

# OGP: The Guide to Opening Government

An Enabling Environment for  
Civil Society Organizations



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This report has been authored by Margaret Scotti on behalf of ICNL at the request of OGP. The content and opinions contained herein are attributed to ICNL alone, and do not necessarily reflect the views of OGP.

# Introduction

In the **Open Government Declaration**, OGP countries pledge to protect civil society organizations (CSOs) in their pursuit to become more transparent, more accountable, and more responsive to their own citizens.<sup>1</sup> CSOs are indispensable to fulfilling OGP's vision of improved governance and improved quality of services. This chapter aims to support governments in their efforts to live up to their commitment to protect and enable CSOs.

*"We commit to protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion."<sup>2</sup>*

An enabling environment for CSOs protects and promotes the exercise of the freedom of association. Freedom of association is the cornerstone of an effective civil society as it allows people to come together to improve their lives, communities, and the world at large. It enables citizen participation and advocacy, including working collectively towards open and responsive governance. Basic protections for civil liberties, which include the freedom of association, are also part of the criteria for membership in the OGP.<sup>3</sup>

*"We commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses."<sup>4</sup>*

CSOs are important partners in the OGP, including in the design, implementation, and monitoring of national action plans; participation in multi-stakeholder mechanisms such as the Permanent Dialogue; and awareness-raising among citizens about the OGP and its achievements.

An enabling legal and policy environment for CSOs not only safeguards the freedom of association afforded to all individuals, it also promotes CSOs' ability to maximize their impact. Through their work within and beyond the OGP, CSOs

enhance transparency, promote citizen engagement, and hold governments accountable to their obligations. They contribute valuable expertise and channel citizen demands in topics of the OGP's focus, such as elections, public services, and consumer protection.

The illustrative commitments in this chapter provide a range of steps for governments to make legal environments more conducive to the formation and operation of CSOs. As in all the chapters of the Open Government Guide, these steps are categorized as "initial," "intermediate," "advanced," and "innovative," creating a flexible framework for promoting an enabling environment for CSOs, based broadly on the current progress of most OGP member countries in this area.

## What is a CSO?

This chapter uses the definition of CSO provided by Lester M. Salamon, Director of the Johns Hopkins University Center for Civil Society Studies: CSOs are **"organizations," "private," "non profit distributing," "self-governing,"** and **"voluntary"**:

1. **Organizations** "have some structure and regularity in their operations, whether or not they are formally constituted or legally registered." Rather than having a legal identity, the key attribute is having "some organizational permanence and regularity as reflected in regular meetings, a membership, and/or some structure of procedures for taking decisions that participants recognize as legitimate." Therefore, an informal group that has some structure and regular meetings would likely be considered a CSO, while a one-off protest would not constitute a CSO.
2. **Private** means the organization is "not part of the apparatus of the state." The definition therefore excludes government-organized non-governmental organizations (GONGOs), such as organizations established by the government through special laws. However, CSOs "may receive support from governmental sources," while still remaining private.
3. **Non profit distributing** requires that an organization does not have a "primarily commercial" purpose and does "not distribute profits to a set of directors, stockholders, or managers." CSOs "can generate profits in the course of their

<sup>1</sup> See section "Support civic participation" of the Open Government Declaration, <http://www.opengovpartnership.org/about/open-government-declaration>

<sup>2</sup> <http://www.opengovpartnership.org/about/open-government-declaration>

<sup>3</sup> "Open Government requires openness to citizen participation and engagement in policymaking and governance, including basic protections for civil liberties." Open Government Partnership: Eligibility Criteria, at: <http://www.opengovpartnership.org/how-it-works/eligibility-criteria>

<sup>4</sup> <http://www.opengovpartnership.org/about/open-government-declaration>

operations, but any such profits must be plowed back into the objectives of the organization.”

- **Self-governing** requires that CSOs “have their own mechanisms for internal governance, are able to cease operations on their own authority, and are fundamentally in control of their own affairs.”
- **Voluntary** means that membership in CSOs “is not legally required or otherwise compulsory.”<sup>5</sup>

## What are legitimate constraints on the freedom of association? The three-part test

All OGP commitments or initiatives that relate to CSOs should, at minimum, reflect the international standard for the freedom of association, as set by Article 22 of the International Covenant on Civil and Political Rights (ICCPR). The freedom of association may only be restricted if restrictions are:

1. Prescribed by law, meaning that restrictions have a formal basis in the law and are sufficiently precise for a CSO to predict whether its conduct would violate the law.
2. Pursuant to a closed list of legitimate interests under international law: national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. These interests

<sup>5</sup> Lester M. Salamon, S. Wojciech Sokolowski and Regina List, *Global Civil Society: An Overview*, The Johns Hopkins Comparative Nonprofit Sector Project (Institute for Policy Studies, The Johns Hopkins University 2003), pp. 7-8.

notably do not include national sovereignty, general national interests, or the harmonization or coordination of CSO activities with government priorities. “National security” must be strictly construed to protect a nation’s existence or independence; it may not be invoked for local or isolated threats to law and order.

3. Necessary in a democratic society, which amounts to a proportionality test between the restriction and the legitimate aim pursued.<sup>6</sup> “Necessary” does not “have the flexibility of terms such as ‘useful’ or ‘convenient’”; rather “there must be a ‘pressing social need’ for the interference.”<sup>7</sup> A restrictive measure must “fall within the limit of what is acceptable in a ‘democratic society’”—the state may not “undermine the very existence” of the attributes of a democratic society, including “pluralism, tolerance, and broadmindedness.”<sup>8</sup>

<sup>6</sup> For more information on this three part-test for justifying restrictions on the freedom of association, see “Defending Civil Society Report,” International Center for Not-for-Profit Law and World Movement for Democracy (2nd Ed., June 2012), pp. 31-33, at: [http://www.defendingcivilsociety.org/dl/reports/DCS\\_Report\\_Second\\_Edition\\_English.pdf](http://www.defendingcivilsociety.org/dl/reports/DCS_Report_Second_Edition_English.pdf)

<sup>7</sup> United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (hereinafter “Maina Kiai”), para. 17, UN Doc. A/HRC/20/27 (May 21, 2012) at: [http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf) (quoting OSCE/Office for Democratic Institutions and Human Rights (ODIHR), Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations, para. 5).

<sup>8</sup> Maina Kiai, para. 17, UN Doc. A/HRC/20/27 (May 21, 2012) at: [http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf) (quoting European Court of Human Rights, *Handyside v. the United Kingdom*, application No. 5493/72, 7 December 1976, para. 49).

# Expert Organisations

The organizations listed below are among those that work on civic space issues and could be leveraged as a resource when developing related commitments

[International Center for Not-for-Profit Law](#)

[European Center for Not-for-Profit Law](#)

[Former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai \(May 1, 2011–April 30 2017\)](#)

[Current UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Annalisa Ciampi \(May 1, 2017–present\)](#)

[CIVICUS World Alliance for Citizen Participation](#)

[Organization for Security and Co-operation in Europe \(OSCE\)/Office for Democratic Institutions and Human Rights \(ODIHR\)](#)

# Overview of Illustrative Commitments

Below are a range of illustrative commitments to promote an enabling environment for CSOs. These commitments are categorized from “Initial” to “Innovative,” and include fundamental rights followed by good and best practices. *Please see the end of this Chapter on guidance for implementation of these illustrative commitments.*

*Through Law, Regulation, and Practice:*

## Initial

- Allow unregistered organizations to operate freely.
- Register CSOs within set time limits, only denying registration on clear grounds that are legitimate under international law.
- Allow CSOs to pursue any not-for-profit activity that is legitimate under international law.
- Make suspension or involuntary dissolution of a CSO a “last resort,” done only by independent courts on clear grounds that are legitimate under international law.

## Intermediate

- Make registration of a CSO quick and easy.
- Allow access to international resources.
- Provide safeguards against undue supervision of CSOs.
- Ensure that CSOs can easily access basic tax exemptions.
- Promote impartial, apolitical and consistent application of laws and regulations that affect CSOs.

## Advanced

- Provide tax benefits and other incentives to promote individual and corporate donations to CSOs.
- Establish mechanisms for a wide range of CSOs to access government grants and contracts.
- Establish a strategy for the development of the CSO sector and for CSO-government relations.
- Bolster CSO engagement in all levels of government decision-making.

## Innovative

- Establish advanced resourcing and support mechanisms for CSOs.
- Establish a notification procedure for registration.
- Strengthen privacy protections of CSOs and their affiliates, particularly with regard to communications over information and communications technology.

# Initial

## Allow unregistered organizations to operate freely

### Justification:

All individuals should be able to act collectively, make formal and informal groups, and freely carry out legitimate activities. The freedom of association equally protects registered and unregistered organizations;<sup>9</sup> the freedom of association cannot depend on registration or legal entity status.<sup>10</sup>

Informal and grassroots groups are an important part of a healthy civil society—they reflect the individual’s fundamental right to come together with other individuals.<sup>11</sup> Informal student groups, women’s groups, and activist networks work hand-in-hand with registered organizations to engage citizens and advocate for reform.

Informal organizations are especially important to a functioning civil society when registration is difficult or subject to arbitrary decision making, thereby allowing the state to marginalize dissenting groups.<sup>12</sup> Voluntary registration is therefore important for safeguarding pluralism in society.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. Registration of CSOs, including online associations, is voluntary in the law, and unregistered groups are not penalized for pursuing their missions.
2. “Everyone,”<sup>13</sup> regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” is guaranteed the right to freely form associations and without discrimination in the law and in practice.<sup>14</sup> The right also protects LGBTI individuals,

<sup>9</sup> Maina Kiai, para. 56, UN Doc. A/HRC/20/27 (May 21, 2012), at: [http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf).

<sup>10</sup> “Defending Civil Society Report,” International Center for Not-for-Profit Law and World Movement for Democracy (2nd Ed., June 2012), p. 37.

<sup>11</sup> OSCE/Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Association (2015), page 17, para 16, <http://www.osce.org/odihr/132371?download=true>.

<sup>12</sup> Maina Kiai, para. 56, UN Doc. A/HRC/20/27 (May 21, 2012), available at [http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freemovement.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf).

<sup>13</sup> United Nations International Covenant on Civil and Political Rights (hereinafter “ICCPR”), Article 22, December 16, 1966, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>14</sup> ICCPR, Article 2.

children, foreign nationals, women, migrant workers, minorities, and other members of marginalized groups.<sup>15</sup>

3. Unregistered CSOs are generally able to pursue their missions similar to registered CSOs, including being involved in political processes and delivering services.

### Standards & Guidance:

[International Covenant on Civil and Political Rights](#)

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Best Practices in Promoting the Rights to Freedom of Peaceful Assembly and of Association](#)

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Threats Against Groups Most at Risk When Exercising Assembly and Association Rights](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Defending Civil Society Report \(Second Edition\) by ICNL & World Movement for Democracy](#)

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

### Country Examples:

- **Almost two-thirds of the countries in the OGP**—such as Brazil, Chile, Moldova, Armenia, Bulgaria, and Mongolia, to name a few—allow unregistered CSOs to operate freely. While a few countries in the world have laws explicitly stating that registration is voluntary, more frequently CSO laws do not include a mandatory registration requirement and the state does not attempt to force organizations to register.
- The Associations Act (1999) of **Slovenia** affirms that “anybody” can be a member of an association and act in an association under equal conditions, even children under the age of seven years old. (Art. 5). Foreigners can found associations if they are permanent residents or temporary residents for a period of more than a year. (Art. 6).

<sup>15</sup> Maina Kiai, para. 17-18, UN Doc. A/HRC/26/29 (April 14, 2014), available at [http://freemovement.net/wp-content/uploads/2014/05/A-HRC-26-29\\_en1.pdf](http://freemovement.net/wp-content/uploads/2014/05/A-HRC-26-29_en1.pdf)

## Register CSOs within set time limits, only denying registration on clear grounds that are legitimate under international law.

### Justification:

All CSOs should be able to register and obtain legal entity status in a non-onerous, timely, and non-discriminatory basis. Legal entity status can help CSOs build institutional capacity and become more effective partners in national OGP mechanisms.

Unfortunately, CSOs are often subject to: lengthy delays in registration, re-registration requirements, unclear or arbitrary denial of registration, and no judicial avenues for appeal of denials. In many countries, groups working in human rights, governance, or on behalf of minority groups in society are disproportionately impacted by these measures.<sup>16</sup> Since 2012, about half of new proposed or enacted restrictions on CSOs concerned their registration or incorporation.<sup>17</sup>

A number of governments have legal provisions that provide vague grounds for denial of registration, such as “national security” and “public order,” without clear description of these grounds, while other grounds like “national interest” or “societal harmony” are not legitimate under international law. Any limitations may only be made in compliance with the three-part test for restrictions on the freedom of association. Some legitimate grounds for issuing a denial of registration could include: incomplete or incorrect documentation (after opportunity is given to correct the error); the name of the applicant is the same as another registered legal entity, which would breed confusion; or the CSO is formed for criminal or for-profit purposes.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. Registration bodies have strict time limits defined by the law for responding to registration applications.<sup>18</sup>
2. The number of founders needed to register an association is no more than 2 or 3 natural and/or legal persons.
3. Denial of registration is based only on clear and written grounds that pass the three-part test for restrictions on the freedom of association.

<sup>16</sup> Maina Kiai, paras. 10, 11, 60, UN Doc. A/HRC/26/29 (April 14, 2014).

<sup>17</sup> Douglas Rutzen, International Journal of Not-for-Profit Law / vol. 17, no. 1, March 2015 / 8, at <http://www.icnl.org/research/journal/vol17ss1/Rutzen.pdf>

<sup>18</sup> Maina Kiai, para. 60, UN Doc. A/HRC/20/27 (May 21, 2012).

4. CSOs have judicial avenues of appeal for denials of registration.
5. Registration is a one-time procedure; CSOs do not have to periodically re-register, or even re-register under a newly enacted law.

### Standards & Guidance:

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Best Practices in Promoting the Rights to Freedom of Peaceful Assembly and of Association](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Defending Civil Society Report \(Second Edition\) by ICNL & World Movement for Democracy](#)

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

### Country Example:

- Under **Serbia’s Law** on Associations, only three founders are required to register an organization. (Art. 10). A registration decision must be made within thirty days of submission of a completed entry application; if a decision is not made within that timeframe, the applicant organization is considered registered. (Art. 32). The entire registration process is generally completed within five days, with all necessary forms available online.<sup>19</sup> The Registrar can reject an application based on limited grounds that generally are not problematic under international law: (a) the association’s name is identical or similar to that of another association or is misleading as to its goals or organizational type; (b) the application was submitted by an unauthorized person; (c) the application or foundational charter was incomplete; (d) the association is secret or paramilitary; or (e) the association’s goals or operations are “aimed at the violent overthrow of the constitutional order, breach of the Republic of Serbia’s territorial integrity, violation of the guaranteed human or minority rights or incitement and instigation of inequalities, hatred and intolerance based on racial, national, religious or other affiliation or commitment as well as on gender, race, physical, mental or other characteristics and abilities.” (Arts. 30-31). For grounds (d) and (e), the Constitutional Court must review the Registrar’s proposal to terminate registration. (Art. 31).

<sup>19</sup> United States Agency for International Development, The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia, at 196, available at: [https://www.usaid.gov/sites/default/files/documents/1863/EuropeEurasia\\_FY2014\\_CSOSI\\_Report.pdf](https://www.usaid.gov/sites/default/files/documents/1863/EuropeEurasia_FY2014_CSOSI_Report.pdf)



## Allow CSOs to pursue any not-for-profit activity that is legitimate under international law.

### Justification:

An enabling legal environment for CSOs includes the presumption that their missions and activities are legal and legitimate. CSOs often initiate discussion and reform on sensitive issues in society or bring to light issues of which the public is not aware. Even if some discussions elicit tension in the society, the state has the duty “to ensure that everyone can peacefully express their views without any fear.”<sup>20</sup>

CSOs therefore need to be accorded the freedom to pursue a wide range of missions and activities, including advocacy and lobbying on issues of concern. For example, CSOs who participate in the OGP should be free to express their opinions and engage in campaigning to advance the right to information or undertake independent monitoring of public services—even if that includes criticism of the government’s actions.

The state has the responsibility of justifying any restrictions on CSO activities under the three-part test based on Article 22 of the ICCPR. The test ensures that restrictions uphold the freedom of association and maintain the pluralism and tolerance that are essential to a democratic society. The state also has the duty to protect CSOs, including human rights organizations, from the illegal actions of others, just as the state would protect individuals, businesses, and other legal entities: “It is crucial that individuals exercising this right [to freedom of association] are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence...”<sup>21</sup> The state should make every effort to investigate threats and crimes against CSOs and their affiliates.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. Both registered and unregistered CSOs are able to pursue a wide range of not-for-profit aims, including human rights, governance, advocacy, and the rights and welfare of vulnerable groups in society.
2. CSOs are free to work at all levels—local, regional, national, and international—as well as join with other coalitions and networks at these levels.<sup>22</sup> For example, a CSO’s

registration does not limit its operations to one geographical area in the country.

3. Any restrictions on CSO missions or activities are clearly stipulated and in line with international law.
4. CSOs are protected from threats and violence by non-state actors. CSOs are given protection by law enforcement, and illegal actions by non-state actors against CSOs are subject to criminal investigations.

### Standards & Guidance:

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Best Practices in Promoting the Rights to Freedom of Peaceful Assembly and of Association](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Defending Civil Society Report \(Second Edition\) by ICNL & World Movement for Democracy](#)

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

### Country Examples:

Decree 88 of 2011 in **Tunisia** specifies that associations have the right to, inter alia: “Access information”; “Evaluate the role of the State institutions and submit proposals to improve their performance”; “Organize meetings, demonstrations, conferences, workshops and *all types of civil activities*”; and “Publish reports and information, print leaflets, and conduct opinion polls.” (Art. 5, emphasis added). Furthermore, “The public authorities are prohibited from directly or indirectly impeding or hampering the activity of an association.” (Art. 6.)

In **Latvia**, the 2003 Associations and Foundations Law provides that “an association or foundation has the right to carry out activities which are not contrary to law, especially to freely distribute information on its activities, create its own press publications and other mass media, organise meetings, marches and demonstrations, and other public activities... In regard to questions relating to the objective of the activities of an association or foundation, the association or foundation...may go to court and defend the rights or legally protected interests of its members.” (Art. 10.)

<sup>20</sup> Maina Kiai, para. 64, UN Doc. A/HRC/20/27 (May 21, 2012).

<sup>21</sup> Maina Kiai, para. 63, UN Doc. A/HRC/20/27 (May 21, 2012).

<sup>22</sup> OSCE/Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Association (2015), page 22-23 (Principle 4), <http://www.osce.org/odihr/13237?download=true>.

## Make suspension and involuntary dissolution of a CSO a “last resort,” done only by independent courts on clear, legitimate grounds.

### Justification:

Laws, regulations, and practices should encourage CSOs to pursue their missions—including human rights and good governance—without fear of arbitrary suspension or involuntary dissolution of their organizations.

Suspension and involuntary dissolution are the harshest measures that could be taken against a CSO. Because the right to freedom of association applies to the entire lifecycle of an association, application of these measures must be in compliance with international law.<sup>23</sup> Similar to denials of registration, the grounds for suspension or involuntary dissolution found in many countries can be unclear, inappropriate under international law, or provide much discretion to regulatory authorities.

Specifically, due to the seriousness of suspension and involuntary dissolution, according to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, they should only be used when:

- “[T]here is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law”;
- The measures to be taken are “strictly proportional to the legitimate aim pursued [national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others]”; and
- “[S]ofter measures would be insufficient.”<sup>24</sup>

To safeguard the rights of CSOs, suspension or involuntary dissolution should only be done on the order of an independent court.<sup>25</sup>

### Recommendations:

*Through Law, Regulation, and Practice:*

1. Grounds for suspension and involuntary dissolution are narrow and clear in the law so that CSOs can foresee when suspension and involuntary dissolution are likely measures to be taken.
2. The grounds for suspension and involuntary dissolution comport with international law. Application of these measures

is limited to the most extreme violations of the law, rather than minor breaches.

3. Administrative measures first aim to correct the situation, such as through warnings or fines.<sup>26</sup>
4. The law provides for suspension and dissolution only by the order of an independent court.

### Standards & Guidance:

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Best Practices in Promoting the Rights to Freedom of Peaceful Assembly and of Association](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Defending Civil Society Report \(Second Edition\) by ICNL & World Movement for Democracy](#)

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

### Country Examples:

- The 2003 Associations and Foundations Law of **Latvia**, the activities of an association may be terminated only based on a court decision and after having received a written warning to remedy a violation. The grounds for termination include: if the association’s operations contradict “the Constitution, laws or other regulatory enactments”; a for-profit business operation has become the main operations of the association; and “other cases as provided for by law.” (Sect. 57).
- Decree 88 of 2011 in **Tunisia** provides a notable process for suspension and involuntary dissolution of an association. Violation of certain provisions subjects associations to a three-part procedure. First, the government warns the association of the necessity to remedy the violation within a period of thirty days. If the violation is not remedied within that time period, the government may petition a Court of First Instance to suspend the association for no more than thirty days. The association can judicially appeal a suspension decision. If the violation persists following warning and suspension, the government or a concerned person may request the Court of First Instance to dissolve the association. The dissolution may only occur after the association has the opportunity to exhaust all appeals. (Art. 45)

<sup>23</sup> Maina Kiai, para. 75, UN Doc. A/HRC/20/27 (May 21, 2012).

<sup>24</sup> Maina Kiai, para. 75, UN Doc. A/HRC/20/27 (May 21, 2012).

<sup>25</sup> Maina Kiai, para. 76, UN Doc. A/HRC/20/27 (May 21, 2012).

<sup>26</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 14, developed by the Baltic Civil Society Development Network, the European Center for Not-for-Profit Law and ICNL, based on good practices and observations in the Western Balkans and Turkey.

# Intermediate

## Make registration of a CSO quick and easy.

### Justification:

An easy and fast registration process facilitates the right of CSOs to form legal entities and relieves administrative burdens on CSOs. Government regulators can also benefit from imposing a simple process. Easy registration can lead to a more professionalized sector, with more capacity to contribute to public services and increased citizen engagement in OGP mechanisms.

There are a number of best practices to improve the registration of CSOs. Furthermore, states are called upon to provide equitable treatment between businesses and CSOs.<sup>27</sup> In many countries, the ease of registration of business entities can therefore be a good benchmark for the registration of CSOs.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. Registration decisions are made quickly, for example, between five and thirty days.<sup>28</sup>
2. Registration is not any more burdensome for a CSO than it is for businesses or other types of legal entities.
3. Registration is facilitated for groups outside of main cities, for example, through an online registration process.
4. Registration fees and associated costs are free, or at least are not burdensome compared to the average living standard in the country.
5. The needed documentation for registration does not require a lengthy or difficult process to compile and does not demand sensitive personal information of founders, such as personal or familial assets. The government has considered the steps that a CSO needs to take in order to retrieve all of the needed documents.
6. A quick and easy registration procedure for umbrella organizations, such as networks of associations, is also provided.

<sup>27</sup> Maina Kiai, para. 17, UN Doc. A/70/266 (August 4, 2015).

<sup>28</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 12.

### Standards & Guidance:

OSCE/ODIHR: Joint Guidelines on Freedom of Association

Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit

Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Comparing States' Treatment of Businesses and Associations Worldwide

### Country Example:

**Chile's** system for registration is relatively inexpensive and quick. A CSO must present its articles of incorporation in a public instrument (certified by a notary public) or private legal instrument (not certified by a notary public). The CSO then has 30 days to file a copy of the articles of incorporation with the Office of the Municipal Secretary in the jurisdiction where the organization is being established. The Municipal Secretary has 30 days to object in writing based on noncompliance with a legal requirement; once this period has elapsed without observation, it is understood that no objection exists and the CSO's legal personality is registered in the Civil Registry. More than one-third of CSOs report that they had "zero" cost in obtaining legal personality.<sup>29</sup>

In 2017 the government in **Honduras** took steps to improve CSO registration, including piloting a new online system for CSO registration, simplifying forms, and reducing required documentation. With support from ICNL, the government also conducted training for: registry personnel as well as officials of the Secretariat of Human Rights, Justice, Interior, and Decentralization; the Unit for Registration of Civil Associations; the Secretariats of Finance, Foreign Relations and International Cooperation, and Development and Social Inclusion; and the Supreme Court on the freedom of association and how it limits their discretion in dealing with CSOs.

<sup>29</sup> Jocelyn Nieva & Claudia Guadamuz, *Challenges and Opportunities to Promote More Enabling Environments for Civil Society Organizations: A Look at Six Latin American Countries* (October 2015), available at: <http://www.icnl.org/programs/lac/Challenges%20and%20Opportunities%20English%20Master%20Copy.pdf>

## Allow access to international resources.

### Justification:

The freedom of association includes the ability of CSOs to seek, receive, and use financial, material, and human resources, including those that are of international origin.<sup>30</sup> For example, CSOs should not be required to obtain government approval to access international funds, or stigmatized by the government because they utilize international resources.<sup>31</sup>

International resources have empowered CSOs to work in many areas pertinent to the OGP, such as anti-corruption initiatives, fair electoral processes, accountable governance, and transparency in various sectors such as the extractive industries and construction. International resources include funding, as well as international exchange and training that often lead to innovative projects and public policies. OGP mechanisms and CSO participation in the OGP would not even be possible without international support. International resources are especially critical in countries where domestic resources for CSOs—especially those working in advocacy-oriented areas pertinent to the OGP—are scarce due to their lack of popularity in the public.

With regard to accessing and utilizing international resources, governments should treat the CSO and corporate sectors equitably. While money laundering or terrorist financing are global concerns, states should “...avoid measures that disproportionately target or burden civil society organizations, such as imposing onerous vetting rules, procedures or other CSO-specific requirements not applied to the corporate sector writ large.”<sup>32</sup> Various types of reporting, such as publishing lists of donors and amounts of donations received on organization websites, should be encouraged as part of good self-regulation practices, rather than legally mandated, due to privacy concerns of donors and their recipients, particularly in relation to advocacy organizations or organizations that represent marginalized groups.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. CSOs can access international resources without the need for registration, prior government approval of the resource (including through the registration of donors), or channelling of funding through a state-controlled entity.

<sup>30</sup> Maina Kiai, para. 8, U.N. Doc. A/HRC/23/39 (24 April 2013).

<sup>31</sup> Maina Kiai, para. 20, U.N. Doc. A/HRC/23/39 (24 April 2013).

<sup>32</sup> Id. at para. 8.

2. CSOs are not subject to restrictions on their work, such as on advocacy or human rights activities, due to their use of international resources.<sup>33</sup>
3. Measures to mitigate risks of money laundering or terrorist financing are generally included in criminal and banking laws and apply to all individuals and legal entities, but do not target CSOs specifically.
4. The government refrains from stigmatizing or engaging in negative rhetoric, labelling, or campaigns against CSOs that receive international resources.
5. Any reporting requirements imposed by the government for accessing international funding: have a clear legal basis; are justified as proportionate to legitimate aims under international law (with consideration of the size and scope of different types of organizations); and are not more burdensome or invasive for CSOs than for other legal entities.

### Standards & Guidance:

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Civil Society’s Right to Seek, Receive and Use Resources—Human, Material, and Financial](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Defending Civil Society Report \(Second Edition\) by ICNL & World Movement for Democracy](#)

[Good Practices in Applying Financial Action Task Force Standards](#)

[Best Practices: Combating the Abuse of Non-Profit Organisations \(Recommendation 8\)](#)

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

### Country Examples:

- **The vast majority of countries in the OGP**—such as Argentina, Guatemala, the Czech Republic, Macedonia, El Salvador, Mexico, Malawi, South Africa, Ghana, and Kenya, to name a few—do not require CSOs to obtain governmental approval or go through special registration processes in order to access international funding.

<sup>33</sup> United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 70, UN Doc. A/HRC/20/27 (May 21, 2012) at [http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf)

## Provide safeguards against undue supervision of CSOs.

### Justification:

CSO representatives, both individually and through their organizations, have the right to privacy under the ICCPR.<sup>34</sup> This essential right enables CSOs to pursue their missions freely without perceiving the need to self-censor or avoid attention from the government. While prevention of illegal operations or public harm by any legal entity are legitimate concerns, CSOs should not be subject to random inspections and searches, ad hoc demands for information, burdensome or invasive reporting requirements, or arbitrary interference in their governance. Respecting CSOs' right to privacy in law and in practice can also encourage CSOs to demonstrate transparency—rather than avoiding government attention—as well as promote trust between CSOs and government.

A degree of oversight over CSOs is prudent in the interests of transparency and enforcement of laws, but governmental oversight should be reasonably restrained based on a principle of minimal state interference. Any oversight and supervision should have a clear legal basis and be proportionate to legitimate aims under international law. Oversight of CSOs should not be more invasive than that of businesses and other legal entities.<sup>35</sup>

Furthermore, CSOs have the right to operate free from undue government interference in their internal governance and affairs.<sup>36</sup> For example, “authorities should not be entitled to... condition any decisions and activities of [a CSO]; condition the validity of board members' decisions on the presence of a Government representative at the board meeting ... and enter [a CSO's] premises without advance notice.”<sup>37</sup>

For more information on privacy, please also visit the chapter on [Privacy and data protection](#).

### Recommendations:

*Through Law, Regulation, and Practice:*

1. The law clearly defines the scope and powers of bodies regulating CSOs, including powers of inspection.

<sup>34</sup> See “Defending Civil Society Report,” International Center for Not-for-Profit Law and World Movement for Democracy (2nd Ed., June 2012), p. 6.

<sup>35</sup> OSCE/ODIHR, Guidelines on Freedom of Association (17 December 2014), para. 228.

<sup>36</sup> “Defending Civil Society Report,” International Center for Not-for-Profit Law and World Movement for Democracy (2nd Ed., June 2012), p. 6.

<sup>37</sup> United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 65, UN Doc. A/HRC/20/27 (May 21, 2012) at [http://freemassembly.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freemassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf)

2. CSOs are allowed to make decisions and determine their governance structures and leaders, without government interference through law or practice. Any governance requirements prescribed by law are proportional to the size and scope of different types of organizations.
3. Reporting requirements are proportional to the size and scope of different types of CSOs and are not more burdensome than for other legal entities. Mechanisms for online reporting to the government are considered in order to lessen administrative burdens.
4. CSOs are given due process protections with regard to inspections of premises or records, demands for information not required in laws or regulations, or interference in decision-making or activities.

### Standards & Guidance:

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Defending Civil Society Report \(Second Edition\) by ICNL & World Movement for Democracy](#)

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

## Ensure that CSOs can easily access basic tax exemptions.

### Justification:

All types of CSOs should be eligible for basic exemptions, such as on income tax from grants and donations, and able to access them through an easy and straightforward process. CSOs are not profit-driven—they do not distribute profit to their members or leaders, but rather allocate any surplus back to their missions. Furthermore, CSOs often serve special societal needs, both in terms of service provision and rights protection. Tax exemptions help such CSOs perform their missions and contribute to their financial sustainability.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. All CSOs are eligible for basic tax and fiscal exemptions, such as an exemption from income tax on grants and donations.
2. Tax treatment and eligibility requirements of CSOs are clear in the law and regulations in order to promote consistent and impartial tax treatment.

3. The process for receiving these tax exemptions is clear and not lengthy or onerous. An automatic exemption mechanism alongside the registration process is considered.
4. Any reporting requirements imposed by the government for accessing tax exemptions have a clear legal basis; are proportionate to legitimate aims under international law, with consideration of the size and scope of different types of organizations; and are not more burdensome or invasive for CSOs than for other legal entities.

### Standards & Guidance:

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

### Country Example:

In numerous countries, CSOs generally receive tax exemptions at least on income from donations, grants, and sources other than for-profit activity. As just a few examples: in **Bulgaria**, CSO income from donations, grants, and membership fees is tax-exempt;<sup>38</sup> in the **Philippines**, CSOs are exempt from income tax under the 1997 Tax Reform Code;<sup>39</sup> and in **Croatia**, CSOs are exempt from tax on income, including from foreign grants, donations, and even from for-profit activity as long as the Tax Administration does not find that the tax exemption would provide the CSO an “unjustified privileged position” in the market.<sup>40</sup>

In **Bulgaria**, CSO income from donations, grants, and membership fees is tax-exempt. These tax benefits are automatic upon registration, rather than requiring an application to tax authorities. If a CSO has not made any income from economic activity, it does not need to submit a tax return. Tax treatment, eligibility requirements, and associated reporting requirements of CSOs are clear in the tax laws. There is one reporting format that all registered CSOs undertaking activities must submit, though if a CSO has no activity to report, it just submits a declaration of inactivity.<sup>41</sup>

<sup>38</sup> United States Agency for International Development, *The 2016 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, at 64, available at: [https://www.usaid.gov/sites/default/files/documents/1866/CSOSI\\_Report\\_7-28-17.pdf](https://www.usaid.gov/sites/default/files/documents/1866/CSOSI_Report_7-28-17.pdf)

<sup>39</sup> United States Agency for International Development, *The 2016 CSO Sustainability Index for Asia*, at 39, available at: [https://www.usaid.gov/sites/default/files/documents/1868/2016\\_Asia\\_CSOSI\\_-\\_508.pdf](https://www.usaid.gov/sites/default/files/documents/1868/2016_Asia_CSOSI_-_508.pdf)

<sup>40</sup> Council on Foundations, *Country Notes, Croatia*, current as of October 2017, available at: [https://www.cof.org/content/croatia#Tax\\_laws](https://www.cof.org/content/croatia#Tax_laws)

<sup>41</sup> ICNL Alliance internal correspondence.

## Promote impartial, apolitical and consistent application of laws and regulations that affect CSOs.

### Justification:

Governments should work to ensure that authorities are following the laws and regulations governing CSOs and applying them consistently, apolitically, and impartially.

While laws and regulations on paper might be set to encourage a free and active civil society sector, government implementers might not always follow the legal framework, or apply the law only to certain groups. Such practice can lead to delays in registration, arbitrary interference in a CSO’s activity, or random inspections of an organization. Consistent and fair application of the law reflects the commitment of OGP countries to the rule of law and high standards of professional integrity, as stated in the [Open Government Declaration](#). How human rights organizations are treated under the law may be especially indicative of whether the law is being applied consistently and fairly.

Furthermore, in some countries, multiple bodies regulate CSOs or the implementers of CSO laws are not properly trained on the legal framework, increasing the risk of inconsistent application or interpretation of the law. Lack of clarity in the application of laws also makes it more difficult for CSOs to comply with their legal obligations. Consistent application of laws and regulations also can promote the trust of CSOs in the regulatory system and therefore promote greater transparency among CSOs.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. To the extent practicable, there is a limited number of governmental entities involved in registration and primary oversight of CSOs (such as reporting) in order to promote government efficiency and avoid inconsistent application of law.
2. Training and guidance is given to government implementers regarding the laws and regulations affecting CSOs and CSOs’ legal rights and obligations—including those working to defend human rights—in order to clarify ambiguities in implementation, ensure consistent procedure, and promote equal treatment under the law.
3. Government regulators are trained to apply the law without discrimination against human rights organizations and organizations representing marginalized groups, such as LGBT organizations, women’s rights organizations, and organizations of indigenous people.

4. Impartial complaints mechanisms, such as ombudsmen and human rights institutions, are easily available to CSOs in order to seek remedy for violations of their rights.<sup>42</sup>

### Standards & Guidance:

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Best Practices in Promoting the Rights to Freedom of Peaceful Assembly and of Association](#)

### Country Examples:

- In 2014, **Côte d'Ivoire** adopted a Law on the Promotion and Protection of Human Rights Defenders (HRDs), the first law in Africa to provide explicit protections to HRDs, one of the most threatened groups in many countries. The law reinforces that HRDs have the freedom of association, including access to resources and the right to submit information to international bodies. Importantly, it also requires the state to protect HRDs from attacks and investigate and prosecute attacks.<sup>43</sup> The regulations for the law were promulgated in 2017.
- As of 2012, it was reported that **Slovenia's** Ministry of Interior regularly supervised the work of its administrative units with regard to how they conduct registration and provided registration officers expert guidance on procedure and legal interpretation.<sup>44</sup>

<sup>42</sup> OSCE/Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on Freedom of Association* (2015), page 46, para. 121.

<sup>43</sup> International Service for Human Rights, *From restriction to protection: Research report on the legal environment for human rights defenders and the need for national laws to protect and promote their work* (November 2014), at 13, available at: <http://www.dlapiperprobono.com/export/sites/pro-bono/downloads/pdfs/Research-report-on-legal-environment-for-HRDs.pdf>

<sup>44</sup> Maina Kiai, para. 66, UN Doc. A/HRC/20/27 (May 21, 2012).

# Advanced

## Provide tax benefits and other incentives to promote individual and corporate donations to CSOs.

### Justification:

Governments should encourage local philanthropy with tax benefits for donations to CSOs that are organized and operated for the public benefit. CSOs engaged in the OGP can typically be considered to be of public benefit, as they promote good governance, accountability, citizen participation, and sustainable development, among others. Incentives for philanthropy can promote the work and financial sustainability of CSOs that directly contribute to open government and high quality public services. Incentives for donations can also lead to further engagement between CSOs and other sectors, such as joint projects and partnerships between CSOs and businesses. Moreover, tax incentives acknowledge the contribution of individual and corporate donors to the public good.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. The law provides tax benefits for individual and corporate donors to CSOs that by law are found to be organized and operated for the public benefit. The public benefit includes not only traditional areas of social service provision, but also encompasses work on human rights and good governance, including government transparency, anti-corruption, accountability, and other activities.
2. The process for determining which CSOs are eligible to receive tax-benefited philanthropy is clear, apolitical, and simple. If such status imposes additional reporting requirements on CSOs, those requirements have a clear legal basis; are proportionate to legitimate aims under international law (with consideration of the size and scope of different types of organizations); and are not more burdensome or invasive for CSOs than for other legal entities.
3. Tax benefits for donors are clear in the law, and the process for donors to claim and access such benefits is simple in order to encourage philanthropy.
4. The privacy of donors is respected. For example, generally donors are not required to be listed on a registry or have their donations publicized.

### Standards & Guidance:

Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit

OSCE/ODIHR: Joint Guidelines on Freedom of Association

### Country Example:

In **Colombia**, individual and corporate donors to CSOs whose purpose relates to various areas of public interest, including health, education, culture, environmental protection, defense, development, human rights, and access to justice or social programs, can deduct up to 30 percent of their net income. (Decree 324 on the Taxation Statute, amended in 2010, Art. 125)

In **Jordan**, the Income Tax Law (Law 75 of 1985) provides that certain societies are eligible for charitable status, which allows donors a tax deduction on their donations of up to 25 percent of their taxable income. Societies with religious, charitable, humanitarian, scientific, cultural, sports, or professional purposes can request the Council of Ministers to officially recognize the society as charitable.

## Establish mechanisms for a wide range of CSOs to access government grants and contracts.

### Justification:

CSOs work on issues that are central to the OGP and identified in the National Action Plans (NAPs), such as transparency in the extractive industries and strengthening of electoral processes. Government grants and contracts at central and local levels enable CSOs to effectively address these issues, thereby accelerating the implementation of NAPs.

CSOs also often fill gaps in service provision and rights-based needs, especially in remote communities. Governments can utilize CSOs' community relationships and direct expertise on community needs by funding their services through grants or contracts.

Most critically, CSOs play an important role in democracy and promote political pluralism, including participation of marginalized groups in political processes<sup>45</sup>—this role of civil society

<sup>45</sup> OSCE/Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Association (2015), pp. 68-69, paras 203-204, available at: <http://www.osce.org/odihr/132371?download=true>.



is an indispensable part of ensuring open, accountable, and responsive governance. Government grants and contracts therefore should support a wide range of CSO projects—from basic services to human rights protection and political reform—to build a vibrant and independent civil society that can promote diverse viewpoints and hold governments accountable.

Government grants and contracts to CSOs should be distributed through clear and fair procedures, including ones that safeguard against partisan decision-making. In pursuit of open and responsive governance, the government could consider awarding grants or contracts to organizations that aim to hold the government accountable, as well as other advocacy or human rights organizations. When bids are open to different types of legal entities, CSOs should at least be treated equitably to that of other legal entities. Sometimes CSOs might enjoy easier procedures than businesses based on a government's commitment to including CSOs in providing services. Special grants and contracts should be set aside for CSO projects, particularly for those that fall outside of traditional service provision.

## Recommendations:

*Through Law, Regulation, and Practice:*

1. There are clear, open and transparent, and legally binding procedures and criteria for CSOs to access government grants and contracts. Such regulations include provisions that address conflicts of interest; require that criteria for selection are published in advance; and mandate that information is made public about the procedures for funding and about projects that receive funding.<sup>46</sup>
2. The government provides grants and contracts to a wide range of CSO projects beyond traditional service provision, including projects regarding human rights, marginalized groups, good governance, and political reform. In addition, there are special funding mechanisms that are open only to CSOs. Funding decisions are made in a non-partisan manner.
3. CSOs are treated on an equitable basis to other service providers in competitions for public tenders for service provision.
4. CSOs do not have more burdensome requirements than other service providers in order to perform a service.
5. CSOs that receive government funding remain independent in their decision-making regarding their operations and

governance.<sup>47</sup> CSOs are able to criticize government without fear of repercussions for future funding.

6. Reporting requirements for CSO recipients of government funding have a clear legal basis; are proportionate to legitimate aims under international law (with consideration of the size and scope of different types of organizations); and are not more burdensome or invasive for CSOs than for other legal entities.

## Standards & Guidance:

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[A Handbook on Non-State Social Service Delivery Models](#)

[Public Funding for Civil Society Organizations—Good Practices in the European Union and Western Balkans](#)

## Country Examples:

- **Bulgaria's** Act on Social Assistance provides for the contracting of social services to private providers, including CSOs. The Act encourages government entities to deliver social services to the community through non-state arrangements, including through CSOs. Both not-for-profit and corporate entities wishing to deliver social services must seek registration with the Register at the Agency for Social Assistance under the Ministry of Labor and Social Policy. CSOs are held to the same registration requirements as commercial entities. (Article 18(2)).
- **Croatia** has a highly transparent structure for monitoring government funding of CSOs. The Government Office for Cooperation with NGOs works to coordinate and monitor public financing to NGOs and ensure that all public bodies provide public funding in accordance with the 2015 *Regulation on the Criteria, Standards and Procedures for Financing and Contracting Programmes and Projects of Public Benefit Interest Implemented by Associations*. Among other things, the Office organizes trainings for public institutions providing funding to CSOs on implementing the Regulation and publishes annual reports detailing the amount and nature of projects financed by the government.<sup>48</sup>

<sup>46</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 30-33.

<sup>47</sup> OSCE/Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Association (2015), p.73, para 215, available at: <http://www.osce.org/odihr/132371?download=true>.

<sup>48</sup> Government of the Republic of Croatia: Office for Cooperation with NGOs, *Financing of projects and programmes of civil society organizations*, <https://udruga.gov.hr/financing-of-projects-and-programmes-of-civil-society-organizations/2964>

- In 2016, **Latvia** established a National NGO Fund, which boosted the financial viability of the CSO sector. In its first call for proposals, the Fund awarded approximately €400,000 to 65 projects.<sup>49</sup>

## Establish a strategy for the development of the CSO sector and for CSO-government relations.

### Justification:

CSO sectors contribute to higher quality services and improved governance in their communities and countries. Therefore, in National Action Plans, support to CSOs' work and development of the CSO sector should also be considered. National strategies to develop the CSO sector and CSO-government relations promote public participation, contribute to higher quality services, and strengthen government accountability.

Formulation of a government strategy helps the government to determine how best to provide resources to the CSO sector or boost CSO-government cooperation. Crafting a strategy helps the government consider, for example, which areas of the country are in most need of resources for CSOs; what kinds of support would be the most impactful to the sector; which areas of CSO development—such as organizational skills, involvement in advocacy and lobbying, or financial sustainability—need the most assistance; and how the government should organize and manage implementation of the strategy.

As with all policies, such a strategy should be participatory and evidence-based. Therefore, all parts of the CSO sector should be given an opportunity to participate in developing the strategy. In addition, the government should make available statistical data on the CSO sector, such as income and employment, to identify needs of the sector and drive the strategy.<sup>50</sup>

### Recommendations:

*Through Law, Regulation, and Practice:*

1. A clear, actionable, and funded national strategy is established to address state-CSO relations—both in service provision and in policy-making—and the development of the CSO sector. CSOs are included in the development, implementation, and monitoring of the strategy.<sup>51</sup> The strategy is driven by available data on the sector (see Recommendation 4).

<sup>49</sup> United States Agency for International Development, *The 2016 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, at 131, available at: [https://www.usaid.gov/sites/default/files/documents/1866/CSOSI\\_Report\\_7-28-17.pdf](https://www.usaid.gov/sites/default/files/documents/1866/CSOSI_Report_7-28-17.pdf)

<sup>50</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 40–42. [http://www.ecnl.org.hu/dindocuments/438\\_MonitoringMatrix%20on%20Enabling%20Environment%20and%20Toolkit.pdf](http://www.ecnl.org.hu/dindocuments/438_MonitoringMatrix%20on%20Enabling%20Environment%20and%20Toolkit.pdf)

<sup>51</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 40.

2. Cooperation with CSOs is facilitated through a national institution—such as a government liaison office, a parliamentary committee, or a council made of government and CSO representatives—and/or focal points throughout the different levels of government. The national institution is sufficiently funded to carry out its mission in facilitating CSO-government relations, and CSOs are included in its decision-making processes.<sup>52</sup>
3. A national fund is created to implement the CSO policy in order to support the development of the civil society sector. The process for CSOs to obtain grants from this national fund is clear, open, and transparent, with safeguards against conflicts of interest and government favoritism.
4. The government makes available statistical data on the CSO sector, such as employment, volunteerism, and donations to the sector. (Any collection of such information must be balanced with CSOs' right to privacy.) This data can serve as a basis for both the government and CSOs to identify needs in the sector and respond accordingly.

### Standards & Guidance:

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

[European Practices on Implementation of Policy Documents and Liaison Offices that Support Civil Society Development](#)

[A Comparative Analysis of European Policies and Practices of NGO–Government Cooperation](#)

### Country Examples:

- The **Estonian Civil Society Development Concept** (EKAK), adopted in 2002, is a strategy document that “phrases the basis of partnership between nonprofit associations and the public sector, and a framework to promote civic initiative and strengthen democracy in Estonia.” Its aims include developing a support system for the non-profit sector and involving citizens and associations more widely in the development and implementation of laws and policies.<sup>53</sup> Among the agreed methods of implementing these goals were to ensure accessible communication channels between CSOs and the public sector, promote the ability of associations to appoint representatives to committees, and establish financial resources for CSOs.<sup>54</sup>

<sup>52</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 42.

<sup>53</sup> Estonian Civil Society Development Concept, approved by the Estonian Parliament on December 12, 2002, *Section I: Goals*, available at: [http://www.kysk.ee/failid/Upload/files/Estonian\\_civil\\_society\\_development\\_concept.pdf](http://www.kysk.ee/failid/Upload/files/Estonian_civil_society_development_concept.pdf)

<sup>54</sup> Estonian Civil Society Development Concept, approved by the Estonian Parliament on December 12, 2002, *Section III: Ways of Achieving Goals*, available at: [http://www.kysk.ee/failid/Upload/files/Estonian\\_civil\\_society\\_development\\_concept.pdf](http://www.kysk.ee/failid/Upload/files/Estonian_civil_society_development_concept.pdf)

- **Croatia** has a [National Strategy for the Creation of an Enabling Environment for Civil Society Development 2012–2016](#), which includes strengthening the institutional framework for civil society development, including support infrastructures, the legal framework for CSOs, and distribution of public resources; enhancing the involvement of CSOs in law and policy making; advancing the role of CSOs in social and economic development, including through provision of social services and engagement in social entrepreneurship; and strengthening the international work of CSOs.

## Bolster CSO engagement in all levels of government decision-making.

### Justification:

CSOs have the freedom to engage in advocacy, including policy reform.<sup>55</sup> Furthermore, individuals have the right to participate in government decision making processes under Article 25 of the ICCPR, and CSOs can help promote public participation and bring diverse sections of the public into the process.

CSO involvement in decision-making is at the core of OGP's multi-stakeholder approach to policy development and implementation. CSOs have an equal seat at the table in designing, implementing, and evaluating National Action Plans. OGP countries therefore have a stake in ensuring that the legal and policy environment for such participation is supportive and encompasses CSO participation at all levels.

States should facilitate the engagement of CSOs beyond the OGP mechanisms as well because CSOs have a critical role in ensuring government accountability and responsiveness. CSOs channel the needs and demands of their constituents, including those who are too remote or marginalized to be involved in decision-making processes. CSOs can also have expertise that contributes to legislation and policy so that it is well-informed and endorsed by stakeholders outside of the government.

The outcome of participatory processes, including the content of OGP commitments, should not undermine the freedom of association, which inter-alia includes a fair, impartial, and timely CSO registration process; the right to freely form organizations for any legitimate not-for-profit purpose; protections against undue interference in CSOs' operations and governance; the right to access resources, both domestic and abroad; and the right to privacy.

<sup>55</sup> Maina Kiai, para. 43, UN Doc. A/68/299 (August 7, 2013) at <http://freeassembly.net/wp-content/uploads/2013/09/UNSR-elections-report-to-UNGA-Aug.-20131.pdf>.

For more information on public participation in decision-making, please visit the chapter on [Citizen engagement](#).

### Recommendations:

*Through Law, Regulation, and Practice:*

1. CSOs are invited, with adequate notice and opportunity and all relevant information, to participate in the formulation and review of all laws and policies, including those that would impact CSOs.<sup>56</sup>
2. Laws and policies that would impact CSOs are developed through CSO participation, and their provisions do not undermine the freedom of association.
3. Laws and regulations require public institutions to invite CSO representatives onto advisory or decision-making bodies. Guidance is created on how to fairly and transparently select CSOs and ensure wide representation from across the CSO sector.<sup>57</sup>
4. Civil servants are trained on how to integrate CSOs into their decision-making and policy design, monitoring, and implementation.<sup>58</sup>

### Standards & Guidance:

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[An Enabling Framework for Citizen Participation in Public Policy: An Outline of Some of the Major Issues Involved](#)

<sup>56</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 42. See also: OSCE/ ODIHR, Guidelines on Freedom of Association (2015), at 65.

<sup>57</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 44.

<sup>58</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 45.

## Country Examples:

- **Brazil** has a lengthy history with engaging with civil society in governance. For example, [Law 13.019 of 2014](#) was created through a participatory process with the active engagement of civil society. It calls for the creation of mechanisms to increase transparency in public financing of CSOs and enhance the effectiveness of state-civil society partnerships.
- In 2005, **Latvia** established the [Cooperation Memorandum between Non-governmental Organizations and the Cabinet of Ministers](#). The Memorandum aims to ensure that NGOs are actively engaged and able to effectively participate in decision-making processes. The implementation of the Memorandum is monitored by the Council for Implementation of the Cooperation Memorandum between Non-Governmental Organisations and the Cabinet of Ministers. Among other things, the government seeks to ensure that NGOs participate in advisory councils and working groups; NGOs are informed of decisions adopted in relation to proposals they submitted and provided reasons for those decisions; and NGOs have the opportunity to follow the development of draft laws and policies and provide their opinions on them.
- In 2016, the parliament of **Moldova**, in cooperation with the National Council of NGOs in Moldova, launched the seventh annual conference on Cooperation between the Parliament and Civil Society. Discussions covered a range of topics, including issues of sustainability of the CSO sector, CSO involvement in public policy, and joint CSO-government platforms for dialogue. The outcome of the conference was a government decision that outlined planned initiatives to boost CSO involvement in decision-making, such as a CSO-government working group focused on laws related to parliamentary cooperation with civil society.

# Innovative

## Establish advanced resourcing and support mechanisms for CSOs.

### Justification:

CSOs can be more effective partners with government and improve their impact on communities if governments provide financial, material, and human resources to promote the institutional development of CSOs.

CSOs around the world rely on project-based grants that typically do not cover a wide range of administrative costs, such as training, equipment, office space, or staff salaries. Many CSOs therefore cannot afford to develop their organizational capacities, such as professional development of their staff, strategic planning, fundraising, monitoring and evaluation, and so on. Government resources that address administrative needs and promote the development of organizational capacities can lead to a more professionalized and effective CSO sector.

The government should aim to provide resources to a diverse range of CSOs, including in terms of size, capacity, geography, and field of work. The government will then have CSOs in various service provision and policy areas with whom to work and consult. The government, for example, may choose to set up a program to build the capacity of under-resourced parts of the sector, such as small CSOs in rural areas. Such a program could ultimately promote inclusiveness in government decision-making and the ability of the government to draw from the particular knowledge and relationships of grassroots CSOs.

Laws and regulations that facilitate resource mobilization, such as laws on social enterprise, can also promote the financial sustainability of CSOs, as well as their service provision.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. Further tax benefits are adopted to promote the financial sustainability of CSOs, such as tax exemptions or tax reductions on earned income; or tax percentage mechanisms, whereby individuals or corporations can allocate a certain percentage of tax liabilities to eligible CSOs, to further boost giving.
2. Resource centers are set up in major cities, as well as more remote areas of the country. They provide consultancy services and trainings in a variety of areas, such as organizational and financial management, fundraising, public

relations, and advocacy. Making resources available online is also considered.<sup>59</sup>

3. Financing programs are established to target the institutional development of CSOs. For example, resource centers can provide grants to small CSOs in rural areas. Selection for such programs is nonpartisan in nature.
4. Programs are established to incentivise volunteerism or employment in the CSO sector. Such programs could include subsidies for employing persons with disabilities or other vulnerable groups, or programs to support experience-building of university students and graduates.<sup>60</sup>
5. A law for social enterprises and other laws and regulations are adopted that could provide alternative avenues for CSOs to increase their impact and financial viability.
6. Efforts are made to consult with CSOs on how the government can support the CSO sector.

### Standards & Guidance:

[Monitoring Matrix on Enabling Environment for Civil Society Development: The Toolkit](#)

[ECNL: Third Sector Organizations in the EU—Legal Environment and Taxation](#)

[ECNL: Experiences on the Implementation of the Percentage Designation Mechanism](#)

[ECNL: Comparative Analysis of the Regulatory Framework for Social Enterprises](#)

[ECNL: Public Funding for Civil Society Organizations—Good Practices in the European Union and Western Balkans](#)

<sup>59</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 34.

<sup>60</sup> Monitoring Matrix on Enabling Environment for Civil Society Development Tool-Kit (2013), at 35.

## Country Examples:

**Estonia** has Regional County Development Centers in all 15 counties of the country. Each center has a professional consultant who provides free information and consultations to CSOs at all stages of their development.<sup>61</sup>

In the **Netherlands, Sweden, and the United Kingdom**, funds from national lottery games are allocated to CSOs or civil society activity. In the United Kingdom, registered charities and unregistered organizations receive the vast majority of national lottery funding.<sup>62</sup> The Netherlands, through the Dutch Postcode Lottery, donates 50 percent of its lottery proceeds to charity, supporting 95 CSOs.<sup>63</sup> Sweden has a similar Postcode Lottery, which in 2015 raised 225.8 million euro for 55 charities.<sup>64</sup>

In **Romania**, individuals can allocate up to two percent of their income tax obligations to a CSO.<sup>65</sup>

**South Korea** allows both non-profit and for-profit organizations to be certified as “social enterprises” under the Social Enterprise Promotion Act (2007, as amended in 2010). A “social enterprise” is defined as “an enterprise...that pursues a social objective, such as raising local residents’ quality of life...by providing vulnerable groups with social services or jobs while conducting business activities, such as the production and sale of goods and services...” (Art. 2(1), unofficial translation). A social enterprise is expected to make efforts to reinvest its profits back into the social enterprise. (Art. 3(1)). It also must have a democratic decision-making structure that includes interested persons, such as service beneficiaries. (Art. 8)(4)). The government is required to set up five-year plans to promote and support social enterprises. (Art. 5(1)).<sup>66</sup>

## Establish a notification procedure for registration.

### Justification:

A notification procedure for registration is a best practice for the freedom of association.<sup>67</sup> Rather than seeking permission from the government to establish a legal entity (a “prior authorization

<sup>61</sup> KUSK National Foundation of Civil Society, *County Development Centers*, at <http://www.kysk.ee/county-development-centers>

<sup>62</sup> UK Civil Society Almanac 2014, Who Receives National Lottery Funding? (last updated April 4, 2014), available at: <https://data.ncvo.org.uk/a/almanac14/who-receives-national-lottery-funding/>

<sup>63</sup> National Postcode Lottery, Dutch Postcode Lottery Factsheet, <http://www.postcodeloterij.nl/organisatie/perscentrum/factsheet-english.htm>

<sup>64</sup> Novamedia, *Charity Lotteries*, <http://www.novamedia.nl/web/Charity-lotteries.htm>

<sup>65</sup> United States Agency for International Development, *The 2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, pp. 193, [https://www.usaid.gov/sites/default/files/documents/1861/EuropeEurasia\\_CSOSIReport\\_2015.pdf](https://www.usaid.gov/sites/default/files/documents/1861/EuropeEurasia_CSOSIReport_2015.pdf)

<sup>66</sup> Ministry of Government Legislation, Korean Laws in English, Social Enterprise Promotion Act, <http://www.moleg.go.kr/english/korLawEng?pstSeq=57937&pageIndex=7>

<sup>67</sup> Maina Kiai, para. 58, UN Doc. A/HRC/20/27 (May 21, 2012).

procedure”), under a notification procedure a CSO notifies the government of its establishment. The government therefore automatically registers the applicant upon the submission of certain information established in the law. This procedure can make registration easier and faster, relieve concern of government discretion over registration, and lessen the administrative burden of both CSOs and government.

### Recommendations:

*Through Law, Regulation, and Practice:*

1. A process automatically grants a CSO a not-for-profit legal entity status once it has submitted the required documents.
2. Through this system, CSOs have a way of proving their not-for-profit legal entity status once their documents are submitted, such as through a receipt that an organization receives upon submission of the required documentation.

### Standards & Guidance:

[Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: Best Practices in Promoting the Rights to Freedom of Peaceful Assembly and of Association](#)

[OSCE/ODIHR: Joint Guidelines on Freedom of Association](#)

[Defending Civil Society Report \(Second Edition\) by ICNL & World Movement for Democracy](#)

### Country Example:

In **Brazil**, an association does not require prior government approval to obtain legal entity status. Rather, an association simply registers its organizational statutes with a notary in charge of the legal entity public register office (Civil Code Article 45; Law 6.015/73 Article 120).<sup>68</sup>

## Strengthen privacy protections of CSOs and their affiliates, particularly with regard to communications over information and communications technology

### Justification:

Information and communications technology (ICT) has provided individuals and CSOs unprecedented opportunity for sharing information, conducting discussions, associating over shared interests, and advocating—more swiftly and more widely than ever. The internet and other ICT have amplified the exchange of ideas that underpin democracy.

<sup>68</sup> Council on Foundations, Brazil, (last updated September 2015), available at: <http://www.cof.org/content/brazil#Applicable>

Alongside the growth of ICT, states have exponentially expanded their surveillance capabilities in order to access communications over these new technologies. There are legitimate reasons for doing so, such as preventing terrorism and other national security threats. However, these concerns need to be balanced with the right to privacy that individuals and CSOs have under international law (ICCPR, Article 17). Surveillance capabilities can be abused to target activists, human rights defenders, and other groups that may speak about against government policies or on sensitive topics. Such abuse has a chilling impact on the sharing of information and ideas. Unfettered surveillance also severely undermines open governance.

According to the UN Special Rapporteur for Freedom of Expression, the right to privacy should be subject to the same permissible limitations test as the right to freedom of movement: restrictions must be provided by the law; the essence of a human right is not subject to restrictions; restrictions must be necessary in a democratic society; any discretion exercised when implementing the restrictions must not be unfettered; the restriction must be necessary to achieve one of the legitimate aims (protect national security, public order, public health or morals, or the rights and freedoms of others); and restrictive measures must be proportionate to and appropriate for the interest to be protected, and constitute the least intrusive means available.<sup>69</sup>

## Recommendations:<sup>70</sup>

### *Through Law, Regulation, and Practice:*

1. Laws provide safeguards for individuals and groups against undue surveillance, including:

- the requirement of an order from an independent court for any surveillance activity and limiting the surveillance only to purposes stated in the court order;
- a substantial threshold for a court order allowing surveillance higher than merely “reasonable grounds”; and
- stipulations on the duration of surveillance (for example, a specific period that would only be extended a limited number of times), the methods of surveillance, the entities authorized to conduct surveillance, and the confidentiality of all data captured via surveillance.

2. The grounds upon which surveillance is authorized in the law or by court order are precise enough that legitimate activities involving human rights, the rights of minority groups, good governance and anti-corruption, and other advocacy activities would not fall under their scope. National security grounds, especially, are narrowly construed and clearly articulated.
3. There are mechanisms in place to challenge the independent court’s decision to allow surveillance. Individuals and groups are notified when they are subjected to surveillance and know what information is collected so that they may seek legal remedies if their rights were violated.
4. Laws do not prohibit any privacy-enhancing technology or method that individuals and groups seek to use, such as encryption devices.
5. All surveillance and provision of communications data to the state are overseen by an independent body, such as a special court.
6. The state avoids laws that require internet and telecommunications providers to retain or routinely provide data of their clients and their clients’ online activities.

## Standards & Guidance:

[UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#)

<sup>69</sup> Human Rights Committee, General Comment No. 27: Freedom of Movement (Article 12), para. 15, UN Doc # CCPR/C/21/Rev.1/Add.9 (1999); Frank La Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, para. 29, UN Doc. # A/HRC/23/40 (April 2013).

<sup>70</sup> Report of the *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, A/HRC/23/40, (April 2013), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/03/PDF/G1313303.pdf?OpenElement>

# Implementation of Illustrative Commitments

Most of the illustrative commitments can be implemented in a number of ways, including:

1. Adopting, amending, or repealing laws and regulations
2. Adopting or improving policies and practices, rather than changing laws or regulations; this includes better implementation of current legal frameworks, as well as declining to interfere in aspects of CSO operations
3. Providing capacity building and trainings (to CSOs and/or CSO regulators)
4. Establishing resources (such as funds)
5. Other innovative approaches

The most effective way to implement a commitment is based on current legal frameworks and the country context. However, for guidance, next to each commitment are numbers (corresponding to numbers 1-5 above) to identify frequent ways in which these objectives are implemented around the world.

## Initial

- Allow unregistered organizations to operate freely. (1) (2)
- Register CSOs within set time limits, only denying registration on clear grounds that are legitimate under international law. (1) (2)
- Allow CSOs to pursue any not-for-profit activity that is legitimate under international law. (1) (2)
- Make suspension or involuntary dissolution of a CSO a “last resort,” done only by independent courts on clear grounds that are legitimate under international law. (1) (2)

## Intermediate

- Make registration of a CSO quick and easy. (1) (2) (3)
- Allow access to international resources.(1) (2)
- Provide safeguards against undue supervision of CSOs. (1)
- Ensure that CSOs can easily access basic tax exemptions. (1) (3)
- Promote impartial, apolitical and consistent application of laws and regulations that affect CSOs. (2)

## Advanced

- Provide tax benefits and other incentives to promote individual and corporate donations to CSOs. (1) (3)
- Establish mechanisms for a wide range of CSOs to access government grants and contracts. (1) (3)
- Establish a strategy for the development of the CSO sector and for CSO-government relations. (1) (2)
- Bolster CSO engagement in all levels of government decision-making. (1) (2)

## Innovative

- Establish advanced resourcing and support mechanisms for CSOs. (1) (3) (4)
- Establish a notification procedure for registration. (4)
- Strengthen privacy protections of CSOs and their affiliates, particularly with regard to communications over information and communications technology. (1) (4)