

# ANALYSIS OF THE NCO DEVELOPMENT ENABLING ENVIRONMENT

SURVEY AND FOCUS-GROUP DISCUSSIONS RESULTS



BISHKEK-2014

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## List of abbreviations

ACT	Action by Churches Together
CIVICUS CSI	CIVICUS Civil Society Index
DCA	Danish Church Aid
ICCO	Interchurch Organization for Development Co-operation
CIDSE	Catholic International Cooperation for Development and Solidarity
MBA	Master of Business Administration
FRSA	Fellow of the Royal Society of Arts (United Kingdom)
AAA	Accra Agenda for Action
BFI	Bishkek Feminist Initiative
CPP	Civil Partnership Platform
PPP	Public-Private Partnership
ICC	Information and Consulting Center
CSOSI	Civil Society Organizations Sustainability Index
LGBT	Lesbian, gay, bisexual and transgender persons
YVO	Youth Volunteer Organization
NCO	Non-commercial organization
NGO	Non-governmental organization
CSO	Civil society organizations
PA	Public Association
PACRP	Public Association for Consumer Rights Protection
UN	United Nations
PA SPP	Public Association "Social Protection of the Population" named after L. Fomova
PF	Public Fund
UNDP	United Nations Development Program
MM	Mass media
FGD	Focus-group discussions
CSSC	Civil Society Support Center

## A word of welcome

Dear readers!

We call your attention to the report on the research: *Analysis of the NCO Development Enabling Environment (Survey and focus-group discussions results)*. Preparation of this research involved participation and support of many NCOs, the Civil Partner Platform "Central Asia on the Move" and the Civil Rights Movement "Bir Duino-Kyrgyzstan", as well as facilitation and technical assistance of the DCA and ICCO representative offices in the Kyrgyz Republic.

This research of enabling environment for the functioning and development of civil society organizations in the Kyrgyz Republic has employed the methodology developed by the international charitable organizations CIDSE and ACT Alliance which allows to obtain a more or less objective quantitative measures. Respectively, our report's main substantial component has been built around this particular data.

The research does not claim to be exhaustive, but rather illustrates some of the NCO development trends in the country, possible challenges and risks identified as a result of the research, as well as traces the NCO development dynamics in the long term. The report provides recommendations whose implementation should enable more efficient development of the NCO sector in the Kyrgyz Republic.

We hope that the research will become a reliable source of information that can serve as the basis for a constructive dialog with the Government to develop new effective public policies in relation to NCOs, elaboration of a new strategy to support the development of NCOs or progressive reform to improve the efficiency of today's policies and practices.

Let us conclude by expressing our sincere gratitude for the support in carrying out this research to: DCA and ICCO representative offices in Kyrgyzstan, Civil Partnership Platform "Central Asia on the Move", Human Rights Movement "Bir Duino - Kyrgyzstan", PA "Bakubat" (Naryn), the "Union of Unity" (Talas), PA CCI "Leader" (Kara-Kol), PF "Spravedlivost" (Jalal-Abad) PF "Human Rights Advocacy Center" (Osh and Osh Oblast), PF "Insan Leilek (Batken oblast), PA "Alga" (Chui oblast).

Sincerely,

The Research Team of the Tian Shan Political Center

## Executive summary

The main purpose of the research was to identify and analyze the conditions of activity of civil society organizations (CSOs) in the Kyrgyz Republic, certain aspects of these conditions, as well as those aspects that require greater attention.

The research "*Analysis of the NCO Development Enabling Environment (Survey and focus-group discussions results)*" was prepared by the team of the Tian-Shan Policy Center at the American University of Central Asia with the support of the Civil Partner Platform "Central Asia on the Move" and the Civil Rights Movement "Bir Duino–Kyrgyzstan", and through facilitation and technical assistance of the DCA and ICCO representative offices in the Kyrgyz Republic.

The research methodology was based on the analysis of the advantages and disadvantages of the various systems of indicators and indices, such as the CIVICUS CSI, the Civil Society Organizations Sustainability Index (CSOSI), as well as the minimum standards for an enabling environment for civil society organizations, developed by the The Open Forum for CSO Development Effectiveness.

The research focused on active civic organizations from all regions of the country who worked in the field of development, human rights and political space. The survey involved 81 respondents from among NCO leaders. The survey was conducted individually, anonymously, on-line and in three languages: Kyrgyz, Russian and Uzbek. The results of the survey were subsequently supplemented by ten focus-group discussions which were also organized and conducted by NCO activists in all regions of the country.

The results of the research allowed the team to identify the three most significant factors for the development of CSOs of the Kyrgyz Republic in the short term: the level of CSO operational environment development, the level of the State's impact on/interaction with CSOs, and the level of the support to CSOs provided by the State and international donor organizations. The research also revealed an apparently diminishing trend in the political space and the enabling environment for CSOs' operation. This trend can be seen on the example of the legislative amendments initiated for introduction in the laws on NGOs, freedom of association, peaceful assembly, which either restrict the activities of CSOs or make it difficult or impossible to obtain funds from abroad. Another trend is related to the authorities' negative perception of individual active CSOs' political activity. The third trend is that of reduced secure space for the activities of Kyrgyz human rights defenders and civil society activists.

The preliminary results of the research were presented and discussed at the first presentation which was attended by some of the survey and focus group participants, as well as international and donor organizations' representatives. The results of the research were approved by the participants of the meeting. In addition, the participants of the presentation made a number of recommendations which then formed the basis of final recommendations and conclusions of the research.

The study concludes with recommendations for the Government of the Kyrgyz Republic, legislators, the Akyikatchy's institute (Ombudsman), civil society organizations and international development partners.

The Annex contains a list of NGOs that took part in the focus-group discussions

## Introduction

The adoption of measures, including through international assistance, to promote economic development and poverty reduction, has a greater effect in those countries where civil society participation promotes quality and deep enrichment of society's social capital. Civil society organizations are inherently different from governmental organizations. They can cooperate with government agencies to provide development assistance, as well as pursue independent activities. The extent to which civil society organizations and non-governmental organizations (NCOs) can develop and pursue activities to implement their mandate is exactly what is seen today as the "NCO Development Enabling Environment" (UNDP, 2008).

Despite the fact that a number of international treaties and conventions have recognized CSOs as independent subjects of development, there arise numerous factors that impede their ability to function as such and ensure sustainable development. Over the past few years, a number of countries, and Kyrgyzstan in particular, have initiated regulatory legal acts and practices which, while being touted as facilitating CSOs' activities, have in fact become an obstacle to their work. As a result, as the UN Special Rapporteur on the right to freedom of peaceful assembly and of association Mr. Maina Kiai noted, "civil society organizations have experienced significant limitations of their mandate and have suffered the unprecedented control over their activities, which led to limitation of freedom of association and brought about violations of fundamental human rights "(the NGO Development Conference, Malawi, Blantyre, November 25-26, 2013).

In recent years, many international non-governmental organizations, as well as the existing UN mechanisms have repeatedly noted a dramatic decline in the quality of the CSO development enabling environment in a number of countries. Many also felt that there came a need to develop an instrument, similar to indices, but less costly in time and resources, to track in "real-time" all changes in CSO operation and development enabling environment, as well as to define whether the impact that such change produces on CSOs is positive or negative. In addition, much importance is being attached to the exchange of knowledge on NCOs and among NCOs in various parts of the world. In this context, CIDSE and ACT Alliance took the decision to develop an appropriate instrument of research which will be discussed in detail in the work offered here for your attention.

The methodology used here offers a quick and resource efficient method for testing the supportiveness of the enabling environment for CSOs/NCOs at any given time, in contrast to other indicator systems which are lengthy and costly to implement. The research does not involve national government nor donor governments as clearly these actors are not the users of the NCO-enabling environment. The research is not an investigation, nor an assessment. Rather it offers a lens through which we can gain new insight and understanding. The team conducting this universal survey also appended it with chapters containing legal and situational analyses of the NCO-enabling environment in Kyrgyzstan. The present survey has been carried out not only in Kyrgyzstan: with the support of DCA and ICCO, such NCO-enabling environment studies are currently being carried out in many countries of the world, with some countries such as Zimbabwe, Malawi, Rwanda and Colombia having already completed it.

The aim of the present study is to identify and analyze operational environment for CSOs in Kyrgyzstan. This environment primarily affects the activities of CSO leaders and activists; some aspects of the environment have a fundamental impact on the activities of CSOs. Attention should be paid to those aspects that call for greater focus and application of practical efforts.

The research purports to prove the existence of the factor of the influence of the State's policies and practices on setting up the CSOs' operation and development enabling environment, the impact of such environment on their development. The research provides for the options, under which an understanding can be achieved as per how various actors at all levels can facilitate creation of an environment for CSOs nationwide.

## Section I. Research methodology

The research design was developed by the international charitable organizations CIDSE and ACT Alliance. The research methodology was based on the analysis of the advantages and disadvantages of the various systems of indicators and indices, such as the CIVICUS CSI, the Civil Society Organizations Sustainability Index (CSOSI), as well as the minimum standards for an enabling environment for civil society organizations, developed by the The Open Forum for CSO Development Effectiveness.

The research methodology includes both quantitative and qualitative approaches. The following is a detailed description of the methods used.

### Online questionnaire survey for NCO leaders

The survey framework is bounded and designed around the rights and responsibilities outlined in the UN Declarations on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights (including the right to development) and Fundamental Freedoms adopted by the UN General Assembly in 1998. Responses to the questionnaire made it possible to identify CSO leaders' subjective assessment of how easy it is to conduct their work in Kyrgyzstan today.

The survey questionnaire was developed by Ms. Kerrie Howard (MBA, FRSA) in English and translated into Russian, Kyrgyz and Uzbek languages. The questionnaire predominantly comprised closed-type questions, scales and indices, as well as 2 open-type questions. Closed questions, drawn out in the form of the Likert scale, consisted of 5 possible answers implying various degrees of the enabling environment for CSO's operations. Answer options which indicated the negative trends in operational environment were assigned numeric codes on a scale from 1 to 3; positive trend indicators were coded as 4 and 5. To illustrate the results for all the questions in the questionnaire, the report demonstrates only the trends of the answers (negative/positive).

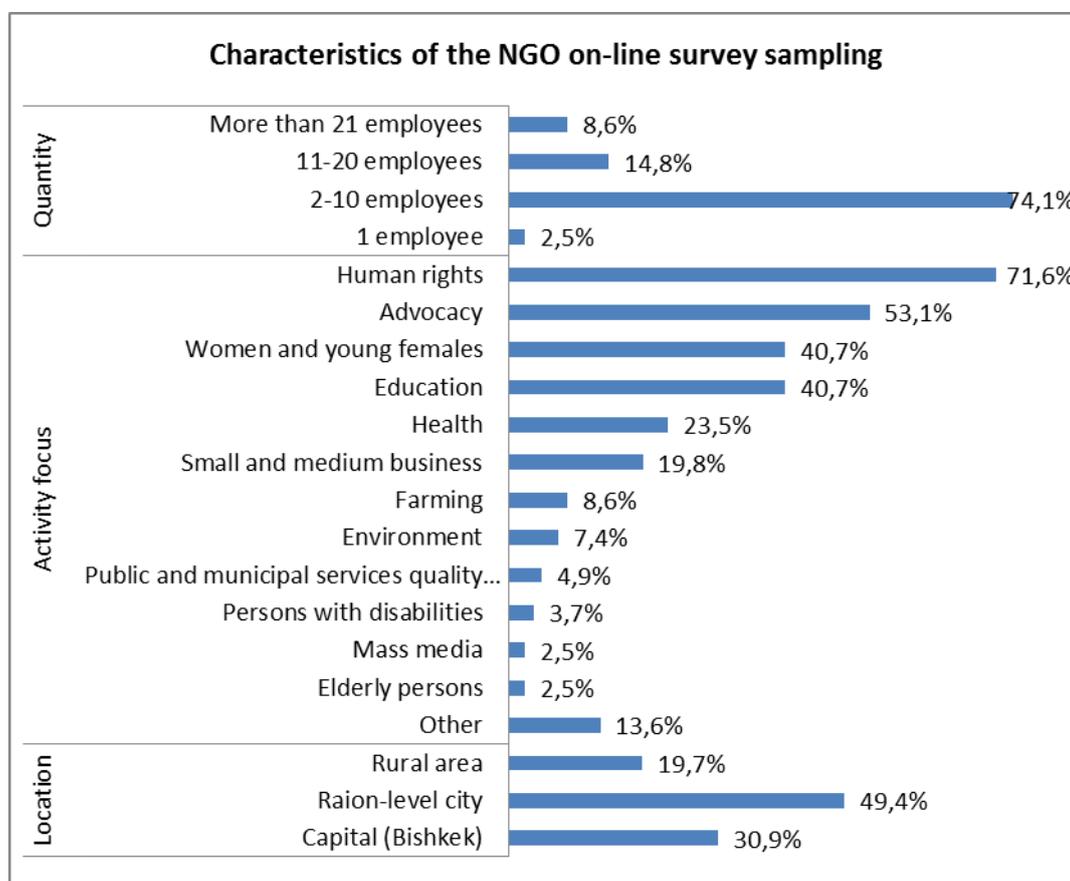
The survey involved 81 respondents - leaders of NCOs, individually, online. The questionnaire-based survey was anonymous - anonymity was ensured through the technical organization of the website (by using the "monkey survey" website for filling in the questionnaire). The list of potential interviewees was prepared and agreed upon by the research team and coordinated/approved by the CPP "Central Asia on the Move", the Civil Rights Movement "Bir Duino", and DCA and ICCO representatives. One of the challenges was the absence of a database on the NCOs of Kyrgyzstan containing their actual contact information (phone numbers and e-mail addresses). Instead of the planned 1 week to harmonize the research sampling, the research team spent 4 weeks on the formation of a database of potential survey respondents.

The survey sample included NCOs with varying range of employee numbers and representing different regions of the country and areas of activity. The number of NCO employees who participated in the research, ranged from 2-5 to 10-20 people. 74.1% of respondents noted that their NCOs employed from 2 and up to 10 people, 14.8% - from 11 to 20 people; more than 21 employees work in 8.6% of the NCOs. Organizations with only one employee comprised 2.5% of the total number of those participating in the research.

As you can see from the chart, most NCOs are engaged in several activities at the same time. It is worthwhile to pay attention to the fact that almost half of all active NCOs are engaged in human rights activities: 71.6% of the NCOs indicated this area as their main one. Then, in descending order, come such activity areas as advocacy and lobbying, followed by gender, civic education, public health, small and medium business, farming, environment, monitoring the provision of public and municipal services, protection of the rights of persons with disabilities, protection of the rights of elderly people and media development.

With regard to the location of the NCOs thus surveyed, 49.4% of them operate in the cities of raion subordination, 30.9% - in the capital of the Kyrgyz Republic, and only 19.8% of these organizations are located in rural areas.

Chart 1.



The questionnaire took about 20 minutes to complete. Instead of the planned 10 days for collection of quantitative data, the survey was conducted for 23 days: from November 28 to December 13. The research group were placing calls to potential respondents more than 2 times with a request to answer the questions in the questionnaire.

### Focus-group discussions (FGD)

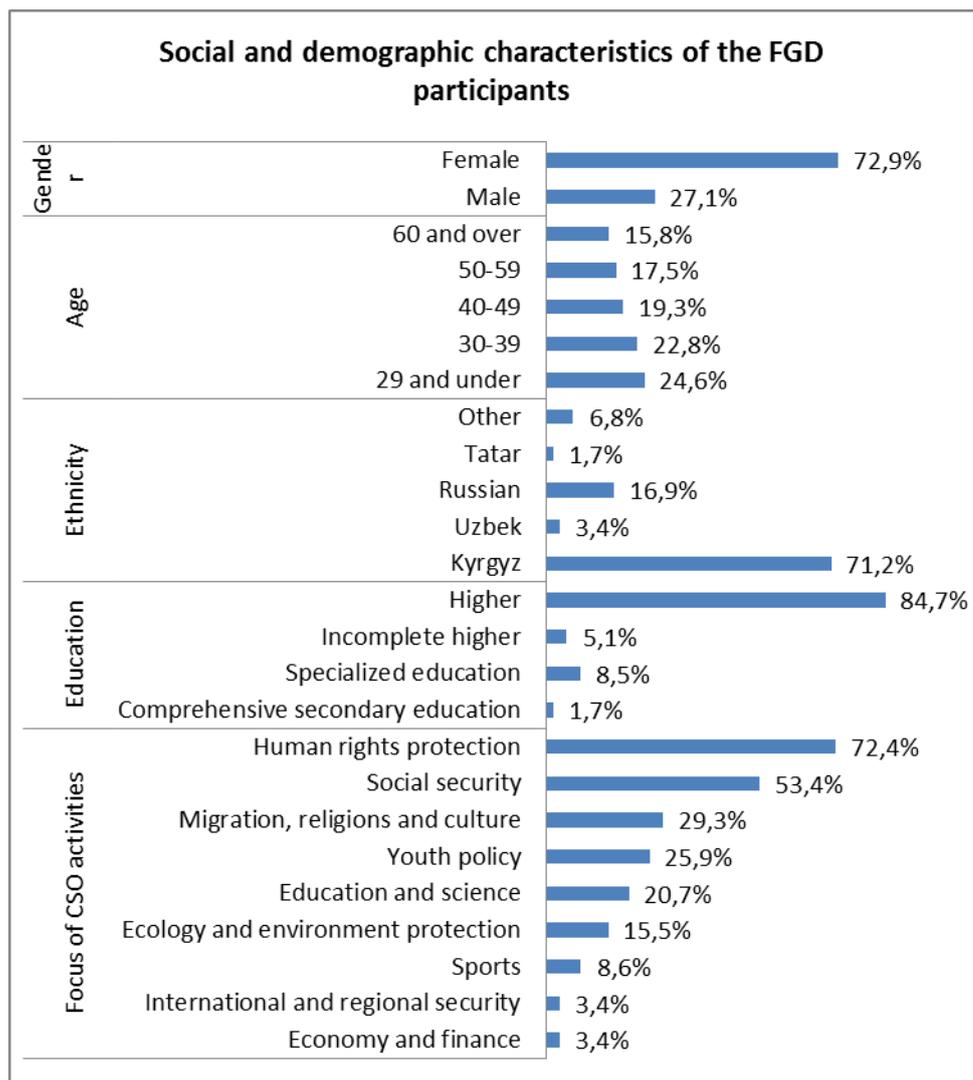
The results of the questionnaire survey were triangulated with more detailed, in-depth information obtained during focus-group discussions (hereinafter - FGD). Overall, 10 FGDs were held in the cities of Bishkek and Osh and the seven oblasts of Kyrgyzstan. The minimum size of a focus-group respondents comprised 5 persons. The list of participants was prepared by the research team, coordinated and approved by the CPP "Central Asia on the Move", the Civil Rights Movement "Bir Duino", and DCA and ICCO representatives. The list of NCOs that took part in focus-group discussions is given in Annex 1.

Table 1. **The number of FGD participants, by oblasts**

<b>Region</b>	<b>Number of FGDs</b>	<b>Number of participants</b>
The city of Bishkek	2	10
Chui Oblast	1	7
Issyk-Kul Oblast	1	6
Talas Oblast	1	7
Naryn Oblast	1	6
The city of Osh and Osh Oblast	2	10
Jalal-Abad Oblast	1	6
Batken Oblast	1	7
<b>Total</b>	<b>10</b>	<b>59</b>

In order to obtain detailed information from FGD participants, focus groups were made heterogeneous, that is, invitations to participate in the FGDs were extended to NCO representatives of different courses of action. The smallest focus group comprised 5 respondents. Each participant was asked to fill out a quick questionnaire that contained gender, age, ethnicity and education level information.

Chart 2.

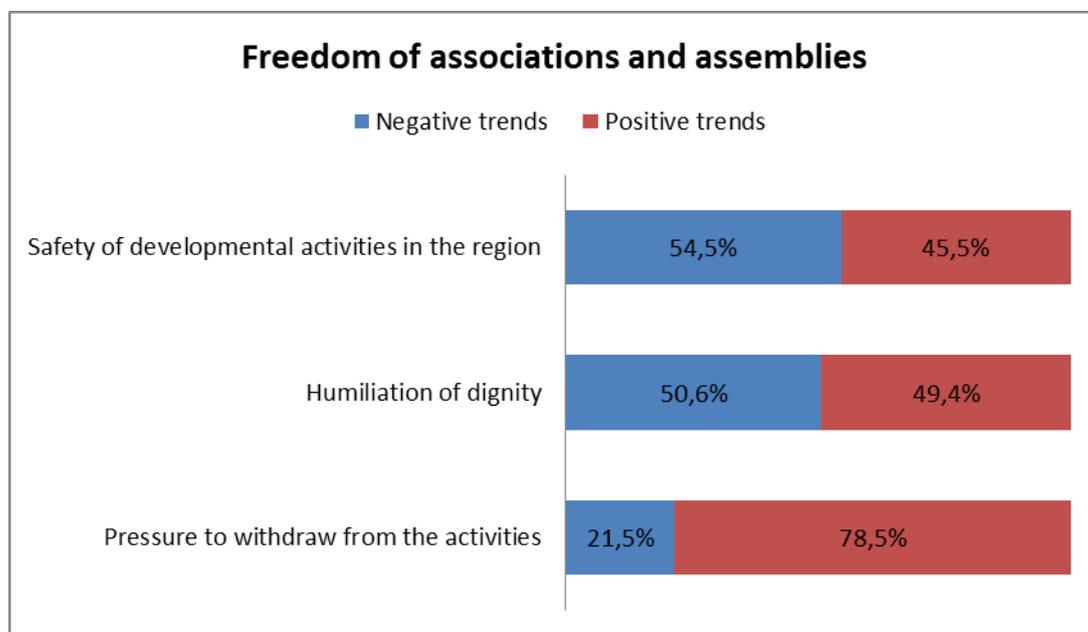


The FGD script was developed in English by Ms. Kerrie Howard (MBA FRSA) and then translated into Russian. On average, an FGD session went on for about 2 hours. All FGDs were recorded on audio for later analysis. In addition, audio recordings of all FGD sessions were transcribed to be subsequently used for qualitative data analysis.

## Section II. Research results

### 2.1. THE FREEDOM OF ASSOCIATIONS AND ASSEMBLIES IN THE KYRGYZ REPUBLIC

Chart 3.



Most of the survey participants (54.5%) responded that they did not feel safe or had doubts about their security while pursuing their NCO activities in a given region of the country. Analysis of the collected survey forms shows that NCO representatives dealing with rights protection, citizens' interests promotion, gender issues, as well as organizing various advocacy-campaigns and actions are the ones who feel the most insecure.

On the basis of the collected and structured information, the authors of the research concluded that it is the human rights NCOs who are the most vulnerable in terms of their physical integrity. While it is precisely the human rights defenders who represent the special group of community activists whose freedom of activity serves as a direct indicator of the general level of respect for human rights in the State. According to the survey and FGDs, most often, the threats aimed at terrorizing, intimidating, reducing and/or discontinuing human rights activities are received by human rights defenders and civil society activists, including those of the LGBT community.

«Our organization and our leader constantly receive threats. We suppose that the higher is the effectiveness of our human rights work, the more frequent are threats we receive, and the more serious becomes their content. We noticed that after the June events of 2010. At the time, the threats to our leader and our organization as a whole came from all over the place, compelling our leader to temporarily leave the country and go overseas because we feared for her life and the safety of her family». (FGD, the city of Bishkek)

Such vulnerability of NCOs engaged in human rights protection and civil interests promotion, gender issues and advocacy is manifested, first of all, in the Government's use of the increasingly expanding anti-terrorism legislation and the State authorities' levers to restrict "political" activities of NCOs which is sometimes accompanied by the exertion of pressure on NCO leaders, as well as members of their families.

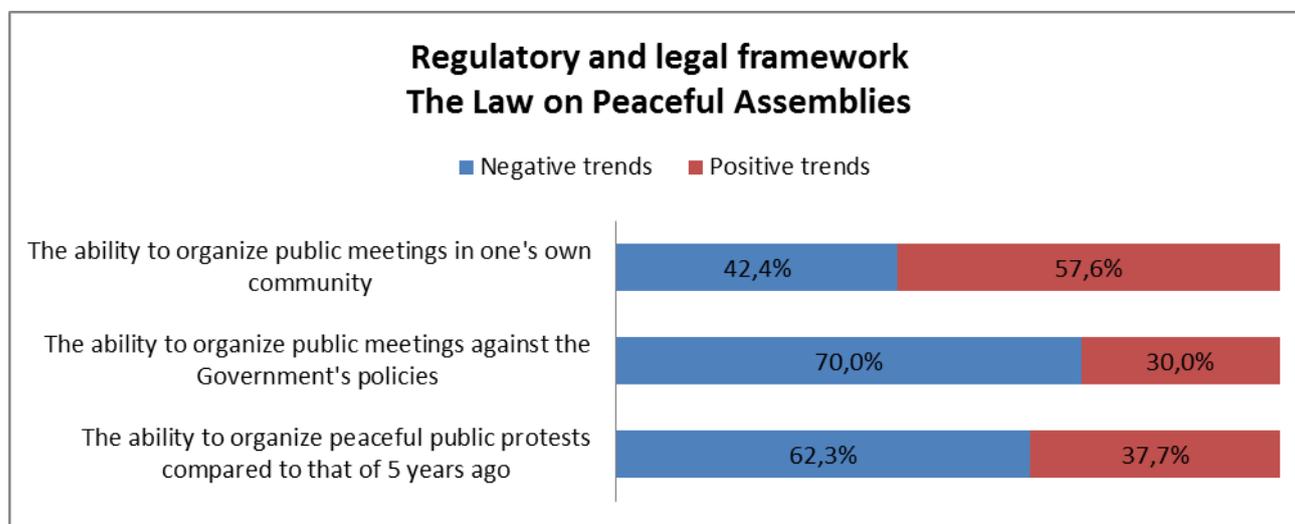
More than half of the respondents (50.6%) experienced, to varying degrees, instances of humiliation of their human dignity. Participants of one of the FGDs recalled that respect for human rights and freedoms in the country can also be assessed by the security situation of human rights defenders and civil society activists, this assessment being one of the indicators of the State's economic and political stability.

The majority of the respondent NCOs (78.5%) did not experience any pressure to abandon their NCO activity or any of its constituent aspects. However, about a quarter of the respondents indicated that an organization engaged in human rights activities, is viewed by the State as a "pragmatic partner" which can be often left unnoticed or merely disregarded.

"It is beneficial for the State to work with NCOs who provide social services to its population, fight poverty and restore the infrastructure. Such NCOs commonly stay away from criticizing the Government or State institutions». (FGD, the city of Karakol)

If the NCOs begin to criticize the Government or require compliance with the principles of transparency and accountability, the State brings in measures of pressure to restrict the unwanted NCOs' activities and "drive them back into the acceptable pale". Most often, human rights and development NCOs are precisely this type of organizations.

Chart 4.



The Chart and the answers provided by the respondent NCOs show negative trends over the past five years in terms of peaceful rallies' organization. 70% of the respondents noted that they experienced difficulties in the process of organizing rallies against the Government's policies. Most often, such difficulties in the process of organizing meetings were experienced by NCOs located in the city of Bishkek and Batken oblast, followed by Jalal-Abad and Naryn oblasts. Moreover, the vast majority of the respondents (62.3%) noted that it had become more difficult today in the Kyrgyz Republic to organize a peaceful social protest than it was 5 years ago.

Despite the fact that there have been negative developments, 57.6% of the respondents believe that there exist no obstacles for holding peaceful rallies in their communities, individual organizations and regions still have difficulties in holding peaceful rallies. This was noted by 42.4% of the respondents. It is noteworthy that 22 survey participants choose "I don't know" for the answer.

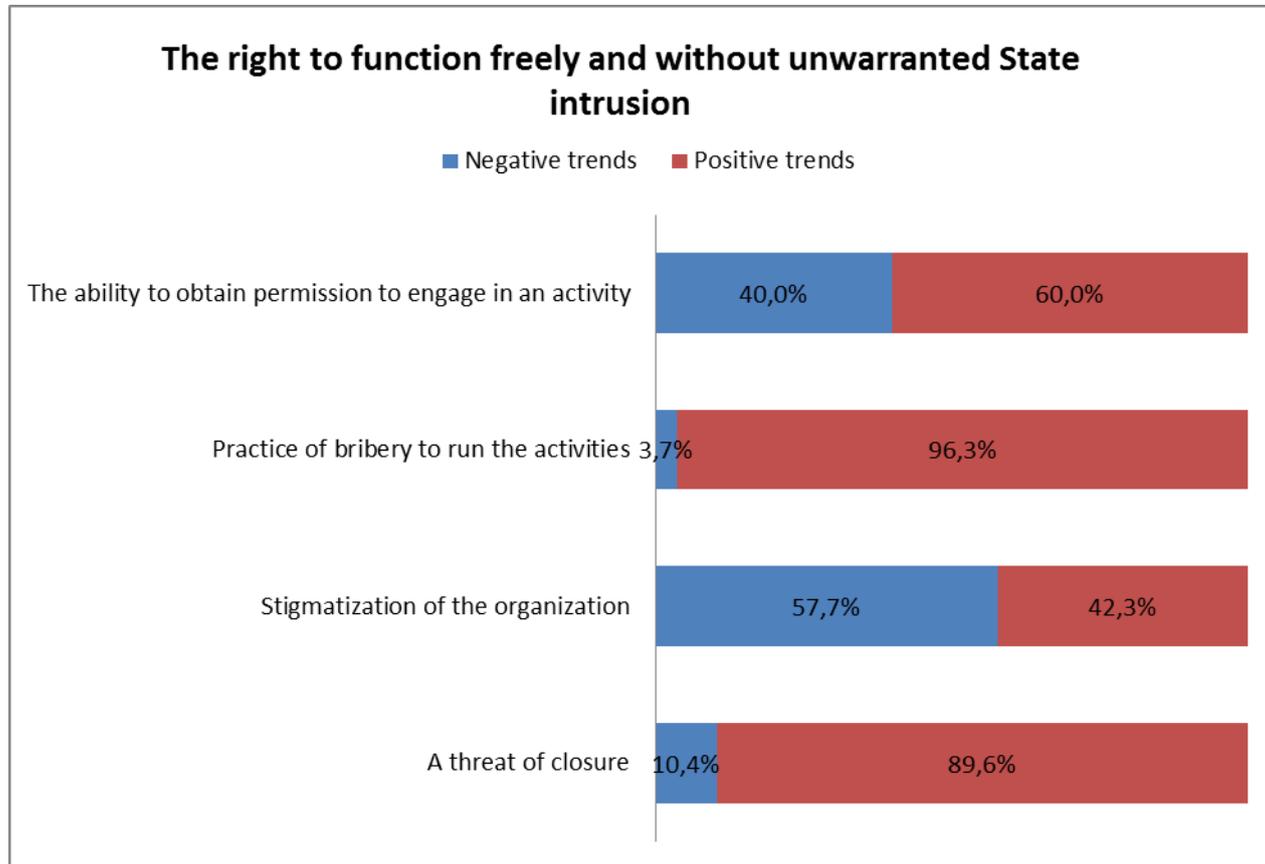
Still, according to all interviewed civil activists, the police today do not always act according to the law and often violate the constitutionally guaranteed rights of citizens by preventing them from holding peaceful rallies.

In accordance with the Law "On peaceful assemblies", territorial divisions of Internal Affairs Departments have the right to decide to ban a meeting only on grounds such as war propaganda, statements containing ethnic, racial or religious hatred, hostility or violence, incitement for breaching national security or public order, violating the rights and freedoms of other persons, holding counter-meetings to disrupt another peaceful assembly.

Moreover, the legality and validity of the decisions of the Internal Affairs bodies to restrict or ban an assembly are subject to a review in court, which the body that adopted such decision must turn to within 24 hours from the date of its issuance.

In accordance with article 34 of the Constitution of the Kyrgyz Republic, "everyone has the right to freedom of peaceful assembly." Officials who have illegally prevented the holding of a peaceful assembly or participation in it shall bear criminal responsibility.

Chart 5.



60% of the respondents consider procedures to acquire permission to which they were subjected in the course of their activities as being quite legitimate, while the remaining 40% have experienced barriers and perceive permission-acquiring procedures that they had to undergo to implement their activities as unreasonable.

The vast majority (89.6%) of the interviewed NCOs did not face a threat of closure of their organizations in 2012 year. Analysis of the survey forms shows that organizations that did face closure, were located in Bishkek (3 organizations) and in rural areas (1). The number of staff employed in organizations which have faced the threat of closure comes to 20 employees, with their activities focused human rights, advocacy, education, health, small and medium business development.

The majority of respondent NCOs (96.3%) admitted that they would not give bribes to open or register their organization and to continue its operation.

Within the wide scope of issues relating to the right to operate free and with no unwarranted State intrusion, the most common one was that was that of stigmatizing an organization to another organization. More than

half of the respondents (57.7%) believe that an NCO will become stigmatized if it cooperates with nonprofit organizations that work with people professing "undesirable" religions or subscribing to any non-traditional views, for example - non-traditional sexual orientation.

This trend have become quite prominent in the last 2-3 years, during the period of the emergence and public showdown of individuals and civil organizations dealing with LGBT community rights protection issues. As the interviews with NCOs involved in the protection of the rights of citizens with a non-traditional sexual orientation have shown, it is very difficult for them to find any allies in defending their rights, not only among NCOs, but even among human rights organizations.

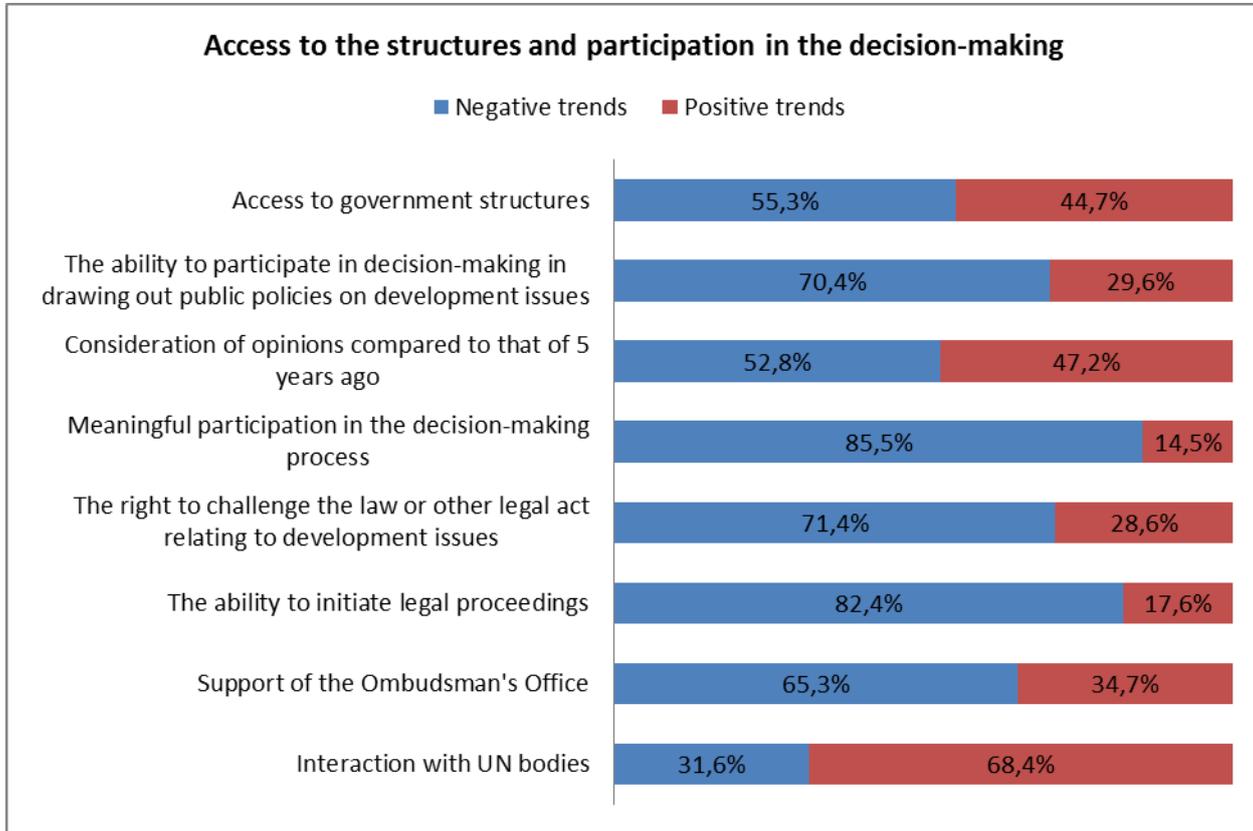
"Violations of LGBT citizens' rights in our country increase in number every year. Today, these people remain among the most brutally suppressed and discriminated communities in the Kyrgyz Republic. And LGBT organizations find it increasingly difficult to protect their rights, as rights violations occur not only on the part of the family, society and/or the State, but on the part of NCOs as well. NCOs do not always stand out in protection of the LGBT community. We find it difficult to find support among colleagues in the NCO sector." *(FGD, the city of Bishkek)*

According to FGD participants, since 2011, one such NCO dedicated to LGBT citizens' rights protection have documented 104 cases of human rights violations. Documentation was carried out on conditions of strict confidentiality.

"The 104 cases indicated are just those offenses that the victims were willing to speak about. Unfortunately, the actual scale of the LGBT rights violations is much wider." *(FGD, the city of Bishkek)*

**2.1.2. THE LAWFUL POSSIBILITY TO SEEK AND PROTECT NECESSARY RESOURCES IN SUPPORTING LEGITIMACY IN DEVELOPMENT**

Chart 6.



Describing the interaction between government entities and NCOs as per the answers received, NCOs believe that there exist no consistent public policies in the field of NCO development in our country today. There is a gap between the declared policy of the State in relation to the rule of law, protection of human rights, freedom of expression, access to services and NGO development and the actual reality.

The views of NGO leaders during the focus groups were divided as to how easy it was for them to meet with relevant Ministers, authorities or senior officials to discuss the issues raised. For some people, building relationships with government institutions, establishing dialogs and meeting with relevant officials represent no difficulties, while for others (55.3%) access to Government has been difficult for various reasons. Opinions on the causes of access difficulties have been divided as follows: the Government (the authorities) seeks to establish a dialog with only a small circle of NCOs of their own preference.

According to the survey, NCO leaders are of different views on cooperation between the authorities and NCOs. But, as the Chart shows, the majority of NCOs still face many difficulties in accessing government structures, despite the fact that NCOs and State agencies may well be partners and jointly solve the problems of the citizens. According to focus-group meetings at the time of the research, NCOs see the feasibility of such partnership in addressing most of the issues of local significance and development, most often in the city- and

national-level territories. However, NCO participants working in rural areas, have shown less interest in such partnership.

Chart 6 shows that, despite the existing complexity of building a partnership between NCOs and the State, there still exists the so-called non-material type of interaction between NCOs and the bodies of authority.

For example, 14.5% of the NCO survey participants worked together with the authorities on more than five occasions during the year to jointly discuss current development programs of both local and national importance with a view to providing their reviews and recommendations. The next form of interaction named was dealing with the authorities in joint working groups, negotiation platforms and public (supervisory) boards. Thus, it can be assumed that the Government has been taking steps to secure partnerships with NCOs at the levels of information sharing, discussions, reviews and recommendations.

It should be noted that, sometimes, the lack of interaction with the authorities is not only due to NCOs' reluctance to form such kind of contacts or due to the irrelevance of such contacts. NCO Respondents noted a frequent lack of the authorities' response to their initiatives, opinions and recommendations.

"We offer our recommendations, but nobody takes them into account, nobody hears us." (FGD, the city of Osh)

"Our correspondence with the authorities causes no response." (FGD, the city of Naryn)

Taking proposals and recommendations of NCOs into account and putting them to action still remains one of the weak points in the policy of NCOs' interaction with the State. Just over one half of respondents (52.8%) noted a negative trend in considering the views of NCOs as participants of working groups or public (supervisory) boards. According to respondents, the Government and the local authorities continue to use NCOs as a decoration in order to show civil society's participation in the discussion of various programs and strategies.

"The local and State authorities continue to use our reports and our data in reporting to their superiors, while playing off the results of NCOs' activities as their own". (FGD, the city of Isfana)

"Infrastructure investment is the only thing that the local government and the aiyl okmotu need from NCOs." (FGD, the city of Naryn)

"The authorities are not interested in a long-term relationship with us, they need us only for show." (FGD, the city of Jalal-Abad)

More than 71% of NCO respondents claim to have difficulties when trying to challenge a legal act which, in their view, is of discriminatory character or can somehow harm the national interests.

More than 82% of NCO respondents believe that it is difficult to initiate a law or other legal act relating to development issues. Only 17.6% of NCOs have had a positive experience in initiating and promoting draft laws.

More than two-thirds (65.3%) of respondents state that the Office of the Ombudsman of the Kyrgyz Republic offers no support to the issues raised by NCOs. This may be indicative of weak interaction of the Ombudsman's Office with the NCB. "Absolute lack of readiness for interaction" has been pointed out by the NCOs of Naryn, Talas and Batken oblasts and the city of Bishkek.

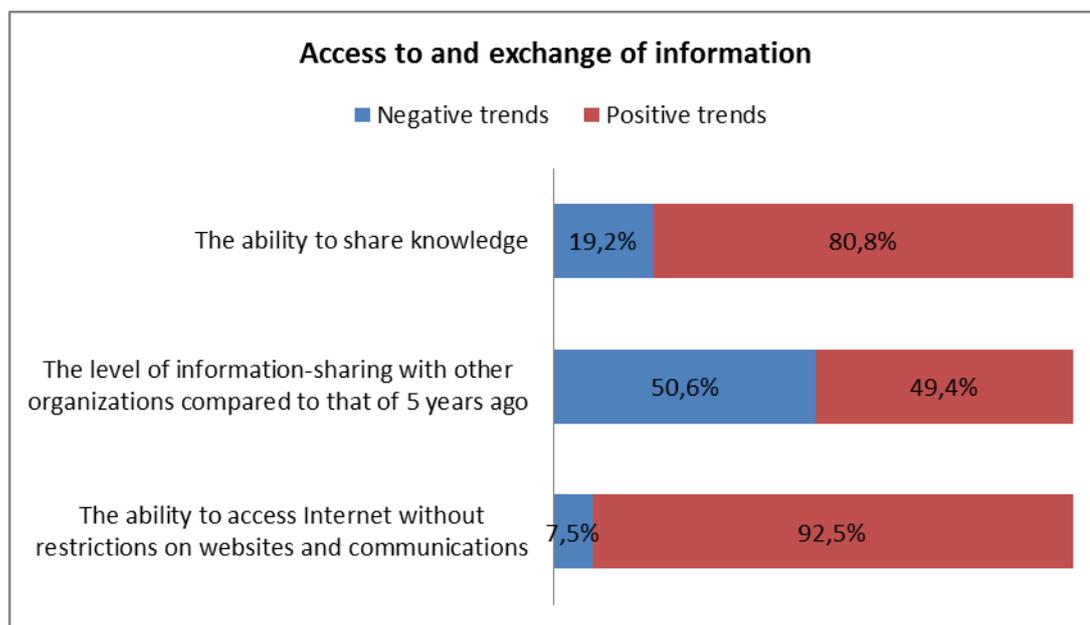
"Local Offices of the Ombudsman are very weak in terms of their performance, I can say that from our own organization's experience. Our cooperation with the Regional Office has been reduced to mere correspondence." (FGD, the city of Naryn)

"I have never heard about activities of the regional representative of the Ombudsman's Office, neither have I seen representatives of the Office attending any of the events conducted by our NCO sector colleagues. The impression is that this institution has not been represented in our oblast at all." (FGD, the city of Batken)

Another indication resulting from the survey (68.4%) is that NCOs collaborate with UN agencies and can coordinate joint human rights activities aimed at achieving developmental results in accordance with international human rights standards. About one-third of the respondents (31.6%) are reluctant to cooperate with the UN bodies, as they fear possible reprisals by the authorities. When asked about possibilities of cooperation, their replies were: "It is hard", "very hard" and "quite impossible" to work with UN agencies.

With regard to the nature of NCOs' interaction with international donors, it should be noted that, in the course of the FGDs, NCO representatives stated that strategic donors' requirements to internal financial and organizational policies and procedures had increased, while their institutional support has been significantly reduced. Many small NCOs with no domestically designed strategic plans, financial policies/procedures, or an established financial and organizational management system, are bound to forfeit access to their funding. This leads to frustration, various rumors and speculations about corruption schemes and "merging" of major NCOs and employees of donor representation offices. It has been also noted that donors must be more open, willing to inform the public about actual recipients of grants, better monitor implementation of projects and targeted use of funds disbursed to prevent violations and misuse which can ultimately affect the overall image and undermines credibility of NCOs.

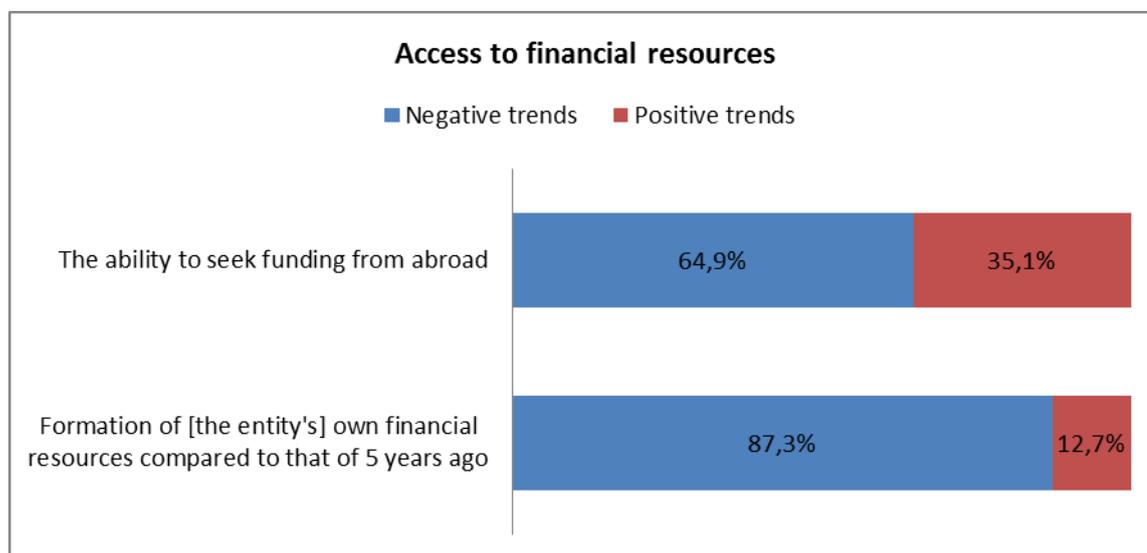
Chart 7.



The majority of respondents (80.8%) note the positive situation with the eligibility for receiving and sharing knowledge at the national and international levels. Task-oriented and concerted learning processes provide the necessary framework for NCOs to become effective development agents. A mutual exchange of knowledge, practical experience, innovation and different working methods has been underway. There are concerns over the fact that just over a half of the respondents (50.6%) noted the deterioration of the situation in the area of information exchange with national and international organizations, as compared with that of 5 years ago.

The vast majority of NCOs (92.5%) have unrestricted access to websites, there are no other restrictions that may prejudice their right to freely seek, receive, and possess any information, as well as to freely exchange information, knowledge and experience at the national and international levels.

Chart 8.



Another area of focused attention of the NCO sector which, in respondents' opinion, has become prominent over the recent years is the somewhat shaken financial sustainability, as evidenced by the reduction or closure of certain donor programs, or an increase in project requirements or an appearance of anti-democratic legislative initiatives in the country that impede the work of both international organizations and local NCOs. as well as due to the negative perceptions of the so-called "political activities" of individual NCBS country authorities.

Grant programs created by the State are few in number and the size of grants allocated on an open competitive basis is small. Respondents were able to name only one Ministry which has had a grant fund for social projects implementation. The scope of corporate social responsibility and corporate philanthropy is insignificant due to the lack of legislation on philanthropy and voluntary services.

Maintaining a sustainable financial position has become the main problem for most Kyrgyz NCOs. It is known that subsidizing by foreign and international donor organizations remains the main source of funding for NCO activities in this country. For example, in 2006,<sup>1</sup> donor funding was the source of 64% of all the receipts to NCOs' budget, whereas in 2012 it comprised just<sup>2</sup> 30%. Over 70% of NCOs do not have more than 2 sources of funding<sup>3</sup>. In spite of these figures, 59.4% of NCOs in the Kyrgyz Republic experience difficulties in obtaining financial means from abroad in support of their development initiatives. The absolute most NCBS participating in focus group research, noted their organizations' dependence on outside funding.

Of particular concern to the regional NCOs is the fact that, in their view, firstly, external resources become fewer and fewer. Secondly, donor resources are distributed unfairly.

"There is an impression that grant assistance is received repeatedly by the same NCOs." (FGD, the city of *Isfana*)

"It is very difficult to get funding for a small rural and only recently established NCO." (FGD, the city of *Talas*)

"We have no means to maintain offices, neither we have the means to pay for the communications services and the Internet, nor incentives to keep young staff in place." (FGD, the city of *Naryn*)

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<sup>1</sup> "An overview of the history of the formation and development of the NGO sector in Kyrgyzstan." - ACSSC, 2006

<sup>2</sup> "The state and the prospects of NCO sector development in Kyrgyzstan," - ACSSC, 2012

<sup>3</sup> Ibid.

"We don't know any English, which complicates our efforts to participate in grant competitions." (FGD, the city of Jalal-Abad)

Many focus-group participants also talked about the facts of corruption inside the sector and the national offices of donor and international organizations. Facts of unfair/inappropriate use of grant funds by certain NCOs cause concern, as this casts a shadow on the entire NCO sector and threatens its image. Focus group participants also noted that national offices of donor organizations have kept the same employees working as coordinators for 10-15 years who have already established their connections and spawned the so-called "focal NCOs" which receive funding in exchange for kickbacks.

"The launder money. For cover. For making money." (FGD, the city of Karakol)

"Just some regular commerce. Under the guise of an international NCO." (FGD, the city of Bishkek)

More than 87% of NCOs pointed out that the Government's policy for enabling NCOs to generate their own financial resources remained unchanged or even deteriorated to some extent.

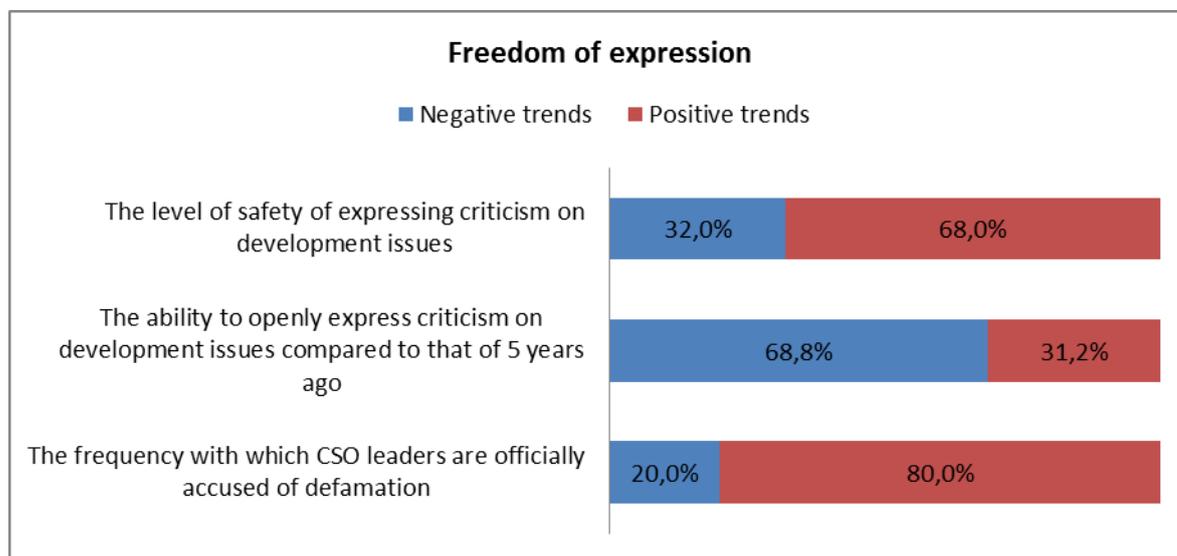
"State institutions are not willing to help, yet they want NCOs to keep providing social services, do the work for them, while the institutions will just keep controlling from the top." (FGD, the city of Osh)

The role of NCOs providing social services to the population, crystallizing new ideas of social development; in reducing social tensions; in protecting the rights of citizens and developing the rule-of-law State has been quite underrated. The consequence of this undervaluation is the lack of a coherent public policy which should be directed to comprehensively support and encourage civil initiatives and to make use of their development capacities.

The State either has no interest or does not know how to do it, with NCOs noting only the mechanism of social control implemented by the Ministry of Social Development of the Kyrgyz Republic.

## 2.2. THE FREEDOM OF EXPRESSION IN THE KYRGYZ REPUBLIC

Chart 9

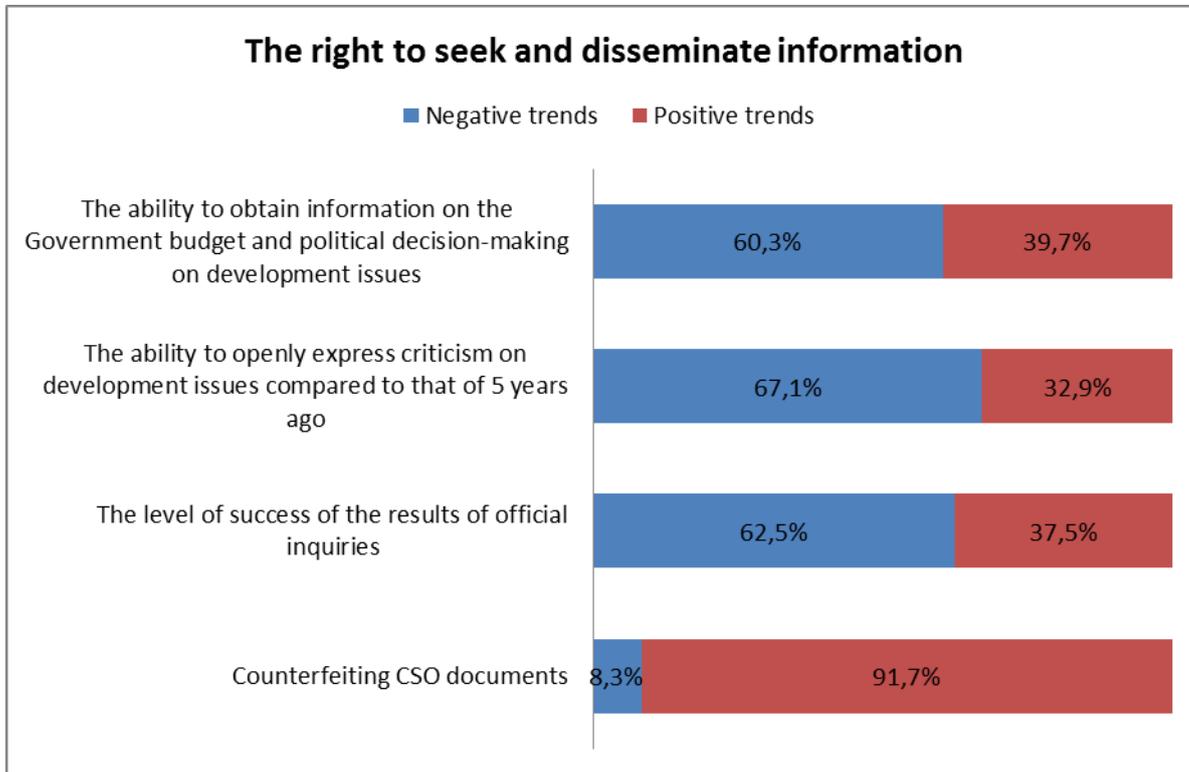


68% of the survey participants have the opportunity to freely express criticism of current policies while addressing them to the Government, in public places, and without fear for their safety (these can be different communicative events). but 32% of participants has had concerns whether their criticism might result in any sanctions against them. Yet more than 2/3 (68.8%) of the survey participants speak about the negative trends in the freedom-of speech issues compared with the period of 5 years ago.

80% of the participants have never been accused of anything that might relate to their public statements/criticism in the media.

## 2.2.1. THE RIGHT TO FREELY SEEK AND DISSEMINATE INFORMATION

Chart 10.

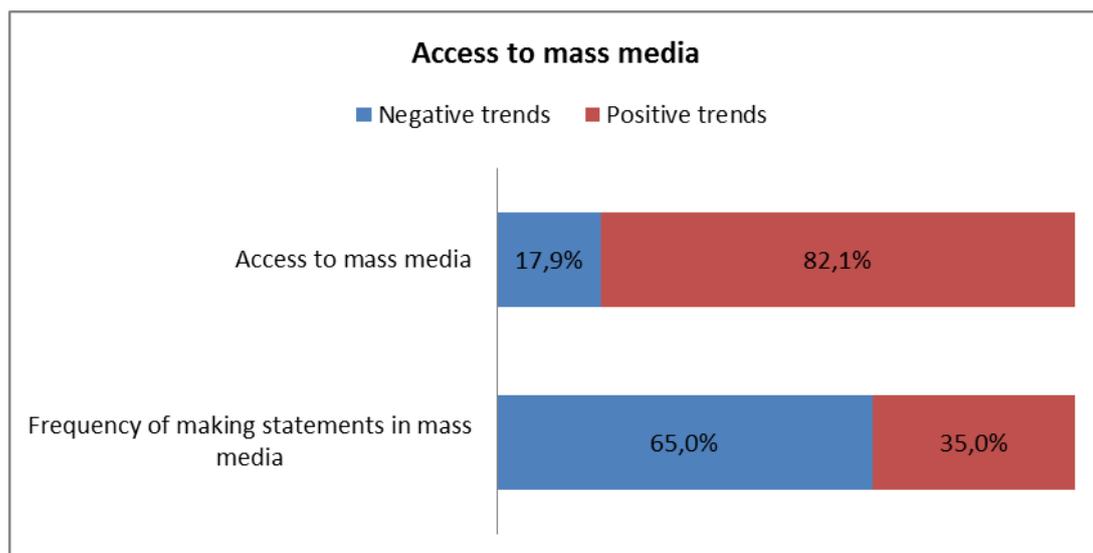


Nearly 60% believe access to information on the Government budget and policy decisions on development issues to be quite difficult. Moreover, 67.1% of the survey participants note that, 5 years ago, to get access to information on the budget and policies was noticeably easier.

62.5% of NCO respondents consider their NPO experience in obtaining formal responses to their inquiries on various issues as unsuccessful.

The absolute majority (91.7%) have not met in their practice with cases where CSO documents have been falsified by the authorities or other entities.

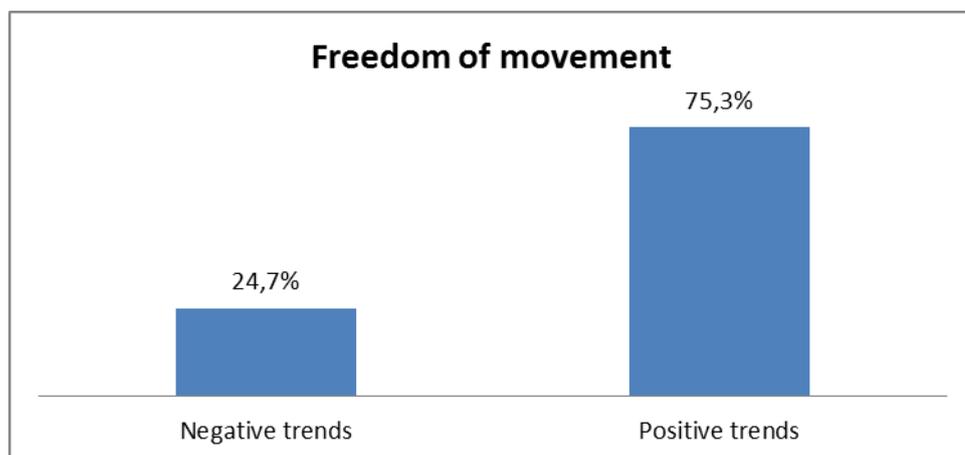
Chart 11.



More than 82% of the respondents, i.e. the absolute majority, have not experienced difficulties in exercising their right to access to the media. However, only just over a third of respondents (35%) in one way or another have had the opportunity to express their views on development issues either in the local or national (republican) mass media.

### 2.3. THE FREEDOM OF AND THE RIGHT TO MOVEMENT IN THE KYRGYZ REPUBLIC

Chart 12.



About a quarter (24.7%) of respondent NCOs, to some extent, have had problems with their movement, fearing control impositions. In general terms, the vast majority (75.3%) of participants are free in their movements.

## 2.4. A REVIEW OF THE LEGISLATION IN THE FIELD OF CSO DEVELOPMENT

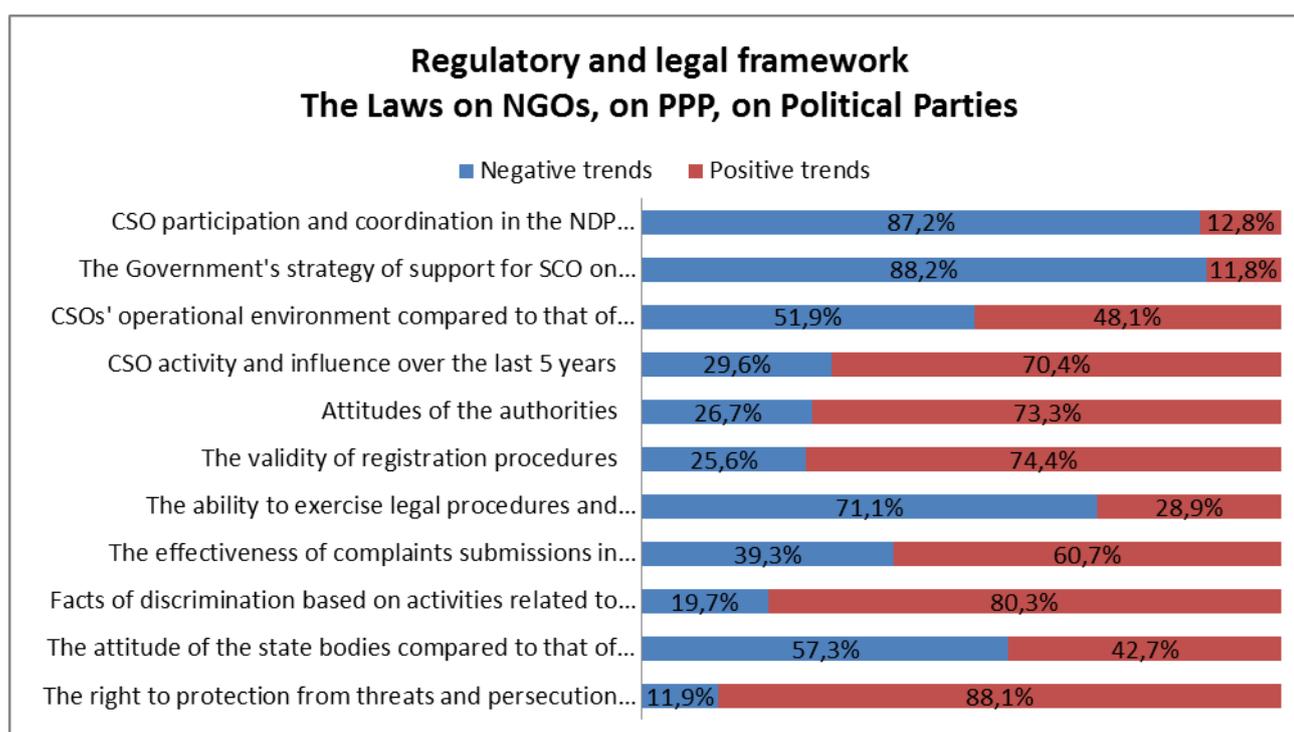
Despite the fact that the NCO legislation in the Kyrgyz Republic is considered as one of the best in Central Asia, it still contains a significant amount of controversy and provisions requiring legal regulation and unification.

For the unification and harmonization of the NCO legislation, tangible measures must be taken in the following areas:

1. Legal regulation of the activities of NCOs should not be discriminatory as compared to that of commercial organizations, in particular, small business entities;
2. There is a need to legislate the principle of the presumption of good faith of NCOs;
3. There is a need to legislate the unified legal status of NCOs, independent of its organizational and legal form;
4. There is a need to reduce the burden of Government control over NCOs through the gradual transition of this function into the format of intrasectoral and public control through the publication of reports on the activities of NCOs;
5. There is a need to reduce costs and simplify procedures for the elimination of NCOs.

On the whole, in connection with the development of the NCO sector and the emergence of a diversity of legal relations therein, it is appropriate to split off NCO legislation into a separate area of law. Taking such measures will contribute to the sustained development of civil society organizations.

Chart 13.



Kyrgyzstan, as a country party to the Paris Declaration on Aid Effectiveness, has committed itself to exercise leadership in devising and implementing national development strategies through enhanced consultation processes.

Only 12.8% of the respondents indicated some NCO involvement in these processes. Thus, we can speak more of NCOs' non-participation, rather than their participation in the development and implementation of the national development plan, and deterioration of the situation. Although NCOs are independent and autonomous as development actors, they never work in isolation. The capacity of an NCO to follow the principles of NCO effectiveness in the field of development bears the impact of the work of other development actors.

Furthermore, 88.2% of respondents indicated that their experience showed: the Government's strategy for CSOs working on development issues, in general, is not a supportive one.

NCOs, as development actors, are strongly influenced by the context in which they work: the policies and practices of developing countries and official donors that simulate such capacity. That is why the success of the Istanbul Principles' implementation in NCOs' activities to a large extent depends on how government policies, laws and regulations comply with the Istanbul principles of "Enabling environment" and "Favorable standards". "Enabling environment" is a political context with policies established by Governments, official donors and other development actors who produce an impact on the implementation of NCO's activity. "Favorable standards" is a set of interrelated good practices of donors and governments - in legal, regulatory, budgetary, informational, political and cultural fields, which support the capacity of NCOs as development actors to be involved in the processes of development in a sustainable and effective manner.

In 2008, the Accra Forum high-level donors and Governments pledged to "work with NCOs by creating an enabling environment to increase their contribution to the development process." NCOs called on Governments, including donors, to jointly review at the country, regional and global levels existing policies, regulations and practices negatively affecting the NCOs as development actors. NCOs' recognition as development actors calls for an enabling environment guaranteeing their full participation in all stages of the development process, including planning and preparation of development plans and strategies.

The majority of respondents (73.3%) noted equal treatment by the authorities of all civil society development participants. However, a positive trend has been noted of the authorities' improved attitude to NCO representatives working on rights protection and development issues. This was noted by 57.3% of the respondents. Much concern has been caused within the NCO community by the recent initiatives of Jogorku Kenesh Member, Tursunbai Bakir uulu.

«We are concerned about the initiatives of the deputies to assign NCOs with the status of "foreign agents." What sort of agents do we make? We just help people?!" (FGD, the city of Karakol)

"Such initiatives can result in NCOs' going underground." Could it be that the State today is strong enough economically and socially to backtrack from our work? Upon such initiatives, many local government

representatives have already started to treat us with apprehension and mistrust." (FGD, the city of Batken)

74.4% of the survey participants indicated that they considered the existing requirements and procedures for the registration of NCOs with the bodies of justice as justified. However, 71.1% of the respondents think that it became a little more difficult to meet the standards and comply with existing legal procedures and requirements than it was 5 years ago.

More than 70% of the respondents indicated that they had expanded their activities in the past 5 years. However, more than a half of the respondents (51.9%) describe their organization's operating environment as less enabling than it was five years ago. The adverse trends in working conditions have been noted mainly by the organizations engaged in the areas of rights enforcement, advocacy, gender, public health care, and education. The survey participants speak of the worsened operational environment, something that can't help but become a cause for concern.

55.7% of the respondents had no reason to complain about any cruel or degrading treatment by the authorities. Citizens who appealed to authorities, were satisfied with the replies received (60.7%).

The survey revealed totally unacceptable facts of discrimination of NCO representatives (19.7%) in connection with their activities in the field of human rights promotion and protection of.

10 NCO representatives were forced to seek protection with the authorities, because they had been subjected to threats and persecution by their opponents, but, regretfully, they rated the protection effectiveness level as inadequate.

11 NCO representatives stated that they had been illegally detained by law-enforcement authorities during the discharge of their obligations.

## **2.4. A REVIEW OF THE LEGISLATION IN THE FIELD OF CSO DEVELOPMENT**

### **2.4.1. INTERNATIONAL LEGAL INSTRUMENTS**

The right of everyone to freedom of association is an integral part of the implementation of all other human rights in their entirety. In accordance with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the right to freedom of peaceful assembly and of association is subject to no restrictions except in cases defined in those documents. Ensuring the right to freedom of association contributes to the resolution of important social issues in areas such as human rights, gender equality, environment, sustainable development, crime prevention, combating trafficking in human beings, social justice, protection of consumers' rights and many others.

Despite this, today, CSOs face serious obstacles in carrying out their activities that may pose a threat to their very existence. Regrettably, these are not isolated examples, this situation is repeated in various forms in a growing number of countries, and Kyrgyzstan here, unfortunately, is no exception, comprising now not a single attempt, but rather a systematic, massive attack on civil society organizations. This offensive is manifested not only through individual campaigns of intimidation of human rights defenders, but also through cleverer, legally binding restrictions on the space in which CSOs function and evolve.

In this situation it is particularly important for the State to remember that freedom of association should be ensured and protected by the State in accordance with its international obligations and its own national legislation that has been brought to conformity with such obligations.

### ***Basic international principles, treaties and standards pertaining to the right to freedom of association.***

The State should take all measures to ensure the following generally accepted six international principles governing the activities of CSOs and guaranteed by international law:

- 1) The right to entry (that is, the right of individuals to form and join CSOs);
- 2) the right to operate to fulfill their statutory purposes free from unwarranted state intrusion;
- 3) The right to free expression;
- 4) The right to communication;
- 5) The right to seek and secure resources;
- 6) The right to protection and support of the state.

### ***The main safeguards of implementation of these rights have been declared in the following sources of international law:***

#### **Conventions**

- Article 20 of *the Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly on December 10, 1948:*

Art. 20:

1. Everyone has the right to **freedom of peaceful assembly and association**.
2. No one may be compelled to belong to an association.

- Article 22 of *the International Covenant on Civil and Political Rights New York, December 16, 1966 (the Kyrgyz Republic acceded to this International Covenant on January 12, 1994, by the Resolution of JK of KR No. 1406):*

Art. 22:

1. Everyone shall have the **right to freedom of association with others**, including the right to form and join trade unions for the protection of his or her interests.
2. **No restrictions may be placed on the exercise of this right** other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others...

- Para.3 of Article 8 of *the International Covenant on Economic, Social and Cultural Rights. New York, December 16, 1966 (the Kyrgyz Republic acceded to this International Covenant on January 12, 1994, by the Resolution of JK of KR No. 1406):*

Art. 8, Para. 3:

**Nothing in this article shall authorize States Parties** to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to **take legislative measures which would prejudice**, or to apply the law in such a manner as to prejudice, **the guarantees provided for in that Convention.**

- Articles 10 para. 1 and 11 of *the Convention on the Protection of Human Rights and Fundamental Freedoms (Council of Europe, November 4, 1950)*:

Art. 10, Para. 1:

1. **Everyone has the right to freedom of expression.** This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Art. 11:

1. Everyone shall have the **right to freedom of peaceful assembly and of association with others**, including the right to form and join trade unions for the protection of his or her interests.

- In articles 2 - 5 of *ILO Convention No. 87, 1948 on freedom of association and protection of the right to associate in trade unions (recognized by the Kyrgyz Republic as a successor State to the Soviet Union)*:

Art. 2:

Workers and employers, without distinction whatsoever, **shall have the right to establish on their own choosing without previous authorization**, as well as the right to join organizations, subject only to statutes.

Art. 3:

1. Organizations shall **have the right to adopt their statutes** and administrative regulations, freely elect their representatives, organize their administration and activities and formulate their programme of action.

2. The public authorities **shall refrain from any interference that could restrict this right or impede the lawful exercise of thereof.**

Art. 4:

Workers' and employers' organizations **shall not be liable to be dissolved or suspended by administrative authority.**

Art. 5:

Workers' and employers' organizations shall **have the right to establish and join federations and confederations** and any such organization... shall have the right to affiliate with international organizations of workers and employers.

- Articles 1 and 3 of *ILO Convention No. 98, 1951 "On the application of the principles of the right to organise and collective bargaining (recognized by the Kyrgyz Republic as a successor State to the Soviet Union)*:

Art. 1:

1. Workers shall enjoy **adequate protection against any discriminatory action** aimed at suppressing freedom of Trade Union Association when being hired.

Art. 3:

Where necessary, **creates a device** that matches the conditions of the country, with a view to ensuring **respect for the right to organise in trade unions** as defined in the preceding articles.

## Council Of Europe Documents

- Section 3 of *the Explanatory Memorandum, sections 1, 4, 5, 6, 7 "Fundamental principles of the status of non-governmental organizations in Europe", 2002.*

Section 3: "**Freedom of Association** is effective only if it goes hand in hand with **legislative measures that are conducive to its observance** and respect the importance of the contribution of NGOs in society..."

Ibid.: "While NGOs can be supported by adopting **favorable for their development laws**, understanding and respect for the contribution of NGOs appears only when the **NGOS are trying to adhere to a responsible, effective and ethical conduct**».

Scope of action. 1. **NGO** is essentially a **voluntary self-governing organization**, which consequently **cannot obey government authorities**.

Scope of action. 4. The main objective of the NGO **is not that of making a profit**. Profit received by them in carrying out their activities, is not distributed among the members or shareholders, and is directed to the fulfillment of the tasks of the organization.

Scope of action. 5. **NGOs can be either informal organizations** and entities with **legal personality**.

Underlying principles. 6. NGOs are created on the initiative of individuals or groups of individuals.

Consequently, **such initiative must meet support** and assistance in the context of the relevant provisions **of the national legal and financial system**.

Underlying principles. 7. all NGOs have the right to freedom of expression.

- Section I-8 of *Recommendations CM/Rec(2007) 14 of the Committee of Ministers to Member States on the legal status of NGOs in Europe 2007:*

Section I-8:

**The legal and fiscal framework applied to NGOs, should encourage their establishment** and continuous work.

## OSCE Instruments

- *The basic guiding principles of freedom of Association for non-governmental organizations OSCE ODIHR*

Section 4.2. "Fundraising":

The law should be clear that the **State has no right to supervise or to require approval for certain grants** or require information about sources of assistance.

- *OSCE commitments relating to freedom of assembly and association*

The Copenhagen meeting on the human dimension of the CSCE are:

...States parties: Art. 7, Para. 6: Respect **the right** of individuals and groups **to establish, in full freedom, their own political parties or other political organizations** and provide such political parties and organizations with the necessary **legal guarantees to** enable them to compete with each other on a basis of equal treatment before the law and by the authorities.

Art. 9, Para. 3: **The right of association is guaranteed.** The right to establish and, depending on the common right of the Trade Union to determine their membership, to freely join a Trade Union, is guaranteed. These rights foreclose any preliminary control.

Art. 10, Para. 3: To ensure that the individuals were allowed to exercise the right to association, including **the right to form, join and participate effectively** in the activities of non-governmental organizations that seek to promote and protect human rights and fundamental freedoms...

Art. 10, Para. 4: Allow members of such groups and organizations to have **unhindered access to and communication with similar bodies** in their own countries and beyond and with international organizations to exchange views, to maintain contact and collaborate with such groups and organizations and to solicit, receive and utilize for the promotion and protection of human rights and fundamental freedoms voluntary financial contributions from national and international sources, as stipulated by law.

Basic general guarantees of the right to freedom of association have been enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights, as well as the commitments made by States in the OSCE. Same documents contain provisions that complement the basic guarantees by asserting that they must be ensured without any discrimination on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, property, birth or any other status. Guarantees for the right to form trade unions have been envisaged.

A number of conventions contain provisions on freedom of assembly and freedom of association for trade unions, in particular in the International Covenant on Economic, Social and Cultural Rights, the European Social Charter, the Convention on Freedom of Association and Protection of the Right to Organize Trade Unions, as well as the commitments made by members of the OSCE.

In addition, there are several other guarantees relating to freedom of assembly and freedom of association for certain categories of citizens, in particular children, environmental activists, human rights defenders, judges, representatives of national minorities.

Effected through the procedure established by law, international treaties and agreements to which the Kyrgyz Republic is a party, as well as universally recognized principles and norms of international law are an integral part of the legislation of the Kyrgyz Republic. The same has been also stipulated in the Law of the Kyrgyz Republic "On international treaties of the Kyrgyz Republic" dated July 21, 1999, no. 89.

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#### **2.4.2. LEGISLATION OF THE KYRGYZ REPUBLIC**

According to the Ministry of Justice, the number of registered NCOs/NGOs in Kyrgyzstan comprises 10,414 organizations (about 30% of them are actually effective); a large number of NGOs have been registered in the last three years (2013 ACSSC Report data).

According to research by Soros Foundation-Kyrgyzstan, almost 9 out of 10 public organizations active in the territory of the country are either public associations or public foundations (87% of all NGOs). Associations of legal entities (associations, unions) comprise about 5% of all NGOs, 3% are non-State institutions. Another 3% pointed out that they do not fall into any of the above organizational and legal forms, as they have not been officially registered.

In accordance with article 4 of the Constitution of the Kyrgyz Republic, "everyone has the right to freedom of association." Citizens have the right to establish public associations of their own free will and community of interests for the realization and protection of their rights and freedoms and meet the political, economic, social, labor, cultural and other interests.

At the same time, there is a ban on activities aimed at violent change of the constitutional order, undermining national security and inciting social, racial, national, ethnic and religious hatred. Registration of non-profit organizations in the Kyrgyz Republic is carried out in accordance with the requirements of the Law "On State registration of legal entities", in its version of July 12, 2005, no. 104. State registration of NGOs is of a declarative nature and includes verification of conformity of constituent documents of legal entities created with the laws of the Kyrgyz Republic, the issuance of the certificate of State registration with the assignment of a registration number, and filing information on legal persons in the unified State Register. The law stipulates that the founding documents of NCOs are: the decision of the founder, articles of association and (or) statutes (regulations), depending on the legal form of organization, in accordance with the requirements of the legislation of the Kyrgyz Republic.

The State registration of legal entities, including NGOs, must be made no later than 10 days from the date of filing the application with the required documents attached.

In 1999, Kyrgyzstan adopted the Law "On non-commercial organizations" regulating the activities of NGOs of various organizational and legal forms, including public associations and funds. Non-governmental organizations can be created in various legal forms stipulated by the State Constitution of KR. The traditional forms are public associations and public foundations, as well as consumer cooperatives, religious bodies, etc. However, the law permits other legal forms of organization as well. The law, however, does not define a "non-governmental organization", and uses the broader term "non-profit organization", which makes it difficult to understand the unique nature of NGOs and its reflection in relevant legislation.

NCO legislation also enshrines the right to citizens' participation in State management, NCO taxation, NCO management and other issues important to the NCO. The Law also established the right to NGO's operation without establishing a legal entity, free State registration of NGOs, and the opportunity for legal and natural persons to jointly establish and participate in associations.

There are two types of taxes that NCOs are required to pay: a social and a retirement fund for all employees, as well as income tax. For some types of activities, simplified patent-based taxation is permitted. In the case of property rights to the building/construction, NCOs pay tax land use.

The legal framework that governs the activities of NCOs in Kyrgyzstan, is comprised by the Constitution of the Kyrgyz Republic, the Civil Code of the Kyrgyz Republic, the Law "On non-commercial organizations" of 1.10.1999, the Law "on State registration of legal entities" with changes from 2007, the Tax Code of the Kyrgyz Republic, other legal-regulatory acts of the Kyrgyz Republic, as well as international treaties ratified or accepted by the KR as a successor State to the former Soviet Union.

In comparison with other countries of the region, freedom of association in Kyrgyzstan has not encountered, up to a certain point, considerable obstacles.

For example, in Belarus, participation in the management and financing of an unregistered public association is an offense punishable by both administrative and criminal penalties.

The Russian Federation also adopted in 2012 amendments to the Law "On non-commercial organizations" whereby they introduced such a politically and legally discriminatory term as "NCOs - foreign agents". One condition to acquire such a "title" was an NCO's engagement in "political activity"; at that, what exactly "political activities" meant, the Law has had no telling. In Russia, NGO legislation authorizes the government to request any financial, operational, or internal document at any time without any limitation, and to send government representatives to an organization's events and meetings (including internal business or strategy meetings). Repressive measures have also touched the issue of Russian NCOs' activities being funded by foreign donors.

Up till now, neither the reaction of human rights defenders, nor that of the international community, nor even the reaction of the Commissioner for human rights in Russia - who have filed a complaint in the Constitutional Court of the RF about this Law contradicting the Russian Constitution - have provided positive results leading to annulment of this repressive bit of legislation in relation to Russian NCOs. More over, their persecution is underway, involving numerous court procedures.

Most recently, on January 16, 2014, the attack on the rights of NCOs in the region and their very existence was continued: On that day, Law No. 3879 was adopted in the Ukraine, according to which, community organizations receiving funding from abroad, become "foreign agents" and must re-register as profit-making organizations; criminal liability for libel and measures to considerably limit freedom of peaceful assemblies were introduced as well.

In 2013, the right to freedom of association in Kyrgyzstan similarly faced significant obstacles to its implementation.

On September 6, 2013, two MPs of the Jogorku Kenesh, allegedly in order to ensure transparency and publicity of the activities of the NCOs in the Kyrgyz Republic, initiated the draft law "On amendments to certain legislative acts of the Kyrgyz Republic." This draft law also attempted to introduce a new legal status for NCOs that make use of the "foreign funding sources" to bring in the status of a "foreign agent". It was also proposed, that another qualifying attribute for the status of a "foreign agent" might be an NCO's participation in "political activities" "on behalf of the foreign source". At that, the draft law initiators provided an extremely vague wording for the term "political activity".

In a joint opinion of the Venice Commission and OSCE/ODIHR, as well as in the analysis of the draft law by the ICNL, serious concern was expressed regarding the prospects of the use of the terms "foreign agent" and "political activity", regarding the dangerous attack on the implementation of the right to freedom of association in the country, as well as regarding the draft law contradicting the norms of the Constitution of the Kyrgyz Republic.

In the case of the draft law's adoption, the label of a "foreign agent" would be placed practically on almost all Kyrgyz NCOs; additional redundant and unwarranted claims would be made towards the NCO reporting

practice; the public authorities would have broad powers to interfere in the internal affairs of NCOs; many of NCOs would cease their activities; provision of social services and deductions of significant amounts in taxes to the State revenue would undergo a significant reduction.

Thanks to the efforts of the members of the NCO, ACSSC and ICNL, initiators of the draft law did not send it in through the formal registration procedure in the JK of KR.

Another test for the civil sector in the past year was the initiation - first by the State Committee for National Security (which later recalled its legislative initiative), and then by the same MPs of the Jogorku Kenesh - of the draft legislation on the so-called "State secret". The proposed additions and amendments to the law were so vague that, if eventually adopted, they would allow the authorities to declare any unfit person a traitor. The NCOs were gravely concerned about the possibility of criminalization of almost all the traditional aspects of human rights defenders' activities, such as round tables and conferences involving donor participation, project reports presentations, and human rights report submissions. Even reports to the UN Committee against torture would fall under the scrutiny of such a law, if it were to be adopted.

Thanks to the consolidated efforts of the non-governmental sector, under the expert guidance of ACSSC and ICNL, this draft law was rejected under very serious circumstances, already in its second reading in the JK of KR.

The year of 2014, unfortunately, no longer is an exception in this chain of assaults on the fundamental rights and freedoms in the Kyrgyz Republic.

There are newer and newer obstacles to the activities of NCOs emerging:

On January 16, 2014, the Ministry of Transport and Communications of the KR, serving the interests of the security structures, with the purpose of conducting the so-called effective OIA (operational investigative activities), initiated a draft law obliging all mobile operators and Internet service providers to purchase and install equipment, with which one can listen and read the correspondence of all Kyrgyz citizens - without the authorization of the supervisory authority .

On January 15, 2014, a draft law was initiated according to which, to conduct an examination of a draft law, individuals and entities will need to get accreditation for any specialized types of expert assessment of draft legal regulatory acts.

On January 13, 2014, the Committee on Legal Affairs and the Rule of Law considered the draft law "On amendments and additions to the Code of Criminal Procedure of the Kyrgyz Republic".

The initiator - MP Kurmantai Abdiev. The draft law provides for the return of a practice whereby the investigative officer is required to compile a bill of indictment. The proponent is of the opinion that this draft law will contribute to the enhancement of the citizens' rights and interests.

Despite these obstacles, many NCOs continue their active operations in Kyrgyzstan, and civil society continues to stay energetic and active.

But this situation should not assuage the public opinion, since, under the circumstances, more and more, it becomes increasingly important to understand and appreciate the nature of CSOs. It is necessary to develop an understanding of the legal framework for the activities of the NGCOs/CSOs which would allow them and international organizations to make the best possible use of all the possibilities provided by the existing

legislation for the development of NCOs/CSOs and, at the same time, to make efforts for its further improvement.

This would be beneficial not only to the NGOs and IGOs, but also to the Government and society of Kyrgyzstan as a whole.

## Section III. Conclusions

Civil society development is crucial to the fundamental values of democracy and pluralism of any country, as well as to the promotion of social integration of citizens in the development process. Development of the civil sector reaffirms the constitutional rights of citizens, including the right to freedom of association, freedom of assembly, freedom of expression. The citizens' activities contribute to sound development, better standards of living and quality of life.

Such participation of CSOs in advancing and building a just society requires close cooperation with the institutions of the State. Reciprocal actions can significantly contribute to progress in various social areas in order to effectively address the existing challenges. Civil society organizations (CSOs) as an integral part of the social system are a form of expression of the citizens' initiative promoting the active participation in public affairs management. Support of the civil society is a way to promote social solidarity and build on sustainable social capital. CSOs contribute to development. Therefore, it is in the interest of the State to support and create an enabling environment for the development of the civil society sector - a fundamental element of the promotion of democracy and democratic values, a vital partner in the identification and resolution of problems in various social environments; promote the development of knowledge and information sharing; protect the constitutional rights of citizens.

Civil society organizations (CSOs) in Kyrgyzstan have contributed to the development as innovative agents of change and social transformation. Non-profit sector comes to the rescue when the State - for various reasons (lack of resources, incompetence or indifference) - may not respond in a timely manner to the emerging challenges and issues of violation of the constitutional rights of citizens and in the social sphere.

CSOs respond to the challenges and provide support to those socially excluded, promote knowledge development, awareness raising, protect the constitutional rights of citizens.

Results of the research demonstrate that, in general, there are negative trends in the field of the rights of communities to freedom of association and of peaceful assembly in the Kyrgyz Republic. Human rights NCOs whose freedom of action serves as a direct indicator of the general level of respect for human rights in the State happen to be most vulnerable in terms their physical integrity. This vulnerability of CSOs manifests itself in the State authorities' imposing various limitations over the so-called "political" activities of CSOs which is sometimes accompanied by exertion of pressure on CSOs and their leaders who may have acted as human rights defenders or criticized the Government.

More concern is caused by individual MPs seeking to initiate legislation that discriminates against/restricts civil society institutions. Concern is caused by the lack of a tolerant environment for the LGBT community and the activities of organizations involved in the protection of LGBT rights.

The Government has taken some steps for CSO's involvement at the level of information sharing, discussions, review and recommendations. However, it should be noted that sometimes the State supports such a dialog just for the sake of formalities or even in a simulation mode.

The Government's policy enabling NCOs to generate their own financial resources remained unchanged or even deteriorated to an extent.

There is no consistent state policy that would be aimed at providing comprehensive support and encouragement of civic initiatives and the use of their capacities in development.

CSOs' access to government structures, their ability to participate effectively in decision-making processes, the opportunity to influence development processes, challenge or initiate legal acts on the issues of development are limited - it can be assumed that the State does not recognize CSOs as an equal development partner.

The rights of CSO to openly pronounce critical remarks on development issues, freely seek and disseminate information on policy and budget matters are very limited.

The heterogeneity of the sector itself also requires special attention. Civil society has been unable to solve one of the most important tasks - that of building sustainable horizontal ties. There is an evident gap between the long-running, large-size ("Whales" - FGD) organizations and the newly established, community-based organizations with little experience and insufficient resources. This gap gives rise to additional problems in the development of sustainable and effective horizontal linkages within the sector.

The next major challenge is to develop the financial basis for CSOs. For the majority of CSOs in the Kyrgyz Republic, grant funding from external donors has been the main financial source. Regrettably, this is a most subordinate strategy: the withdrawal of external donors from the country has brought about financial insolvency of such organizations.

It has been noted that the requirements of strategic donors towards internal financial and organizational policies and procedures have increased, while their institutional support has been significantly reduced. Many small CSOs with no domestically designed strategic plans, financial policies/procedures, or an established financial and organizational management system, are bound to forfeit access to their funding. This leads to frustration, various rumors and speculations about corruption schemes and "merging" of major CSOs and employees of donor representation offices. It has been also noted that donors must be more open, willing to inform the public about actual recipients of grants, better monitor implementation of projects and targeted use of funds disbursed to prevent violations and misuse of funding which ultimately affects the overall image and undermines credibility of CSOs.

As for internal organizational hurdles, the foremost are institutional weakness and lack of professionalism. CSOs' activities are often based on one or two employees, while others work only for the period of implementation of a project. Upon completion of the project, the organization stops its operation or stays idle until the next project. There are many projects around of the so-called "one-person" type.

As for interaction with the media, its representatives, just like those in other walks of life, are characterized as lacking a holistic perception of the not-for-profit sector. "Demonization" of CSOs in the media by individual politicians and public figures (Tursunbai Bakir uulu, Mavlân Askarbekov, etc.) is a cause for another concern. CSOs are yet to overcome these challenges. And how soon this will happen depends, of course, on the activity of CSOs themselves, as well as their openness, transparency and accountability.

The civil sector of Kyrgyzstan is now at such a stage of its development when the CSOs need to strive for their recognition as a significant social force that can influence this country's development processes. The success of this implementation depends in many ways on CSOs' getting massive support from other citizens. Without constantly informing citizens about the results of CSO activities, such support is hardly possible.

Another important factor of development is, in the opinion of CSO leaders, support and funding for the non-profit sector. Currently there are many priority issues, in which the State and CSOs could work together.

According to NCO representatives, these will involve addressing the issues of the poor, disabled, minors and the elderly, issues in education, health and the environment.

CSOs note the dual position of the local authorities: on the one hand, given the limitations of local budgets, and the inability to solve all the social and infrastructure problems on their own, the authorities perceive CSOs as "investors" and "invite" them just for the sake of formalities or even in the simulation mode, which ensures no real participation that would lead to concrete changes or policy adjustments. On the other hand, in response to the activities of human rights organizations, the authorities are taking the initiative to limit CSO activities. CSO leaders are calling for changes in public policy, a shift from suspicions to a constructive dialog and the active support of the nonprofit sector.

## Section IV. Recommendations

### **4.1. RECOMMENDATIONS TO THE GOVERNMENT OF THE KYRGYZ REPUBLIC**

1. Jointly with CSOs, develop a consistent State concept, which should aim at all-round support, encourage civil initiatives and the use of the CSOs' capacity in development.
2. Create an ad hoc coordination office within the Government to work with CSOs.
3. Establish regular communication platform between CSOs and the Government to discuss development issues, socio-economic and political life of the country.
4. Ensure compliance of the State authorities, local self-government and the internal affairs authorities with the right of citizens to peaceful assembly.
5. Implement the obligations under the basic minimum international standards, including the UN Declaration on human rights defenders.
6. Develop and initiate the amendments to the Tax Code and other laws of additions and amendments that create an enabling environment for the development of the country's charities and volunteering.
7. Introduce a system of 1% deductions from the income tax paid by the citizens to those CSOs which citizens will be able to choose on a voluntary basis, in order to promote their development and resolution of problems on the local level.
8. Ensure protection for CSOs under a threat to their integrity.

### **4.2. RECOMMENDATIONS TO THE JOGORKU KENESH OF THE KYRGYZ REPUBLIC**

1. To discontinue the practice of copying, duplication of laws of other countries that restrict, discriminate against institutions of civil society.
2. Develop and adopt a package of legislative proposals on changes and amendments in the existing normative legal acts establishing safeguards for the implementation of a citizen's constitutional rights and freedoms.
3. Provide control over execution of the legislation governing the right to peaceful assembly and Association (associations).
4. Introduce changes and amendments to the Law of the Kyrgyz Republic "On Peaceful Assemblies", in accordance with the recommendations of the Venice Commission (the name change to the Law "On freedom of assembly", as well as the introduction of the term "public events" in the conceptual apparatus of the above Law).
5. In close cooperation with organizations representing the interests of LGBT citizens, develop a wide range of anti-discriminatory legislation, which includes provisions on non-discrimination based on sexual orientation or gender identity.
6. Consider and take into account proposals and recommendations of the civil society organizations, and, following international obligations, recognize CSOs as an equal development partner.

7. Conduct an analysis of the impact of 1% deductions from the income tax to the benefit of CSOs on the economic and budgetary situation in the country.
8. Develop and amend the Tax Code and other laws that create favorable conditions for the development of charities and volunteering in the country'.

#### **4.3. RECOMMENDATIONS TO THE OMBUDSMAN'S (AKYIKATCHY) OFFICE OF THE KYRGYZ REPUBLIC**

1. Actively involve CSOs in the work of the Ombudsman's Office.
2. Provide assistance in ensuring ongoing monitoring as a mechanism to track the level of observance of the rights of citizens in the Kyrgyz Republic.
3. Promote communication platforms for civil society and Government representatives in order to effectively and promptly address human rights and rule-of-law issues.
4. Respond to homo- and trans-phobic statements in the media that incite hatred of LGBT citizens.

#### **4.4. RECOMMENDATIONS TO THE CIVIL SOCIETY ORGANIZATIONS**

1. Establish partnerships within the NCO sector.
2. Develop in your organizations the principles of transparency and accountability, particularly with regard to the use of grants, State social order funding, and private donations.
3. Promptly respond to the unconstitutional initiatives of the authorities; be active in protecting the rights of citizens.
4. Human rights NCOs need to identify common strategies for joint human rights protection activities.
5. Develop network (coalition) partnerships.
6. Promote and practice within their organizations the 8 principles of good governance.

#### **4.5. RECOMMENDATIONS TO INTERNATIONAL PARTNERS IN THE AREA OF DEVELOPMENT**

1. Fund program activities of CSOs and not the project activities.
2. Establish an effective external monitoring of the funds received and used by CSOs.
3. Support the institutional development of the CSO.
4. Develop and put into practice the mechanisms for donor reporting on external assistance.

## Section V. Conclusion

The research has allowed to follow the dynamics of sustainability of the non-profit sector in the Kyrgyz Republic and its development in the long-term.

Predictions have been quite disappointing. The recent initiatives of the deputies of the Jogorku Kenesh on changing legislation on NCOs may bring about fundamental changes in operating conditions for many NCOs. Human rights NGOs are particularly at risk. There are a number of changes, the biggest of which, from the human rights perspective, is decriminalization of defamation, which is likely to once again return to the Criminal Code of the Kyrgyz Republic. All new unconstitutional and undemocratic initiatives of the JK deputies contribute to the marginalization of not only human rights groups but also the entire NCO sector.

The situation is a cause for concern in certain matters of personal security of human rights defenders and civil society activists. The research has shown that such types of threats as collecting information about the leaders of organizations, offers for citizens to sign statements against other human rights defenders, activists or organizations (as was the case with the Public Association "Reproductive Health Alliance", the Human Rights Movement "Bir Duino"), handing out warnings about the inadmissibility of violation of laws/notices of criminal responsibility, disruption of events, etc. are now organized not only by the authorities, but by individual radically-minded public organizations as well.

Following the discussion of the interim results of the research among the NCO executives conducted by the research team on December 26, 2013, human rights organizations and NCOs working in the field of development, are now in the process of identifying their individual strategies. There are a few of them and, most likely, they will be implemented in parallel. Heads of charitable organizations agree with them, too. Unfortunately, no enabling environment has been created for the development of charitable activity in the country. Despite the rhetoric of the authority representatives about the importance and necessity of supporting voluntary services and charity, there has been no essential improvement of the legal environment in this area.

Despite the fact that the information received from the heads of NCOs was of somewhat subjective nature, the integrated approach applied through the selected methodology helped to identify the overall picture of the NCO sector, including the organizations' key features, the financial stability picture, as well as the trends and challenges the NCOs of the Kyrgyz Republic have encountered and may still encounter in the near future. On the whole, we can say that civil society organizations of the Kyrgyz Republic are facing a number of serious challenges that arise from the modern trends in the national and economic policies. This includes the attempts to change the national legislation in the NCO area, heavy dependence on donor organizations and financial instability, and negative perceptions of NCOs' "political activities" by the authorities.

## Annex 1. List of NGOs that took part in focus-group discussions

1. Public association "Resource Center for the Elderly", Issyk-Kul Oblast
2. MBO "Leadership", Issyk-Kul Oblast
3. PA "Adamzat den-soolugu", Issyk-Kul Oblast
4. PA "The Center for economic education", Issyk-Kul Oblast
5. PA CIC "Leader", Issyk-Kul region
6. PA "Reproductive Health Alliance", the cities of Bishkek and Karakol, Issyk-Kul Oblast
7. PA "Nur Bala", Talas Oblast
8. OO "FGSP Talas", Talas Oblast
9. IPOO Consortium, Public Reception, Talas Oblast
10. ICC "El Naz", Talas Oblast
11. PA "Dilonor", Talas Oblast
12. PF "Onol Ajym", Talas Oblast
13. PA "The Union of Unity", Talas Oblast
14. PA "Coalition for democracy and civil society", Naryn Oblast
15. Naryn Oblast Women's Congress, Naryn Oblast
16. PF "Bakubat", Naryn Oblast
17. PA "Tynchtyk", Naryn Oblast
18. PF "Impulse + K", Naryn Oblast
19. PA "Uturum", Naryn Oblast
20. BFI "SKew", the city of Bishkek
21. CPP "Central Asia on the move", Bishkek
22. PA "Arysh", the city of Bishkek
23. PA "Coalition for Democracy and Civil Society", Bishkek
24. PA "the Foundation for the development of law and business", the city of Bishkek
25. PA "Dostoyanie Respubliki", the city of Bishkek
26. PA HRM «Bir Duino », the city of Bishkek
27. PA "Labrys", the city of Bishkek
28. PA "The Center for Child Protection ", the city of Bishkek
29. PF "Smile", the city of Osh and Osh Oblast
30. PF "Ray of Solomon", the city of Osh and Osh Oblast
31. PF "DCCA-OSH", the city of Osh and Osh Oblast
32. Public Foundation "Information Security Media Center", the city of Osh and Osh Oblast
33. Public Foundation "Human Rights Advocacy Center", the city of Osh and Osh Oblast
34. Public Association "Ene Nazary for protection of prolific mothers", the city of Osh and Osh Oblast
35. PA "Ak Jurok", the city of Osh and Osh Oblast
36. The International Protection Assistance Center, the city of Osh and Osh Oblast
37. PA "Ensan Diamond", the city of Osh and Osh Oblast
38. PA "MC Interbilim", the city of Osh and Osh Oblast
39. PF "Activist", Batken Oblast
40. PF "Insan Leilek," Batken Oblast
41. PA "Eldyk Demilge - Toguz Bulak", Batken Oblast
42. "Protection of the rights of the rural child", Batken Oblast

43. PF "Leilek Daanyshmany", Batken Oblast
44. PA "The Youth of Lejlek", Batken Oblast
45. PA "The Leilek Ayalzaty", Batken Oblast
46. OPZO "Justice", Jalal-Abad Oblast
47. PF "Ajmidiâ", Jalal-Abad Oblast
48. PA "Tais Plus Two", Jalal-Abad Oblast
49. CSSC "Jalal Abad", Jalal-Abad Oblast
50. OZPP "Libra", Jalal-Abad Oblast
51. NGO "Protection of the rights of the rural child", Jalal-Abad Oblast
52. PA SPP named after L. Fomova, Chui Oblast
53. PA "Elsen", Chui Oblast
54. PA "Epkin", Chui Oblast
55. PA "Alga", Chui Oblast
56. PA "Nushor", Chui Oblast
57. TIO Krasnorechenski Aiyl Kenesh, Chui Oblast
58. PA "Shazet", Chui Oblast