concept.

The legislation regulating the functioning of public service has a number of shortcomings, like those listed below:

- The regulating norms are scattered across various laws and often times are not mutually exclusive. It is desirable to systemize them and pass as a Code;
- Applying a competitive hiring method in a public agency is a possibility, rather than an obligation of the person in charge of the agency. In general, legislative requirements concerning the hiring process in the public sector are not well defined and insufficient;
- There is no well defined system of moving up the career ladder by a public official. Stimulation as well as disciplinary methods are contradictory. There are no appeals and work ethics committees;
- Majority of public servants do not have their job descriptions (even though required by the Law), making it impossible to objectively evaluate their work performance;
- Rules of giving ranks to public officials are imperfect;
- The public officials reserve system is not functioning due to the lack of legislative provision;
- In short, there are no efficient motivation mechanisms in place.

All the above mentioned, along with a tendency of hiring public officials based on their political preferences, result in an extremely highly politicized public service sector, thus decreasing its effectiveness.

Transparency and accountability :

Public participation in policy planning of various public sectors is low. In addition, there are no such mechanisms established and provided normatively;

In terms of accessibility of public information, there is a whole category (particularly concerning budgetary information) that, according to the legislation, is public, but in fact is mostly impossible to have access to;

The public agency reporting system is imperfect. As a rule, such reports are not published at all (other than some rare exceptions), or, if published, they are oriented only to emphasize achieved success;

E-government and E-service elements have been introduced in some limited agencies and areas (e.g. Ministry of Justice; Service Agencies established under the MIA; on the first and second stages of issuing building permits by Tbilisi City Hall). However, the overall public sector in the country, and especially the local governments, are still too far from applying this system. It should also be noted here, that general situation with regards to the Internet penetration in the country and spreading e-technologies is not satisfactory.

Local and Regional Government :

Even though the Local Self-Governance reform was planned and implemented in 2005-2006 (territorial-institution division, property issues, introduction of the State supervisory system, etc.), the following still remain to be the main problems:

- Unclear division and separation of the public functions between the Central and local governments;
- Enormous financial dependence of local self-governments on the State budget;
- Low qualification of local officials;
- Low level of citizen participation in the self-governance.
- No unified system of qualification raising and retraining of local self-government public officials - all these resulting in low level of their qualification;
- Lack of participation of local stakeholders such as local authorities, civil sector, businesses in the regional projects carried out by the Central Authorities (with the State budget funding);

4. Update on Belarus

Local self-government in Belarus has been experiencing a deep systemic crisis since a long period of time. The causes of this crisis are in the Soviet-type understanding of the role and meaning of local authorities.

The existing legislative norms yet again reproduce the outdated blueprints and templates based on the Soviet-era theory of 'state self-government'. This theory is in line with an authoritarian, non-democratic model of governance in the country. The respective model differs greatly from the ones existing in most developed democratic countries based on the theory of 'dualism,' which implies clear distribution of responsibilities and functions between central and local authorities as well as their flexible balance in addressing issues of national and local importance at the local level.

Belarus is the only European country which is not a signatory of the European Charter of Local Self-Government.

In February 1991 Belarus adopted the Law 'On Local Self-Government and Local Economy' (from 1994 it is called 'On Local Government and Self-Government'). A multitude of amendments and addenda have been made in this law since then.

According to its latest version, local self-government is not separated from the system of state government bodies. Consequently, elected bodies of local self-government, such as Councils of Deputies, are defined in terms of state government bodies. Traditional terminology used in many countries, such as municipality, commune or local community, is never mentioned in the law.

The largest part of competence attributed to local councils by the Constitution and legislation covers the following responsibilities: endorsement of local budget and reports on their implementation, approval of local socioeconomic development programs, defining of procedures for the management and disposal of communal property, and introduction of local taxes and duties. However, in practice these responsibilities are merely formal attributes, because it is the local executive committees which play the major role in addressing those issues.

Local councils do not have possibilities to influence the personnel policy of executive committees and have very limited supervisory functions with respect to the activities of executive committees.

Local self-government does not have its own executive bodies. Local executive committees function as a separate system of government and are not accountable to citizens. In essence, they are bodies of state government at the local level. There are unresolved issues in the division of competence between different levels of local authorities. There is

no real economic foundation for the activities of local bodies, and their independence with respect to budget and taxes is substantially limited.

In accordance with the Constitution in force since 1994 in Belarus, communal property is preserved as a sub-type of state property and can be seized and redistributed by central or higher bodies of government at their will. Article 13 of the Constitution reads that 'mineral wealth, water and forests are in exclusive ownership of the state. Agricultural land is owned by the state.'

Bodies of local self-government along with bodies of local government by the virtue of their state government status are guided in their activities, first of all, by the national interests and decisions of higher authorities, including central government, according to Article 120 of the Constitution.

Local self-government in Belarus, as per Article 122 of the Constitution, is not protected from administrative pressure from higher authorities of state and local government. Similarly, it is limited in its ability to set up its own bodies, select personnel and elect leaders.

A new version of the Law 'On Local Government and Self-Government' entered into force on July 15, 2010 (adopted on January 4, 2010) and brought some positive changes concerning guarantees for local self-government. In particular, Article 7 of the Law provides for the possibility to set up associations of local authorities, including at the national level, while Article 59 in Point 7 introduces the clause on judicial protection of local self-governments.

However, these positive changes do not concern the very foundation of the existing model and activities of local authorities and are not yet applied in practice.

The Law provides opportunities for citizens to be engaged in local self-government through direct democracy: local referendum, assemblies of citizens, citizen appeals, law-making initiative, territorial self-government, etc (there are a total of 11 different ways specified in the law). However, these forms of direct democracy are not used in practice, because they are strongly politicized and bureaucratized.

To move out of the existing situation, the structure and operation of local self-government bodies in Belarus should undergo a systemic reform based on the principles and provisions of the European Charter of Local Self-Government through the adoption and implementation of a comprehensive and scientifically grounded Concept of Local Self-Government Reform endorsed at the highest government level.

Taking into account the main features of the existing situation and considering the actual conditions of local self-government, the following priorities are deemed to be crucial:

- Preparations for the signing of the European Charter of Local Self-Government;
- Drafting of a Concept of Local Self-Government Reform and its subsequent endorsement at the highest level of government;
- Improvement of local self-government legislation on the basis of principles and norms of the European Charter;
- Establishment of an Association of Local Councils;
- Activities to make sure universities offer programs on local self-government and provide additional training for personnel working this field;
- Development and implementation of performance benchmarks for local councils;
- Implementation of the principle of openness in the operation of local authorities;
- Creation of communication platforms for the development of dialogue between local authorities and citizens.

5. Update on Ukraine

Today, no one in Ukraine argues that there is a need to reform local self-government and governance at a regional level, importance of decentralization, including financial decentralization. The inter-budgetary relations reform is included in the list of priority objectives of the incumbent government.

The relevance of achieving the real progress in this area today is also determined by the fact that the Council of Europe is starting the next monitoring of the implementation status of the European Charter of Local Self-Government in Ukraine. Furthermore, the European Commission Report on the Implementation of the ENP Progress in Ukraine in 2011 also recommends including the issues related to reforming both local self-government and public governance in general in the priorities of the 2012 Association Agenda.

Unfortunately, Ukraine today is demonstrating a trend toward deterioration of the situation with local self-government.

The concept of reforming local self-government and territorial organization of governance in Ukraine developed by the Ministry of Regional Development, Construction and Housing and Communal Services supported by the experts of the Council of Europe involving civil society organizations was not approved by the Ukrainian Government in May 2012. This Concept, however failing to address the reform needs, could still be used as a basis for the start of the reform of the local self-government system.

On May 17 2012, the parliament voted down a draft Law of Ukraine "On Association of Territorial Communities". This project, despite its significant shortcomings, could serve as a



good basis for the first real steps in reforming an extremely deficient system of administrative-territorial organization of Ukraine.

Thus, despite all the intentions declared by the President of Ukraine in early 2011 concerning the reform of local and regional governance, activities in this sphere are hindered, and any real progress is virtually absent.

An imperfect system of local elections leads to an escalation of opposition between mayors and local councils. This situation has a negative impact on stability of the work of local self-government bodies, and often results in unjustified firing of legally elected mayors and establishment of control of local executive bodies over local self-government bodies.

Another important problem is the absence of a clear delimitation of power and authorities between local self-government bodies and executive bodies. The deficient system of territorial organization deepens unjustified centralization and concentration of powers of the state executive branch.

Ukraine as a state with a large territory especially needs decentralization of power, delegation of executive powers to the local level with a simultaneous clear regulation of activities of the governance bodies, compete delimitation of powers, and transition from political control of local self-government to regulatory control – over legitimacy and competency of documents adopted by local self-government bodies.

Analysis of this situation shows that institutional and human resources potential of local self-government in Ukraine is rather low. An important problem is that of resource, including manpower, support for the authorities of local self-government bodies. The Ministry of Justice developed and submitted to the parliament a draft Law of Ukraine “On Service in Local self-Government Bodies”, which is imperfect and violates the principles of the European Charter of Local Self-Government.

A positive development is adoption of the Law of Ukraine “On Administrative Services”. Its proper implementation will have a positive impact on the improved quality of services provided by state authorities to the population.

It should also be mentioned that the measures previously taken to improve the reform the inter-budgetary relations, created a general legislative basis for implementing fiscal decentralization. The main benchmarks here were adoption of the new Budget Code in 2001 and creation of the State Fund for Regional Development in 2012. The further financial decentralization should be done not by introducing individual legislative amendments but by decentralization and deconcentration of power. Prolongation of the reform of the territorial organization of power, absence of a clear delimitation of powers between local self-government bodies and executive bodies will deepen the discrepancy between the financial (fiscal) opportunities and the existing powers and authorities of local self-government bodies.

The Law of Ukraine “On Local Self-Government” has created the minimum necessary legislative basis for various forms of local democracy. At the same time, there is still a

rather important problem of real mechanisms of their functioning. Adoption of the draft laws “On Local Referendum” and “On Peaceful Assembly” meeting the standards of the Council of Europe and the OSCE should be accelerated.

The government’s effort to develop the mechanisms of consultations with the public and public policy implementation (creation of public councils, organization of public expertise, etc.) should be developed and institutionalized as law. This requires respective amendments to the legislation on local self-government.

In view of this, the following needs for reforming local self-government in Ukraine in the nearest future can be identified:

- sooner adoption of the Concept on reforming local self-government and the start of its implementation in practice;
- adoption of legislative acts opening the opportunities for reforming the administrative-territorial division and territorial organization of power;
- adoption of the laws on local referendum, on peaceful assembly, and on the bodies of citizens self-organization.

6. Update on Moldova

Currently, the situation of local government in Moldova can be characterized as follows: De jure, the LPA authorities in the Republic of Moldova have an autonomy declaratively full, but, de facto, this is limited, in part because of the CPA’s interference in their daily activity, in part due to the fact that their own financial resources that do not reach the limit of needs. This is accompanied by an excessively fragmented territorial-administrative organization and low administrative and institutional capacity.

The National strategy for decentralization, currently approved, represents the government’ commitment to reform deeply the local government system in order to strengthen the administrative and financial capacity of local authorities, improving management and quality of services provided to citizens. On short and medium term, the key challenges of reforming the public administration system from Moldova are:

Elaboration of sectoral decentralization strategies, their implementation, monitoring and evaluation. In at least 8-10 sectors: education; social; communal services & public utilities: gas, water, sewerage& waste management, public lighting, parks and public spaces, housing, roads; public order; health, e-governance, culture; etc. should be elaborated

sectoral strategies. These strategies should assess the impact of the decentralization reform and provide strategic recommendations for improvement of services which fall under the responsibility of local authorities.

Analysis, revision and adjustment of legislative acts. Two sets of laws were analyzed in 2010-2012 with a view to harmonize their provisions and also bring them in line with the European Charter of local self-government. A number of other laws remain to be reviewed in the same way (for example laws pertaining to public finances, local finance, taxation, etc.). The sectoral decentralization strategies will as well call for changes in the current laws or elaboration of new legal provisions. In addition, a regular process has to be put in place, during which legal provisions are assessed for their impact and mutual interrelation, and adjustments.

Clarification of competences which derive from sectoral strategies. In 2011-2012 a Chart of local government responsibilities and competencies has been elaborated with UNDP's assistance. This Chart identifies 112 responsibilities of local authorities, grouped in 16 broad categories. The clarification and allocation of competencies across levels of government is an ongoing process and will be partially determined by the sectoral strategies. The Chart has to be refined and detailed for each category, function, service, etc.

Fiscal decentralization. Recently, were elaborated several policy options for improvement of local own revenues, transparent sharing of the income tax, and options for a more equitable, simple and predictable equalization transfer system. A new law on local public finances has to be issued. From these reasons, implementation and a periodic review of the impact of the new revenue and transfer system including equalization as well conditional transfers for delegated functions; tax administration; grants and borrowing; internal and external audit; public acquisition; improvement of local budget and financial management frameworks has to be assured.

Property decentralization: inventory, registration & management of local (real estate) assets. Recently, Ministry of Economy receives a comprehensive set of policy options and recommendations, including draft law proposals. They cover the legal tools to separate the property of central government from that of the local authorities, to distinguish between public and private domains, as well as detailed methodology to complete the inventory of public assets. If they are adopted and the necessary laws and regulations passed, the actual identification and registration of the local assets has to be done.

Analysis and public debates regarding policy options for territorial administrative reform. The territorial-administrative fragmentation of Moldova is a major obstacle for the improvement of the service provision. Rural local authorities have only a representation,



rather than service delivery role, as they cannot raise the necessary resources to build the needed administrative capacity. This reform needs preparation: an analysis of options and their impact, as well as a fact based public debates.