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# **Direction of National Policies for Citizens' Participation in Local Sustainable Development**

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**ABBREVIATIONS**

|                  |  |
|------------------|--|
| <b>ACMB</b>      | Associations of Co-owners of Multi-Apartment Building (ACMB) |
| <b>BSP</b>       | Bodies of Self-organisation of Population                    |
| <b>CBE</b>       | Community-Based Enterprise                                   |
| <b>CBO</b>       | Community Based Organisation (same as CO, NO)                |
| <b>CIDP</b>      | Crimea Integration and Development Programme                 |
| <b>CMU</b>       | Cabinet of Ministers, Ukraine                                |
| <b>CO</b>        | community organization                                       |
| <b>CRDP</b>      | Chernobyl Recovery and Development Programme                 |
| <b>MGSDP</b>     | Municipal Governance and Sustainable Development Programme   |
| <b>NGO</b>       | Non-government Organisation                                  |
| <b>NO</b>        | Neighborhood Organisation (same as CO or CBO)                |
| <b>O &amp; M</b> | Operation and Maintenance                                    |
| <b>RFD</b>       | Regional Forum for Integration and Development               |
| <b>SDC</b>       | Swiss Agency for Development and Cooperation                 |
| <b>UNDP</b>      | United Nations Development Programme                         |
| <b>CO</b>        | Community organization                                       |

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## **PREFACE**

The Municipal Governance and Sustainable Development Programme (MGSDP) of UNDP-Ukraine is working towards strengthening urban governance to address sustainable development agenda. To sharpen its course of action on this subject, UNDP/MGSDP solicits ideas and recommendations from practitioners, professionals, policymakers and other experts. To encourage discussions and dialogues among the sustainable development community, it publishes ground-based experiences for wide circulation.

In its quest to establish good governance, the Governments of Ukraine has endeavoured in making the governance decentralized and people-centred since its independence. In this context, several national and international agencies are involved since more than a decade in promoting people's participation and strengthening of decentralisation process in Ukraine. Three laws respectively on the Bodies of Self-Organization of Population, on Local Self-Government in Ukraine and on Association of Apartment Building Co-owners bring the people and the local governments close to each other so as to achieve the vision of sustainable development through their joint efforts. However, experience has showed and researchers have found that the achievements made so far in this direction is less than satisfactory. This paper tries to analyse the constraints in this context and make recommendations for improvement.

The report heavily draws its conclusions from the experience of three projects of UNDP in Ukraine. However, these conclusions very well represent the experience of several other development actors which are involved in promoting participatory governance and community-based development approach in Ukraine.

It is expected that this paper will prove itself useful to all those involved in promoting good governance, public-private partnership and sustainable development in Ukraine and its findings will raise public awareness and encourage intellectual debates.. Any feedback and recommendation on this paper will be welcomed.

### **Direction of National Policies for Citizens' Participation in Local Sustainable Development Abstract**

This paper is a consolidated version of three separate, but inter-related, studies carried out during November 2005 — February 2006. These studies reviewed the community-based local development practices in Ukraine and countries in the region; assessed selected on-going efforts in Ukraine, especially the ones being carried out under support of United Nations De-

velopment Programme and made policy recommendations.

Under self-initiatives or under the guidance of national/international non-governmental agencies, citizens across Ukraine are found to be organized at community level for achieving development objectives for the benefit of community at large. Often such organizations of communities are called community organisation, neighborhood organisation, community-based organisation, house committee, Associations of Apartment Building Co-owners and so on. The studies mentioned above establish the validity of such community-based participatory approach for sustainable local development and its importance for a country like Ukraine. The findings show that in a framework of public-private-partnership at local level and under strong leadership of local governments, the local communities are able to plan, implement and monitor local development activities and deliver services on a sustainable basis. However, the success is constrained by current policy/legislations that hinder community financing for local development, in particular, the Law of Ukraine of the Bodies of Self-Organization of Population, the Law of Ukraine on Local Self-Government in Ukraine, the Law of Ukraine of Taxation of Enterprise Profits. Registration policy, taxation policy, policy on use/ownership of communal properties, budget code for community financing etc. are the areas that warrant changes if local development is to be made sustainable in participation of the local communities. The key recommendations are:

- Clarity in definition is needed between the territorial community in form of political bodies (e.g. village council/city council) and organisation of citizens on specific territories;
- Citizens' participation in the decision making process must be made more participative than mere representative and further enhanced through adoption of appropriate mechanism to integrate communities' development plan into the plans of the local self-governments;
- Registration process of the bodies of self-organisation of population must be further simplified and made more stable in longer term perspective;
- Policy and legislation provision on taxation must be revised to make the bodies of self-organisation of population tax-exempted on the activities related with local development and delivery of community services;
- Budget code must be improved to enable community financing take place effectively. "local development funds" or "block grants" must be established to facilitate such financing;

- Policy must be improved to enable bodies of self-organisation of population to own, use and maintain communal properties for delivery of communal services;
- Revenue provisions of the local self-government must be revisited to raise their income-formation opportunity and autonomy must be granted to allocate resources for funding of community projects.

## **I. Introduction**

The World Summit on Sustainable Development (Johannesburg, 2002) not only reaffirmed the conclusions and recommendations of the World Summit in Rio de Janeiro (1992), but also laid foundations for practical and long-term steps necessary to solve the world's most pressing problems under the framework of public-private partnership and good governance. It was envisaged that active role of citizens in decision making process at all level and facilitating role of civil society organisations and local government would be essential for sustainable development<sup>1</sup>. Governments around the globe have been actively pursuing these recommendations within their development framework.

Ukraine was an initiator and active participants of both the above-mentioned important World Summits. Between Rio to Johannesburg, it accrued significant experience on implementation of the state policy on sustainable development. Some key policy/programme interventions were 'Concept of Sustainable Development of Settlements' approved by the enactment of the Verkhovna Rada (parliament) of Ukraine (No. 1359-XIV of 24 December 1999); Comprehensive Program for Ensuring the Implementation of the Poverty Elimination Strategy approved by the enactment of the Cabinet of Ministers (CMU) of Ukraine (No. 1712 of 21 December 2001); the Program of HIV/AIDS Prevention in Ukraine approved by the CMU (Enactment No. 790 of 11 July 2001); the State Program of People's Employment for 2001-2004 implemented by the Law of Ukraine (No. 3076-III of 7 March 2002); the State Program for Providing Youth with Housing for 2002-2012 approved by the CMU (Enactment No. 1089 of 29 July 2002); the National Action Plan for 2001-2005 for Improvement of Women's Situation and Promotion of Gender Equality in Society approved by the CMU (Enactment No. 1712 of 21 December 2001); the Reproductive Health 2001-2005 National Program approved by the Decree of the President of Ukraine (26 March 2001); the Children of Ukraine National Program approved by the Decree of the President of Ukraine (No. 42 of 18 January 1996 and 24 January 2001). These policies did define priority directions of the state for securing balanced development in the country. However, they proved inadequate from the perspective of the Johannesburg vision on sustainable development. Therefore, a new Ukrainian plan for implementation of the summit's decisions appeared which is

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<sup>1</sup> UNDP/MGSDP (2004). World Summit on Sustainable Development: Political Declaration and Plan of Implementation. (Ukrainian version); clause # 163 – 170.

reflected in a concentrated form in the Comprehensive Program for Implementation of the Summit's Decisions approved by the Enactment of the Cabinet of Ministers of Ukraine (No. 634 of 26 April 2003). The Johannesburg decisions in the social and economic field also found their development in the President's Message 2004 and in the Strategy of Economic and Social Development of Ukraine for 2004-2015.

### **Conceptual provision for the implementation of sustainable development programs**

Although significant achievements have been made in recent years (2000-2005) towards strengthening social and economic security in the country, several milestones on social, economic and environmental agenda are yet to be tackled in line with the vision of the World Summit and European Integration. Eloquent evidence to this is the people's living standards which is still less than satisfactory due to unsustainable service delivery system, inadequate employment opportunities, faulty social protection system, and inadequate decentralisation. To improve the situation, a series of interventions and reforms are deemed essential in the sphere of administrative and economic decentralisation; financial markets, social services and people's participation in the process of governance and development<sup>2</sup>.

The existing situation may partly be explained with insufficient financing of the said programs due to shortage of funds in the state and local budgets. However reasons also lie in the disregard of such important issues as creation of conceptual provision for the implementation and performance of sustainable development decisions; elaboration of scientifically grounded mechanisms for the implementation of the (above-mentioned) program documents and, ensuring citizens' participation in implementation of the social, economic and environmental aspects of sustainable development at local level.

## **II. Objectives**

This paper examines the effectiveness of people's participation in the sphere of local sustainable development and brings forth arguments that would enlarge the scope of people's participation in the local development process through appropriate policy and legal changes.

## **III. Methodology**

This paper is based on findings of three studies<sup>3</sup> commissioned by UNDP/

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2 UNDP, Ukraine (2006). The State and the Citizen: Delivering on Promises. Report of The Blue Ribbon Commission for Ukraine

3 Valentyna Sereda, head of academic section, Municipal Management Academy, Kyiv 'Analytical Report on Local, National, and Regional Experience of Municipal Governance for Sustainable Development, and Recommendations on its Inclusion into the Policy of Ukraine Development Process'  
Tetiana Tymochko, Director, Ahrus Information Training Centre, Kyiv 'A Concept of the National Policy and Strategy of Municipal Governance for Sustainable Development of Ukraine'  
Victoria Rosihina, legal expert, Municipal management Academy, Kyiv 'Proposal for UNDP/MGSDP on policy/normative and legislative changes suitable for participation based sustainable development Initiatives, joint local development planning and financing' .

MGSDP to assess various aspects of area-based development approach utilized by the Programme and make policy recommendations. In course of their research, the respective researchers carried out literature review, interviewed local/national level stakeholders and visited beneficially communities to get first hand information from the ground.

## IV. Findings

### 4.1 Community Participation in Local Development

It is often the case that the population would like state or local councils or someone else to solve their problems and make their life better. On the other hand, the state or local governments carry obligation to address the local development problems and make the living condition of the population better. But numerous minuscule problems to be addressed under constraints like inadequate resource availability, weak technical capacity and trade-off between current problems and future development vision negate the willingness of the local authorities to meet the local needs fully. Even if they are able to meet the problems partially, issue of sustainability follows thereafter as the citizens often like to enjoy subsidized services. Unmet demands result in frustration leading to tension between citizens and local authorities.

Experiences worldwide show that empowering local communities<sup>4</sup> to shoulder a part of this task mitigates above problems to a larger extent. What is needed is to unleash the willingness and potential of the people to help themselves.

Art of unleashing people's potential lies in motivating them to get organized along certain purpose that is directly related with their wellbeing vis-a-vis their community. The purpose must be very much local specific. Broadly, it could be related with (a) reducing poverty (e.g. creating employment through skills, micro-finance, enterprises, economic infrastructures etc.); (b) mitigating exclusion<sup>5</sup> (e.g. of women, disabled, youths, ethnic minorities etc.); (c) strengthening governance; (d) managing natural resources (e) managing aftermath of conflicts due to civil wars, spillovers (refugees) from wars in neighbouring countries, inter-ethnic tensions, etc.; (f) managing disasters due to natural cause (such as floods, hurricanes, tsunamis, earthquakes, volcanic eruptions, droughts) or man-made (such as nuclear disasters, land erosion, certain epidemics, etc.); (g) tackling environmental issues and (h) addressing social issues such as HIV/AIDS.

Community participation does not happen automatically. In first place,

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4 Group of people living on the same territory (e.g. village/settlement in the rural area; multiple apartment or along street/lane in the urban area) and sharing same natural resources, communal services or development challenges

5 Groups/categories of people that feel or are marginalised and excluded from mainstream society with the potential to escalate into conflict.

the target population must be motivated, persuaded and reminded about their potential to help themselves. Once their willingness is unleashed then they will have to go through a series of practical exercises to learn the process by doing. In the process, they adopt elements of good governance like participation, transparency, equity, accountability etc., set up priorities, mobilise resources, implement priorities, monitor the work and then enjoy the benefit. To ensure that the benefit is delivered uninterrupted they maintain the system on their own. On the process they have ample opportunity to link their priorities with local authorities and implement these priorities in partnership with them. With this capacity and linkage with local authorities, the communities continue resolving local problems one after another and with sustainability. At the end, there is a win-win situation for all parties as each one receives greater output with smaller input.

However, the scope of this mechanism is limited to the capacity of the communities and thus should not be considered that communities can and should take care of all local development agenda. There are cases where the local authorities are overwhelmed by the performance of the communities in undertaking local development and use them as their extended arms only to see poorer performance. Organised communities perform well as long as they govern themselves autonomously and give their independent opinion through such mechanism as participatory planning, public hearing, and social auditing.

#### 4.1.1 Global/Regional Experience

Experiences of contemporary European democratic societies (e.g. Poland, Slovakia, Estonia, Romania, Bulgaria) and that of countries like Switzerland show that their successful local development is greatly determined by the active cooperation between local authorities and local communities for tackling local problems. Such cooperation is a consequence of a developed democratic system of local self-government where a community is entitled to influence upon decision-making process of the local authorities and enjoys that right actively. In those cases the power and resources are sufficiently delegated to the lowest level of authorities which are able to act on the productive mechanism of community participation around irrefutable, fundamental values. This is how the potential of society's or citizens' are realized as the local communities serve as foundation for local self-government and local sustainable development.

Experience of European countries also shows that a special role in regulation of joint initiative is vested in the bodies of self-organization of population (BSP) the logic of existence of which consists of power deconcentration on the local level and transfer of a number of powers from the local self-government level down to a lower (self-organizing) level through the powers delegation procedure. Reasonability of such "rapprochement" relies on the idea that a proprietor (owner) always treats an economic entity as its own



thereby ensuring efficient, careful, rationally weighted attitude to financial and material resources. It is often found that local problems are handled in a much better way in those areas where BSPs exist, and cooperation between local governments and communities plays a major role in that process.

In many countries, a financing mechanism, often called a Fund<sup>6</sup> (such as local development fund, community development fund, rural development fund, urban community development fund etc.), is established for local governments/departments from which annual/multi-year block grants are provided to the local communities strictly under the community participation and cost sharing framework and for the projects identified, implemented and sustained by the communities. Argument for such block grants is that they really respond to the local needs without waiting for sectoral budgets, which may not be available at the time of need. Secondly, these grants are small and managed locally in a simple possible way but still within the framework of legal financial norms.

#### 4.1.2 Experience in Ukraine

Domestic experience shows that when a community takes no part in discussion of a decision, it is much less disposed to recognize and comply with it but much more inclined to offer resistance — both active (via various protest actions) and passive, completely standing aside of social and political affairs. As to authorities, without citizens' participation they are inclined to choose not a decision that suits a community's interests best but the one that is the simplest at best or the one made in the interests of the public authority at worst. To avoid this situation, the foundation for sustainable development of a region, city or any settlement should be based on the values citizens' participation in decision making process and concrete cooperation between local governments and local communities.

Several examples exist in Ukraine whereby such tools of local democracy as public hearings and local initiatives are actively exploited, regular social monitoring is carried out, and territorial community statutes have already been adopted. Municipalities like Berdyansk, Nikopol, Ivano-Frankivsk etc. can be considered as examples. There are also several examples whereby local communities have resolved their problems of social, economic and environmental nature on their own initiative and delivered needed services on sustained basis while maintaining a close linkage with the local authorities. Many national NGOs and international agencies have contributed to this experience since 90s. Profound impact is often observed out of these efforts including positive impact on governance and performance of local self-governments.

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6 For examples, Rural Development Fund of the Department of Community, Rural and Gaeltacht Affairs, Government of Ireland, Dublin; <http://www.pobail.ie/en>; Albanian Development Fund - <http://www.google.com/search?q=local+development+fund>; Local Community Fund of the Department of Social Development, UK. [http://www.dsdni.gov.uk/local\\_community\\_fund](http://www.dsdni.gov.uk/local_community_fund); Local Development Fund, Community Development Block Grant, Georgia Department of Community Affairs <http://www.dca.state.ga.us/communities/CDBG/index.asp>;

#### 4.1.3 Local sustainable development within UNDP framework

Working experience of the United Nations Development Programme (UNDP) in various countries of the world proves that the choice of local governments to involve citizens/local communities in the management of local development is an efficient way for solving socio-economic and environmental problems on their territorial units. UNDP/Ukraine has tested this approach in three different contexts, namely social tension (in Crimean peninsula), ecological disaster (in Chernobyl zone) and municipal governance through its three projects, namely Municipal Governance and Sustainable Development Programme working in urban context (Box — I), Crimea Integration and Development Programme working in rural context (Box — II) and Chernobyl Recovery and Development Programme (Box — III) working in rural context. Together, these projects are operating in 15 oblasts, rayons, 267 village councils, 14 municipalities in the country. They have supported about 146 290 citizens to get organized into 809 community organizations<sup>7</sup> to carry out community projects under the framework of participation and sustainability. By September 2006, community organisations were found to have implemented 241 community projects worth UAH 21. 7 million. In all cases, the approach proved effective in unleashing the potential of the people to help themselves. The citizens could make their living condition better in all these different situations. However, it is equally important to note that the governance as well as relationship between the citizens' and the local authorities improved in each case.

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<sup>7</sup> Community based organisation (CBO) is a common term used in community-based development approach. In rural context, it is often termed as community organisation (CO) while it is termed as neighborhood organisation (NO) or house committee (HC) in urban context. CBO/CO/NO/HC in legal term could be described as 'bodies of self-organisation of population (BSP) or Associations of Co-φ of Multi-Apartment Building (ACMB) as appropriate.

### **Box - I: Urban Communities Improve Living Condition through Public-Private Partnership**

Mykola Tyshchenko of Zhytomyr municipality is now full of satisfaction to see that 14 years of the efforts put by him and his colleagues in the neighbourhood has finally borne fruit. The inhabitants spent winter in warmth since 2005. Now their frequent visit to the city council since last 14 years has come to an end and with it their sufferings of 14 years as well. 'Seeing old persons and children suffering frequently from cold-related sicknesses were terrible those days' recalls Mykola Tyshchenko as if those memories are still fresh.

The experience is similar for inhabitants of house #126 on Konovaltsya street in Ivano-Frankivsk municipality and 21 other multiple apartment buildings of Ivano-Frankivsk, Zhytomyr, Rivne, Novograd Volynskiy municipalities.

The situation with the teachers of school #1 in Rivne municipality was not much different before 2004. They used to get worried with arrival of winter every year. The worn out windows in the school building caused heavy heat loss during winter. Due to very low temperature in the class rooms, the children could not concentrate on studies. Often they fell ill and there was high irregularity in their attendance. 'But now those difficult days of 6 years are over, sighs the school director Lyudmyla Bal with relief, "Since 2004, the teaching work is going on well with recorded level of high attendance during winter and minimum level of sickness among the students. We teachers and the parents are so happy".

The school director, Shevchuk of Uhornytska school in Ivano-Frankivsk shares same experience as the one in Rivne followed by four other schools of Ivano-Frankivsk, Rivne, Novograd Volynskiy municipalities.

Apart from these dwellers and school teachers, the municipal authorities in these municipalities are also happy as they have found solution for some of their immediate problems with much smaller budget than otherwise would be required to get it done. Moreover, they receive less complains and more appreciation from the citizens these days than in the past thanks to the Municipal Governance and Sustainable Development Programme of UNDP. The citizens are not only supporting them in finding practical solution but also they are willing to take responsibility of delivering development goods.

Municipal Governance and Sustainable Development Programme (MGSDP) of UNDP

UNDP/MGSDP is working in urban Ukraine since 2004 with objective

to strengthen participatory governance and improve living quality of the people in a sustainable way. It uses area-based development approach to achieve this objective. Under this approach, it builds institutional capacity of its partner municipalities to unleash the potential of the local communities to help themselves - to resolve their problems in a sustainable way.

**Box – 1.1: Biggest Challenge for Municipal Authorities**

Most of the buildings and communal service systems in the cities of Ukraine were built long back. As it would be natural, wear and tear has taken a toll on them. As a result, living condition of the urban population has deteriorated heavily because these buildings are in dire need of repair as the communal systems in these buildings have become technically inefficient- may it be water supply system, heating system, sewerage system, solid waste management or building structures. Small repair needs are so numerous that local governments are not able to satisfy them due to inadequate budgetary provisions and technical personnel. As a result they keep receiving complaints from the citizens and often face their frustrations and anger. Citizens do not always understand these limitations of the elected officials as they gave their votes on the promises of 'solving their immediate problems'. Undoubtedly, the municipal authorities face dual challenges: solving numerous small immediate problems which are so important for the voters and solving a few larger development agenda for the future which is so important for the city and the country. Trading off between these two choices become a herculean task as they need to take their cities ahead without losing the trust of their voters.

**Community mobilisation**

Citizens living in multiple apartment buildings or houses along street; academic institutions, small businesses and NGOs in the municipalities are considered as communities on the territory of the municipality. Through social mobilization technique, they are mobilized to get organized into neighbourhood organization (NO) or Network. Capacity of NOs/Network is built around the norms of good governance. NOs are registered, under appropriate Ukrainian legislation, as housing committee through the decision of the city council or as association

of co-owners. The Networks of school, small businesses and NGOs take shape of a public organization. Decision-making process of NOs/ Networks is of participative nature where members at large participate make.

**Community participation in decision-making**

The members of NOs/Networks discuss among themselves to identify their common needs and priorities them. The prioritized plans are mainstreamed with the municipal plan through various mechanisms such as public hearing etc. The process of participatory planning opens up an opportunity for dialogue to take place between the local authorities and the communities – thus making the development decisions participatory and people-centered.

**Public private partnership in implementation**

The members of NOs/Networks pool their collective strength and resources to realize their priority. In case their own strength is inadequate, they approach to other sources for seeking resources/

technical support. Municipality and UNDP/MGSDP are among such sources. They provide joint funding on competitive basis. Such competition requires NOs/Networks to commit their resources, implement the project and sustain it upon completion on their own. As of November 2006, 59 NOs/Networks were supported for solving their problems such as energy saving, drainage system, water supply and sanitation, public health etc. These projects cost about 5.7 million UAH, which was shared among various partners as follows:

- Beneficiary communities (NOs/Networks) - 10.4%
- Municipality - 44.2%
- UNDP/MGSDP - 37.3%
- Others (including private sector) - 8.15%

The projects were implemented by the communities on participatory basis and in an environment of transparency and accountability. Properties created thus went to the inventory of the concerned department while usufruct right remained with the NOs/Networks. In a few cases, NOs/Networks owned and used such properties as they had legal right for it. More than 50,290 people benefited from these projects directly with additional indirect beneficiaries estimated to be more than 40,000 persons.

### **Public private partnership in envisioning**

To create adequate environment for public-private involvement in decision-making process on sustainable development of the city, the NOs/Networks follow path of vertical growth and network with municipality and rayon/oblast administration in the process. All these stakeholders of local development together form a Municipal Sustainable Development Council, which meet frequently to review ongoing efforts and create vision for future direction of local development

### **Lessons, Opportunities and Challenges**

Mindset of the beneficiary communities has changed in favour of self-help and partnership with the state for solving local development problems. Community feeling has taken strength in urban (Box – 2.2). Local government finds it easier and cost effective to deliver development goods, which is sustained by the beneficiary communities through appropriate tariff and local skills. There is a win-win situation indeed.

However, there are policy/legislation barriers that constrain full utility of peoples' potential to help themselves. Such barriers include issue of

**Box – 1.2: We Became a Community**

“When we first talked with the neighbours about the possibility to get support of the Programme for repairing the pipes in the basement, and installing the heating meter in the building, everybody laughed at us. People did not believe in this idea. We gathered several times to talk about the Programme and the initiative of the city management; identified our priorities and ways of participation in the project.

I am leaving behind the details on how we protected our ideas on public hearings with ZHEO#3, how we tried to prove to the representatives of UNDP/MGSDP who came to get to know our community that we are worth to be provided with support, and that we already did a lot around our building on our own. ...As soon as we successfully passed the competition and were selected for the financial support, some inhabitants appeared to be even more faultfinding than before. There were continuous arguments taking place near the building; some people would offer one thing, others would offer something else, there were those who wanted to refuse the cooperation with MGSDP because they didn't trust the contractor, and instead offered to work through the administration. The community was split, but soon came into understanding as we realized that we had to solve this problem by ourselves. Now everything is OK. We got the grant from UNDP and the municipality and fulfilled our promises. Now, we have made a major conclusion – we became a community. Now we can solve our other problems jointly as well.”

Volodymyr Hudyma, member of NO “Vytyvtskoho, 28” in Ivano-Frankivsk

registration, taxation, funding mechanism to communities, ownership of communal property and users' right.

Besides, there is a basic discrepancy in the concept of community itself. The proponent of community-based approach consider people living in the same territorial community and sharing same living environment form a community which is autonomous and apolitical while the legislation considers community more from the perspective of governance over a defined territory.

**SOURCE:** UNDP/MGSDP (2006). Decentralization and Efficient Local Governance.

UNDP/MGSDP, Third Quarterly Progress Report, 2006

### **Box – II : Local Authorities Cherish Partnership with Rural Communities in Crimea**

Officials of village councils and rayon administration of Autonomous Republic of Crimea are less worried about delivery of development goods in their territories as they have strong partnership with local communities for this purpose thanks to the Crimea Integration and Development Programme (CIDP) of UNDP in Ukraine.

#### **Experiment of Sevastyanovka and Ten-istoye settlements**

As in many rural villages in Crimea, 800 inhabitants of Sevastyanovka and Ten-istoye settlements identified water supply for drinking and home gardening (irrigation) as overwhelming priority. It was reasonable as they did not have drinking water supply at one hand and they recognized kitchen gardening as the main source of income for more than 80% of the active population was unemployed. But the question was who is going to fulfill this need of these communities. They could wait for an outside help or they could try out by themselves. The

inhabitants chose the second option as they saw that the first option lacked certainty. For the second option, they would require a collective action as no individual in the community could accomplish this task on his/her own.

Under guidance of the CIDP officials, the villagers organised themselves in self-governing Community Organisation (CO) in 2002 and prepared community development plan. Water supply ranked top on these priority list. The CO then presented their development plan to the local village council in order to incorporate them into local and regional development plan.

Feasibility study and technical design for the proposal was carried out jointly by CIDP specialists and the CO-members. This design was simpler, based on local knowledge and the cost was significantly lower compared to the one prepared by the Republican Committee for Nationalities and Ethnic Minorities of Crimea under old Soviet standards and norms. The proposal reflected cost sharing arrangement from various sources including CO-members, local authorities, donor, private sector etc. It was approved, in an environment of transparency and competition, by the Regional Forum for Integration and Development (RFD), which is chaired by the Regional State Administration and involves all village councils, community organisations, local NGOs and other stakeholders in the region including donors like UNDP/CIDP.

### **Project implementation, monitoring and handing over**

Partnership was established between the CO and supporting parties. A specialized contractor, selected through open, competitive bidding, constructed the system under a formal contractual arrangement. The CO-members actively participated in the construction of the water distribution systems, the individual house connections and the installation of water meters. The project was completed in 2003 with 22% cost sharing from the community, 30% from the local authorities (village council and rayon administration) and 48% from CIDP/UNDP. Most importantly, local authorities provided vital administrative support to ensure that all legal requirements were met, and that permits were issued for construction works and for user-based operation and maintenance of the systems. During implementation, progress of the projects was regularly monitored by CIDP-staffs and the CO-members. Upon full technical tests, the project was handed over to Communal

Enterprises (KomunKhoz) – the body responsible for the maintenance and management of rural drinking water supply systems in the village council. Moreover, the village council took the water supply system in its inventory so as to ensure the possibility to allocate budget for future major maintenance and expansion of the system.

### **Operation and maintenance (O & M)**

Considering the capacity of the CO-members, the village council, as the owner of the water supply infrastructure, authorized the CO to autonomously manage, operate and maintain the system. Agreement between the village council and the CO regulated their respective responsibilities - particularly in terms of land taxation, tariff setting, monitoring and reporting. Subsequently, the CO selected a member who registered as a so-called Community-Based Enterprise (CBE). The CO sub-contracted all O&M tasks and responsibilities (including financial administration of the water supply systems) to the CBE. To ensure payment by consumers, the CBE established service delivery contracts for the provision of water services with individual households, commercial enterprises and other institutions. In order to reliably monitor and charge for water consumption, all house connections were equipped with water meter. An agreement between KommunKhoz and the CBE was signed for determined quantity and quality of water to be supplied to the settlement, the unit cost of water, the services to be provided in case of major breakages and the charges for technical services and equipment.

Water fees was set at a level that could covered the costs on production (e.g. power consumption for pumping); royalties or procurement of water; recurrent operational and maintenance costs (including remuneration for services); material cost for routine, periodic preventive and major maintenance; depreciation of the system; taxes and rent of land. In addition, social justice was established for basic needs and commercial use of water.

### **Performance and impact**

The CO is overall guard to ensure efficient service delivery. Transparency and social control has lowered overhead cost and minimized misuse of water. As a result, people enjoy 24 hour reliable access to water, water consumption has been reduced to an extent that people pay 5 times less for water, operating cost is much lower and water fee is 100% paid



by the consumers (CO-members).

In 2005, some major changes were also seen in the community. Agricultural production - and thus income of the dwellers, has increased substantially. Local enterprises such as concrete block production, carpentry, etc have emerged. Houses that were abandoned or sold years ago are being bought again. While solving their common problem, the community members also developed sense of fellowship, mutual respect and cooperation. Village councils and rayon administration receive less number of complains for service delivery as the communities have partnered with them for sharing development responsibility

### **Replication of the experience**

The success of Sevastyanovka and Ten-istoye village has been appreciated by other communities, local authorities, and private sectors in the area. There is heavy demand for this kind of approach by other communities. UNDP/CIDP has responded to these demands subject to its limited capacity. 16 such projects have been planned in the settlements of 14 rural districts of Crimea to benefit 76,000 citizens.

Experience of water supply has been used by many communities for delivery of services in other sectors too e.g. community managed health service system are being practiced in 32 villages; parents, teachers and pupils of 40 schools have used collective action to improve school premises including drinking water and sanitation; small businesses in 8 rural towns have joined together to work for improving business environment

UNDP/CIDP is operating in 12 rayons of Crimea Republic. 492 COs have been formed in 128 village councils. These COs have prepared their own development plans, established community funds and implemented several community initiatives to address their common problems.

### **Main Lessons Learned**

The most important lesson learned from this experiment is that meaningful community involvement can lead to positive changes in attitude of the people – to help themselves and there is strong potential for nurturing public-private partnership for effective local development and delivery of development goods.

However, the existing policies and legislations are not conducive enough to effectively support this approach as can be seen from the

complicated mechanism followed for community participation in this experiment. This aspect ought to be corrected if this potential of the community is to be exploited at a larger scale.

**SOURCE:** UNDP/MGSDP (2006). Decentralization and Efficient Local Governance.

UNDP/CIDP (2005). Annual Progress Report of the Crimea Integration and Development Programme

SDC (2004). Peace and Stability Through Sustainable Social and Economic Development: Lessons from Community Based Approaches in Water Supply Projects for Multi-Ethnic Neighborhoods in Crimea.

### **Box - III: Communities Help Themselves to Recover from the Chernobyl Disaster**

20 years after Chernobyl catastrophe the people living in the contaminated area are still suffering from consequences of the disaster in Ukraine. Health insecurity, economic insecurity, dependency syndrome of helplessness and passivity are a few critical factors challenging sustainable human development. But there are communities like Zamglai which have tried to pave the way to optimism thanks to the Chernobyl Recovery and Development Programme (CRDP) of UNDP in Ukraine.

#### **Zamglai youth leading to recovery and development**

Zamglai village, located 70 km from the Chernobyl Nuclear Power Plant is inhabited by 1985 people including 400 youths. With the passage of time radiation effect declined in the area but the population did not resume the active and meaningful life that they enjoyed before disaster. State funded subsidies helped them maintain living but unemployment, dependency and passivity led to alcoholism and drug addiction of young people. In this situation, CRDP-officials mobilised this community, especially the youths, and motivated for forward looking.

#### **Institution development and planning**

In 2003, the youths of Zamglai village, established a community organization called "TEMP" (Talented Erudite Young Generation). To start with, TEMP undertook, on its own, several self-help initiatives such as renovating cemetery, cleaning streets, repairing fences, repairing water supply systems/wells etc. These activities empowered youths

to undertake planned development. It was for the first time, when people gathered all together to discuss community needs. Youth Center was identified as the highest priority since its realization would enable people to have more frequent meetings and to provide youth with appropriate conditions for cultural, educational and physical development. The plan was also discussed with local authorities and sponsors working in the region.

### **Realisation of dream**

TEMP mobilized the resources from different stakeholders (Village council, rayon administration and CRDP) and successfully built the Youth Center, procured equipments and logistics. All the renovation and local construction works were voluntarily contributed by the members. The property created remained with the inventory of the village council, while the usufruct right and responsibility to operate and maintain them remained with the Youth Centre. At present, the Youth Center provides computer services, language classes and physical fitness. They also conduct awareness programme for youth and villagers on such area as HIV/AIDs, alcoholism, drugs, Chernobyl issues, healthy life styles and others. As a result, trend of youths leaving the village has declined and youths from the rayon and from other Chernobyl affected regions of the country visit this Center to learn from its experiences

### **Continuation of momentum**

The youths of Zamglai village did not stop at their first achievement. They have already implemented “School workshop and sport ground renovation” project and are also planning to build capacity in business development for economic recovery of the village through use of information technology, micro credit etc.

Youth CO leader Ms. Nason is proud to say that “Youth Center has become centre for human resource and social enterprises development not for Zamglai village only but for the entire rayon”.

### **Replication of experience**

Success of Youth Centre has been replicated in 24 villages in the Chernobyl affected area. Positive impact has been found everywhere. By mid 2006, UNDP/CRDP has successfully mobilised 20,000 men, women, youths of 139 villages into 258 community organizations (COs). These COs resolve important socio-economic problems in

the villages including - reconstruction of water pipe-lines and gasification; reconstruction of schools, baths, village health centres and ambulatories; creation of youth/public/service centres. So far, the COs have implemented more than 160 such projects costing over 15 million UAH. 16 percent of this cost was shared by the communities, village councils and rayon administration supported with 40% of the cost, UNDP/CRDP supported 31% of it and the remaining 13% came from other sponsors including private sectors. This cost sharing was in form of public-private partnership for local development.

#### Ownership, Operation and Maintenance

Often it takes longer time for the COs to register themselves in form of public organisation (NGOs). Most of them are enrolled with their respective village councils. As a result, the properties created under public-private partnership arrangement remain go to the inventory of the village councils while usufruct right and responsibility to maintain them remains with the COs. It is a practical solution in the existing legal framework in the country.

#### **Institutional growth**

In many rayons, the COs have federated upward and joined local authorities, rayon administration, youth centres to form 'rayon forum'. This Forum helps in mainstreaming of local level (community's plan) to the village council and rayon level plans – thus involving people in decision-making process. It also facilitates the process of local policy changes. It is envisioned that this Forum will be registered as public organisation to function with adequate autonomy.

**SOURCE:** UNDP/MGSDP (2006). Decentralization and Efficient Local Governance.

UNDP/CRDP (2005). Annual Progress Report of Chernobyl Recovery and Development Programme

## 4.2 Constraints to Community-based Local Development in Ukraine

Foregoing evidences provide enough ground to argue that the importance of community-based local development cannot and should not be undermined. Because it offers ‘win-win’ situation, Ukraine should adopt this approach strongly and nationally. However, this approach is yet to receive wide recognition within the national framework of development due to several constraints including income source of the local councils and enabling policy environment.

### 4.2.1 Income Source: Limitation of Local Self-government

It is self-evident from above case studies (Box – I, Box – II, Box – III) that local communities together with local councils could effectively shoulder the vision of sustainable local development. However, majority of the local councils lack income source or autonomy to utilize the available income to support the initiatives of the local communities. For example, Budget Code of Ukraine provides conceptual provision of local self-government – assigning revenue sources to local governments’ own powers. However, existing practice shows that only 2% of Ukrainian cities consider themselves sufficiently budget-provided; 39% appraise their budget provision as insufficient but satisfactory upon considering objective circumstances; 59% cities assess their budget provision as insufficient and unsatisfactory. Situation of village councils is worst in that they do not have power upon resources for local development. Proceeding from such reality, local governments in various regions of Ukraine look for opportunities to use more efficient ways to realize their own powers and to provide better-quality social services with lower costs by using elements of cross-sectoral cooperation such as partnering with local communities, private sector and international agencies. In other words, successful socio-economic development in every individual community absolutely needs joint definition of goals to be achieved in cooperation by local governments, business, local public, and community members.

Local self-government is recognized and guaranteed in Ukraine as well (Article 7 Constitution of Ukraine). Ukraine’s domestic legislation defines a territorial community<sup>8</sup> as a primary subject of local self-government (Article 140 Constitution of Ukraine, Article 6 Law of Ukraine on Local Self-Government in Ukraine) and guarantees it “the right and real ability to settle questions of local importance independently or on responsibility of local governments and officials thereof”. Still, reality of local self-government is determined first of all not by declarative provisions but by available material and financial resources that a territorial community commands and that, in aggregate, constitute the material and financial foundation of local self-

<sup>8</sup> Denotes local (village or city) council in practical term and is significantly different from the term ‘local community’ used in this paper

government. However regrettable it may be, the state policy related to formation of the resource base for local self-government currently fails to meet contemporary requirements and European standards. At the moment, territorial communities are substantially restricted in their capability of forming and disposing of local budgets and local property independently, at their own discretion, and in the interests of their community members<sup>9</sup>. It calls for action for sufficient financial decentralization and delegation of authority to (a) strengthen legal base of local government, (b) provide the local authority material and financial resources at the level of cost of services that are guaranteed to the citizens by the Constitution and current legislation of Ukraine, and (c) enable joint financing on projects of the local communities developed through bottom-up participatory planning process.<sup>10</sup>

#### 4.2.2 Policy Environment Analysis

In practice, citizens residing on a given territory (e.g. a village, a multiple apartment building, houses along a street etc.) form a community as they share the same resources, facilities/services and challenges and have willingness to put collective efforts to resolve their problems. People from one territory will have no interest to work together with people from another territory to solve someone else's problem as they do not share common agenda. This community (termed as local community<sup>11</sup> through out this paper) is autonomous in nature and carries out a variety of activities to fulfill their needs - on its own or through support from external agencies/individuals including the local councils or other state bodies. Body of self-organization of population (BSP) represents this local community of citizens in formal sense often called as a 'house committee' in municipalities or territorial community in villages. Along with BSPs, other forms of population's self-organization exist that can undertake joint local development initiatives. It is called 'associations of co-owners of multi-apartment building (ACMB)'. ACMB is established to jointly maintain and manage a real estate complex, possess, use and, within statutory bounds, dispose of the joint common property. ACMB becomes legal entities from the day of its state registration.

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9 The necessity to differentiate the definitions of "community" (gromada) as administrative territorial unit (municipality/ rayon) and "community" as inhabitants having "common interests determined by their permanent residence within the limits of municipality/rayon" was stressed in the Report of G. Marcou, expert of Council of Europe during the seminar "Legislative and Institutional Assistance to Local and Regional Development in Ukraine" June 28-29, 2006 in Kyiv, Ukraine.

10 Recommendations of (a) All-Ukrainian conference "Local government in the context of constitutional and democratic reforms in Ukraine" organized by UNDP/MGSDP and UALRA on the 14<sup>th</sup> of April, 2005 in Kiev; (b) All-Ukrainian Workshop "Decentralization of power and finance – a prerequisite of development of local self-government in Ukraine" organized by UNDP/MGSDP, UNDP/IAGP and UALRA on 13-16 September 2005 in Zatoka, Odesa oblast, Ukraine.

11 Lack of clarity is often experienced while using 'territorial community'. It is used to denote a local council as well as non-political (or natural community understood in social sciences) community of citizens residing over a territory. A collection of one more such natural communities constitute a council, which is political/administrative unit.

It has accounts in banks, seals with its name and other particulars. A “house committee” (BSP) and an (ACMB) are not identical because they have a different legal status (although these terms are identical in advanced countries of the West). BSP is a representative body in Ukraine while ACMB is a nonprofit economic organization.

The community organizations developed under UNDP-supported Programmes follow participative form of governance in that all the major decisions are taken by full participation of the organisation-members while governance in case of BSP or ACMB is more representative as most of the decisions are taken through executive committee. Evidence shows that in the latter case larger portion of the constituent population often remains unaware of the activities of BSP/ACMB and become passive while in the former case the situation is reverse.

BSP is a special type of public organization consisting of a few people elected by the local residents in order to represent the interest of the residents. The residents themselves are neither registered members of the BSP and hence they are not accountable to it. Also, the residents or the founders need to contribute their (financial) assets into the BSP statutory fund. This situation severely weakens the effectiveness of BSP as promoter of participatory governance and concept of sustainable development. Therefore, it is necessary to make it membership-based with their active participation in the governance and financial requirements.

ACMB, functional under the framework of public organization (or NGO) mode, is not as constrained as a BSP or a house committee. Therefore, this paper focuses on the policies/legislation environment related with BSP only.

### **Problems of legal establishment of BSP**

Analysis of provisions in the current Law of Ukraine on the BSP as well as other regulatory provisions and Acts passed in pursuance of that law gives grounds to believe that legislative regulation of BSP organization and its functioning is not perfect. It substantially restricts BSP-members in the exercising their rights; prevents them from using local resources efficiently for territorial economic and social development so as to improve the level of services provided to people locally. Among major problems arising in application of the Law of Ukraine on the BSP (No. 2625-III of 11 July 2001), are the problems such as registration of a BSP and giving it the legal entity status; delegation of powers and financial provision of BSPs; opening and servicing bank accounts of BSPs; taxation and reporting of these bodies. In

spite of these legislative problems, BSPs still keep emerging and try to exert real influence over the situation in a community.

First of all, the BSP establishment procedure, provided for in the law, seems too complicated. A decision to initiate establishment of a BSP is made by the general meeting at the citizens' domicile; then the council gives its consent; then another general meeting is held that approves the regulations on the BSP. The regulations are subject to legalization through registering with the local executive committee; then another general meeting must be held to elect the BSP personal membership. Thus, the procedure is extremely complicated because, according to the law, three (!) meetings must be held. However, a procedure of holding a citizens' meeting at their domicile is not given clear definition either in the law in question or in any other current legislative Act while the Regulations on a Citizens' General Meeting at Domicile approved by the Enactment of the Verkhovna Rada of Ukraine of 17 December 1993 is greatly in conflict with the laws of Ukraine on Local Self-Government and BSP.

Another important issue in BSP establishment and operation consists of the problem of registering a BSP and giving it the legal entity status. The legal entity status allows such bodies to exercise the powers delegated by a respective council, execute agreements, be a plaintiff and a defendant in courts. Besides, the legal entity status is mandatory when local councils delegate certain powers to respective BSPs because appropriate financial and material resources (a balance sheet and a bank account) may be transferred only given such a status.

In municipalities/village councils where organized citizens choose to establish BSPs as legal entities, they immediately confront with a problem of tax status of those bodies. As existing municipal practice shows, ACMBs already operate in cities along with BSPs, and they are exempted from profit tax even if they are registered as legal entities. Such a situation is not quite understandable and fails to match the simplest logic. The problem of registering a BSP as a legal entity is not as simple as it might seem on the face of it. According to Article 13 Law of Ukraine on the BSP, the registration is carried out by the executive committee of a respective council. The list of documents required for registration is rather short, and the procedure of registration looks simple. The most difficult point, however, is subsequent registration of a BSP in other public authorities because any legal entity in Ukraine has to pass all the registration stages from a statistical board to various social insurance funds. As the most important consequence of such registration, the legal entity receives a tax-payer certificate from a tax



inspection, which is necessary to open account in a bank.

And this is where the problem of a not quite clear legal status of a BSP as a tax-payer begins. Taxation of any legal entity in Ukraine follows the Law of Ukraine on Taxation of Enterprise Profits (No. 283/97-VR of 22 May 1997). The law provides for two taxation regimes: general where the rate of profit tax is 25%, and special for nonprofit organizations which, if they meet the attributes listed in paragraph 7.11 Article 7 of this Law, are not taxed with the profit tax. Unfortunately, according to item “a” of sub-paragraph 7.11.1, nonprofit organizations only include “local governments and institutions or organizations established thereby, which are maintained at the expense of respective budgets”. As we can see, it does not mean BSPs which, although being part of the local self-government system and able to be financed from local budgets, are established not by local governments but by natural persons (i.e. residents of a respective territory). For this reason, one can hardly expect that tax service will place BSPs among nonprofit organizations as per the above-mentioned paragraph. Item “g” of the same sub-paragraph theoretically gives some chances to register a BSP as a nonprofit organization, but this will again depend on tax service. In particular, this item places among nonprofit organizations other legal entities “activity of which does not contemplate gaining a profit according to provisions of relevant laws”. However, the Law on BSPs does not mention that a BSP is a nonprofit organization.

### **Problems of financial provision and taxation of BSP**

The problem of financial provision for BSPs is a separate and rather complicated issue. Opening a BSP’s bank account is an obvious solution. However, this entails the need for accounting and financial control over the BSP’s activities, which in turn generates a number of practical questions because a BSP is not a public organization so accounting and tax reporting is not usual both to BSPs themselves and to tax administration. As an alternative, rather self-dependent existence of a BSP without opening its own bank account, is possible when a local government opens sub-accounts for the BSP and services them upon written application of the BSP head to draw funds from such an account.

Problem of taxation of already established BSPs is a stumbling block in their activities. The current Ukrainian legislation contains no regulation that would establish a preferential regime of taxation for a BSP like for a nonprofit organization. In practical terms, if a BSP is registered as a legal entity it must be registered in tax administration as a usual tax-payer and must pay a profit tax even on local budget funds or on the voluntary contributions provided to

the BSP by local governments, natural persons and legal entities. Of course, this situation is not normal. First of all, it does not promote consolidation of BSPs as really working bodies of the local self-government system and, secondly, it does not allow the joint financing mechanism to function efficiently because BSPs have to pay a profit tax often on international technical aid funds. All this considered, to provide normal conditions both for BSP activities and for efficient usage by grants by BSPs, to set the joint financing mechanism going, and proceeding from the character of these bodies just as nonprofit organizations, some appropriate amendments are suggested for the Law of Ukraine on the Bodies of Self-Organization of Population and the Law of Ukraine on Taxation of Enterprise Profits (see below).

Thus, there is no sufficient clarity today to assert that a BSP as a legal entity may be a nonprofit organization. Although all requirements concerning a nonprofit status may be expressly provided in a BSP regulation, the final word will belong to tax administration. If a BSP is a usual tax-payer then any fund it receives from the local budget and from other sources (including international technical assistance) will be subject to taxation on common terms.

### **4.3 Proposals to Improve Legislative Provision**

#### **4.3.1 In the context of implementation of joint sustainable development initiatives**

Amendments to the current legislation suggested below (in particular, the Law of Ukraine of the Bodies of Self-Organization of Population, the Law of Ukraine on Local Self-Government in Ukraine, the Law of Ukraine of Taxation of Enterprise Profits), will allow the above-mentioned problems in the field of BSP establishment and operation to be solved. At the same time, adopting the amendments on the legislative level and implementing them in practice will not entail any expenditure increase or revenue decline in state and local budgets; otherwise, it will have considerable social effect. In particular, granting BSPs the nonprofit organization status will give them opportunities to develop and build their organizational capacity, which in turn will allow local councils to transfer to BSPs some part of powers for territory improvement supervision, public utilities quality control, handling the problems of efficient use of near-house areas in the interests of their residents, etc. Thus, the amendments proposed can become an important incentive for development of local initiative and for consolidation of BSPs as a major tool of municipal sustainable development.

### **Proposals to improve organizational aspects of BSP activities**

1) Supplement the list of BSP organization and activity principles (Article 5 Law of Ukraine on the Bodies of Self-Organization of Population) with such an important principle as “being nonprofit”. On the one hand, it will allow BSPs to work in the preferential taxation regime and, on the other hand, it will not allow BSPs to be established and used to gain a profit because such a function is not appropriate for a body belonging to the local self-government system;

2) Specify in the legislation more precisely that delegated powers of BSPs are not the power of the respective councils but are that of executive bodies formed by those councils. If needed, the councils may additionally vest such powers in BSPs;

3) Specify the legislative provisions that define a house committee’s territory of activity (Article 7 Law of Ukraine on the Bodies of Self-Organization of Population); to state, in particular, that a house committee’s territory of activity includes, apart from the house as such, any assigned near-house territory in the public and community housing stock and in the stock of housing construction cooperatives;

4) Simplify the statutory BSP establishment procedure; in particular, provide that they may be registered according to the “one-stop shop” principle;

5) Expand the financial and economic sphere of activities of BSPs by providing them the property rights on the property created at the expense of BSF’s or transferred to them on legal basis;

6) Provide the BSPs with the right to exercise economic activities to meet their own needs directly or by means of making agreements with natural and legal entities ;

7) Provide local governments with the statutory right to regulate issues, important for BSP activities, in statutes of territorial communities (in particular, concerning joint financing with other national/international agencies).

### **Proposals to improve material and financial resources of BSPs**

1) Specify legislative regulations concerning the economic basis for BSP activities (Article 16 Law of Ukraine on the Bodies of Self-Organization of Population); in particular, expressly indicate that the economic basis of BSPs includes movable and immovable property, plots of land, provided by

respective councils for their use and which are necessary to exercise their authorities as well other property acquired on the legal basis;

### **Proposals to improve taxation and reporting system of BSPs**

1) Supplement the list of institutions and organizations, to which subparagraph 7.11.1 of the Law of Ukraine on Taxation of Enterprise Profits may be applied, with the bodies of self-organization of population. This amendment is logical because a BSP, according to the law, is a body of the local self-government system, which may not be a profit-gaining organization by its nature. The new wording will let BSPs obtain the nonprofit status in tax inspection bodies and not pay the profit tax, which is extremely important for BSP consolidation and for rational use of the budget funds and international financial aid means within the framework of the Program;

2) Simplify the bank account opening procedure for BSPs; in particular, provide a possibility of opening a bank account given the state registration certificate (that is, exclude the tax inspectorate's certificate from the list of documents required to open an account);

3) Introduce a simplified reporting form for BSPs that will be necessarily presented only to local councils and their executive committees and, in cases of joint financing of local sustainable development initiatives, also to the persons that provided funds for respective programs.

### **Proposals to improve legal provision for BSPs on the local level**

Along with the proposals listed above, it should be noted that a number of currently existing legal gaps may be filled at the by-law level of BSP legal regulation. The by-law level should first of all consist of the General Regulations on city BSPs and the Model Regulations on a BSP (house, street, block or other committee), which may be both independent Acts of municipal standard-setting and components of a territorial community's statute. Municipal regulation of the BSP organization and activity procedures is first and foremost designed to improve the procedure of legalization of the initiative for creation of such bodies, adapted to realities of large cities. In particular, it should be noted that not only a meeting but also a conference of the city territorial community members permanently residing in a certain territory is a form of implementation of a BSP creation initiative. The regulations must establish representation quotas and a procedure of registration of the constituent conference convocation initiative (for example, on a written application of the territorial community members permanently residing in the neighborhood).

It should also be noted by whose order, within what term, and at whose expense the constituent conference is convoked; a procedure of notification on the conference through publications in mass media, personal letters, leaflets, advertisements on entrance doors or bulletin boards should also be provided for. On the local level it is also reasonable to improve the BSP management system including by designating a conference, empowered to make decisions in BSP competence, as the highest form of decision-making in the self-organized territory. In our opinion, the regulations should also settle a number of procedural issues of conference convocation by balancing interests of BSPs themselves and local governments, namely they should define conference convocation subjects (e.g. a committee, a city mayor on his/her own initiative or on the request of no less than 10% of micro-district, or a city council), establish convocation periodicity, and provide for a procedure of logistical support.

In our opinion, the general regulations on BSP should clearly state a model list of powers that may be delegated to BSPs when they are established as well as provisions on organizational and legal regimes of relations between BSPs and local governments (controllability, accountability, and responsibility). Besides, basics of relations between BSPs and municipally owned enterprises and organizations situated in the BSP territory need to be outlined. Hence, the contemporary stage of local self-government consolidation in Ukraine calls for wider use of local rule-making to regulate problems of functioning of territorial communities, particularly in the field of practical assimilation of local democracy tools (e.g. BSPs, community general meetings, public hearings, local initiatives, etc.), a bottom-up planning principle, joint financing of sustainable development projects and local initiatives designed by bottom-up planning. Besides, local rule-making may serve to consolidate the local sustainable development policy that will envisage, in particular, bringing local sustainable development strategies into conformity with European local development and self-government standards. Here we mean both development and adoption of individual local normative Acts and their systematization and codification on the local level with the help of a territorial community statute.

At the same time, it should be noted that all this requires a considerable volume of organizational and qualified juridical efforts, and only a small part of Ukrainian communities are able to ensure professional development of a more or less complete package of necessary normative documents. Such local legal Acts should: first of all, envisage a modern legal policy in the local government field and legislative Acts (especially the Law on Local Self-Government in Ukraine and the Law on the Bodies of Self-Organization of

Population) as well as respond proactively to current law-drafting activities of the Verkhovna Rada of Ukraine (in particular, the draft Law on a Territorial Community and the draft Municipal Code of Ukraine); secondly, avoid artificial reproduction and inadequate interpretation of provisions of laws in force on the level of self-organization of residents of houses, streets, blocks, city districts and provide framework conditions to adapt the provisions onto the micro-territorial level to prevent the legal regulation level from reducing or depreciating; thirdly, limit the number of reference and blanket rules as much as possible; fourthly, ensure informational accessibility of rule wordings for residents; fifthly, provide legal opportunities for direct action of statutory and corporate rules within the existing regulatory and legal framework.

### **Managing changes**

In order to assist territorial communities and local governments, it is recommended that appropriate manual with methodological recommendations and model drafts/formats for the development of local regulatory and legal acts on sustainable municipal development, in particular, the regulations on BSP establishment, registration and termination, the regulations on BSP activities, the regulations on local initiatives, the regulations on public hearings, the regulations on community general meetings, the regulations on notification of territorial community members, the regulations on ensuring the implementation of the bottom-up planning principle, etc., must be made available to the stakeholders. Also, the local council members and local self-government officials must be trained on development and implementation of local sustainable development strategies in participation of the BSPs/ACMBs.

#### **4.3.2 Proposals to improve regulatory and legislative provision for material and financial autonomy of local self-government<sup>12</sup>**

In context of arguments made in section 4.2.1, following measures are recommended:

1. Since efficiency of local self-government directly depends on its material foundation made up of communal property, legislative solution of problems concerning formation of communal property, definition of its legal regime, composition of property objects, amount of local governments' powers in the exercise of the right of ownership of communal property and land resources, creation of a principally new economic and organizational mechanism of interaction between public authorities and all subjects of communal property law still remain to be major points in the context of the

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<sup>12</sup> Refer to footnote # 8 for further reference on this subject.

sustainable development policy. Considering this, it is suggested that the Law of Ukraine on Communal Property should be developed and passed as soon as possible. The law must use constitutional provisions, provisions of the Civil Code and Economic Code of Ukraine as well as economic practice of local self-government to regulate the matters of management of this form of public property. The law must also regulate the legal regime of the property in joint ownership of local communities.

2. The procedure for redemption and withdrawal of objects and property of communal ownership by public authorities needs to be defined on the legislative level. It is suggested that transfer of communal ownership objects to other forms of ownership should be accomplished solely by the local council decision and, desirably, on the basis of sale at market prices (i.e. at the prices which formed in the market of real estate or land, etc.). In case of disposition of communal ownership objects, especially important for a local community, holding a local referendum is regarded as reasonable and even indispensable. Besides, legislation should provide that the list of such objects must be approved either in the territorial community statute or the in council's decision.

3. A multi-channel system of local budget formation should be envisaged in laws; according to the system, each tier of the budget system must have its own assigned revenues amount of which must be sufficient to secure functions and responsibilities vested in some or other level of authorities. At the same time, one should consider that budgets of local governments must be built primarily on their own revenue sources because increase of the own revenue share in local budgets can substantially foster greater independence of local governments as well as promote intensification of their activities.

This considered, the structure of "local self-government revenue baskets" should be reviewed on the legislative level towards expansion of revenue sources, which are not taken into account when calculating inter-budgetary transfers, due to land pay, single tax for small enterprise entities, pay for licensing and state registration of entrepreneurial entities in a respective territory. Secondly, own revenues must be assigned legislatively not only to budgets of villages, settlements and cities but also to those of districts and oblasts (as is known, these budgets do not have their own revenue sources; they are formed from state budget funds). Thirdly, practical additional sources to finance local budgets can include increased receipts from local taxes and dues. Taking this into account, the existing concept of usage of local taxes and dues should be radically revised. First and foremost, the practice of establishing local taxes and dues by subordinate legislation (the

Decree by the Cabinet of Ministers of Ukraine on local taxes and dues, 1993) should be abolished because it is in conflict with Article 92 of the Constitution of Ukraine, which reads that any matters regarding taxes must be decided solely by laws of Ukraine. In view of that, it would be necessary to pass the Law of Ukraine on Local Taxes and Dues. Besides, provisions covering local taxes and dues (in particular, their distinct list and rate limits) must be fixed also in the future Tax Code of Ukraine.

4. On the legislative level, it is suggested to establish a system to encourage local governments for resource capacity building of local budgets in revenue sources. In particular, we propose to include in the Budget Code the provision that some part of revenue increase in the general fund of the State Budget of Ukraine in a certain territory is used to increase revenues of a respective local budget. Besides, it would be reasonable to provide in the law that the amount growth rate of the funds transferred to the State Budget of Ukraine from local budgets must not be higher than the growth rate of local budget revenues.

5. The statutory mechanism of calculating and accomplishing transfers from budgets of one tier to those of other tier needs further refinement. Considering this, it seems necessary to improve the formulas of distribution of inter-budgetary transfers towards ensuring a minimal per capita rate of social services. To that end, we propose, first of all, to reject the practice of calculating the so-called “financial standard of budget provision” (Article 94 Budget Code of Ukraine) of powers of local state administrations and executive bodies of local self-government, which substantially affects determination of a total volume of local budget expenditures. As a matter of fact, the financial rate of budget provision is average budget expenditures per capita or per service consumer within Ukraine. However, average budget expenditures within available resources by no means may be regarded as a rate since this contradicts the ideology of the Law of Ukraine on State Social Standards. We therefore deem reasonable and suggest recognizing as the rate of budget provision, on the level of the Budget Code of Ukraine, a calculated indicator used to determine a state-guaranteed level of financing of state and local budget expenditures according to established state social standards of the expenditures. The said social rates should be developed with participation of all the parties concerned (first of all, representatives of local governments).

Secondly, legislation must provide a clearer meaning of so-called “corrective coefficients of financial rates of budget provision” (Article 95 Budget Code of Ukraine), which are currently established actually “in the



manual mode” while their application continues the practice of in-office redistribution of financial resources among regions as well as between local budgets and the State Budget of Ukraine. This considered, we suggest establishing on the Budget Code level that “corrective coefficients” are calculated indicators with the help of which financial rates of budget provision are changed. The Budget Code should clearly state that the said rates are adjusted with account for socio-economic, demographic, climatic, environmental and other specific features of administrative-territorial units and territorial differences in the cost of services just to ensure the state-guaranteed level of financial expenditures of local budgets according to established state social standards.

6. It is proposed to revise the system of subsidies and subventions from the State Budget of Ukraine to local budgets and the procedure of providing them. It is suggested to introduce subventions for development of depressive regions, which is completely in line with the draft law on stimulation of regional development that has already been considered by the Verkhovna Rada of Ukraine.

7. Considering that neither the Law of Ukraine nor the Budget Code of Ukraine provide for sole competence of a territorial community in the field of local finance as a primary subject of local self-government, it is proposed that the competence should be determined in a new law on local self-government. Competence of a territorial community in the field of local finance can be additionally determined in statutes of respective communities. This approach will, on the one hand, promote consolidation of a territorial community as a main subject of local self-government, including in the field of local finance. On the other hand, it will allow increasing the realization by territorial community members of their role in formation of their own financial resources.

8. The concept of “grant” needs to be defined on the legislative level. It is suggested to define the “grant” as a special type of purposeful voluntary donation that may be provided through an agreement between a natural person or legal entity and a nonprofit organization provided that the latter does some work, provides services or produces commodity within its statutory activities, but not in favor of the donating person. A system of ‘block grant’ should be established to enable the local governments better respond to the local specific needs as identified by the local communities.

9. The Budget Code should state that sums of the grants provided to support and finance local sustainable development initiatives and programs are not considered when calculating inter-budgetary transfers, and that the

very fact of receiving such grants may not be a ground to reject requests about provision of subsidies and subventions from the State Budget of Ukraine.

10. Although the Civil Code of Ukraine and the Law on Charitable Organizations (1997) may currently be used until legal regulation of creation of 'Community Development Funds' is implemented, it is still suggested to develop and pass a separate law dealing with organization of such Funds – the Law on Community Development Funds. This proposal seems especially topical in view of the fact that the Community Development Funds registered as NGOs are exempted from land tax, profit tax, and value-added tax on the sum of voluntary donations in cash or kind as well as on some other statutory taxes (including passive income, subsidies from the local budget, foreign grants, income from principal activity, particularly from provision of charitable aid).

11. As to priority directions of the state and local policy concerning formation of local budgets for next 3-5 years, they should be as follows: streamlining of local budget expenditures that should be connected with reform of administrative-territorial system and with formation of self-sufficient communities, and this will be used as a basis for considerable increase of expenditure efficiency; distinct delimitation of functions, duties and responsibility areas of executive authorities and local governments as well as of various levels of local governments in order to bring provision of services closer to their consumers as well as elimination of duplication of functions of executive authorities and local governments; implementation of the program-and-purpose method of making expenditures from local budgets (based on bottom-up planning); legislative provision for implementation of joint financing of local development projects or programs with local communities; active involvement of private sector representatives, non-budget sources, particularly people's money, in financing of local programs, implementation of the system of mortgage lending for housing construction, land mortgage, medical and pension insurance.

This will allow radically changing the situation with planning and implementation of joint sustainable development initiatives and with involvement of citizens in management.

#### **V. Mechanism for implementation of the suggested amendments: procedural aspects**

According to the Rules of the Verkhovna Rada of Ukraine, draft laws may be developed by the statutory right, on the Verkhovna Rada's instructions, on

the contractual basis to order, or as initiative. In the latter case, citizens and legal entities have the right to develop draft laws. Along with this, the current legislation does not provide the right of legislative initiative to those subjects (that is the right to officially submit a draft law or a legislative proposal to the Verkhovna Rada). A comprehensive list of the persons and bodies having the right of legislative initiative is provided in Article 93 of the Constitution of Ukraine and includes the President of Ukraine, people's deputies of Ukraine, the Cabinet of Ministers of Ukraine, and the National Bank of Ukraine.

The foresaid means that natural person and legal entities may, as initiative, develop draft laws (that is the text of a future law with all its attributes such as preamble, articles, paragraphs, etc.) or legislative proposals (that is ideas or concepts of a future law) but they may be submitted to the Verkhovna Rada of Ukraine only through subjects of the right of legislative initiative designated by the Constitution of Ukraine. Thus, the legislative changes suggested above may most likely be submitted to the Verkhovna Rada for consideration through people's deputies of Ukraine (the committee for state construction and legal self-government, the committee for budget) and through the Cabinet of Ministers of Ukraine (the Ministry of Finance, the Ministry of Environmental Protection).

For that purpose, citizens or partner municipalities need to establish cooperation either with the above-mentioned subjects or with organizations of the "third sector" or other institutions dealing with local self-government issues and able to "reach" subjects of legislative initiative (e.g. with the Public Council for Legislation for Local Self-Government and Third Sector Organizations, the Ukrainian Association of Local and Regional Authorities, the Association of Ukrainian Cities, the Fund for Promotion of Local Self-Government of Ukraine, etc.).

## **VI. Conclusion**

BSPs can be regarded as a form of local democracy. Positive experience of community-based local development approach testifies the efficiency of using the model for sustainable development at local level because its implementation results in stronger confidence and better cooperation between authorities and citizens. Even where the BSPs actively work and have become partners to local authorities in handling local problems, their development is hindered by lack of appropriate regulatory and legal framework necessary to provide organizational, logistical, financial and economic foundations for their activity.

This in turn points to the need and reasonability of policy and legislative changes on the local and national levels. The legislative amendments are quite necessary to finance sustainable development initiatives which are based on participatory planning. Realization of these proposals will promote both creation of conditions for implementation of joint sustainable development initiatives and improvement of efficiency of the local self-government institute as well as increase of Ukrainian people's quality of life.

However, this needs one more precondition: political will and political understanding (both on the state and local level) of the importance of local self-governance in Ukraine as an institute of true democracy, as an efficient tool to achieve sustainable development goals and affirm its values.