

**ASEAN Conference on civil service matters
November 14-15, 1012
At Manila, Philippines**

Country Paper

On

Citizens' Participation in Governance and Social Accountability

Of the Lao PDR

November 14-15, 1012

Introduction

The 7th Party Congress in March 2001 emphasized the necessity of further improving the democratic process, through the most optimal match between state, civil society and private sector, in order to ensure that development results from the creative interaction between these three complementary forces. For the Lao government, creating a dynamic and participatory society goes hand in hand with creating opportunities for the people in the urban and local communities men, women, youth and the elderly to enjoy their participation in social, cultural, economic and political activities.

Each citizen can have a voice in the decision-making process, through the public consultation processes that occurs regularly in the development of all legislation and the formulation of Government policies and strategies. They can lodge complaints in accordance with the Constitution.

In the Lao context, civil society is represented by the mass organizations, the social and professional organizations, the Buddhist society and other religious organizations, the parents organizations, student organizations, the sports organizations in the villages, youth organizations etc.

Mass organizations have an important role in representing the voice and interests of the different sectors and ensuring that they are incorporated into all levels of decision and policy-making.

They help to transmit Government decisions to all sectors of society, encourage the people in the protection of the country, in building the country and expanding the rights of ownership of the people. Within the Government organization, mass organizations are an essential part of the country's planning system and, as such, are an integral part of the Party's and the Government's efforts to building up capacity and institutions. In this sense, they will continue to contribute to help the Lao society achieve a continually increasing level of participation and implementation.

In addition to the mass organizations, the interests of the people are also supported through an increasing number of cultural, religious, social and professional organizations (such as the Bar Association, the Foundation for the Promotion of Education, the Foundation for the Promotion of Culture, the Sports Union and various Cultural Clubs). Individuals with similar business interests are also free to form associations in order to protect their particular group interests. At the village and district levels, a variety of associations also exist and are part of an effort to enhance local ownership and to increase ownership over important collective development efforts.

These organizations provide organized fore to represent educational, social, religious, professional and recreational pursuits of the Lao people.

The Government implements its work in accordance with the principles spelled out in the Constitution, enshrining the Lao people's aspirations to promote unity and to discourage all acts of discrimination and division, particularly on the basis of religion or ethnicity. Consequently, compliance with these constitutional principles is one of the main criteria for the formal approval of an organization or association. This allows the government to ensure the people that the unity, peace and harmony of the country are maintained.

STRATEGIE OF THE PEOPLE' S PARTICIPATION IN THE LAO PDR

Background and Strategic Objectives

The Lao Government has long been committed to ensuring that the Lao people are closely associated in all areas of decision-making and that they are able to participate fully in all areas of the socio-economic development of the country. This participation includes not only the economic life of the country, in order to ensure that individuals are able to find their own means to sustain their livelihoods, but also the social, cultural and political life of the country.

For the Lao PDR, the concept of people's participation is fundamentally enshrined in the Constitution through the concept of 'Fundamental Rights and Duties of the Citizens' and through the structure of the political regime, the Government at central and local levels, the National Assembly, and other organisations including mass organisations and other social and professional organisations.

The implementation of these basic rights, to ensure that they are universally respected in our country, involves freeing the Lao PDR from mass poverty,¹ improving governance in the four main areas that we are dealing with in this policy paper as well as the building up of a sustainable resource base and the continuous integration into the regional and international context.

People's participation is the basis of our system of governance and our democratic approach to decision-making, through which we ensure the most direct involvement of the Lao people in the management of our country, thereby constantly submitting our policies and actions to the opinion of the people and legitimising our actions, plans and programs. Therefore, our overarching goal in this priority area of the governance reform program is:

to ensure that all Lao people are given the opportunity to be associated in all areas of decision-making, that they can fully enjoy their constitutional rights and that they are educated and well-informed so that they can express their opinion on government policy, on how our government is servicing them and participate fully in all areas of cultural, social and economic development.

¹ This is the fundamental purpose of the Government's political priority of the National Poverty Eradication Programme, in accordance with the plans as announced in our Report to the 6th RTM in Geneva, June 1997.

To reach this goal, the Government will target the following strategic objectives:

- 1. Ensuring a stable and peaceful society and improving human security.**
- 2. Strengthening the National Assembly**
- 3. Promoting a dynamic and participatory society**
- 4. Promoting an open and transparent society**

Each of these strategic objectives is addressed under a separate section below, with the greatest space given to the chapter on redefining central-local relations (objective 5) which concerns the institutional framework through which the Government seeks to bring service delivery closer to the people, and ensures the greater ability for people to address their own needs at the local level.

1. Ensuring a Stable and Peaceful Society and Improving Human Security

Crisis situations around the world have shown that peace, security and stability are vital prerequisites for good governance and poverty reduction. Human security is people-centred and consists in safety, well-being and dignity. It encompasses issues such as the right to education and other social services, to a safe and healthy environment, to equal treatment, to a decent quality of life, to inclusion and protection for minority people, disabled people, elder, women, youth, children and those who are ill or in need of support. The Lao Government attaches great importance to all these human security related concerns, which form the basis of the constitutional rights of the Lao people and underpin all our 8 National Development priorities.

The Government therefore places a high priority on ensuring that peace, safety and security are guaranteed for every citizen. As in most other countries, in the Lao PDR guaranteeing the security, safety and peace of Lao citizens is divided between the Ministry of Public Security (until 2002 the Ministry of the Interior) and the Ministry of National Defence.

The first responsibility of the **armed forces** is to protect the territorial integrity and sovereignty of the Lao PDR, and the peace and security of its borders, according to a strict policy of self-defence. The Lao army also participates in the socio-economic development of the country, it has an important role in opening up remote areas for development and is also in charge of the protection of various bio-conservation areas. The army also assists the population in times of emergency, such as natural disasters, and assists with other important human security programmes such as the Unexploded Ordinance Programme.

Whereas the army formerly has been involved in a number of commercial ventures, most of these companies are no longer under the Ministry of Defence.

The Ministry of Defence, with its headquarters in Vientiane, is supported by commanders at provincial and district level, and people's self defence forces at the village and district levels.

The **Ministry of Public Security** is responsible for the internal security of the country. It has branches at the district, provincial as well as the central level. Villages also have their Security Committee to keep peace and security within the village. Through its membership in the international police organisation (Interpol), the ministry is increasing its co-operation with other regional and international police forces.

In addition to governance issues related to the peace and stability in the country, the entire package of measures taken by our government on issues related to human security aim to reduce possible barriers that prevent the people to enjoy the benefits of our development policies and to participate in economic, social and political activities, to the best of their abilities. Throughout our policies for implementing our vision to achieve equitable growth for the benefit of eradicating poverty and improving our country's level of human development, we are strongly committed to apply the key governance principles, which derive from our vision statement on governance - stability, equity, predictability, efficiency and effectiveness, transparency, participation, responsiveness, accountability and rule of law.

2. Strengthening the National Assembly

The Constitution identifies the National Assembly as the organisation of the people's representatives (*representative function*). It is the legislative organ, which has the right to decide the fundamental issues of the nation (*legislative function*). It also supervises and oversees the function of the executive and judicial branches of government (*oversight function*).

The National Assembly consists of a single chamber of 109 representatives, elected for 5 years by direct and secret universal suffrage. It exercises its legislative, representative and oversight functions through the Standing Committee, six parliamentary commissions, a number of internal offices and departments and 18 Provincial Offices.

MPs represent the populations of their constituencies. According to the Electoral Law, each province has the right to elect a certain number of candidates, depending on the number of population.

The role of the provincial offices is to strengthen the representative, legislative and oversight/handling complaints function of the National Assembly by bringing the legislature closer to the local population/communities, ensuring that the people are well informed of the laws and policies, and allowing the local population to lodge complaints and petitions directly to their representatives.

Based on this constitutional right of the people, almost all our public offices, including members of the National Assembly, have an obligation to receive and study complains and requests of the population. The National Assembly and its Department of People's Complaints and Nationality in particular, as well as the provincial offices of the National Assembly, are playing a key role in handling people's complaints.

Over the past years, and with the help of some of our development partners, a lot of efforts were targeted at the training of the members of parliament and their support staff, including in-country seminars, overseas study tours and English language training. A new library has been established and a modern sound recording system was installed. Legislative oversight was improved through the introduction of question time, electronic voting and improved media liaisons, including at the provincial level.

3. Promoting a dynamic and participatory society

The 7th Party Congress in March 2001 emphasized the necessity of further improving the democratic process, through the most optimal match between state, civil society and private sector, in order to ensure that development results from the creative interaction between these three complementary forces. For the Lao government, creating a dynamic and participatory society goes hand in hand with creating opportunities for the people in the urban and local communities – men, women, youth and the elderly – to enjoy their participation in social, cultural, economic and political activities.

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Mass organisations have an important role in representing the voice and interests of the different sectors and ensuring that they are incorporated into all levels of decision and policy-making. They help to transmit Government decisions to all sectors of society, encourage the people in the protection of the country, in building the country and expanding the rights of ownership of the people. Within the Government organisation, mass organisations are an essential part of the country's planning system and, as such, are an integral part of the Party's and the Government's efforts to building up capacity and institutions. In this sense, they will continue to contribute to help the Lao society achieve a continually increasing level of participation and implementation.

In addition to the mass organisations, the interests of the people are also supported through an increasing number of cultural, religious, social and professional organisations (such as the Bar Association, the Foundation for the Promotion of Education, the Foundation for the Promotion of Culture, the Sports Union and various Cultural Clubs). Individuals with similar business interests are also free to form associations in order to protect their particular group interests. At the village and district levels, a variety of associations also exist and are part of an effort to enhance local ownership and to increase ownership over important collective development efforts.

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The Government implements its work in accordance with the principles spelled out in the Constitution, enshrining the Lao people's aspirations to promote unity and to discourage all acts of discrimination and division, particularly on the basis of religion or ethnicity. Consequently, compliance with these constitutional principles is one of the main criteria for the formal approval of an organisation or association. This allows the government to ensure the people that the unity, peace and harmony of the country are maintained.

The decentralisation policies also present new challenges and opportunities to the social and professional organisations and international NGOs operating in Laos. The government recognises the important contribution these organisations can bring to the development process at the local level.

4. Promote Open and Transparent Society

Increased information to the public will help the government become more transparent and more service oriented. By increasing the availability of official information, the government also aims to enable citizens participation in the making of laws and policies and to promote the accountability of state officials.

Freedom of speech is guaranteed by the Constitution. The media are important fora for promoting national development, charged with informing and educating the people about the policies and efforts of the Government in socio-economic development. Their main task is (1) to inform the broader public on the government's policies, programmes and activities, (2) to involve the whole nation actively in national development and (3) to mirror the people's response to the policies and efforts of the Government.

For the Government, it is essential that all media contribute to build the country into a strong and integrated economy and unified society, characterised by peace, solidarity and ever-improving standards of living. The media also form a bridge between the political structure, the Government and the Lao multi-ethnic population.

In recent years, the role of the media has expanded. They have been given particular tasks in the fight against corruption as well as to provide for the spiritual needs of the people and to co-operate with the economic sectors. They are also the main vehicle for disseminating information on our country's integration in the regional and global economy.

In principle there is no authorisation required for the publication of articles or the broadcasting of material but media organisations are required to keep copies of newspapers, radio and television broadcasts for two months, in order to allow the Ministry of Information and Culture to investigate allegations of wrongdoing.

Today there are over 30 newspapers, magazines, journals and news bulletins published in the Lao PDR. The radio broadcast system (15 radio stations) has become an increasingly important vehicle for grassroots distance learning. We have 3 TV channels, broadcasting from Vientiane as well as provincial TV stations. Lao TV watchers can view not only six Thai TV stations, programmes from China and Vietnam, but also CNN, BBC and other worldwide broadcasting TVs. The Lao National News Agency (KPL) has its own reporters in all provinces. With the access to Internet, and various foreign news agencies, foreign news is now more rapidly accessed, and translated into Lao.

For the Lao Government, the mass media is also an important tool for holding public officials accountable for their actions, as part of our strategy to reduce corruption in the country. The Government therefore strongly encourages our journalists to report increasingly on substantive issues and report cases of misdemeanors of interest to the public, supported by properly established facts and evidence.²

Recently, the Lao Journalist Association decided to create an Inspection Committee to oversee journalistic ethics and to ensure that reporters gather and publish news that is important for the society and the development of the country.

The Government also encourages constructive Criticism aimed at good governance, and improved public service delivery in particular. To ensure that this is done in a clear legal environment, the Government is in the process of finalizing a draft law on Mass Media.

Development of Citizens' Participation

The 1991 Constitution gives all citizens' the rights to education, free expression and association, but in reality the laws sometimes restrict the practice of these rights. The evolvement of civil society institutions lays the foundations for these rights. The Party's 7th Resolution in 2001 urged *a creative and non-confronting interaction among state, civil society and the private sectors* to build a democratic culture and process.

The mention of "civil society" and its interlocking and stimulating role in promoting democratic rights and processes raises many questions. Is the statement signaling the need

for opening the avenues for an internationally recognized democratic culture, as some Lao citizens and many donors have been urging? And if so, does the government have the capacity to formulate the legal framework? Or is the statement simply a polite nod with little political will behind it in order to appease external donors?

Referring to the Constitution, Laws and Strategy of the participation, in 1999 the Lao government issues the decree on Association. Objectives this decree set the rules and This Decree sets the rules and regulations governing the establishment, operation and management of associations registered as legal entities in Lao PDR for the purposes of:

1. Promoting the Lao people's rights of freedom, creativity and ownership in the organization of associations aiming at national protection and development;
2. Providing references to individuals or organizations intending to set up their associations;
3. Providing references to government organizations concerned in managing, facilitating and encouraging lawful activities by associations, promoting associations' contributions towards socio-economic development and poverty eradication, as well as countering and restricting activities affecting national stability, social order and individual rights of freedom

The civil society in Lao PDR

I. The meaning of Association

Association is the civil society which establishes based on volunteering of the people, it has role to consolidate solidarity, help each other among the association member and society; protect the legal rights of the association, members, and communities; contribute to the development and poverty eradication of the country.

Associations significantly contribute their efforts, knowledge, fund and assets to the country revolution mission and to the country construction and development in the recent time.

Associations in Laos and outside the countries have important roles to protect the legal rights of the members, help and share happiness, sad or popularity with each other; act as a social relief organ in emergency situation such as earthquake, storm, tsunami etc. war impacts, widespread diseases (HIV/AIDS) help vulnerable people, elderly, orphan, disabled people with no care takers; contribute to solve social phenomenon (eradicate poverty) and environmental issues (reserve and rebuild the forest); be focal point between party, state and people (to interpret direction, policies of the government to implement in Association, convey the ambitious of the members present to the concerned governmental organizations, contribute to create transparent public and private sectors); scrutinize or propose to the government regarding mechanism, policies that seems inappropriate with the current situation and the desire of the entire people or propose to the private sector regards the commodity prices in the market or public services that are poor delivery, encourage the intellectual, thought of the people, members of the association to contribute

to facilitate the mechanism, policies or laws to meet the real need, meet with the desire of the people.

II. The need of Association Decree

In the past few years, there is no legal framework that clearly interprets the article 44 chapter IV of the constitution 2003 especially the content regards association. In the past there were some decrees in this area, however, they could not apply to the entire society due to it specifically defined for some organisations such as the decree 71/PM, dated 28 April 1998 on the INGOs that operate in Lao PDR; decree 59/PM dated 10 March 2005 on Lao Union of Science and Engineering Association.

Due to it lacks leading legal framework to guide the implementation and operation of the association. For this reason, Lao people or organization in Laos need to establish their association have no clear direction and do not know where to send their application for approval their association or when established they do not know how to operate. Moreover, in the past there were no clear defined organizations to manage, control, and evaluate the association, these make the process of approval of the association complicated, overlapped and did not align with the principles of the civil society or in worse cases the associations operate without scope which created a loophole for bad people to take the name of the association in creating benefit for their private gain and so on. So that in order to enhance the article 44 of the Lao constitution regarding the freedom of the citizen to establish the association based on the laws and legal framework and to promote direction, policies of the Party, the State to enhance the role of the civil society to contribute in national development and eradicate poverty. For these above reasons, there is a need to have a decree on the association to be a guideline and reference for the establishment, operation and management of the association across the country.

III. The starting point of the association decree

According to the important and need to have the decree on association, the Prime Minister's Office assigned the Public Administration and Civil Service Authority (PACSA) to be focal point with Lao Front for National Construction, Lao Union for Science and Engineering Association (LUSEA) and other related organisations to draft legal framework on civil society management and vocational such as association and foundation based on the noticed number 1459/PMO dated 19 September 2006. To implement the given noticed, PACSA established legal drafting committee which includes representatives from Lao Front for National Construction, National Assembly, Ministry of Foreign Affairs, Central Committee for Personnel and Organisation, Ministry of Justice, Ministry of Finance, PACSA and LUSEA in the agreement number 132/PACSA dated 12 September 2007. After established the legal drafting committee to responsible for drafting the decree, the committees received some necessary trainings and organized comprehensive exposure visit to neighbouring countries on the important role of the civil society, organized several workshops in different levels to

seek comments and feedback from various view of the people in the society on the content of the association decree. Once organized the workshop some new ideas had gather, the committee sit in the meeting to review the content of the decree again and again. Furthermore, the legal drafting committee had cooperated and got feedback from Vietnamese experts from International Centre for Non-Profit Law. The draft decree was presented in the Social-Culture Committee of the National Assembly meeting. After the feedback and comments from various sectors, the committee had review the decree and submitted to the government meeting in July 2008 for consideration and approval.

On 29 April 2009, the government of Lao PDR issued a Decree on Associations (decree No. 115/PM, allowing for the formation and registration of national non-profit Associations (NPAs). The decree represents a momentous step towards the development of civil society in Lao PDR as it reflects the recognition by the Lao Government that civil society organizations can contribute to greater diversity and quality of development dialogue, as they have the local knowledge and on the ground presence to work with communities to reduce poverty and support the country's efforts to reach the Millennium Development Goals (MDGs). The decree represented the initiation of a formal dialogue between civil society and the government and this dialogue has the potential -if nurtured well over long term-to transform the government service provider relationship that it is characterized by today, to that of a partnership whereby civil society and government work alongside in policy development and policy engagement with development partners.

IV. Status of the CSO registration

Decrees 115 and 149 reflect the view of the Lao Government that civil society has a role to play in the further development of the Lao PDR and also that civil society should closely align with government sectoral policies and goals. The decrees embody a strong emphasis on the need for CSOs to contribute to socio-economic development and poverty eradication. As the decrees encourage a strong sectoral orientation, line Ministries are brought in to provide technical assessments during the registration process.

The nature and spirit of the decrees is reflected in the process established for registration. The registration is the first step from which CSOs may start to gain formal legitimacy for their work, and is the first step in a long term process of relationship building between the CSO community and the Government. An efficient, effective, timely and user-friendly registration process for NPAs and Foundations is a critical foundation for the implementation of Decrees 115 and 149. It is therefore important to study the registration process to determine whether the process is optimized. The process essentially involves three main stages with assigned timeframes for and within each stage and while it was not within the scope of this report to examine the registration process in details, some observations and suggestions with regard to the registration process are included later in the report.

According to the signed CSSP project document, there were –prior to the issuance of Decree 15- reportedly approximately 191 NPAs registered with a variety of government agencies. It is estimated that approximately 32 of these are engaged in development-related activities. Of these, those local associations that are generally considered to be reasonably well developed have been supported by or emerged from international NGOs and according to local experts, number approximately 15.³

This group of 191 NPAs included many groups that designated themselves as ‘associations’ but do not conform to the definition of an association per Decree 115 including for example, school student and parent associations and social event groups. Therefore, with the issuance of the decree, many of the associations did not (re)register. Out of the 191 NPAs, 34 NPAs have submitted re-registration applications as required under the new decree. To date, 98 applications for CSO registrations have been received at MoHA of which 31 registration requests have been approved, 9 of which were re-registrations. This is a significant increase from the 6 associations that had delivered all necessary documents to PACSA for processing as of February 2010. Of these 98 applications, 12 cases have been long-outstanding due to incomplete follow-through from the NPA side in fulfilling requirements. These 12 cases may likely be ‘written off’ as closed cases due to the lack of movement. The number of pending registrations, is attributed primarily to NPA challenges in developing by-laws; NPA proposed Articles of Incorporation being inconsistent with Articles of the NPA decree; elongated period between stages 2 and 3 of the registration process during which time a temporary license has been issued; and delays in the technical review process at the Ministerial level. Among the pending cases, 24 NPAs have received approval to establish mobilization committees (end of Stage 1/beginning of Stage 2); 25 NPAs are awaiting comments from concerned line Ministries (middle of Stage 2); and 18 NPAs have been granted their temporary license (end of Stage 2/beginning of Stage 3).

An overview of the NPAs registered at national level reflects that as of the time of registration, several NPAs registered as working in various areas of operation. As a result, the classification of NPAs as working in distinct focus areas –as they pertain to the MDGs- is not straightforward.⁴ Of the 31 nationally registered NPAs, there is a clear dominance of NPAs working in the area of agriculture, labour and welfare, followed by many NPAs working in areas of education and health (approximately 6-7 NPAs working in each of these sectors), followed by a few NPAs (3 each) working in the areas of environment and gender equality. Approximately 30% of the nationally registered NPAs have an explicit focus on working with vulnerable and marginalized groups including people with HIV/AIDS, disabled persons, the poor, women and youth.

At the provincial level, 68 NPAs have registered post-decree. As full documentation on NPAs registered at provincial level is not available at central level, it is difficult to determine

³ Source of data: Lao Front for National Construction & Concern Worldwide (2009).

⁴ According to the CSSP workplan, discussions between MOFA and MOHA with regard to the undertaking of a civil society mapping exercise is foreseen for the last quarter of 2012.

from the title of the organization only, the extent of the linkages between NPA mandates and their intended contribution to the MDGs. However, it appears that approximately 25-30% of the registered NPAs are supporting agricultural, food production, import and export, thereby contributing toward MDG1. This estimate could very likely be higher subject to clarification as to how many of the NPAs working in the transportation sector (a notable 30%+ of the NPAs registered at provincial level are working in this sector) support transportation of foodstuffs and goods (vs. transport of people). As detailed records on sub-nationally registered NPAs are only available at the provincial level, analysis of these NPA mandates should feature heavily in the envisaged mapping exercise.

When comparing the figure of 191 active NPAs prior to the issuance of decree, the current figures, it is difficult to determine how many of those 191 pre-decree registered NPAs which have not sought re-registration and which do not confirm to the definition of 'association' as per decree 115, may still be operating as 'associations'. MoHa and key line Ministries who were responsible previously for pre-decree registrations would need to collaborate closely to address any potential gap, and ensure that all NPAs currently operating in Lao PDR have valid registration licenses. It is hoped that a public awareness campaign would also help in this regard, by stressing to NPAs the need to re-register as well as well as by informing the general public on how to identify and engage with legally registered CSOs operating in their communities.

V. Challenges

- There are many steps to set up Association and take long time in the process. This difficulty indirectly hinders the people who want to establish Association;
- There is a limited understanding about the content of the decree and civil society principle among the people. The establishment of Association is not the initiative of the Lao citizen but by the courage of the outside factors;
- Civil society Organisation is a new content for the people, there is still lack of understanding among the government officers (Ministries and Provincial authorities) especially the concerned organizations that should monitor and manage the operation of the Association and Foundation. In some provinces, the approval of the Association still not follow the decree 115/PM due to the lack of understanding of the provincial authorities.
- There is a lack of monitoring and evaluation system for the registered association and foundation which makes the MOHA has no statistic about Associations that are well or poor operations
- There is no rule or punishment for the Associations and Foundations that are established before decree 115 and 149 and not re-registered but still operating in the society;

- Some applications to establish Association and Foundation are poor and inappropriate with the defined decrees, once received feedback and recommendations to improve the applications, the people who want to establish Association/Foundation are reckless to act immediately. This makes the process of establish Association/Foundation take longer than defined in the decrees;
- Ministry of Public Security who are responsible to certify the history of Association/Foundation management team and Ministries concerned in the process of establish Association and Foundation still see this job as an additional job, carelessness to give comment and feedback. These issues are some of the main causes that make the process of set up Association longer than specified;
- Many regulations of Association and Foundation are poor in structure and content which often not align with the defined decrees. It needs to improve many times before propose to the Minister approval. This is a crucial cause for making the process of establishment longer.

VI. Future plan/recommendation

- To study and interpret the policy of the Party and State regarding the Civil Society Management;
- Continue study and issue more legal framework in Civil Society organization area to enabling environment for the emerge of the civil society;
- Continue raising awareness of the public regarding the role and function of the civil society organization;
- Advice and train the civil society responsible officers and registered Associations to strengthening their knowledge and capacity.
- Promote the coordination and cooperation with the International Organizations and neighbouring countries to enabling environment for the civil society.