CSO METER

Assessing the civil society environment in Eastern Partnership Countries

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TRANSPARENCY INTERNATIONAL anticorruption center

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ACRONYMS

ACHPR	African Charter of Human and People's Right
AML	Anti-money laundering
AML/CTF	Anti-money laundering and counter-terrorism funding
CoE	Council of Europe
CSO	civil society organization
CRPD	Convention on the Rights of Persons with Disabilities
EaP	Eastern Partnership
EC	European Commission
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ECNL	European Center for Not-for-Profit Law
EU	European Union
FoAA	Freedom of peaceful assembly and freedom of association
FOE	Freedom of Expression
HRIA	Human Rights Impact Assessment
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex and queer community
ICCPR	International Covenant of Civil and Political Rights
ICT	Internet and Communication Technologies
NGO	Non-Governmental Organization
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Cooperation in Europe
SLAPP	Strategic lawsuit against public participation
SMC	social media company
SMS	short message service
UN HRC	United Nations Human Rights Council

FOREWORD

Dear readers,

Civil society organizations (CSOs) play an important role in every segment of society – be it hobby organizations, service providers, research institutions, nature conservation groups, organizations of people with disabilities, policy institutes or other groups with common interests. They may be very diverse in nature but their fundamental purposes are the same, embedded in basic human needs: CSOs create space in which people can feel that they belong to a community, help others, express themselves and live a meaningful life.

CSOs have the right to receive the necessary support to do their important work and to operate in an enabling environment. Measuring the civil society environment will help both state institutions and CSOs to identify gaps or challenges to be addressed. It can also highlight success stories that can provide ideas for further reform. Valuable lessons learnt from one country can be shared with others and inspire exchange, support and innovation. With that in mind, we developed the CSO Meter.

The CSO Meter is the result of a joint effort by many stakeholders. It was developed with input from many civil society representatives from each of the Eastern Partnership countries, whose input helped ensure the creation of a tool that is responsive to local needs. It was led by our partners – a committed group of experts with deep understanding of the issues that civil society faces:Transparency International Anti-Corruption Center (Armenia), MG Consulting LLC (Azerbaijan), Civil Society Institute (Georgia), Promo-LEX Association (Moldova) and the Ukrainian Center for Independent Political Research. We also want to thank the members of our Advisory Board – Jeff Lovitt, Tinatin Tsertsvadze, Simona Ognenovska and Natalia Yerashevich – who provided valuable ideas and guidance throughout the process. This endeavour would not have been possible without the European Union, which provided financial support for the creation of this tool.

While the CSO Meter is the result of extensive work, we do not regard its contents as being set in stone. Rather, we see it as a living instrument. During 2019 the CSO Meter was piloted in each country and country and regional reports were developed. In 2020 we evaluated its practical implementation and adjusted the CSO Meter to integrate lessons learned and other relevant issues. The COVID-19 and the emergency measures taken by various governments also had serious implications on the environment for civil society and we took this into consideration when revising the CSO Meter. To address the emerging issues in 2021, we expanded the CSO Meter, by adding a new area on Digital Rights and major revisions to the area on Freedom of Peaceful Assembly to reflect the new protections under international standards.

We hope that the CSO Meter will be used by both governments and CSOs, researchers and practitioners, donors, decision-makers and policy implementers. But most of all, we hope that the CSO Meter will help to improve the environment and the good standing of civil society in the Eastern Partnership region.

Yours sincerely,

Eszter Hartay and Luben Panov

INTRODUCTION

What is the CSO Meter?

The CSO Meter is a tool developed to assess the civil society environment in the Eastern Partnership countries. It consists of a set of standards and indicators in 11 different areas that measure both law and practice. They were developed based on a review of international standards and best regulatory practices to address the needs and emerging trends in the region.

The objective of the CSO Meter is to provide a framework that will support regular and consistent monitoring of the environment in which civil society organizations (CSOs) operate. The data from this process is used to produce recommendations and initiate evidence-based advocacy campaigns aimed at creating a more enabling environment. Stakeholders have a better understanding of the issues affecting the environment for CSOs and rely on benchmarks based on international standards in order to improve the environment.

For the purposes of the tool, the term "CSO" is used to define voluntary self-governing bodies or organizations established to pursue the non-profit-making objectives of their founders or members. CSOs encompass bodies or organizations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based. CSOs can be either informal bodies or organizations, which have legal personality. They may include, for example, associations, foundations, nonprofit companies and other forms that meet the above criteria. The CSO Meter does not consider the environment for political parties, religious organisations or trade unions.

How was the CSO Meter developed?

The CSO Meter was developed collaboratively by a group of experts from the Eastern Partnership region, with the support of the European Center for Not-for-Profit Law (ECNL) under the project "Monitoring Progress, Empowering Action" financed by the European Union. A local partner in each of the six Eastern Partnership countries supported the process:

- Armenia – Transparency International Anti-Corruption Center;
- Georgia – Civil Society Institute (CSI);
- Moldova – Promo-LEX Association;
- Ukraine –Ukrainian Center for Independent Political Research (UCIPR);
- Azerbaijan - MG Consulting LLC.

The process of developing the CSO Meter was highly participatory, and the core group of experts relied on external input from the project advisors and a broader group of CSO partners at every stage of drafting the tool. There were three rounds of in-country consultations.

In 2019 local partners in the six countries piloted the CSO Meter tool and methodology to assess the civil society environment against a set of standards and indicators in 10 different areas. The monitoring was a vibrant and ongoing process that was captured in country reports. During 2020 we evaluated the impact of COVID and the practical implementation of the CSO Meter and adjusted it to integrate lessons learned and other relevant issues. Based on this data and trends, in 2021 we worked on the expansion of the CSO Meter tool with experts from ECNL and consulted the members of the regional CSO Meter Hub which includes 21 CSOs across the six EaP countries (and our core partners). Also, we worked on introducing scoring (quantitative assessment) of the civil society environment, by using the CSO Meter tool.

What are the key elements of an enabling environment for CSOs?

The CSO Meter takes a broad view of what constitutes an "enabling" environment for civil society. The experts agreed that for the purposes of the tool, key elements of an enabling environment are present when CSOs are able to:

- Establish themselves and operate freely, without government interference;
- Liaise with their constituencies, form networks inside and outside of the country without approval or notification to the government;
- Participate in policy and law-making processes, advocate for their causes, monitor government actions and policy and engage in a watchdog role;
- Express publicly their opinions and assemble and protest without prior authorisation and with no undue administrative burdens or practical impediments;
- Be treated equitably compared to business entities and enjoy the right to privacy;
- Generate resources for their activities (from economic activity, foreign and domestic donors, state funds and through using various methods, e.g. public fundraising) and involve volunteers;
- Enjoy tax benefits that allow them to use resources and stimulate individuals or companies to donate;
- Engage in meaningful cooperation with the state which supports civil society development.

How is the tool structured and what areas does it cover?

The CSO Meter covers 11 different but strongly interconnected areas. Each of the areas is composed of standards that set the basic requirements and indicators that help to measure the standards. The indicators cover both the law and its practical implementation.

The CSO Meter is split in two main parts:

- Fundamental rights and freedoms – This part contains the basic standards, which are essential for the existence of an enabling environment for civil society. These are based on fundamental human rights that should be enjoyed by both individuals and

CSOs. The areas included in the CSO Meter under Fundamental rights and freedoms are:

- Freedom of association
- Equal treatment
- Access to funding
- Freedom of peaceful assembly
- Right to participation in decision-making
- Freedom of expression
- Right to privacy
- State duty to protect

- Necessary conditions – This part contains standards that ensure additional support also critical for the development of civil society, but their existence alone – without guaranteeing fundamental rights and freedoms – is not sufficient to ensure that the environment is enabling. The areas included in the CSO Meter under Necessary conditions are:
  - State support (including taxation and volunteering)
  - State-CSO cooperation

Since 2021, we introduced a new area Digital Rights. This area contains two standards, the first on protection and compliance of digital technologies with human rights standards, and the second on the role of the states to create conditions for enjoyment of digital rights. As the CSO Meter is a living instrument, and the international standards on digital rights are being shaped to safeguard the fundamental rights and civic freedoms, we will further integrate and revise this area, after the pilot monitoring that will take place in 2021.

How can you use it?

The CSO Meter Hub members, led by our project partner in each of the six Eastern Partnership countries will develop a country report based on the CSO Meter. The findings of the country reports will feed into a regional report that ECNL will develop and capture regional trends and country specificities. The CSO Meter, together with the country and regional reports shall serve to:

- Compare the qualitative findings and the quantitative scores under each area year by year and track progress or regression;
- Compare the achievements or obstacles in one country to the developments in any of the other Eastern Partnership countries. This may give additional incentives to further improve the environment or ideas for future policies or measures to be enacted;
- Propose evidence-based solutions for advocacy and policy-making. The recommendations of the CSO Meter can serve as guidance for reforms that need to be undertaken and could be used by both the government and development partners to determine policies. CSOs can also use the recommendations to identify priorities for their advocacy;
- Organize debates on identified challenges and proposed recommendations;

- Prepare infographics or other promotional materials presenting the findings of the country reports;
- Assess proposed legislative initiatives in the areas of CSO environment;
- Provide up-to-date information for further research and analysis on the state of civil society in the countries;
- Develop more detailed thematic reports based on the information collected about the standards and indicators in each of the 11 areas of the CSO Meter (e.g. by producing separate reports on access to resources or CSO privacy).

STANDARDS AND INDICATORS

FUNDAMENTAL RIGHTS AND FREEDOMS AREA 1: FREEDOM OF ASSOCIATION		
STANDARDS	INDICATORS	
	Law	Practice
I. Everyone can freely establish, join, or participate in a CSO.	1. The right to establish a CSO belongs to any person, legal or natural, local or foreign and group of such persons. 2. CSOs are not required to register or receive legal personality in order to operate. 3. There are no territorial limitations for the operation of CSOs, and the right includes the ability to associate online. 4. Individuals and legal entities can freely join and participate in the activities of any CSO by becoming members, volunteers or by supporting the initiatives of a CSO.	1. The state does not impose practical obstacles to establishing or joining a CSO or taking part in its activities. 2. Individuals are free to decide whether to join a CSO or take part in its activities.
II. The procedure to register a CSO as a legal entity is clear, simple, quick, and inexpensive.	1. Registration is quick, accessible and inexpensive. 2. The requirements to obtain legal personality are clearly described, simple and do not allow for discretion of the registering authority.	1. The body responsible for granting legal personality acts independently and impartially in its decision-making and does not set any additional registration requirements that are not prescribed by law.

	3. There are a limited number of clear and justifiable grounds for the denial of registration.	2. Any deficiencies in the registration documents are communicated clearly and timely to the applicant and the application is not rejected in case of minor deficiencies. 3. Independent and impartial judicial review is provided within reasonable time if a CSO's registration application is rejected.
III. CSOs are free to determine their objectives and activities and operate both within and outside the country in which they were established.	1. The law enables CSOs to determine their objectives and carry out any legitimate activities. 2. CSOs are able to pursue their objectives working locally, nationally or internationally, including through membership of associations or federations whether national or international. 3. The law does not compel CSOs to coordinate their activities with government policies and administration.	1. Registration authorities do not judge and exercise discretion in the review of CSOs' objectives. 2. State authorities do not impose practical obstacles that hinder CSOs' ability to engage in al legally allowed areas of operation.
IV. Any sanctions imposed are clear and consistent with the principle of proportionality and are the least intrusive means to achieve the desired objective.	1. Sanctions for CSOs are clearly defined and are the least disruptive to the right to freedom of association. 2. The grounds for involuntary termination and suspension are clearly listed and used only when less intrusive measures would be insufficient.	1. CSOs are provided with adequate warning about the alleged violation and given the opportunity to correct it before further sanctions are applied. 2. Involuntary termination is used only in case of serious violation of the law.
V. The state does not interfere in internal affairs and operation of CSOs.	1. CSOs are free to determine their internal governance and operations.	1. Inspections of CSOs are justified, proportionate and objective. 2. CSOs can easily fulfil the reporting requirements online and/or offline.

	2. There are clear rules for the scope, criteria and limitations on monitoring and inspection of CSOs by the state. 3. Reporting procedure and requirements are clearly described and proportionate to the size of CSO and/or the scope of its activities.	

AREA 2: EQUAL TREATMENT		
STANDARDS	INDICATORS	
	Law	Practice
I. The state treats all CSOs equitably with business entities.	1. Procedures for registration and voluntary termination of CSOs are not more expensive, time-consuming, and burdensome compared to business entities. 2. CSOs are not subject to stricter administrative and operational requirements than business entities. 3. CSOs can receive benefits and compete in public procurement on equal basis with business entities, without additional burdensome requirements. 4. Legal regulations regarding access to funding, including from abroad, for CSOs is not less favourable than for business entities.	1. Registration authorities do not impose additional requirements or other obstacles for the registration, operation or dissolution of CSOs as compared to business entities. 2. The state does not reject or impede CSOs' access to procurement procedures or other funding sources due to their legal entity status. 3. Inspections and sanctions for CSOs are not more frequent compared to business entities.
II. The state treats all CSOs equally with regard to their establishment, registration, and activities.	1. CSOs are treated equally and any preferential treatment is based on clear and objective criteria. 2. CSOs established in the country by foreign individuals or legal entities are treated in the same	1. State bodies avoid preferential treatment towards specific organizations. 2. CSOs that express views and positions critical of state officials or policy are not purposefully restricted in their activities.

	way as legal entities established by local individuals or legal entities.	

AREA 3: ACCESS TO FUNDING		
STANDARDS	INDICATORS	
	Law	Practice
I. CSOs are free to seek, receive, and use financial and material resources for the pursuit of their objectives.	1. CSOs are free to solicit and receive funding or in-kind support from public or private donors through various mechanisms. 2. The requirements for CSOs to receive, use and report funding or in-kind support from any donor are not burdensome.	1. It is easy for CSOs to receive funding or in-kind support from any legal source. 2. CSOs can use diverse methods for fundraising. 3. Limitations on cash or bank operations do not impede CSO activities.
II. There is no distinction in the treatment of financial and material resources from foreign and international sources compared to domestic ones.	1. There are no special restrictions or procedures for CSOs to receive and use foreign and international funding or in-kind support, and for donors to provide funding to CSOs. 2. Foreign and international grants, donations, and membership fees have the same tax treatment as domestic ones.	1. CSOs are able to receive foreign funding freely and use foreign sources in practice. 2. CSOs receiving foreign funding are not stigmatized or attacked in state-supported media or by the government.

AREA 4: FREEDOM OF PEACEFUL ASSEMBLY		
STANDARDS	INDICATORS	
	Law	Practice
I. Everyone can freely enjoy the right to freedom of peaceful assembly by organizing and participating in assemblies.	1. Any person, local or foreign, and groups of such persons, including CSOs have the right to organize and/or participate in a peaceful assembly, which is adequately protected by law wherever it takes place: outdoors or indoors, online, in public and private spaces or a combination of the above. 2. Spontaneous assemblies, simultaneous assemblies and counter assemblies are allowed by law.	1. There are no instances of arbitrary refusals or dispersals of peaceful assemblies. 2. Persons, groups of persons or CSOs are not forced to or systematically prohibited from participating in peaceful assemblies. 3. Individuals are not detained or intimidated for planning to organize, take part or not to participate in peaceful assemblies. 4. Individuals and legal entities are not prosecuted or sanctioned for organizing or taking part in peaceful assemblies outdoors or indoors, online, in public and private spaces or a combination of the above.
II. The state facilitates and protects peaceful assemblies.	1. The right to hold a peaceful assembly is not subject to prior authorization, but to notification at most, which is clear, simple, and free of charge and requires reasonable advance notice. 2. Notification is not required for gatherings whose impact on others' rights can reasonably be expected to be minimal. 3. The final ruling of appeals to decisions limiting peaceful assemblies is issued before the planned date of the assembly. 4. Legislation protects the right to use any electronic means of communications to organize peaceful assemblies.	1. Notification is not used as a de-facto authorization. 2. Restrictions are proportional and based on objective evidence of necessity. 3. Access to the internet and/or social media is not limited as a means to restrict peaceful assemblies online or offline.

III. The state does not impose unnecessary burdens on organizers or participants in peaceful assemblies.	1. Assembly organizers are not held responsible for the maintenance of public order or for the acts of others during an assembly. 2. Interference by authorities only occurs to facilitate the peaceful assembly or in case it turns violent.	1. The state bodies do not impose unjustified fees for services which they are obliged to provide. 2. There are no impediments on distribution of information about peaceful assemblies. 3. The state does not impose disproportionate restrictions on the use of technical equipment during peaceful assemblies.
IV. Law enforcement supports peaceful assemblies and is accountable for the actions of its representatives.	1. Law enforcement has clear regulations on use of force during peaceful assemblies that follow a human rights based approach. 2. There are accountability mechanisms for any excessive use of force or failure to protect participants in peaceful assemblies. 3. There are clear laws and regulations in place on use of surveillance devices to police or monitor assemblies.	1. Prior warnings are made before force is used, but a predictable and proportional approach extends to all aspects of policing of assemblies. 2. Law enforcement protects participants of the assembly from any person or group (including agent provocateurs) who attempts to disrupt the assembly. 3. Law enforcement representatives are held accountable when violating the right to freedom of assembly. 4. Law enforcement representatives and/or intelligence agencies are transparent about whether they use surveillance devices to police or monitor assemblies.

AREA 5: RIGHT TO PARTICIPATION IN DECISION-MAKING		
STANDARDS	INDICATORS	
	Law	Practice
I. Everyone has the right to participation in decision-making	1. Public consultations are mandatory for legal and policy drafts that affect the general public or specific sectors and groups. 2. The law guaranties an inclusive and meaningful civil participation in decision-making and any limitations or restrictions are clearly prescribed and narrowly defined. 3. The legal framework clearly prescribes the mechanisms to redress and remedy any non-compliance with the rules governing civil participation and transparency of the decision-making. 4. There are clear criteria and equal opportunities for all CSOs to participate in the decision-making process.	1. Authorities use various mechanisms to ensure meaningful public participation. 2. There are no repercussions against CSOs that participate in decision-making processes. 3. Any CSO can participate in consultations without discrimination, whether based on the type of CSO or its positions toward the government.
II. There is regular, open and effective participation of CSOs in developing, implementing and monitoring public policies..	1. The procedures for public consultations are simple and clearly set by law. 2. The law provides for establishment of consultative bodies with clear standards and transparent mechanisms for selecting their members and decision-making within these bodies. 3. The law provides for CSO involvement in policy implementation, monitoring, and evaluation.	1. Information on drafts and timelines is available free of charge, preferably in a single online platform that is simple to use. 2. The consultation format guarantees effective participation and CSOs are invited to provide input to the decision-making process at the earliest stages and are given sufficient time. 3. The existence of a consultative body does not limit other CSOs' ability to participate in the public consultation on the given subject matter.

		4. State authorities make the suggestions provided by CSOs publicly available and provide feedback. 5. There is a growing practice of engaging CSOs in implementation, monitoring and evaluation of state policies and programs.
III. CSOs have access to information necessary for their effective participation.	1. Legislation includes terms and timelines for state bodies to publish all information related to the decision-making process. 2. The law establishes simple and clear procedure on how to access information.	1. Draft laws and policies are published and accessible and CSOs are duly notified on public hearings or discussions of draft regulations. 2. State authorities provide responses to information requests in due time, free of charge.
IV. Participation in decision-making is distinct from political activities and lobbying.	1. Limitations to CSO participation in political activities are clearly described and narrowly defined and do not affect the ability of CSOs to engage in public policy activities. 2. The regulation of lobbying does not restrict CSOs' ability to engage in public policy and advocacy activities.	1. CSOs are not harassed and do not experience any pressure for views supporting or alternative to the interests of political parties. 2. CSOs are free to engage in advocacy activities without the need to register as lobbyists or professional advocates, or any additional administrative or financial burdens.

AREA 6: FREEDOM OF EXPRESSION		
STANDARDS	INDICATORS	
	Law	Practice
I. Everyone has the right to freedom of opinion and expression.	1. The right to freedom of opinion and expression is guaranteed to any person, local or foreign, individually or as a group, including CSOs, without discrimination. 2. CSOs and associated individuals are free to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, through any media. 3. Any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence is prohibited. 4. No sanctions are established for the dissemination of information based on broad and vague definitions of "false news" or "non-state-verified" information.	1. There are no repercussions or disproportionate sanctions for expression of thoughts and opinions. 2. The expression of ideas, opinions and thoughts that are incompatible with or critical of official policy is not hindered by state. 3. Sanctions imposed for hate speech are strictly necessary and proportionate as a deterrent and the same result could not be achieved if they were replaced with lighter measures. 4. There are no cases of journalists, activists or CSO representatives prosecuted or convicted for creating or disseminating "false news" or "disinformation".
II. The state facilitates and protects freedom of opinion and expression.	1. There is no limitation on the free use of Internet or other communication means for expression of opinions. 2. There are clear protections and guarantees against censorship. 3. The law protects the confidentiality of whistleblowers and journalists' sources of information. 4. There are clear and proportionate sanctions for defamation/ libel and the latter are not criminalized.	1. Cases of blocking of conventional and online media are always based on clear legal grounds and are proportionate for the achievement of legitimate aims. 2. Publication on the internet does not require special permission or compliance with specific administrative regulations applicable to traditional media. 3. There are no cases of journalists convicted or media sites raided by the police in order to disclose their sources of information. 4. State authorities facilitate the dissemination of reliable, verifiable and trustworthy information.

AREA 7: RIGHT TO PRIVACY		
STANDARDS	INDICATORS	
	Law	Practice
I. Everyone enjoys the right to privacy and data protection.	1. The right to privacy is provided to all without discrimination. 2. The law provides guarantees against interference or attacks on privacy regardless of whether they are committed by state bodies, physical persons, or legal entities or whether they are carried out online or offline. 3. The law regulates the collection, processing, and storage of private persons' personal data by governmental authorities.	1. Violations of the right to privacy by state authorities are investigated and prosecuted. 2. CSOs and associated individuals are protected from illegitimate or disproportionate collection, processing, and storage of personal information, online and offline.
II. The state protects the right to privacy of CSOs and associated individuals	1. Reporting requirements for CSOs protect the privacy of members, donors, board members and employees and the confidentiality of their personal assets. 2. Access to CSO offices is possible only when based on objective grounds and appropriate judicial authorisation. 3. Surveillance of a CSO or associated individuals is proportionate, legitimate and requires a preliminary authorization issued by an independent judicial authority.	1. There are no cases of unauthorised interference with the privacy or communications of CSOs or associated individuals. 2. There are no cases breaking into CSOs offices or accessing CSO documents without due judicial authorizations.

AREA 8: STATE DUTY TO PROTECT		
STANDARDS	INDICATORS	
	Law	Practice
I. The state protects CSOs and individuals associated with CSOs from interference and attacks.	1. The law requires the state to protect the rights of CSOs and associated individuals. 2. CSOs and associated individuals have access to effective complaint and appeal mechanism before independent and impartial bodies in order to challenge or seek review of decisions affecting the exercise of their rights or the public interest. 3. The law guarantees effective remedies to CSOs within a reasonable time. 4. Any emergency measures introduced are limited in duration, lawful, necessary and proportionate and there is oversight over their implementation.	1. The state effectively protects CSOs and associated individuals when third parties violate their rights. 2. Appeals and/or complaints concerning lack of protection are decided by competent authorities and courts impartially and within reasonable time. 3. State officials do not use hate speech or stigmatize CSOs, and there are no smear campaigns in the state-supported media against CSOs or associated individuals. 4. The state does not use emergency measures as a pretext to purposefully limit participation, human rights or sanction critical organizations.
II. Measures used to fight extremism, terrorism, money laundering or corruption are targeted and proportionate, in line with the risk-based approach, and respect human rights standards on association, assembly, and expression.	1. Laws to combat extremism, terrorism, money laundering and corruption do not include provisions which restrict or make it impossible for them to undertake legitimate activities or enjoy fundamental freedoms. 2. Legal measures designed to fight money laundering and terrorism financing apply only to CSOs found at risk. 3. Anti-corruption laws, measures and strategies do not restrict or infringe the rights of CSOs or their employees and donors.	1. CSO activities are not limited based on unjustified claims of connections with extremism, terrorism, money laundering and corruption. 2. State authorities or bank practices do not disrupt or discourage CSOs' ability to send or receive money. 3. Implementation of anti-corruption regulations does not adversely affect the rights and activities of CSOs, employees and donors.

NECESSARY CONDITIONS AREA 9: STATE SUPPORT		
STANDARDS	INDICATORS	
	Law	Practice
I. There are a number of different and effective mechanisms for financial and in-kind state support to CSOs	1. The law provides for the establishment of diverse state funding mechanisms by various state bodies at both national and local level. 2. There are legal possibilities for the state to provide in-kind support to CSOs.	1. The state regularly provides funding to a large number of CSOs working in a diversity of fields. 2. There is funding for CSO-provided services and there is a growing practice of contracting CSOs to provide services.
II. State support for CSOs is governed by clear and objective criteria and allocated through a transparent and competitive procedure	1. State financial and in-kind support is provided based on clear principles of transparency, accountability, and equal access to resources. 2. The law requires the participation of CSO representatives in the selection of funding priorities and grant recipients. 3. There is a clear and impartial monitoring and evaluation mechanism for the state funding provided to CSOs.	1. The application procedure for state funding is simple and transparent, information about it is widely publicized, and the selection criteria are publicly announced in advance. 2. The provision of state support is not used as a means to undermine their independence of CSOs or to interfere in their activities. 3. The government publishes information about selection results and project results in a timely manner.
III. CSOs enjoy a favourable tax environment	1. The law provides favourable tax benefits for grants, donations, economic activities, endowments and membership fees that support non-profit activities. 2. CSOs may obtain public benefit status under clear, simple, and inexpensive procedure. 3. Public benefit status is granted for an indefinite period of time or an appropriately long term that can be easily renewed.	1. Tax benefits for CSOs can be used in practice. 2. Monitoring and evaluation of the compliance with public benefit requirements does not interfere in CSO activities. 3. CSOs are not subject to unjustified tax penalties or withdrawal of public benefit status by state authorities.

IV. Businesses and individuals enjoy tax benefits for their donations to CSOs.	1. There are incentives for financial and in-kind donations to CSOs and the procedure to obtain them is clear and simple. 2. The threshold for deducting donations stimulates regular and large gifts including endowments.	1. Individual donors can use available tax benefits without administrative burdens. 2. Corporate donors can use available tax benefits without administrative burdens.
V. Legislation and policies stimulate volunteering	1. There is a clear definition of volunteering and volunteer work, and host organisations and volunteers cannot be viewed as illegal workforce. 2. Legislation does not establish additional burdens and restrictions for engaging volunteers. 3. The state provides incentives for the development of volunteerism through policies, programs and financial support.	1. CSOs face no obstacles to engage volunteers and can engage foreign volunteers and send volunteers abroad without restrictions. 2. The incentives for volunteerism are used in practice and acknowledged by various institutions such as employers, universities, etc.

AREA 10: STATE-CSO COOPERATION		
STANDARDS	INDICATORS	
	Law	Practice
I. State policies facilitate cooperation with CSOs and promote their development.	1. Policy documents on CSO development and cooperation between the state and CSOs are adopted and incorporated into legislation. 2. The policy documents include action plans and programs in which purposes, activities, responsible state bodies, implementation terms, assessment procedures and financial sources are clearly defined.	1. The state develops policy documents on cooperation and CSO development with the active participation of CSOs. 2. Policy documents are implemented in practice and influence state policies. 3. The state allocates sufficient resources for implementation of the policy document. 4. Regular monitoring and evaluation is conducted during the implementation of the policy documents and the findings are considered during revisions.
II. The state has special mechanisms in place for supporting cooperation with CSOs.	1. Key principles for the operation and transparency of public councils and other consultative bodies for dialogue and cooperation are regulated by law. 2. The selection criteria for participation of CSOs in consultative bodies are clear and objective, and the selection procedure is transparent.	1. The establishment of consultative bodies is transparent and takes place both on the initiative of public authorities and CSOs. 2. The decisions of various consultative bodies are taken into consideration when state policies are prepared. 3. All CSOs concerned have the opportunity to participate in the work of consultative bodies.

EMERGING ISSUES		
AREA 11: DIGITAL RIGHTS		
STANDARDS	INDICATORS	
	Law	Practice
I. Digital rights are protected, and digital	1. Legislation guarantees the existence of safe and enabling online environment and the protection and exercise of digital rights.	1. Measures to fight cybercrime, disinformation, hate speech/incitement to violence, and terrorism are not used to limit digital rights.

technologies are compliant with human rights standards	2. Any limitations to digital rights are based on the principles of legality, legitimacy, proportionality and necessity. 3. The development and use of digital technologies, including artificial intelligence (AI) and automated systems is in compliance with international human rights standards.	2. State institutions do not undertake any measures to prevent or disrupt an individual's exercise of digital rights, including through mobile connection signal shutdowns, Internet slowdowns or shutdowns or limiting access to digital tools. 3. State institutions do not use technology to silence, surveil or harass CSOs, human rights defenders, activists and protesters for their online activity and do not block CSO websites and blogs or remove content. 4. State institutions and the private sector conduct human rights due diligence, including impact assessment and provide transparency into the design, development and deployment of digital technologies and engage in meaningful consultation with CSOs and potentially affected groups before and after deploying digital technologies.
II. The state creates conditions for the enjoyment of digital rights	1. The state guarantees open, accessible and affordable Internet. 2. The state ensures the existence of an independent, effective, adequately resourced and impartial oversight mechanism and there are effective remedies for violations of digital rights.	1. The state engages in a transparent and inclusive dialogue with all stakeholders, including civil society, when formulating and adopting national digital technology and AI-related public policies. 2. State institutions engage in or finance activities aiming at bridging the digital divide, including through education, access to technology, promoting digital literacy, etc. 3. The state uses digital technology to enable the exercise of human rights.

CSO METER EXPLANATORY NOTE

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AREA 1. FREEDOM OF ASSOCIATION

Standard 1. Everyone can freely establish, join or participate in a CSO

Freedom of association is guaranteed under the International Covenant for Civil and Political Rights and the European Convention for Human Rights. It includes the right of everyone, regardless of nationality, to associate with others and establish a civil society organization (CSO). Besides individuals, the freedom extends to legal entities. CSOs may establish a legal entity or operate as informal organization. Furthermore, freedom of association includes the right of everyone to take part in the activities of the CSO as a member or supporter. Association shall be possible without territorial limitations, both online or offline.

Law

Indicators for Law
1. The right to establish a CSO belongs to any person, legal or natural, local or foreign and any group of such persons. 2. CSOs are not required to register or receive legal personality in order to operate. 3. There are no territorial limitations for the operation of CSOs, and the right includes the ability to associate online. 4. Individuals and legal entities can freely join and participate in the activities of any CSO by becoming members, volunteers or by supporting the initiatives of a CSO.

1. **The right to establish a CSO belongs to any person, legal or natural, local or foreign and any group of such persons**

Freedom of association is a universal right that belongs to everyone. It is not limited to citizens, voters or people with certain nationality or residence. Refugees, migrants, stateless persons, women, minority representatives, to name a few, equally enjoy freedom of association. The right to establish a CSO extends to children as well. While certain restrictions in terms of the legal capacity of children to form and join associations may be justified, any such restrictions must be in line with international law and take into account the evolving capacity of the child. Typically, children above the age of 14 should be able to become members of associations.

The right to establish a CSO should be enjoyed by people with disabilities, including people with limited legal capacity, on an equal basis with others. Their participation/membership in different organizations shall be encouraged, and support measures for enjoying their rights shall be established. It is possible to apply some limitations as safeguards regarding certain financial and management decisions. The aim of these safeguards shall be to ensure that the person is supported in taking decisions, expressing their will and handling responsibility from their decisions.

The right to found a CSO belongs also to legal entities, not just to individuals. These may be nonprofit legal entities or corporations. Examples include the establishment of a CSO umbrella organization (e.g. a Network of CSOs or Union of Foundations/Associations), a corporate association (e.g. the Union of the Mining Industry) or an organization having both corporate and nonprofit members (e.g. the Donors' Forum).

The right to establish a CSO includes the possibility to establish membership-based (e.g. association) and non-membership organizations (e.g. a foundation).

States do not impose, in law or practice, undue restrictions for individuals to form associations even during public emergency.

Violations of this indicator may include:

- Founders of a CSO are required to have clean criminal record;
- Founders of a CSO are required to have a residence permit or citizenship.

2. CSOs are not required to register or receive legal personality in order to operate

CSOs can be either informal organizations with some institutional form or structure, or bodies with legal personality. There should be no requirement for CSOs to be registered by an authority in order to start any activity. Obtaining legal personality or status as a legal entity should be a decision made independently by the CSO to enjoy associated benefits, such as limited liability for its members or the possibility of opening bank account in its own name.

Violations of this indicator may include:

- CSOs are required to notify authorities before conducting any activities;
- There is mandatory registration as a legal entity for all CSOs;
- Unregistered groups are prohibited or sanctioned.

3. There are no territorial limitations for the operation of CSOs, and the right includes the ability to associate online

Freedom of association includes both the right to associate in person and online (e.g. to establish a social/online network of members sharing a similar objective/purpose). Any limitation to online associations should be subject to the same standards for legitimate aim and proportionality as traditional CSOs. In order to operate on the national level, a CSO should not be required to obtain special registration or permission. Nor should it be required to have branches or representatives in a region in order to be able to engage in activities in that region.

Violations of this indicator may include:

- CSOs are required to have physical presence in more than one location in order to be able to act on national level;
- There are different registration requirements for organizations that operate on local, national or international level.

4. Individuals and legal entities can freely join and participate in the activities of any CSO by becoming members, volunteers or by supporting the initiatives of a CSO

The law should not limit the possibility to become a member or otherwise participate in the activities of a CSO. This rule should apply to both legal entities and individuals, regardless of nationality or any other characteristic (see the description of Indicator 1 which is also applicable for membership in a CSO). The respective CSO, as an independent entity, has the freedom to decide if it wants to

accept the individual/legal entity as a member, but it must ensure that it follows the general principle of non-discrimination.

Nor should there be a mandatory requirement for an individual to be a member of a CSO to engage in a profession or in certain activity. While there are examples of professions which require membership in professional associations – e.g. lawyers have to be members of bar associations – in such cases these organizations do not fall within our definition of a CSO. There also cannot be limits on CSOs engaging volunteers, receiving donations from individuals or involving people in similar ways.

The law may limit the ability of some public officials, including members of the police and armed forces, to be members of a CSO. Such limitations should be used in limited cases and be necessary in a democratic society (e.g. to avoid a conflicts of interest).

Violations of this indicator may include:

- Legal entities cannot be founders or members of an association;
- Individuals with criminal record cannot be members of a CSO.

Practice

Indicators for Practice
1. The state does not impose practical obstacles to establishing or joining a CSO or taking part in its activities. 2. Individuals are free to decide whether to join a CSO or take part in its activities.

1. The state does not impose practical obstacles to establishing or joining a CSO

There are no practical obstacles imposed on the enjoyment of freedom of association, such as persecution/harassment of unregistered groups or a requirement for official registration in order to express an opinion, exercise freedom of expression or assembly, etc. The legal requirements are followed in practice and individuals and legal entities can associate freely without the need to obtain status as a legal entity. They can also join or take part in the activities of an unregistered group.

The registration body does not evaluate the expedience/reasonableness of the objectives of a CSO, but focuses on whether it complies with the legal requirements for establishment and provides all documents required by law. The existence of other organizations with the same objective is not a reason to deny registration. Registration is not dependent on the authorities' determination of whether the CSO has the available means to solve the problems it aims to address.

The registration authority should not require additional documents other than those provided by law.

The fact that a CSO does not have physical presence in one location should not limit its possibility to engage in activities in that location. There should be no requirements for covering a certain percentage of the territory of a country in order to engage in policy-making or other activities at the national level.

Violations of this indicator may include:

- People can volunteer only through registered CSOs;
- CSOs cannot effectively start operations due to delays in the registration decision.

2. Individuals are free to decide whether to join a CSO or take part in its activities

There are no special requirements established by the authorities for membership in associations e.g. education level, belonging to a specific minority, etc. Such requirements, however, may be established by the CSO itself. Membership in CSOs is voluntary; no one can be forced to join a CSO or be involved in its activities in any other capacity.

The mere fact of membership in an organization (or participation in its legitimate activities as a volunteer, donor or supporter) should not be used as a reason for sanctions or pressure. This is especially true for organizations that express dissenting opinion to the official state policy.

Members of a CSO with legal entity status or members of its bodies should not be held liable for the activities/violations of the organization. Exceptions to this rule may include the negligent behaviour of official representatives.

Violations of this indicator may include:

- Arrests of members of a CSO without clear legal grounds;
- Prosecution of active members of CSOs on grounds unrelated to their membership (e.g. tax audits).

Standard 2. The procedure to register a CSO as a legal entity is clear, simple, quick, and inexpensive

CSOs can obtain legal entity status based on an effective registration procedure. The registration procedure shall be easy, without legal or practical obstacles such as high registration fees, a complicated and long list of documents to be provided, or a lengthy application process. In addition, the registration authority shall act independently and impartially and shall review the legality of the application without the discretion to judge whether the CSO's objectives are easily attainable or needed. Denial of registration is permitted only on very limited grounds in line with international standards. Any denial can be appealed before an independent body.

Law

Indicators for Law
1. Registration is quick, accessible and inexpensive. 2. The requirements to obtain legal personality are clearly described, simple and do not allow for discretion of the registering authority. 3. There are a limited number of clear and justifiable grounds for denial of registration.

1. Registration is quick, accessible and inexpensive

The registration procedure should be clearly described by law. There are different practices with regard to the timeline for registering a new civil society organization or making changes to an organization that is already registered. The process is prompt (such as in Georgia, where it takes only one day), and does not exceed 30 days, which is excessive and contrary to international standards.

Accessible registration covers several separate issues. First, people should have information about the steps in the registration procedure and clear instructions regarding the required documents. Second, the registration authority should ensure that people do not need to travel long distances to submit registration documents – for example by allowing them to be submitted online. If online submission is utilized, the state needs to ensure that there is access to Internet nationwide, and that the online procedure does not require specialized knowledge or representation by a lawyer, etc.

Registration of a CSO is not an administrative service but a basic human right. As such, the cost of registering a CSO should minimal, ensuring that everyone can enjoy the right to freedom of association and the possibility of registering their CSO as a legal entity. Ideally, registration should be free.

Violations of this indicator may include:

- CSOs can register only in the capital city;
- Organizations must be represented by a lawyer in order to register.

2. The requirements to obtain legal personality are clearly described, simple and do not allow for discretion of the registering authority

The law sets a clear list of required documents that the founders of the CSO seeking legal personality should present. The required documents should be limited in number, and the aim of presenting these documents should be solely to prove that the founders have followed the legally established procedure for setting up the organization. Typically, the registration authority will need to receive a document expressing the founders' decision to establish an organization, the statute of the organization, name and contacts of the organization and its representative(s), names of the people in the management body, proof for payment of the registration fee (if any), etc.

According to international standards, no more than two individuals or legal entities should be required to establish a CSO. Foundations may be established with only one founder, though some countries may require more. Requiring more than 10 founders, however, could be considered burdensome.

Violations of this indicator may include:

- The law allows the registering authority to request additional documents not listed in the law;
- The law requires the line ministries to provide an opinion on the registration of a CSO.

3. There are a limited number of clear and justifiable grounds for denial of registration

Registration is denied only in specific and very limited cases, and a detailed written statement of reasons for the denial should be provided. These could be related to one of the following grounds for limiting freedom of association according to the European Convention on Human Rights:

- in the interests of national security or public safety;
- for the prevention of disorder or crime;
- for the protection of health or morals; or
- for the protection of the rights and freedoms of others.

Registration may also be denied on formal grounds e.g. not having the required by law number of founders, not submitting the requested documents or not having the required minimum capital (for foundations). Any decision denying registration should be based on the law and should be in line with international standards.

Violations of this indicator may include:

- The law allows for registration to be denied if the ministry responsible for the specific area has not provided its preliminary consent;
- Denying registration following negative media articles about one of the founders.

Practice

Indicators for Practice
1. The body responsible for granting legal personality acts independently and impartially in its decision-making and does not set any additional registration requirements that are not prescribed by law. 2. Any deficiencies in the registration documents are communicated clearly and timely to the applicant and the application is not rejected for minor deficiencies. 3. Independent and impartial judicial review is provided within a reasonable time if a CSO's registration application is rejected.

1. The body responsible for granting legal personality acts independently and impartially in its decision-making and does not set any additional registration requirements that are not prescribed by law

Registration authorities are bound by the law. They should not require additional documents such as a residence permit or proof of a clean criminal record of the founders. The requirements to obtain legal entity status are based solely on the law, and the registration body acts independently (i.e., its decisions are not directed by another state body) and is not bound by political considerations such as:

- the founders being critical towards the government;
- the possible anti-government agenda of the CSO;
- the unpopular cause of the CSO (e.g. protecting a minority)

Violations of this indicator may include:

- There is a requirement that the offices of a CSO are in an administrative building;
- CSOs are asked to provide documents not listed in the law.

2. Any deficiencies in the registration documents are communicated clearly and timely to the applicant and the application is not rejected for minor deficiencies

Typically, if a CSO does not provide all necessary documents, as required by law, it should be provided a reasonable time to present them. The applicant should be notified promptly about the need to present additional documents; registration should be denied only if he/she does not provide those in the stated time period. If the applicant provides all required documents, the registration authority should be obliged to register the CSO. In case of minor formality errors, such as typos, missing words, missing page numbers, etc., the CSO is provided an opportunity to immediately fix them and the application is accepted for review.

The process of requesting additional documents should not be used to prolong the registration process excessively.

Good practices with regard to notification include sending an SMS or an e-mail to the contact person of the CSO.

Violations of this indicator may include:

- The registration authority does not notify the applicant of the need to provide additional documents and denies the application;
- The registration authority requests the amendment of the application documents for minor issues (e.g. the management body of the CSO is called Director instead of Executive Director).

3. Independent and impartial judicial review is provided within a reasonable time if a CSO's registration application is rejected

Practically, there should be very few cases where the registration of CSOs is denied. Any decision for rejecting CSO registration should be subject to appeal to an institution other than the one that has denied registration. In most countries this institution is a court. If the registration entity is the court, appeal should be possible to a higher court.

The appeal procedure should also be accessible and affordable, and fees for appealing decisions should be low and in line with cost of living levels in the respective country. The decision on the appeal should be taken quickly and without undue delay. Ideally, the time for the appeal decision should not be much longer than the time necessary to issue a registration decision.

Violations of this indicator may include:

- Appeal is not possible or is with the same authority responsible for registration.
- The registration authority does not issue a written decision denying registration and appeal is possible only after a written decision is issued.

Standard 3. CSOs are free to determine their objectives and activities and operate both within and outside the country in which they were established

In a democratic and pluralistic society, CSOs shall be free to offer different perspectives and solutions to societal challenges. This is possible only if they are free to choose their objectives on their own, without the need to comply with any government recommendations, priorities or policies. In addition, CSOs shall be able to freely choose the activities through which they will achieve their objectives. The government shall not impose any limitations on the scope of their activities (e.g. online, local, and international).

Law

Indicators for Law
1. The law enables CSOs to determine their objectives and carry out any legitimate activities. 2. CSOs are able to pursue their objectives working locally, nationally or internationally, including through membership of associations or federations, whether national or international. 3. The law does not compel CSOs to coordinate their activities with government policies and administration.

1. The law enables CSOs to determine their objectives and carry out any legitimate activities

CSOs can choose their objectives freely even if they are not always in line with the opinions and beliefs of the majority. The only limitations are related to the limitations set in art. 11 of the ECHR. Using violent or undemocratic means for achieving the objectives of an organization is not allowed. For example, the Bulgarian Constitution, in art. 44 states that "*any organization which establishes clandestine or para-military structures or seeks to accomplish the purposes thereof by violence, is hereby prohibited*".

In addition, the law would not protect CSOs having undemocratic aims[1]. The European Court of Human Rights has announced that CSOs are allowed to pursue even a change in the constitutional order as long as:

a) this is done in a legal manner by democratic means, and
b) the desired change is in itself compatible with basic democratic principles.

CSOs should not be required to seek governmental approval to start operating in a particular area of work, unless this is required from all entities operating in that area (e.g. a license to engage in banking activities).

Violations of this indicator may include:

- The registration authority refuses to register a CSO that wants to restore the constitutional monarchy in a parliamentary republic;
- The law requires that the objectives of the CSO correspond to the government priorities.

[1] Refah Partisi (Prosperity Party) and others v. Turkey, ECtHR

2. **CSOs are able to pursue their objectives working locally, nationally or internationally, including through membership of associations or federations whether national or international**

There should be no limitation on the scope of work of CSOs. Any organization, regardless of where its seat is, should be able to operate in any region/community or on the whole territory of the country. There should neither be a limitation nor special permission required for a CSO to operate abroad or join any international or local network.

Foreign CSOs should equally be able to operate in the country without the need to establish a new legal entity. They should, however, be able to establish a local branch office or an affiliate organization if they so choose. Foreign organizations should be able to operate in any area in which local CSOs can operate, unless the specific regulation of the respective area requires local legal entities to carry out the activity.

Violations of this indicator may include:

- The law prohibits a foreign organization to engage in a country unless it has a permission/registration as a local institution in the country.

3. **The law does not compel CSOs to coordinate their activities with government policies and administration**

CSOs have the freedom to choose freely the area in which they operate. The Government's own priorities do not limit the possibility of CSOs to work in other areas. Of course, the government may encourage CSOs to focus on priority areas by providing financial support for work in these areas, but should not limit other (non-state) funding for specific areas that it does not consider important.

The state may require CSOs to prove certain capacities in order to work in some areas, through a licensing requirement (e.g. in the area of healthcare or certain social services). However, such a requirement, if introduced, should apply for all service providers and not only CSOs.

Violations of this indicator may include:

- The law obliges the donor to enter into an agreement with the government in order to provide funding within the country;
- Permission from a line ministry is required to engage in activities in the ministry's respective area.

Practice

Indicators for Practice
1. Registration authorities do not judge or exercise discretion in the review of CSOs' objectives. 2. State authorities do not impose practical obstacles that hinder CSOs' ability to engage in all legally allowed areas of operation.

1. **Registration authorities do not judge or exercise discretion in the review of CSOs' objectives**

The registration body does not evaluate the expedience/reasonableness of the objectives of a CSO but focuses on whether the organization complies with the legal requirements for establishment and provides all documents required by law. The existence of many organizations with the same objective as the CSO seeking registration is not a reason to deny registration. Determination of whether the CSO has the available means to solve the problems it wants to address is not a reason for denial of registration, as long as the organization meets basic minimum standards set by law (e.g. in some countries there is a requirement for foundations to have a certain minimum capital).

Violations of this indicator may include:

- The registration authority requests that the CSO explain why it has chosen to support a specific group;
- The registration authority requires proof that the CSO has sufficient resources to achieve its objectives.

2. **State authorities do not impose practical obstacles that hinder CSOs' ability to engage in all legally allowed areas of operation**

CSOs are free to operate in any sphere of activity without any approval, except for some spheres where special permission or special conditions may apply (e.g. banking services, loans, etc.).

CSOs registered abroad should not be required to obtain special permission or to register a local entity in order to operate in the country. Their treatment should be the same as local CSOs and they should be able to operate in all areas where local CSOs engage.

The activities of CSOs should be presumed legal unless there is objective evidence to the contrary. Any requests for documents should be limited to needs related to monitoring or inspection. Where CSOs are required to provide documents before or during inspection, the required documents should be defined, reasonable and serve the purpose of confirming or discarding the suspicion of a serious contravention of law.

Violations of this indicator may include:

- CSOs are required to obtain additional approval from a government agency to operate;
- CSOs are required to provide documents which they cannot issue (e.g. documents signed by an "owner," which the CSO may not have);
- Foreign organizations are obliged to hire a local citizen as local representative/director;
- There are attempts by state authorities to intimidate CSOs or interfere in their activities.

Standard 4. Any sanctions imposed are clear and consistent with the principle of proportionality and are the least intrusive means to achieve the desired objective

The purpose of any sanction should be to rectify a violation of the law rather than to hinder CSO operation. CSOs shall be provided a reasonable opportunity to correct any wrongdoing before any sanctions are applied. If sanctions are imposed, authorities shall respect the principle of proportionality. The law shall provide a list of clearly defined

sanctions, amongst which termination is treated as a measure of last resort, applied in rare occasions. In addition, sanctions should be foreseeable and CSOs should know what violations can lead to them.

Law

Indicators for Law
1. Sanctions for CSOs are clearly defined and are the least disruptive to the right to freedom of association. 2. The grounds for involuntary termination and suspension are clearly listed and used only when less intrusive measures would be insufficient.

1. Sanctions for CSOs are clearly defined and are the least disruptive to the right to freedom of association

Sanctions should be imposed on CSOs only for serious violations of the law. The law should clearly prescribe what types of sanctions can be imposed on CSOs and for which violations. Sanctions should be proportionate to the violations. There should be a gradation of sanctions, and for minor violations, there should be minor sanctions.

Sanctions should also be predictable - the law should clearly state what sanctions are imposed for specific legal violations. Imposing a very high financial penalty would be considered disproportionate.

Violations of this indicator may include:

- Fines for the failure to submit a report on time are excessively high (e.g. several hundred euros).
- The law provides that CSOs are subject to termination for violation of the law without clearly listing the exact type of violation

2. The grounds for involuntary termination and suspension are clearly listed and used only when softer measures would be insufficient

Involuntary termination is a measure of last resort that may only take place following a decision by an independent and impartial court. It is used only for the most serious breaches of the law and only when other sanctions cannot remedy the legal violation(s). CSOs should be given the possibility to remedy the situation before involuntary termination proceeds. Termination can happen only if it is based on one of the legitimate grounds of art. 11 of ECHR:

- in the interests of national security or public safety;
- for the prevention of disorder or crime;
- for the protection of health or morals; or
- for the protection of the rights and freedoms of others.

Suspension should be used only to prevent an imminent threat and only for the most serious threats to democracy. The decision to suspend a CSO should be taken by an independent court. Suspension is a temporary measure and the law should provide a limited period of time for suspension.

Both suspension and termination should be subject to appeal.

Violations of this indicator may include:

- The law does not clearly list which legal violations may lead to suspension or involuntary termination;
- The law provides no limitation on the duration for which an organization could be suspended.
- Termination is imposed when there are two violations of the law in one year, regardless of their severity.

Practice

Indicators for Practice
1. CSOs are provided with adequate warning about the alleged violation and given the opportunity to correct it before further sanctions are applied. 2. Involuntary termination is used only in cases of serious violation of the law.

1. CSOs are provided with adequate warning about the alleged violation and given the opportunity to correct it before further sanctions are applied

The objective of any sanction against a CSO should be to correct its behaviour and remedy the alleged breach of law. That is why the first step before imposing any sanction should be a warning providing sufficient time to rectify the unlawful behaviour. For example, CSOs that have failed to submit an annual report should be notified and given reasonable time to submit it before any sanctions are imposed. This warning should be in writing, and there should be evidence that the warning was received by the CSO.

Violations of this indicator may include:

- The deadline provided for the correction of a violation is so short that makes it practically impossible to comply.

2. Involuntary termination is used only in cases of serious violation of the law

Involuntary termination should be used as a sanction only when no other means to achieve the respective objective (in other words, it must be proportionate to the violation of the law). According to the European Court of Human Rights, this means that there should be a determination that the sanction is "necessary in a democratic society".

A good practice is to provide a sufficient period for remedying the violation. Bulgarian law provides that the CSO will be given a 6-month period to correct the violation before being involuntarily terminated.

In addition, termination is a measure of last resort and should be imposed only for the most serious violations. For example, not summoning the general assembly of an association in the exact manner prescribed by law is a minor violation that should not lead to termination.

Example of the violation of this indicator include:

- Termination or suspension is used as a means to silence organizations critical of the government.
- Organizations do not receive a warning before being terminated.

Standard 5. The state does not interfere in the internal affairs and operation of CSOs

CSOs are self-governing entities, independent from the state. They are free to decide on their internal structure (adhering to the basic legal requirements), the membership of their bodies and their mandate. CSOs may be subject to reporting on their activities, which has to be clearly defined and proportional. Furthermore, the law shall provide clear rules for the scope, criteria and limitations on monitoring and inspections by the state authorities. Any monitoring or inspection must be carried out in a justified, proportionate, and objective manner.

Law

Indicators for Law
1. CSOs are free to determine their internal governance and operations. 2. There are clear rules for the scope, criteria and limitations on monitoring and inspection of CSOs by the state. 3. Reporting procedures and requirements are clearly described and proportionate to the size of CSO and/or the scope of its activities.

1. CSOs are free to determine their internal governance and operations

The state has the negative obligation not to interfere in the internal affairs of a CSO (as part of the freedom of association). CSOs should be free to create a governance structure according to their own preferences, as long as it follows the minimum requirements of the law (e.g. in the case of associations the highest body is the assembly of members). CSOs can decide by themselves the membership conditions and the selection process for members of their organization and its bodies, taking into consideration the principle of equal treatment of members.

The state may require CSOs to notify the registration authority about a change in their governing documents, structure or membership of the managing body of the organization. This should not, however, serve as a means for control or approval of such decisions, as long as they comply with the legal procedure. The organization should have the right to continue its operation without the need to get confirmation from the registration authority that the notified changes are formally registered.

The state can have oversight over the decisions of a CSO only based on legality (their compliance with the law) or their compliance with the organization's statute and internal regulations (based on an appeal of a member to the court).

Another possible role of the state would be to make a decision in case of a deadlock (a situation which cannot be resolved under the internal regulations of the organization). This may be the case when the founder of an organization has reserved the right to make certain decisions and after his/her death this right was not transferred to the organization or a third party blocks such decisions.

In some countries the state may be a founder or a member in a CSO. In such cases, it has the right to take part in the internal affairs of the CSO in the same way as all other members. However, a requirement for mandatory participation of a state representative in the internal meetings of a CSO would be a violation of this indicator.

An indispensable part of the freedom of association is the freedom to decide not to associate or to decide to terminate an organization. CSOs should not need permission from any state body to terminate the organization, although they may need to follow a special procedure under which a state body eventually announces the termination. Such a procedure usually aims to ensure the rights of potential creditors or members are protected. The termination procedure should be clear and not burdensome for CSOs. The timeline in which such a decision is taken should be reasonable e.g. 6 months.

Violations of this indicator may include:

- A CSO is obliged to invite a government representative to its general assembly;
- The state needs to be notified of any change in the composition of all bodies of a CSO;
- The registration of changes in the governing documents or other internal decisions takes excessively long or is a pre-condition for the organization to continue carrying out its regular activity;
- The CSO can only have bodies listed in the law.

2. There are clear rules for the scope, criteria and limitations on monitoring and inspection of CSOs by the state

The law should clearly state the scope of the oversight that the state has over CSOs. Any inspections should be based on the law and on reasonable suspicion that the law has been breached.

The law should limit the types of documents that the CSO must provide to ones necessary to verify the CSO's legality. Asking for a complete list of members and their contact information is typically not considered necessary as this information can be sensitive and is not usually necessary to prove that an organization is acting in compliance with the law. For example, if the authorities need to check if an organization has the necessary number of members or a quorum for taking certain decisions, it would be enough to request an updated number of members.

Access to CSO offices or confiscation of documents should be possible only in cases of where there are objective grounds for such actions (e.g. to prevent a crime) and only after a court authorization.

Violations of this indicator may include:

- CSOs are obliged to provide any document that the authorities request;
- The inspection authorities have free access to the CSO offices without the need to provide any objective grounds or judicial authorization.

3. Reporting procedures and requirements are clearly described and proportionate to the size of CSO and/or the scope of its activities

Legislation should clearly state in which cases CSOs are subject to reporting requirements. Typically, organizations that receive state support may be subject to more thorough reporting requirements. In any case, reporting should not be too burdensome and ideally should be proportionate to the size of the organization – e.g. an organization with a low financial turnover should be permitted to present a simplified report. In addition, reporting requirements and forms should take into consideration the specificities of CSOs. A good practice is to have reporting forms tailor-made for CSOs.

Reporting requirements should respect the rights of donors, beneficiaries, members and staff; it should also protect legitimate business confidentiality. A person engaged as Board member or an employee of a CSO should not be treated as a public official exercising public functions or required to publicly declare his/her assets or income.

A violation of freedom of association would be to impose heavier reporting requirements for CSOs than for businesses (e.g. CSOs must report twice per year or more, when businesses report only once).

Violations of this indicator may include:

- CSOs are required to provide a list of all individual and corporate donors to the responsible state agency;
- All CSOs are obliged to provide a detailed report regardless of whether they have had any activities during the year.

Practice

Indicators for Practice
1. Inspections of CSOs are justified, proportionate and objective. 2. CSOs can easily fulfil reporting requirements online and/or offline.

1. Inspections of CSOs are justified, proportionate and objective

Any inspection of a CSO should aim to disrupt as little as possible the legitimate activities of the CSO. It should be justified:

- based on legal grounds (falling under one of the cases when inspection is authorized by law); and
- within the scope of what is permitted by law (the measure taken by the authorities are allowed by law).

Any inspection should be proportionate - taken only when there is a reasonable suspicions, that a violation of the law has occurred and the inspection is the best way to prove that. The inspection

should also be objective and not used as a tool for political pressure or to silence organizations, especially in the case of CSOs that are critical of the government.

Violations of this indicator may include:

- Inspections are carried out predominantly of CSOs that criticize the government.

2. CSOs can easily fulfil reporting requirements online and/or offline

Authorities should consider that most CSOs are voluntary organizations and lack professional assistance. Thus, there should be clear explanations of CSO obligations that are easily accessible. There should also be officials who understand CSO reporting requirements made available to provide explanations to anyone needing assistance.

While online reporting could be an advantage, CSOs should also be permitted to submit hardcopy reports via offline means.

Violations of this indicator may include:

- The reporting forms are excessively complicated and are not tailored to CSOs.

Relevant resources

- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 7, 74, 139-146, 150, 231
- Council of Europe Recommendation CM/Rec (2007)14 on the legal status of NGOs in Europe, para. 2, 3, 16 (adopted 10 Oct 2007)
- Convention on the Rights of Persons with Disabilities (CRPD), A/RES/61/106, art. 12
- UN Human Rights Council, "The promotion, protection, and enjoyment of human rights on the internet," A/HRC/20/L.13, (29 June 2012), art. 1, 5
- UN Human Rights Council resolution on civil society space: engagement with international and regional organization, A/HRC/38/L.17 (4 July 2018)
- Thematic Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (21 May 2012), para 56
- Thematic Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/38/34 (13 June 2018)
- Checklist – FoAA during public health emergencies, developed in the context of the COVID-19 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association

AREA 2. EQUAL TREATMENT

Standard 1. The state treats all CSOs equitably with business entities

The state regulates the work of both the business and the civil society sector, and their treatment should be equitable as both sectors aim for socio-economic development. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that the state must regulate both sectors in a fair, transparent and impartial manner, grounded in domestic and international law. While there is no need for identical treatment for businesses and CSOs, any differences in regulation must be clearly set forth in law and comply with the principle of equity, with minimum discretion given to state officials. Businesses and CSOs shall be treated equitably by regulations related to registration procedures, administrative and operational requirements and access to funding.

Law

Indicators for Law
1. Procedures for registration and voluntary termination of CSOs are not more expensive, time-consuming, and burdensome compared to business entities. 2. CSOs are not subject to stricter administrative and operational requirements than business entities. 3. CSOs can receive benefits and compete in public procurement on an equal basis with business entities, without additional burdensome requirements. 4. Legal regulations regarding access to funding, including from abroad, for CSOs is not less favourable than for business entities.

1. Procedures for registration and voluntary termination of CSOs are not more expensive, time-consuming, and burdensome compared to business entities

Registration fees for CSOs should not be higher than those paid by business entities. The maximal time period for registration set by law for CSO should also not exceed that for business entities. For example, if business registration takes two days, the registration of associations shall be completed within the same period.

CSO registration should not be more burdensome, which means that the scope of required documentation and the registration approval procedures are similar to those for business entities. For example, in many countries business entities are registered as soon as their documentation complies with legal requirements, and no approval is needed by a specific government authority. In Belarus, business registration is completed at the moment the application is filed. Similarly, no decision or other legal act from another state authority should be needed for registration of an association, so long as all necessary documents are duly presented. The information required for CSO registration should include the same or similar documentation as businesses. The registration bodies for businesses and associations shall have the same scope of coverage across the country; i.e. if there are local offices providing registration to business entities, CSOs should be able to register locally as well without the need to travel farther. If the state has created special mechanisms to facilitate easy registration of businesses, similar mechanisms should be applied to CSOs, e.g. online registration or one-stop shops providing consulting and assistance in registration.

Similarly, the dissolution process for CSOs should not be more restrictive, i.e. it should require the same scope of documentation and equal or lower fees. Involuntary dissolution of CSOs should not take place on additional grounds that do not apply to businesses, and must be guided by the principles of proportionality and necessity.

Violations of this indicator may include:

- CSO registration requires more time and more complex procedures versus business entity registration.
- Registration fees or other dues and taxes from legal entities are higher for CSOs than for commercial organizations.
- Online registration is not possible for CSOs while businesses can apply and register online.
- There are more grounds for involuntary dissolution of CSOs than for business entities, e.g. dissolution for not providing annual reports or not complying with the purposes defined in CSO charter.

2. CSOs are not subject to stricter administrative and operational requirements than business entities

In their administration and operation, CSOs shall not have more burdensome requirements compared to businesses. The requirements for registering changes in the organizational documents or changes in the composition of the management should be subject to equitable conditions for CSOs and commercial companies. When opening bank accounts, the same scope of documentation shall be required and the bank fees shall not be higher for CSOs than for business entities. The law should define the same or lesser grounds for a state audit of the financial records of CSOs. According to the UN Special Rapporteur report, "if an association receives tax benefits in exchange for registration as a nonprofit entity, States have a legitimate interest in ensuring that the association is not generating profits or distributing earnings[2]", but there should be no other differences in auditing CSOs and businesses beyond this.

CSO reporting requirements set by law shall not be more complex or expensive than that of business entities, and the frequency of filings required should be similar or less frequent for CSOs, since business entities' profit-making function and tax liabilities may require them to report more often than CSOs. The scope of information required should not be more intrusive for CSOs, for example requiring minutes of board meetings or details about funding sources that are not required for companies. Special reporting is permissible only if it is required in exchange for certain benefits, and provided it is within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits.

Violations of this indicator may include:

- The law requires additional documentation for CSOs to open bank accounts;

[2] Thematic 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), A/70/266, para. 52

- Registration of changes in the organizational documents or in the composition of the management takes longer or is more burdensome for CSOs as compared to commercial companies;
- The law requires CSOs to report on the minutes of board meetings, details of funding sources or other internal documentation or procedures that are not required for companies;
- Auditing and reporting is more frequent for CSOs than for businesses, without added benefits.

3. CSOs can receive benefits and compete in public procurement on an equal basis with business entities, without additional burdensome requirements

CSOs should be free to engage in any lawful economic, business or commercial activities, including participation in public procurements, in order to support their nonprofit activities. They may be subject to any licensing or regulatory requirements which are also applicable to other businesses carrying out the activities concerned. Competition on equal basis means that same scope of documentation is required from CSOs and businesses, and the same criteria are applied in the selection process. CSOs shall not be required to provide additional information about their founders or funding sources in order to be eligible to participate in public procurement competitions if such information is not required for the business entities as well.

States may take measures to facilitate or promote investments in businesses that work in specific areas that are declared as a priority for the country (e.g. development of new technologies, social entrepreneurship). States can also undertake measures to support the economy during health or other emergency. However, these measures should apply in an equal manner to CSOs working on the same areas, e.g. benefits for engaging people with disabilities or working in vulnerable zones. Equally important is to ensure that any emergency measures introduced would not affect CSOs disproportionately.

Violations of this indicator may include:

- All or certain forms of CSOs are restricted or forbidden to participate in public procurements;
- CSOs are required to present additional information during the procurement process, such as data on founders, financial reports, implemented projects, while businesses are not required to provide this information;
- Small businesses receive tax exemptions if their annual income does not exceed a specific threshold, while CSOs engaged in economic activities do not have such benefit;
- Tax exemptions are available for businesses employing vulnerable groups of people, but not for CSOs;
- CSOs are not eligible recipients of economic support measures for their work in the same way as businesses.

4. Legal regulations regarding access to funding, including from abroad, for CSOs is not less favourable than for business entities

Similar to businesses receiving investments, CSOs should be free to receive funding from any contributors. As mentioned in the UN Special Rapporteur's report, foreign funding or investment is the type of resource most frequently targeted by state restrictions. However, the regulatory trends towards businesses and CSOs are diverging: while undue restrictions on civil society's ability to access foreign funding have grown in the past decade, restrictions on foreign investment in businesses are dissipating. For example, in Russia and Hungary, CSOs that receive funding from abroad must register as foreign agents, while foreign investments in businesses are largely promoted by the state. Access to any type of funding, domestic or foreign, must be open for both sectors equally and should not require any burdensome procedures.

Violations of this indicator may include:

- CSOs pay fixed taxes for their entrepreneurial activities, while businesses can select different types of taxation depending on the scope of their activities.
- Foreign funding of CSOs needs to be approved and/or registered with state, while foreign investment in businesses does not.

Practice

Indicators for Practice
1. Registration authorities do not impose additional requirements or other obstacles for the registration, operation or dissolution of CSOs as compared to business entities. 2. The state does not reject or impede CSOs' access to procurement procedures or other funding sources due to their legal entity status. 3. Inspections and sanctions for CSOs are not more frequent than for business entities.

1. Registration authorities do not impose additional requirements or other obstacles for the registration, operation or dissolution of CSOs as compared to business entities

Registration authorities should not create additional obstacles to CSO registration as compared to businesses. For example, they shall not undertake more in-depth examination of their charter, impose stricter requirements on the formulation of the charter beyond the legal provisions, or require additional documentation. Similarly, the process of dissolution of CSOs should not be more burdensome than the dissolution of a business entity. No additional requirements to the ones listed in the law should be imposed.

Violations of this indicator may include:

- Registration of CSOs or registration of changes in the organizational documents or in the composition of the management of a CSO in practice is usually more difficult and slower than in the case of businesses.

- The "one stop shop" principle (allowing registration through one body without necessity to visit multiple agencies) is applied in the process of registration of companies, but is not applied for registration of CSOs.

2. The state does not reject or impede CSOs' access to procurement procedures or other funding sources due to their legal entity status

Non-profit status shall not serve as a basis for rejecting CSO applications in the procurement process, or to decrease CSOs' chances to win the procurement. CSOs should not undergo additional procedures in order to be eligible to participate in procurement. CSOs can also freely use other funding sources such as grants or donations from local and foreign sources without facing artificial obstacles beyond the legislative requirements.

Violations of this indicator may include:

- CSOs participating in procurements are required to provide information on their founders or other additional information related to their nonprofit status in practice;
- CSOs participating in public procurements need to obtain preliminary approval from the relevant state body;
- When receiving funding from local or foreign sources, CSOs are required to provide justification or reporting or face additional government checks beyond the legal requirements, merely due to their non-profit status.

3. Inspections and sanctions for CSOs are not more frequent than for business entities

Even if the law provides same frequency of audits and inspections by the state, it should be ensured that in practice state bodies do not inspect CSOs more often. CSOs are subject to additional inspection only when they receive benefits due to their nonprofit status, and only based on the relevant legislative requirements.

Violations of this indicator may include:

- CSOs are inspected more often by tax bodies or other state agencies than businesses, without relevant legal justification.

Standard 2. The state treats all CSOs equally with regard to their establishment, registration and activities

The principle of equal treatment means that legislation and state authorities should treat CSOs equally regarding their establishment, registration and activities. Any differential treatment is discriminatory unless it has an objective and reasonable justification, clearly defined by law. Such justifications are applied towards a legitimate aim and follow the principle of proportionality, for example supporting CSOs working in particularly vulnerable areas or with certain groups.

Law

Indicators for Law
1. CSOs are treated equally and any preferential treatment is based on clear and objective criteria. 2. CSOs established in the country by foreign individuals or legal entities are treated in the same way as legal entities established by local individuals or legal entities.

1. CSOs are treated equally and any preferential treatment is based on clear and objective criteria

Legislation should treat all CSOs equally with regard to norms regulating their establishment, registration (when applicable) and activity. If an organization receives special status or treatment, it should be based on clear and objective criteria in the law. The process should also be accessible - any organization may try to fulfil the respective conditions and receive the same benefits. As an example, in some countries representative organizations of people with disabilities or other sectors receive specific rights and easier access to consultative bodies. This is possible as long as any organization that complies with the requirements for representativeness can get similar benefits.

Violations of this indicator may include:

- The state provides benefits to certain organizations without any clearly defined criteria;
- The procedure to receive certain benefits is vague, unclear or de-facto non-existent.

2. CSOs established in the country by foreign individuals or legal entities are treated in the same way as legal entities established by local individuals or legal entities

Under international law, foreign individuals are allowed to establish CSOs on the same terms as those granted to local citizens and legal entities. There should not be restrictions on the activity of CSOs established by foreign individuals or legal entities, except for those restrictions that are reasonably permitted by law in respect of CSOs established by citizens. Standards on freedom of association should equally apply to the establishment and activity of foreign and local CSOs, including CSOs operating at the international level.

Violations of this indicator may include:

- There are special restrictions, control and reporting requirements for CSOs established by foreign individuals or legal entities.

Practice

Indicators for Practice
1. State bodies avoid preferential treatment towards specific organizations. 2. CSOs that express views and positions critical of state officials or policy are not purposefully restricted in their activities.

1. **State bodies avoid preferential treatment towards specific organizations**

State bodies should not demonstrate preferential treatment towards specific organizations unless such treatment is based on criteria provided by law. This should apply to engaging CSOs in decision-making processes, providing support, and granting any special status or benefits. In particular, state support and benefits should not be based on whether the organization is supportive or critical of the government, but rather on transparent procedures with objective criteria.

Violations of this indicator may include:

- Only CSOs that have experience collaborating with state agencies are considered for specific awards/benefit status.
- Officials give preference to CSOs founded by their acquaintances when selecting among applicant CSOs for a consultative body,
- The state grants preferences and benefits to CSOs which propagandize state ideology or are dependent on the state in their decision-making or management.
- Information about allocated state support and its extent is not publicly accessible.

2. **CSOs that express views and positions critical of state officials or policy are not purposefully restricted in their activities**

Freedom of expression is crucial for realization of freedom of association. The fact that CSOs criticize the actions of state bodies, their stances or decisions cannot be grounds for restricting their activity. National security measures should be temporary in character and narrowly designated for the achievement of clearly defined legitimate goals, as stipulated by law. Such measures should not be used to persecute those who criticise the government or hold dissenting views.

Violations of this indicator may include:

- State bodies organize searches and additional inspections in the offices of CSOs that express stances and opinions different from those of the state bodies;
- Founders, heads and members of CSOs are accused and/or prosecuted for the legitimate activities of their organization;
- CSOs are liquidated due to their programs or opinions expressed by their leaders and members on behalf of the organization.

Relevant resources

- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 64, 94, 96, 126, 166, 205, 208, 225-226, 233
- Council of Europe Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, para. 14 (adopted 10 Oct 2007)
- Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/70/266 (16 Sept 2015), para. 22-75, 83-85, 109
- Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (21 May 2012), para. 5, 68

AREA 3. ACCESS TO FUNDING

Standard 1. CSOs are free to seek, receive and use financial and material resources for the pursuit of their objectives

Access to funding supports CSOs to realize their mission. The diversity of resources contributes to their independence and sustainability. CSOs shall be free to seek, receive and use financial or in-kind support from any legal public or private source (individuals and/or legal entities). They shall be able to use any available fundraising mechanisms and the procedures for these shall be simple and clear. Furthermore, there shall be different incentives introduced for individuals and legal persons to support the work of CSOs. The reporting requirements for both recipients and providers of funding shall not be burdensome. CSOs shall have the option of operating with cash and/or with banks.

Law

Indicators for Law
1. CSOs are free to solicit and receive funding or in-kind support from public or private donors through various mechanisms. 2. The requirements for CSOs to receive, use and report funding or in-kind support from any donor are not burdensome.

1. CSOs are free to solicit and receive funding or in-kind support from public or private donors through various mechanisms

Access to financial resources is important for the activity of CSOs and is interlinked with exercising freedom of association. The availability of a variety legal funding sources for CSOs ensures sustainability and cohesive development of the civil society sector.

CSOs of all types should have the legal opportunity to solicit various resources, including financial, in-kind, material and human, from various sources, including state and private, national, foreign and international sources. The opportunity to seek, receive and use resources is crucial for the existence and functioning of any CSO.

CSOs are by their nature nonprofit legal entities. However, their nonprofit purpose does not mean that they should be barred from pursuing any economic activities, so long as they abide by the general principles of nonprofit operation. Economic activities can be a key source of income. CSOs should have the right to freely engage in any legal economic, business or commercial activity to support their non-commercial activities. Any regulation on social entrepreneurship should recognize CSOs as social enterprises and establish conditions that facilitate rather than limit their operation.

At the same time, they must meet all regulatory requirements and license terms generally applicable to the type of activity they pursue. Moreover, in order to maintain nonprofit status, a CSO must not distribute profits to its members and founders; rather, this money must be used to pursue the CSO's goals.

Limitations on access to resources – and the resulting reduction of the CSO's ability to pursue its goals and engage in its activities – can be considered an unjustified restriction and interference on the right to freedom of association. The criminalization or de- legitimization of the activities by civil society on account of the origin of their funding is prohibited.

Both individuals and private legal entities should be able to provide funding to CSOs. Funding should be permitted for any legal CSO activity; legislation should not restrict the list of activities that private donors are allowed to support.

Donors should not be required to undergo any prior authorization procedure by the government. CSOs should be allowed to use various methods for collecting resources such as online fundraising campaigns, crowdfunding, collection boxes, face-to-face fundraising, etc. If public collection of donations is regulated, the regulations should allow all CSOs to use this method of fundraising. Any procedure regulating public collection should not be burdensome for the CSOs.

Violations of this indicator may include:

- Only certain types of CSOs are allowed to receive donations from private donors;
- All CSOs or certain types of CSOs do not have the right to conduct entrepreneurial activity (economic activity, aiming at earning of profit);
- The legislation does not recognize CSOs as potential forms of social enterprises or sets burdensome criteria;
- Legislation restricts CSOs from organizing charity lotteries and charity auctions (including online);
- Legislation specifies the types and aims of CSO activity for which private funding can be received.

2. The requirements for CSOs to receive, use, and report funding or in-kind support from any donor are not burdensome

Normally there should be no preliminary conditions for CSOs to receive funding or in-kind support, regardless of the source. While authorities may regulate certain fundraising methods (e.g. street collections/public fundraising), such regulation should not totally bar CSOs from using these methods.

CSOs should be able to use the funding received from legitimate sources for any legitimate activity.

Resources received by CSOs may be subjected to reporting and transparency requirements. However, such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the CSO and the scope of its activities, taking into consideration the value of its assets and income. Stricter requirements can only be set for large donations or donations from public funds (for example, the donation must be made public or the report should be published).

Compliance with reporting and administrative requirements should not be so burdensome that it forces CSOs to refrain from the activity being funded from a certain source.

CSOs and their staff (or members) should have the opportunity to open and use bank accounts abroad without special approval from the state or an obligation to notify the state.

Violations of this indicator may include:

- There is a limitation on public fundraising for certain types of CSOs;
- CSOs are required to notify the authorities within a fixed period of time after the receipt of any foreign donation;
- It is forbidden for CSOs to have accounts abroad;
- CSOs must obtain preliminary approval from a state regulator in order to open an account abroad;
- It is forbidden for managers/representatives and staff of CSOs to have accounts abroad.

Practice

Indicators for Practice
1. It is easy for CSOs to receive funding or in-kind support from any legal source. 2. CSOs can use diverse methods for fundraising. 3. Limitations on cash or bank operations do not impede CSO activities.

1. It is easy for CSOs to receive funding or in-kind support from any legal source

All CSOs should have equal access to all legal sources of funding in practice. Political allegiance of CSOs should not be the criterion for access to state and other sources of resources. CSOs should be able to receive funding from the following sources: direct state funding (grants, state orders and subsidies), indirect mechanisms of state support (percentage designation tax mechanism, lotteries) and private internal sources (donations and other forms of funding by individuals, corporations or non-governmental bodies).

The process of obtaining funding or in-kind support does not require any special permission or another procedure. In case there is some requirement introduced (e.g. for notification or reporting), it is not burdensome and ideally could be carried out electronically.

Reporting, disclosure and other requirements are not used to limit CSOs' ability to access resources. Practical application of regulations on registration of donations and reporting does not negatively influence the volume of private or state funding. CSOs do not refrain from projects because of difficult reporting requirements. Requirements related to the registration of donations and reporting are known in advance.

Violations of this indicator may include:

- CSOs critical of the government are never financed under public financing mechanisms;
- Technicalities and requirements on reporting the receipt of state donations or donations from corporate sources are so bureaucratic and burdensome that only a few large CSOs can meet them;
- In practice, the requirements for registration and reporting of small donations lead to administrative expenses that exceed the amount of the funds received by CSOs

2. CSOs can use diverse methods for fundraising

The traditional forms of funding for CSOs include grants, economic activity, membership fees and donations. In order to raise donations from corporations or individuals, CSOs can use different methods to collect money e.g. public collection on the streets, charity lotteries, charity concerts, etc. CSOs should face no practical limitations when engaging in those methods of fundraising. CSOs should also be free to use new mechanisms to solicit financial resources, such as electronic payment systems, Internet-based crowdfunding platforms, SMS donations and other electronic donations.

Violations of this indicator may include:

- Fundraising via websites is restricted or forbidden unless the website hosting and domain are domestically-based.
- CSOs cannot engage in online/digital fundraising because anonymous donations are not allowed, but in the case of digital fundraising the electronic system does not allow to learn the identity of the donor.
- Banks and state regulators interfere with crowdfunding platforms, censoring them, influencing the character of projects or blocking collected funds.
- Anonymous donations in cash are de facto impossible due to practical restrictions on the placement of collection boxes in public areas or because of the application of banking and accounting rules restricting and regulating cash turnover.

3. Limitations on cash or bank operations do not impede CSO activities

CSOs with legal entity status should have the opportunity to manage their income and property and use bank accounts. Access to banking services is essential for CSOs to receive donations and to manage and protect its property. This does not mean that banks should be obliged to provide such services to any CSO that applies. However, banks' right to freely select their clients should be exercised in compliance with the principle of non-discrimination.

Registered CSOs without legal entity status and informal initiatives should be permitted to collect donations in cash. Restrictions on collecting cash donations should be rationally justified and in any case should not be an impediment to the practical collection of donations.

There shall be no restrictions on CSOs' ability to withdraw cash, including excessive bank fees, or other obstacles that prevent the organization from converting non-cash financial instruments into cash.

Violations of this indicator may include:

- Banks often refuse to open CSOs' accounts or to facilitate the transfer of donations to CSOs;
- Legal persons are prohibited to make donations in cash;
- The law entitles banks to monitor whether CSOs' financial operations comply with their goals and / or laws.

Standard 2. There is no distinction in the treatment of financial and material resources from foreign and international sources compared to domestic ones

States shall not obstruct the receipt of funding from foreign and international sources, as such funding helps to develop CSO capacities and contributes to the social, economic and human development of the countries. States shall not impose any special restrictions or special taxation measures upon donors or CSOs when providing, receiving or using foreign and international funding. Likewise, CSOs and associated individuals shall be able to use the services of both local and foreign banks without obtaining special permission. Furthermore, CSOs using foreign resources shall not be subject to stigmatization, pressure or public attacks in media, particularly from state officials.

Law

Indicators for Law
1. There are no special restrictions or procedures for CSOs to receive and use foreign and international funding or in-kind support, or for donors to provide funding to CSOs. 2. Foreign and international grants, donations, and membership fees have the same tax treatment as domestic ones.

1. There are no special restrictions or procedures for CSOs to receive and use foreign and international funding or in-kind support, or for donors to provide funding to CSOs

CSOs should have the opportunity to receive resources from abroad as easily as from domestic sources. The state should not ban certain CSO activities from being financed by foreign sources.

Restrictive provisions on donations to CSOs from abroad are most often found in legislation on customs duties, turnover of foreign currency, money-laundering, financing of terrorism, and funding of elections and political parties. Legislation should not require special registration or preliminary approval from the state for receipt of foreign funding.

According to the OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association (p. 220), "any restrictions on access to resources from abroad (or from foreign or international sources) must be prescribed by law, pursue a legitimate aim in conformity with the specific permissible grounds of limitations set out in the relevant international standards, as well as be necessary in a democratic society and proportionate to the aim pursued. Combating corruption, terrorist financing, money-laundering or other types of trafficking are generally considered legitimate aims and may qualify as being in the interests of national security, public safety or public order. However, any limitations on access to these resources must be proportionate to the state's objective of protecting such interests, and must be the least intrusive means to achieve the desired objective."

If there are requirements relating to CSOs' reporting of funds received from abroad, they should be limited to notification about the receipt of funds and the submission of the reports on their usage. Any state regulation of CSOs' ability to receive foreign resources should be reasonable and should not involve excessive interference or prevent CSOs from carrying out their legitimate activities.

CSOs receiving funds from abroad should not be required to undergo a separate registration procedure or use any name designating that they are foreign funded, e.g. "foreign agent" or "organization supported from abroad."

Violations of this indicator may include:

- Legislation specifies a closed list of CSO activities that can be financed from foreign sources, or a list of CSO types and purposes that cannot be financed by foreign sources (human rights, publishing activities, etc.);
- Foreign funding must be registered with a state body. Such registration could be refused and there are sanctions for the use of foreign funding without registration;
- Donations from foreign citizens (regardless of their place of residence), stateless persons and domestic citizens residing abroad are considered to be foreign and are subject to restrictions;
- Donations from enterprises with foreign investments are considered to be foreign and are subject to restrictions;
- In publications sponsored by foreign donors, CSOs are obliged to disclose that they have received foreign financing or otherwise identify themselves as the beneficiary of the foreign aid.

2. Foreign and international grants, donations, and membership fees have the same tax treatment as domestic ones

Donations from foreign sources should be treated equally to domestic donations by tax legislation, and should not be subject to income taxes and other taxes. States may encourage foreign support to CSOs by introducing tax and other incentives. Other incentives may include lowering the cost of bank transfers and tax exemptions on donations received from foreign organizations.

Violations of this indicator may include:

- Foreign donations are treated as profit and are subject to profit tax;
- Entrance and membership fees from members of associations residing abroad are treated as foreign funding and are subject to restrictions, including taxation;
- Requirements on reporting regarding foreign donations are too strict and are significantly stricter than requirements on reporting regarding domestic donations;
- Rules and conditions for contributing to the initial capital or the statutory fund while setting up a CSO are not the same for a foreign founder and a resident founder.

Practice

Indicators for Practice
1. CSOs are able to receive foreign funding freely and use foreign sources in practice. 2. CSOs receiving foreign funding are not stigmatized or attacked in the state-supported media or by the government.

1. CSOs are able to receive foreign funding freely and use foreign sources in practice

The regime for receipt of foreign donations should encourage foreign funding for CSOs. The receipt of foreign funding by CSOs should not entail negative consequences for anyone. All CSOs willing to access foreign funding should have the right to seek such funding and, when there are foreign donors

willing to support their activity, to receive and use such foreign funding in practice. The legal regime for foreign donations should not be implemented ambiguously and inconsistently; something that may be lawful for one organization should not lead to sanctions for another organization.

Donors shall be free to operate in their home countries and to support CSOs from abroad without needing to obtain prior permission from the government. Even if there is a requirement for notifying/reporting on foreign grants, it shall not impede the operation of CSOs or donors and shall not provide any administrative authority with the ultimate decision-making power as to whether or not CSOs may receive such funds.

Violations of this indicator may include:

- Only a few CSOs are able to legally receive foreign funding and the process takes several months;
- Foreign-funded CSOs are de facto restricted from engaging in human rights, advocacy or other activities;
- It is impossible for CSOs to receive foreign aid without a political decision or approval of the state;
- A donor organization is allowed to make donations to CSOs only after registering as a donor or a mission of a foreign organization;
- Foreign donors must sign a special agreement with the Government.

2. **CSOs receiving foreign funding are not stigmatized or attacked in the state-supported media or by the government**

CSOs receiving foreign funding should not be subject to discriminatory measures or defamatory informational campaigns by state bodies or state-supported media. Stigmatization can be manifested in negative media publications, offensive articles in the press or otherwise creating a negative image for CSOs. CSOs receiving foreign funding should not be restricted in activities that are common for other CSOs that do not receive foreign assistance (for example, access to parliament, access to courts, or the possibility of working in government prisons or universities).

Violations of this indicator may include:

- The leader of a CSOs receiving foreign funding is criminally prosecuted;
- The state makes inspections or initiates audits more often of foreign-funded CSOs compared to CSOs which do not receive such aid;
- Foreign-funded associations are required to be labelled in a pejorative manner, thereby stigmatizing or delegitimizing their work.

Relevant resources

- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 22, 102-04, 166, 195, 200-22
- Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39 (24 April 2013), para. 8, 20

- Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (21 May 2012), para. 94
- Thematic report of the UN Special Rapporteur on the situation of human rights defenders, A/64/226 (4 Aug 2009), para. 94
- Checklist – FoAA during public health emergencies, developed in the context of the COVID-19 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association
- Human Rights Committee: *Belyatsky et al v Belarus* (24 July 2007); *Korneenko et al v Belarus* (31 October 2006)
- Council of Europe Recommendation CM/Rec(2007)14 on the legal status of CSOs in Europe (adopted 10 Oct 2007), para. 6, 8, 50, 51, 57-61
- Council of Europe, Expert Council on CSO Law, Second annual report on the internal governance of non-governmental organizations, para. 388-89, 397-98 (January 2010)
- Fundamental Principles on the Status of Non-Governmental Organisations in Europe, Principles 6, 57, 58 and 59; para. 62-65 of Explanatory Memorandum
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 6(f)
- Concluding Observations of the Committee on the Elimination of Racial Discrimination, Ireland, CERD/C/IRL/CO/2 (14 April 2005), para. 12
- Concluding Observations of the Committee on the Rights of the Child, Democratic Republic of the Congo, CRC/C/COD/CO/2 (10 Feb 2009), para. 25; Malawi, CRC/C/MWI/CO/2, (27 March 2009), para. 25
- Concluding Observations of the Committee against Torture, Belarus, CAT/C/BLR/CO/4 (7 Dec 2011), para. 25
- Freedom of association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (revised) edition, 2006, para, 485, 494
- European Court of Human Rights: *Sigurdur A Sigurjónsson v. Iceland* (1993)

AREA 4. FREEDOM OF PEACEFUL ASSEMBLY

Standard 1. Everyone can freely enjoy the right to freedom of peaceful assembly by organizing and participating in assemblies

A vibrant democratic society means enabling everyone to assemble and pursue specific goals such as expressing their opinion, protest, commemorate, express solidarity or even simply convene gregariously or celebrate together. This is why the right to peaceful assembly has also an inherent associational value . The freedom of peaceful assembly is guaranteed under the International Covenant for Civil and Political Rights and the European Convention for Human Rights. It includes the right for any person, local or foreign, and groups of such persons, including CSOs, without discrimination to organize and/or participate in peaceful assemblies. The decision to participate in assemblies belongs to each individual and no one may be forced or systematically prohibited to participate in an assembly. There shall be no cases of arbitrary refusals or dispersals of peaceful assemblies or cases of detention or intimidation of organizers and participants in peaceful assemblies.

Law

Indicators for Law
1. Any person, local or foreign, and groups of such persons, including CSOs, have the right to organize and/or participate in a peaceful assembly, which is adequately protected by law wherever it takes place: outdoors or indoors, online, in public and private spaces or a combination of the above. 2. Spontaneous assemblies, simultaneous assemblies and counter assemblies are allowed by law.

1. Any person, local or foreign, and groups of such persons, including CSOs, have the right to organize and/or participate in a peaceful assembly, which is adequately protected by law wherever it takes place: outdoors or indoors, online, in public and private spaces or a combination of the above.

An assembly is a gathering of more than one person for a specific purpose. Only peaceful assemblies – i.e., non-violent gatherings – are protected under the right to freedom of assembly. The right of peaceful assembly is an individual right but is exercised collectively by more than one person, who gather non-violently for specific purposes, principally expressive ones (e.g., to protest, commemorate, show solidarity, celebrate etc.). However, an assembly can also merely have the intention of affirming group solidarity or identity. Assemblies can also have other goals, such as entertainment, cultural, religious or commercial objectives.

In the past, the traditional definition of "peaceful assembly" only included physical gatherings. However, nowadays our increasingly digital world has opened up new ways to organize such gatherings and even new virtual spaces to hold them or drum up support for them: there are, e.g., assemblies taking place in physical spaces but facilitated by digital technologies (in particular by the Internet), because they are previously discussed, organised and/or promoted through them; assemblies taking place in an entirely virtual space (usually the Internet); or even "hybrid"

assemblies, with elements of both (e.g., they are organised via social media platforms and take place both offline and online or they started offline but are continuing online or vice versa, etc.). International human rights standards protect peaceful assemblies wherever they take place, either in physical spaces or online, or even a combination of both. Protection also extends to remote participation and organization of assemblies.

Assemblies in the privately-owned space are protected as well. Those spaces can either be: (1) publicly accessible or "semi-public": both in the physical sense (e.g., shopping malls, squares, museums, terraces, libraries, courtyards, parking lots, etc.) and digitally (e.g., social media like Twitter, Facebook and Instagram); or (2) enclosed: (e.g., private residences, flats, factories, some offices, etc.).

The freedom to organize and/or participate in peaceful assemblies is a fundamental human right that is to be enjoyed equally by everyone. It must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals; to children, women and men; to law enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses. National law should extend the freedom of peaceful assembly not only to citizens, but also to stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists.

Children should enjoy the right to organize and/or participate in an assembly. Freedom of peaceful assembly provides children with means of expressing their views and taking part in society. Certain restrictions concerning the legal capacity of children to organize assemblies may be justified. Any such restriction must be in line with international law and take into account the evolving capacity of the child.

In principle, an assembly organizer has the right to choose the time, place and manner to carry out an assembly. However, the right to organize or participate in an assembly may be subject to restrictions. Any restriction placed on the exercise of the right to freedom of assembly should comply with the three part test, meaning it must be: (1) prescribed by law, (2) necessary in a democratic society and (2) in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Lawful restrictions on the exercise of the right to peaceful assembly may be imposed on certain grounds. Namely there can be restrictions to the members of the armed forces, the police, or the state administration only for reasons directly connected with the absolute necessity to maintain the neutrality of their service duties. Restrictions can also be imposed for the protection of public health (for example, to prevent the spread of a disease or epidemic). However, this restriction must be applied evenly to other gatherings, such as sporting events, concerts, attendance at school and other.

The blanket application of legal restrictions shall be prohibited. Blanket limitations do not take into consideration the specific circumstances of each assembly, and thus violate the principle of proportionality. The circumstances of each assembly must be evaluated separately and given an individual response.

The emergency measures affecting the right to peaceful assembly should have a limited time frame and renewed only when strictly necessary to address the relevant threats. Restrictions of movement and gatherings should have exemptions to ensure civil society actors, particularly journalists, trade unions, legal professionals, human rights defenders, and organizations providing humanitarian assistance and social services can continue to operate during emergency, consistent with health protocols and guidelines. These exemptions should be clearly communicated to the police and security services in order to ensure that they are adhered to and respected.[3]

The law should provide that participation in public assemblies is entirely voluntary and uncoerced.

Violations of this indicator may include:

- Organizers of assemblies are required to have a residence permit or citizenship;
- Organizers of assemblies of a political nature in private spaces that are not publicly accessible to the public are still required to notify the authorities;
- Underage persons are not allowed to organize or participate in assemblies;
- Assemblies are not allowed in the centre of the city, instead authorities redirect them to a park outside the city centre;
- Limitations, because of a public health emergency, are introduced to assemblies but not to other types of mass gatherings (both indoors and outdoors).
- State authorities are allowed by law or regulation to intervene in online assemblies or shut down the internet to stop people from organising them, taking part in or publicizing them.

2. Spontaneous assemblies, simultaneous assemblies and counter assemblies are allowed by law

Spontaneous assemblies are assemblies whose initiation and deployment represent a direct and immediate response to the events which; from the point of view of the participants, the response cannot be postponed. Spontaneous assemblies should be exempted from the requirement to give advance notice if giving advance notice is impracticable. As long as a spontaneous assembly remains peaceful, public authorities should protect and facilitate it. Spontaneous assemblies may not necessarily have an identifiable organizer. A street gathering of a sports team's supporters to celebrate their team's victory immediately after a game is an example of a spontaneous assembly with no specific organizer; it should not be required to undergo regular notification procedures, and should be facilitated as long as it remains peaceful.

If authorities are notified of two or more independent assemblies at the same place and time (simultaneous assemblies), each should be facilitated as best as possible. If the location allows accommodating both (or more) assemblies, none can be prohibited based of the fact that at a different assembly will be held in the same time and place. The principle of non-discrimination requires that assemblies in comparable circumstances should not face differentiated levels of restriction.

[3] Checklist – FoAA during public health emergencies, developed in the context of the COVID-19 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Counter-demonstrations are a form of simultaneous assembly that occur as a response to another assembly or demonstration. The specific character of the counter-demonstration is that its goal is to express opinions that are contrary to the initial assembly. Both assemblies are protected by the international standards on the right to peaceful assembly. The state has the obligation to facilitate both the initial and counter-demonstration within reasonable distance that allows visual and sound contact between the two. State authorities should protect both assemblies and provide adequate police resources to facilitate them as long as they remain peaceful.

Violations of this indicator may include:

- Spontaneous assemblies are required to undergo the regular notification procedure;
- Simultaneous assemblies are not allowed, even if the location is large enough to accommodate all the intended simultaneous assemblies;
- Counter-demonstrations are not allowed because they may disturb or obstruct the visual and audible content of initial assemblies.

Practice

Indicators for Practice
1. There are no instances of arbitrary refusals or dispersals of peaceful assemblies. 2. Persons, groups of persons or CSOs are not forced to or systematically prohibited from participating in peaceful assemblies. 3. Individuals are not detained or intimidated for planning to organize, take part or not to participate in peaceful assemblies. 4. Individuals and legal entities are not prosecuted or sanctioned for organizing or taking part in peaceful assemblies, outdoors or indoors, online, in public and private spaces or a combination of the above.

1. There are no instances of arbitrary refusals or dispersals of peaceful assemblies

In certain circumstances, state authorities may impose legitimate restrictions on assemblies that are intended to be peaceful. Any refusal by a state authority to conduct a peaceful assembly – or a dispersal of an assembly – should be prescribed by law (the specific law on freedom of assembly, the Constitution or the international conventions on human rights), proportionate, predictable, minimal and necessary to achieve a legitimate aim. Any refusal or dispersal that does not follow these requirements is considered arbitrary.

A restriction or refusal can be imposed when there is compelling evidence that organizers or participants will use violence or incite lawless and disorderly action, and that such action is likely to occur. If there is evidence of potential violence, the organizer(s) should be given the opportunity to provide evidence that the assembly will be peaceful. The possibility of a hostile reaction towards a peaceful assembly cannot serve as basis for refusal of a peaceful assembly.

The decision to choose whether or not to organize the assembly lies within the exclusive competence of the organizer.

The dispersal of assemblies is a measure of last resort and should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm (for example, detaining bystanders who become violent) and unless there is an imminent threat of violence. As long as an assembly remains peaceful, it should not be dispersed by law enforcement officials - even if authorities did not receive prior notification.

Dispersal should follow specific procedures provided by law enforcement guidelines that are based on international standards. Efforts to tackle terrorism or extremism cannot justify arbitrary actions that curtail the enjoyment of fundamental human rights and freedoms.

Peaceful simultaneous and counter-assemblies are held at the will of their organizers. Law enforcement must take all necessary measures to facilitate peaceful assemblies held in the same time and place. States should make available adequate policing and other resources to facilitate simultaneous and counter assemblies, to the extent possible, within "sight and sound" of one another. In addition, according to the principle of non-discrimination, peaceful assemblies which are held in comparable circumstances should not deal with different levels of restriction.

Violations of this indicator may include:

- Prior refusal of a peaceful assembly based on the assumption that it will cause hostile reactions or disrupt traffic;
- Dispersal of a peaceful assembly because of hostile/violent third parties intrude during the assembly;
- Dispersal of a peaceful assembly without complying with the dispersal procedure provided by law.
- Authorities do not allow simultaneous or counter-assemblies, invoking the impossibility of the proposed location accommodating two or more assemblies;
- All peaceful counter-assemblies are banned because authorities believe they carry an inherent risk of violence.

2. Persons, groups of persons or CSOs are not forced to or systematically prohibited from participating in peaceful assemblies

Participation in peaceful assemblies should be an independent, personal decision by each individual, entirely voluntary and uncoerced. This includes also minority groups (e.g. LGBTIQ) or groups whose views are not supported by the majority of the population.

Negative incentives that influence someone's decision to take part in a peaceful gathering represent infringement of the right to freedom of peaceful assembly. An example of negative incentives may include dismissal from a job or reprimand. Such actions that constrain or prohibit participation should be illegal and sanctioned.

Violations of this indicator may include:

- Civil servants or other employees are forced to participate in an assembly under the imminent threat of dismissal or other administrative measures related to the place of work for not complying;
- Known civic activists are constantly hindered from reaching assembly locations;

- LGBTIQ groups are hindered when attempting to participate in peaceful assemblies, parades or marches.

3. Individuals are not detained or intimidated for planning to organize, take part or not to participate in peaceful assemblies

Any measure directed to prevent the physical presence of persons at the place of a peaceful assembly is a violation of assembly rights. Law enforcement officials should not intervene to stop, search or detain protesters on the way to an assembly. Intrusive anticipatory measures should not be used unless a clear and present danger of imminent violence actually exists.

Imposing preliminary restrictions based on the possibility of minor incidents is likely to be disproportionate. Isolated violence should be dealt with by detention and prosecution, and not through prior detention or intimidation.

The law enforcement officials should only resort to detention of participants when such action is necessary to prevent serious criminal offences. Detention of organizers or participants one or more days in advance of the assembly date is likely to serve as intimidation tool or even an instrument to prevent physical presence at the assembly.

Detention of participants or organizers during an assembly based on grounds that they committed administrative, criminal or other offences should meet a high threshold, given the right to liberty and security of person.

Violations of this indicator may include:

- The organizer of a peaceful assembly is detained before the assembly takes place;
- A CSO planning to organize a peaceful assembly is exposed to unusual controls from public control authorities;

4. Individuals and legal entities are not prosecuted or sanctioned for organizing or taking part in peaceful assemblies outdoors or indoors, online, in public and private spaces or a combination of the above.

Anything not expressly forbidden by law should be presumed permissible, and those wishing to assemble should not be required to obtain permission to do so.

Organizers of assemblies should not be held liable for the actions of participants or third parties, for the unintentional failure to perform their responsibilities or for unlawful conduct that the organizers did not intend or directly participate in.

Participation in a peaceful assembly is a lawful exercise of the right to assembly that should not be prosecuted or sanctioned in any way. As such, organizers and participants in assemblies should benefit from a "reasonable excuse" defence. For example, participants should not be held liable for participating in an unlawful assembly if they were not aware of the unlawful nature of the assembly. Participants should likewise not be held liable for anything done under the direction of a law enforcement official or other public authority.

If the organizers of a peaceful assembly fail to comply with notification requirements based on reasonable grounds, no liability or sanctions should be applied.

Anyone charged with an offence relating to an assembly must enjoy the right to an effective legal remedy and a fair trial before independent courts. All provisions that create criminal or administrative liability must comply with the principle of legality and proportionality.

Violations of this indicator may include:

- The organizer of an assembly faces prosecution for either underestimating or overestimating the number of expected participants in an assembly;
- Organizers of an assembly e.g., of a political nature – in a private space not publicly accessible or online are fined for failing to notify such assembly to public authorities;
- Individuals are held liable for participating in an unlawful assembly even though they were not aware of the unlawful nature of the assembly and did not commit any illegal actions.

Standard 2. The state facilitates and protects peaceful assemblies

The State shall create an environment that facilitates the organization of and participation in public assemblies. Properly defined procedural rules enable the right to peaceful assembly. The procedures shall be free of charge, simple and clear and there shall be no prior authorization of the assembly, but notification at most. The procedures should also accommodate different forms of assemblies such as spontaneous and simultaneous assemblies. In cases when authorities impose restrictions over an assembly, they shall be necessary and proportional. There should be a possibility for effective appeal with a final ruling before the planned date of the assembly. The use of electronic means to communicate about peaceful assemblies or the organization of peaceful assemblies shall not be discouraged or restricted by the authorities.

Law

Indicators for Law
1. The right to hold a peaceful assembly is not subject to prior authorization, but to notification at most, which is clear, simple, and free of charge and requires reasonable advance notice. 2. Notification is not required for gatherings whose impact on others' rights can reasonably be expected to be minimal. 3. The final ruling of appeals to decisions limiting peaceful assemblies is issued before the planned date of the assembly. 4. Legislation protects the right to use any electronic means of communication to organize peaceful assemblies.

1. **The right to hold a peaceful assembly is not subject to prior authorization, but to notification at most, which is clear, simple, and free of charge and requires reasonable advance notice**

In accordance with international human rights law, there is no need for national legislation to require prior notification of an assembly. The purpose of prior notification is to enable state authorities to put in place necessary arrangements to facilitate freedom of assembly, to protect public order, public safety and the rights and freedoms of others.

National law should at most require the organizer of the assembly to give notice of their intent to hold an assembly; it should not require a request for permission to hold an assembly. The law should clearly state which authority has the responsibility to receive and respond to notifications.

The notification procedure should be clear for interaction between event organizers and regulatory authorities; it should exhaustively provide what information must be submitted, who should submit it, to what public authority, how and when.

The notification procedure should be simple; it should not require excessive documentation (such as registration documents), special knowledge or advanced and specific technical skills.

The advance time required for notification should not be excessively long. It should be long enough to allow each stage of regulatory process (in case there is a contestation of the assembly) and for state authorities to plan and take all necessary measures to provide public order and security for participants at the assembly (no more than a few days prior to the event).

Violations of this indicator may include:

- Prior authorization is required for organizing a public assembly;
- Notification procedures require the submission of many documents or require notice several weeks or months in advance.

2. **Notification is not required for gatherings whose impact on others' rights can reasonably be expected to be minimal.**

As clarified by the international standards on the right to peaceful assembly, the obligation to notify an assembly can only be justified as long as it is strictly necessary to assist the authorities in facilitating the smooth conduct of the event and protecting the rights of both assembly participants and the others. Therefore, a notification requirement should exclude assemblies whose impact on others' rights is minimal because of their nature, size or location: assemblies taking place online, for instance, or even private assemblies held in private homes, do not require the presence of police closing roads or re-directing traffic from the place of the protest, demonstration, commemoration etc.

Violations of this indicator may include:

- Online assemblies require notification.

3. **The final ruling of appeals to decisions limiting peaceful assemblies is issued before the planned date of the assembly**

Decisions limiting an assembly should be communicated promptly and in writing to the organizers, with an explanation of the reason for each restriction. They should be taken as early as possible so that any appeal can be completed before the planned date of the assembly provided in the notification.

The organizers should be entitled to the right to appeal the substance of any restrictions or prohibitions issued by the regulatory authority. Appeals should be judged by an independent court and take place in a prompt manner so that any revisions to the decision of the authorities can be implemented without prejudice to the applicant's rights.

Violations of this indicator may include:

- The law does not provide a reasonable time limit for the final ruling of appeals to decisions limiting peaceful assemblies.

4. **Legislation protects the right to use any electronic means of communication to organize peaceful assemblies**

Prior communication is essential for the organization process and for mobilization of participants in the assembly. The law should not forbid the use of any means of communication to organize peaceful assemblies. Besides traditional offline communication, mobilization can be achieved by various forms of communication including electronic means such as telephone, text message, the Internet, etc.

Organizers or participants should be able to use any offline and electronic means of communication in the organization process. Organizers should be allowed to announce and promote the assembly even if the organizing procedure has not yet been undertaken. Announcement of an assembly through public communication does not substitute the legal notification procedure.

Violations of this indicator may include:

- It is forbidden to use social media networks for the purpose of communicating about the organization of an assembly;
- Legislation regulating activities of Internet service providers and intermediaries restricts unduly assemblies or the privacy of assembly participants.

Practice

Indicators for Practice
1. Notification is not used as a de-facto authorization. 2. Restrictions are proportional and based on objective evidence of necessity. 3. Access to the internet and/or social media is not limited as a means to restrict peaceful assemblies online or offline.

1. Notification is not used as a de-facto authorization

When the organization of a public assembly is subject to a notification procedure, it should work accordingly and should not be used as an authorization procedure by public authorities (e.g. there should be no requirement for the authorities to agree to the notification and there should be a presumption in favour of assemblies). The receiving authority should issue a receipt of notification in all cases immediately after the notification has been submitted.

The notification process should not be onerous. The forms for lodging notification should be based on requirements set forth in law and should be concise and accessible. As long as the authorities do not present any objections to a notification, the organizers of a public assembly should be able to proceed with their activities according to the terms presented in their notification without restriction.

Authorities should not require notification for assemblies that have minimal impact on the rights of others (e.g. online assemblies or assemblies in private spaces).

Violations of this indicator may include:

- Prior notification includes a registration procedure which requires de facto approval of the registration body.
- A notification regime is enforced on all peaceful assemblies indiscriminately, becoming an end in itself and not distinguishing on a case-by-case basis.

2. Restrictions are proportional and based on objective evidence of necessity

The main goal of a public assembly is to send a message to a particular target person, group or organization. Hence, peaceful assemblies should be facilitated in close proximity to the target audience. An assembly is as legitimate use of public space as commercial purposes or traffic.

The authorities must substantiate any imposition of restrictions based on legitimate aims such as public order, public safety, the protection of health, the protection of morals, the protection of the rights and freedoms of others, national security.

Authorities should offer reasonable alternatives if any restrictions are imposed on the time, place or manner of an assembly. Restrictions must be proportional - that is when applying any restriction, public authorities must respect the balance between the need for such a restriction in a democratic society and the exercise of the right to assembly.

The necessity for a restriction must be substantiated with conclusive evidence based on facts that can be examined, evaluated and proved by means of analysis, measurement and observation.

Violations of this indicator may include:

- An assembly is relocated to a less central area of the city, far from its target audience;
- An assembly is not allowed to have more than 50 participants, ostensibly to prevent the spread of an infectious disease, but other gatherings such as markets are not forbidden.

3. **Access to the internet and/or social media is not limited as a means to restrict peaceful assemblies online or offline.**

There should be no obstacles in the access to the internet and/or to use of social media. Online content referring to peaceful assemblies must be accessible through any internet provider, at any time from any geographical location as long as the author has not decided otherwise. There shall be no practical obstacles imposed upon online content, such as persecution/harassment of editors or providers. Social media/Internet should not be blocked or otherwise disrupted around the location of the assembly to prevent people from organizing.

Violations of this indicator may include:

- Access to social media content with information regarding an upcoming protest is blocked;
- Some providers do not grant access to online content regarding peaceful assemblies.

Standard 3. The state does not impose unnecessary burdens on organizers or participants in peaceful assemblies

Peaceful assemblies should be allowed, to the maximum extent possible, to be conducted based on the terms and conditions foreseen by the organizer. Public authorities should facilitate peaceful assemblies and interfere only when the assembly turns violent. Maintenance of public order and other specific responsibilities are the positive obligation of the state and should be provided free of charge. The use of public space should be provided tax free, and the organizers should be allowed to use any technical means they consider necessary without disproportionate restrictions.

Law

Indicators for Law
1. Assembly organizers are not held responsible for the maintenance of public order or for the acts of others during an assembly. 2. Interference by authorities only occurs to facilitate the peaceful assembly or in case it turns violent.

1. **Assembly organizers are not held responsible for the maintenance of public order or for the acts of others during an assembly**

Public authorities should support all costs and organizational procedures related to security, safety and the maintenance of public order during public assemblies. The state must not impose any additional financial charges for providing adequate policing.

Organizers of assemblies are allowed to deploy clearly identifiable stewards to help facilitate the assembly, but the stewards do not have the powers of the law enforcement officials. Stewards should not use force and should obtain the cooperation of assembly participants through means of dialogue and persuasion.

Organizers should not be held liable for the actions of others during an assembly. Any individual who personally commits an offence or fails to carry out the lawful directions of law enforcement officials should be individually liable.

Violations of this indicator may include:

- Public authorities require the organizers of assemblies to contract private security services for the maintenance of public order during assemblies;
- Organizers of assemblies bear responsibility for the illegal actions of individual participants.

2. Interference by authorities only occurs to facilitate the peaceful assembly or in case it turns violent

State authorities have the positive obligation to facilitate and protect the right to freedom of assembly.

The law should provide comprehensive procedures regulating the rights and obligations of authorities during public assemblies. Interference with an assembly should only occur in order to achieve a legitimate purpose. The law should allow authorities to choose from a wide range of tools and methods. Their choices should not be limited to non-intervention and dispersal. The most suitable and least intrusive means of intervention should be provided by law. Non-violent methods such as dialogue, negotiation, mediation and other forms of communication are to be preferred in the early stages of intervention.

The use of force and special means by law enforcement should regulated by special laws or regulations that are made public. Any use of force by police should always be treated as an exception. Any intervention should be predictable and should follow the principle of the use of minimum necessary means needed to restore order.

Isolated incidents of violence or violent actions of some individuals during an assembly are not sufficient grounds to impose restrictions on peaceful participants. Special Operating Procedures of law enforcement should provide personalized possibilities for interventions that differentiate between various groups in an assembly. Law enforcement should not treat a crowd as homogenous when they must detain participants or forcefully disperse an assembly.

Violations of this indicator may include:

- Law enforcement officers intervene in a peaceful assembly because an alleged unannounced change of route;
- Law enforcement intervene to disperse an assembly after a few participants use violence;
- Public authorities end an assembly because it has exceeded the initially announced completion time.

Practice

Indicators for Practice
1. State bodies do not impose unjustified fees for services which they are obliged to provide. 2. There are no impediments on distribution of information about peaceful assemblies. 3. The state does not impose disproportionate restrictions on the use of technical equipment during peaceful assemblies.

1. State bodies do not impose unjustified fees for services which they are obliged to provide

Organizing a peaceful assembly is a legitimate use of public space and should not lead to the imposition of any fees for public services. Peaceful assemblies should be differentiated from commercial use of public space. Fees for renting the space, payment for police attendance at the event, cleaning after the event, etc. are not a good practice. Public authorities should ensure the provision of services requested by the organizer and services that are normally provided by subordinate bodies. State authorities should not impose unjustified fees for such services.

The requirement of such fees from the organizers might be prohibitive and would represent a serious barrier to the exercise of the right to freedom of assembly. Onerous financial requirements are likely to constitute a prior restraint.

Violations of this indicator may include:

- Public authorities require the organizers of assemblies to contract cleaning services;
- Organizers are obliged to pay a fee for using a public space.

2. There are no impediments on distribution of information about peaceful assemblies.

Organizers and others should be able to freely distribute information about peaceful assemblies prior to, during and after the assembly. The organizer should not be required to undergo an administrative procedure before distributing information about the assembly. The organizers and participants should be able to distribute information equally via online and offline means.

Anyone interested should be allowed to assist with a public assembly or make recordings of the event. Media should be provided full access by organizers, law enforcement and other authorities without any special accreditation. Media representatives should be provided protection by law enforcement if the assembly turns violent. They should also be able to cover all public assemblies, including those that are illegal or turned violent.

If restrictive security measures are taken during an assembly, media representatives may be required to be clearly identifiable by wearing distinctive signs such as bibs, vests or armlets in order to facilitate their access.

Seizure of technical equipment, as well as of video and audio recordings of assemblies, should only occur in accordance with the law.

Violations of this indicator may include:

- Organizers are forbidden to distribute information about the planned assembly because an official notification procedure has not been completed;
- Media are forbidden to cover an assembly held by an opposition party.

3. The state does not impose disproportionate restrictions on the use of technical equipment during peaceful assemblies

A wide range of visual or audible content can be used to communicate during a public assembly. These include banners, insignia, loudspeakers, the display or use of sound amplification equipment or lighting and visual effects. Temporary constructions may also be erected.

Regulation of the use of visual and audio content can be appropriate in some circumstances due to the location or time of day for which the assembly is proposed. However, restrictions on visual or audio content should be proportionate, should aim to facilitate the assembly within "sight and sound" of its object or target audience and should aim to strike a balance between the right to freedom of assembly and the rights of others (non-participants). Media should be allowed to use all equipment it considers necessary for photo, video and audio recordings during an assembly.

Seizure of media tools such as recording and reporting equipment or video and audio recordings must be done in accordance with the law and international standards. Otherwise such seizures should be regarded as a criminal offence. Deliberate breaking or smashing of the recording and reporting equipment should also be considered a criminal offence, and those responsible should be held accountable.

Violations of this indicator may include:

- Organizers are not allowed to use loudspeakers during an assembly in the daytime in the city centre;
- An assembly is forbidden to use banners because the inscriptions or colours could cause confusion for traffic.

Standard 4. Law enforcement supports peaceful assemblies and is accountable for the actions of its representatives

The obligation to facilitate and protect peaceful assemblies lies within law enforcement officials. Law enforcement activity during public assemblies should be designed to target the protection of peaceful assemblies and the maintenance of public order and security. The use of force and of other specific law enforcement tools should be proportional and clearly regulated based on human rights principles. Law enforcement representatives who violate the right to peaceful assembly, apply unlawful use of force or fail to protect peaceful assemblies should be held accountable.

Law

Indicators for Law
1. Law enforcement has clear regulations on the use of force during peaceful assemblies that follow a human rights based approach. 2. There are accountability mechanisms for any excessive use of force or failure to protect participants in peaceful assemblies. 3. There are clear laws and regulations in place on the use of surveillance devices to police or monitor assemblies.

1. Law enforcement has clear regulations on the use of force during peaceful assemblies that follow a human rights based approach

The human rights based approach to policing assemblies provides that the policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards.

The state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants being exposed to physical violence. Law enforcement must protect peaceful assembly participants from any person or group, including instigators and counter-demonstrators, that attempts to disrupt or inhibit the assembly in any way.

National legislation should regulate the use of force and should set out the circumstances that justify its use and intensity. The law should provide a range of responses that enable a differentiated and proportional use of force and special tactics. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations where other more peaceful interventions have failed.

The responses of law enforcement should be predictable and should be accompanied by adequate prior warnings. Therefore, it is recommended that the policing protocols be publicly available.

The use of less lethal weapons, which specifically affect the respiratory system, including for instance tear gas, should be avoided as much as possible in accordance with the increased risks posed in the context of health emergencies. Any police officers facilitating public assemblies should have adequate personal protective equipment, for their own protection and that of assembly participants.[4]

Violations of this indicator may include:

- Regulations on the use of force during peaceful assemblies do not include the obligation of prior warning;
- The use of force during assemblies is not subject to respect for the principles of legality, necessity, proportionality or non-discrimination;

[4] Checklist – FoAA during public health emergencies, developed in the context of the COVID-19 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association

- There are no clear legal provisions that regulate the tactics and use of force during peaceful assemblies.

2. There are accountability mechanisms for any excessive use of force or failure to protect participants in peaceful assemblies

Inappropriate, excessive or illegal use of force by law enforcement can violate fundamental freedoms and rights, undermine the relationships between public authorities and society and cause widespread tension.

The law should provide that any unlawful, unauthorized or excessive use of force or failure of the public authorities' representatives to protect assembly participants is subject to civil, criminal or disciplinary sanction. The authority that failed to intervene where such intervention might have prevented escalation or other use of force should also be liable.

In death or injury due to the intervention of the law enforcement, prompt investigations should be conducted by an independent body. Depending on the case, such a body could be a special parliamentary commission, the ombudsman, civilian police oversight board, the prosecutor's office, a court of law, or other similar entities.

Data on the use of force should not be classified and should be made publicly available.

Violations of this indicator may include:

- There are no legal mechanisms to hold law enforcement representatives accountable for using excessive force against participants in peaceful assemblies;

3. There are clear laws and regulations in place on the use of surveillance devices to police or monitor assemblies.

The international standards on freedom of peaceful assembly unequivocally acknowledge that while surveillance technologies can be used to detect threats of violence and protect the public, including assembly participants themselves, they can also infringe on the right to privacy and other rights of participants and bystanders, thus exercising a "chilling effect" on society. This becomes even more dangerous considering that control of publicly accessible spaces – whether public or private – is often delegated to private entities/contractors and that vast digital communication platforms are owned by private actors responsible for monitoring, content curation and moderation.

Furthermore, the legislation should include the obligation to conduct regular inclusive assessments on the impact that such devices may have on the rights of assembly organizers, participants and others rights. (For more details on human rights impact assessments, see Digital Rights Area).

Violations of this indicator may include:

- There are no regulations on when/how the authorities can use surveillance tools to police or monitor assemblies;

- Where regulations exist, they are overbroad or not clearly and narrowly defined in accordance with the three-part test (legality, legitimacy and necessity/proportionality);
- There are no legal mechanisms to hold authorities accountable to report how many times they have used such devices, what data they have processed and retained, where and for how long.

Practice

Indicators for Practice
1. Prior warnings are made before force is used, but a predictable and proportional approach extends to all aspects of policing of assemblies. 2. Law enforcement protects participants of the assembly from any person or group (including agents provocateurs) that attempts to disrupt the assembly. 3. Law enforcement representatives are held accountable when violating the right to freedom of assembly. 4. Law enforcement representatives and/or intelligence agencies are transparent about whether they use surveillance devices to police or monitor assemblies.

1. Prior warnings are made before force is used, but a predictable and proportional approach extends to all aspects of policing of assemblies

Assemblies that lose their peaceful character and become violent may be terminated in a proportionate manner. The use of violence by a small number of participants in an assembly does not automatically turn a peaceful assembly into a non-peaceful assembly. In this case, any intervention should aim to deal with the particular violent individuals rather than dispersing the entire assembly.

Policing activity during public assemblies should be predictable to all actors involved. Organizers, participants and third parties should be aware of the consequences of their actions and should have enough time to react to the response of law enforcement.

Any use of force other than an immediate response to a threat to an individual's life or physical integrity should be predictable and announced in advance according to existing legal procedures.

The behaviour of law enforcement should be easily predictable via publicly available policing protocols. During the assembly, law enforcement interventions should be announced through prior warnings. Prior warnings should be explicit, loud, clear and repeated at reasonable intervals of time.

Any policing action regarding public assemblies should follow the principle of proportionality and respect the balance between the need for such a restriction in a democratic society and the exercise of the right to assembly. Authorities should always give preference to the least intrusive means for achieving their legitimate objective. Blanket restrictions are therefore over-inclusive and would fail the proportionality test, because no consideration is given to the specific circumstances.

Violations of this indicator may include:

- Police disperse an assembly of 500 people using water cannons following an incident when a few participants turned violent;
- Police apply tear gas and batons to a protest chanting anti-government slogans;
- Law enforcement applies force against participants at an assembly without any prior warning;
- Law enforcement uses force against all participants at an assembly although only few individuals turned violent;
- Police adopt disproportionate restrictive measures during an assembly by blocking city traffic 10 blocks away from the assembly site.

2. Law enforcement protects participants of the assembly from any person or group (including agents provocateurs) that attempts to disrupt the assembly

The state has a positive duty to actively protect and facilitate peaceful assemblies. This positive obligation requires the state to protect the participants of a peaceful assembly from any persons or groups (including agents provocateurs and counter-demonstrators) that attempt to disrupt or inhibit them in any way.

Observers, accidental bystanders or anyone else in the vicinity of the assembly but who is not involved in the development of the assembly as organizer or participant should be considered a non-participant. Non-participants who conduct intentional or unintentional attempts to disrupt the assembly may be regarded as agents provocateurs.

Violations of this indicator may include:

- Law enforcement does not intervene to prevent or counteract non-participants from breaking the banners of participants in a peaceful assembly.

3. Law enforcement representatives are held accountable when violating the right to freedom of assembly

Law enforcement representative should be held accountable for any failure to fulfil their positive obligations to protect and facilitate the right to freedom of peaceful assembly. Law enforcement should also be held liable for the failure to fulfil their negative obligations of not intervening in a peaceful assembly. Liability should also extend to private agencies or individuals acting on behalf of the state.

Complaints against the actions of public authorities should be dealt by an independent body (commission, ombudsman, court, etc.). Complaints regarding the conduct of law enforcement officials should be subject to an effective and prompt official investigation. The investigation should aim to secure the effective implementation of the law and to ensure accountability for the violation of the right to freedom of assembly and for any deaths or physical injuries caused.

In order to be held accountable, law enforcement representatives must be clearly identifiable through personal identification numbers (or other methods) imprinted and easily seen on the uniforms (for example on their backs or helmets).

Violations of this indicator may include:

- A police officer who forbade the use of sound amplification at a peaceful assembly is not held accountable;
- A police officer who dispersed a peaceful assembly on grounds that that it did not follow official registration procedures is not held accountable;
- Individual law enforcement officials deployed at public assemblies are not clearly identifiable.

4. Law enforcement representatives and/or intelligence agencies are transparent about whether they use surveillance devices to police or monitor assemblies.

Law enforcement authorities and/or intelligence agencies should respond without delay to requests from anyone about their practices of using surveillance devices. They should also be proactively transparent and publish regular reports on which tools they use (e.g., CCTVs with facial recognition technology, emotion recognition, IMSI catchers of mobile phones, etc.), the information they gather ahead of or during assemblies, directly or via third parties/private entities, where they store it, for how long and how they protect such information from illegal use or hacking.

Violations of this indicator may include:

- There are no clear signs indicating the presence of CCTVs in public or publicly accessible places where assemblies are usually held;
- Organisers of assemblies that notify them to the authorities are not informed by them about their intention to use surveillance devices to monitor the event and what devices will be used;
- Law enforcement authorities do not publish reports on their use of surveillance devices and information gathering practices and when they do, the reports are vaguely framed and inconclusive;
- Law enforcement authorities do not respond to single specific requests about the surveillance activities they have exercised in one or more particular occasions or events.

Relevant resources

- UN Human Rights Committee, General comment no. 37 (2020) on the right of peaceful assembly (Article 21)
- UN Human Rights Council Resolution 44/20 on the promotion and protection of human rights in the context of peaceful protests (2020)
- UN Special Rapporteur on Freedom of Peaceful Assembly and Association Clément Voule, Rights to freedoms of peaceful assembly and associations in the digital age (2019)
- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association (2015)
- The Right to Protest: Principles on the protection of human rights in protests, Article 19 (2016)

- European Court of Human Rights, Article 11: The Conduct of Public Assemblies in the Court's Case-Law (2013)
- OSCE/ODIHR Human Rights Handbook on Policing Assemblies (2016)
- UN Special Rapporteur on Freedom of Peaceful Assembly and Association Maina Kiai, 10 Principles for the Proper Management of Assemblies: Civil Society Guide, Jan. 2017
- Checklist – FoAA during public health emergencies, developed in the context of the COVID-19 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association
- OSCE Representative on Freedom of the Media, Special Report: Handling of the Media During Political Demonstrations (21 June 2007)
- Joint report on the proper management of assemblies by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/31/66 (4 Feb 2016)

AREA 5. RIGHT TO PARTICIPATION IN DECISION-MAKING

Standard 1. Everyone has the right to participation in decision-making

The right to participation in decision-making is guaranteed by the International Covenant on Civil and Political Rights. Legislation shall ensure that citizens enjoy inclusive, broad and meaningful participation. The exercise of this right may not be suspended or limited except on objective and reasonable grounds provided by law. CSOs play a crucial role in this process as they facilitate public participation and represent the interests of various groups, particularly the voices of poor and marginalized people. They shall enjoy equal opportunities to participate and shall not be subject to repercussions for their participation in development of laws and policies at all levels, whether local, national, regional or international.

Law

Indicators for Law
1. Public consultations are mandatory for legal and policy drafts that affect the general public or specific sectors and groups. 2. The law guarantees inclusive and meaningful civil participation in decision-making and any limitations or restrictions are clearly prescribed and narrowly defined. 3. The legal framework clearly prescribes the mechanisms to redress any non-compliance with the rules governing civil participation and transparency of decision-making. 4. There are clear criteria and equal opportunities for all CSOs to participate in the decision-making process.

1. Public consultations are mandatory for legal and policy drafts that affect the general public or specific sectors and groups

Legislation should contain provisions requiring the organization of public consultations on any legislative draft, as well as other normative legal acts that affect the general public or any specific group, including by-laws, policies, national or local government decisions, national strategies, etc. Public consultations can be organized in-person through open meetings with interested stakeholders, announced publicly (e.g. via the agency's website or through the media), or in written form (including online) by providing a channel for citizens and CSOs to send comments and suggestions. The relevant draft legal act shall be published for review and comments in advance of the consultation for a reasonable time (typically at least 30 days per draft). The outcomes of the consultation should be published in a written format, with clear arguments for the rejection of proposals that were not accepted.

Violations of this indicator may include:

- Legislation does not require for any normative legal draft to be published and consulted by the government prior to being sent to parliament.

2. The law guarantees inclusive and meaningful civil participation in decision-making and any limitations or restrictions are clearly prescribed and narrowly defined

Inclusive participation means that all groups of society have an equal chance to participate in decision-making. No distinctions can be made on the grounds of race, colour, sex, religion, birth, political or other opinion, national origin, property or other status. For CSOs, no distinction should be made regarding the level of operation (local, national, or international), sources of funding, areas of their activities, groups they represent, etc. The state should address and overcome specific challenges confronting minority, disadvantaged, vulnerable or marginalized persons or groups wishing to participate in public decision-making processes. Moreover, the state should put in place legal guarantees and organizational mechanisms to ensure inclusiveness of the public decision-making processes, through diversifying the structures, methods, mechanisms, tools and types of public participation. This could entail ensuring that the tools are user-friendly, utilizing new technologies (including but not limited to online tools), providing accessibility for persons with disabilities and other approaches.

A way to silence activists, journalists and CSOs are the Strategic Lawsuits Against Public Participation (SLAPPs). These are claims brought to silence critics on a range of (baseless) claims aiming to drain the CSO resources or in other words *"the use of litigation as a tool to abuse the judicial process in order to shut down critical or political expression, journalism, and acts of public participation, such as environmental and anti-corruption advocacy or protest"*[5]. Legislation should ensure that there is the possibility for early dismissal of SLAPPS, there are measures that punish abuse of litigation and providing support to the victims of SLAPPS, among others[6]. The European Court of Human Rights has already highlighted that there is higher threshold when criticisms relate to public figures; there should be safeguards against high damage awards; and there is higher protection for public watchdogs[7].

The mechanisms for both online and offline consultations should be defined by law to ensure broad public participation. Notice of consultations should be disseminated widely through a variety of channels, including media, websites, social networks, etc. Community announcement boards should be used for posting information on local-level consultations. The law should clearly state that a variety of CSOs, including those which might be critical to the proposed draft, should be involved in consultations.

Meaningful participation implies that the participation mechanisms are not process-focused but impact-focused, and comments and suggestions provided are duly discussed and taken into consideration by the relevant decision-making body. Limitations to participation should be clearly defined by law and based on objective and rational considerations.

Even during public health or other emergencies, legislation should guarantee that public consultations can take place. As the UNHRC has stated *"a civic space where a public debate can be held*

[5] The need for a Council of Europe Recommendation on measures to deter and remedy the use of SLAPPs, https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/605e125624daa0419362a36c/1616777814677/The+Need+for+a+Council+of+Europe+Recommendation+-+Final.pdf

[6] CoE Commissioner for Human Rights issues a Human Rights Comment on SLAPP, https://www.coe.int/en/web/media-freedom/-/coe-commissioner-for-human-rights-issues-a-human-rights-comment-on-slapps

[7] para. 29, The need for a Council of Europe Recommendation on measures to deter and remedy the use of SLAPPs

constitute important safeguards for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations under the Covenant."[8]

Violations of this indicator may include:

- The law sets specific criteria for CSOs participating in public discussions, e.g. CSOs should have a certain amount of experience in a relevant area or serve as public council member;
- The law does not specify the channels where information on legal drafts should be published, thus allowing, for example, an announcement on a consultation to be sent to a limited number of CSOs, not ensuring broad public participation.
- The law mentions "emergency" or "expedited" procedures for the adoption of legislation without specifying the circumstances when these procedures might be applied.

3. The legal framework clearly prescribes the mechanisms to redress any non-compliance with the rules governing civil participation and transparency of decision-making

In cases where legal acts are adopted without complying with binding standards on public participation, the law should provide procedures to bring the case before judicial bodies or other designated independent bodies. As an alternative, a mechanism should be provided for sending the proposed draft document back to the drafting body. For example, in Bosnia and Herzegovina, according to The Rulebook for the Implementation of Regulations on Consultations in Legislative Drafting[9] in the Ministry of Justice, the Council of Ministers may return the draft law to the Ministry to comply with the rules on consultation. In exceptional circumstances, a Minister may waive the consultation obligation, but the obligation for minimum consultation is not subject to any exceptions. As another example, the 2008 Law on Transparency of the Decision-Making Process in the Republic of Moldova (as amended and supplemented by a government decision in 2016[10]) stipulates that the non-application of rules on transparency constitutes disciplinary and administrative responsibility. In addition, the law defines and limits the instances when "emergency" or "expedited" procedures for the adoption of legislation, decisions or other public acts can be applied.

Violations of this indicator may include:

- The law does not provide administrative sanctions for violating the provision on mandatory public consultation;

4. There are clear criteria and equal opportunities for all CSOs to participate in the decision-making process

Legislation should ensure the equal participation of CSOs in the decision-making processes. State bodies do not have the right to exclude CSOs based on their sources of funding, their relations with

[8] CCPR/C/128/2, Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic

[9] The Rulebook for the Implementation of regulations on Consultations in Legislative Drafting in the Ministry of Justice of Bosnia and Herzegovina, available at http://www.mpr.gov.ba/web_dokumenti/EJ%20Pravilnik%20za%20konsultacije.pdf

[10] Government Decision No. 967 of 9 August 2016 on the consultation mechanism with civil society in the decision-making process. Available at: http://lex.justice.md/md/366274/

the government or their stance on the laws and other state decisions. Any selection criteria related to the CSO's geographical scope (international, national or local levels), aims and fields of activity, legal status (registered or unregistered organizations) and represented social group should be well-substantiated by the consultation body.

Violations of this indicator may include:

- There are no anti-discriminatory norms that ensure equal participation of CSOs in decision-making;
- There are no clear and publicly available criteria for CSO participation in decision making process or consultative bodies.

Practice

Indicators for Practice
1. Authorities use various mechanisms to ensure meaningful public participation. 2. There are no repercussions against CSOs that participate in decision-making processes. 3. Any CSO can participate in consultations without discrimination, whether based on the type of CSO or its positions toward the government.

1. Authorities use various mechanisms to ensure meaningful public participation

State bodies should use a variety of online and offline tools most appropriate to the subject and field concerned to reach as many citizens and CSOs as possible. They should also use CSO databases and lists for broad dissemination of information on draft legal acts, strategies, programs and announcements on public hearings and other public consultation events. Useful tools and mechanisms may include: online consultation (e.g. web platforms) and/or in person meetings (e.g. focus group, seminars, public debates, forums, expert panels) to discuss the formulation, implementation and evaluation of policy with the public; mechanisms to follow progress such as polls, online surveys or questionnaires to collect interests and suggestions from stakeholders; and open plenary or committee sessions to ensure debates during the decision-making.

Authorities should see participation as an element of the legal and policy preparation process. If a draft has not been subject to public consultations, decision-makers should return it to the relevant state body to organize a public consultation or attempt to organize one before the adoption of the act. For example, states can establish a system of monitoring and reporting on compliance with binding public participation standards.

Authorities, even during times of emergencies should continue using accessible and inclusive consultative mechanisms, that consider those most affected, in particular women and other marginalized individuals and groups. Authorities should use innovative approaches and modern technologies to ensure public participation in times of emergency. Existing consultative mechanisms should remain open and be utilized to the extent possible. Governments should not use

emergency measures to adopt legislation without consultation or in an emergency mode and "*as a general rule, fundamental legal reforms should be put on hold during the state of emergency*".[11]

Violations of this indicator may include:

- A state body uses only one channel of information to announce a consultation, for example a website or email list, not accessible for large groups of the public;
- A state body organises a meeting to discuss development strategy, and the meeting is held on an invitation-only basis with the participation of a few CSOs, with no information published online;
- State bodies organize a pro forma consultation with CSOs without considering their opinion and suggestions during the decision-making process;
- There are recorded cases where legal drafts were adopted without proper public consultation.

2. There are no repercussions against CSOs that participate in decision-making processes

In many instances, laws are enacted and applied arbitrarily to deny participation, and intimidation and persecution are employed to pressure individuals voicing opposing opinions. According to the Report of the Office of the United Nations High Commissioner for Human Rights (23 July 2015), "in many countries, persons and organizations engaged in promoting and defending human rights face threats, harassment and insecurity, including when advocating for the right to participate in political and public affairs" (para.16). CSOs should be free from such threats and be able to openly participate in decision-making processes at the local, national and international level and advocate for any decision in the interest of their stakeholders. They should not bear any responsibility or be subject to any pressures by the state on the basis of their participation. Similarly, CSO participation should not be hindered by attacks from powerful industry and private sector representatives e.g. through SLAPPs. No CSO can be restricted in its rights because of its participation in decision-making processes.

Objectively justified restrictions can be applied, however, in cases when a genuine conflict of interest appears. For example, if a CSO is a part of a selection committee for state grants, it should not be able to apply for such grants. However, such limitations should be made in writing and explained clearly.

Violations of this indicator may include:

- A CSO was refused state funding because it expressed a critical opinion on a specific law;
- CSO employees faced harassment because of opinions they expressed on a specific draft;
- CSOs are subject to SLAPPs because of their active position on environmental or other issues;
- CSOs faced surveillance and/or collection of personal data after providing critical feedback when participating in decision-making processes.

[11] Point 2.3; SG/Inf(2020)11, Council of Europe; Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis. A toolkit for member states; 7 April 2020

3. **Any CSO can participate in consultation without discrimination whether based on the type of CSO or its positions toward the government**

CSOs shall be able to effectively take part and be consulted in all governmental and quasi-governmental mechanisms on state policies and decision-making. CSOs should not be discriminated against based on, amongst others, their sources of funding, their objectives or spheres of activities (regardless of whether they involve advocacy and/or the defence and promotion of human rights and/or the rights of minority, disadvantaged, vulnerable or marginalized persons or groups), their legal status (unregistered or registered); or the fact that they, or their founders, are critical of the government and/or of draft policies, legislation, or other public decisions.

Violations of this indicator may include:

- State bodies engage only a narrow list of CSOs funded by the state in discussions on state policies and decision-making;
- CSOs providing social services are consulted on relevant laws and policies, while human rights organisations are not invited to consultations;
- Only pro-governmental CSOs are invited to public consultations.

Standard 2. There is regular, open and effective participation of CSOs in developing, implementing and monitoring public policies.

CSO involvement in the public debate, including critical voices and dissenting views, is essential for a pluralistic democratic society. CSOs shall have opportunities to effectively participate in all stages of the decision-making process including planning, implementation, monitoring and evaluation. Such participation consists of simple and clear procedures for engagement; availability and accessibility of all the draft documents for free; early stage involvement with sufficient time to prepare; and transparent feedback on all received proposals. Furthermore, CSOs shall be involved in decision-making processes via consultative bodies, which contributes to building mutual trust and cooperation between the state and civil society sector. Such bodies shall operate based on prescribed and clear standards and provide for transparent mechanisms for selection of members.

Law

Indicators for Law
1. The procedures for public consultations are simple and clearly set by law. 2. The law provides for the establishment of consultative bodies with clear standards and transparent mechanisms for selecting their members and decision-making within these bodies. 3. The law provides for CSO involvement in policy implementation, monitoring and evaluation.

1. **The procedures for public consultations are simple and clearly set by law**

The law contains provisions on how public consultations are organized, including online and offline consultations and specific communication mechanisms for citizens to provide suggestions. The law also sets the timeline for when information on consultations should be published, which allows the

CSO involvement as early as possible and provides sufficient time to prepare, discuss and submit recommendations on draft policies and legal acts. The conditions for public consultations should not require unnecessary documentation, such as licenses or information on organization, or complex application/submission procedures. The government should take appropriate actions to facilitate participation and avoid unduly burdening CSOs in the course of participation.

Violations of this indicator may include:

- The law does not set any clear regulation for public consultations, leaving the organisation and procedures of public consultation to the discretion of state bodies;
- Advance notice given to CSOs for sending opinions or attending a public event is too short;
- The procedures for participation in a consultation contain unnecessary documentation requirements for CSOs, e.g. certification or information on founders.

2. The law provides for the establishment of consultative bodies with clear standards and transparent mechanisms for selecting their members and decision-making within these bodies

Consultative bodies are important tool for CSOs' participation in developing, implementing and monitoring public policies. Thus, it is important that the law requires state bodies to establish consultative bodies, such as public councils, working groups, or other bodies with CSO involvement. Such consultative bodies can be established with ministries and the government, as well as with other governmental agencies and local level governments (municipalities), and regulated by law or by-law documents. The mechanisms for engagement in these consultative bodies shall be transparent, i.e. published by the relevant body, and provide clear standards for CSO involvement, based on objective and reasonable criteria. The standards should contain justified reasons to reject a candidate, safeguards in case of conflict of interest and provisions to ensure participation of marginalized groups. Decision-making within these bodies should also be transparent: e.g. minutes of the meetings or decisions are posted online, along with the list of CSOs that participated in the meetings.

The state institution which establishes the consultative body should ensure its operations, in particular by providing premises and technical equipment.

Violations of this indicator may include:

- Only some state authorities are allowed to establish permanent consultative bodies;
- State agencies have created consultative bodies, but there are no legal regulations on composition and operation of these bodies;
- The law does not contain explicit powers of consultative bodies;
- A consultative body includes pre-selected organizations specified by the agency which created the body;
- There is no requirement for the transparency of the consultative bodies' activities.

3. The law provides for CSO involvement in policy implementation, monitoring and evaluation

The law should allow CSOs to participate in implementation, monitoring and evaluation of policies adopted by various state bodies. CSOs should have opportunity to participate in the implementation stage, for example in service delivery and project execution. CSOs should also have an important role in policy monitoring and evaluation as representatives of the groups affected by these policies. An effective and transparent system of CSO involvement in these stages will ensure an impartial approach and credibility of outcomes. In Italy, the Monithon platform encourages active engagement in the monitoring of cohesion policy, offering a wide range of possibilities, such as studying the history of a selected project and exploring its progress, writing reports based on available data and organizing groups to monitor spending of EU funds in a specific territory.

Violations of this indicator may include:

- The law does not contain any provision on CSO involvement in policy implementation and monitoring;
- The selection procedures for engaging CSOs in policy monitoring are not specified.

Practice

Indicators for Practice
1. Information on drafts and timelines is available free of charge, preferably in a single online platform that is simple to use. 2. The consultation format guarantees effective participation and CSOs are invited to provide input to the decision-making process at the earliest stages and are given sufficient time. 3. The existence of a consultative body does not limit other CSOs' ability to participate in the public consultation on the given subject matter. 4. State authorities make the suggestions provided by CSOs publicly available and provide feedback. 5. There is a growing practice of engaging CSOs in implementation, monitoring and evaluation of state policies and programs.

1. Information on drafts and timelines is available free of charge, preferably in a single online platform that is simple to use

Information on legal drafts should be published and accessible in an accessible format and within timelines required by law. Particularly in times of emergency there is a need for timely and accessible publishing of information. The publication of this information should include supporting documents and a timeline for the consultation period. Information on all legal drafts can be consolidated via ICT tools, e.g. in one single platform, allowing ease of use. The platform should not require a subscription or fees. For example, in Armenia, there is a special platform, www.e-draft.am, where legal drafts are posted along with the supporting documentation. The platform allows users to search for drafts and provide written feedback; it also provides a summary of comments with their responses. In small communities, measures should be taken by local authorities to make draft

policies accessible for everyone, including through offline formats, e.g. using announcement boards or town hall meetings.

Violations of this indicator may include:

- Information on draft laws is provided on a special platform which requires subscription and fees are applied;
- Information concerning changes in legislation or adopted measures during crisis are not accessible to everyone, even though they regulate public behaviour or contain high sanctions.

2. The consultation format guarantees effective participation and CSOs are invited to provide input to the decision-making process at the earliest stages and are given sufficient time

Advance notice should be given on public consultations, as required by law, to allow CSOs to prepare for the consultation and provide meaningful input. Various consultation mechanisms should be applied to ensure effective participation of a wide range of CSOs. Legal drafts and policies shall be discussed in the early stages, with the possibility of revision before the next stage of draft development. CSOs should be consulted on all subsequent drafts as well. Revised versions of the legal drafts and policies should be published as soon as they are available.

State bodies should not apply "emergency" or "expedited" procedures for the adoption of legislation, decisions or other legal acts in order to circumvent the requirement for public consultation. The application of such procedures should be rare. A mechanism should be in place to review whether such procedures are necessary and adequate in each case.

Violations of this indicator may include:

- Legal drafts are posted less than a week before the deadline of submitting comments;
- CSOs are invited to public consultations on short notice or without having been provided a draft of the discussed policy/law prior to the meetings;
- Legal drafts and policies are discussed in the early stages of consultation and significant revisions are made; however, the revisions are processed without further publication and/or consultation;
- CSOs are invited to provide feedback after all key issues have already been decided, and revisions are difficult if not impossible;
- There are multiple cases where emergency procedures are used to adopt legal drafts without public consultation.

3. The existence of a consultative body does not limit other CSOs' ability to participate in the public consultation on the given subject matter

Organizers of public consultations should be impartial and open the public decision-making processes to all interested CSOs, including smaller or grassroots civil society groups. Smaller groups should be able to engage even if they are not involved in regular discussions or institutionalized frameworks for participation, such as consultative bodies (e.g. public councils) or appointed

government bodies/working groups. Non-members should have the chance to attend meetings of consultative bodies and express their opinion as well.

Violations of this indicator may include:

- The legal drafts and policies of a specific state agency are discussed only within the framework of the meetings of a consultative body of the relevant agency.

4. **State authorities make the suggestions provided by CSOs publicly available and provide feedback**

Providing feedback on received inputs is a crucial element in increasing trust and strengthening cooperation. All comments received from civil society should be given equal consideration and publicized, regardless of whether they are in favour of or against the proposals under discussion. Feedback on each of the suggestions should be published, with notations to indicate which suggestions were incorporated in the final document, what was not included and why. The feedback can also be presented as a brief report with a summary of all responses and the action taken.

Violations of this indicator may include:

- A summary of comments received is provided without indication of their incorporation or rejection, or without any explanations of the reasons for rejection.

5. **There is a growing practice of engaging CSOs in implementation, monitoring and evaluation of state policies and programs.**

CSOs should be involved not just in discussion about state policies and programs but also in their implementation and monitoring which should not be reserved only for state entities or companies. This should happen in a transparent manner and based on the expertise of CSOs. CSOs have the capacity to provide health, educational or social services, engage in the area of culture, etc. In addition, CSOs could evaluate the impact of various state policies e.g. take part in regulatory impact assessment or evaluate the effect on environment of various projects, including construction, infrastructure, etc. This indicator should provide information about specific examples of CSO engagement in monitoring, evaluation and implementation and assess if there is a positive trend in that respect.

Violations of this indicator may include:

- There are practical obstacles to CSO engagement in monitoring or implementation, specifically in areas where CSOs have capacity and expertise.

Standard 3. CSOs have access to the information necessary for their effective participation

Effective participation in the decision-making process is only possible if CSO have access to all necessary information. The law shall establish the terms and timelines for publishing all information necessary for the decision-making processes. State authorities should ensure access to information based on a simple and clear procedure. States should adopt legislation that obligates state institutions to timely publish their legislative agenda.

Law

Indicators for Law
1. Legislation includes terms and timelines for state bodies to publish all information related to the decision-making process. 2. The law establishes simple and clear procedures on how to access information.

1. Legislation includes terms and timelines for state bodies to publish all information related to the decision-making process

The right to participate in decision-making is closely linked to transparency and full access to relevant information. Thus, information related to the decisions must be accessible, except for clearly defined cases which are enshrined in the law. Moreover, such restrictions must comply with the conventions of the Council of Europe and other international obligations.

The information must be provided free of charge or at a reasonable price (e.g. the cost of printed materials) and within the deadlines clearly set by law, through Internet or printed media. The information must be provided in a clear and understandable manner, relevant to the essence of the submitted requests, and be accessible to the requesting party. Further, the recipient must be allowed to use the information at their own discretion, e.g. to print it or post it on a website.

To facilitate access to information, legislation shall obligate state authorities to publish their legislative agenda with all laws and policies that are planned for amendment or adoption, as CSOs must be familiar with laws or policies in order to prepare their proposals and/or comments.

Public authorities should provide up-to-date, complete information on the decision-making process and participation procedures. For example, according to Article 15 of the Law of Ukraine "On access to public information", the information holder is obliged to publish draft decisions to be discussed and the agenda of their open meetings without delay, but not later than five business days from the document approval date. Draft regulatory acts and decisions of local governments shall be made public not later than 10 business days prior to the date of their consideration for the purpose of adoption.

Violations of this indicator may include:

- There is no legal requirement to publish information related to government decisions;
- There is no provision in the law establishing deadlines for the publication of information related to decisions;
- The laws do not envisage publication of the legislative agenda of the government.

2. The law establishes simple and clear procedures on how to access information

Access to public information should be regulated at the legislative level. Such legislation should specify what documents are needed to request information, timeframes for providing information and valid reasons for refusal, which should be clear, understandable and contain an exhaustive list of grounds. CSOs are not obligated to indicate a reason for their request of public information. The formalities related to the request should not exceed the necessary level for processing the request.

Violations of this indicator may include:

- Access to information is not regulated by law;
- Numerous documents must be provided to obtain information.

Practice

Indicators for Practice
1. Draft laws and policies are published and accessible and CSOs are duly notified on public hearings or discussions of draft regulations. 2. State authorities provide responses to information requests in due time, free of charge.

1. Draft laws and policies are published and accessible and CSOs are duly notified on public hearings or discussions of draft regulations

Public authorities should make draft laws and policies available for public discussion in accordance with established procedures. Such access should be provided without unnecessary administrative obstacles and free of charge, in line with the open data principles and in timely manner. Accessibility of information also means that CSOs should be able to obtain information about draft laws without any additional approvals, online or offline. Timely publication means that CSOs have enough time to prepare for public hearings or discussions – e.g. to familiarize themselves with drafts and write their proposals. The access may be provided online or offline.

In instances where access to legislative drafts is limited, legal requirements should be followed. Moreover, such instances should occur strictly for limited purposes – i.e. national security, defence and international relations; public safety; and the prevention, investigation or prosecution of criminal acts.

Violations of this indicator may include:

- There is a case where a draft law or policy was not presented for public discussion;
- There has been a delay in publication of a draft law or policy for public discussion;
- State authorities do not announce public hearings or discussions;
- The state denies information about a legislative draft to a CSO without stating the reasons;
- State authorities announce public hearings or discussions without allowing sufficient time for preparation.

2. State authorities provide responses to information requests in due time, free of charge

The public authorities should respond to duly completed requests for providing public information within fixed deadlines. Moreover, government agencies should provide their response free of charge, except for pre-set and reasonable costs related to printing and/or copying of materials. An applicant should only be required to give the minimum amount of identifying information necessary to for the state to identify the applicant and respond to the request.

Public authorities must provide a timely and comprehensive response to information requests, and any rejection of information provision should be clearly justified with relevant legal grounds, such as confidentiality, national security, etc. Cases where information is not provided should be clearly justified with references to relevant laws.

Moreover, CSOs should be able to submit complaints regarding limited or burdensome access, and the state should respond to such complaints and take corrective action.

Violations of this indicator may include:

- Public authorities do not respond to the request;
- Public authorities miss the deadlines to respond to a request;
- Public authorities respond to the request in a manner that does not answer the questions raised;
- Access to information is restricted during emergencies.

Standard 4. Participation in decision-making is distinct from political activities and lobbying

In recent years, the desire for stricter transparency requirements with regard to political activities and lobbying has affected the ability of CSOs to engage in the public debate and participate in the decision-making process. CSO activities are increasingly characterized as political, which results in some organizations facing excessive administrative burdens and harassment. As with any other limitations to the rights to freedom of association, expression and participation, restrictions should be based on a legitimate state aim and based on the principle of proportionality. Therefore, political activities should be clearly and narrowly defined so that they do not limit CSO participation in public and advocacy activities. In a similar manner, the regulation of lobbying shall not limit the advocacy activity of CSOs.

Law

Indicators for Law
1. Limitations to CSO participation in political activities are clearly described and narrowly defined and do not affect the ability of CSOs to engage in public policy activities. 2. The regulation of lobbying does not restrict CSOs' ability to engage in public policy and advocacy activities.

1. Limitations to CSO participation in political activities are clearly described and narrowly defined and do not affect the ability of CSOs to engage in public policy activities

Participation of individuals and groups in the conduct of public affairs and policy-making is an important element of democracy.

CSOs have a very important role in the policy-making process because they are a vehicle for collecting and channelling the views of their members and other stakeholders. Their input adds value to the political decision-making process and has great potential to enhance the quality and relevance of resulting policies.

If defined too broadly, political activity can encompass not only things like supporting candidates for public office or fundraising for political parties, but also activities undertaken by a number of CSOs – e.g. advocating for or against specific laws, engaging in public advocacy, pursuing public interest litigation or taking part in a policy debate. To prevent restrictions on these legitimate CSO activities, countries shall clearly indicate what is considered "participation in political activity" in their respective laws. It is important that political activity regulations do not violate the right of CSOs to participate and represent the views of their organization or stakeholders.

Violations of this indicator may include:

- The definition of political activity is overly broad, while also limiting CSOs ability to engage in political activity;
- CSOs which receive funding from abroad are prohibited from taking part in public policy activities;
- Regulations on political activity are complicated or restrictive, resulting in CSOs choosing self-imposed silence.

2. The regulation of lobbying does not restrict CSOs' ability to engage in public policy and advocacy activities

Lobbying is both oral and written communication with a public official aiming to exert influence on legislation, policy or administrative decisions. To draw a clear distinction between lobbying and advocacy (which is in principle a nonprofit activity), national laws, such as the 2008 Macedonian Law on Lobbying, may define lobbying as an activity carried out for monetary compensation by registered lobbyists or their employees who have signed a lobbying contract (Art. 2).

It is important that the definition of "lobbying" and related regulations do not impede on CSO rights and activities, in particular typical advocacy activities such as public speaking, analysis and publication of surveys or research and the sharing of information with decision-makers.

Violations of this indicator may include:

- The definition of the lobbyist activities limits CSOs' ability to engage in advocacy;
- CSOs must register as lobbyists when carrying out public policy activities;
- CSOs cannot enter the buildings of state authorities without registering as a lobbyist.

Practice

Indicators for Practice
1. CSOs are not harassed and do not experience any pressure for views supporting or alternative to the interests of political parties. 2. CSOs are free to engage in advocacy activities without the need to register as lobbyists or professional advocates, or any additional administrative or financial burdens.

1. **CSOs are not harassed and do not experience any pressure for views supporting or alternative to the interests of political parties**

The right to participation cannot be implemented if CSOs are silenced or intimidated to abandon their activities. Intimidation can occur in various ways: physical intimidation of employees, financial sanctions against CSOs, barriers to speech and advocacy, barriers to communication and cooperation, etc. CSOs should be free of such threats and be able to openly participate in the decision-making process and advocate for any decision in the interests of their stakeholders. No CSOs can be restricted in their rights because of their participation in the decision-making process.

Political parties, particularly those holding power, are obliged to respect CSOs' rights to freely express their views and beliefs, regardless of the point of view of the ruling party itself. Political parties, civil servants and other individuals must not exert pressure on CSOs to persuade them to support the general political line of the government. Such pressure may take various forms, e.g. interference in the internal management of NGOs or conditioning state funding opportunities on the CSO's expression of support for the ruling political party.

Violations of this indicator may include:

- CSOs have lost their nonprofit status because of their critical assessment of government policy;
- CSO staff faced persecution/physical injuries due to their opinion on a specific project;
- CSO employees receive phone calls with threats aimed at compelling them to support the interests of the ruling political party.

2. **CSOs are free to engage in advocacy activities without the need to register as lobbyists or professional advocates, or any additional administrative or financial burdens**

Efficient advocacy enables CSOs to shape public discussions on important social issues and promote the interests of communities on policy areas that affect their lives. CSOs should not need to obtain any special status defined by legislation, such as lobbyist, in order to conduct advocacy activities like participation in public hearings and consultations, provision of comments on policies and legislation, etc. Similarly, CSOs should not have to pay special fees or provide additional reporting if they are involved in policy advocacy activities.

Violations of this indicator may include:

- State authorities impose a fine on a CSO for advocacy activities without registration as a lobbyist;
- CSOs need to provide additional information on their founders and members when involved in advocacy activities;
- CSOs engaged in advocacy experience inspections more often than envisaged by the schedule of inspections.

Relevant resources

- OSCE-ODIHR – Venice Commission Joint Guidelines on Freedom of Association, para. 31, 183-195
- International Covenant on Civil and Political Rights, art. 25
- General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, para. 1-4
- OSCE Recommendations on enhancing the participation of associations in public decision-making processes, Vienna (15-16 April 2015), No. 3, 6-7, 10-11, 16, 20-21, 25-26, 27
- OSCE, International practices on confidence-building measures between the state and the civil society organizations, Chapter IV (Dec 2010)
- UN Human Rights Council, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/30/26 (23 July 2015)
- OHCHR Draft guidelines for States on the effective implementation of the right to participate in public affairs, A/HRC/39/28 (Sept 2018) para. 19, 21, 56-58, 64-77, 79, 82-94
- CCPR/C/128/2, Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic
- Checklist – FoAA during public health emergencies, developed in the context of the COVID-19 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association
- Organisation for Economic Co-operation and Development, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying, Annex (2018)
- Council of Europe Guidelines for civil participation in political decision making, CM (2017)-83 final (adopted 27 September 2017) para. 4, 6, 8-12, 20-21, 23, 26-29.
- Council of Europe Expert Council on NGO Law, Regulating political activities of non-governmental organizations. OING Conf/Exp (3 December 2015)
- Council of Europe Recommendation N (2002)2 on access to official documents (adopted Feb 21, 2002)
- Council of Europe Recommendation CM/Rec(2007)2 on legal regulation of lobbying activities in the context of public decision making (adopted 22 March 2017)
- Council of Europe Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, art. 76-77 (adopted 10 Oct 2007)
- Council of Europe Recommendation Rec(2001)19 on the participation of citizens in local public life (adopted 6 Dec 2001)
- Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process, CONF/PLE(2009)CODE1 (adopted by the Conference of INGOs on 1 October 2009), background document, Chapter III.ii and Chapter IV.iii, 4-5
- Council of Europe, Convention on Access to Official Documents (CETS No. 205)
- Council of Europe and ECNL, Civil Participation in Decision-Making Processes: An Overview of Standards and Practices in Council of Europe, Chapter V, sections 1 and 2.2; Chapter VI, section 3 and country example No. 13; Chapter VII (May 2016)

- Council of Europe; SG/Inf(2020)11, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis. A toolkit for member states; 7 April 2020, Point 2.3
- Defending Civil Society, the International Center for Not-for-Profit Law, World Movement for Democracy (September 2012)

AREA 6. FREEDOM OF EXPRESSION

Standard 1. Everyone has the right to freedom of opinion and expression

The freedom of opinion and expression is the cornerstone of a democratic society, as free people are able to articulate their needs and priorities and hold decision makers to account. Freedom of expression is guaranteed under the International Covenant for Civil and Political Rights and the European Convention for Human Rights. Freedom of opinion and expression is guaranteed to any person without discrimination. It provides the right to seek, receive and impart information and ideas in any possible form. States may limit freedom of expression, but any limits must be based on clear law and shall be strictly necessary to achieve legitimate aims. Hate speech – that is, any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence – is not protected by freedom of expression and shall be prohibited.

Law

Indicators for Law
1. The right to freedom of opinion and expression is guaranteed to any person, local or foreign, individually or as a group, including CSOs, without discrimination. 2. CSOs and associated individuals are free to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media. 3. Any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence is prohibited. 4. No sanctions are established for the dissemination of information based on broad and vague definitions of "false news" or "non-state-verified" information.

1. The right to freedom of opinion and expression is guaranteed to any person, local or foreign, individually or as a group, including CSOs, without discrimination

The respect and protection of the right to freedom of opinion and expression is an obligation of the state that should be given effect in national law. The national legal system should provide effective guarantees of freedom of opinion and expression to every person throughout the entire territory of the state, individually or as a group, and to CSOs as well.

Freedom of opinion is not subject to any limitations. The freedom to hold opinions also includes the negative freedom to hold no opinions and not to be obliged to reveal one's own opinion on any topic. All forms of opinion should be protected, including those of a social, political, scientific, historic, moral or religious nature. The holding of an opinion may not be criminalized. States may not impose exceptions or restrictions to the freedom of opinion. No person can be subject to the impairment of any rights on the basis of their actual, perceived or supposed opinions. It is prohibited to coerce someone to hold or not an opinion regardless of the form of coercion.

Freedom of expression carries with it special duties and responsibilities and therefore can be subject to certain formalities, conditions, restrictions or penalties. Any such restrictions must pass a three-part, cumulative test:

1) They must be "provided for by law", which is clear and accessible to everyone (principle of legal certainty, predictability and transparency);

2) They must pursue a legitimate purpose, i.e.: to protect the rights or reputations of others or to protect national security, public order or public health or morals (principle of legitimacy). This is an exhaustive list of restrictions, and it cannot be further extended.

3) They must be proven necessary and must be the least restrictive means required to achieve the purported legitimate aim (principles of necessity and proportionality), even in exceptional situations of emergency dictated, for example, by public health, and safety or national security reasons.

Violations of this indicator may include:

- CSOs or associated persons are prohibited to question or deny scientific or historical facts officially supported by the Government;
- A restriction on freedom of expression is based on traditional rules, religion or customary law rather than written norms;
- A legal norm that restricts some forms of expression is not clearly formulated in a way that makes it possible for anyone to understand when it applies and how;
- The law does not provide an exhaustive list of restrictions, leaving the restrictions up to the authorities' discretion.

2. CSOs and associated individuals are free to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media

Adequate access to information is a basic condition for participatory decision-making processes in democratic governance. In circumstances where access to information is instrumental for the exercise of a CSOs' right to receive and impart information, the authorities' refusal to disclose information requested by CSOs in the public interest is a violation of the right.

The right to seek, receive and impart information is not limited by frontiers, and foreign CSOs have the same right to seek and receive the information as local ones. Similarly, the right to seek and receive information is not linked with the location of CSOs within the country.

Information and ideas of all kinds can be imparted to others, in whatever form and regardless of media. The protection of freedom of expression extends to information or ideas that may be regarded as critical or controversial by the authorities or by a majority of the population, including ideas or views that may "shock, offend or disturb." Examples of protected forms of expression also include commentary on one's own affairs or public affairs, canvassing, discussion of human rights, journalism, scientific research, the expression of ethnic, cultural, linguistic and religious identity, artistic expression, advertising, teaching, political discourse and advertising during election campaigns.

Forms of protected expression include "spoken, written and sign language as well as nonverbal expression such as images and objects of art." Means of expression also include "books, newspapers,

leaflets, posters and banners as well as all forms of audio-visual, offline, electronic and internet-based modes of expression."[12]

Violations of this indicator may include:

- Foreign CSOs are prohibited from expressing their views in the local media;
- The authorities deny CSOs access to information that is in the public interest and is crucial for the exercise of CSOs' right to seek and disseminate information to civil society.

3. Any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence is prohibited

Freedom of expression is not an absolute right; certain types of speech are not protected. States must prohibit by law "any propaganda for war" as well as any "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."[13] This specific set of characteristics is usually referred to as "hate speech" and is not protected by the right to freedom of expression.

With the advent of the internet, a peculiar form of hate speech called "cyber-bullying" has also developed. Cyber-bullying usually identifies and targets an individual victim (or even an organisation) with spiteful or offensive content, harassment or even threats of violence. This does not fall within the scope of "hate speech" because the author does not seek to incite others to take actions against a group of people on the grounds of their "national, racial or religious" characteristics. However, this type of speech is still subject to the limitations and three-part test (i.e. restrictions by law, pursuing a legitimate aim, and necessary in a democratic society) required by international standards protecting freedom of expression.

It is important to note that while states are obliged by international standards to adopt specific legislation prohibiting "hate speech" only against three specific target groups – i.e., national, racial or religious groups – this does not mean that "hate speech" towards other groups (such as socio-economic groups, LGBTIQ groups, etc.) is otherwise permissible. Restrictions on "hate speech" against other groups or individuals can be adopted, as long as they comply with the three-part test described above.

The term "advocacy" (of hatred) requires that the author of a statement have a specific intention to promote hatred publicly towards a target group (i.e., national, racial or religious group). Therefore, it is not sufficient that the statement is perceived as hateful by the target group if the author was not attempting to stoke hatred.

The term "incitement" indicates all statements about national, racial or religious groups which "create an imminent risk of discrimination, hostility or violence of discrimination, hostility or violence against persons belonging to those groups." ECtHR case law makes a distinction between, on the one hand, genuine and serious incitement to extremism and, on the other hand, the right of

[12] EU Human Rights Guidelines on Freedom of Expression, Online and Offline (Council of the European Union), 2014, par. 18
[13] ICCPR, Article 20.

individuals (including journalists and politicians) to express their views freely and to offend, shock or disturb.

According to international standards on freedom of expression, a statement qualifies as "hate speech" if it complies with a specific six-part threshold test (which examines context, speaker, intent, content, outreach, likelihood of harm), which is detailed out in the Definitions section.

Violations of this indicator may include:

- The state does not have laws prohibiting hate speech against national, racial or religious groups and as a result, incitement to discrimination against such groups is tolerated or even actively supported by state authorities;
- A third party (e.g., a journalist or a human rights activist) who repeats inflammatory racist remarks made by others (e.g., a neo-Nazi group) for the sole purpose of a debate in the public interest can be convicted by law for assisting in the dissemination of "hate speech";
- The law allows a CSO that criticizes government actions against part of its own people to be punished for advocacy of national hatred inciting to violence and social unrest.

4. No sanctions are established for the dissemination of information based on broad and vague definitions of "false news" or "non-state-verified" information.

As already explained under Indicator 1, states may only impose restrictions to freedom of expression as long as they are clearly provided by law to protect a legitimate interest recognised by the international human rights treaties and are strictly necessary and proportionate to achieve that interest. Sanctions are generally considered necessary and proportionate when they are the least intrusive instrument to protect a legitimate interest. In other words, any type of sanctions, either criminal or administrative, fails the necessity/proportionality test if the protection could have been achieved in a less restrictive way.[14] International human rights standards acknowledge that targeted disinformation can interfere with the people's right to form opinions by seeking, receiving and imparting information and ideas of all kinds and that some forms of disinformation may be prohibited if they cause harm to the individuals' privacy or reputation or they incite to hatred, violence or discrimination against certain groups in society. However, international human rights standards treaty bodies unanimously concur that general prohibitions based on broad and vague definitions of "false news" or "disinformation" are always incompatible with the protection of freedom of expression and should be abolished.[15] This is also true whenever states threaten with sanctions or even imprisonment anyone who reports or discloses information considered as likely to cause alarm, panic or unrest in times of declared emergencies for public health, safety or security reasons.

According to the regional standards, "disinformation" is understood and defined as "verifiably false or misleading information that is created, presented and disseminated for economic gain or to

[14] UN HRCttee, General Comment No. 34, Article 19 (Freedom of Expression), para 34.

[15] Joint declaration on freedom of expression and "fake news", disinformation and propaganda, declaration by the united nations special rapporteur on freedom of opinion and expression, the organization for security and co-operation in europe representative on freedom of the media, the organization of american states (oas) special rapporteur on freedom of expression and the African commission on human and peoples' rights special rapporteur on freedom of expression and access to information, 3 march 2017, para 2 (https://www.osce.org/files/f/documents/6/8/302796.pdf)

intentionally deceive the public, and may cause public harm."[16] The definition of "public harm" may include "threats to democratic political and policymaking processes" as well as to protection of citizens' health, the environment or security.[17] However, the definition of "disinformation" categorically excludes any reporting of "errors, satire and parody, or clearly identified partisan news and commentary."[18]

Violations of this indicator may include:

- A legal norm restricting dissemination of "disinformation" does not narrow down its definition to verifiably false information knowingly and intentionally shared to cause harm to legitimate interests of the individuals, the public and the state and/or for economic gain;
- The legal provisions against dissemination of "disinformation" impose sanctions that are disproportionate for the protection of a specific legitimate interest (e.g., jail for "being likely to cause panic and disorder") thereby causing a chilling effect on freedom of expression.

Practice

Indicators for Practice
1. There are no repercussions or disproportionate sanctions for expression of thoughts and opinions. 2. The expression of ideas, opinions and thoughts that are incompatible with or critical of official policy is not hindered by state. 3. Sanctions imposed for hate speech are strictly necessary and proportionate as a deterrent, and the same result could not be achieved if they were replaced with less intrusive measures. 4. There are no cases of journalists, activists or CSO representatives prosecuted or convicted for creating or disseminating "false news" or "disinformation".

1. There are no repercussions or disproportionate sanctions for expression of thoughts and opinions.

Freedom of expression covers not only the opinions shared by the majority or by large groups. It also covers protection for "information and opinions expressed by small groups or one individual even where such expression shocks the majority"[19]. The tolerance of individual points of view is an important component of the democratic political system. Opinions expressed in strong or

[16] European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions, "Tackling online disinformation: a European Approach", 26 April 2018, https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-236-F1-EN-MAIN-PART-1.PDF

[17] See Footnote 11 above 2

[18] Also, see Council of Europe report DGI(2017)9, "Information Disorder: Toward an Interdisciplinary framework for research and policymaking", (https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c), which identifies the "Three Types of Information Disorder": a) Misinformation, i.e. when false information is shared but with no intention to cause harm; b) disinformation, i.e. when false information is knowingly and intentionally shared to cause harm; and c) mal-information, i,e when genuine information is shared to cause harm (i.e., leaks of private lives of someone, hate speech, etc).

[19] Council of Europe, Protecting the Right to Freedom of Expression under the European Convention on Human Rights; A handbook for legal practitioners, 2017, p. 75

exaggerated language are also protected. The extent of protection depends on the context and the aim of the criticism.

The state should not allow any repercussion against people or CSOs because of their opinion. No persons can be imprisoned for simply expressing thoughts and opinions. The imposition of a criminal sanction may be applied only in cases of hate speech or incitement to discrimination, hostility or violence against groups or individuals.

Defamation should not be treated as a crime, but as a civil wrong. Where defamation is still treated as a crime by law, the national courts must refrain from applying criminal penalties, in particular imprisonment, as such sanctions are always disproportionate; nor are they necessary in a democratic society.

CSOs are not harassed or named and shamed by national or local public institutions for expressing criticism of the government or its policies.

Violations of this indicator may include:

- CSOs or associated individuals are sanctioned for publicly expressing opinions on the social, economic or political context of the country;
- CSOs or associated individuals are sanctioned for making humorous or satirical comments on the activities of public figures, religious organizations or political institutions;
- CSOs or associated individuals are imprisoned for damaging other people's reputation after merely expressing their opinions;
- Vocal CSOs and associated individuals are constantly ordered to appear in court or in administrative procedures to explain or clarify their expressed opinions;
- CSOs critical of the government or other public authorities are excluded from public consultations, meetings and debate in the media.

2. The expression of ideas, opinions and thoughts that are incompatible with or critical of official policy is not hindered by state

Any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial or other unwarranted influence. Laws must be applied in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenging and remedying abuse.

Value judgments should enjoy special protection, as they are an expression of the pluralism, which is crucial for a democratic society. State policies and legislative provisions affecting CSOs must apply equally to organisations that are supportive of the government and those that voice dissent or work in areas not included in the government's priorities.

CSOs should be able to freely access media channels to express their views and opinions, including those critical to official policy. Media freedom and pluralism should be protected by law. The editorial independence of public service broadcasters must be guaranteed by a board appointment mechanism that is not controlled by the government or the parliamentary majority. Media and CSO

access to and use of internet and social media must not be restricted for publishing third-party content whose removal has not been ordered by an independent judicial authority.

Pluralism of political debate in the mainstream media should enjoy special protections, especially during electoral campaigns. Funding of media outlets for both public and private media must be transparent and accountable to the public, particularly with regard to the allocation of state advertising.

Violations of this indicator may include:

- A CSO that constantly voices critical opinions against the government is subjected to taxes and other state controls with greater than usual frequency and intensity;
- CSOs and associated individuals known for their opposition to state policy are not allowed/invited to appear on state owned TV stations;
- CSO websites or pages are blocked or shut down by ministerial orders or other administrative authorities;
- Institutions undertake smear campaigns against CSOs and their donors.

3. **Sanctions imposed for hate speech are strictly necessary and proportionate as a deterrent, and the same result could not be achieved if they were replaced with lighter measures**

The government should not use hate speech legislation as a means to "discourage citizens from engaging in legitimate democratic debate on matters of general interest"[20]. Applied sanctions should be proportionate (not disproportionately small to encourage hate rhetoric and not disproportionately big to chill freedom of expression).

Sanctions imposed must comply with the three-part test, that is, they should be clearly established by law for the achievement of legitimate grounds and be strictly necessary for the achievement of that purpose.

Violations of this indicator may include:

The courts do not apply the six-part threshold test (see the Definitions section) to assess if a controversial statement qualifies as "hate speech" or falls under other provisions (e.g., on defamation);

- When courts impose sanctions to punish cases of hate speech, they do not carefully assess and justify the proportionality of the sanction to each specific violation and tend to apply penalties that are either too lenient or too harsh.

4. **There are no cases of journalists, activists or CSO representatives prosecuted or convicted for creating or disseminating "false news" or "disinformation".**

International human rights treaty bodies have consistently stated that the prosecution or conviction of journalists for merely creating of disseminating "false information" is incompatible with the protection of freedom of expression. This type of protection is also extended to anyone else who

[20] EU Human Rights Guidelines on Freedom of Expression, Online and Offline (Council of the European Union), 2014, p.18

exercises the essential function of "journalism" by seeking, receiving and imparting information (aka "citizen journalism").

Violations of this indicator may include:

- CSOs, bloggers or activists are criminally prosecuted and sanctioned for publishing "untrue and unverified information".

Standard 2. The state facilitates and protects freedom of opinion and expression

The state has the positive obligation to facilitate and protect freedom of opinion and expression. The legal framework should be designed to provide an environment where information flows freely and a diverse range of content is protected. No limitation should be imposed on the free use of communication tools such as the internet. There should be no censorship, and prompt and proportionate responses should be in place in cases of defamation via media. The activity of journalists should be protected, and their right to keep sources of information confidential should be respected.

Law

Indicators for Law
1. There is no limitation on the free use of internet or other communication means for expression of opinions. 2. There are clear protections and guarantees against censorship. 3. The law protects the confidentiality of whistle-blowers and journalists' sources of information. 4. There are clear and proportionate sanctions for defamation/libel, and the latter are not criminalized.

1. There is no limitation on the free use of Internet or other communication means for expression of opinions

International standards on freedom of expression acknowledge that the same rights that people have offline must also be protected online. However, the internet is characterized by some peculiarities – e.g. it provides an unlimited number of points of entry for an unlimited number of users, unlike the broadcast media, which is characterized by a finite bandwidth and therefore by a limited amount of frequencies to be allocated amongst operators.

Because of the internet's differences from broadcast media, international standards of protection of freedom of expression acknowledge that:

- The internet should not be subject to the same licensing and registration rules as the broadcast media (i.e., radio and television), for which such rules were necessary to allow States to allocate limited frequencies fairly;
- "Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or

national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet";[21]

- Sweeping bans on the operation of websites, blogs or any other internet-based communication systems, including systems to support such communication (such as internet service providers or search engines) are not compatible with the three-part-test outlined above. Restrictions should be strictly content-specific and clearly indicated by law for the protection of legitimate aims. National legislation must guarantee that "content, applications or services should never be blocked, slowed down, degraded or discriminated against, except in very limited circumstances (e.g. implement a court order or a legislative provision, for instance conforming to the law enforcement provisions on child abuse or child pornography, crucial network security issues, prevent unsolicited communication, minimize exceptional congestion)".[22]

Violations of this indicator may include:

- Internet companies are required to register and obtain a license to be able to access a country audience;
- Bloggers with over 1000 visitors per day have to comply with the same obligations as media.

2. <u>There are clear protections and guarantees against censorship</u>

National legislation should provide clear protection against laws or practices that "impose censorship, encourage self-censorship or provide legal penalties, including criminal, financial and administrative sanctions on the exercise of freedom of opinion and expression, in violation of international human rights law."[23]

Measures taken before publication, such as licensing of journalists, refusal to register a periodical, examination of an article by an official before its publication or the prohibition of publication are also regarded as acts of censorship. These limitations can reduce the value of the information being shared, even if they are temporary.

Any means of censorship that are unacceptable within the "traditional media" must not be used for online media. New forms of censorship must not be developed, such as content filters or restrictions on traffic to certain web pages.

Violations of this indicator may include:

- There are no legal protections against censorship;
- The news service of the public television station is required to submit news topics for prior authorization;

[21] Joint Declaration on FOE and the internet by the four special mandates to FOE (UN Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe ("OSCE") Representative on Freedom of the Media, Organization of American States ("OAS") Special Rapporteur on Freedom of Expression and African Charter of Human and People's Rights ("ACHPR") Special Rapporteur on Freedom of Expression and Access to Information), 2011 par. 6 b

[22] EU Human Rights Guidelines on Freedom of Expression, Online and Offline (Council of the European Union), 2014, p.20

[23] EU Human Rights Guidelines on Freedom of Expression, Online and Offline (Council of the European Union), 2014, p. 17

- CSO publications and website content must be reviewed by state bodies before publication.

3. The law protects the confidentiality of whistleblowers and journalists' sources of information

State law should protect any CSO or associated person who discloses information that they reasonably believe to be true and that may constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud, harm to the environment, public health or public safety. Protections should also extend to journalists who receive this information, so that they are not required to disclose their sources.

Whistle-blower protection is essential to encourage the reporting of misconduct, fraud and corruption. States should "foster an environment that encourages reporting or disclosure in an open manner and that individuals should feel safe to freely raise public interest concerns."[24] It is also recommended that "clear channels should be put in place for public interest reporting and disclosures and recourse to them should be facilitated through appropriate measures".[25]

ECtHR jurisprudence has developed a six-part test to determine whether a whistleblower is entitled of protection. The test examines the following factors:

1) Has the whistleblower considered disseminating the confidential information in his/her possession via internal reporting, but found that such reporting was "clearly impracticable"?
2) Is the interest which the public may have in the particular information "so strong as to override even a legally imposed duty of confidence"?
3) Is the damage, if any, suffered by the public authority as a result of the disclosure outweighed by the interest of the public in having the information revealed?
4) Is the information disclosed accurate and reliable, "to the extent permitted by the circumstances"?
5) Did the whistleblower act in good faith or was motivated by a "personal grievance or a personal antagonism or the expectation of personal advantage, including pecuniary gain", which would not justify a "particularly strong level of protection"?
6) Was the penalty imposed on the whistleblower proportionate "in relation to the legitimate aim pursued"?

According to international standards on freedom of expression, journalists should also be provided explicit and clear legal protection of their right not to disclose information identifying a source. Other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source through the collection, editorial processing or dissemination of this information, should equally be protected.

Governments must allow journalists to work in a free and enabling environment in safety and security, without the fear of censorship or restraint.

[24] Council of Europe, Recommendation CM/Rec (2014)7 on the protection of whistleblowers and Explanatory Memorandum, Principle 12
[25] Ibid, Principle 13

International and regional human rights standards do not consider warrants for searches and seizure of material from a journalist as a "necessary" measure in a democratic society.

Violations of this indicator may include:

- Whistleblowers are prosecuted for violating confidentiality agreements or commercial secrets legislation, even when disclosing information in the public interest;
- Journalists' premises are raided and materials are seized following the issuance of a search warrant identifying the journalists' sources;
- Journalists are prosecuted and convicted for refusing to disclose their sources of information.

4. There are clear and proportionate sanctions for defamation/libel and the latter are not criminalized

The purpose of defamation (also known as libel) laws is to protect people from false statements of a factual nature that cause damage to their honour and reputation. The protection of freedom of expression can be limited in order to protect the reputation of rights or others, but any restriction must comply with the three-part of test – that is, it must be clearly established by law to achieve a legitimate state purpose and must be strictly necessary ("proportionate") for the achievement of that purpose. This means that the same result could not have been achieved with less restrictive measures.

Defamation should fall under civil and administrative penalties and should not be subject to criminal sanctions. "Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate and proportionate civil defamation laws"[26]. States should consider the decriminalization of defamation and, in any case, the application of the criminal law should only take place in the most serious cases. Imprisonment is never a proportionate penalty.

Violations of this indicator may include:

- All defamation actions are sanctioned with the same punishment, without applying the criteria of necessity and proportionality of the sanction to the different circumstances;
- Defamation is a criminal offence;
- Defamation is a civil wrong but the civil sanctions envisaged by law are disproportionate and unnecessary in a democratic society.

[26] Joint Declaration by UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, International Mechanisms for Promoting Freedom of Expression, 2002.

Practice

Indicators for Practice
1. Cases of blocking of conventional and online media are always based on clear legal grounds and are proportionate for the achievement of legitimate aims. 2. Publication on the internet does not require special permission or compliance with specific administrative regulations applicable to traditional media. 3. There are no cases of journalists convicted or media sites raided by the police in order to uncover sources of information. 4. State authorities facilitate the dissemination of reliable, verifiable and trustworthy information.

1. Cases of blocking of conventional and online media are always based on clear legal grounds and are proportionate for the achievement of legitimate aims

There are no "attempts to block, jam, filter, censor or close down communication networks or any kind of other interference in violation of international law."[27]

Any case of blocking of conventional or online media (regardless of the time period for which the blocking is effective) must comply with the three-part test, that is, it must be clearly established by law for that purpose and must be strictly necessary ("proportionate") for the achievement of that legitimate purpose. This means that the same result could not have been achieved with less restrictive measures.

Violations of this indicator may include:

- A website is blocked, slowed down or shut down on the basis that it may be critical of the government or the political system espoused by the government;
- A national provider blocks the emission of a TV station during TV shows that feature opposition leaders;
- A private broadcaster's license is refused, suspended or revoked without prior warning or adequate justification and a legitimate aim supported by law.

2. Publication on the internet does not require special permission or compliance with specific administrative regulations applicable to traditional media

Individuals and CSOs should not be treated as media which are means of communication for the dissemination of information of a periodical character, such as newspapers, broadcasting or television.

Individuals and CSOs should not be required to obtain permission for publication of internet content in any form unless it is for the protection of other legitimate rights (e.g., copyright).

[27] EU Human Rights Guidelines on Freedom of Expression, Online and Offline (Council of the European Union), 2014, par. 33 d

Violations of this indicator may include:

- Blogging is regarded as a mass-media activity and is required to comply with legal procedures applied to media institutions, such as registration, licensing, etc

3. There are no cases of journalists convicted or media sites raided by the police in order to uncover sources of information

Police raids or searches of newspapers or broadcasting premises are a form of interference with the freedom of the press. Whether authorized by a judicial warrant or not, such searches endanger the confidentiality of journalistic sources and function as a form of censorship for all journalists in the country.

Violations of this indicator may include:

- A media institution is searched by police and hardware is seized following an investigation it conducted based on confidential sources;
- Journalists are convicted and sentenced to prison after refusing to disclose their sources of information in court.

4. State authorities facilitate the dissemination of reliable, verifiable and trustworthy information.

International human rights treaty bodies also highlight the positive obligations of states to counter the spread of disinformation by promoting an enabling environment for free, independent and diverse communications. These obligations include the proactive commitment to facilitate the dissemination of reliable, verifiable and trustworthy information and to refrain from creating or disseminating statements that are known – or should be know – to be false as well as statements that "demonstrate a reckless disregard for verifiable information" (the latter defined more specifically as "propaganda").

Violations of this indicator may include:

- State-owned media create and promote smear campaigns aimed at discrediting the work of local CSOs by disseminating unverified information on their supposedly received aid and abetting of criminal activities (e.g., trafficking of migrants, spreading of public health panic or social rest, etc.);
- State actors actively disseminate on their social media channels unverified information inciting to hatred and hostility against a part of the population that is critical of their political performance.

Relevant resources

- International Covenant on Civil and Political Rights, art. 5, 19, 20
- European Convention on Human Rights, art. 10
- Charter of Fundamental Rights of the European Union, art. 11
- UN Convention Against Corruption, art. 33
- UN Human Rights Committee, General Comment No. 34 on Article 19 of the ICCPR (2011)

- Council of the European Union, EU Human Rights Guidelines on Freedom of Expression, Online and Offline (2014)
- EU Framework decision on combating certain forms and expressions of racism and xenophobia (2014)
- UN Human Rights Committee, *Ross v. Canada* (2000)
- European Court of Human Rights: *Jersild v. Denmark* (1994)
- European Court of Human Rights: *Gunduz v. Turkey* (2003)
- European Court of Human Rights: *Handyside v. United Kingdom* (1976)
- European Court of Human Rights: *Sener v. Turkey* (2000)
- European Court of Human Rights: *Lingens v. Austria* (1985)
- European Court of Human Rights: *Eon v. France* (2003)
- European Court of Human Rights: *Cojocaru v. Romania* (2015)
- European Court of Human Rights: Grand Chamber, *Magyar Helsinki Bizottság v. Hungary* (2016)
- European Court of Human Rights: *Manole and Others v. Moldova* (2009)
- European Court of Human Rights: *Roemens Schmit v. Luxembourg* (2003)
- European Court of Human Rights: *Guja v. Moldova* (2008)
- Theory and Practice of the European Convention on Human Rights, 4th Edition (2006)
- UN Human Rights Council resolution on the promotion, protection and enjoyment of human rights on the internet, A/HRC/RES/38/7 (17 July 2018)
- UN Human Rights Council resolution on the promotion, protection and enjoyment of human rights on the Internet, 2012, A/HRC/RES/20/8 (29 June 2012)
- UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred – Annex: Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, A/HRC/22/17/Add.4 (11 Jan 2013)
- Joint Declaration on freedom of expression and the internet by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organisation for Security and Cooperation in Europe ("OSCE") Representative on Freedom of the Media, the Organisation of American States ("OAS") Special Rapporteur on Freedom of Expression and the African Charter of Human and People's Rights ("ACHPR") Special Rapporteur on Freedom of Expression and Access to Information (1 June 2011)
- Joint Declaration on international mechanisms for promoting freedom of expression by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (10 Dec 2002)
- Joint Declaration on freedom of expression and "fake news", disinformation and propaganda, Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information (3 March 2017)

- UN HRC Consideration of reports submitted by States Parties under Article 40 of the Covenant
- Concluding observations of the Human Rights Committee, Cameroon, CCPR/C/79/Add.116. November 1999
- Concluding Observations of the Human Rights Committee, Armenia, UN Doc CCPR/C/79/Add.100, 19 November 1998
- Council of Europe, Freedom of Expression: A guide to the implementation of Article 10 of the European Convention of Human Rights – Human Rights Handbook No. 2, 2nd Edition (2004)
- Council of Europe, Protecting the Right to Freedom of Expression under the European Convention on Human Rights: A handbook for legal practitioners (2017)
- Council of Europe, Recommendations and declarations of the Committee of Ministers of the Council of Europe in the field of media and information society (2016)
- Council of Europe PACE Resolution 1577 (2007): towards decriminalisation of defamation and corresponding Recommendation 1814 (2007) (adopted 4 Oct 2007)
- Council of Europe Recommendation 2007(2) on media pluralism and diversity of media content (adopted 31 Jan 2007)
- Council of Europe, Recommendation CM/Rec (2014)7 on the protection of whistleblowers and Explanatory Memorandum (adopted 30 April 2014)
- Council of Europe, Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information (adopted 8 March 2000)
- Council of Europe Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership (adopted 7 March 2018)
- Council of Europe report DGI(2017)9, "Information Disorder: Toward an Interdisciplinary framework for research and policymaking"
- Organisation for Economic Co-operation and Development, Revisiting Whistleblower Protection in OECD Countries: From Commitments To Effective Protection (2014)
- European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions, "Tackling online disinformation: a European Approach" (26 April 2018)
- ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation (2017)

AREA 7. RIGHT TO PRIVACY

Standard 1. Everyone enjoys the right to privacy and data protection

The right to privacy is the respect for an individual`s private and family life, home and correspondence. The right is guaranteed to everyone under the International Covenant for Civil and Political Rights and the European Convention on Human Rights. The right to privacy and the protection of personal data pertains to CSOs as well and needs to be balanced with the right of access to information. Any interference must be based on clear law and be strictly necessary to achieve legitimate aims. Furthermore, interference or violation of the right to privacy shall be investigated and prosecuted.

Law

Indicators for Law
1. The right to privacy is provided to all without discrimination. 2. The law provides guarantees against interference or attacks on privacy, regardless of whether they are committed by state bodies, physical persons or legal entities, or whether they are carried out online or offline. 3. The law regulates the collection, processing and storage of private persons' personal data by governmental authorities.

1. The right to privacy is provided to all without discrimination

International and regional human rights standards acknowledge that all people have the right to privacy, and that there may be no arbitrary or unlawful interference with this right. The right to privacy may, in some circumstances, serve as a limit on freedom of expression and access to information, when the public interest to keep certain information confidential overrides the public interest to disclose it.

The notion of "private life" may extend to professional and business activities and aspects of a person's physical and social identity – including the right to personal autonomy, personal development and establishment of relations with other people. Thus, respect for someone's "private life" includes the right to live a "private social life," which means the opportunity for an individual to develop the social aspect of his/her personality without unwarranted interference. The "protection of private life" includes the protection of home, reputation, communication and personal data. The notion of "privacy" also extends to the privacy of one's home and correspondence, which in the case of CSOs includes their working offices and related assets.

Under international human rights treaties, the right to privacy also applies to an association and its members. Therefore, any legal requirements imposed on CSOs to disclose information that is usually covered by data protection rules must comply with a three-part test. The test requires restrictions to:

1) have a clear legal basis;

2) pursue legitimate interests (the protection of state security or public safety, the protection of monetary interests of the state, the prevention of criminal offences or the protection of the rights and freedoms of others);
3) be strictly necessary in a democratic society for the achievement of such interests, even in exceptional situations of emergency dictated, for example, by public health, and safety or national security reasons.

If one of these criteria is not fulfilled, interference with the right to privacy is unjustified.

The right to privacy should be guaranteed by law to CSOs and their founders, members, beneficiaries, donors and other affiliated individuals without discrimination. CSOs "should not be under the general obligation to disclose the names and address of their members since this would be incompatible with their right to freedom of association and the right to respect for private life."[28] Furthermore, the oversight and supervision of CSOs should not be more exacting than the oversight and supervision applicable to private businesses.

Rules of accounting and reporting for CSO should be in line with legislative privacy requirements (e.g., information from employees' health records should not be disclosed, as they contain private medical data).

Violations of this indicator may include:

- Data disclosure provisions for CSOs are more exacting or intrusive than those applicable to private businesses;
- Provisions limiting CSOs' right to privacy apply to all CSOs in the same way, regardless of differences in size, structure and activities;
- Provisions requiring CSOs to disclose personal data and confidential information are disproportionate and not justified by legitimate interests.

2. The law provides guarantees against interference or attacks on privacy, regardless of whether they are committed by state bodies, physical persons or legal entities, or whether they are carried out online or offline

International and regional standards prohibit any form of unlawful and arbitrary interference with the right to privacy by the state. These standards also impose positive obligations on the state to protect individuals and organisations from such interference committed by third parties. Legislation should therefore stipulate responsibility for interference in private life of CSOs and their founders, members, beneficiaries, Board members, donors and other affiliated individuals – both when such interference comes from the State or from a third party. Legislation should also guarantee privacy both online and offline. The state should not be able to compel internet service providers to disclose information exchanged online (or via other electronic technologies) unless there is a valid court order based on objective evidence. This applies to information exchanged between individuals belonging to an association or between associations themselves.

[28] OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, 2015, par. 167

The state does not violate the right to privacy of CSOs themselves, their founders, members, beneficiaries, donors and other affiliated individuals. Any specific interference with the right to privacy should be subject to judicial scrutiny by an independent judicial authority.

Legislators must narrowly tailor any provisions that permit the surveillance of CSOs, and must ensure that such measures are always based on a court order issued by an independent judicial authority for legitimate reasons.

Violations of this indicator may include:

- There are no provisions clearly regulating the responsibility of the state or other parties when they interfere with the right to privacy or access data of CSOs and their members, for example by conducting wiretapping or other intercepting communications of CSOs' members and activities;
- The law does not require authorities to obtain an order from an independent court before demanding that CSOs share information.

3. The law regulates the collection, processing and storage of private persons' personal data by governmental authorities

Personal data should not be disclosed, made available or otherwise used for purposes other than protection of national security, public order or the protection of health and morals and in an effort to ensure observance of other citizens' rights and freedoms. Personal data can be disclosed when entities or individuals give their consent to their use. This is acknowledged by the EU General Data Protection Regulation, which applies not only to organisations based in EU territory, but also to organisations outside the EU that reach out to EU citizens (e.g., for fundraising purposes) or collect, process and store the data of EU citizens.

The state should stipulate appropriate sanctions and other means of protecting the right to privacy when it is violated. The state should also ensure non-discriminatory treatment of data subjects. Security safeguards applicable to individuals should also be applicable to associations, whether they are legal entities or not.

There should be substantive and procedural guarantees ensuring that state authorities only have access to (or the ability to use) data when it is required (for example, within the framework of criminal investigation).

Violations of this indicator may include:

- The law permits the disclosure of personal data for non-legitimate purposes without the consent of the individual concerned;
- The rules regarding collection, storage and utilization of personal data are not set forth in legislative acts or are vague, indistinct and unclear to CSOs, allowing broad interpretation.

Practice

Indicators for Practice
1. Violations of the right to privacy by state authorities are investigated and prosecuted. 2. CSOs and associated individuals are protected from illegitimate or disproportionate collection, processing and storage of personal information, online and offline.

1. Violations of the right to privacy by state authorities are investigated and prosecuted

Violations of the right to privacy should be promptly and fairly investigated and proportionate sanctions, stipulated by law, are imposed on guilty parties. CSOs, their founders, members and other affiliated individuals should have the right to seek compensation for any unlawful interference in their right to privacy and any other related rights as a result of surveillance by the state – even if such surveillance is conducted on the basis of the law, aiming at protection of national security and fight against crime – if the interference is disproportionate and unnecessary in a democratic society. Protection of privacy should be enforceable in a court.

Violations of this indicator may include:

- CSOs, their founders, members or other affiliated individuals have been placed under surveillance or bugged without sufficient legal guarantees such as a court order and legitimate reasons (e.g. national security) established by law;
- Allegations that CSOs, their founders, members and other affiliated individuals are under surveillance or being bugged are not investigated and/or not prosecuted.

2. CSOs and associated individuals are protected from illegitimate or disproportionate collection, processing and storage of personal information, online and offline

The process of collection, processing and storage of personal information should be based on the law. CSOs should not be obliged to disclose names, addresses and other personal data of their members and other affiliated individuals, as this violates not only their right to privacy but also their freedom of association.

However, members of CSOs and other affiliated individuals could be legitimately required to disclose specific personal information in some circumstances – for example when they are involved in the collection of donations from the public or receive substantial support from the state or society. There can also be a reasonable requirement to disclose lists of members of political parties when they seek state funding reserved for parties with a minimum number of members. Individuals could be required to report their membership in a CSO when such membership could violate their obligations as a public employee or official. Specific professional associations may also be required to provide a list of members when these associations perform certain regulatory functions. However, any disclosure of such information should be based on the principles of proportionality, following data protection principles and limiting the number of people who have access to the data.

Collection, utilization and supervision of the personal data of CSOs, their founders, members, beneficiaries and other affiliated individuals can be carried out only on the basis of clear and

transparent rules. Supervision and control by the state should have a clear legislative basis and should be proportionate to legitimate purposes it aims to achieve. Personal data cannot be used without the consent of their owner.

Violations of this indicator may include:

- While inspecting CSOs, state bodies demand that CSOs should provide personal information – for example lists of members – without legitimate grounds clearly established by law;
- Personal information of CSOs, their members and founders is sent to an indefinite number of state bodies for additional approval
- Rules regarding the collection, storage and utilization of personal data are not set forth in legislative acts or are vague, indistinct and unclear to CSOs, allowing broad interpretation.

Standard 2. The state protects the right to privacy of CSOs and associated individuals

The right to privacy should be protected by the state for CSOs and all associated individuals. Legislation related to CSO reporting shall protect the privacy of all individuals associated with a CSO such as donors, members, volunteers and other associates. Access to CSO offices and documents should be possible only if there are objective grounds for such access. Any surveillance or interference with CSOs should be proportionate, legitimate and require preliminary authorization issued by an independent judicial authority.

Law

Indicators for Law
1. Reporting requirements for CSOs protect the privacy of members, donors, board members and employees, and the confidentiality of their personal assets. 2. Access to CSO offices is possible only when based on objective grounds and appropriate judicial authorization. 3. Surveillance of a CSO or associated individuals is proportionate, legitimate and requires preliminary authorization issued by an independent judicial authority.

1. Reporting requirements for CSOs protect the privacy of members, donors, board members and employees and the confidentiality of their personal assets

"All regulations and practices on CSO oversight and supervision should take as a starting point the principle of minimum state interference in the operations of the organization."[29] The right to privacy requires that all individuals should be free from "arbitrary or unlawful interference with their privacy, home, correspondence and family", and from attacks on their reputation.[30] As such, the right to privacy protects the confidentiality of letters, phone calls, emails, text messages and internet browsing and the individuals' control of their personal data.

[29] OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, 2015, para. 228
[30] ICCPR, Article 17, par. 2

Therefore, while a reporting requirement in itself is not a restriction on a CSO's operation, there should be sufficient guarantees for the protection of privacy of the members of CSOs, donors, board members, employees and volunteers. Individuals associated with CSO may be subject to reporting requirements only in cases where they have entered into personal transactions with the CSO itself or the authorities have serious and evidence-based concerns about potential fraud, embezzlement or other criminal activities. Indeed, worldwide state practices and regulations usually invoke combating fraud, embezzlement, money laundering and other crimes in the interest of national security, public safety or public order as legitimate justifications to impose disclosure of private data on CSOs. However, the UN Special Rapporteur on the Right of Freedom of Association has clarified that although such justifications may be legitimate, "it is not sufficient to simply pursue a legitimate interest" and all related limitations should still be "the least intrusive means to achieve the desired objective." Such guarantees should also be clearly stated in the law and be accessible to the public.

The public interest of disclosing the information must be weighed against the public interest in keeping the information confidential. This "public interest" test is regularly applied by the European Court of Human Rights ("ECtHR") in privacy cases where it must also consider the right to access information.

As noted above, the right to privacy also encompasses a right to the protection of personal data. Such protections might not be easy when it comes to online resources that require specific technical expertise. Even if consent to use personal data is given voluntarily, the person who gives the consent has the right to withdraw consent at any time. Silence, pre-ticked boxes or inactivity should not be considered as implicit consent, as established by the EU General Data Protection Regulation (which also applies to organisations not based in EU countries but that address or process data regarding EU citizens).

CSOs are also protected with regards to automatic processing of personal data. Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards as specified in international law. The same applies to personal data relating to criminal convictions.

In all cases, oversight should always be carried out based on the presumption that the CSO and its activities are lawful. Moreover, such oversight should not interfere with the internal management of CSOs, and should not compel the CSO to co-ordinate its objectives and activities with government policies and administration.

Violations of this indicator may include:

- Reporting requirements on private data of members of CSOs, donors, board members, employees and volunteers are the same for all CSOs regardless of size, structure and scope of activities;
- Reporting requirements on private data of CSO members, donors and employees are disproportionate, unnecessary for the protection of legitimate purposes and not in the public interest;
- Reporting obligations compel a CSO to disclose information about its members who are HIV positive.

2. **Access to CSO offices is possible only based on objective grounds and appropriate judicial authorization**

Any search of CSO offices or seizure of documents or other property (laptops, etc.) shall be compliant with the three-part test established by international standards for the protection of the right to privacy (i.e., provided by law and strictly necessary for the pursuit of a legitimate aim). It must also be accompanied by an authorization issued by an independent judicial authority and be conducted in presence of the CSO representative. Any such authorization shall be subject to appeal in court.

Legislation should clearly define the list of bodies that are authorized to conduct searches at CSO offices. Such bodies should have internal rules that regulate the grounds for inspecting CSOs, the duration of inspections and the documents that need to be produced during or after the inspection. Such rules must also contain clear definitions of the powers of inspecting officers and ensure respect for the right to privacy of members and founders of the CSOs.

In any case, CSOs should be informed reasonably in advance about the search or inspection as well as about duration of an inspection. Any exceptions should be limited, narrowly defined, justified by law and thoroughly motivated in the judicial search warrant. The law should also provide that, where possible, CSOs should have an opportunity to invite their lawyer for the duration of the search or inspection.

Violations of this indicator may include:

- CSOs are obliged by law to provide access to their offices based on the order of the police and without any authorization from an independent body;
- The rules on how searches of CSO offices should be conducted and by whom are not clearly defined;
- There is no timeline for how long searches and inspections can be.

3. **Surveillance of a CSO or associated individuals is proportionate, legitimate and requires preliminary authorization issued by an independent judicial authority**

Surveillance conducted by states should primarily aim to fight crime and protect national security. Even when surveillance measures are conducted for these legitimate state aims, they can nonetheless amount to undue, unnecessary and disproportionate limitations on the right to privacy of associations and their members.

As highlighted by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the use of surveillance powers and new technologies without adequate legal safeguards can have a chilling effect on freedom of expression and freedom of association because "these freedoms often require private meetings and communications to allow people to organize in the face of Governments or other powerful actors."

Measures of surveillance should comply with the minimum requirements and safeguards provided for in the case law of the European Court of Human Rights.

The conditions and circumstances in which the authorities can exercise secret surveillance and collection of data must be clearly outlined in law and must always include oversight by an independent and impartial judicial authority.

In the absence of a court order supported by objective evidence, it should be unlawful to compel internet service providers to share with the authorities any information exchanged online or via other electronic technologies.

The blocking of CSO websites or of certain sources of information or communication tools can have a significantly negative impact on the organizations. Security measures should be temporary in nature, narrowly defined to meet a clearly-defined legitimate purpose and prescribed by law. These measures should not be used to target dissent and critical speech.

Legislators must, therefore, narrowly tailor any provisions that permit the surveillance of CSOs, and must ensure that they are always based on a court order. "Any provisions constituting an interference with the use of the Internet and other communication tools, including social media, must be proportionate and the least intrusive of all options available. Any surveillance measures must always be open to judicial review."[31]

Violations of this indicator may include:

- There are no provisions limiting blanket surveillance of organisations to exceptional circumstances or providing adequate oversight mechanisms;
- The authorities in charge of authorizing surveillance are not independent from the government.

Practice

Indicators for Practice
1. There are no cases of unauthorised interference with the privacy or communications of CSOs or associated individuals. 2. There are no cases of authorities breaking into CSO offices or accessing CSO documents without due judicial authorization.

1. There are no cases of unauthorised interference with the privacy or communications of CSOs or associated individuals

Interference with communications (including broad surveillance, interceptions of emails, telephone, SMS, etc.) should never take place unless it has been duly authorised by a court. The court order that authorises such interference must include a clear explanation of the legal basis of the order, indicate the specific legitimate interest pursued (i.e., protection of state security, public safety, monetary interests of the state, suppression of criminal offences or rights and freedoms of others) and justify why such interference is proportionate and strictly necessary for the achievement of such interest. The person or organization affected should be able to appeal the decision or seek redress

[31] OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, 2015, para. 271

before another independent judicial body. In any case, the government should not use its surveillance powers to impair the operations of organizations.

The private income and assets of board members, employees or donors of CSOs are protected under the law; state institutions should not require or collect information about such assets unless duly authorized.

Violations of this indicator may include:

- Governments or other state authorities carry out surveillance of a CSO without a court order;
- A court order issued to authorise the interference is not adequately substantiated (e.g., lacks the relevant legal basis, lacks an indication of the legitimate interest pursued or fails to provide a justification of the necessity and proportionality of the interference);
- The organisation or individuals affected cannot appeal the court order authorizing the interference to question its lawfulness.

2. There are no cases of authorities breaking into CSO offices or accessing CSO documents without due judicial authorization

Any search of CSO offices or seizure of documents or other property (laptops, etc.) must be accompanied by a search warrant based on an order issued by an independent judicial authority and conducted in the presence of the CSO's representative. The warrant must include a clear reference to the legal basis of the warrant, indicate the specific legitimate interest pursued (i.e., protection of state security, public safety, monetary interests of the State, suppression of criminal offences or rights and freedoms of others) and justify why the measure authorised is proportionate and strictly necessary for the achievement of this interest. The CSO affected should be permitted to appeal to a different independent judicial authority to contest the lawfulness of the warrant.

CSO should have access to the rules that specify the grounds for inspecting associations, the duration of inspections, the documents that must be produced during or after inspections and other procedural aspects. Whenever possible, CSOs should be permitted to summon a lawyer prior to the search. The search should not commence until the lawyer arrives, and the lawyer should be permitted to remain for the duration of the search.

CSO documents that are taken for further examination by the inspecting authority should be returned intact. The authorities should have protocols for cataloguing the description and quantity of items seized for further examination. The inspecting authority shall be responsible for any damage to such documents.

Violations of this indicator may include:

- A CSO's offices are broken into and documents are accessed without issuing a preliminary judicial search or inspection warrant;
- Searches or inspections are initiated without allowing the CSOs to invite their lawyers to assist;
- Seized documents and materials that are not retained as evidence are not duly returned to CSOs.

Relevant resources

- International Covenant on Civil and Political Rights, art. 17, 19, 22
- European Convention on Human Rights, art. 8
- Fundamental Charter of Human Rights of the European Union, art. 7, 8
- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, par. 167, 211, 228-29, 231, 265, 267, 271
- OSCE/ODIHR, Opinion on the Draft Law of Ukraine on Combating Cybercrime, par. 44-47 (22 August 2014)
- European Court of Human Rights, Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life (2018)
- European Court of Human Rights: *Van Rossem v. Belgium* (2005)
- European Court of Human Rights: *Varga v. Romania* (2011)
- European Court of Human Rights: *Y. v Turkey* (2015)
- European Court of Human Rights: *Bagijeva v. Ukraine* (2016)
- European Court of Human Rights: *Shimovolos v. Russia* (2011)
- European Court of Human Rights: *Piechowicz v. Poland* (2012)
- European Court of Human Rights: *Roman Zacharov v. Russia* (2015)
- European Court of Human Rights: *Big Brother Watch and Others vs United Kingdom*, par 303-387 (2018)
- European Commission on Human Rights, *National Association of Teachers in Further and Higher Education v. United Kingdom* (16 April 1998)
- Council of Europe Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe (adopted 10 Oct 2007)
- Council of Europe, Recommendation R(91) 10 on the Communication to Third Parties of Personal Data Held by Public Bodies (adopted 9 September 1991)
- Council of Europe, Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data
- Council of Europe Convention 108, art. 2-3, 6, 9
- Thematic report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/13/37 (28 Dec 2009)
- Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39 (24 April 2013)

- UN General Assembly Guidelines for the Regulation of Computerised Personal Data Files, A/45/95 (14 Dec 1990)
- Office of the United Nations High Commissioner for Human Rights, report on the right to privacy in the digital age, A/HRC/27/37 (30 June 2014)
- Data Protection Standards for CSOs, ECNL, 2018
- EU General Data Protection Regulation 2016/679, art. 9
- Organisation for Economic Co-operation and Development, Recommendation Concerning Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (2013)

AREA 8. STATE DUTY TO PROTECT

Standard 1. The state protects CSOs and individuals associated with CSOs from interference and attacks

The protection of CSOs against interference and unjustified attacks is indispensable for their exercise of freedom of association. CSOs must be able to foster the trust of citizens and represent their needs. The state thus has an obligation to adopt legislation that protects CSOs from interference, and to ensure that such protections are implemented in practice. The duty to protect includes safeguarding CSOs' rights against state interference and ensuring that third parties do not violate CSOs' rights or hinder CSOs from exercising their activities.

Law

Indicators for Law
1. The law requires the state to protect the rights of CSOs and associated individuals. 2. CSOs and associated individuals have access to effective complaint and appeal mechanisms before independent and impartial bodies in order to challenge or seek review of decisions affecting the exercise of their rights or the public interest. 3. The law guarantees effective remedies to CSOs within a reasonable time. 4. Any emergency measures introduced are limited in duration, lawful, necessary and proportionate and there is oversight over their implementation.

1. The law requires the state to protect the rights of CSOs and associated individuals

Under international law, the state has both passive and active duties to uphold the right to freedom of association – that is, the duty to not interfere itself, and the duty to protect CSOs from interference by third parties. The law should never contain provisions that damage or reduce the rights of individuals based on their connection to a CSO. Rather, laws should guarantee certain rights and provide incentives for CSOs to help them serve their constituencies – e.g., tax deductions or exemptions from duties and fees, the right to represent them in court and or within the framework of public participation mechanisms, etc.

As part of its passive duties, the state should enact legislation that bans unauthorized state interference. It should also ban discrimination based on affiliation with a CSO. The state must ensure that CSOs receiving state funding remain free from interference by the state or other entities. When government support is provided to CSOs, there should be strong safeguards against a takeover by the state and guarantees for the independence of organizations.

As part of its active duties, the state must ensure that CSOs and associated individuals are protected from interference or other negative influence by third parties (including by using legal sanctions for such interference, if available). Certain groups of CSOs (e.g. LGBTIQ, minorities and human rights advocacy groups) may need special state protection from attacks, interference or defamation by third parties. Such protections can be laid down in criminal law as special offences or as elements of

hate crimes. CSOs should be provided with the possibility of legally protecting their reputation to the same extent as other entities.

Violations of this indicator may include:

- The law allows the government to disregard or alter certain decisions of CSOs concerning internal management (e.g. non-recognition of the powers of the highest managing body or board or invalidation of internal election results);
- The state does not condemn and take active steps against the intimidation or public shaming of certain CSOs

2. CSOs and associated individuals have access to effective complaint and appeal mechanisms before independent and impartial bodies in order to challenge or seek review of decisions affecting the exercise of their rights or the public interest.

CSOs, their founders and members must have effective means of legal defence for all decisions affecting their fundamental rights (in particular, the right to freedom of association, freedom of expression and freedom of assembly) or limiting their ability to operate. This requires granting CSOs the right to request review, before an independent and impartial court, of government authorities' decisions or inaction. It also requires ensuring the right to review any statutory requirements relating to registration, activities, prohibition, termination or imposition of sanctions. This right should include the possibility of both retroactive filing of a complaint or appeal (when the CSO believes that its right was violated) and preventive defence (when the CSO believes that a certain provision or law enforcement practice may become an impediment to its activity in the future). The right to lodge a complaint should include the possibility to appeal any decision of first instance before a higher court. There should also be a mechanism for appealing decisions by non-judicial agencies, and the fact of appealing before a non-judicial body should not deprive CSOs of the right to seek further judicial review. Nor should it reduce the statutory time limit for a court appeal.

The founders, members and representatives of CSOs should enjoy the right to a fair trial in any lawsuits brought by them or against them. CSOs should have the right to defend their own interests in court (act in own right), as well as the interests of their members (act on their behalf) directly and through lawyers. An association that does not enjoy the status of a legal entity should have the right to be represented in court by competent entities chosen at the CSO's own discretion.

CSOs should be provided with the possibility to file class action lawsuits and to pursue litigation in the public interest. Legislation should allow appeal of government decisions affecting the public interest such as assessment of the environmental impact of investment decisions, decisions on urban planning, etc. The court fees for such lawsuits should not be too high to constitute a barrier to protect citizen interests.

Any appeal or contestation of a decision to ban, disband or suspend a CSO should, as a rule, block the implementation of this decision. The decision should not come into force until the appeal or contestation has been ruled on by the court. This rule prevents situations where a CSO is effectively "strangled" – for example due to frozen bank accounts or suspended activities – long before its appeal is considered. This principle is not applicable in those cases when there is exceptionally strong evidence of a grave offense.

The burden of proving violations that lead to sanctions against a CSO should always lie with the Government. Procedures that may result in the imposition of sanctions should be clear and transparent, but not necessarily characterized by a high degree of publicity. The latter naturally flows from the intent to ensure a proper balance between the right of the public to access information and the possible damage to the reputation of the CSO – the unwanted damage that can be inflicted before the responsibility of the defendant is duly established.

Violations of this indicator may include:

- The law does not allow CSOs to defend the interests of third parties in court, bring an action on their behalf or represent them in court;
- The law sets complicated and/or excessive requirements towards CSOs to initiate court cases representing public interest;
- The decision to refuse registration to CSOs cannot be appealed in court;
- The decision to suspend or disband a CSO can be taken extra judicially and cannot be appealed in court;
- There is no avenue to challenge decisions taken by a court of first instance;
- There is no principle of presumption of innocence in cases which result in sanctions against CSOs.

3. The law guarantees effective remedies to CSOs within a reasonable time

CSOs should be able to appeal a denial of registration or any failure to review their applications within reasonable time, and they should also have the opportunity to bring such cases to an independent and impartial court. The time limit for filing a court challenge should not be too short, and it should be calculated from the date when the CSO receives formal notification of the decision.

The procedure for appeal and review should be clear and not burdensome, and remedies should include compensation for moral injury and property damage. The court fee must be reasonable and should not be an impediment that makes it nearly impossible for CSOs to seek recourse to courts.

Mechanisms of international legal protection for the right to freedom of association are available for members and founders of CSOs via UN treaty bodies and the European Court of Human Rights. Mechanisms for the implementation of decisions of these bodies should be available at the national level, either via a special institution or through ordinary means of enforcing domestic judicial decisions.

Violations of this indicator may include:

- The time limit to appeal decisions of government bodies in court is too short;
- The period for appealing against decisions of government bodies is calculated from the moment that the act is signed (not from the moment of its publication or other proper notification of interested parties);
- The government lacks agencies that are in principle able to identify and report on a relevant violation, or these agencies cannot correct the violation or provide the injured party with appropriate remedy or compensation;

- The country lacks machinery (or it is flawed) for the enforcement of decisions of international quasi-judicial bodies on human rights (on financial compensation, in particular).

4. Any emergency measures introduced are limited in duration, lawful, necessary and proportionate and there is oversight over their implementation.

States have the possibility in the case of public emergencies to derogate from some of its human rights obligations under certain conditions. If a country decides to introduce emergency measures (e.g. a state of emergency, health emergency, health quarantine or any similar measure to address an emergency), this should happen in very limited cases and:

- The emergency should threaten the life of a nation;
- The emergency has to be officially proclaimed; and
- The measures taken should restrict human rights only to the extent strictly required by the exigencies of the situation.

While countries have certain margin of appreciation to determine whether a situation threatens the life of a nation, they nevertheless have to ensure that they follow the legally prescribed procedure for proclaiming the emergency according to their own legal order. When the emergency measures taken lead to derogation from the human rights obligation of a country, "*derogations must, as far as possible, be limited in duration, geographical coverage and material scope, and any measures taken, including sanctions imposed in connection with them, must be proportional in nature*". States should not only justify the need to introduce a state of emergency (or measure of similar effect) in general but also ensure that all restrictions are necessary and proportional. The same applies also to the sanctions imposed for violations of the measures. States have a "*duty to conduct a careful analysis under each article of the Covenant based on an objective assessment of the actual situation*" before introducing such limitations. Moreover, emergency measures should not involve discrimination on the ground of race, colour, sex, language, religion or social origin or serve as a justification for advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence. All emergency measures should be taken only by an authorized body in accordance with procedures provided by law.

When an emergency is announced, states should ensure that it is introduced as a short term measure that has a sunset clause for automatic termination after a defined, short period of time. In case of need, such a measure may be prolonged for an additional short-term period. In any case, there should be a mechanism guaranteeing that the actions of the executive are monitored and another branch of the government exercises oversight over the proportionality of the measures, the need to extend the emergency, etc. During emergency individuals should have access to court and the possibility to appeal any limitations to their rights. Moreover, there are certain rights which are absolute and cannot be limited even in emergency situations. These include the right to life; prohibition of torture or slavery; prohibition of imprisonment for violation of a contractual obligation; prohibition of punishment without a law; and freedom of thought, conscience and religion.

Any derogation from human rights guaranteed by international treaties (such as ECHR or ICCPR) must be notified according to the respective treaty provisions (art. 15 ECHR and art. 4 ICCPR).

Violations of this indicator may include:

- The state of emergency or any measure of similar effect is announced for an indefinite period;
- Restrictions are imposed de facto, without emergency measures being installed/declared officially.
- Only the state body that exercises authority during the state of emergency has the power to decide when the emergency will end;
- Limitations are discriminatory towards certain groups on the ground of race, colour, sex, language, religion or social origin;
- Individuals cannot appeal the limitations of their rights during emergency;

Practice

Indicators for Practice
1. The state effectively protects CSOs and associated individuals when third parties violate their rights. 2. Appeals and/or complaints concerning lack of protection are decided by competent authorities and courts impartially and within a reasonable time. 3. State officials do not use hate speech or stigmatize CSOs, and there are no smear campaigns in the state-supported media against CSOs or associated individuals. 4. States do not use emergency measures as a pretext to purposefully limit participation, human rights or sanction critical organizations

1. The state effectively protects CSOs and associated individuals when third parties violate their rights

To facilitate the exercise of the right to freedom of association, states need to ensure a safe and supportive environment for CSOs. The state should not undertake measures that restrict CSOs or the people associated with them, e.g. by imposing travel bans or other restrictions on CSO members.

The state must protect the rights and legitimate interests of CSOs in the manner prescribed by law, and ensure effective mechanisms for judicial redress and defence against defamation. The state should protect CSOs from attacks on their offices and investigate criminal attacks on CSO members or staff. It should also investigate cases of illegal detentions, torture and disappearances of CSO leaders, activists and human rights defenders.

In addition, CSOs and people associated with them have been also subject to various "digital" or psychological attacks, such as threats and hate speech against CSOs and associated individuals published in social media accounts or sent to them directly via personal communication. The state should ensure such attacks are investigated and sanctioned.

Violations of this indicator may include:

- The state does not take action in cases where people are dismissed from work for belonging to a CSO;
- The state does not initiate investigations of physical or digital/online attacks on CSO leaders or members or attacks on CSO offices; the perpetrators in such cases always or almost always avoid arrest and punishment.

2. Appeals and/or complaints concerning lack of protection are decided by competent authorities and courts impartially and within a reasonable time

State authorities, including courts, should not discriminate or be biased in their consideration of CSOs' complaints about denial of legal protection. These cases must be dealt with promptly and within the statutory time limits.

CSOs or people associated with them can appeal against refusal of registration or termination, or any other decision related to their activities in both domestic and international setting and the decisions of international courts and bodies related to CSOs and their operation are enforced. The state should not impose practical obstacles and additional requirements to the CSOs that initiate court cases to protect public interest.

There should be access to international legal protection for the right to freedom of association. The Government must recognize the competence of the European Court of Human Rights and the UN treaty bodies. The rulings of these bodies concerning the violation of freedom of association must be carried out within a reasonable time and with due compensation.

Violations of this indicator may include:

- Cases concerning complaints by CSOs drag on for years;
- CSOs filing collective complaints are requested numerous documents to justify their eligibility and based on subjective interpretation are rejected legal standing;
- Decisions of the European Court of Human Rights or UN treaty bodies are not implemented;
- The government hinders communication between CSOs and international human rights bodies (delays in response and non-response to requests of international instances, interception of correspondence, bans on travel abroad for CSOs members, stigmatization of individuals and CSOs cooperating with international bodies);
- In practice, courts, the Ministry of Internal Affairs, justice authorities or other law enforcement agencies do not consider complaints about the unlawful actions by third parties against CSOs;
- Certain categories of CSOs (LGBTIQs, minorities, human rights advocacy groups, opposition groups) always lose in court against state authorities or against dominant political groups.

3. **State officials do not use hate speech or stigmatize CSOs, and there are no smear campaigns in the state-supported media against CSO or associated individuals**

States must refrain from any type of harassment against CSOs, including judicial, administrative or tax-related measures; negative public discourse; smear campaigns or intimidation. Government officials should not make offensive statements that impugn the honour and dignity of CSO members and other associated individuals or harm the reputation of CSOs and civil society in general.

State officials should not make misleading claims about CSOs or attack organizations for taking a critical position towards the government. The fact that CSOs receive foreign funding should not be grounds for stigmatization. Labelling CSOs as foreign agents or a "threat to traditional values" is a form of stigmatization.

Media – especially state-owned media – should not be an outlet for anti-CSO rhetoric, and should provide CSOs with the opportunity for rebuttal when they are attacked.

Violations of this indicator may include:

- Politicians and government officials engage in hate speech towards human rights CSOs, minority CSOs, LGBTIQ groups, and CSOs receiving foreign funding;
- Propaganda against CSOs is financed by the national or municipal budget (print materials, public broadcasting, etc.).

4. **States do not use emergency measures as a pretext to purposefully limit participation, human rights or sanction critical organizations.**

During emergencies states should make every effort to ensure that citizens and civil society organizations are consulted on the measures taken, specifically when those affect them. According to the decisions of the European Court of Human Rights "*the existence of a "public emergency threatening the life of the nation" must not serve as a pretext for limiting freedom of political debate. Even in a state of emergency the States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness*".[32] Governments should proactively provide information and be transparent about the measures taken and the reasons for it. Measures should not be used to limit human rights more than strictly necessary to address the emergency. They should neither be used to silence critical voices. Any sanctions imposed should be proportionate

Violations of this indicator may include:

- Organizations criticizing the emergency measures are subject to pressure or sanctions;
- The government fails to engage civil society in policy-making by using the need for urgent measures as a pretext;
- Laws and policies that are not directly related to the public health or other emergency are adopted without public discussions.

[32] https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf

Standard 2. Measures used to fight extremism, terrorism, money laundering or corruption are targeted and proportionate, in line with the risk-based approach, and respect human rights standards on association, assembly and expression

The recent rise in radicalization, extremism and terrorism has influenced a number of initiatives on a global level that combat the core causes of such occurrences. Measures designed to combat money laundering, terrorism financing and corruption shall not serve the purpose of restricting civil society. Relevant state institutions shall carefully examine areas with potential risks, and avoid adopting measures that target the whole sector. Making CSOs subject to anticorruption laws may restrict or infringe on their rights and the rights of their employees and donors.

Law

Indicators for Law
1. Laws to combat extremism, terrorism, money laundering and corruption do not include provisions which restrict CSOs or make it impossible for them to undertake legitimate activities and enjoy fundamental freedoms. 2. Legal measures designed to fight money laundering and terrorism financing apply only to CSOs found at risk. 3. Anti-corruption laws, measures and strategies do not restrict or infringe the rights of CSOs or their employees and donors.

1. Laws to combat extremism, terrorism, money laundering and corruption do not include provisions which restrict CSOs or make it impossible for them to undertake legitimate activities and enjoy fundamental freedoms

The fight against corruption, financing of terrorism, money laundering or other forms of illicit trafficking is usually regarded as a legitimate objective, and can be qualified as a justification that serves the interests of national security and public safety. Nevertheless, any restrictions on CSOs' access to resources should be strictly commensurate with identified risks and the government's objectives in protecting the aforementioned interests. They must also remain as non-intrusive as possible.

National legislation on customs regimes, currency transactions, the prevention of money laundering and terrorism must meet international human rights standards and cannot harm the ability of CSOs to generate income, seek funding or operate without undue restrictions.

Efforts to prevent terrorist activity on the internet (such as by regulating, filtering or blocking online content deemed to be illegal under international law), must be compliant with international human rights standards and exercised according to the rule of law, so as not to unlawfully impact freedom of expression and the free flow of information.

Simply holding or peacefully expressing views or beliefs that are considered radical or extreme should not be considered crimes. The state should not restrict civil society under the pretext of "fighting extremism" or "the need to reduce radicalism," as these are only legitimate state aims when they target *violent* forms of these phenomena (for example, "violent extremism").

Violations of this indicator may include:

- There is a law on countering of terrorism or extremism, money laundering or corruption in which CSOs are included as entities subject to special regulation;
- The law provides for an extrajudicial procedure for declaring a CSO a terrorist or extremist organization;
- The law provides for the suspension of CSOs and/or their activities based on suspicion of terrorist or extremist activities, without the possibility for judicial review and remedy.

2. Legal measures designed to fight money laundering and terrorism financing apply only to CSOs found at risk

Any anti-money laundering or counter-terrorism funding (AMFL/CTF) measures should be strictly limited to specific organizations or a subset of the sector found at risk, rather than targeting the whole CSO sector. Such measures cannot target all CSOs with special regulations.

The law should not require CSOs or certain categories of CSOs to submit special reports on AML/CTF compliance or prescribe other active duties in this area as “obliged” entities. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or limitation of foreign funding of CSOs by the government.

If any restrictions such as increased supervision, oversight, reporting and governance requirements are to be applied, they should be imposed only on the CSO sub-sector identified to be at risk, based on an official risk assessment process. Such restrictions should be proportional to the identified risk.

Violations of this indicator may include:

- The law obliges banks to assess whether financial transactions of all CSOs comply with their statutes and goals;
- AML/CTF legal measures apply to all CSOs, regardless of the level or risk posed, and are not in line with the risk based approach or official risk assessment;
- CSOs must submit special reports on AML/CTF or perform other actions to prove compliance with AML/CTF regulations ("presumption of guilt");
- The limits on the amount of donations that CSOs can receive or the number of financial transactions they can conduct, impede their income generating activities and fundraising;
- CSOs need to develop and adopt specific policies on AML and/or hire a specialist on staff to serve as an AML compliance officer and/or organize staff trainings on AML measures.

3. Anti-corruption laws, measures and strategies do not restrict the rights of CSOs or their employees and donors

The law should not overburden CSOs with specific non-proportional duties related to anti-corruption, such as requiring reports beyond those already specified for CSOs in other legislation. Government measures on anti-corruption should not obstruct lawful CSO activities and hinder

organizations from pursuing legitimate goals. This principle applies to CSOs themselves, as well as their members, donors and employees – none of whom should be special objects of state control or anti-corruption regulations.

CSOs and especially watchdog CSOs are often a driving force behind anti-corruption measures. Governments should not impose additional restrictions on CSOs and associated individuals under the pretext of fighting corruption.

Violations of this indicator may include:

- Employees or leaders of CSOs must publicly release their tax returns, although they are not public officials.

Practice

Indicators for Practice
1. CSO activities are not limited based on unjustified claims of connections with extremism, terrorism, money laundering and corruption. 2. State authorities or bank practices do not disrupt or discourage CSOs' ability to send or receive money. 3. Implementation of anti-corruption regulations does not adversely impact the rights and activities of CSOs, employees and donors.

1. CSO activities are not limited based on unjustified claims of connections with extremism, terrorism, money laundering and corruption

A country's national interest in fighting corruption, money-laundering and terrorist financing does not justify imposing new reporting requirements for CSOs unless there is a concrete threat to the public and/or the constitutional order or a concrete indication of individual illegal activity. Measures designed to fight extremism or terrorism should be based on illegal activities, rather than the personal beliefs, views or international connections of CSO members and leaders. A decision declaring a CSO an extremist or terrorist organization or suspending its activities based on those charges in one jurisdiction should not be automatically extended to another jurisdiction. Such decisions must be taken only by a court and be subject to appeal.

To prevent and eradicate corruption effectively, states also have the duty to cooperate with CSOs. Anti-corruption efforts need to be in line with human rights standards, otherwise they become less effective or potentially lose their legitimacy.

Most CSOs represent little or no risk of terrorist financing or money-laundering. Therefore, states should apply targeted and proportionate measures using a risk-based approach. The decision to impose sanctions against terrorist or extremist organizations should be made by an independent court based on hard evidence in an open and adversarial trial where the organization is guaranteed the right to defence.

Violations of this indicator may include:

- Authorities declare a CSO an extremist or terrorist organization, or suspend its activities, based solely on the beliefs and views of its founders, donors or leaders;
- Authorities declare an organization extremist in absentia or out of court.

2. State authorities or bank practices do not disrupt or discourage CSOs' ability to send or receive money

Banks or state regulators should not obstruct or impede lawful financial activities of CSOs, such as receiving money in bank accounts, accumulating financial resources (incl. in the form of endowments) and sending money abroad.

Restrictive measures such as freezing bank accounts or limiting fund transfers should be considered a limitation on CSO activities. Such limitations should be based on evidence showing that there is a threat to national security or public order; they must also be based on the law and proportional (i.e. there is no less restrictive means to achieve the policy objective).

Violations of this indicator may include:

- CSOs face difficulties opening bank accounts, receiving funds in bank accounts and sending funds to bank accounts abroad (or such activities require prior consent of the government);
- Banks, on their own initiative or in pursuance of the regulator's instructions, refuse or delay services to CSOs, treating them as "suspicious".

3. Implementation of anti-corruption regulations do not adversely impact the rights and activities of CSOs, employees and donors

Anti-corruption measures and transparency requirements impacting CSOs cannot be unnecessarily burdensome. They should be proportionate to the size of the organization and the scope of its activities, taking into account its assets and income.

While transparency and anti-corruption may in some cases be a legitimate means to help protect national security or public order, or prevent disorder or crime, it is not explicitly listed as a legitimate aim in the relevant international human rights instruments. Moreover, transparency by itself is a vague and general term that is not as specific as the existing legitimate aims, e.g. protection of national security, public order, health, or the rights and freedoms of others. Therefore, states shall not require, but instead encourage and facilitate CSOs to be accountable and transparent and refrain from using transparency measures to restrictive legitimate CSO activities. If such measures extend to members, donors or employees of a CSO, they must be proportionate and shall respect their right to privacy.

Violations of this indicator may include:

- Employees of an anti-corruption CSO must publish their tax returns or face disproportionate financial and criminal sanctions, or even termination.

Relevant resources

- European Convention on Human Rights, art. 6, 13, 14
- United Nations Convention against Corruption, Preamble & art. 26.4
- Financial Action Task Force Recommendations, International standards on combating money laundering and financing of terrorism & proliferation, Recommendation 8 and Interpretive note to recommendation 8
- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 25, 33, 41, 74, 104, 121, 192, 215, 220, 224, 241, 256
- OSCE/ODIHR, Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Leads to Terrorism (2014)
- Human Rights Council Resolution on the negative impact of corruption on the enjoyment of human rights, A/HRC/RES/35/25, Art. 5 (23 June 2017)
- Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39 (24 April 2013), para. 20, 27, 29, 34 and 35
- Thematic report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/13/37 (28 Dec 2009), para. 36
- CCPR/C/128/2, Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic
- CCPR/C/21/Rev.1/Add.11, General Comment No. 29: Article 4: Derogations during a State of Emergency
- OSCE/ODIHR, Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism (Warsaw: ODIHR, 2014), p. 42
- Venice Commission, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, CDL(2013)023 (16 October 2013) para. 35
- Council of Europe PACE Resolution 2226 on New restrictions on NGO activities in Council of Europe member States (adopted 27 June 2018), para. 10.6
- Council of Europe Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, art. 76-77 (adopted 10 Oct 2007), paras. 27, 22, 26, 72, 74 and 75;
- Council of Europe, Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Principles 24, 70, 71, 72 and 73;
- Human Rights Committee case law: *Boris Zvozskov et al. v. Belarus* (17 October 2006); *Malakhovsky and Pikul v Belarus* (26 July 2005); *Aleksander Belyatsky et al v Belarus* (24 July 2007); *Natalya Pinchuk v Belarus* (17 November 2014)
- Paris Principles "Additional principles concerning the status of commissions with quasi-jurisdictional competence" and General Observation 2.10 (as adopted by the International Coordinating Committee Bureau on 6-7 May 2013), available at http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf
- European Court of Human Rights: Guide on Article 15 of the European Convention on Human Rights, Derogation in time of emergency, available at https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf

- European Court of Human Rights: *Staatkundig Gereformeerde Partij v. Netherlands* (2012)
- European Court of Human Rights: *Movement for Democratic Kingdom v. Bulgaria* (1995)
- European Court of Human Rights: *Özbek and Others v Turkey* (2009)
- European Court of Human Rights: *Islam-Ittihad Association and Others v. Azerbaijan* (2014)
- European Court of Human Rights: *Ramazanova and Others v. Azerbaijan* (2007)
- European Court of Human Rights: *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan* (2009)
- European Court of Human Rights: *Kasparov and Others v. Russia* (2013)
- European Court of Human Rights: *Szerdahelyi v. Hungary* (2012)
- European Court of Human Rights: *Patyi v. Hungary* (2012)
- European Court of Human Rights: *Szerdahelyi and Patyi v. Hungary* (2012)
- European Court of Human Rights: *Uzun v. Germany* (2010)
- European Court of Human Rights: *Emek Partisi and Şenol v Turkey* (2005)
- European Court of Human Rights: *Freedom and Democracy Party (ÖZDEP) v Turkey* (1999)
- European Court of Human Rights: *Herri Batasuna and Batasuna v Spain* (2009)
- European Court of Human Rights: *IPSD and Others v Turkey* (2005)
- European Court of Human Rights: *Kalifatstaat v Germany* (2006)
- European Court of Human Rights: *Ourkiki Enosi Xanthis and Others v Greece* (2008)
- European Court of Human Rights: *Refah Partisi and Others v Turkey* (2003)
- European Court of Human Rights: *Sılay v Turkey* (2007)
- European Court of Human Rights: *Siveri and Chiellini v Italy*, (2008)
- European Court of Human Rights: *Socialist Party and Others v Turkey* (1998)
- European Court of Human Rights: *Socialist Party of Turkey (STP) v Turkey* (2003)
- European Court of Human Rights: *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan* (2009)
- European Court of Human Rights: *Tüm Haber Sen and Çinar v Turkey* (2006)
- European Court of Human Rights: *Tunceli Kültür ve Dayanışma Derneği v Turkey* (2006)
- European Court of Human Rights: *United Communist Party of Turkey and Others v Turkey* (1998)
- European Court of Human Rights: *Yazar and Others v Turkey* (2002)

AREA 9. STATE SUPPORT

Standard 1. There are a number of different and effective mechanisms for financial and in-kind state support to CSOs

States have developed different mechanisms for financial and in-kind support of CSOs to underline their important role in addressing societal needs. The state supports CSOs through institutional and/or project funding, contracting CSO services, subsidies or in-kind support. One important aspect of all mechanisms is the principle that CSOs are independent and autonomous from the government despite the fact that they receive state support.

Law

Indicators for Law
1. The law provides for the establishment of diverse state funding mechanisms by various state bodies at both the national and local level. 2. There are legal possibilities for the state to provide in-kind support to CSOs.

1. The law provides for the establishment of diverse state funding mechanisms by various state bodies at both the national and local level

Financial support to CSOs provided by the state can take on different forms – grants, subsidies, procurement, etc. However, the usage of each form depends on the purpose and the result that is aimed to be achieved.

Grants are the most common form of direct financial support to CSOs, and are allocated from the central or local budget. The states may provide grants for institutional or project support. Project support may be granted in different areas, depending on the aim the government wants to achieve. For example, if the goal is to enable the environment for CSOs, a project grant may be provided for improving the legal framework for CSOs. Grants for institutional support are meant to cover expenses necessary for the operation of the organization, and may cover infrastructure costs, capacity building, audit expenses, etc.

Subsidies are provided as a form of institutional support for certain civil society organizations, and are not linked to specific projects. Usually there is no competition for subsidies and the recipient CSO is entitled to the support as prescribed by law. In many countries subsidies are given to different representative organizations of various types of social groups.

Service procurement is the public authorities' purchase of goods and services from the CSOs. In contrast with grants, the purpose here is to provide a concrete service. In this case, the government knows exactly what needs to be done and is looking for someone who will deliver the service at the highest quality for the lowest price.

The law should ensure that CSOs are able to bid on state procurement contracts in any area in which they are allowed to operate. The State should not set unreasonable requirements which create burdens for CSO participation (e.g. demands for a bank guarantee or excessively high requirements for financial turnover).

Governments should support CSOs' engagement in social entrepreneurship through creating enabling operational conditions, including direct and/or indirect state benefits or adoption of other policy measures.

Violations of this indicator may include:

- The law does not provide the opportunity for direct state funding of CSOs;
- Municipalities are not able to issue grants;
- There is no opportunity to provide institutional support for CSOs;
- There is no opportunity to issue funding in a diversity of fields;
- Legislation does not allow CSOs to participate in state procurement;
- There are discriminatory requirements which limit CSO participation.

2. There are legal possibilities for the state to provide in-kind support to CSOs

In-kind support is a form of institutional support provided by the state, and may be given to CSOs in different forms. For example, the state may contribute goods such as computers, furniture or other technical equipment which may be used by the organization for its everyday operations. In addition, in-kind support might be given in the form of services, e.g. providing room for a meetings and events or administrative support. Another type of in-kind support is expertise given in the form of legal, financial or strategic assistance. Acknowledgments and awards can also be considered in-kind support when they are granted to CSOs for their achievements.

Violations of this indicator may include:

- The law limits the possibility for the state institutions to provide in-kind support to CSOs;
- Rules for providing in-kind support are not clearly established;
- In-kind support is only given to CSOs that work on social issues.

Practice

Indicators of Practice
1. The state regularly provides funding to a large number of CSOs working in a diversity of fields. 2. There is funding for CSO-provided services and there is a growing practice of contracting CSOs to provide services.

1. The state regularly provides funding to a large number of CSOs working in a diversity of fields

The state should provide funding for CSOs regularly, which means that funding is available every year and is accessible for various types of CSOs. Most CSOs are participating in the democratic development of the country and are involved in important fields such as education, human rights, sports, culture, health, youth, economic development and others. Depending on their field of interest, organizations may act as think tanks, watchdogs and service providers. States should take into consideration this diversity and should not limit financial support to a few or specific types of

organizations. Instead, they should provide funding opportunities for a number of organizations, both big and small in terms of budgets and employees. In case of public emergency, the state should continue supporting CSOs with the earmarked funds, but also find ways to further support them to carry out their diverse and important role. CSOs delivering vital social services and humanitarian assistance should have access to emergency public funding while preserving their independence. These funding programs should be transparent, fair and accessible on equal basis to civil society.

Violations of this indicator may include:

- State funding is provided in limited fields and to a small number of CSOs;
- The law provides the possibility of in-kind support, but the state does not provide this type of support or it happens rarely;
- Institutional support is not provided by the state;
- Support awarded to CSOs is cut and repurposed for other state objectives.

2. There is funding for CSO-provided services and there is a growing practice of contracting CSOs to provide services

There should be examples of CSOs in different fields receiving contracts for service provision from the state. In the traditional CSO areas (social services, education, culture) such contracts should be a usual practice, with CSOs recognized as important contractors for the state. There should be a growing trend of hiring CSOs, meaning that the number of contracts and amount of funding are increasing each year.

CSOs should be contracted in diverse areas, at both the national and local levels. They should not be expected to work pro-bono when providing services to state institutions.

Violations of this indicator may include:

- CSOs are not contracted by the state to provide services;
- Budgets for contracting CSOs are decreasing.

Standard 2. State support for CSOs is governed by clear and objective criteria and allocated through a transparent and competitive procedure

The state shall use the public resources effectively and transparently. The distribution of public funding should be in accordance with the principles of equal access, transparency and accountability. Information about the call for applications, selection criteria and results shall be published timely. CSOs shall be able to actively take part in all the phases of the public funding cycle, especially the determination of funding priorities and supported projects. Moreover, clear and adequate monitoring and evaluation mechanisms on distribution and spending shall be in place.

Law

Indicators for Law
1. State financial and in-kind support is provided based on clear principles of transparency, accountability and equal access to resources. 2. The law requires the participation of CSO representatives in the selection of funding priorities and grant recipients. 3. There is a clear and impartial monitoring and evaluation mechanism for state funding provided to CSOs.

1. State financial and in-kind support is provided based on clear principles of transparency, accountability and equal access to resources

In order to ensure that there are good procedures and principles that are respected by all state bodies which distribute funding, the government should adopt regulations that establish a framework for public funding procedures. These regulations should define the principles of funding and detail the specific procedural requirements that must be observed. They should aim to ensure that the key requirements are applied across all bodies and agencies of the government which distribute funds.

There should be a clear and transparent procedure through which state funding for CSOs is distributed. The procedure should, among other things: impose a requirement to publish funding announcements in official and local media; establish clear and objective selection criteria; allow appropriate time for submission of the proposal; require that selection criteria and names of the selected applicants are publicized; require copies of announcements to be sent to potential applicants; and require that the funding authority answer the inquiries of potential applicants. In addition, both CSOs and state authorities should be accountable for the funds provided/received, and information on funding decisions should be publicly available.

The principle of equality means that all CSOs should have the chance to receive funding. At the same time, there could be a special reason for supporting certain CSOs, e.g. organizations satisfying certain social needs, which, for example, promote the principles of gender equality and non-discrimination, or human rights organizations. However, provision of such preferential support is possible only if there are accurate, clear and objective criteria and procedures to guide the process. Such criteria should be publicly disclosed.

Violations of this indicator may include:

- There are no legal standards for transparency and objectiveness in providing state financial and in-kind support, hence resources are not accessible equally to all CSOs;
- The law does not specify a detailed procedure for providing state financial support;
- Existing regulations on state funding procedure are not transparent and objective;
- Effective legal remedies are not available;
- Legislation contains a closed list of CSOs that are granted state support and preferences;
- Legislation contains a narrow list of CSO fields of activity eligible for state benefits.

2. The law requires the participation of CSO representatives in the selection of funding priorities and grant recipients

State funding should be issued after a fair and transparent bidding process, and the decision on the financial support of specific initiatives should be made by a collegial body. This collegial body should include civil society organizations and international organizations, as well as specialists from relevant fields. In the best-case scenario, both state and non-state entities should have at least equal representation in the collegial body and all decisions should be based on the majority of votes.

In order to ensure impartial decisions, it is important to include a special provision against conflicts of interests. State grant-issuing entities, including ministries, local self-governments and public legal entities, should have binding legal provisions governing how they regulate potential conflicts of interest and how to avoid them. These rules should prohibit individuals with direct or indirect vested interests from participation in the decision-making process. Such legal constraints should affect both state and non-state actors equally.

The participation of civil society organizations in identifying thematic areas for funding is one of the most important aspects of a transparent and accountable state granting system. Legal regulations should require the state to consult CSOs in the process of planning the budget and defining areas. This can be done by organizing formal consultations and/or by gathering input from CSOs on their needs and opinions.

Violations of this indicator may include:

- The law does not allow the participation of CSOs and other important stakeholders in the process of defining thematic areas for funding or selecting of grant recipients;
- There are no objective criteria for selecting CSOs and other important stakeholders as members of selection committee.

3. There is a clear and impartial monitoring and evaluation mechanism for state funding provided to CSOs

Establishing a monitoring and evaluation mechanism is one way to measure the effectiveness of state funding to CSOs. The law should ensure that there are clear provisions on how programs using state funding will be assessed. All recipients of state funding should be required to submit reports clearly showing how funding is spent. It is also important that the mechanism measures not only projects, but the overall program itself. There may be a case when awarded projects are successfully implemented, yet the program did not reach its goal.

Violations of this indicator may include:

- The law does not provide norms and standards for effective monitoring and evaluation.

Practice

Indicators for Practice
1. The application procedure for state funding is simple and transparent, information about it is widely publicized, and the selection criteria are publicly announced in advance. 2. The provision of state support is not used as a means to undermine the independence of CSOs or to interfere in their activities. 3. The government publishes information about selection results and project results in a timely manner.

1. The application procedure for state funding is simple and transparent, information about it is widely publicized, and the selection criteria are publicly announced in advance

State funding procedures should be based on a clear application and assessment process. This means that the state institutions which are involved in funding CSOs should publish all relevant information (selection criteria, amount of funding, contact information, etc.) online. In order to ensure that information is widely publicized, the state may use various media sources, including CSO media and CSO mailing lists. Documents required for the application should be inexpensive and easy to acquire. The application forms should be simple and the whole application package should be easy to prepare. It is also important that appropriate time is given for submission of the proposal and that applicants are able to correct minor deficiencies.

Violations of this indicator may include:

- The call for applications is not published in due time;
- Information is not spread through alternative resources (media, internet and etc.);
- Consultation meetings are not available or accessible;
- Evaluation criteria are not published in advance;
- The application procedure is unclear and leaves room for interpretation.

2. The provision of state support is not used as a means to undermine the independence of CSOs or to interfere in their activities

The provision of the state support for CSOs should not undermine their independence. A threat to CSO independence may occur if the state institution tries to interfere in a CSO's project or other activities. It is also inappropriate to condition funding on whether the organization makes positive or supportive statements regarding state policies.

Violations of this indicator may include:

- Recipients of state funding are "requested" to provide supportive statements for the minister;
- CSOs that receive funding from the state are involved in elections to support the ruling party or a particular candidate.

3. **The government publishes information about selection results and project results in a timely manner**

It is important that information about the application and selection procedure is clear and accessible to everyone. Additionally, there should be mechanisms to ensure timely announcement of final results and the ability to appeal decisions. Good practice shows that the process for selecting and publishing results should not take more than 30 days. Procedures for appeal should include an orderly, efficient and institutionalized way for CSOs that have filed a grant application to contest decisions. Each organization that has filed a grant application should have right to file an appeal within a reasonable time after being notified of the results if, for example, it has noticed an omission or procedural deficiency in the way that its application was assessed.

It is important that information about project results is published. States should ensure that reports provided by CSOs are published and are accessible to anyone, especially other CSOs who are interested in how the funding was spent.

Violations of this indicator may include:

- The timeline for application submission, selection of projects and publication of results is not published;
- Results are not published in due time;
- Information about project results is not published.

Standard 3. CSOs enjoy a favourable tax environment

Indirect state support is essential for the financial viability and further development of civil society. Thus, CSOs and donors shall enjoy favourable tax treatment. Tax benefits should be available for various CSO income sources. The state may introduce provisions allowing CSOs to obtain public benefit status. If available, the status shall be accessible to any organization via a clear and inexpensive procedure. Organizations that obtain the status can enjoy additional benefits, but shall not be exposed to burdensome monitoring and evaluation.

Law

Indicators for Law
1. The law provides favourable tax benefits for grants, donations, economic activities, endowments and membership fees that support non-profit activities. 2. CSOs may obtain public benefit status under clear, simple and inexpensive procedures. 3. Public benefit status is granted for an indefinite period of time or an appropriately long term that can be easily renewed.

1. **The law provides favourable tax benefits for grants, donations, economic activities, endowments and membership fees that support non-profit activities**

The law should ensure that there are clear rules for the tax treatment of all CSO income, such as grants, donations from domestic and foreign individuals and legal entities, membership fees,

income from economic activities, legacies, etc. Income from traditional non-profit sources of CSOs such as private or corporate donations, grants and membership fees should not be subject to income or corporate tax. Tax laws should contain clear exemptions from taxation for income from these sources.

It is good practice to exempt income from CSO economic activities from tax, as long as it is used to further the CSO's mission. If there is no full exemption, the law should tax economic activities at a lower rate or provide an exemption below a certain threshold. It is also a good practice to encourage CSOs engaged in social entrepreneurship through tax breaks, income tax exemptions, exemptions from payment of social contributions and other indirect benefits.

Tax benefits for CSOs should be simple and straightforward. If there are too many conditions to be fulfilled in order to use them, it can create compliance difficulties for CSOs, particularly for smaller organizations.

The law should allow CSOs to invest their assets and use income from economic activities to further their non-profit mission.

Violations of this indicator may include:

- Restrictive tax treatment limits CSOs' ability to receive income through grants, donations, economic activities, endowments or membership fees;
- Income from economic activities is fully taxed even if it is used to further a CSO's non-profit mission.

2. CSOs may obtain public benefit status under clear, simple and inexpensive procedures

The regulatory approach to charitable/public benefit/public utility status (hereinafter jointly referred as "public benefit status") may differ in countries. Through introducing charitable/public benefit/public utility status, governments aim to promote certain activities which are related to the common good. Organizations with this special status usually receive favourable tax treatment or other benefits because their work benefits the public, a community and/or those in need.

Regulations on obtaining such status should ensure that the registration process is clear, quick and inexpensive. In addition, there should be rules governing the grounds for refusing such status and appeals. CSOs may be required to submit relevant documentation in order to receive public benefit status. The procedures and requirements may differ depending on the country's regulatory scheme. It is considered good practice to require documents showing compliance with activity requirements, information on qualifying public benefit activities and limitations on activities. The law should set a time limit for the registration decision and include a list of reasons that registration could be denied. CSOs should always have the right to appeal. An example of good practice can be found in Georgia, where status is automatically granted if the responsible entity does not provide a decision within one month.

Violations of this indicator may include:

- The law does not provide the opportunity to obtain charitable/public benefit/public utility status;

- The law does not specify rules or procedures for obtaining such status and does not contain norms on refusal;
- There are no clear and objective rules for termination of the status;
- There is no effective legal remedy.

3. Public benefit status is granted for an indefinite period of time or an appropriately long term and can be easily renewed

There are various approaches regarding who should oversee the granting of public benefit status. The responsible body may be a tax authority, independent commission or other governmental entity.

However, it is important that the status is granted for a reasonable period of time. For example, in Germany the local tax authorities grant the status and are responsible for verifying continued compliance with requirements every three years.[33] In Georgia, the status is granted for indefinite period of time, however organizations with charity status are required to provide a report to the relevant tax authority annually according to the Tax Code.

Violations of this indicator may include:

- The status is not granted for a reasonable period of time;
- The status cannot be renewed.

Practice

Indicators for Practice
1. Tax benefits for CSOs can be used in practice. 2. Monitoring and evaluation of compliance with public benefit requirements does not interfere in CSO activities. 3. CSOs are not subject to unjustified tax penalties or withdrawal of public benefit status by state authorities.

1. Tax benefits for CSOs can be used in practice

Tax benefits for CSOs should be simple and easy to use. Burdensome requirements may discourage CSOs, and as a result there will be a small number of organizations who enjoy such benefits. An example of a complicated administrative procedure is a requirement to submit a large number of documents.

Violations of this indicator may include:

- The procedure to obtain tax benefits is lengthy.

[33] The Fiscal Code of Germany: https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html

2. **Monitoring and evaluation of compliance with public benefit does not interfere in CSO activities**

By establishing a special public benefit status and providing benefits, states in return may require a higher level of governance and accountability for these organizations. However, this does not mean that monitoring and evaluation may be used to interfere in CSO activities. Some examples of negative interference include burdensome reporting requirements or requiring information about staff salaries.

Public benefit organizations are not public entities even though they work for the benefit of the public. Their employees or Board members are not public officials. Therefore, CSOs and their officials should not be required to comply with the requirements for public entities or public officials.

Violations of this indicator may include:

- CSOs with public benefit status are asked to provide more information than required by law.

3. **CSOs are not subject to unjustified tax penalties or withdrawal of public benefit status by state authorities**

State sanctions on CSOs with charitable/public benefit/ public utility status can be imposed for failure to file reports or in case of violations of certain legal requirements. State sanctions typically include the loss of tax benefits, suspension of the status and in the worst case, termination of the status. Organizations should be notified prior to termination of the status so that they have the opportunity to correct any deficiencies. The status may be terminated only after previous, less intrusive measures have been exhausted and there is no other way to remedy the situation. CSOs should have the opportunity to file an appeal.

Violations of this indicator may include:

- There are cases of unjustified penalties;
- Effective legal remedies are not available;
- Monitoring happens frequently without appropriate justification.

Standard 4. Businesses and individuals enjoy tax benefits for their donations to CSOs

The State should support corporate and individual giving by providing tax incentives for both corporate and individual donors of CSOs. In addition, both business entities and individuals should be able to easily use tax deductions/credits when making any donations. Both financial and in-kind donations should be tax deductible.

Law

Indicators for Law
1. There are incentives for financial and in-kind donations to CSOs and the procedure to obtain them is clear and simple. 2. The threshold for deducting donations stimulates regular and large gifts, including endowments.

1. There are incentives for financial and in-kind donations to CSOs and the procedure to obtain them is clear and simple

The freedom of CSOs to receive donations for their activity is inseparable from the freedom of donors to independently decide which CSO to support and to what extent. States should encourage giving to CSOs by creating mechanisms that stimulate donations by businesses and individuals. These incentives are usually in the form of deductions – decreasing the amount of the tax base on which the corporate/income tax is imposed. Another form of tax benefit is the tax credit. Tax credits allow the donor to subtract part of the donated amount from the tax to be paid, thus reducing the amount of tax owed.

Individual and corporate donations should be voluntary. Donors should have the option of remaining anonymous, and making a donation should not require signing a written contract. Donations should not require preliminary consent of the state or other institutions, but only the parties involved in the donation. All individuals or companies, including those of foreign origin, should be able to donate to CSOs. There should be legal mechanism whereby individuals can leave legacies to CSOs or establish foundations through their will.

With the development of electronic communications, the importance of electronic forms of fundraising with the use of credit cards, SMS, etc. has also increased. Donors should have the opportunity to select traditional or new forms of making donations, either in cash, by credit cards, bank transfers or in-kind. The possibility to use mechanisms such as endowments or crowdfunding platforms, can create additional opportunities and should be permitted by law.

Both employees and individuals who are self-employed and earn their income by independent activities should be entitled to receive tax exemptions for their donations.

Violations of this indicator may include:

- There are no tax deductions/credits for corporate and individual donors;
- Donations from anonymous sources are forbidden or significantly limited;
- Possible donations are determined by individuals' membership in organizations – individuals are allowed to donate money or property to only those organizations which they are members of;
- Donations to CSOs in the form of testaments are forbidden;
- The tax deduction mechanism is complicated; hence business entities avoid using it.

2. The threshold for deducting donations stimulates regular and large gifts, including endowments

Provisions for businesses or private philanthropic individuals to make tax-deductible donations to CSOs should be comprehensive. CSO should be free to accept tax-deductible donations without additional burdens, and businesses making such donations should have a right to claim a deduction. Any limits set by the state on how much can be deducted from the taxable income or the amount of donations needs to be reasonable and fair in order to stimulate regular giving. Favourable measures include the ability to deduct large donations over several tax years.

Violations of this indicator may include:

- The threshold for deducting donations is low.

Practice

Indicators for Practice
1. Individual donors can use available tax benefits without administrative burdens. 2. Corporate donors can use available tax benefits without administrative burdens.

1. Individual donors can use available tax benefits without administrative burdens

The mechanism for individuals to utilize tax benefits should be clear, consistent and require minimal time and resources. The documents required should not be burdensome to obtain.

The mechanism should also be easy to use, whether individuals are donating funds, goods or services. The administrative procedure should not require approval of several state bodies, and donors should not be requested to undergo burdensome procedures. A low number of taxpayers applying for tax deductions or credits can be an indicator that the administrative process is too complex.

There should also be an option for people who do not submit an annual tax declaration to use the benefits through their employer or in another way. Large donations should be deductible over a period of several years.

Violations of this indicator may include:

- Administrative authorities possess wide discretion and decisions are not justified;
- The tax deduction mechanism is complicated and rarely used in practice.

2. Corporate donors can use available tax benefits without administrative burdens

The mechanism for businesses to utilize tax benefits should be clear, consistent and require a reasonable amount of time and resources. The documents required should not be burdensome to obtain.

The mechanism should also be easy to use, whether the company is donating funds, goods or services. The administrative procedure should not require approval of several state bodies and the donors should not be requested to undergo burdensome procedures. A low number of taxpayers applying for tax deductions or a falling number of donations can indicators that the administrative process is too complex.

Violations of this indicator may include:

- Administrative authorities possess wide discretion and decisions are not justified;
- The tax deduction mechanism is complicated and rarely used in practice.

Standard 5. Legislation and policies stimulate volunteering

Volunteering enables people to contribute to the social, cultural and economic development of their communities. The state shall support and promote volunteerism, including by clearly defining the scope of volunteer work. The law shall regulate the rights and responsibilities of volunteers and organizers of volunteer work. The state shall ensure that there are incentives for volunteering and no practical obstacles to engage volunteers.

Law

Indicators for Law
1. There is a clear definition of volunteering and volunteer work, and host organisations and volunteers cannot be viewed as an illegal workforce. 2. Legislation does not establish additional burdens and restrictions for engaging volunteers. 3. The state provides incentives for the development of volunteerism through policies, programs and financial support.

1. There is a clear definition of volunteering and volunteer, work and volunteers cannot be viewed as an illegal workforce

Volunteering comes in different forms – from spontaneous, ad hoc volunteering to organized, formal, contract-based engagement. Due to its nature, it is difficult to regulate all forms of volunteering. Therefore, the law should take into consideration this diversity and ensure that regulations do not restrict opportunities that could enhance the volunteering environment. Excessive regulations can lead to limited opportunities for engaging volunteers, especially on ad hoc basis. For example, when a group of people decide to take care of a polluted park, the law should not create obstacles, such as requiring that they sign contracts.

National legislation, in line with international standards, should define volunteering and regulate it in order to recognize volunteering. At the same time, it is important to provide legislative and fiscal regulations for enhancing volunteering arrangements and – most importantly – to ensure a clear distinction between employees and volunteers. The absence of legal definitions may result in the treatment of volunteers as paid employees. The law should contain provisions which are necessary to protect volunteers and host organizations. These regulations should include definitions, rights and obligations, tax issues and other types of benefits, liability rules and etc.

Violations of this indicator may include:

- Volunteers are not differentiated from employees;
- The law restricts opportunities for informal or ad-hoc volunteering.

2. Legislation does not establish additional burdens and restrictions for engaging volunteers

The legal framework is not in line with international standards when it creates limits and impedes volunteering. A proper legal framework is particularly important for those volunteer arrangements that require an engagement on a daily basis over a longer period of time. Long-term volunteers are directly or indirectly affected by a variety of laws, including labour laws, tax laws, liability laws and others. Potential problems may include the misapplication of labour laws, the taxation of volunteer time, the loss of unemployment benefits, liability issues and volunteers performing under dangerous conditions and being unaware of their rights and obligations. National legal frameworks should also aim to foster volunteering by their own citizens abroad and expand legal protections to foreign volunteers serving in their countries.

Violations of this indicator may include:

- A written contract is mandatory to engage any volunteer;
- Reimbursements to volunteers are subject to income tax;
- Legislation is not favourable to engage foreign volunteers

3. The state provides incentives for the development of volunteerism through policies, programs and financial support

State policies and programs should ensure that volunteering is protected and promoted. Adopting a state policy for the promotion and support of volunteering is an effective tool to ensure consistency of the state's approach and measures in this area. Being able to refer to a policy can help to avoid decisions being made on ad hoc basis. A comprehensive policy also shows a state's commitment towards volunteering and underlines its importance in society.

The state (through its policies or legislation) may provide incentives for volunteers. These may include the possibility to receive health insurance or social security, exemption from income tax on the reimbursed costs related to volunteering (travel, accommodation, per diems, etc.) and others.

Violations of this indicator may include:

- The state does not have policies and/or programs for the development of volunteerism;
- The law does not provide different types of incentives for volunteers.

Practice

Indicators for Practice
1. CSOs face no obstacles to engage volunteers and can engage foreign volunteers and send volunteers abroad without restrictions.

2. The incentives for volunteerism are used in practice and acknowledged by various institutions such as employers, universities, etc.

1. CSOs face no obstacles to engage volunteers and can engage foreign volunteers and send volunteers abroad without restrictions

Volunteers may contribute to bringing positive changes to society both in their home countries and abroad. CSOs should be able to engage volunteers without the need to request preliminary approval from the state. There should be no mandatory financial burdens such as insurance, payment of social security, etc. unless this has been agreed upon between the CSO and the volunteer.

Volunteering opportunities cannot be limited to the national level. CSOs should not face practical obstacles in creating partnerships with overseas organizations to send and receive volunteers. One of the most important aspects of promoting cross-country volunteering is creating a favourable tax environment. The reimbursement of costs such as travel, accommodation and other related expenses should not be taxable in the country of origin or the host country. Furthermore, documentation requirements should not excessively burden organizations who accept volunteers or subject them to additional government inspections.

Violations of this indicator may include:

- CSOs working on human rights are not able to engage volunteers;
- It is not possible to reimburse expenses for volunteers;
- CSOs are not able to engage foreign volunteers;
- The documentation necessary to involve foreign volunteers is too complicated;
- Hardly any CSOs engage foreign volunteers.

2. The incentives for volunteerism are used in practice and acknowledged by various institutions such as employers, universities, etc.

There are many benefits that volunteering brings to communities and to societies at a large. Therefore, the experience acquired during volunteerism should be acknowledged and promoted by various institutions, including the state itself. Demonstrating appreciation and recognizing voluntary work is important at many levels. Volunteers themselves should feel appreciation for their efforts and at the same time, it is in CSOs' best interest that volunteers have a fulfilling and useful experience. Steps to formally recognize volunteering and provide incentives – for example, allowing volunteers to earn university credits for their experience – can result in an increase in the number of people volunteering. Other examples include: the state recognizes volunteering work as in-kind contribution to government grants; volunteerism is part of the regular curriculum in the educational process; state institutions give awards to volunteers and to different entities (such as non-profits, businesses) that engage volunteers; organization of community events where volunteerism as a concept is promoted.

Violations of this indicator may include:

- Volunteering is not popular and/or not acknowledged;
- It is not possible to earn university credits with volunteering experience.

Relevant resources

- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 190, 218
- Council of Europe, Recommendation of the Committee of Ministers of Member States on the Promotion of Voluntary Service (1994)
- UN General Assembly Resolution on volunteering, A/RES/56/38 (10 Jan 2002)
- Council of Europe Recommendation No.R (94)4 of the Committee of Ministers of Member States on the Promotion of Voluntary Service (adopted 1994)
- Council of Europe, Improving the Status and Role of Volunteers as a Contribution by the Parliamentary Assembly to the International Year of Volunteers 2001 (draft), Doc. 8917, December 22, 2000, http://www.seeyn.org/files/4/6_Voluntarism_and_public_institutions.pdf, 203-205
- Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39 (24 April 2013)
- Council of Europe Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, art. 76-77 (adopted 10 Oct 2007), para 6, 8, 14, 50, 57, 58, 59, 60, 61
- Checklist – FoAA during public health emergencies, developed in the context of the COVID-19 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association

AREA 10. STATE-CSO COOPERATION

Standard 1. State policies facilitate cooperation with CSOs and promote their development

CSOs are important partners in the development of countries. Thus, the state shall endorse and promote CSO activities in different societal spheres and regulate their work in the most favourable manner. In addition, CSOs shall be provided with sufficient opportunities to contribute to both policy-making and policy implementation. The state shall approach its cooperation with CSOs strategically and facilitate the development of the sector. This includes adoption of policy documents on CSO cooperation and participation with concrete action plans, developed in a participatory manner with CSOs. Such documents shall be effectively implemented and regularly monitored and evaluated.

Law

Indicators for Law
1. Policy documents on CSO development and cooperation between the state and CSOs are adopted and incorporated into legislation. 2. The policy documents include action plans and programs in which purposes, activities, responsible state bodies, implementation terms, assessment procedures and financial sources are clearly defined.

1. Policy documents on CSO development and cooperation between the state and CSOs are adopted and incorporated into legislation

States should create policy documents that lay out a clear basis for collaboration and facilitate ongoing dialogue and understanding between CSOs and public authorities. These documents outline undertakings, roles, responsibilities and procedures for cooperation and CSO development. They could be bilateral agreements with parliament or government, strategy documents and official programs for cooperation, or one sided-strategy documents which lay out specific commitments by the public authorities to support CSO development.

Violations of this indicator may include:

- There are no legal acts or policies on state-CSO collaboration or support to CSO development.

2. The policy documents include action plans and programs in which purposes, activities, responsible state bodies, implementation terms, assessment procedures and financial sources are clearly defined

The policy documents promoting state-CSO collaboration and/or CSO development should not be limited to a declaration of principles; it should also include specific programs and provide timelines, aims, activities, responsible bodies and financial sources for implementation. This helps ensure the setting of specific, achievable and measurable goals within a specific policy, and provides a basis for assessment of implementation. For example, in Moldova, the Civil Society Development Strategy

for 2018-2020 and its Action Plan include specific timelines and activities aimed at creating an enabling environment for CSOs.

Violations of this indicator may include:

- The policy document on state-CSO collaboration is of a declarative nature and does not contain any specific measurable activity;
- The policy document enlists a number of activities to promote state-CSO cooperation, but does not set timelines or designate a responsible body for implementation.

Practice

Indicators for Practice
1. The state develops policy documents on cooperation and CSO development with the active participation of CSOs. 2. Policy documents are implemented in practice and influence state policies. 3. The state allocates sufficient resources for implementation of the policy document. 4. Regular monitoring and evaluation is conducted during the implementation of the policy documents and the findings are considered during revisions.

1. The state develops policy documents on cooperation and CSO development with the active participation of CSOs

When developing policy documents on cooperation with CSOs, state bodies need to engage a broad range of CSOs in the process – large and small, national and local. In addition, they should ensure that there are a variety of mechanisms for including CSO input in the process. CSO representing various views, including those critical of the government, shall be included. Co-drafting is the most inclusive mechanism for active CSO participation. Online consultation by itself is not sufficient for a meaningful participation; in-person meetings, public forums and seminars are also needed. CSOs should be able to present and defend their opinions in person. Consultations on the subsequent amended versions of drafts – up until the adoption of the final text – are necessary as well.

Violations of this indicator may include:

- A policy document on CSO development or Government-CSO collaboration is developed in a one-sided manner by state representatives;
- Participation in the development of policy documents is limited to a few CSOs already collaborating with the given state body or CSOs affiliated with government officials.

2. Policy documents are implemented in practice and influence state policies

The policies, strategies and by-laws on CSO development and government-CSO collaboration should be effectively implemented in practice and make a genuine impact on CSO participation and development. The implementation of these policies is not a means in itself, but a tool to provide CSOs the opportunity to represent the interests of their stakeholders and ensure impact on state policies.

Effective implementation also means that these policy documents are used by a considerable number of CSOs and inform their collaboration initiatives. The government should take measures to build mutual respect, understanding and trust between public authorities and civil society actors. In addition, the government must ensure that CSOs are involved in the implementation of the policy document.

Violations of this indicator may include:

- The policy document on Government-CSO collaboration is not used in policy-making processes.
- Despite having policies and strategies on cooperation in place, the government is reluctant to collaborate with CSOs and/or demonstrates a negative attitude towards the sector.
- The government does not take any action(s) to implement the policy document(s) within the timeline set in the document.

3. The state allocates sufficient resources for implementation of the policy document

The state should develop a set of measures to ensure implementation of cooperation policies. Thus, it is important to that the state allocate the human and financial resources necessary for effective policy implementation. This means assigning specific persons in different institutions to coordinate the government-CSO cooperation process. The capacity building and training of those officials should be properly funded. Furthermore, sufficient funding should be allocated to ensure outreach to a broad range of interested CSOs and the public (including via online communication channels and in-person events).

Violations of this indicator may include:

- The policy documents on cooperation are not covered in the state budget;
- State officials assigned to coordinate and implement the policy document do not have the required capacity.

4. Regular monitoring and evaluation is conducted on the implementation of the policy documents and the findings are considered during revisions

The state should monitor the implementation of cooperation and CSO development policies in order to evaluate their usefulness and effectiveness, and use the findings to improve policy design and implementation. Mechanisms for monitoring can include annual reports on policy implementation, public hearings, a special monitoring committee, etc. These monitoring tools also help to increase public officials' awareness of the importance and substance of implementing cooperation measures. The monitoring and evaluation should be done with the involvement of independent experts or bodies and the participation of CSOs. Relevant statistical information on CSO development trends should be collected through the monitoring.

Violations of this indicator may include:

- No measures are initiated by the state for monitoring of the government-CSO cooperation policy, or the monitoring is not regular;
- The monitoring of the government-CSO cooperation policy is formalistic and does not involve CSOs.

Standard 2. The state has special mechanisms in place for supporting cooperation with CSOs

In order to facilitate the relationship between public authorities and CSOs, a number of countries have developed different cooperation mechanisms. These mechanisms increase dialogue and foster a sense of ownership and willingness to develop the civil society sector. Possible mechanisms include: a contact person for CSOs in each ministry or a central coordination body; joint CSOs-public authority structures as multi-stakeholder councils or committees; and joint working groups of experts and other advisory bodies on different levels. CSOs shall be able to take part in these governmental and quasi-governmental mechanisms for dialogue and consultations. The transparent selection of members in the consultative mechanisms shall be based on clear and objective criteria. Proposals by the mechanisms shall be taken into consideration in decision-making processes.

Law

Indicators for Law
1. Key principles for the operation and transparency of public councils and other consultative bodies for dialogue and cooperation are regulated by law. 2. The selection criteria for participation of CSOs in consultative bodies are clear and objective, and the selection procedure is transparent.

1. Key principles for the operation and transparency of public councils or other consultative bodies for dialogue and cooperation are regulated by law

Public councils and/or consultative bodies with the aim to support the state policies to increase cooperation and development of CSOs should be established by laws or regulations which outline the roles, rights, responsibilities and procedures for cooperation. The role of such bodies should not be merely declarative. For example, such a mechanism can be a consultative body or a council that focuses on the development of civil society, or a governmental office or an independent agency that deals with civil society, etc. Such public councils and consultative bodies should also be required to work transparently and ensure that all information about their activities is widely and easily available both online (for example, all of the consultative body's decisions should be published on the public authority's website) and offline.

The state body which establishes the consultative body should ensure its operations, in particular by providing premises and technical equipment.

Violations of this indicator may include:

- State bodies do not establish public councils and/or other consultative bodies for dialogue and cooperation due to lack of legal regulation;
- Only some state authorities are allowed to establish permanent consultative bodies for dialogue and cooperation;
- There are no regulations governing the operation of consultative bodies;
- The law does not contain explicit powers of consultative bodies;

- There is no regulation requiring the publication or online posting of the consultative body's decisions or other work;
- The law does not envisage advisory bodies holding meetings with the participation of the public and/or holding such meetings is complicated.

2. **The selection criteria for participation of CSOs in consultative bodies are clear and objective, and the selection procedure is transparent**

The process for selecting CSOs should be clear and contain specific criteria and stages for selection of members. It should contain justified reasons to reject a candidate, safeguards in case of conflict of interest and provisions to ensure participation of marginalized groups. Each stage of the selection process should be accessible to the general public, including through the internet. Moreover, the public should be able to observe the selection of the body's members. The selection process should be set by a normative act – a law or a regulation. It is important that the CSOs themselves participate in the development of such regulation.

Violations of this indicator may include:

- Legislation contains a non-exclusive or irrelevant list of documents to be submitted for participation in public councils or other advisory bodies;
- Legislation contains selection criteria that are not clear and understandable;
- Legislation contains a non-exclusive list of grounds for rejection of a candidate.

Practice

Indicators for Practice
1. The establishment of consultative bodies is transparent and takes place both on the initiative of public authorities and CSOs. 2. The decisions of various consultative bodies are taken into consideration when state policies are prepared. 3. All CSOs concerned have the opportunity to participate in the work of consultative bodies.

1. **The establishment of consultative bodies is transparent and takes place both at the initiative of public authorities and CSOs**

Where advisory bodies exist, public authorities should implement transparent criteria and processes for the selection of CSOs. It is important that the selection mechanism is conducted in a manner which is clear for the general public. Governments must strictly observe the prescribed procedural steps and not take a preferential approach to certain CSOs. Moreover, the law should allow the establishment of advisory bodies to be initiated both by the state and CSOs. The selection and appointment of the CSO members of the advisory body should be based on clear criteria.

Violations of this indicator may include:

- The selection procedure to advisory bodies is not published on public platforms;
- Members of the advisory bodies have no knowledge in the required field;
- The selection procedure and/or selection results are concealed from the public.

2. The decisions of various consultative bodies are taken into consideration when state policies are prepared

When drafting legislative changes, state authorities should take into account the decisions of advisory bodies, including critical ones. Decisions of advisory bodies should be recognized as legitimate. If state authorities do not take into account the decisions of advisory bodies, they should provide a grounded explanation.

Violations of this indicator may include:

- A law which affects CSOs' rights or responsibilities is adopted without the participation of the public council;
- The decision of an advisory body is disregarded by the respective state authority without any clear justification.

3. All CSOs concerned have the opportunity to participate in the work of consultative bodies

States shall provide equal participation in public councils for all interested CSOs, based on clear and legally binding rules. The participation of marginalized or discriminated individuals and groups, such as women and girls, indigenous people, minorities and persons with disabilities, should be ensured. Permanent mechanisms should be developed to ensure participation of the above-mentioned categories in the advisory bodies, including physical accessibility of meeting locations.

It is important for various organizations to be able to participate in the advisory bodies on an equal basis and to have the same right of access. Procedures that limit the number of subjects to be discussed should be used only in exceptional conditions and for legitimate purposes.

Violations of this indicator may include:

- CSOs working in a specific field (e.g. disabilities) are not able to be part of a council on CSO development;
- CSOs that were not selected to be part of the consultative body are not informed about the body's decisions or completely excluded from its work.

Relevant resources

- OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, 2015, para. 183-86, 189.
- Council of Europe and ECNL, Civil Participation in Decision-Making Processes: An Overview of Standards and Practices in Council of Europe, Chapter V, Chapter VI, sections 1, 2.2 (May 2016)

- Council of Europe Guidelines on Civil Participation in Political Decision Making, CM (2017)83 (adopted 27 September 2017) para. 15
- Council of Europe Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe (adopted 10 Oct 2007)
- Council of Europe, Fundamental Principles on the Status of Non-Governmental Organizations in Europe, para. 74-78
- Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process, CONF/PLE(2009)CODE1 (adopted by the Conference of INGOs on 1 October 2009), Chapter IV.iii, Article 4
- OSCE Recommendations on enhancing the participation of associations in public decision-making processes, Vienna (15-16 April 2015), No. 3-11, 27
- OHCHR Draft guidelines for States on the effective implementation of the right to participate in public affairs, A/HRC/39/28 (Sept 2018) para. 19 (h), 56, 58
- 1999 Istanbul OSCE Commitment, art. 27
- UN Human Rights Council, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/30/26 (23 July 2015)
- European Commission, Guidelines on Principles and Good Practices for the Participation of Non-State Actors in the Development Dialogues and Consultations, DG Development (November 2004) Chapter III, section 3.1.2.

AREA 11. DIGITAL RIGHTS

Standard 1. Digital rights are protected, and digital technologies are compliant with human rights standards

Digital rights are all human rights that are applicable in the digital world. While emphasis is mostly given to the right to privacy, freedom of opinion, expression, and information, and freedom of assembly and association, digital rights have a much larger scope. For example, the right to non-discrimination, right to life, liberty, and security, right to fair trials and remedy, and economic, social and cultural rights are also highly relevant and often at risk when digital technologies are used. That said, the design, development or deployment of technology – especially emerging technologies such as artificial intelligence systems – often operate within a legal vacuum, as many national laws are applicable offline only. Digital technologies are often deployed without consideration for human rights, or worse, are fundamentally incompatible with them (e.g., mass biometric surveillance).

Law

Indicators for Law
1. Legislation guarantees the existence of safe and enabling online environment and the protection and exercise of digital rights. 2. Any limitations to digital rights are based on the principles of legality, legitimacy, proportionality and necessity. 3. The development and use of digital technologies, including artificial intelligence (AI) and automated systems is in compliance with international human rights standards.

1. Legislation guarantees the existence of safe and enabling online environment and the protection and exercise of digital rights.

Legislations should guarantee a safe and conducive online environment. This means that everyone has access to Internet and can make a full use of digital platforms. People should be able to use Internet and digital tools to exercise their rights, express opinions, organize protests, etc. As an example, everyone should be allowed to freely post content (user generated content or "UGC") that is accessible to all, without fear of harm.

For people to be able to exercise their rights freely, states should ensure any legislation that affects the exercise of digital rights is clear and not too broad. For example, states should **make sure that Cybercrime laws** or other criminal laws related to the digital sphere are limited to illegal acts that are clearly prescribed. Some cybercrime laws, especially those on online content, covering topics such as disrespect for authority, insults, defamation of the head of state, and obscenity or pornographic material, may unduly restrict the exercise of certain human rights, especially freedom of expression. States should also provide effective and comprehensive **data protection and privacy laws** to protect CSOs' and users' online data against undue collection, processing, transfer, sale, or retention. States should ban, or at the very least **establish moratoria on remote biometric identification** (e.g., facial recognition and other mass biometric surveillance) so that CSOs and activists are free from digital surveillance.

Social Media Companies ("SMCs"), often referred to as platforms or intermediaries given that they host or enable third party content, should be allowed to freely operate. Platforms should generally be shielded from liability for user-generated content, or they would otherwise be incentivized to remove problematic content which is otherwise legal and protected by the right to freedom of expression. Relatedly, laws should not require social media companies to remove hate speech and other illegal content in a very short period of time (e.g. within a few days or hours), as this can easily lead to overbroad censorship. SMCs should have **transparency obligations under national law** and must have in place inclusive appeals systems so that users can appeal decisions around content moderation internally. Importantly, States should ensure effective and accessible remedy and judicial oversight for violations against users' rights on social media platforms, such as when platforms' decisions violate a person's right to express themselves or access information.

Violations of this indicator may include:

- CSOs, bloggers or activists must get authorization from the government to post content online.
- States allow surveillance technology to operate unconstrained or unregulated and/or use spyware/malware to surveil CSOs or activists.
- States limit how surveillance technology can be used but introduce vast exceptions and derogations to prohibitions or limitations in national security, border control, or counter-terrorism laws.

2. Any limitations to digital rights are based on the principles of legality, legitimacy, proportionality and necessity.

Digital rights are human rights, so basic principles of international human rights law and constitutional law restricting human rights apply to them. This means that the Governments limitations applied are guided by the principles of legality, legitimacy, proportionality and necessity.

Therefore, any limitations to digital rights should be based in law and the law should be clear enough so that people can understand what actions may constitute a violation (foreseeability). The Government should not allow vague and overbroad limitations on digital rights (e.g., for the use of biometrics or user-generated content on social media platforms). Any limitation on digital rights should only be made for legitimate purposes as specified in the European Convention on Human Rights or other international treaties. Unspecific references to "extremism" or "terrorism" rarely (if ever) qualify as legitimate.

Limitations to digital rights should be "necessary in a democratic society" – that would mean that even if the restrictions are based in law and try to address a legitimate concern of the government, they also need to make sure that digital rights are not limited to a greater extent than necessary to resolve the concerns of the state. For example, the Government requests for data of social media companies and other platforms must be transparent, limited, and provide appropriate avenues for appeals.

Also, collecting or processing data of CSOs or their representatives for digital technologies (e.g., AI-driven systems) should only take place for **strictly necessary** purposes. Any use of data must be limited in time, scope, and secure/protected against interference. Moreover, when restricting online content because it is considered hate speech or extremist speech, SMCs should take measures to avoid **disproportionately** impacting already marginalized groups such as women/gender non-binary persons and racialized groups.

Violations of this indicator may include:

- Governments pass laws that authorize or enable them to make blanket removals of content, blocking CSOs' websites or de-platforming CSO representatives.
- National security, border control or counter-terrorism law authorize opaque and unaccountable government requests for data, where the concerned user has no knowledge or right to remedy.
- Laws authorize mass collection and use of biometrics for a wide range of purposes, including surveillance.
- Databases that are collected for one purpose are repurposed for another (e.g. national emergency laws authorize data to be collected for tracking COVID-19, and this data later falls in the hands of law enforcement).

3. The development and use of digital technologies, including artificial intelligence (AI) and automated systems is in compliance with international human rights standards.

Emerging technologies can negatively affect digital rights. States should enact **laws that regulate technologies** based on their human rights impacts and risks. They should introduce safeguards to prevent adverse impacts on human rights, especially in cases where the risk of abuse is high (e.g., law enforcement, border control, national security, justice). The State should introduce **mandatory human rights due diligence** including human rights impact assessments (HRIA) imposing the obligation over AI developers and deployers to conduct due diligence on their services and products throughout the entire life cycle of the product (design, development, deployment, maintenance). When technologies are fundamentally incompatible with human rights (e.g., mass biometric surveillance such as remote biometric identification with facial recognition), they should be **banned.**

The State should ensure through the data protection laws that CSOs and affected groups have knowledge of and consent to the use of technologies. They should also have a right to remedy in the case of misuse or abuse of technology. Laws should ensure adequate transparency to affected groups of the used technologies.

Violations of this indicator may include:

- Technologies are deployed without a human rights-based process, such as conducting an HRIA or meaningfully involving civil society and affected groups.

- Data protection and other relevant laws do not adequately regulate AI systems, such that CSOs or affected groups are not aware that they are being subject to an AI system, nor do they have any means to contest the use.

Practice

Indicators for Practice
1. Measures to fight cybercrime, disinformation, hate speech/incitement to violence, and terrorism are not used to limit digital rights. 2. State institutions do not undertake any measures to prevent or disrupt an individual's exercise of digital rights, including through mobile connection signal shutdowns, Internet slowdowns or shutdowns or limiting access to digital tools. 3. State institutions do not use technology to silence, surveil or harass CSOs, human rights defenders, activists and protesters for their online activity and do not block CSO websites and blogs or remove content. 4. State institutions and the private sector conduct human rights due diligence, including impact assessment, and provide transparency into the design, development and deployment of digital technologies and engage in meaningful consultation with CSOs and potentially affected groups before and after deploying digital technologies.

1. Measures to fight cybercrime, disinformation, hate speech/incitement to violence, and terrorism are not used to limit digital rights.

States should not use any measures to fight cybercrime, disinformation, hate speech/incitement to violence, and terrorism as a pretext to limit digital rights. While these measures are important to protect online space and digital rights, they can also be misused to expand government overreach while limiting civic space and negatively impact people's rights online. Many terms such as disinformation and hate speech are not defined under international law, and governments interpret them expansively to justify many restrictions. There are variety of cases when in practice, States use measures to fight cybercrime, disinformation, hate speech/incitement to violence, and terrorism to limit digital rights. In some cases, introducing a state of emergency or protecting state sovereignty (and taking measures against aggressor states) can also be used to limit digital rights, including blocking social media.

Violations of this indicator may include:

- Governments order social media companies (SMC) to systematically block content of CSOs because they see them as threats.
- Governments or companies take advantage of measures to fight cybercrime, disinformation, hate speech/incitement to violence, or terrorism to bypass legal process, transparency requirements or stakeholder engagement.

2. **State institutions do not undertake any measures to prevent or disrupt an individual's exercise of digital rights, including through mobile connection signal shutdowns, Internet slowdowns or shutdowns or limiting access to digital tools.**

Access to the internet is fundamental to exercise our human rights online, and internet shutdowns are inconsistent with human rights as they can never be proportionate. CSOs cannot operate adequately if they do not have access to the internet.

An **internet shutdown** can be defined as an intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information and prevent criticism or exercise of basic rights. A full internet shutdown is the most extreme case, but other related measures can include slowing down the internet or ending/disrupting connection via mobile phones. In such cases, States and telecom companies limit mobile connection to prevent efficient communication of activists / CSOs (especially during public assemblies) or use intercepting devices on mobile phone traffic for surveillance of activists (e.g., IMSI catchers used by law enforcement and/or intelligence agencies).

Internet shutdowns or slowdowns often disproportionately impact at-risk individuals such as journalists, activists and political dissidents. There are examples of States disrupting access to the internet during elections, protests, or school exams.

Violations of this indicator may include:

- Governments use national security or crime as excuses to justify shutting down or slowing down the internet.
- Governments impose strict requirements or pressure on telecommunications to shut down the internet, under the threat of ending licenses, concessions or authorizations.
- Governments try to block access to specific tools in order to prevent online assemblies or critical speech.

3. **State institutions do not use technology to silence, surveil or harass CSOs, human rights defenders, activists and protesters for their online activity and do not block CSO websites and blogs or remove content.**

State institutions do not engage in trolling, doxing or cyberattacks on civil society organizations and other members of civil society. CSOs and activists can engage in online activities without fearing pressure or arrests. Examples of online activities include creating /generating content on social media platforms (e.g., text, photos, videos, audio, etc.), sharing content of other activists or journalists, using communications platforms to facilitate conversations, education/training or gatherings that fall under their right to freely associate (e.g., Zoom, Skype or other videoconference platforms or messaging apps such as WhatsApp, Signal or Telegram).

CSOs and activists can operate free from digital state surveillance. Civil society is not subjected to AI-driven biometric identification (e.g., facial analysis technologies including facial and emotional recognition, predictive policing), spyware/malware or other forms of digital surveillance. Also, the

SMCs ensure that users can post content online without revealing their identity, and that anonymity is protected.

Data collection is limited to the strict minimum, as collection of people's private information (especially sensitive data such as biometrics) may discourage/deter people from participating in online activities. This can enable a chilling effect on free expression online and endanger the safety of civic activists. State institutions provide transparency about any request for information or content take down they make to digital platforms/social media companies.

Violations of this indicator may include:

- States procure and/or use surveillance technology to monitor, identify and target activists or representatives of CSOs.
- States representatives lead smear campaigns against activists or CSOs on social media platforms (either by revealing their identity, using fake accounts or posting anonymously)
- States pressure telecoms and other technological companies to provide them with customer private data.
- States establish "watch lists" of persons whose social media activity they monitor to inform future arrests/detention.

4. **State institutions and the private sector conduct human rights due diligence, impact assessment and provide transparency into the design, development and deployment of digital technologies and engage in meaningful consultation with CSOs and potentially affected groups before and after deploying digital technologies.**

Pillar two of the United Nations Guiding Principles on Business and Human Rights sets out companies' responsibility to conduct human rights due diligence in order to prevent or mitigate any adverse impacts on human rights of their activities, services, products and relationships. This process includes assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Transparency is necessary for understanding threats to or violations of human rights and the first step for holding perpetrators accountable. Transparency in technology can take many forms and varies based on the type of technology and the stage of its life cycle (I.e., design, development, testing, deployment, maintenance). Companies and governments conducting a human rights impact assessment should publish key information related to the process/methodology, stakeholder engagement, findings, and integration of findings into their activities/products. Overall, it is important that any information that is communicated is done so in a way that is accessible and understandable to a wide range of stakeholders, especially marginalized ones.

When assessing the human rights impacts of its services and products, a company or State institution should consult with CSOs and affected groups. This engagement should be ongoing, transparent, and allow for meaningful participation of external stakeholders (including by providing resources and capacity building/training for participation).

Violations of this indicator may include:

- Deploying technologies without any prior HRIA
- Conducting an HRIA without any participation of CSOs and affected groups, and/or not publishing the outcomes of the HRIA
- Conducting a one-off HRIA and not integrating findings into the broader design, development or deployment process
- Providing inaccurate, false or misleading information or restricting access to relevant information.

Standard 2. The state creates conditions for the enjoyment of digital rights

Beyond the negative obligation to "do no harm", States have positive obligations to enable a safe and inclusive environment (both offline and online) where CSOs, activists, journalists and other stakeholders can effectively carry out their work. When developing policies or establishing practices related to digital rights, States must meaningfully engage all stakeholders, with particular attention given to civil society, affected groups and marginalized communities. States must establish effective and accessible grievance mechanisms, to ensure that those whose digital rights have been violated can have access to remedy. This includes creating a legal framework to hold technology companies accountable for their activities, services, and products, as well as ensure corporate responsibility to protect human rights. Other practices are related to bridging the digital divide or supporting rights-based digitalization that may support civil society activity, ensuring a safe and open online space free from surveillance, harassment and abuse, and protecting civil society representatives' data.

Law

Indicators for Law
1. The state guarantees open, accessible and affordable Internet. 2. The state ensures the existence of an independent, effective, adequately resourced and impartial oversight mechanism and there are effective remedies for violations of digital rights.

1. The state guarantees open, accessible and affordable Internet.

Access to the Internet is fundamental to exercising our human rights online, especially freedom of expression, association and assembly, and this is explicitly stated in law. Everyone should be guaranteed open, accessible and affordable Internet. This means having access to the worldwide Internet (and not to a modified country version). Open Internet means that websites can freely operate with net neutrality and without hindering from Internet Service Providers (ISPs). Also, the Internet should be accessible, meaning that all regions have access to the internet, especially the poor, rural or under-developed areas. The access to internet should be affordable: at a low price or free, especially for persons from poor or lower socio-economic status. The States should support the telecommunications infrastructure and software. A positive step could be that the States financially support CSOs and marginalized groups which can't afford market-rate internet. Telecommunications operators and companies can freely operate under national law.

Violations of this indicator may include:

- Governments impose excessive restrictions on telecoms, and/or large areas of a country do not have available internet infrastructure so that CSOs operating there cannot access the internet.
- Net neutrality laws hinder open and fast internet, favoring some websites over others.

2. The state ensures the existence of an independent, effective, adequately resourced and impartial oversight mechanism and there are effective remedies for violations of digital rights.

State institutions ensure that CSOs and activists have effective and accessible access to remedy, including by providing the training and resources necessary to seek remedy.

CSOs should be able to appeal any violation of their digital rights. The appeal procedure should be clear and not burdensome. Any fee for such appeal must be reasonable and should not be an impediment that makes it nearly impossible for CSOs to seek redress. The oversight mechanism should provide a timely remedy that should also include compensation for any damage.

Violations of this indicator may include:

- Limiting remedy to harms or violations committed offline and not online.
- Using trade secrets, intellectual property law, national security, criminal justice or immigration law, among others, as obstacles to systematically hinder access to justice for digital rights.

Practice

Indicators for Practice
1. The state engages in a transparent and inclusive dialogue with all stakeholders, including civil society, when formulating and adopting national digital technology and AI-related public policies. 2. State institutions engage in or finance activities aiming at bridging the digital divide, including through education, access to technology, promoting digital literacy, etc. 3. The state uses digital technology to enable the exercise of human rights.

1. The state engages in a transparent and inclusive dialogue with all stakeholders, including civil society, when formulating and adopting national digital technology and AI-related public policies.

When developing national tech policy and laws, States ensure that these are consistent with international human rights standards.

Multi-stakeholder collaboration is critical to ensure that digital technologies and tech law/policy is rights-based and promotes the interests of all, especially those that are most at-risk. This requires centering affected communities and marginalized groups in all conversations and development related to tech policy. States should emphasize working with CSOs that do not traditionally focus on

digital rights, including those who represent the interests of women and gender non-binary persons, racialized people, LGBTQI+, disabled persons, children and the elderly, and persons from rural areas or of lower socio-economic status, among others.

States should provide adequate resources, both in terms of finance and capacity building/training, to community representatives and CSOs, to ensure their meaningful participation. This is especially important in the digital rights sector where there tends to be a "knowledge gap", and many activists feel ill-prepared to participate in tech policy.

Violations of this indicator may include:

- Passing laws or policies related to technology without adequate consultation with stakeholders, including by providing insufficient time or resources to meaningfully participate.
- Limiting access to documents or information necessary for meaningful multi-stakeholder participation.
- Favouring corporate actors or powerful organizations over less resourced and grassroots orgs.

2. State institutions engage in or finance activities aiming at bridging the digital divide, including through education, access to technology, promoting digital literacy, etc.

The State should be committed to building the digital skills of its citizens and CSOs. They provide training on digital security and digital literacy to citizens and CSOs. They provide funding to CSOs, including those that to not traditionally work on digital rights, to participate in issues related to digitization and human rights in the digital sphere. Also, the States provide equipment, devices, access to the internet to CSOs who do not have the resources or means to procure it. This includes software needed to prevent hacking, surveillance, or cyberattacks, among others.

Violations of this indicator may include:

- States take no actions to ensure access to Internet to all
- States engage only with technologically advanced communities.
- States use digital equipment that exposes users/CSOs to attacks or vulnerabilities, or for the purpose of surveilling them (e.g. Infiltrated with spyware/malware)

3. The state uses digital technology to enable the exercise of human rights.

Digitalization of some administrative services can be helpful, so long as alternative means are available as this does not exclude any CSOs or put them in danger. This has become especially important during the COVID-19 pandemic, where a lot of in-person interactions are restricted. Examples of digitalization of the administrative services include electronic petitions, electronic submission of documents for registration of CSOs, online communication via email or videoconference, online public registers or access to information. The collection/disclosure of private information that is necessary to develop or deploy these digital tools does not endanger the exercise of human rights or the safety of activists, CSOs, etc. Affected groups' data, especially sensitive data, must be fully protected.

Violations of this indicator may include:

- Using digital tools for administrative purposes without due consideration for privacy and security or in a way that excludes CSOs or marginalized groups.

Relevant resources

- https://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx
- https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24736
- https://www.ohchr.org/Documents/Issues/Terrorism/Use-Biometric-Data-Report.pdf
- A/HRC/41/41 - 2019 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association
- A/HRC/46/37 (2021) Report of the Special Rapporteur on the right to privacy ("Artificial intelligence and privacy, and children's privacy")
- A/HRC/39/29 (2018) The right to privacy in the digital age, Report of the Office of the United Nations High Commissioner for Human Rights
- A/HRC/RES/32/13 - 32/13. Human Rights Council resolution on the promotion, protection and enjoyment of human rights on the Internet, 1 July 2016
- A/71/53 - Human Rights Council resolution 32/31 on Civil society space, 1 July 2016
- A/HRC/47/L.22 Human Rights Council Resolution 47/22 (2021) on the promotion, protection and enjoyment of human rights on the internet
- A/HRC/47/L.12/Rev.1 Rights Council Resolution 47/12 (2021), New and emerging digital technologies and human rights
- A/HRC/47/L.1 Human Rights Council Resolution 47/1 (2021), Civil Society Space Resolution
- A/RES/71/199 - General Assembly Resolution 71/199 on the right to privacy in the digital age, 19 December 2016
- A/RES/73/173 - General Assembly Resolution 73/173 on promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association, 17 December 2018
- A/HRC/17/27 - Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011
- A/HRC/38/35 - Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018
- General comment No. 34 (2011), Article 19: Freedoms of opinion and expression
- General comment No. 37 (2020) on the right of peaceful assembly (article 21)
- Council of Europe Commissioner For Human Rights Recommendation (2019) "Unboxing artificial intelligence: 10 steps to protect human rights" CM/Rec(2020)1 - Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, 8 April 2020
- Council of Europe, Consultative Committee of Convention 108, Guidelines on Facial Recognition (2021)
- UN Special Rapporteurs Joint Statement, "Digital rights: key to inclusive and resilient world", RightsCon 7-11June 2021

ANNEX

Glossary of Definitions

This collection of definitions provides a list of the key terms and concepts used in the CSO Meter and its Explanatory Note.

Anti-money laundering

Anti-money-laundering (AML) is a set of procedures, laws and regulations designed to prevent, disrupt and stop the practice of generating income for an individual or group through carrying out illegal actions and/or criminal acts.

Artificial Intelligence

Artificial intelligence systems are algorithm-based technologies designed with a capacity to interact with a set physical or virtual environment, analyse it, draw correlations and perform cognitive tasks such as making predictions, recommendations or decisions. AI systems are designed to operate and achieve a given set of human-defined objectives with varying degrees of autonomy from human intervention. AI-based systems can be purely software-based, acting in the virtual world (e.g. voice assistants, image analysis software, search engines, speech and face recognition systems) or AI can be embedded in hardware devices (e.g. advanced robots, autonomous cars, drones or Internet of Things applications)."

Authorization and notification

Authorization is the act of authorities granting permission to the organizers of a peaceful assembly (expressly provided in writing). Notification is the act of providing information to the authorities on an upcoming assembly, and does not constitute a request for permission. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly, Annex C)*

Censorship

The suppression of speech, public communication, or other information, or any other activity that stops the transmission of information and ideas to those who want to receive them, on the basis that such material is considered objectionable, harmful, sensitive, or inconvenient as determined by a government or private institution.

Civil society

The ensemble of individuals and organised, less organised and informal groups through which they contribute to society or express their views and opinions, including when raising issues regarding human rights violations, corruption and other misconduct or expressing critical comments. Such organised or less organised groups may include professional and grass-roots organisations, universities and research centres, religious and non-denominational organisations and human rights defenders. *(Council of Europe Guidelines for civil participation in political decision making, CM (2017)-83 final (adopted 27 September 2017), Art. 2)*

Civil society organisation (CSO)

CSOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based. CSOs can be either informal bodies or organisations or ones which have legal personality. They may include, for example, associations, foundations, nonprofit companies and other forms that meet the above criteria. The CSO Meter does not consider the environment for political parties, religious organizations or trade unions. *(Council of Europe Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, art. 76-77 (adopted 10 Oct 2007), Art. 1-3)*

CSOs and associated individuals

Various categories of persons who work closely with CSOs and may be affected by state laws and practices that target CSOs. The group of associated individuals may include employees, members, board members, volunteers, donors, supporters and others with links to a CSO.

Civil participation

The engagement of individuals, CSOs and civil society at large in decision-making processes by public authorities. Civil participation in political decision-making is distinct from political activities in terms of direct engagement with political parties and from lobbying in relation to business interests. Civil participation in decision-making can take different forms, including: provision of information, consultation, dialogue and active involvement. *(Council of Europe Guidelines for civil participation in political decision making, CM (2017)-83 final (adopted 27 September 2017), Art. 2 and Art. 19)*

Consultation

A form of initiative where public authorities ask CSOs for their opinion on a specific policy topic or development. Consultation usually includes the authorities informing CSOs of current policy developments and asking for comments, views and feedback. *(Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process, CONF/PLE(2009)CODE1 (adopted by the Conference of INGOs on 1 October 2009), para. IV.i.2.)*

Counter terrorism financing

Countering terrorism financing (CTF) is a set of procedures, laws and regulations designed to prevent, disrupt and stop the practice of financing of terrorism acts, individuals or organizations. *(The FATF Recommendations - International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012))*

Crowdfunding

Crowdfunding is a way of raising money from a large number of people via online platforms. It can be used to finance projects, CSOs and businesses. Funders and project owners are matched through the use of electronic information systems. *(Proposal for a Regulation of the European Parliament and Of The Council on European Crowdfunding Service Providers (ECSP) for Business, COM(2018) 113 final, Art. 3)*

Cybercrime

Cybercrime consists of criminal acts committed online by using electronic communications networks and information systems. The EU has implemented laws and supports operational cooperation also through non-legislative actions and funding. Cybercrime is a borderless issue that can be classified in three broad definitions: (1) crimes specific to the internet, such as attacks against information systems or phishing (e.g. fake bank websites to solicit passwords enabling access to victims' bank accounts); (2) online fraud and forgery: large-scale fraud can be committed online through instruments such as identity theft, phishing, spam and malicious code; (3) illegal online content, including child sexual abuse material, incitement to racial hatred, incitement to terrorist acts and glorification of violence, terrorism, racism and xenophobia. Many types of crime, including terrorism, trafficking in human beings, child sexual abuse and drugs trafficking, have moved online or are facilitated online. As a consequence, most criminal investigations have a digital component. (Source: https://ec.europa.eu/home-affairs/what-we-do/policies/cybercrime_en)

Data protection

Data protection is the protection of personal data of an individual alone or as part of a group or organisation. The right to data protection is inferred from the more general right to privacy. Several human rights treaties establish the right to protect specific categories of data and the way they should be processed (e.g., The Council of Europe Convention 108 for the Protection of Individuals with Regard to the Automatic Processing of Personal Data and the OSCE Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data).

Decision-making process

The development, adoption, implementation, evaluation and reformulation of a policy document, a strategy, a law or a regulation at national, regional or local level, or any process where a decision is made that affects the public, or a segment thereof, by a public authority invested with the power to do so. *(Council of Europe Guidelines for civil participation in political decision making, CM (2017)-83 final (adopted 27 September 2017), Art. 2)*

Defamation

Defamation is a civil wrong (a tort or delict) committed by one individual against another or others, including in some circumstances a "legal person." The nature of the wrong is the negative effect on, or harm to, a person's reputation or good name. Reputation is not about self-esteem but rather the esteem in which others hold one. Thus, the act of defamation consists of making a false or untrue statement about another person that tends to damage his/her reputation in the eyes of reasonable members of society. The statement may consist of an allegation, an assertion, a verbal attack or other form of words or action. Such a statement may be made orally or in writing; may take the form of visual images, sounds, gestures and any other method of signifying meaning; may be a statement that is broadcast on the radio or television, or published on the Internet; or may be an electronic communication. *(Tarlach McGonagle (2016) Freedom of expression and defamation: A study of the case law of the European Court of Human Rights, Council of Europe. p. 14)*

Demonstration

A demonstration is an assembly or procession held to express the point of view of the participants. (*OSCE-ODIHR Guidelines on Freedom of Peaceful Assembly, Annex C).* Counter-demonstrations, also known as simultaneous opposition assemblies, are a particular form of simultaneous assembly in which the participants wish to express their disagreement with the views expressed at another assembly. The right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly, para. 4.4)*

Digital Rights

Digital rights are all human rights that are applicable in the digital world. While emphasis is mostly given to the right to privacy, freedom of opinion, expression, and information, and freedom of assembly and association, digital rights have a much larger scope. For example, the right to non-discrimination, right to life, liberty, and security, right to fair trials and remedy, and economic, social and cultural rights are also highly relevant and often at risk when digital technologies are used.

Digital divide

The term "digital divide" refers to the gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard to both their opportunities to access information and communication technologies (ICTs) and to their use of the Internet for a wide variety of activities. The digital divide reflects various differences among and within countries/regions and demographic groups. (*Source: OECD*)

Digitally-mediated assembly

A digitally-mediated assembly is a gathering of more than one person for specific purposes that takes place either through the support or by means of digital communication technologies: e.g., via mobile phones, internet services, social media or other digital platforms. In a not-so-distant past, the traditional definition of "peaceful assembly" only included physical gatherings of individuals to protest, commemorate or take part in social/recreational activities. However, nowadays our increasingly digital world has opened up new ways to organize such gatherings and even new virtual spaces to hold them or drum up support for them. In a nutshell, we can categorise digitally mediated assemblies as: (1) Digitally-enabled: taking place in physical spaces but facilitated by digital technologies (in particular by the Internet), because they are previously discussed, organised and/or promoted through them; (2) Digitally-based: taking place in an entirely virtual space (usually the Internet); (3) Hybrid: with elements of both. For example, they are organised via social media and take place both in physical spaces and online or they started in physical spaces but are continuing online or vice versa, etc. (Source: ECNL)

Discrimination

The European Convention states that the enjoyment of the rights and freedoms set forth in its text shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. *(Article 14 of the European Convention of Human Rights)* The principle of non-

discrimination prohibits both direct and indirect discrimination. Direct discrimination refers to acts or regulations that generate inequality, whereas indirect discrimination includes acts or regulations that, although prima facie not discriminatory, result in unequal treatment when put into practice. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 123)*

Equity

Equity between the business and civil society sectors implies a fair, transparent and impartial approach in which the regulation of each sector is grounded in domestic and international law, standards and norms (*Thematic report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/70/266 (4 Aug 2015), para. 17*). Equitable treatment implies a proportional approach to the sectors, taking into account each sector's peculiarities.

Hate speech

All forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. *(Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "Hate Speech", adopted by the Committee of Ministers on 30 October 1997, Appendix to Recommendation No. R (97) 20, Scope)*

Hate speech (Six-part test)

According to international standards on freedom of expression, a statement qualifies as "hate speech" if it complies with a specific six-part threshold test, which includes:

1. The context of the speech: e.g., was the speech held in a private or public meeting? What was the social and political situation at the time the speech was made and disseminated?
2. Speaker: e.g., what was the status, position or standing of the speaker in the society? Was the speaker part of an organisation?
3. Intent: e.g., negligence and recklessness of the speaker are not sufficient to prove the "advocacy" or "incitement" of the speech and therefore qualify it as "hate speech";
4. Content and form: e.g., to what extent was the speech provocative and direct? What arguments were used to support it?
5. Outreach: e.g., was the speech public or private? Was the speech circulated in a restricted environment or widely accessible to the general public? What means of disseminations were used (individual leaflet, mainstream media, internet, etc.)? How vast was the audience reached?
6. Likelihood, imminence of harm: e.g., was there a reasonable probability that the speech would succeed in inciting actual action against the target group? This criterion applies even though it is acknowledged by European Court of Human Rights jurisprudence that it is not necessary that hatred or violence actually happen as a consequence of inflammatory speech, as long as the presence of a clear unequivocal intent to do so is demonstrated. (*Annual report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4)*

Human rights based approach to policing assemblies

The policing of assemblies furthers the realisation of human rights as laid down in international human rights instruments. It is guided by the principles of legality, necessity, proportionality and non-discrimination and adheres to applicable human rights standards. To implement human rights in an adequate manner, the state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence or other restrictions. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly, para. 5.3)*

Human rights due diligence

A human rights due diligence process is a process to identify, prevent, mitigate and account for how businesses address their impacts on human rights (United Nations Guiding Principles, Guiding Principle 15(b)).

Human Rights Impact Assessment

HRIA can be defined as a process for identifying, understanding, assessing and addressing the adverse effects of business projects and activities on the human rights enjoyment of impacted rights-holders with meaningful participation of civil society and affected stakeholders.

Lobbying

Lobbying is promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making. *(Council of Europe Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making, Adopted by the Committee of Ministers on 22 March 2017 at the 1282nd meeting of the Ministers' Deputies; Definitions)* According to the Council of Europe Guidelines for civil participation in political decision-making, lobbying is distinct from civil participation in political decision-making, because it is related to business interests.

Necessity and proportionality

While the state may restrict human rights in some circumstances, it must always provide adequate justification. The European Court of Human Rights examines three main questions to determine if the interference was justified. These involve showing that: (1) the measure was in accordance with the law, (2) its aim was to protect a recognized state interest in fact, and (3) it was necessary in a democratic society. In determining whether such a need exists, attention must be paid to the particular facts of the case and to the circumstances prevailing in the given country at the time. The state's action must also be based upon an acceptable assessment of the relevant facts. The requirement or doctrine of proportionality denotes that a balance is struck between the interests of the community and the rights of the individual and CSOs, thus the interference must be the minimum needed to secure the legitimate aim. *(Handyside v. the United Kingdom judgment of 7 December 1976, A 24)* The principle of proportionality requires that authorities do not routinely impose restrictions. A blanket application of legal restrictions tends to be over-inclusive and will most likely fail proportionality test because no consideration has been given to the specific circumstances of the case. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly, para. 2.4)*

Net Neutrality

Net neutrality is the principle that individuals should be free to access all content and applications equally, regardless of the source, without Internet Service Providers discriminating against specific online services or websites. In other words, it is the principle that the company that connects you to the internet does not get to control what you do on the internet. (*Source: Public Knowledge*)

Peaceful assembly

A non-violent gathering of more than one person for a specific purpose that may be an expressive one but also with the only intention of affirming group solidarity or identity or for entertainment, cultural, religious or commercial objectives. The term "peaceful" equals to "non-violent". Only peaceful assemblies are protected. "Violence" in an assembly typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Other behaviour such as mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities does not amount to "violence". Therefore, term "peaceful" should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly, para. 1.2-1.3; HRCommittee General Comment 37 on Article 21, ICCPR, para 15)*

Political activity

There is no universally accepted definition of political activities for the purposes of NGO engagement. Laws and practice may distinguish between political activities and other kinds of activities, which can be grouped as public policy activities. Political activity could be defined narrowly to include e.g., registering a candidate for election, direct or indirect financing of a political party or elections, participation in election campaigning, supporting candidates for public office, or particular political parties. Public policy activities, on the other hand, may include attempting to influence legislation, engaging in decision-making processes, lobbying, campaigning on issues of relevance, raising awareness of issues of concern, monitoring elections, participating in public affairs and criticism of actions by public authorities. *(Conference of INGOs of the Council of Europe, Expert Council on NGO Law Regulating Political Activities of Non-Governmental Organisations, OING Conf/Exp (2014) 2, para. 32 and 34).*

Public authority

Any executive, legislative or administrative body at national, regional or local level, including individuals, exercising executive power or administrative functions. *(Council of Europe Guidelines for civil participation in political decision making, CM (2017)-83 final (adopted 27 September 2017), Art. 2)*

Privacy

Privacy is the fundamental right for everyone to not be subject to arbitrary interference with the intimate aspects of their life, family, home or correspondence, nor to attacks upon their honour and reputations. Everyone has the right to be protected by law against such interferences or attacks. The right to privacy is also instrumental to the protection of everyone's right to freely form opinions and express them without fear of judgment or discrimination. Every limitation of the right to privacy of

individuals and organisations must be lawful, legitimate and proportionate, striking a balance with the protection of other fundamental rights. *(International Covenant on Civil and Political Rights, art. 17)*

Remedy and redress mechanism

Remedy and redress mechanisms are administrative and judicial proceedings that establish the right to bring suit or to appeal against and obtain review of any actions or inactions of the authorities that affect rights, including those actions concerning the establishment of associations and their compliance with charter or other legal requirements. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 36)*

Resources

In order to pursue their objectives, CSOs require resources – i.e. funding and other forms of support, whether public or private. The term "resources" is a "broad concept that includes: financial transfers (for example, donations, grants, contracts, sponsorships and social investments); loan guarantees and other forms of financial assistance from natural and legal persons; in-kind donations (for example, the contribution of goods, services, software and other forms of intellectual and real property); material resources (for example, office supplies and information technology equipment); human resources (for example, paid staff and volunteers); access to international assistance and solidarity; the ability to travel and communicate without undue interference; and the right to benefit from the protection of the state. Resources also include both public and private funding, tax incentives (for example, incentives for donations through income tax deductions or credits), in-kind benefits and proceeds from the sale of goods belonging to the association, as well as other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities and property transactions). *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 201)*

SLAPP

Strategic lawsuits against public participation (SLAPP) are a form of legal harassment aimed at intimidating and ultimately silencing those that speak out on issues that are of political or societal significance. SLAPPs are typically pursued by private parties (e.g., corporations, tycoons, etc.) or by state/government representatives acting in their private capacity and may affect journalists, activists, academics, and CSOs.

Spontaneous assembly

A spontaneous assembly is generally regarded as one organized in response to some occurrence, incident, other assembly or speech, where the organizer (if there is one) is unable to meet the legal deadline for prior notification, or where there is no organizer at all. Such assemblies often occur around the time of the triggering event, and the ability to hold them is important because delay would weaken the message to be expressed. Where a lone demonstrator is joined by another or others, the event should be treated as a spontaneous assembly. While the term "spontaneous" does not preclude the existence of an organizer of an assembly, spontaneous assemblies may also include gatherings with no identifiable organizer. Such assemblies are coincidental and occur when a group of persons gathers at a particular location with no prior advertising or invitation. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly, para. 115 and 126-127)*

State funding

State funding is a form of financing of CSOs which is assigned from the public budget at the central and/or local level. Direct state funding happens through providing direct budgetary support, e.g. grants, subsidies, contracting out a service or providing third party payments (voucher mechanism). Indirect funding refers to the provision of certain tax benefits from the state. It may also take the form of a "percentage mechanism" by which every taxpayer may designate a certain percent of personal income tax payment to a qualified beneficiary of his or her choice.

Stigmatization

The act of treating someone or something unfairly by publicly disapproving of them. *(Definition by Cambridge Advanced Learner's Dictionary & Thesaurus)* Stigmatization may include strident rhetoric declaring CSOs tools of foreign influence for receiving foreign funding, and claiming that their goal is to undermine the state. Stigmatization can result in multiple and aggravated forms of discrimination, as well as visible and invisible forms of violence that prevent them from carrying out their work in a safe and enabling environment. (*Reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/38/34 (13 June 2018) and A/HRC/34/52/Add.3)*

Transparency

In the civil society context, transparency refers to the level of openness and the disclosure and dissemination of information concerning a CSO's values, processes and procedures. *(CIVICUS (2014) Accountability for Civil Society by Civil Society: A Guide to Self-Regulation Initiatives, p. 8)* Openness and transparency are fundamental for establishing accountability and public trust. The state may not require associations to be accountable and transparent, but should encourage and facilitate this. *(OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 224)***Volunteering**

Volunteering is unpaid, non-compulsory work where individuals perform activities through an organization without compensation. Volunteers can receive reimbursement of expenses related to the volunteering (food allowance, transport to and from the place of volunteering, accommodation, training expenses, etc.) as well as rewards, honoraria or similar payments as recognition for voluntary services. Based on the nature of such payments and the recipient's circumstances, the receipt of this type of payment should not preclude the person from being considered a volunteer. (*International Labour Organization, Manual on the Measurement of Volunteer Work, 2011, para 3.5)*

Whistleblower

Any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector. (*Council of Europe, Recommendation CM/Rec (2014)7 on the protection of whistleblowers and Explanatory Memorandum, Definitions*)

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