

International Centre for Policy Studies

Community-based Local Development: Conditions and obstacles

Kyiv 2011



This document has been prepared by the International Centre for Policy Studies on commission from the United Nations Development Programme in Ukraine. Its purpose is to assess existing legislative and institutional conditions and obstacles to community-based local development, based on previous experience at UNDP Ukraine and other international technical assistance projects. Local development is treated as the activity of all interest groups—from local government bodies, entrepreneurs and community activists to the general population, and so on—that is aimed at improving quality of life as a whole or in its components, at the local level, regardless of the settlement or location.

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Contents

Overview	5
How community-based approaches to local development have been used in Ukraine	5
An active community is a guarantee of local development	7
Obstacles to local development	9
The financial dependence of local governments	9
Lack of administrative oversight at the local level	9
Dysfunctional representation of community interests	10
Conditions for local development and active communities	10
Analysis of CBA components	13
Forms of community organization	13
Regulatory framework	14
Institutional barriers	23
Registering a community organization	23
Regulatory framework	24
Institutional barriers	33
Community-local government cooperation and engagement in local development planning	34
Regulatory framework	34
Institutional barriers	37
Carrying out and funding community projects	39
Regulatory framework	39
Institutional barriers	44
Managing property generated by a community project	45
Regulatory framework	45
Institutional barriers	46
Recommendations for enabling a community-based approach to local development (CBA)	48

Annex 1. List of reports from international LD TA projects	52
Annex 2. List of local development experts surveyed	54
Annex 3. List of primary documents regulating CBA	55

Overview

How community-based approaches to local development have been used in Ukraine

A community-based approach (CBA) to local development requires the active participation of the local population in resolving issues that particularly matter to that community and to satisfy the needs of local communities by jointly deciding how to resolve local problems and jointly working to put those policies into action. It is based on an understanding that no one individual, organization or government office can figure out all local problems, all on its own. And this means a partnership among an active civil society, private sector, local government and local executive bodies at all levels, as well as other national and international organizations. Establishing local priorities, agreeing them with the local government, planning and joining forces to bring this to life makes it possible for communities to shore up both trust among their members and all partners, and the capacity for long-term activity.

The main objectives of a community-based approach to local development are these five:

- To improve living conditions for rural, village and small town residents in Ukraine through the comprehensive renovation, effective exploitation and systemic management of basic municipal infrastructure and to improve the quality and availability of public services through community self-help initiatives.
- To foster confidence in the decision-making process at the local government level and promote dialog between citizens and governments. To mobilize community resources and understanding and cooperation among individuals, their organizations, foreign donors and local governments as a foundation for long-term planning of municipal development.
- To build institutional capacity, especially professional knowledge and skills in self-governing by community organizations, local government bodies and municipal institutions in terms of initiating and sustaining partnerships, assessing local needs and priorities, using planning, managing and monitoring methodology, in the context of local government with community input.
- To foster the expanded influence of local communities by establishing mechanisms for consensual dialog that offers all individuals the opportunity, from the very start, to be equal partners in the planning and mobilization of resources.
- To prove the effectiveness and workability of partnerships between local governments, their communities and other stakeholders in carrying out local development initiatives; to expand this practice across Ukraine; to foster its inclusion in the process of making policy and undertaking reform of local development and proper governance.

The practical undertaking of this approach requires the community to take standard, consistent actions, including:

1. **Joining forces and setting up an organization:** An organization will make it possible to engage the necessary resources to resolve local problems, to do more for less money, and to involve other organizations.
2. **Electing competent leaders:** This kind of leader, and not outsiders, will be able to stir a desire among people—and the capability—to help themselves.
3. **Collecting money:** The organization will need money to function and evolve.
4. **Prioritize local problems:** These are the problems that locals consider a top priority for solutions, in order to improve the quality of their lives.
5. **Evaluate options:** Each problem has a number of options that should be established, their costs assessed, and a plan of action drawn up.
6. **Draw resources:** A variety of sources need to be tapped for the organization to be able to achieve its priority objectives.
7. **Sustain the results achieved:** The ability to sustain the impact will make it possible to improve the quality of life for the long run.
8. **Make connections and lobby your own interests:** This requires establishing contacts in different government offices and other entities involved in local development.

The community-based approach to local development (CBA) is being the most actively applied and promoted in Ukraine by the United Nations Development Programme (UNDP). Starting in 1995, UNDP organized a series of comprehensive, large-scale projects in close cooperation with other international organizations and development agencies. The activities of these project always include measures that will ensure that the objectives of the approach are achieved, that is: developing partnerships at the community level, from settlement to rayon to oblast; institutional support for communities, government agencies and other partners to interact; providing some financial support for community micro-projects; developing potential and building capacity in the community, government and other partners at the local level.

The four UNDP programs applying CBA in Ukraine are:

1. **The Crimea Integration and Development Programme (CIDP)** which is a joint initiative of the international donor community: the Canadian International Development Agency (CIDA), the governments of Denmark, Greece, the Netherlands and Norway, and the Swiss Agency for Development and Cooperation (SDC, the Swedish International Development Agency (SIDA), and Turkey. The goal of this project is sustainable socio-economic development in Crimea that reflects its ethnic and cultural diversity. From 1995 to 2010, a total of US \$4.4 million went towards more than 600 community organizations to carry out 419 community projects worth a total of US \$11.9 million for 143,000 beneficiaries.

2. **Chornobyl Recovery and Development Programme (CRDP)** was initiated by several UN agencies and undertaken with the support of four donors: the UN Trust Fund for Human Security, the Government of Japan, the Canadian International Development Agency (CIDA), and the Swiss Agency for Development and Cooperation (SDC). The purpose of this project is to support the Government of Ukraine's efforts to relieve the long-term social, economic and environmental costs of the Chornobyl disaster by promoting better quality of life and ensuring sustainable human development in the regions that suffered the most as a result of the catastrophe. This program operated from 2002 through 2010 in selected rayons of Kyiv, Zhytomyr, Chernihiv and Rivne Oblasts. During this time, a budget of UAH 6.6 million supported 279 community organizations in 192 villages in these four oblasts, reflecting a membership of over 20,000. A total of 190 projects was carried out for a total value of UAH 18.5mn and nearly 200,000 beneficiaries.
3. **The Municipal Governance and Sustainable Development Programme** is being carried out by UNDP with the support of four donors: the Canadian International Development Agency (CIDA), the Swiss Agency for Development and Cooperation (SDC), and the Embassy of the Kingdom of Norway. The goal of this program is to build the capacity of local communities and municipalities to participate in the decision-making process and to apply this capacity to multilateral cooperation and events directed at local socio-economic and environmental administration for the sake of sustainable growth. Running over 2004-2010 in 24 cities and 5 towns in 12 oblasts in Ukraine, the program had a budget of UAH 9 million to support 519 organizations in 29 towns, representing a total membership of over 53,000. A total of 239 projects were carried out, at a total value of UAH 27.2 million and nearly 125,000 beneficiaries.
4. **The Community-Based Approach to Local Development** project is a Ukraine-wide project that is being funded by the European Union and UNDP to establish an environment suitable for sustainable socio-economic development at the local level by getting communities to organize themselves and become socially active, designing and carrying out small-scale community initiatives in all oblasts across Ukraine and in the Autonomous Republic of Crimea. The program operated from 2007 through 2010 in 200 rayons covering all 24 oblasts and Crimea. In this time, a budget of EUR 13.3 million funded more than 1,000 community organizations from over 1,000 villages to carry out community projects that benefited nearly 1.2 million individuals.

For communities to appreciate their capacity to rely on their own strength and to have a real sense of dignity, this approach is intended to transfer and re-create the positive results shown by previous UNDP projects, in a large number of municipalities all across Ukraine.

An active community is a guarantee of local development

In any given country, quality of life is determined both by the overall situation in that country and by the actual level of development of the particular commu-

nity in which an individual lives. Local development depends on the decisions and actions of the central government, but the key role is actually played by the stakeholders themselves in the local community: local government offices, local business and local society, that is, the people who belong to these local communities. Practice in those countries with the highest level of quality of life across the broadest population groups demonstrates beyond a doubt that local development requires the active participation and cooperation of all three sectors. An active community that is directly involved in both decision-making regarding basic local development issues and in carrying out socially-significant projects and initiatives is the guarantee of successful development at the local level, real everyday democracy, and an engaged civil society.

In most local communities in Ukraine, locally important issues are not being resolved satisfactorily, while the quality and accessibility of public services provided at the local level leave consumers feeling frustrated. The level of development and quality of life in different regions and settlements is very uneven, in terms of not only the quality, but also the quantity of basic public services available to the public. This is combined with a deteriorating physical infrastructure inherited from soviet times, especially social facilities. Although currently nearly 60% of the country's population lives in small towns and villages, in many smaller communities demographic trends are generally negative. The more active members of these communities tend to migrate to bigger cities, more developed regions, or even abroad. Their main reasons are the lack of opportunity to satisfy their needs, unavailable or poor-quality basic public services, a lack of sufficient and varied sources of income, a lack of social facilities—and poor prospects for improvement in any of these.

Under such circumstances, many of Ukraine's local communities have understood that, waiting for the central or local government to improve the situation is pointless and have taken an active role in solving common problems through organization and cooperation with other sectors, especially local governments and business. Underlying this process were historical traditions coupled with information exchanges both within the country and with communities and regions from other countries. And international technical assistance played a major role in supporting and expanding this community activism.

Most often this kind of association and organization take place around the idea of rehabilitating or establishing locally significant facilities that correspond to the needs of most members of the community, such as renovating a local clinic, fixing the roof of an apartment building, installing PVC windows in a kindergarten, building a water supply system, and so on. Initiative group of the community members sets up an organization that gets most members of the community involved in establishing the priority, develops a project, collects and attracts funding, uses this money to acquire the materials, goods and services necessary to complete the project, and arranges to independently or in partnership maintain the facility for the foreseeable future. Some of the costs are picked up by the community and often some portion of the community members carry out some of the work involved.

This way, thanks to joint efforts, a community that is not especially wealthy can considerably improve its own situation with the provision of one kind of service or another and its overall quality of life. Members of such communities qualitatively change their attitudes both towards their own lives and prospects and to other members of the community, the local government, business, international and other partners. This is the best possible indicator that governments at all levels in Ukraine should be encouraging this process.

Obstacles to local development

The unsatisfactory situation in local development in Ukraine has been driven by a number of factors, key among which are:

The financial dependence of local governments

Local governments in Ukraine have been directly or indirectly burdened with providing basic social and administrative services. Today, all these functions can only be carried out effectively by cities at the oblast or state level, which, according to the Budget Code, have direct relations with the State Budget and enjoy a real right to proper budgetary independence. In the rest of the country's self-governing administrative territories, such as villages, towns and small cities, both local financial resources and those that are transferred from the central budget through oblasts and rayons are insufficient to provide public services of the proper level of quality and quantity.

The lion's share of local budgets—nearly 90%¹—is spent on social matters, such as education, healthcare, the arts, and so on, which have been delegated to local governments. But the money in local budgets allocated for these areas cover only payroll costs at budget entities—and even that only 70–80%. Funding to maintain infrastructure, to buy equipment, medication and textbooks, to organize the feeding of public school pupils, and so on is chronically insufficient. The options for local communities to establish development budgets are very limited: the share of the local budget that they are allowed to spend discretionarily for development goals is extremely small—on average only 10–11% in recent years.

Lack of administrative oversight at the local level

The fact that local governments and local offices of central executive bodies (CEBs) lack budgetary independence means that they are completely dependent on the central government to carry out their day-to-day functions even when it comes to in local development. Meanwhile, local state administrations do not even provide centralized administrative oversight over how the Constitution, the country's laws and national programs are being carried out locally, what the human rights situation is, or the preservation of territorial integrity and national security.

¹ Source of information here and further, ICPS evaluations and calculations.

Dysfunctional representation of community interests

Members of territorial communities play no real role in local development processes. The public is involved in the planning and adoption of policies unsystematically and largely as a formality. On one hand, the nature of the budget process—top-down planning and execution—realistically makes it impossible to reflect the interests of communities in the activities of local government bodies. This is particularly true of the development of infrastructure. On the other hand, there are no established and workable mechanisms for such participation. The current legislative framework provides a few mechanisms for reflecting the will of the local community, such as public hearings, community councils, local referenda and so on. But these mechanisms are either too complicated for practical application or not binding on the local government.

Conditions for local development and active communities

The practice of initiatives by organized communities in Ukraine and other countries suggests that a series of conditions must be met before these can be successful, especially the regulatory environment and actual practice among local government bodies:

1. **Mechanisms for local communities to organize.** For members of a community to act collectively, they generally have to officially form and register a community organization (CO). Legislation needs to provide for both options and mechanisms for setting up COs that:
 - ✧ are simple to apply, requiring the minimum of specialized knowledge and experience, especially legal and financial skills;
 - ✧ do not cost much in the way of resources when going through all the procedures—no more than the state fee for registering;
 - ✧ are not time-consuming: preparing for and going through the process should take no more than 7-14 days;
 - ✧ do not make COs dependent on various local government bodies, local executive bodies and their sub-units, especially when it comes to documentary requirements for registration;
 - ✧ have clear-cut, complete requirements that leave no room for individual interpretation, in order to minimize the influence of officials, especially when it comes to dragging procedures out, requiring additional steps, or imposing third-party services;
 - ✧ provide for all the options, rights and powers necessary for COs to carry out proper projects and initiatives;
 - ✧ relieve COs of the problem of tax liabilities from the minute they are formed, given that local development initiatives, a priori, have no profit-making goals;
 - ✧ include procedures for CO accounting and reporting that require no special knowledge or major time.

2. **Mechanisms for debating and adopting policy.** For both the community as a whole and for COs, these should be:
 - ✧ simple, with no procedural requirements that demand special knowledge and effort or additional time;
 - ✧ effective, that is, that their application leads to a decision being adopted and does not raise doubts. The forms that the public will take can vary: voting directly at meetings, answering surveys, collecting signatures, and so on;
 - ✧ a guarantee of not just representation but of the direct involvement of most members of the community or CO, based on their socio-demographic profile, depending on the issue at stake. The direct participation of a majority in the debate of policies and the adoption of at least key ones, is precisely what can ensure a true sense of ownership among members of the community;
 - ✧ nondiscriminatory, ensuring the participation of women, minorities and handicapped members of the community on a parity basis;
 - ✧ a guarantee that the debate and adoption of policies are independent and free, without any manipulation or pressure on the part of government bodies or other interested parties. This process must be entirely transparent and understandable to the general public.
3. **Mechanisms for cooperation between local government and government bodies at different levels.** These need to allow for COs to present initiatives to local government bodies and local executive bodies, to establish partnerships, to allow communities to participate in the debate and adoption of policies, both at the beginning, in the process, and after the completion of projects. These mechanisms should:
 - ✧ allow the proper participation of COs and communities in local development planning for the relevant settlements and regions, and in the review and adoption of policies related to other significant local issues;
 - ✧ require minimal specialized knowledge, efforts or time spent applying such mechanisms. These mechanisms should provide for both formal events such as meetings or assemblies and ongoing interactions, such as information exchange;
 - ✧ be institutionally sustainable, regardless of political and personnel changes so that neither side can ignore them or treat them as a mere formality, as well as to ensure that relations between the various sides are completely parity-based.
4. **Financial and administrative freedom.** COs should have unlimited rights and powers when it comes to:
 - ✧ arranging for funding in unlimited amounts from any sources available: CO members, other physical and legal entities, businesses, budgets at all levels, foreign and international donors, and so on;
 - ✧ getting funding and resources in whatever other form, including gratis works and services;

- ✧ freedom to spend the funding and other resources received in accordance with the decisions taken, provided that all requirements for accounting and reporting are met;
- ✧ removing restrictions or inappropriate requirements for the provision of funding, other resources, works and services from potentially suitable sources to such COs.

5. **Managing and maintaining property.** COs need to:

- ✧ have the right to independently own property that was either generated or renovated as the outcome of related projects and to have all the rights and powers necessary to manage and maintain such property;
- ✧ or to have available workable mechanisms for such property to be transferred into ownership, management or maintenance to other partners, most often local government bodies or local executive bodies. The procedures and requirements for such a transfer should not require highly specialized knowledge, serious effort or considerable time;
- ✧ have the opportunity, regardless of who the owner of such a property is, to participate in its further maintenance and servicing, especially through the completion of various kinds of works. For this it is necessary that any owner of such property not have restrictions or inappropriate requirements in order to allow a CO to participate in such maintenance or servicing;
- ✧ have the power and mechanisms to oversee the management of the property, especially whether it is being used as intended, if the CO is not the owner.

A general requirement for active communities should also be a mechanism for filing suit against improper action or inaction on the part of local government bodies and local executive bodies. Such a mechanism must also be independent of these bodies.

Even the simplest requirements for undertaking local development initiatives inevitably require specialized knowledge and skills, such as in legal, financial, technical, management, and other areas. Both members of a community and local government officials do not always possess such knowledge or skills at the necessary level. This means they should have access to informational and instructional materials, experts and consultants, and to professional development courses.

Still, the minimum objective for a government that wishes to support such initiatives but lacks serious material and other resources is to set up the necessary conditions so that these processes become possible and to remove any barriers, whether over-regulation, standard practices, or red tape.

Analysis of CBA components

In practice, UNDP projects highlight such key local development components in the community-based approach (CBA): organized community, registration of community organizations, cooperation between communities and their local governments, the involvement of communities in planning local development, the undertaking and funding of community projects, and the management of property generated in the context of community projects. We analyzed each of these components in terms of existing obstacles arising from the legislative environment and current practice. We identified practical obstacles to local development components based on our analysis of information from such sources as:

- studies and recommendations arising from international technical assistance projects;
- interviews with local development experts;
- the KIIS survey.²

A list of the reports containing the and recommendations from technical assistance projects can be found in Annex 1, a list of surveyed experts in Annex 2, and a list of analyzed regulatory documents in Annex 3.

Forms of community organization

How a community is organized, like the form its organization takes, is the most important element in the CBA. By organizing themselves, members of a community can jointly express their opinions and act to fulfill their own potential. Community organizations bring together members who generally live on the same territory, such as a village, town, micro-district or even a single block or apartment building and are facing the same problems. Such organizations are normally run by a group of activists whom most members of the community trust. A community organization is a self-governing structure, whose conditions for functioning include transparency and accountability as well as a high level of activity among community members.

Over 2008-2010, the joint UNDP and EU joint project, "Community Based Approach to Local Development (CBA)," mobilized more than 330,000 households in more than 1,000 settlements—effectively nearly 80% of their populations—to take action to improve the quality of their own lives. The vast majority of communities that participated in this project—87%—preferred to set up community organizations.

² The Community-Based Approach to Local Development: The results of a sociological study called "The impact of CBA local development carried out in UNDP projects in Ukraine," Kyiv International Institute of Sociology (KIIS), Kyiv, 2010.

Regulatory framework

Ukrainian legislation³ defines **territorial communities** as *the residents who are permanently domiciled within the boundaries of a single village, town or city that is an independent territorial administrative unit or a voluntary association of the residents of several villages that have a common administrative center.*

Territorial communities are the primary self-governing local entity and can be formed at the village, town or city level, as well as city districts where the city has them.⁴

Members of such territorial communities can handle local development issues in a number of ways:

1. As a territorial community, without forming additional organizations or representative bodies.

For this purpose, the Law of Ukraine №280/97-BP "On local government in Ukraine" dated 21 May 1997 (further, Law on local government) provides for such mechanisms as local referenda, town meetings, local initiatives, and public hearings.

All these mechanisms can be used as **a way of making decisions** regarding local development. They do not ensure the involvement of ordinary citizens in actually carrying out any such decisions.

Such forms as local referenda, town meetings and local initiatives are examined in greater detail in the section, "Cooperation between communities and local governments and engaging communities in planning local development."

2. Through representative bodies of local government and their executive bodies.

Art. 10 of the Law on local government states that "Village, town and city councils are local governing bodies that represent the related territorial community and carry out local government functions and exercise powers in the name and interests of that community, as designated in the Constitution of Ukraine, and this and other legislation."

The executive organs of village, town, city and city district councils are their executive committees, departments, administrations and other executive bodies set up by such councils, according to Art. 11 of the Law on local government.

This means, like the previous one, does not require the direct, active involvement of members of the community in carrying out local development projects.

3. Through setting up organizations or entities in the established manner.

³ Art. 1, Law of Ukraine №280/97-BP "On local government in Ukraine" dated 21 May 1997.

⁴ Ibid., Art. 6.

Setting up organizations or institutions is **meaningful** if members of the community:

- ✧ intend to join forces to promote and defend their lawful social, economic and other common interests;
- ✧ plan to undertake their activities on an ongoing or regular basis;
- ✧ plan to establish mandatory rules and procedures for their members;
- ✧ intend to establish relations with governing bodies as an organized community rather than as individual citizens.

In those instances where local development projects require commercial activities and/or involvement in commercial relations, such as owning or disposing of property, providing services, entering contractual agreements, and so on, a formal organization **must be** set up.

This conclusion is based on Art. 3 of the Commercial Code of Ukraine, which states that commercial activity *means activities involving commercial entities in social production directed at manufacturing and selling products, carrying out works or providing services with a specific cash value.*

The definition of a commercial entity is provided in Art. 55 of the Commercial Code of Ukraine, which states:

"1. Commercial entities are defined as participants in the economy that undertake commercial activities, selling their commercial product (a set of commercial rights and duties), have separate assets, and carry responsibility for their obligations within the limits of these assets, except for those cases provided for by law.

2. Commercial entities are:

- 1) commercial organizations, that is, legal entities established in compliance with the Civil Code of Ukraine, state, communal and other enterprises established in compliance with this Code, and other legal entities that are carrying on commercial activities and are registered in the manner established by law;*
- 2) citizens of Ukraine, foreign citizens and persons without citizenship who are carrying on commercial activities and are registered as entrepreneurs in accordance with the law."*

Ukrainian law allows a community to set up an organization, both with the status of a legal entity and without such status. Specifically, both community organizations and public organized bodies can function without the status of a legal entity (for details, see further).

Members of a community can set up a legal entity in any organizational form permitted by Ukrainian law, including as a commercial entity.

However, setting up a commercial entity makes sense only in those cases where the community organization intends to commercialize its activities.

In other cases, a CO should be established as a **non-commercial or non-profit entity**. Art. 53 of the Commercial Code of Ukraine states that *"A non-commercial or not-for-profit activities may be carried on by commercial entities on the basis of property rights or the right to ad hoc management in an organized form de-*

terminated by the owner, a relevant governing body or a local government body, as prescribed by this Code and other legislation."

Ukrainian law recognizes five forms of non-commercial or not-for-profit entities:

- **community organizations (COs)**, which are regulated by Law of Ukraine №2460-XII "On associations of citizens" dated 16 June 1992 (further, *CA Law*);
- **philanthropic organizations (POs)**, which are regulated by Law of Ukraine №531/97-BP "On philanthropy and philanthropic organizations" dated 16 September 1997 (further, *Law on philanthropy*);
- **bodies of self-organization of population (BSPs)**, which are regulated by Law of Ukraine №2625-III "On bodies of self-organization of population" dated 11 July 2001 (further, *BSP Law*);
- **associations of co-owners of multi-apartment building (ACMBs)**, which are regulated by Law of Ukraine №2866-III "On associations of co-owners of multi-apartment building" dated 29 November 2001 (further, *ACMB Law*);
- **cooperatives (co-ops)**, which are regulated by Law of Ukraine №1087-IV "On cooperatives" dated 10 July 2003 (further, *Co-op Law*).

None of these forms of organizing is really ideal in terms of engaging the community in local development. Each of them has basic flaws and none of them ensure a community a full range of instruments for its active participation in local development.

Still, when setting up a CO, it is important to choose a form based on the objectives and operating conditions of this community organizations.

The community organization (CO)

The most widespread form of self-organization is the **community organization (CO)**. Art. 3 of the CA Law defines a community organization as an "*association of citizens to promote and defend their lawful social, commercial, artistic, age-related, national and cultural, athletic and other common interests.*"

The goal of setting up such an organization, its participants and its areas of activity can vary considerably. Community organizations have non-profit status, are permitted to own and manage property, and may receive funding from various sources.

Nevertheless, the law does not grant such organizations effective instruments to participate in the policy-making process regarding local development.

Art. 20 of the CO Law grants registered community organizations seven main rights:

- to participate in civil legal relations, to acquire property and non-property rights;
- to represent and defend its lawful interests and those of its members or participants before state and civic bodies;

- to receive the information necessary to achieve its goals and objectives from state government and administrative bodies and local government bodies;
- to submit proposals to government bodies and administrations;
- to participate in the implementation of regulatory policy;
- to disseminate information and promote its ideas and goals;
- to establish news media.

Community organizations have the right to establish enterprises that are necessary to carry out their statutory purpose, according to Art. 20 of the CO Law.

A closer look at these rights suggests that they are essentially no different than those of other commercial entities.

One positive fact is that community organizations have the right to property engage in commercial activities. This can be useful when undertaking certain local development projects. However, this positive note is neutralized somewhat by the complicated nature of administration, especially tax matters, of such organizations (for more details, see the next section).

On the other hand, as the list indicates, community organizations are not provided with separate instruments or mechanisms to help them influence local development decisions made by local government and local executive bodies. Similarly, there are no norms that would simplify the provision of public funding to community organizations, or private funding from legal and physical entities, to carry out local development projects.

The philanthropic organization (PO)

Art. 1 of the Law on philanthropy defines a philanthropic or charitable organization as *a non-government organization whose main purpose is to carry out charitable activities in the interests of society or specific categories of individuals in line with this Law*. Charitable activities are defined as *voluntary, non-mercenary activities by philanthropic organizations that do not intend profit from such activities*.

This suggests that the area to which this form of organization would apply is limited to those local development projects that do not require getting funds from community members for providing services, carrying out works, or building objects, other than those instances when such funding is obtained through charitable donations.

Art. 6 of the Law on philanthropy states that charitable organizations may be set up in four main legal formats:

- a membership-based charitable organization;
- a philanthropic fund;
- a philanthropic institute;
- other charitable organizations (foundations, missions, leagues, and so on).

Like community organizations, philanthropic organizations have the right to carry out commercial activities. Art. 6 of the Law on philanthropy states that a *philanthropic organization may carry out commercial activities directed at fulfilling its statutory goals and objectives*.

In undertaking commercial activities, a philanthropic organization is obligated to have formal accounting and pay taxes as prescribed by law. Only charitable organizations that live off membership dues and voluntary donations may be relieved of taxes and other budget and special fund contributions, according to Art. 20 of the Law on philanthropy.

Like community organizations, POs are not provided with effective mechanisms to participate in the policy-making process around local development. However, they have some clear tax advantages (see below). On the other hand, operating and reporting requirements are stricter for POs. The Law on philanthropy specifically requires of such organizations that they:

- ensure complete access to their reports and documents on commercial and financial activities (Art. 14);
- prepare philanthropic programs (Art. 15);
- run separate books for their commercial and philanthropic activities as well as for local and foreign currencies (Art. 21).

In addition, Art. 19 of the Law on philanthropy states that POs may not borrow any money whatsoever to finance their activities,

The body of self-organization of population (BSP)

An body of self-organization of population is a **representative body** that is established by residents who are legally domiciled on the territory of the village, town, city or parts thereof, to handle specific tasks, according to Art. 2 of the BSP Law. In effect, BSPs are not a form for self-organizing communities but a means for the community to delegate its objectives and rights to a specific group of individuals.

BSPs do not provide for the direct participation of citizens in resolving local development objectives. The BSP Law does not provide for the mandatory participation of community members in the decision-making process of the BSP.

Thus, Art. 19 of the BSP Law states that the working format of the BSP is a sitting or session in which elected members of the body are allowed to participate. However, the right of community representatives to participate in such meetings is not guaranteed by this Law. Art. 18 guarantees only the right to be familiarized with the decisions that were adopted.

On the other hand, the BSP Law does not prohibit the participation of individual citizens in the decision-making process of local governments with regard to local development. This makes it possible to organize the activities of an BSP in such a way that will ensure the broadest possible participation of community members in its decision-making process.

Specifically, Art. 12 of the BSP Law states that these organs operate on the basis of a Provision that is confirmed at an assembly (conference) of communi-

ty members. Such a provision may provide for the right of community members to engage in an BSP's decision-making process on issues related to local development.

In order for an BSP to therefore be effective in the CBA, it makes sense to draft—and, if possible, to enshrine in law—a standard BSP provision. This provision should include specific principles of the CBA approach, such as the direct involvement of members of a community in the BSP's decision-making process on local development issues.

Under the current circumstances, BSP's can become effective facilitators during the implementation of local development projects, ensuring that both members of the community and representatives of local government bodies are involved with them.

The advantage of an BSP over other forms is that this kind of format ensures the strongest ties between community organizations and local governments. This close link is guaranteed because the BSP Law enshrines some important rights for BSPs, including:

- Art. 14 grants BSPs the right to submit proposals of draft local socio-economic and cultural development programs for their territorial administrative unit as well as draft local budgets, following the established procedure.
- Art. 27 states that members of an BSP have the right to participate in the sessions of their local councils and executive bodies where these are related to their activities and also when matters initiated by the BSP are brought up for debate. They also have the right to a non-binding vote.
- Art. 15 says that local councils may confer some of their powers to BSPs along with additional funding of their own and the logistical and other resources necessary to exercise these powers. The councils then oversee execution.

The downside of BSPs in terms of carrying out local development projects includes legislative restrictions on commercial activity. Art. 17 of the BSP Law states that the material basis for the activities of a body of self-organization of population is property **transferred to them by the council to manage on an ad hoc basis**. The body of self-organization of population then uses this property as intended in the exercise of its powers.

In short, the Law does not offer the option of an BSP owning any property, including assets that it may have generated, such as construction.

Moreover, the BSP Law only allows for limited sources of funding. Art. 16 specifies that these may be:

- funding from the related local budget that are **provided by the village, town, city or city district council** for ad hoc community organizations to exercise the powers they have been delegated;
- voluntary donations by physical and legal entities;
- other income not prohibited by law.

The Law does not provide for BSPs to generate income of their own through commercial activities, the way that COs can. This means that such organizations cannot be self-funded. The other sources listed here do not guarantee stable funding to such organizations.

The BSP Law does not specify what the tax status of BSPs is. Specifically, it does not clearly state that donations or voluntary contributions are tax-exempt, which imposes additional restrictions on the financial activities of BSPs.

The association of co-owners of multi-apartment building (ACMB)

An association of co-owners of multi-apartment building (ACMBs) can be considered as one of the self-organizing forms that a community can use to reach local development objectives, despite its narrowly targeted purpose.⁵ For instance, an ACMB can be used in settlements with many high-rise apartment buildings to also carry out local development projects related to these buildings, such as repairing utility infrastructure, building playgrounds, and so on.

According to the Law, the most important operational issues for ACMBs can be resolved exclusively through general assemblies of members of the association. Art. 10 of the ACMB Law lists these 10 issues:

- approving or amending the statutes of the association;
- dealing with the issues around the use of property that is the common ownership of members of the association;
- approving estimates, the association's balance sheet and its annual report;
- approving contracts (agreements) for sums that are above the limit established in the association's statutes;
- setting dues and other payments by members of the association members;
- adopting decisions regarding reconstruction or repairs to buildings or the construction of commercial buildings;
- setting the size of material and other incentives for members of the association and its management;
- setting limits on the use of property that is co-owned by the association;
- making decisions on the leasing out of property that is co-owned by the members of the association to physical and legal entities;
- approving agreements to establish societies or to participate in societies.

To settle any of these matters, a general assembly of the members of the association should have a quorum of 50% + 1 of its membership, according to Art. 10 of

⁵ Art. 4 of the ACMB Law states that "The main activity of such an association lies in carrying out functions that ensure the exercise of the rights of owners of premises to manage and use the common premises of members of the association, the proper maintenance of the building and adjacent territory, the support of members of the association in being provided with the proper level of residential and other services at reasonable cost, and the proper fulfillment of their commitments to the association and its activities."

the ACMB Law. This requirement encourages the active involvement of members of the association in handling vitally important issues.

Art. 4 of the ACMB Law states that *"Such association is a non-profit organization and does not have the purpose of gaining profit to be distributed among the members of the association."*

At the same time, legislation gives ACMBs considerable leeway for raising funds from physical and legal entities in the form of regular payments. Art. 21 specifically establishes that:

"The association's funding consists of:

the balance on the accounts of the previous owner of the property;

*statutory contributions and **mandatory payments** by members of the association;*

monies received by the association from the rental of ancillary premises;

subsidies on the payment of residential services and subsidies paid in compensation to individuals with the right to such subsidies for residential services for their share of overall mandatory payments for the maintenance and repair of common and general property once a proper agreement has been drawn up between the owner of the premises and the association;

income directed at reaching the statutory goals of the association and gained from the activities of enterprises whose founder is the association;

***voluntary donations of property and money and contributions** by physical and legal entities.*

"To accumulate funds to repair common and general property and immediately recover losses due to accidents or other unforeseen circumstances, the association must set up repair and reserve funds. The monies in these funds accumulate on the association's accounts in a banking institution and may be used exclusively for their intended purpose.

"A list and amount of mandatory payments to service and repair common and general property and the procedure by which they should be made are established in accordance with the association's statutes.

"By decision of a general assembly of the association, additional special funds may be set up whose spending is dedicated to goals established in the statutes."

Still, this form of community organization has one very serious drawback in terms of its broad application. Art. 6 in the ACMB Law states:

*"An association may be established in a **building** of any form of ownership among those who privatized or acquired an apartment, the owner of the entire building or the owner's authorized proxy, the owners of residential space, and owners of non-residential space."*

In other words, to deal with local development objectives that are beyond the context of a single apartment building, this kind of organization makes little sense.

The cooperative (Co-op)

In many cases, the cooperative can be the most convenient kind of legal entity. A closer look at the purpose and main objectives of cooperatives, as indicated in Art. 2 of the Co-op Law, offers the grounds to conclude that cooperatives directly relate to local development objectives.

“Art 3. The purpose and main objectives of a cooperative

“The goal of cooperatives is to fulfill the economic, social and other needs of the members of cooperative organizations, based on combining their individual and collective interests, sharing risks, costs and income among themselves, and developing their organization, administration and oversight.

“The main objectives of cooperatives are:

raising the standard of living of members of the cooperative and defending their property interests and social rights;

setting up commercial and social self-help systems for the general public and commercial entities;

*engaging additional workers in the production of goods, works and services and **increasing the labor and social involvement of the general population;***

establishing and expanding the infrastructure needed for cooperatives to carry on commercial and other activities in order to improve the material standing of its members and satisfying demand for goods and services;

***fostering sustainable growth** and establishing the foundations for the democratic development of society.”*

Co-ops offer considerable options for engaging financial resources. Art. 19 of the Co-op Law recognizes six main sources for generating assets in a cooperative:

“Initiation, membership and targeted dues from their members, shares and additional shares;

property that has been voluntarily transferred to the co-op by its members;

income from commercial activity;

income from enterprises, institutions or organizations set up by the cooperative;

monetary and material donations, charitable contributions, grants, gratis technical assistance from legal and physical entities, including foreign ones;

other income not specifically prohibited by law.”

At the same time, the legal status of a cooperative is similar to that of non-profit institutions and organizations. As Art. 23 states:

“Manufacturing cooperatives carry on commercial activities with the purpose of making a profit. Other cooperatives offer services to their membership without the intention of earning a profit.”

According to Art. 157 of the Tax Code, the latter cooperatives are eligible for a specific profit tax status that allows them to be relieved of one-time and regular tax payments.

Given this, in many cases, it will be most convenient to set up a cooperative as a form of community organization to reach local development objectives.

Other sections contain more details about specific aspects of the functioning of all the discussed forms of community organizations, along with the pros and cons of each form in terms of these various aspects.

Institutional barriers

The experience of UNDP, GTZ and SDC in setting up community organizations and the recommendations resulting from their projects suggest that there are definite barriers to effectively engaging community organizations in the local development process:

- A KIIS study reports that Ukrainians are generally highly active in town meetings, with an average of 94% participating. In practice, however, the formalization of the results of such town meetings can be complicated.
- The mechanics of community organization provided in Ukrainian law, that is the registration procedure, funding and reporting, are overly bureaucratized and complicated in terms of their practical application in small communities. This problem is discussed in greater detail in two further sections of this report: "Registering a community organization" and "Undertaking and funding community projects."
- There are discrepancies in the way that government bodies apply legal norms to COs in practice. Government bodies in different administrative territories can impose different requirements and require different procedures for registering a CO, different reporting procedures, and different approaches to providing public funding for community development projects. This complicates the exchange of experience among COs in different territorial units and the process of developing a single approach to interacting with government bodies.
- The lack of steady sources of funding for community projects, especially when it comes to the budget, reduces incentives for individuals to participate in community organizations.
- Local government bodies lack an understanding of the significance of actively engaging the community in local development processes and underestimate the potential for communities to organize.

Registering a community organization

Registering as a community organization is a necessary condition for such an organization to legally engage in commercial activities, including on a non-profit basis, to open a bank account and make financial transactions, and to raise budget funds and funding from international organizations. All community organizations established for the purpose of participating in the UNDP – EU "Community-Based Approach to Local Development" project were registered.

Regulatory framework

Ukrainian law does not contain a single procedure for registering or legitimizing all possible forms of community organizations. Each form has its own specific features.

At the same time, it is not possible to state that the current registration procedures set up barriers to communities. There are definitely some complications, but they are not really critical. In all cases, without exception, they are related to the preparation of documents that need to be submitted along with the application for registration.

Setting up a community organization

Art. 12 of the CO Law states that *“the decision to establish an association of citizens shall be made at a constituent assembly, convention or general meeting.*

The number of participants or founders of a CO is not limited by law, which means that even three physical entities can set one up.

Art. 13 states that *“an association of citizens acts on the basis of statutes or provisions (further, statutory document).”* To register the CO, the members of the community need to prepare a statutory document that contains:

- 1) *the name of the association of citizens, both in full and shortened in accordance with Para. 3 of Art. 12.1 of this Law, its status and legal address;*
- 2) *the goal and objectives of the association of citizens;*
- 3) *the conditions and procedure for joining the association of citizens and for leaving it;*
- 4) *the rights and obligations of members or participants in the association;*
- 5) *the procedure for establishing the statutory bodies of the association and its local branches, their functions, and their powers;*
- 6) *sources of funding and the procedure for using funds and other property belonging to the association and the procedures for reporting, for oversight and for engaging in commercial and other profit-making activities necessary to reach the statutory objectives;*
- 7) *the procedure for making changes and additions to the association's statutory documents;*
- 8) *the procedures for terminating the activities of the association and for settling property issues when winding it down.*

Practice shows that preparing a statutory document is one of the most complicated stages in setting up a CO. Art. 13 of the association law states: *“The statutory document of an association of citizens shall not conflict with Ukrainian law.”* Upholding this requirement demands special legal knowledge on the part of those who are drafting the text.

The requirement to legalize the association of citizens established in Art. 14 is stated thus:

"Legalizing or official recognition of an association of citizens is mandatory and is done by registering the association of issuing a notification of its founding.

"When registered, the association of citizens gains status as a legal entity.

"A community organization is legalized in compliance with the Ministry of Justice of Ukraine, local offices of central executive bodies (CEBs), and the executive committees of village, town and city councils of elected deputies."

The procedure for registering a CO is established in Art. 15 of the association law and the Provisions on the Procedure for legalizing associations of citizens, which was confirmed by Cabinet of Ministers Resolution №140 dated 26 February 1993.

Based on these normative acts, a standard application for registration is submitted to the registering body, signed by at least three founders of the association of citizens or their proxies. These signatures should be witnessed in the established procedure, that is, notarized.

The application should be accompanied by:

1) two copies of the statutes or provisions. The statute should include:

- ✧ the name of the association of citizens, both in full and shortened in accordance with Para. 3 of Art. 12.1 of this Law, its status and legal address;
- ✧ the goal and objectives of the association of citizens;
- ✧ the conditions and procedure for joining the association of citizens and for leaving it;
- ✧ the rights and obligations of members or participants in the association;
- ✧ the procedure for establishing the statutory bodies of the association and its local branches, their functions, and their powers;
- ✧ sources of funding and the procedure for using funds and other property belonging to the association and the procedures for reporting, for oversight and for engaging in commercial and other profit-making activities necessary to reach the statutory objectives;
- ✧ the procedure for making changes and additions to the association's statutory documents;
- ✧ the procedures for terminating the activities of the association and for settling property issues when winding it down.

2) the minutes of the constituent assembly or convention or general meeting that adopted the statute, along with the formal decision to found a community organization, the adoption of the statute or provision, and the decision to elect executive and oversight bodies;

3) information about the executive members of central statutory bodies, including names, surnames, patronymics, dates of birth, domiciles, jobs or positions, and place of work;

- 4) information about any local branches (Annex №2), approved in the minutes of the convention or assembly;
- 5) document confirming the payment of the registration fee;
- 6) information about the founders of the association of citizens or the union of associations. For individuals, name, surname, patronymic, date of birth, and domicile should be provided; for a union of associations, the names of the associations, the location of their executive statutory bodies, and a copy of the document about their legalization should be attached;
- 7) a document confirming the location of the association of citizens, such as a letter of guarantee of the owner of the premises, a rental agreement, and so on.

The application for registering a local CO is supposed to be reviewed within three days of the receipt of the documents. The decision to register or reject an application is sent in written form to the applicant no later than the first working day after the decision was made.

Applications to register national or international COs are reviewed over a 30-day term.

Preparing such a package of documents without special legal knowledge is very difficult. Many organizations run into endless problems at precisely this stage. The greatest difficulties arise in the preparation of the CO's statute or provisions and in properly organizing and running the constituent assembly or convention or general meeting and formulating the minutes.

Given this, there is an urgent need to simplify the registration procedure. The main means of doing this is to shorten the list of documents that need to be submitted. Another option would be to approve standard statutes or provisions that individuals could use when setting up a CO.

Another serious problem is the "double" registration of community organizations. The registration procedure described earlier is in the association law. But when registering, organizations also have to consider the requirements of Art. 3 of the Law of Ukraine "On the registration of legal entities and physical entities that are entrepreneurs," which states that an association of citizens can only gain legal status from the moment of its registration with the state according to a procedure in this Law. Moreover, this procedure applies to all legal entities.

In short, in addition to registering with the Ministry of Justice, COs also have to be in the state registry.

Setting up a philanthropic organization

Art. 8 of the philanthropy law, *a philanthropic or charitable organization gains its rights as a legal entity from the moment of its state registration.*

The process of registering a PO with the state is largely similar to the process of state registration for a CO.

State registration of national and international POs is handled by the Ministry of Justice, while local charitable organizations, branches, affiliates and representa-

tive offices of national and international POs are registered with local executive bodies, according to Art. 8.

Art. 8 also states that POs pay a fee whose amount cannot be more than three untaxed minimum wages for state registration.

To register with the state, POs must submit a number of documents:

- an application by the founder(s) or their proxies;
- the statute or provision;
- the minutes of the constituent assembly, convention or meeting;
- information about the founder(s) and the managing bodies of the charitable organization. For legal entities, **documentary confirmation of their assets**, which will allow the founders to establish their share of participation in these legal entities.
- information about local branches, affiliates or representative offices of the charitable organization;
- a document confirming that the fee for state registration has been paid.

Art. 12 of the PO law requires that the statute or provision of the PO provide:

- the name, location, status and legal form of the charitable organization;
- the subject, goals, objectives and basic form of charitable activity;
- the procedure for setting up the managing bodies of the PO and their activities;
- sources of funding and the procedure for using property and monies in the philanthropic organization;
- the procedure for changing the statute or provisions of the philanthropic organization;
- the procedure for reorganizing or shutting down the philanthropic organization, using its property and monies in the case where it is wound down;
- the conditions and procedure for joining and leaving the charitable organization;
- the rights and obligations of members of the philanthropic organization.

Just as with COs, this list of documents is too burdensome. Local individuals typically run into difficulties when drawing up the statutes, minutes, and so on.

According to Art. 8 of the PO Law, the timeframe for registering a PO is longer than the timeframe for other forms of community organizations. The application for state registration of a philanthropic organization is reviewed over a 60-day period from the day that all the necessary documents have been received. Meanwhile, the body that does state registration could choose to check the information contained in the documents submitted.

A registered PO is entered into the register of charitable organizations, which is done by the body responsible for the state registry, which issues a related number.

A closer look at the procedures here makes it clear that the process of registering a PO is too long and burdened with requirements for too many different documents.

Setting up an ad-hoc community organization

The procedure for setting up an BSP begins with the **initiative to set up** an ad-hoc community organization. Art. 8 of the BSP Law states that *“an assembly or convention of residents of a territory, provided that at least half of the voting residents of that territory participated or were represented, can apply with an initiative to set up a body of self-organization of population to their village, town, city or city district council.”*

In short, the law establishes fairly strict conditions regarding the number of members of a community that may make the decision to set up an BSP. To establish the presence of the necessary number, a list of participants in the assembly or convention must be prepared, participants need to be registered, and so on.

The decision of the assembly or convention is adopted by a majority vote by its participants, according to Art. 8 of the BSP Law. After the decision is passed, *“the initiative group submits an application to form an ad-hoc community organization, the minutes of the assembly or convention of residents of the territory to initiate the establishment of the body of self-organization of population indicating its main areas of activity, and a list of all the participants at the assembly or convention, indicating their names, surnames and patronymics, date of birth, passport serial number, and home address, to the village, town, city or city district council.”*

Art. 9 of the BSP Law states that

“Permission to establish an body of self-organization of population is granted by the village, town, city or city district council. The council decision to permit the setting up of an body of self-organization of population must indicate its name, its main areas of activity, its powers and the conditions for exercising them, and the territory within which the body of self-organization of population is to operate.”

Once a positive decision has been made regarding the setting up of the BSP, the **procedure for electing the body of self-organization of population takes place**. Art. 10 of the BSP Law regulates this procedure by providing that:

1. *The body of self-organization of population is elected by an assembly or convention of residents of the territory based on a general, equal electoral right by secret ballot cast by residents who are legitimately domiciled on the given territory.*
2. *The organization of the assembly or convention of residents of the territory is normally the responsibility of the executive body of the village, town, city or city district council.*
3. *The election of the body of self-organization of population includes a chair, a deputy chair or chairs, a secretary, and other members. Those individuals who obtained a*

simple majority of the votes cast by participants in the assembly or convention who reside on the given territory are considered elected to the body of self-organization of population .

In addition, once the relevant council has approved the setting up of the BSP, a further assembly or convention of residents **approve the Provision** on the body of self-organization of population . Art. 12 of the BSP Law states that the Provision should indicate:

- 1) the name and legal address of the body of self-organization of population;*
- 2) the main objectives and areas of activity of the body of self-organization of population;*
- 3) the rights and obligations of members of the body of self-organization of population;*
- 4) the territory within which the body of self-organization of population operates;*
- 5) the term of the body of self-organization of population 's powers and the procedure for terminating them ahead of term;*
- 6) the procedure for using funds and other property and for reporting;*
- 7) the procedure for terminating the activity of the body of self-organization of population;*
- 8) other issues related to the activity of the body of self-organization of population.*

Once these procedures are completed, the BSP is legalized. Art. 13 establishes the procedure for legalizing an BSP:

- 1. Legalizing the body of self-organization of population is mandatory and is done by registering it or announcing its establishment. If registered, the body of self-organization of population is granted the status of a legal entity.*
- 2. The registration of an body of self-organization of population is handled by the executive committee of the relevant council (further, registering body).*
- 3. To register an body of self-organization of population empowered by an assembly or convention of domiciled residents, their representatives submit an application to the registering body. The application to register an ac-hoc community body should be accompanied by:*
 - 1) a copy of the decision of the relevant council to permit the setting up of the body of self-organization of population ;*
 - 2) the minutes of the assembly or convention of domiciled residents with the decision to elect members of the body of self-organization of population and the individuals elected, the decision to approve the provision, and the decision to elect authorized representatives to carry out the registration of the body of self-organization of population ;*
 - 3) two copies of the provision approved at the assembly or convention of domiciled residents;*

4) a list of members of the body of self-organization of population , stating surname, name and patronymic, date of birth and domicile.

4. The application to register an body of self-organization of population is reviewed by the registering body within 30 days from the day that all the necessary documents are received, in accordance with this Law.

As with community organizations, BSPs can also establish themselves legally through a simple written announcement. Such an announcement is presented to the relevant executive committee of a village, town, city or city district council, according to Art. 13 of the BSP Law.

A closer look at the procedures here makes it clear that the process of registering an BSP is the most complicated, compared to other forms of community organizations. When this is added to its other drawbacks, the BSP appears unattractive in terms of its usefulness to members of a community to carry out local development projects.

Setting up an association of co-owners of multi-apartment building

A constituent assembly is called to establish an ACMB. Art. 6 of the ACMB Law regulates the procedure for calling and running such an assembly:

"A constituent assembly is called by the owner of a building or an initiative group that consists of at least three owners of apartments or non-residential premises. Notice of the constituent assembly is sent by the owner of the building or the initiative group no later than 14 days prior to the date of the constituent assembly. Notice is sent in writing and delivered to every owner by hand or by mail via recommended letter. The notice of the constituent assembly indicates whose initiative it was to call the assembly, the place and time of the assembly, and a draft agenda.

"The time and place of the assembly is selected based on what will be most convenient for the majority of potential participants.

...

"Every owner at the constituent assembly has a single vote, regardless of the space or number of apartments or premises in their possession.

"Decisions are adopted by a roll-call vote. Decisions are recorded in the minutes along with the results of the vote (ayes and nays) and signed personally by every individual who voted.

"Decisions are considered passed if at least two thirds of those present with a right to vote voted on the issue.

"Constituent assemblies are legitimate if 50%+1 of all owners is present."

Constituent assemblies adopt the decision to establish an association and approve its status. Art. 7 of the ACMB Law, the statute of the association is based on the Standard Statute that is approved by a specially-authorized central executive body (CEB) responsible for urban development and housing policy. The statute should indicate:

the name and location of the association;

the purpose for setting up the association and its objectives and areas of activity;

a list of the property that is in common joint ownership (common property) and the rights and obligations of members of the association with regard to this property;

a list of the property that is in common partial ownership (public property) and the rights and obligations of members of the association with regard to this property;

the statutory bodies of the association, their powers and the procedure for forming them;

the procedure for calling and running general assemblies;

the periodicity of assemblies;

the procedure for voting at assemblies and adopting decisions;

a list of issues whose resolution requires a qualified majority of the vote;

sources of funding and the procedure for using association property and monies;

the procedure for adopting an estimate, the formation and utilization of association funds, including reserve funds, and the procedure for paying for joint expenditures;

the procedure and conditions for drawing up contracts between the association and every owner of an apartment or premises;

a list of issues that may be decided by meetings of representatives;

the procedure for joining the association and leaving it;

the rights and obligations of members of the association;

liability for violating the statutes and decisions of statutory bodies;

the procedure for amending the statute;

grounds and procedures for winding down, reorganizing (merging, breaking up) an association and deciding property issues related to this."

An association is considered established as soon as a certificate has been issued confirming its state registration. The state registration of ACMBs is regulated by the registration law.

To register with the state, a number of documents need to be submitted to the state registry, according to Art. 24 of the registration law:

a completed registration card for state registration of legal entities;

a duplicate of the original or a notarized copy of the founders' decision to establish a legal entity;

two copies of the statutory documents;

a document that confirms the payment of the registration fee for state registration of a legal entity.

Here, state registration is handled on a "one-stop shop" basis and normally takes three working days.

Setting up a cooperative

Art. 7 of the Co-op Law regulates the procedure for setting up a co-op. It states that:

A cooperative is formed by its founders on a voluntary basis.

The decision to set up a cooperative is made at a constituent assembly.

All decisions of the constituent assembly are recorded in the minutes, which are signed by the chair and secretary of the assembly.

The number of members in a cooperative cannot be fewer than three individuals.

During the formation of the cooperative, a list of members and associated members of the cooperative should be formed and approved at a general assembly.

Art. 8 of the Co-op Law requires that the constituent assembly approve the statute of the cooperative and that it include:

the name of the cooperative, the type of cooperative, and its location;

the purpose of setting up the cooperative and a complete list of its potential activities;

a list of its founders;

the conditions and procedure for joining the cooperative and leaving or being excluded from it;

the rights and obligations of members and associated members of the cooperative;

the procedure for amending the statute of the cooperative;

the procedure for establishing the size and payment of contributions and share by members of the cooperative and the penalty for not upholding the obligation to pay;

the ways that members of the cooperative may be involved in its activities;

the procedure for forming the management and oversight bodies of the cooperative and their members and competencies and the procedure for decision-making by these bodies, especially those issues that must be decided either unanimously or by a qualified majority of the votes of members of the cooperative present at the general assembly;

the procedure for forming, utilizing and disposing of cooperative property;

the procedure for distributing cooperative income and covering losses;

the procedure for accounting and reporting in the cooperative;

the procedure for restructuring and winding down the cooperative and dealing with property issues related to this;

the procedure for calling a general assembly;

the conditions and procedure for returning a share

The state registration of a cooperative follows the procedure provided in the registration law. Art. 24 of this law requires that these documents accompany a request to be registered:

a completed registration card for state registration of legal entities;

a duplicate of the original or a notarized copy of the founders' decision to establish a legal entity;

two copies of the statutory documents;

a document that confirms the payment of the registration fee for state registration of a legal entity.

Here, state registration is handled on a "one-stop shop" basis and normally takes three working days.

Institutional barriers

Previous experience running UNDP and other international agencies' projects suggests that in practice, Ukrainians run into a number of barriers in the process of trying to register their own organizations:

- The complexity and duration of the procedures for registering a CO, especially preparing and collecting documents, opening bank accounts for legal entities, and preparing and submitting reports for oversight bodies. This becomes especially burdensome for communities with not a very high level of legal awareness, especially rural communities.
- To register a CO, there must be statutes for the organization. Yet a statute is a fairly complicated document that requires considerable preparation, special knowledge and skills, and the integration of a large quantity of information that often has no direct relationship to the functioning of the organization itself. At the same time, the statute determines all the key questions regarding a community organization's activities, so that any error or gap at this stage could have a negative impact on the future work of the CO. Drafting the statute typically causes problems in the process of getting an organization up and running and thus leads to additional costs on the services of a lawyer.
- Activities connected to the registration and launch of a CO require additional spending. In practice, depending on the legal form of the CO and the conditions under which it is registered, overall costs to set up a CO run between UAH 750 and UAH 2,000,⁶ or US \$100-250, although registration itself is virtually free. This adds to the difficulty of setting up a CO, given that the funds needed represent a considerable outlay for poorer communities, especially rural ones, that needs to be collected somehow even prior to the functioning of the organization, that is, on someone's word.
- The process of registering and operating a CO can also be complicated by its non-profit status and the related indicators for the non-profit code. Complications can arise both due to the ignorance of the CO's representatives and due to deliberate actions on the part of tax officials. The most simplified reporting requirements for the tax administration apply if the organization is

⁶ This represents a month's wages in most smaller communities. UAH 750 is the basic monthly pension today.

registered as a Code 006 for non-profit indicators. Still, practice shows that it is quite common for tax administration officials influence the registration process and for a CO to be placed under a very different code, 0011. This then means the CO has to pay profit tax on any funding assistance it receives.

Community-local government cooperation and engagement in local development planning

The UNDP project “Community-based approach to local development” called for special bodies to be set up in the territorial administrative units covered by the program to foster cooperation between local communities and their local governments. Such support institutions included local development forums at the rayon level and regional coordinating councils at the oblast level. At the start of the project, 209 local development forums were set up and 25 regional coordinating councils.

Local development forums were established via instructions from the rayon state administrators in each rayon that was involved in the “Community-based approach to local development” project. Typically, these consisted of officials from the rayon state administration, chairs of village or town councils, and the management of the CO. The purpose of these local development forums was to foster dialog and cooperation between the local government and its community and to include community development priorities in the rayon socio-economic development plans.

Regional coordinating councils typically consist of rayon local development forums, the chairs of oblast councils, and oblast state administrators. Their purpose is to ensure the coordination of local development projects at the oblast level and to foster the integration of community development priorities contained in rayon socio-economic development plans in oblast socio-economic development plans.

Regulatory framework

In terms of on legislated norms, the most options for cooperating with local government are offered by the body of self-organization of population (BSP). The BSP Law offers three main mechanisms for cooperation:

- **The right to submit proposals.** These may be submitted to local socio-economic and cultural development programs being drafted by the relevant territorial administrative unit and draft local budgets. Art. 14 of the BSP law states that such proposals must be reviewed by the relevant councils.
- **Delegated powers.** The related councils can delegate some of their powers to BSPs along with the additional funding and logistical and other resources necessary to exercise these powers, and oversee their execution. Art. 15 of the BSP Law thus ensures joint participation in resolving local development problems.
- **The right to participate in sessions.** This right to participate in the sessions of related local councils and their executive bodies, especially when issues initiated by the body of self-organization of population are under discussion,

is provided for in Art. 27 of the BSP Law, along with the right to a non-binding vote.

Some of the instruments for cooperation between the community and its government are provided by the local government law: the local referendum, the town meeting, local initiatives, and public hearings.

The local referendum

Art. 7 of the local government law states that:

1. *The local referendum is a form for the local community to resolve locally significant issues through a direct vote.*
2. *The subject of a local referendum may be any question that the Constitution of Ukraine, this law and other laws have defined as belonging to the local government.*
3. *Decisions adopted by local referendum are binding throughout the particular territory.*

The procedure for running a local referendum is overly complicated and costly, which is why it makes no sense to use it for minor local development issues.

Town meeting

Art. 8 of the local government law states that *"A town meeting of domiciled citizens is a form of direct participation in resolving locally significant issues."*

Decisions by a town meeting have to be taken into account by local government bodies in their activities, according to Art. 8. The procedure for running a town meeting of domiciled citizens is established in this Law and **in the statute of the territorial community**.

Art. 9 of the local government law, *"members of the local community have the right to initiate the review of any matter that is in the local government's purview, in the form of a local initiative."* The procedure for submitting a local initiative for review by a council is established by the local elected government body or by the **statute of the territorial community**. A local initiative that has been submitted for review to a council in the established order is **subject to mandatory review** at an open session of the council with the participation of the initiative group that raised the particular local initiative.

Public hearings

Art. 13 of the local government law states that *"the territorial community has the right to run a public hearing, that is, to meet with the deputies of the relevant council and local government officials, during which members of the community can listen to them, raise questions and present proposals on local issues that are within the purview of the local government."*

"Proposals submitted after a public hearing are subject to mandatory review by local government bodies. The procedure for organizing public hearings is set in the statute of the territorial community."

The basic drawback with all these mechanisms is the lack of suitable regulation of their application. As can be seen from the discussion further, these issues are primarily regulated through the statutes of territorial communities. The problem is that the statutes of different territorial communities can vary considerably. Moreover, not all communities even have one, because the local government law allows communities to have such a document without making it mandatory.

Thus, Art. 19 of the local government law states that *"in order to reflect the historic, ethnic, socio-economic and other characteristics of local government in action, local representative bodies may adopt a statute for the territorial community of a village, town or city, in accordance with the Constitution and within the limits of this Law."*

Regardless of the chosen form of community organization, a community can cooperate with its government using such mechanisms as:

- public consultations on issues of forming and enacting state policy;
- community councils.

The functioning of these mechanisms is governed by Cabinet of Ministers Resolution №996 dated 03 November 2010.

Point 2 in the Procedure for organizing public consultations on forming state policy, which was approved by Cabinet Resolution №996, states that, *"public consultations are held in order to engage the community in the management of state affairs, to provide the opportunity to have open access to information about the activities of executive bodies, and to ensure the consensus, openness and transparency of the work of these bodies."*

The Procedure gives community organizations and other non-commercial societies and institutions legalized in accordance with Ukrainian law the right to *"initiate the holding of public consultations on issues not included on the preliminary plan, by submitting such a proposition to the community council or directly to an executive body."*

Point 7 of the Procedure states that: *"If proposals to hold public consultations on a single issue have come from at least three civil society institutions that operate in that particular territory, holding such public consultations becomes mandatory."*

Community councils

The Standard Provision approved by Cabinet Resolution №996 states that a community council *"is a permanent collegial elected consultatory body, set up to support the participation of citizens in managing state affairs and exercising public oversight of the work of executive bodies, to establish effective interactions between the designated bodies and the public, and to take public opinion into account when forming and enacting public policy."*

One of the functions of community councils, according to Sec. 8, Point 4 of the Standard Provision, is to *"organize public events to discuss current issues in the development of a particular branch or territorial administrative unit."* In other words, such councils can and should be active participants in local development processes.

To carry out their functions, Point 5 of the Standard Provision grants community councils have the right to:

- 1) set up permanent and temporary working bodies such as boards, secretariats, committees, commissions, expert groups, and so on;
- 2) engage staff from executive bodies and local government bodies, representatives of national and international expert and scholarly organizations, enterprises, institutions and organizations, with the approval of their management, and individual specialists, in this work;
- 3) organize and hold seminars, conferences, roundtables and other events;
- 4) receive the information necessary to ensure the council's proper functioning, in the established procedure, from executive bodies and local government bodies;
- 5) receive draft legislation on issues that require public consultations from the body.

Members of the community council have the right to access, in the established procedure, to premises in which the body presides.

A community council may include, through election, representatives of community, religious and philanthropic organizations, labor and professional unions and associations, arts unions and associations, employer associations, non-state media and other non-entrepreneurial societies and institutions, which have been legalized in accordance with Ukrainian law (further, civil society institutions or CSI).

Point 7 of the Standard Provision states that a community council is formed at its constituent assembly by preferential voting for candidates who have voluntarily expressed a desire to participate in the work of the community council and been nominated by civil society institutions.

Institutional barriers

The experience of UNDP projects and the practice of engaging communities in local development planning suggest that there are obstacles to more sustainable and productive cooperation between communities and their local governments, such as:

- The real options and financial powers of local governments to support the development of its territorial units are quite limited, given that local government bodies do not have properly independent budgets and when they delegate powers at the local level, they cannot provide the necessary funding. This narrows down the options for local governments to fund community projects and, conversely, the ability of communities to influence local development.
- The implementation of community projects can only be planned on the basis of financial support from local governments within the framework of the budgetary year, which is typically shorter than a calendar for local governments. This is because state and local budgets are generally approved well into the next cycle.

- Funding for development spending is generally available only in the final quarter of the year, which makes the planning and implementation of development projects very difficult, even within the context of a single year.
- The mechanism of public hearings provided for in Ukrainian law is often used by local governments in a very declarative fashion, without actually ensuring the necessary participation of communities in the local development planning process. This is partly due to the complicated procedure for holding public hearings and partly with the strictly consultative nature of their decisions, that is, they are not binding on local governments. Experts on UNDP and other international projects have noted that, for this mechanism to really work, clear institutional frameworks need to be established and both the participation of communities in the debate and the format of this participation, especially the question of a quorum, need to be regulated.
- Ukrainian legislation and current practice around it do not provide an effective mechanism for engaging communities in planning local development at the rayon and oblast level. The UNDP initiated the use of such instruments of cooperation between communities and their local governments as regional coordination councils at the oblast level and local development forums at the rayon level because of the lack of framework legislative provisions. Provisions for local development forums were approved on an individual basis at the rayon level. In practice, local development forums and regional coordinating councils proved effective as workable mechanisms for dialog between the community and its local government. They offer the best and most mutually convenient format of cooperation, allowing communities to directly influence decisions by local governments and governments to know the positions of their communities on local development issues and to gain their support. These conclusions are supported by data from a survey by KIIS: 93% of the government officials and local government officials polled said that local development forums are effective while 85% of those polled found oblast coordinating councils effective. What is more, the instruments launched by UNDP for cooperation between communities and local governments have been widely disseminated, and are actively used today even by territorial administrative units who were not involved in UNDP projects.
- There is no single procedure for preparing and implementing socio-economic development plans for a settlement. This complicates the local development planning process and limits the participation of communities in it.
- Budget funding is not tied to territorial unit development plans. As a result, the measures proposed in such plans have no budget backing, which reduces the effectiveness of local development planning.
- The grassroots or bottom-up mechanism of planning has no legislative or institutional support. Experts from international organizations point to the lack of a single mechanism that would link all development plans: from community organization plans to development plans at the settlement, rayon and oblast levels. Still, the results of a KIIS poll showed that 76% of government and local government officials polled said that the development priorities of

pilot communities were at least partly taken into account in the rayon or city development plan.

Carrying out and funding community projects

The UNDP–EU “Community-based approach to local development” project supports community projects on a co-funding basis, meaning that 5% comes from the community, 45% from the local budget and 50% from the CBA project. The actual structure of funding community projects is more like this: 44.5% contributed by local budgets, including 12.1% from village or city budgets, 29.6% from rayon budgets, and 2.8% from oblast budgets. COs on average contribute 7.1% while the CBA project contributes on average 46.9%. Communities have also been able to persuade the private sector to co-fund their own initiatives, for an average of 1.4%. The overall value of all community projects that were carried out under the CBA project was nearly UAH 196.3mn.

Regulatory framework

A key condition for the successful completion of development projects by a community is the capacity of the CO to raise funds and to use it to fund projects. The sources of funding for COs that are allowed in Ukrainian law can be broken up into three groups:

- internal funds from commercial activities;
- contributions and donations in various forms from legal and physical entities;
- budget money.

Income from economic activity

Ukrainian law allows raising funds to be raised through commercial activities for certain types of community organizations: COs, POs, co-ops, and ACMBs. Ad hoc community bodies, by contrast, have no right to engage in commercial activities.

Art. 24 of the association law states, *“For the purpose of carrying out its statutory objectives and goals, registered associations of citizens may carry out any necessary economic and other commercial activities by setting up self-financing entities and organizations with the status of legal entities or starting up companies in accordance with the law.”*

Meanwhile, Art. 21 states that community organizations *“also have the right to own property and **funds gained through economic and other commercial activities** by self-financing entities and organizations or companies set up by them.”*

According to Art. 20 of the PO Law, a philanthropic organization may undertake commercial activities intended to reach its statutory goals and objectives.

Art. 19 of the co-op law states that cooperative property may be acquired from two main sources:

"funds that come from carrying on commercial activities;

"funds that come from companies, entities or organizations formed by the cooperative."

The right of an ACMB to carry on commercial activities is enshrined in Art. 16 of the ACMB Law, which states that an association has the right, in accordance with the law and its own statutes *"to undertake any necessary commercial activity necessary to fulfill its statutory objectives, in the procedure established by law."*

In carrying on economic activities, Art. 24 of the association law states that community organizations are *"obligated to carry out operational and financial accounting and statistical reporting, to register with the state tax administration, and to contribute to the budget payments in the order and amount provided for by law."*

Contributions and donations from legal and physical entities

Contributions and donations can roughly be divided into two groups:

- regular contributions by members of a community organization (membership dues);
- voluntary, non-refundable contributions that are not made on a regular basis, such as charitable donations.

According to Ukrainian law, community organizations, cooperatives and ACMBs have the right to collect regular contributions or dues from their members.

All types of community organizations, without exception, have the right to obtain "non-regular" voluntary contributions from legal and physical entities.

Thus, Art. 21 of the association law states that *"Associations of citizens gain the right to own funds and other property that has been transferred to them by the founders, members or participants, or the state, acquired from initiation and membership dues, donations by individuals, enterprises, institutions and organizations, and property acquired for its own money or on other terms not prohibited by law."*

Art. 19 of the PO Law states that the property and funds of philanthropic organizations can be *"charitable contributions and donations that are targeted in nature (philanthropic grants), given by physical and legal entities in cash or in kind."*

For cooperatives, the right to get contributions and donations in different forms is provided in Art. 19 of the co-op law, in accordance with which:

"Sources for acquiring property for a cooperative are:

***initiation, membership and targeted dues** from its members, shares and extra shares;*

property voluntarily transferred to the cooperative by its members;

funds that come from carrying on commercial activities;

funds that come from the cooperative's setting up enterprises, institutions or organizations;

cash and in kind donations, charitable contributions, grants, gratis technical assistance from legal and physical entities, including foreign ones.”

The right of ACBAs to collect membership dues and receive voluntary donations is provided for in Art. 21 of the ACMB Law, in accordance with which, an association's funds can consist of:

“statutory contributions, mandatory association membership fees;

voluntary property, including monetary, contributions by physical and legal entities.”

ACOs do not have a right to collect membership dues, although Art. 16 of the ACO Law states the basis for such an organizations to be funded can be *“voluntary contributions by physical and legal entities.”*

All this leads to the conclusion that special legislative acts that regulate the activities of various forms of community organizations do not contain significant restrictions regarding the taking of membership or voluntary contributions.

Still, such limitations are present in tax legislation. The rules of the Tax Code do not always free voluntary contributions and donations received by community organizations of tax liabilities.

The procedure for taxing a non-profit organization is established in Art. 157 of the Tax Code. Information about what kinds of organizations and which type of income are not subject to taxes can be found in the table below.

Form of community organization	Income not subject to taxes
Community organization (CO), philanthropic organization (PO)	<ul style="list-style-type: none"> • Funds or property that comes at no cost or in the form of on-refundable financial assistance or voluntary donations; • Passive revenues; • Funds or property that received as a result of the basic activities of such non-profit organizations; • Grants or subsidies received from the state or local budget, state targeted funds or in the context of technical or charitable assistance, including humanitarian, other than grants to regulate prices for paid services that are provided by such non-profit organizations or through them to their beneficiaries, in accordance with legislation intended to reduce the level of such prices. <p>(Art. 157.3, Tax Code)</p>
ACMB	<p>Contributions, funds or property that come to such non-profit organizations to cover the needs of their primary activities and in the form of passive revenues.</p> <p>(Art. 157.8, Tax Code)</p>
Cooperative (non-commercial) ACO	<ul style="list-style-type: none"> • One-time or regular contributions, contributions by founders or members; • Funds or property that come to such non-profit organizations to cover the needs of their primary activities and in the form of passive revenues; • Grants or subsidies received from the state or local budget, state targeted funds or in the context of technical or charitable assistance, including humanitarian, other than grants to regulate prices for paid services that are provided by such non-profit organizations or through them to their beneficiaries, in accordance with legislation intended to reduce the level of such prices. <p>(Art. 157.5, Tax Code)</p>

From the table, it can be seen that membership dues collected by community organizations are subject to taxation. Moreover, this norm in the Tax Code has

been written vaguely. This means that community organizations that collect dues from their members are forced to call them "non-refundable financial assistance" or "voluntary donations," which are essentially not equivalent to "membership dues."

Another problem arises because the taxation of non-profit organizations is largely regulated at the sub-legislative level by the State Tax Service. One of the main instruments of such regulation is assigning non-profit organizations a code indicating its non-profit status. Such a code is assigned after state registration, when the organization is taken on the rolls in Tax Service offices.

Members of an association of citizens cannot always properly determine which code they need to indicate when submitting their documents to tax offices. Being assigned the wrong code is a major risk for such organizations, the result of which can be that all their income in monetary form will be fully taxed.

Budget funds

Community organizations can obtain public funding through:

- state procurements of works or services;
- the social procurement mechanism;
- funding in the context of privileged programs set up by government bodies and local government bodies.

State procurements are organized in accordance with the norms of Law of Ukraine №2289-VI "On state procurements" dated 01 June 2010 (further, procurement law).

Art. 2 of the procurement law states that this Law *"applies to all procurers and all purchases of goods, works and services that fully or in part are at public cost, on condition that the value of the subject of the purchase of good(s) or service(s) is at least UAH 100,000 and the purchase of works is at least UAH 300,000."*

The current procedures for state procurement are overly complicated and financially burdensome for smaller community organizations. In practice, therefore, applying them leads to many problems. Still, given the designated norm, government bodies can now order services from community organizations that are not worth over UAH 100,000 without going through a tender.

Getting public funds in the context of a social procurement is regulated by Law of Ukraine №966-IV "On social services" dated 19 June 2003 (further, social services law).

From the point-of-view of undertaking local development projects, the mechanism for funding social services is not very acceptable as social services are services aimed at satisfying the needs of specific vulnerable groups of the population and not at the needs of an entire community.

In addition, Art. 17 of the social services law contains limitations for persons who provide such services. Such individuals should satisfy qualifying requirements

and undergo testing in the procedure established by the relevant central executive bodies (CEBs).

Yet another option for getting funding from local budgets is the financial support provided to COs to carry out social and socio-economic projects and targeted programs. This kind of support can be given if the relevant budget has such an allocation.

Organizations are selected competitively for such support. Moreover, there is no single procedure for running such competitions. Procedures for using State Budget funds under one program or another are approved during the year by the Cabinet of Ministers. There is an entire series of Cabinet resolutions in effect regarding: calls for projects for children, youth, women and families; the procedure for using money from the Ministry of Culture and Tourism under certain programs; the procedure for community organizations to carry out measures to provide social protection to those who have suffered as a result of the Chernobyl disaster; the procedure for using funds to carry out informational measures on European and Euroatlantic integration; the procedure for using funds to provide financial support to community organizations of invalids, community organizations of veterans, and so on.

An example of this is the Procedure for holding a competitive selection of projects and programs to inform the public on European integration issues, prepared by community organizations, which was approved by Cabinet of Ministers Resolution №956 dated 30 October 2008.

Local budget funding is provided on a competitive basis, following procedures that are approved by local government bodies. In different regions, these procedures may vary considerably. An example of such a normative act is the L'viv City Council's Program for funding community organizations to undertake socio-cultural projects, passed by L'viv City Council Approval №2521 dated 19 March 2009.

Typically, funding to support the implementation of socio-cultural projects is given to community organizations in the established procedure by:

- transferring funds to the community organization's current account at a bank that was established and operates in Ukraine in accordance with current Ukrainian law, upon the signing of protocols of completion of works;
- transferring funds to an account of the community organization that has been opened with the State Treasury of Ukraine, after the community organization has been granted the status of a recipient of public funds.

Being assigned status as a recipient of budget funds places considerable demands and restrictions on a community organization. Among others, such an organization is forced to comply with many requirements for Treasury services, which are established in normative acts issued by the Treasury. Moreover, recipients of Budget funds are subject to mandatory oversight by the State Financial Inspection, called the Main Control and Review Administration until December 2010.

However, Ukrainian law does provide for a very interesting instrument to fund COs, although it is not yet very widespread.

This instrument is called **self-assessment**, a way to raise money from the local community to fund events of a one-time, targeted, social and community-oriented nature and on a voluntary basis, upon decision of an assembly of domiciled residents.

Institutional barriers

Experts from UNDP and other international projects have put together four basic sources of funding for communities that want to implement development projects:

- donor organizations
- donations from business, individuals and community organizations
- membership dues to community organizations
- the State Budget

From the practical point-of-view, for a CO to raise and use funds from the first two sources does not entail any serious complications. The main problem that arises in getting funding from donor organizations, business, individuals and other community organizations is the process of registering a CO, when non-profit tax status is confirmed. This issue is detailed in an earlier section, "Registering a community organization."

The nature of fundraising for COs in the form of membership dues is such that, in order to avoid being taxed, such dues are collected on a voluntary basis as "non-refundable financial assistance." Although this is a completely lawful way of raising budget funds for community organizations, such dues remain unrecognized. Sometimes, a CO's statutes deliberately include an item on the non-binding nature of membership dues.

In practice, the most difficult aspect of running a CO has proved to be raising budget funds. The problem is that Ukrainian law makes it impossible to get direct funding for the activities of community organizations from local budgets. Because of this, experts have come up with two main approaches to raising funds for community projects:

- **Spending money from local governments to implement a project.** This approach means using budget money to directly pay contractors for goods or services that are necessary to complete the community project.
- **Funding through special Treasury accounts.** These are opened for the CO and the formal sole manager of the money on the account is a local government body.

The current regulatory framework presents a number of key drawbacks to possible sources of public funding of community projects:

- The community is nominally excluded from the process of acquiring goods or services, which carries risks of corruption.
- The procedure for selecting contractors for state procurements is highly time-consuming and bureaucratized.
- COs are subject to complicated, burdensome reporting to oversight bodies on the use of budget funds.
- Access to money is complicated and funds can be held up for weeks, or even months, effectively holding up the project itself.
- Budget funding is tied to the calendar year, making it impossible to transfer the balance of funds to the following calendar year.

Managing property generated by a community project

Once a CO has successfully completed a development project, the problem often arises of how to handle property that was generated or renovated during the course of the project. This problem is typically handled by transferring the newly-created property to the community. Thus, from the beginning of the UNDP – EU CBA project, a total of 1,303 assets were generated or renovated by community projects and transferred to local councils.

At the same time, the idea of sustainable development at the local level that the CBA project upholds requires the active participation of members of the community in managing the newly-constructed or renovated assets. One possible mechanism for such involvement would be for community organizations to set up a fund for the support of viable assets, where some of the money of these community organizations will be set aside for the purpose of maintaining and ongoing repairs to property that has been constructed or renovated by a community project. In fact, during the course of the CBA project, community organizations set up 1,029 support funds for viable assets.

Regulatory framework

Ukrainian law allows community organizations to be involved in the management of community property. Still, in practice, all the available means of doing so are not especially acceptable in terms of a community undertaking local development projects.

Typically, the community is faced with one of these two questions regarding property management:

- how the property generated by the community can be transferred to public ownership for its ongoing maintenance and servicing;
- how the community itself can undertake the ongoing servicing of the property, such as renovating schools, hospitals, and so on, when it is public property.

In the first instance, serious problems often arise, as current legislation does not provide a clear and transparent procedure for community organizations to transfer property to public ownership. The existing procedures are convoluted and often entail considerable costs.

As to providing for the maintenance of the property, the necessary relationships can be regulated by service agreements. However, in this instance, the relationship between community organizations and local governments are governed by legislation on state procurements, which immediately raises numberless problems and barriers.

According to current legislation, the issue of common management/ownership of property can be decided using such mechanisms as concessions, property management, investment projects, and public-private partnerships. However, they are typically applied in those cases where someone stands to gain commercially, which is, on principle, not acceptable for the purposes of local development projects.

Notably, for certain forms of community organization, the law provides especially effective mechanisms for participating in asset management, that is, the ACO. Ukrainian law directly allows for a given council to transfer property for operational management to an ACO. However, ACOs themselves have no practical means of raising funds for the purpose, as they are not legal entities.

Institutional barriers

If a project's goal was to renovate a public property, the main questions that arise once it is completed are:

- how to maintain the renovated property in a suitable state;
- how to set up public oversight over the intended use of the property.

To maintain the community's influence over a property that is in public ownership but was renovated through a development project, one possible solution is to set up a supervisory board consisting of members of community organizations, local government bodies and local executive bodies to oversee the condition of the property, its maintenance and servicing.

If the project planned to construct or acquire a property, after it ends, a slew of questions arise in relation to the right to own the new property:

- UNDP, GTZ and SDC project experts are inclined to think that it is not the purpose of a CO to directly maintain and manage properties. Moreover, this kind of activity could prove burdensome for the community because the CO does not have a sustainable institutional base and stable sources of funding. This is particularly true of situations where the maintenance and servicing needed for a property generated by a community project requires considerable work and costs.
- Transferring an asset to public ownership or setting up a community enterprise to maintain and service a property is a long and difficult process with

a large number of administrative requirements with regard to the property itself.

- Transferring a property into the management of a commercial entity is possible, provided that the property can generate income that can ensure its ongoing operation. For instance, a water supply system generates revenue in the form of payments for the supply of water.

Recommendations for enabling a community-based approach to local development (CBA)

State policy in Ukraine treats local development exclusively as the responsibility of local governments, that is, the representative bodies of the respective territorial communities. Still, both state and local government bodies frequently lack the capacity and resources to properly take on such commitments. At the same time, Ukraine has not set up sufficiently supportive conditions for its communities to participate directly in local development processes. The importance and effectiveness of this participation has been amply proved by the successful work of the UN Development Programme in Ukraine in promoting the community-based approach to local development (CBA).

The options for communities to organize and take active part in local development processes need to be enshrined in law in such a way that they supplement, rather than duplicate the functions of local governments. This will provide the conditions for the most effective cooperation between local governments and their communities in dealing with local development issues.

A closer look at the conditions for instituting community-based approaches to local development and the experience of UNDP programs in Ukraine indicates that there are substantial obstacles to the more active participation of communities in local development processes. There are three possible ways to remove these obstacles: pinpoint changes to current legislation, a new version of the Law "On bodies of self-organization of population" or the adoption of a new Law "On local development."

Pinpoint changes of current legislation could remove specific obstacles to local development, but they will not make it possible to comprehensively deal with problems in this area. Adopting a new version of the Law "On bodies of self-organization of population" to considerably expand the powers of the current form of community organization, bodies of self-organization of population, seems the optimal way to set up a holistic system for engaging communities in local development processes. Still, such changes could also seriously restrict the way bodies of self-organization of population currently function. Adopting a new Law "On local development" that would provide for community organizations as a targeted form of non-profit organization for communities to organize themselves is an alternative means to comprehensively remove the obstacles to instituting a community-based approach to local development. This option would not in any way restrict the functioning of existing forms of non-profit organizations, but it is more complicated from the political point-of-view.

Obstacle	Recommendation	Means
<p>None of the forms of community organization currently legislated offers all the necessary options for communities to be most actively engaged in the local development process.</p>	<p>Adjust the setting up of various types of organizations communities to:</p> <ul style="list-style-type: none"> • be as simple as possible to set up; • offer the most options for carrying on non-profit economic activities; • provide the most opportunities to interact and cooperate with local governments. <p>For this purpose, the conditions of registering and carrying on economic activity that has been legislated for cooperatives can be used, as well as those ways of interacting with government bodies that current legislation offers bodies of self-organization of population and public organizations.</p>	<p>There are two options:</p> <ul style="list-style-type: none"> • expanding the powers of bodies of self-organization of population by amending the Law “On bodies of self-organization of population;” • establishing a targeted form of non-profit organization for community organizations by adopting a new version of the Law “On local development.”
<p>Preparing the documents necessary to register all forms of community organizations requires considerable outlays of time and money.</p>	<p>Simplify the process of preparing documents to register a community organization by legislating a standard statute for such organizations. This statute should contain three main requirements of such organizations:</p> <ul style="list-style-type: none"> • At town meetings to decide basic issues tied to community participation in local development, no less than 80% of domiciled households should be represented, that is, at least one representative per household. • The same level of representativeness is necessary to set up a community organization, that is, at least one representative from no less than 80% of households. • At the assemblies of a community organization at which basic issues around its activities are decided, no less than 80% of its members must be present. 	<p>A Cabinet Resolution approves the Standard Provision</p>
	<p>Remove the requirement to provide notarized copies of documents for the purpose of registering a community organization should be removed, which would considerably reduce the outlays tied to such registration.</p>	<p>Amend Art. 24 of the Law of Ukraine “On the registration of legal entities and physical entities that are entrepreneurs”</p>

Obstacle	Recommendation	Means
<p>Current mechanisms for communities and local governments to cooperate and the engagement of the community in developing plans and adopting policies at the local level do not guarantee that the community's positions will actually be taken into account.</p>	<p>Make it mandatory to review decisions passed at a public hearing at the next local council session. This should make it impossible to ignore community positions that were formalized as a resolution at a public hearing.</p>	<p>Rewrite Art. 13 of the Law of Ukraine "On local government" to read: <i>"Propositions that are passed as resolutions at a public hearing must be reviewed by local government bodies at their next session."</i></p>
	<p>Extend the rule about mandatory review at a local council session to decisions passed by an assembly of a community organization, given that, by its nature, such an organization is an authorized representative of the community.</p>	<p>Include such a rule in the new version of the Law "On bodies of self-organization of population" or in the new Law "On local development."</p>
	<p>Grant representatives of community organizations to be present at local council meetings and have the right to a non-binding vote.</p>	<ul style="list-style-type: none"> • If a new version of the BSP law is adopted, maintain the current rule to ensure that bodies of self-organization of population are granted this right. • Ensure that any new Law "On local development" that is adopted includes this rule.
	<p>Extend the mechanism of public consultations that are binding on CEBs to local government bodies as well.</p>	<p>Change the Procedure for holding public consultations on formulating and implementing public policy that was approved by Cabinet Resolution №996 dated 03 November 2010.</p>
	<p>Bind local government bodies to set up a coordinating body on local development issues at the demand of community organizations: a local development forum at the rayon level and a coordinating council at the oblast level.</p>	<p>Provide for the necessary rule in the new version of the Law "On bodies of self-organization of population" or in the new Law "On local development." Regulate procedural matters in a separate Cabinet Resolution</p>
	<p>Provide for the setting up of Community Organization Resource & Information Centers as sub-units of all local state administrations.</p>	<p>Amend the recommended list of administrations, departments and other sub-units of local state administrations that were approved in Cabinet Resolution №996 dated 01 August 2007.</p>
<p>None of the current legislated forms for registering community organizations offers the possibility of receiving money from all permissible sources of funding unhampered and tax-free.</p>	<p>Provide for community organizations to be able to receive untaxable funds from certain sources: membership dues, non-refundable financial assistance, commercial activities that are not profit-oriented.</p>	<p>Amend Art. 157 of the Tax Code of Ukraine.</p>
	<p>Regulate the mechanism for running competitions for NGO projects, which is currently regulated by local legislative acts at the city and oblast level, at the national level and extend it to community organization projects.</p>	<p>Pass a Cabinet Resolution approving a standard procedure for running such competitions.</p>

Obstacle	Recommendation	Means
The outcomes of community projects can prove unsustainable because community participation in maintaining and servicing properties generated or renovated by such projects is not properly regulated.	Require local government bodies to receive property generated by community organizations on their balance if the latter have indicated an intention to transfer it and to ensure all possible support for this process.	Change the Law of Ukraine “On local government in Ukraine.”
	Regulate all issues around community organizations’ setting up support funds to keep property viable, keeping their accounts going with funding from the community and using them to cover the maintenance and servicing of such properties that were generated or renovated by the community in a standard statute for community organizations.	Pass a Cabinet Resolution approving a standard statute.

Annex 1.

List of reports from international LD TA projects

1. Report on the Municipal Management and Sustainable Development Program, UNDP Ukraine, December 2006.
2. The Swiss-Ukrainian Support for Decentralization Project Six-month report, February-June 2010.
3. Project Document №13, Reforming Local Taxes for GTZ 's "Reforming public administration in Ukraine" project.
4. Project Document №17 Feedback on the Draft Bill "On the foundations of regional policy," GTZ's Reforming Public Administration in Ukraine project.
5. Project Document №19 Feedback on the Concept and Bill on Administrative Territorial Reform in Ukraine, GTZ's Reforming Public Administration in Ukraine project.
6. Project Document №21 Fiscal Decentralization in Ukraine: The fiscal system and the need to reform it, GTZ's Reforming Public Administration in Ukraine project.
7. Report on "Cooperation between communities and local governments: The EU/UNDP Community-Based Approaches to Local Development Project in Khmelnytsk Oblast," UNDP Ukraine.
8. Report on "Applying CBA in Ivano-Frankivsk Oblast," UNDP Ukraine.
9. Report on "The development of local communities in Luhansk Oblast: Cooperating with the EU/UNDP CBA Project," UNDP Ukraine.
10. Report on "CBA in Mykolayiv Oblast," UNDP Ukraine.
11. Report on "Social mobilization of communities in Cherkasy Oblast: Cooperating with the EU/UNDP CBA Project," UNDP Ukraine.
12. Report on "Implementing the EU/UNDP CBA Project in Chernihiv Oblast," UNDP Ukraine.
13. Report on "Instituting community-based approaches to local development under the joint EU – UNDP CBA Project in Kherson Oblast," UNDP Ukraine.
14. Report on "Mobilizing communities in Sumy Oblast: Together works better," UNDP Ukraine.
15. Report on the Zakarpattia Oblast State Administration and the Zakarpattia Oblast Council on documenting community development based on partnership, UNDP Ukraine.

16. Report on "Zaporizhzhia Communities: From indifference to independent development," UNDP Ukraine.
17. Report documenting the application of CBA in Donetsk Oblast, UNDP Ukraine.
18. Report documenting the application of CBA in Vinnytsia Oblast, UNDP Ukraine.
19. Report documenting the application of CBA in Cherkasy Oblast, UNDP Ukraine.

Annex 2.

List of local development experts surveyed

1. *Aider Seimosmanov*, advisor on regional development, Crimea Development and Integration Program, United Nations Development Programme in Ukraine (UNDP Ukraine).
2. *Anatoliy Tkachuk*, President, Association of Regional Development Agencies of Ukraine (ARDA).
3. *Vadym Proshko*, Executive Director, The Mayors' Club, an All-Ukrainian Community Organization.
4. *Hanna Brovaya*, community mobilization specialist, Luhansk Oblast, Community-Based Approach to Local Development (CBA) Project, UNDP Ukraine.
5. *Yevhen Fyshko*, First Vice-President, ARDA.
6. *Ihor Stefaniv*, community mobilization specialist, Ternopil Oblast, CBA Project, UNDP Ukraine.
7. *Iryna Skaliy*, Project Manager, Municipal Management and Sustainable Development Program, UNDP Ukraine.
8. *Iryna Shcherbyna*, General Director, Institute of Budgets and Socio-Economic Studies.
9. *Liudmyla Shynkarenko*, community mobilization specialist, Donetsk Oblast, CBA Project, UNDP Ukraine.
10. *Natalia Byeliukina*, community mobilization specialist, Kyiv Oblast, CBA Project, UNDP Ukraine.
11. *Olena Lytvynenko*, program manager, DESPRO, the Swiss-Ukrainian Support for Decentralization in Ukraine Project.
12. *Yuriy Hanushchak*, budget specialist, Association of Cities of Ukraine.

Annex 3.

List of primary documents regulating CBA

1. Constitution of Ukraine
2. Budget Code of Ukraine
3. Tax Code of Ukraine
4. Commercial Code of Ukraine

Laws of Ukraine

5. Law of Ukraine "On local government in Ukraine"
6. Law of Ukraine "On ratifying the European Local Development Charter"
7. Law of Ukraine "On service in local government bodies"
8. Law of Ukraine "On local state administrations"
9. Law of Ukraine "On cooperatives"
10. Law of Ukraine "On philanthropy and philanthropic organizations"
11. Law of Ukraine "On associations of citizens"
1. Law of Ukraine "On bodies of self-organization of population"
5. Law of Ukraine "On associations of local government bodies"
6. Law of Ukraine "On association of co-owners of multi-apartment building"
7. Law of Ukraine "On national and local referenda"
8. Law of Ukraine "On land planning and development"
9. Law of Ukraine "On state forecasting and development of economic and social development plans in Ukraine"
10. Law of Ukraine "On the foundations of regulatory policy on economic activity"
11. Law of Ukraine "On social services"
12. Law of Ukraine "On concessions"
13. Law of Ukraine "On stimulating regional development"
14. Law of Ukraine "On cross-border cooperation"
15. Law of Ukraine "On the procedure for illuminating the activities of government bodies and local government bodies in Ukraine through the media"
16. Law of Ukraine "On public-private partnerships"
17. Law of Ukraine "On state procurements"

Decrees of the President of Ukraine

26. Presidential Decree "On a concept for state regional policy"
27. Presidential Decree "On state support for the development of local government in Ukraine"

Acts of the Cabinet of Ministers of Ukraine

28. Cabinet Instruction "On measures to fulfill the State Support for the Development of Local Government in Ukraine Program"
29. Cabinet Instruction "On measures to carry out the Concept of State Regional Policy"
30. Concept for a Program of Legislative Support for the Development of Local Government" (approved by Cabinet)
31. Cabinet Resolution "Approving the Provision on the procedure for recognizing associations of citizens"
32. Cabinet Resolution "Approving the Procedure for engaging individual citizens in the formation and implementation of state policy"
33. Procedure for holding a competitive selection of projects and public information programs on European integration issues presented by community organizations, approved by Cabinet Resolution №956 dated 30 October 2008
34. Standard Provision, approved by Cabinet Resolution №996 dated 03 November 2010
35. Procedure for holding public consultations on the formation and implementation of state policy, approved by Cabinet Resolution №996 dated 03 November 2010