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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****General principles and guidelines on ensuring the right of  
civil society organizations to have access to resources****Report of the Special Rapporteur on the rights to freedom of peaceful  
assembly and of association, Clément Nyaletsossi Voule\****Summary*

In the present report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, presents a compilation of general principles, practical recommendations and positive actions on how to create and maintain, in law and in practice, an enabling environment for the enjoyment of civil society organizations' right to access resources. This report seeks to assist States, the donor community and other key stakeholders in the implementation of the recommendations made by the Special Rapporteur in his 2022 annual report to the Human Rights Council (A/HRC/50/42), which examines global trends and challenges threatening civil society's access to financial resources, including access to foreign funding.

The Special Rapporteur hopes that these guidelines will offer a useful practical tool for States and other key stakeholders on protecting, supporting and empowering civil society organizations globally and promoting cross border giving and solidarity for the advancement of human rights, democracy and sustainable development.

\* Reproduced as received, in the language of submission only.



## Introduction

1. The right of associations to freely access human, material and financial resources is inherent in the right to freedom of association, as set out in article 22 of the International Covenant on Civil and Political Rights.<sup>1</sup> To realize this right, States are required to ensure civil society organizations can seek, secure and use resources from domestic, foreign and international sources without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities.<sup>2</sup>

2. In June 2022, the Special Rapporteur submitted to the Human Rights Council a thematic report<sup>3</sup> in which he examined global trends and challenges threatening civil society's access to financial resources.<sup>4</sup> In the report, he warned about the persistent proliferation of laws, regulations and practices that are severely limiting access to funding by civil society actors in many countries in the world, including a trend of overregulation of the civil society sector under the guise of counter-terrorism measures. The Special Rapporteur also examined the policies and practices of donors, financial institutions and multilateral entities that continue to impose, often unintentionally, severe burdens on civil society actors that negatively affect both their financial sustainability as well as the impact of their programs and activities. He made several recommendations to these actors to ensure human rights are respected when they devise and implement policies and practices that could affect civil society's access to funding – directly or indirectly.

3. In July 2022, the Human Rights Council adopted resolution 50/17, in which took note with appreciation of the report submitted by the Special Rapporteur global trends and challenges threatening civil society's access to financial resources, and it recognized that these trends have intensified in the context of the COVID-19 health crisis. The Council called upon States to “establish and maintain a safe and enabling environment in which civil society actors can operate freely, including by fostering and facilitating their access to financial resources, to ensure that national legislation, policies and practices are in compliance with their international human rights obligations and commitments, and to refrain from applying laws and engaging in practices that unduly interfere with their ability to do so including with regard to their ability to access funding.”

4. In the present report, the Special Rapporteur provides guidance to States and key stakeholders on how international human rights standards and recommendations developed by the Human Rights Council and his mandate may be operationalized in domestic law and practice to ensure civil society organizations can fully enjoy their right to seek, receive and use financial resources. The report starts by summarizing a set of general principles that, in accordance with international human rights law, should guide the effective implementation of civil society's right to access resources. Secondly, it provides practical recommendations and guidelines on measures States are expected to take to comply with their human rights obligations in this field. Afterward, it provides practical recommendations to the donor community, and other key stakeholders, such as financial institutions and multilateral entities (e.g., the Financial Action Task Force - FATF), so they can also ensure their policies and practices do not unduly restrict civil society's access to resources. The report includes some promising and good practices that could be scaled up and replicated by these actors.

5. The report compiles and builds on guidelines and recommendations made by the Special Rapporteur, previous mandate holders,<sup>5</sup> other special procedures experts, particularly

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<sup>1</sup> See A/HRC/50/42, A/HRC/23/29.

<sup>2</sup> See A/HRC/50/42, A/HRC/23/29; and Human Rights Council resolutions 32/31 and 50/17.

<sup>3</sup> A/HRC/50/23.

<sup>4</sup> A/HRC/50/23.

<sup>5</sup> For instance, the report builds on the “General principles on protecting civic space and the right to access resources” adopted in 2014 by the former Special Rapporteur on the rights to peaceful assembly and of association, Maina Kiai, and the Community of Democracy. The tool is available at: <https://www.ohchr.org/en/documents/tools-and-resources/general-principles-protecting-civic-space-and-right-access-resources>

the Special Rapporteur on counterterrorism and human rights,<sup>6</sup> and regional human rights bodies. The report was also developed in consultation with civil society and other stakeholders, including States and donors from different regions of the world. In particular, the Special Rapporteur took into account the written inputs he received for the development of the 2022 report, which totaled 87 submissions from States, civil society organizations, national human rights institutions and international organizations. The report was also developed with reference to good and promising practices observed by the Special Rapporteur in the course of his work.

## I. Definitions

6. The present report focuses on access to resources by “associations” or “organized civil society”, as essential contributors to sustainable development and the realization of human rights. The mandate has previously described an “association” within the meaning of article 22 of the International Covenant on Civil and Political Rights (ICCPR), as encompassing “any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests.”<sup>7</sup> While these associations can take a wide variety of forms, it is understood that they share some basic commonalities: they are non-governmental, non-profit, non-violent and self-governing entities that pursue common interests and values in various spheres of life, including in political, social, cultural, religious and scientific fields.<sup>8</sup> This includes both formal and informal organizations, national or international in their composition and sphere of operation, and can include voluntary groups, clubs, non-profit organizations, cooperatives, foundations, charities, trade unions, as well as advocacy groups.<sup>9</sup> Political parties, a type of association protected under article 22 of the Covenant for which different rules governing access to funding and resources may apply,<sup>10</sup> are excluded from the scope of this report.

7. “Resources” is broadly understood to cover financial transfers (including donations, grants, contracts, sponsorships and social investments); loan guarantees and other forms of financial assistance; in-kind donations (e.g., goods, services, software, intellectual property, real property); material resources (e.g., office supplies, information technology equipment); and human resources (e.g., paid staff, volunteers). “Resources” also covers access to international solidarity; the ability to travel and communicate without undue interference; and the right to benefit from the protection of the state.<sup>11</sup> However, many of the issues covered in these guidelines primarily deal with associations’ access to financial resources or funding.

8. The Special Rapporteur uses the term “donor” in the present report to refer to any natural and legal persons that voluntarily makes a gift of property, donation or grant to civil society associations. Donors can be domestic, foreign or international, as well as of public or private nature, including individuals; charities; foundations; governments; corporations and international organizations (including United Nations funds and programmes).

9. “Philanthropy” is understood in the report more specifically as the practice of giving money, time, experience, skills and/or talent, all with the altruistic objective of improving human welfare. It includes individual giving by everyday givers and high net-worth

<sup>6</sup> For example, A/74/335 and A/HRC/40/52.

<sup>7</sup> A/HRC/20/27, para. 51.

<sup>8</sup> A/HRC/35/28, para. 10.

<sup>9</sup> A/HRC/20/27, para. 51. See also, Council of Europe’s Committee of Ministers Recommendation (2007)14, Basic Principles; and Conference of International NGOs of the Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process.

<sup>10</sup> Previously, the mandate has indicated that while political parties may be subjected to different rules governing access to funding and resources, they “must be non-discriminatory and their implementation should not be arbitrary, with a view to not jeopardizing the independence of political parties and their ability to genuinely compete in elections. Foreign donations may be regulated, limited or prohibited to avoid undue influence of foreign interests in domestic political affairs.” See, A/HRC/20/27, para. 71.

<sup>11</sup> A/HRC/35/28, para. 12.

individuals, institutional giving through associations and foundations, as well as local traditions of giving.

## II. General Principles

10. This Section presents a set of general principles that, in accordance with international human rights law, should guide the effective implementation of civil society's right to access resources. These principles underpin the Guidelines and are applicable to all issues addressed in this report.

### A. Principle 1: The freedom to seek, receive and use resources is inherent to the right to freedom of association and essential to the existence and effective operations of civil society

11. International human rights law and standards amply recognize the freedom to access resources as part of the right to freedom of association.<sup>12</sup> Article 22 of the ICCPR protects all activities of an association including activities directed at accessing resources or funding, subject to restrictions consistent with ICCPR Art. 22(2), as described further in Principle 4 below. This includes the freedom to seek, receive and use resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities. Consequently, undue limitations on associations' freedom to access funding violate states' obligations under Article 22 of the ICCPR.<sup>13</sup>

12. Other international human rights instruments also recognize associations' right to access resources. For instance, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders) has recognized in article 13 that everyone has a right, individually and in association with others, to solicit, receive and utilize resources for promoting and protecting human rights through peaceful means.<sup>14</sup>

13. Regional monitoring bodies have also amply recognized that freedom of association protects the right of associations to seek, receive and use financial resources. For example, both the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights have recognized that associations have the right to seek, receive and use funds freely.<sup>15</sup> The Inter-American Juridical Committee recently adopted a Declaration explicitly recognizing that "nonprofit civil entities have the right to seek, access, and use funding for the achievement of their social objectives, from public and private, as well as domestic and foreign sources."<sup>16</sup> In the European context, the Committee of Ministers of the Council of Europe has repeatedly affirmed that "NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own State but also from institutional or individual donors, another State or multilateral agencies".<sup>17</sup> The

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<sup>12</sup> See, A/HRC/50/23, A/HRC/23/29; and Human Rights Council resolutions 22/6, 32/31 and 50/17.

<sup>13</sup> *See id.*

<sup>14</sup> General Assembly resolution 53/144. See also General Assembly resolution 36/55 (Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief), art. 6(f), and CEDAW/C/RUS/CO/8, paras. 15-16 and CEDAW/C/TJK/CO/6, para. 19.

<sup>15</sup> African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly, paras. 37–38, and Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas, para. 179.

<sup>16</sup> Inter-American Declaration of Principles on the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities, March 9, 2023, OEA/SER.Q CJI/RES. 282 (CII-o/23) corr.1, Principle 7.

<sup>17</sup> Council of Europe Committee of Ministers recommendation CM/Rec(2007)14, and see also recommendation CM/Rec(2018)11; OSCE Office for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission), Joint Guidelines on Freedom of Association, principle 7.

European Court of Human Rights<sup>18</sup> and the European Court of Justice,<sup>19</sup> too, have acknowledged that freedom of association also encompasses civil society organizations' right to access funding. Most recently the Council of the European Union acknowledged that "civil society actors at all levels need appropriate and sufficient human, material and financial resources to carry out their missions effectively and that the freedom to seek, receive and use such resources is an integral part of the right to freedom of association."<sup>20</sup>

## **B. Principle 2: Any association – registered and unregistered - should enjoy the right to seek, receive and use funding and resources**

14. The right to freedom of association extends to both registered and unregistered associations. Therefore, not only legally registered associations, but also individuals, and thus, associations which have no legal status, such as unregistered associations – have the right to access funding and resources.<sup>21</sup>

15. States must respect the right of unregistered associations to seek, receive and use funding and resources. Lack of registration alone cannot justify restrictions on an association's right to access resources.<sup>22</sup>

16. In any event, rules regulating the creation of associations must be simple, easily accessible, non-discriminatory, and non-onerous or free of charge to avoid impeding associations to access funding and resources.

## **C. Principle 3: States must respect, protect and facilitate the right to seek, receive and use funding and other resources of all associations, without discrimination**

17. States have the responsibility under international human rights law to respect, protect and facilitate the right to freedom to access resources by civil society organizations.

18. *The obligation to respect* – States parties must refrain from placing illegitimate restrictions in the way of associations' access to resources. For example, States must not require prior authorization to civil society organizations to be able to access domestic and foreign funding and resources.

19. *The obligation to protect* – States must protect civil society organizations from violations of this right by third parties. For example, States must ensure that laws and policies governing the operations of financial institutions does not constrain but enable these corporations to respect the associations' freedom to access funding. States must be diligent in protecting associations from stigmatization, harassment, threats, and attacks on the basis of the sources of their funding.

20. *The obligation to fulfil or facilitate* – States must take measures to facilitate the ability of associations to access funding from its various sources. This includes taking appropriate legislative, administrative, budgetary, judicial and other actions towards the creation and maintenance of an enabling environment for the enjoyment of civil society organizations' right to seek, receive and use resources.

21. *Non-Discrimination* – States' obligations must be implemented in a non-discriminatory manner, with particular attention to the rights and needs of individuals from groups or populations at higher risk of facing discrimination and marginalization, including

<sup>18</sup> European Court of Human Rights, *Ramzanova and others v. Azerbaijan* (application No. 44363/02), para. 59; *Aliyev v. Azerbaijan*, (applications nos. 68762/14 and 71200/14) para 212; *ECODEFENCE and others v. Russia* (applications nos. 9988/13 and 60 others), para. 165.

<sup>19</sup> European Court of Justice, *Commission v. Hungary* (case C-78/18), judgment of 18 June 2020, paras. 110–118.

<sup>20</sup> Council of the European Union, *Conclusions on the role of the civic space in protecting and promoting fundamental rights in the EU*, No. 7388/23 (10 March 2023).

<sup>21</sup> A/HRC/20/27, para. 68.

<sup>22</sup> A/HRC/23/39, para. 17.

women; youth; indigenous peoples, persons with disabilities, persons belonging to minority groups or groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, and non-nationals, as well as activists advocating for women's and sexual and reproductive rights and facing discrimination for their political views, including opposition to their government.

**D. Principle 4: Restrictions on associations' right to seek, receive and use resources must meet requirements set out in Article 22(2) of the International Covenant on Civil and Political Rights, meaning that they must be provided by law and comply with the strict test of necessity and proportionality in a democratic society.**

22. States must ensure that any restriction on civil society organizations' right to access funding and resources complies with international human rights requirements of legality, legitimate aim, necessity and proportionality in a democratic society, as set out in Article 22(2) of the International Covenant on Civil and Political Rights.

23. *Legality* – Restrictions must be “provided by law”. A restriction does not meet this requirement simply because it is formally enacted as a national law. The legality requirement also refers to the quality of the law. The laws in question must be accessible and sufficiently precise to allow members of the society to decide how to regulate their conduct (foreseeability) and may not confer unfettered or sweeping discretion on those who enforce them.

24. Laws that restrict foreign funding, including “foreign agent laws”, generally fail to establish with sufficient degree of foreseeability what funding and what sources of funding would qualify as “foreign funding” for the purposes of registration as a “foreign agent” and allow for and overbroad and unpredictable interpretation of the law in practice.<sup>23</sup>

25. *Legitimacy* – To be lawful any restriction must protect only those interests enumerated in article 22 (2): national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

26. Restrictions to foreign funding based on the protection of State sovereignty, which is not listed as a legitimate ground for restrictions under the Covenant, generally fails to meet this requirement.<sup>24</sup>

27. The State cannot simply assert that national security is threatened when an association receives funding from foreign sourcing. To invoke “interests of national security” States must demonstrate that “restrictions are necessary to preserve the State's capacity to protect the existence of the nation its territorial integrity or political independence against a credible threat or use of force.”<sup>25</sup> Also, national security may not serve to justify measures aimed at perpetrating repressive practices against a state's own population.

28. *Necessity and proportionality* – To meet the condition of necessity, authorities must demonstrate that the restriction can truly be effective in pursuing the legitimate aim and be the least intrusive means among those which might achieve the desired objective. The State must also prove that the measure is necessary to avert a real and not a hypothetical threat to one of the grounds for limitation, such as national security or public order.<sup>26</sup>

29. When assessing the proportionality of a restriction imposed on associations' access to funding, States must examine, in consultation with the civil society sector, whether the

<sup>23</sup> See IND 7/2015, IND 2/2016, IND 10/2016, IND 28/2018 and IND 17/2020. See also detailed analysis of the Foreign Contribution (Regulation) Act, of 2010, at <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>; NIC 3/2020, SLV 8/2021 and RUS 16/2022; See also, European Court of Human Rights. ECODEFENCE v. Russia, (Applications nos. 9988/13 and 60 others), para. 110.

<sup>24</sup> A/HRC/23/39, paras. 30-34.

<sup>25</sup> Human Rights Committee, general comment No. 37 (2021) on the right to peaceful assembly (art.21), para. 42.

<sup>26</sup> A/HRC/23/39, para. 23.

measure is excessively burdensome, and whether the nature and severity of the sanctions imposed in case of non-compliance are proportionate to the gravity of the wrongdoing.<sup>27</sup> Restrictions should not impair the essence of the concerned right or be aimed at discouragement and casting a chilling effect to deter its enjoyment.

#### **E. Principle 5: The right to seek, receive and use resources must be protected offline and online**

30. Digital technologies play a crucial role in enabling and facilitating the full enjoyment of the right to freedom of association, including the freedom to seek, receive and use financial resources.<sup>28</sup> Indeed, increasingly, civil society organizations are relying on new, digitally based techniques (e.g., crowdfunding via the Internet, e-payment systems, email, and SMS-based campaigns) to raise funds and encourage instant and easy giving.

31. States and other relevant stakeholders must ensure associations can freely access and use new and innovative technologies to seek, receive, and use funding such as crowdfunding platforms and other technologies that enable digital giving. These efforts should go hand in hand with measures to bridge digital divides, including the gender digital divide, and enabling digital inclusion.<sup>29</sup>

32. Any measures to restrict the access and use of digital technologies by associations, including to address any security concerns on the Internet, should be in full compliance with international law obligations, be adopted through democratic and transparent national institutions, and satisfy the principles of legality, legitimacy, necessity and proportionality.<sup>30</sup>

33. Similarly, any government and private sector measure that rely on artificial intelligence systems to execute public functions, such as fighting against financial crimes, must ensure that their design, procurement, deployment and operation comply with international human rights standards and is followed by extensive public consultations involving civil society organizations and human rights due diligence.<sup>31</sup>

#### **F. Principle 6: Rules governing access to resources by both the corporate and civil society sectors should be equitable (sectoral equity)**

34. States must ensure that businesses and associations are treated equitably and receive comparable treatment under laws and practices regulating registration and access to resources, including foreign financial resources, taxes, political activity and contributions.<sup>32</sup>

35. In particular, States must refrain from adopting measures that disproportionately target or burden civil society organizations and impair their access to funding, such as imposing onerous vetting rules, prior authorization and registration or licensing requirements for fundraising activities, domestic or foreign or other CSO-specific requirements not applied to the corporate sector.<sup>33</sup>

36. Regulations should be clearly set forth in law, with minimum discretion given to State officials to avoid unequitable treatment between associations and businesses.

37. Differential treatment can be seen in comparing how States help facilitate foreign activity and funding in each sector. In many countries, States often encourage multi-national corporations' foreign direct investment through tax incentives and lowering bureaucratic

<sup>27</sup> Ibid.

<sup>28</sup> Human Rights Council resolution 50/17. See also, A/HRC/41/41.

<sup>29</sup> Human Rights Council resolution 47/16.

<sup>30</sup> Human Rights Council resolution 47/16, para. 13

<sup>31</sup> For more on A/73/348.

<sup>32</sup> A/70/266, paras. 105-108.

<sup>33</sup> A/HRC/23/39, paras. 24, 79 and Community of Democracies/UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, "Protecting civic space and the right to access resources" available at: <https://www.ohchr.org/sites/default/files/GeneralPrinciplesProtectingCivicSpace.pdf>

barriers. This is rarely the case for associations, where foreign activity and funding can be heavily restricted.<sup>34</sup> Tax incentives for donations to civil society organizations convey an important message: governments recognize the role of associations in addressing societal needs. Best practice dictates that States should equally promote unrestricted philanthropic flows across borders.

38. Multilateral organizations, businesses, financial institutions and other stakeholders should also commit themselves to the concept of sectoral equity and contribute to create the best possible enabling environment for associations' access to resources and unhindered cross-border philanthropy.<sup>35</sup>

#### **G. Principle 7: States must ensure that associations are not subject to stigmatization, harassment, threats, and attacks, including on the basis of the sources of their funding**

39. States and state agents must not subject associations to harassment, smear campaigns and other forms of stigmatization, threats, undue audits and other attacks on the basis of the sources of their funding.

40. Receipt of foreign funding as such does not justify the imposition of additional restrictive measures, nor stigmatization measures such as requiring all associations receiving foreign funding to be labeled as "foreign agents," nor targeting, whether through audit procedures, the imposition of penalties or otherwise. Any limitations imposed must comply with the principle of legality, be undertaken for a legitimate purpose as recognized under international human rights law, and be necessary and proportionate in a democratic society.<sup>36</sup>

41. Pursuant to their duty to protect the right to freedom of association, States must unequivocally condemn all attacks committed against civil society actors and take positive measures to ensure associations are protected from harassment, smear campaigns, threats, and attacks, including on the basis of the sources of their funding.<sup>37</sup>

42. States should seek to raise public awareness of the value of a well-resourced and independent civil society and develop a positive narrative around philanthropy, as a strategic part of the economy and the achievement of sustainable development, as well as the protection and promotion of human rights.

#### **H. Principle 8: States and other stakeholders should support and incentivize voluntary efforts by civil society organizations to enhance self-regulation, transparency and accountability mechanisms, based on existing good practice and standards**

43. States and other stakeholders should support and incentivize voluntary civil society efforts to establish independent self-governance standards and promote openness, transparency, accountable and democratic structures.<sup>38</sup>

44. States should refrain from mandating or coopting civil society's self-regulatory efforts.

45. States should permit the formation of umbrella organizations to adopt and enforce principles or standards of conduct. The law should not, however, require membership in any specific umbrella organization.

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<sup>34</sup> A/HRC/50/23, paras. 19-30. See also: A/70/266, paras. 40-46.

<sup>35</sup> A/70/266, paras. 108.

<sup>36</sup> A/HRC/50/23, paras. 25-29 and A/HRC/23/39, para. 20.

<sup>37</sup> A/HRC/23/39, para. 33.

<sup>38</sup> African Commission, Guidelines on Freedom of Association and Assembly in Africa, para. 32. Also, OSCE Office for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission), Joint Guidelines on Freedom of Association, principle 47.



## I. Principle 9: States and other stakeholders must meaningfully engage with civil society organizations when adopting any measures affecting their right to seek, receive and use resources

46. States and relevant stakeholders must develop and improve consultation mechanisms to ensure meaningful and inclusive participation by civil society organizations in processes to design, draft, implement and monitor any legislation, rule, policy, programme or strategy affecting associations' right to access to resources.

47. Civil society organizations should be able to access adequate, accessible, timely and necessary information to allow them to participate effectively in any consultation process.<sup>39</sup>

## III. Recommended Guidelines

48. This Section sets out practical recommendations and guidelines on measures States are expected to take to comply with their human rights obligations in this field. It also provides practical recommendations to the donor community, and key stakeholders, such as financial institutions and multilateral entities (e.g., the Financial Action Task Force - FATF), so they can also ensure their policies and practices do not unduly restrict civil society's access to resources.

### A. States

49. **States must create and maintain, in law and in practice, an enabling environment in which associations can freely seek, receive and use resources, without discrimination and undue interference. Recommended actions that States should take:**

- Ensure associations' right to access resources from domestic, foreign or international sources is explicitly recognized, protected and facilitated in national legislation, regulations and policies, in line with international human rights norms and standards. This includes resources in the form of cash as well as property, goods, services, investments, and other assets.<sup>40</sup>
- Develop policy positions and publicly recognize the legitimate and vital role of a well-resourced, inclusive and independent civil society, a vibrant philanthropic sector and enhanced development cooperation for the full enjoyment of human rights, strengthening democracy, attaining the Sustainable Development Goals and ensuring resilience in addressing global crises.
- Revise existing laws that directly or indirectly restrict associations' right to access to resources and ensure their compliance with international human rights norms and standards.
- Ensure that laws and practice provide for a simple, easily accessible, non-discriminatory, and non-onerous or free of charge process for the legal formation of associations and allow for the existence of unregistered associations.
- Respect and facilitate associations' right to generate resources through their own activities.<sup>41</sup>
- Ensure that the implementation of legislation, policies and regulations concerning associations' access to funding is undertaken by regulatory authorities in a transparent, impartial, timely and accountable manner. Any oversight must have as a guiding principle the promotion of civil society and civic space. Properly resource regulatory authorities and enable them to do their work free from undue interference.

<sup>39</sup> For more detail on access to information for public participation see: A/HRC/39/28.

<sup>40</sup> African Commission, Guidelines on Freedom of Association and Assembly in Africa, para 37.b).

<sup>41</sup> Venice Commission & OSCE, Joint Guidelines on Freedom of Association (2014), paras. 190- 1, 202.

- Develop training for regulatory authorities on international human rights norms and standards concerning the right to freedom of association and civil society organizations' freedom to access resources.<sup>42</sup>
- Develop and implement comprehensive policies to expand and protect civic space, in consultation with civil society organizations and other relevant actors.

**50. States must respect, protect and facilitate associations' right to freely seek, receive and use foreign funding and promote cross-border philanthropy. Recommended actions that States should take:**

- Ensure that laws and regulations do not unfairly target or restrict the international flow of donations, either for associations to receive or to send them abroad. Civil society organizations should not be subject to administrative burdens or charged fees different that of corporations to mobilize international resources and seek, receive and use foreign funding.
- Repeal laws and regulatory measures that unduly restrict foreign funding, including, measures:
  - (i) Imposing blanket prohibitions on accessing foreign funds;
  - (ii) Imposing prior authorization, registration, or licensing requirements to receive funding or carry out fundraising activities, domestic or foreign;
  - (iii) Requiring additional burdensome and overly intrusive reporting or public disclosure obligations from civil society organizations seeking to access or use foreign funds;
  - (iv) Imposing caps or additional tax on the income from foreign funding;
  - (v) Stigmatizing or delegitimizing the work of foreign-funded and other groups of civil society organizations, including compelling recipients of foreign funding to adopt negative labels such as that of "foreign agents", with the aim of suppressing the legitimate activities, such as human rights and democracy promotion, of those associations;
  - (vi) Using overly broad and vague definitions to limit the ability of civil society organizations' receiving foreign funding to defend human rights or engage in matters of political concern or public debate;
  - (vii) Mandating funds originating from foreign donors to be channel via relevant government and not directly to civil society organizations;
  - (viii) Imposing unnecessary and disproportionate sanctions;
- Adopt positive measures to enable and promote cross-border giving, including ensuring legal and fiscal frameworks that enable donors – corporate and individual – to give donation charity to associations abroad and benefit from meaningful tax incentives.

**51. States must ensure associations are able to freely access resources, including foreign funding, to promote and defend human rights and democratic governance, including through peaceful assemblies. Recommended actions States should take:**

- Refrain from prohibiting, dissolving, stigmatizing, or criminalizing associations simply because they receive and use foreign funding to participate in matters of political and public debate, including promoting rights-based amendments to the legal or constitutional order.
- Ensure that any regulation affecting foreign funding for "political" activities are well-defined and leave no room for ambiguous interpretation. While additional restrictions may be appropriate in the context of political parties and political campaigning,

<sup>42</sup> See A/HRC/47/24.

loosely-defined restrictions and limitations on associations' engagement in "political" activities violate the right to freedom of association.<sup>43</sup>

- Prevent and investigate any act of retaliation against civil society organizations designed to discourage or prevent them from pursuing human rights advocacy and other legitimate objectives,<sup>44</sup> including the use of enhanced audits and inspections, seizure of income or assets of associations or revocation of tax benefits.
- Revise and repeal laws that criminalize or delegitimize activities in defense of human rights on account of the foreign source of their funding.
- Drop charges against all human rights defenders currently facing criminal prosecution under those laws.
- Release those who have been imprisoned under such laws for the exercise of their rights to freedom of association, expression or peaceful assembly.
- Enact, implement and strengthen measures to protect human rights defenders and publicly recognize their relevant work.

**52. States must ensure measures targeting harmful activities, such as terrorist financing, do not unduly or inadvertently restrict associations' right to access resources, including financial resources, to carry out their legitimate activities.<sup>45</sup> Recommended actions States should take include:**

- Ensure that definitions of terrorism and terrorist financing and other forms of "material support" to terrorism are not overly broad and vague. They must be precise and sufficiently narrow to not criminalize legitimate activities of civil society, including accessing financial resources. Reporting and documenting on terrorism and carrying out charitable work in conflict zones, including humanitarian assistance, are legitimate and protected activities of associations in the exercise of their rights to freedom of expression and association. These activities must not be construed as material support of terrorism or financing of terrorism.
- Repeal overly broad legal provisions for terrorist financing to ensure compliance with international law.
- Ensure laws, regulations and practices on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) fully comply with a risk-based approach and are carefully tailored, necessary, and proportionate to empirically identified, differentiated, and current AML/CFT risk. In no cases may the pursuit of these ends be used as a pretext to crack down on civil society groups which the government disfavors.<sup>46</sup>
- Avoid overregulating and imposing additional and/or onerous registration, reporting, and supervision requirements over the entire civil society sector on the basis of AML/CFT standards. Any AML/CFT regulation must be based in *ex ante*, comprehensive, transparent, empirically-based, inclusively-performed, and human rights-centered risk assessments. States must always study whether existing measures are sufficient to address the current risk to the civil society sector and refrain from simply reproducing laws and regulations adopted by other States.
- Explicitly include unambiguous exemptions for humanitarian and human rights organizations and protected activities in any measures to counter the financing of terrorism, including through sanctions.
- Make transparent, accessible, and readily comprehensible AML/CFT risk assessments, and use all relevant sources of information including from civil society

<sup>43</sup> A/HRC/50/23, paras. 30-32.

<sup>44</sup> A/HRC/50/23, paras. 30-32 and Venice Commission & OSCE, Joint Guidelines on Freedom of Association (2014), para. 192.

<sup>45</sup> A/HRC/40/52, para. 75.

<sup>46</sup> A/HRC/23/39, para. 23.

in such assessments. Assessments should clearly identify the nature and modalities of the threats posed.<sup>47</sup>

- Establish formal avenues for civil society and the general public to provide inputs to risk assessments and to review and challenge the findings of State assessment reports.
- Train and build the capacity of national and institutional actors involved in countering terrorism and terrorist financing so that they can understand and recognize impact that counterterrorism measures have on civil society's right to seek, receive and use resources, notably in creating a chilling effect that will affect all actors even without direct targeting.
- Avoid the stigmatization, marginalization, co-optation and exclusion of civil society, as well as securitization under the guise of the fight against financing terrorism and money laundering.<sup>48</sup>
- Ensure that emergency measures are strictly limited and not used to crack down on civil society actors and their right to access resources.

*The recent amendment of Nigeria's 2022 Money Laundering (Prevention and Prohibition) Act de-listed non-profit organizations among Designated Non-Financial Institutions—thus, no longer subjecting them to the same onerous registration and reporting obligations. This legislative amendment followed an extensive, six-year constructive dialogue between civil society and government authorities.*

*Switzerland provides for an exclusion from terrorist financing crimes financing "intended to support acts that do not violate" international humanitarian law, or acts "carried out to with a view to establishing or reestablishing a democratic regime or a state governed by the rule of law or with a view to exercising or safeguarding human rights."*

**53. States must ensure that any measure imposed relative to associations' receipt and use of funding, including foreign funding, are necessary and proportionate. Recommended actions States should take:**

- Ensure any reporting and transparency requirements on associations' funding and resources are necessary and proportionate – that is, are not unreasonable, overly intrusive, overly costly or overly disruptive of lawful activities.<sup>49</sup> Legal obligations to publicly disclose the sources of funding may constitute an unjustified interference with the rights to privacy and association and generally should be discouraged. If adopted, disclosure requirements should be narrowly tailored to specific, enumerated purposes and sufficient procedural safeguards should be in place to protect the privacy and safety of civil society organizations, donors, and beneficiaries.
- Ensure that enhanced inspections or sanctions for failure to comply with legal obligations are proportionate to the alleged wrongdoing.<sup>50</sup> This requires that:
  - i. enhanced inspections and audits only take place if there are well-founded evidence-based allegations of serious wrongdoing, and should only be imposed following a judicial order.<sup>51</sup>
  - ii. suspensions of an association only be based on grave violations of law, such as potential threats to the security of the state or of certain groups, or to

<sup>47</sup> See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, Position Paper on the Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures (2022), available at: <https://fatfplatform.org/assets/2022-06-13-SRCTHR-CFT-Position-Paper.pdf>

<sup>48</sup> A/HRC/40/52, para. 75.

<sup>49</sup> A/HRC/23/39, para. 37; Venice Commission & OSCE, Joint Guidelines on Freedom of Association (2014), para. 221.

<sup>50</sup> Venice Commission & OSCE, Joint Guidelines on Freedom of Association (2014), para. 221.

<sup>51</sup> African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, para. 34.

fundamental democratic values, and should only be imposed following a judicial order.

- iii. The dissolution or closure of an association only be imposed as a last resort, in serious cases where the association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and should only be imposed following a court order.
- iv. Minor infractions, such as the failure to submit or publish financial statements, should never lead to enhanced inspection, suspension or dissolution of an association. Rather, the association should be requested to promptly rectify its situation.<sup>52</sup>

**54. States must take appropriate steps to ensure that banks and financial institutions in their jurisdiction respect the right to association and implement human rights due diligence practices to safeguard and promote civil society's access to financial services. Recommended actions States should take:**

- Make it explicit that banks and financial institutions domiciled or operating within their jurisdictions are expected to comply with the Guiding Principles on Business and Human Rights when doing business at home and abroad and that this includes respecting the right to freedom of association and civil society organizations' right to access resources. Such expectations should be included in key policies and guidance issued by state oversight agencies over the financial sector.
- Introduce regulations that require human rights due diligence by banks and financial institutions in line with the Guiding Principles on Business and Human Rights. This involves requiring banks and financial institutions to prevent and address any adverse impacts their AML/CFT activities and practices may have on the full enjoyment of the right to freedom of association, including by carrying out out systematic and periodic human rights impact assessments.
- Provide clear guidance on how to enforce Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) laws and regulations, what a risk-based approach entails and how it should be applied to ensure compliance with FATF recommendations and avoid unwarranted de-risking and safeguard access to financial services to the civil society sector.
- Urge banks and financial institutions to avoid engaging in de-risking practices with regard with associations whereby they deny, delay or terminate access to financial services on unsubstantiated grounds or without valid reasons and incentivize management and mitigation practices to preserve access to financial services by associations.
- Increasing the transparency and public accessibility of banks' AML/ CFT compliance policies and supporting guiding documentation to ensure independent oversight and adequate incorporation of human rights due diligence processes.
- Periodically publish data and carry out research, in consultation with a broad representation of civil society organizations, to understand the drivers, trends and impacts of bank de-risking on the financial inclusion of civil society in the country.
- Develop training and build the capacity of banks and financial institutions on their human rights responsibilities in relation to civil society organizations' right to access resources and promote increased understanding by financial institutions of their human rights responsibilities in this regard.
- Ensure that such training offer guidance on how to recognize and promptly address the challenges created by bank de-risking measures on civil society from a human rights perspective. In particular, ensure training to banks and financial institutions covers how to deal with bank services to humanitarian aid projects in conflict zones or regions subject to sanctions.

<sup>52</sup> A/HRC/23/39, para. 38.

- Promote multistakeholder dialogues where for non-profit organizations, banks, regulators, and other government departments can discuss and find solutions to address de-risking against civil society organizations. These processes need to reach out to supervisors, including Central Banks, Financial Intelligence Units and other authorities responsible, e.g., for compliance with the EU General Data Protection Regulation (GDPR).
- Ensure that any legislation and regulation regarding online banking technologies is guided by the objective of promoting the financial inclusion of associations and philanthropy and does not hinder it. In addition, regulation should avoid imposing measures that unnecessarily inhibit online fundraising, encourage online surveillance of donations, or undermine associations' data ownership and security as they solicit fundraising online.

*The European Banking Authority published in 2023 a new set of guidelines challenging unwarranted de-risking resulting from anti-money laundering/countering the financing of terrorism (AML/CFT) rules and regulations, and seeking to safeguard access to financial services for vulnerable customers. These guidelines include a special annex on identifying and assessing ML/TF risk associated with non-profit organizations customers. The guidance seeks to help financial institutions better understand how non-profit organizations are organized and how they operate, so that risk can be mitigated effectively, without having to deny the sector access to financial services altogether.*

*The Office of Foreign Assets Control (OFAC) of the US Treasury Department released in February 2023 "Guidance on Authorized Transactions Related to Earthquake Relief Efforts in Syria", seeking to explain the General License that they released which enables humanitarian relief efforts in Syria post-earthquake. Donors have valued the guidance stating it is one of the clearest General License explainers released by OFAC to date, and would encourage this type of clear documentation to continue in the future.*

*A working group comprised of Danish banks, non-profit organizations and national authorities examined possible solutions to ease the administrative burdens that non-profit organizations experience when banks carry out "Know your Client" -KYC- procedures. The working group is working on three initiatives, which includes a guidance to help banks conduct risks assessments of non-profit organizations, a digital solution for registration of non-profit organizations and a guidance to standard articles of incorporation for the sector.*

*The UK tripartite working group on financial access is another example of a national roundtable where relevant stakeholders identify joint solutions to navigate the complex AML/CFT and sanctions landscape with the aim of facilitating payments, in support of humanitarian aid in particular. In Argentina, following through from the G20 side event, and led by an NPO coalition, a roundtable with banks and the government initiated a discussion on de-risking which, in Argentina, is primarily a domestic problem related to potential money laundering and corruption risk detected in the sector by the government, and which seems to be in contravention of FATF's Recommendation 8 and guidance on TF.<sup>53</sup>*

*At the international level, the World Bank and ACAMS have convened roundtables to primarily solve de-risking in the US context through a number of work streams, the outcome of which is expected in the coming months.*

*Another international initiative, supported by the Swiss government and EU ECHO, aims to develop risk compliance guidance for banks, governments and NPOs in order for payments to safely reach vulnerable populations in Syria.*

**55. States should increase their public support to associations, including not only direct financial support, but also material support, benefits and exemptions.<sup>54</sup> Recommended actions States should take:**

<sup>53</sup> Human Security Collective. Derisking and Civil Society: Drivers, Impact and Solutions, available at: [https://www.hscollective.org/news/timeline/article-derisking-and-civil-society-drivers-impact-and-solutions/?acceptCookies=64687e7bb9b1c#\\_ftn6](https://www.hscollective.org/news/timeline/article-derisking-and-civil-society-drivers-impact-and-solutions/?acceptCookies=64687e7bb9b1c#_ftn6)

<sup>54</sup> African Commission, Guidelines on Freedom of Association and Assembly in Africa, paras. 41-46.

- Provide tax benefits, incentives or exemptions to associations working towards public benefit objectives, such as exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as meaningful incentives for donations through income tax deductions and credits. The process of qualifying for such privileges should be simple, transparent and impartial.
- Consider reducing the costs of bank transfers of donations and protect donations, including online giving, from taxation.
- Ensure a fair and a non-partisan distribution of any public support to associations. This includes ensuring all benefits and funds are distributed through clear and accessible application procedures and objective, transparent and non-discriminatory criteria.
- Publish and broadly disseminate calls for proposals for public funding or grants so that they are widely accessible, including using digital technology tools and translation where appropriate and feasible.
- Provide capacity building and training to associations on how to qualify and access all available forms of public support, particularly tax benefits.
- Empower associations representing the interests of groups or populations at higher risk of facing discrimination and marginalization to access public funding, and ensure that their specific rights and needs are addressed in application procedures and qualifying criteria for such benefits and funding.
- Consider providing flexible and multi-year funding schemes and allow associations to use public funding to cover administrative expenses and support their institutional and resiliency building.
- Ensure transparency and make publicly available information as to which associations receive public funding, and the grounds upon which decisions were made, with due respect to data protection and privacy rights requirements protected under international human rights law.
- Promote and commit to a culture of openness and transparency and consider, where applicable, joining the Open Government Partnership, an international network committed to making governments more open, accountable and responsive to the public.<sup>55</sup>
- Ensure that the provision of tax benefits, public funding and other forms of public support does not deprive associations of their independence, and is not used as leverage to control or excessively monitor civil society organizations.<sup>56</sup>
- Recognize that funding of associations should not solely be dependent on public funds, in order to safeguard their independence.<sup>57</sup>

*The Ministry for Foreign Affairs (MFA) of Finland has had a standing mechanism to support Finnish development NGOs to apply for European Union funding. As the EU grants have the requirement for a share of funding raised from applicant's own sources, MFA has agreed to provide half of the funds required to meet this requirement. Furthermore, MFA has actively promoted and encouraged NGOs to consider applying for EU-based funds.*

**56. States should create and expand an enabling environment for philanthropy. Recommended actions States should take:**

<sup>55</sup> A/HRC/39/28.

<sup>56</sup> Venice Commission & OSCE, Joint Guidelines on Freedom of Association (2014), paras. 205-17.

<sup>57</sup> Council of Europe, Conclusions on the application of the EU Charter of Fundamental Rights; The role of the civic space in protecting and promoting fundamental rights in the EU, available at: <https://data.consilium.europa.eu/doc/document/ST-7388-2023-INIT/en/pdf>

- Guarantee the right of associations to seek, receive and use funding from private donors, both domestic and foreign.
- Enhance collaboration between the public sector, philanthropic and social investment actors, to mobilize available resources to civil society.
- Provide tax deductions for all private contributions and donations to not-for-profit associations working towards public benefit objectives.
- Grant fiscal benefits and incentives to encourage private donations, specifically in relation to corporate giving.
- Reduce complexity of tax rules and standards. Complex tax rules and related compliance costs disproportionately affect low-income donors and smaller philanthropic entities. By simplifying the tax rules and facilitating payroll schemes for philanthropic giving, States can mobilize resources to people and places in need.

**57. States must genuinely, proactively, meaningfully and constructively engage with a broad representation of civil society actors to support a more conducive environment for associations' right to access resources. Recommended actions States should take:**

- Ensure civil society's input is sought in decision-making and monitoring processes affecting civil society's right to access resources, including the development and implementation of laws, regulations, policies and other measures. Associations must be given the space to offer their views on the proposed measures and provide information on their possible adverse impact on civil society.
- Establish formal and transparent mechanisms to allow civil society organizations to petition for or against new legislation and regulation that impacts the associations' access to funding.
- Ensure all draft laws, regulations, policies and other related measures affecting civil society's right to access resources are made publicly accessible within ample time to ensure effective participation and informed input by civil society.
- Carry out a mapping exercise of the country's civil society sector, including national, local, community-based, registered and unregistered associations, social movements, coalitions and networks. A mapping exercise can help the authorities to better identify and engage with a broad representation of civil society organizations (geographical, thematic and sectoral) in consultation processes. The stakeholder mapping exercise should be made consultative and with due respect of privacy and data protection requirements under international law.
- Publicly disseminate opportunities for consultation for civil society, including using local print media, posters, mass media (television or radio), community media, institutional websites, social media and other digital tools.
- Ensure consultative process include diverse channels for the collection of inputs, including online and in-person consultation opportunities. These spaces should take into account cultural and language needs to ensure all voices are heard, and should ensure accessibility for people with disabilities.
- Hold in-person consultations beyond the capital cities and have a wide geographical and sector reach.
- States should consult with indigenous peoples, and respect and give effect in practice to their right to free, prior and informed consent, when adopting or implementing measures that may affect them.
- Adopt measures to ensure women's effective participation in consultations mechanisms, including by addressing unequal power relations and social norms and practices that reduce women's influence in those processes.
- Maintain an open line of communication and exchange with representative associations working to promote civil society's ability to seek, receive and use resources, for example, networks of associations, fundraisers association and foundations associations.



- Keep a permanent roundtable with a broad representation of civil society organizations to exchange ideas and collaborate on developing shared solutions to issues concerning civic space and the accessibility, availability and sustainability of funding for the civil society sector. Notable examples include:

*In Bulgaria, the new Civil Society Development Council acts as an advisory body to the government and is involved in developing and implementing policies to support civil society. It delivers opinions on legal acts and documents relating to civic organizations.*

**58. States must ensure that associations can have access to effective remedies for violations of their right to access resources. Recommended actions States should take:**

- Ensure all civil society organizations are able to access independent, impartial and effective judicial bodies, including bodies that take fully into account the obligations imposed by human rights law, in cases of violations of their right to access resources. Ensure that the specific rights and needs of marginalized groups and populations, in particular in relation to language, accessibility and safety, are met.
- Ensure independent oversight and judicial review processes against arbitrariness and abuse in the implementation of laws on terrorist financing. In particular, States should make available judicial remedies to all civil society actors affected by terrorism sanctions regimes.
- Develop training for judges, prosecutors and lawyers, possibly through networks of bar associations, on international human rights norms and standards concerning the right to freedom of association and civil society organizations' right to access resources.<sup>58</sup>
- Ensure that judges, prosecutors and parliamentarians are trained to recognize violations to associations' freedom to access resources and understand how criminalization of foreign funding and national security legislation may be used to deter human rights defenders and critical groups.

## **B. Donor Community**

**59. Donors should contribute to the creation and maintenance of an enabling environment for civil society, including for the enjoyment of the right to access to resources. Illustrative actions donors should consider taking:**

- Fully implement the OECD Development Assistance Committee Recommendation on enabling civil society in development cooperation and humanitarian assistance, including by:
  - i. Developing clear policy positions on the value of an inclusive and independent civil society and on the importance of respecting, protecting, and promoting civic space in line with rights to the freedoms of peaceful assembly, association, and expression.
  - ii. Engaging in dialogue with partner country or territory governments and raise public awareness on the value of an inclusive and independent civil society and civil society participation and on respecting, protecting, and promoting civic space.
  - iii. Supporting and engaging with international, regional, and national bodies and initiatives that work to respect, protect, and promote civic space.
  - iv. Supporting, as appropriate, partner country or territory government institutions to prevent unintended consequences due to misinterpretation or misapplication of anti-money laundering and counter-terrorism financing standards.

<sup>58</sup> A/HRC/47/24.

- v. Exploring and sharing strategies to counter mis- and disinformation, harassment, discrimination and anti-democratic narratives targeting civil society.
- Help improve the legal and institutional environment for association's right to access resources, including by supporting efforts to carry out legal reform, strengthening institutions and promoting dialogue between different stakeholders at national or local level.
- Integrate the issue of closing civic space and undue restrictions to civil society's right to access resources into staff training and senior leadership briefings.

*The Funders' Initiative for Civil Society (FICS) was established in 2016 to develop a strategic funders' response to the systemic challenge of closing civic space. In 2019, FICS interviewed 150 funders and civil society representatives to understand the opportunities and threats that will shape civic space in the next ten years and publish the report "Rethinking Civic Space in an Age of Intersectional Crises: A briefing for funders", in May 2020.*

**60. Donors should invest in the development of an independent, strong, resilient and effective civil society sector at the international, regional and domestic levels. Illustrative actions donors should consider taking:**

- Invest in the core organizational strength of civil society organizations, by providing with multi-year and flexible funding that enables them to increase impact and build institutional resilience for the long term. This includes multi-year funding for gender transformative work.
- Pay the full indirect cost of project grants, when providing time-bound grants aimed at achieving specific goals and milestones. Examples include costs for overall management of the organization, facilities (heat, electricity), technical support, as well as legal financial services and fundraising efforts.
- Promote multi-donor collaborations and pooled funding mechanisms to harmonize support and provide greater impact to strategies aimed at tackling structural and intractable challenges.
- Provide grantee partners with the flexibility to adapt to changes in context and seize unexpected opportunities.
- Include civil society (grantees and non-grantees partners) in the review and design donor strategies and decision-making on how to improve donor policies, processes, and practices as well as how to assess risks associated with funding particular projects or organizations.
- Establish a process to co-create funding priorities and distribution of funding with participation with civil society and affected communities (participatory grant-making).
- Listen actively to the goals and opportunities of grantee partners in order to understand better how to support their mission and increase their impact.
- Increase investment in feminist and women's rights organizations and women peacebuilders, particular organizations led and working for women belonging to racial and ethnic minority groups. Also, support the development and growth of independent women's funds.
- Review grant making processes for accessibility and inclusion. For instance, make all grant application materials — including websites, press releases, and guidelines — accessible to non-technical audiences, both online and offline, and in multiple languages. Also, review these materials with a view to ensure the needs and rights of people with disabilities, and indigenous peoples are addressed.
- Simplify any administrative and reporting requirements to meet the needs of grantee partners and reduce transaction costs.

- Communicate clearly and early with grantee partners regarding continued funding. Consider providing graduated reductions in funding that extend a grantee's engagement to ensure stability.

*A pooled fund called CIVITATES was 'born' in 2017 in Warsaw, at the European Foundation Centre conference "Courage to re-embrace solidarity in Europe", out of concern for the state of democracy in Europe. The fund, which is hosted by the Network of European Foundations, became operational in 2018 thanks to the support from 16 diverse foundations, which provided a starting budget of 4.1 million euro (for 2018-2020). In addition to providing funding, Civitates has a Funding Plus component, through which the fund provides capacity development and networking opportunities to its grantees. Civitates, which has an annual budget of approximately 3M EUR, is supported by a large group of diverse foundations, of different shapes and sizes, which bring in a wealth of expertise and different perspectives. The initiative, which is hosted by the Network of European Foundations (NEF) and housed in the Philanthropy House in Brussels, builds on lessons learned from other pooled funds. Its secretariat is composed of three people, a Fund Manager and two Programme Officers.*

*FRIDA, The Young Feminist Fund is co-created by feminist movements to provide flexible, multi-year financial support, capacity strengthening, and space for movement connections to young feminist collectives across regions, thematics, and strategies. FRIDA applies a feminist participatory approach to their grantmaking. Young feminist communities are part of resource allocation decisions, but they also decide how FRIDA's grantmaking process can best support the needs of the young feminist community. This approach promotes solidarity rather than dividing people over competition for resources. More: <https://youngfeministfund.org/wp-content/uploads/2023/02/FRIDA-RESOURCE-SOURCING-CONNECTIONS-interactive.pdf>*

*Ford Foundation's Building Institutions and Networks (BUILD) initiative is a grant making approach focused on helping social justice organizations become stronger and more resilient through the provision of multiyear, unrestricted funding combined with dedicated institutional development support. More: <https://www.fordfoundation.org/media/7095/build-evaluation-final-report.pdf>. Also, in January 2023 the Ford Foundation raised its minimum indirect cost (IDC) rate applicable to eligible project grants from 20% to 25% —or to an even higher rate, under certain circumstances. This increase allows Ford to fully cover indirect costs on the vast majority of their project grants and ensure that their grantees have the flexibility and support to cover the true cost of their work.*

*The Disability & Philanthropy Forum, is an emerging philanthropy-serving organization seeking to coordinate philanthropic leadership to advance disability inclusion in philanthropy. The member organizations commit to embark on an internal journey of inclusion and work collective to move the philanthropic sector to a disability -inclusive future.*

*At the 2021 Generation Equality Forum Ireland committed to providing €150,000 per annum 2021-2026 for the establishment of the Girl's Fund to expand funding opportunities for young feminists in partnership with Plan International and Purposeful and pledged €60 million to the Global Partnership for Education over the next five years, with €10 million earmarked to the Girls' Accelerator Mechanism*

#### **61. Donors should promote, invest and support local civil society**

- Recognize local civil society organizations as co-creators of development programs (not just "implementing partners") with the knowledge, relationships and capacity to deliver impact and achieve social change.
- Engage in ongoing and meaningful consultations with civil society (grantee and non-grantee) to understand the local context and needs, to help define problems and identify opportunities and challenges for collaboration and investment.
- Provide and increase longer-term investment (such as flexible and multi-year support) and adaptive core support systems for local organizations and movements. This type of support should enhance institutional resilience and ownership of local civil society associations and support their ability to achieve enduring impacts.

- Explore opportunities to empower local organizations to diversify their financial base and mobilize support resources from alternative sources, including by supporting their efforts to raise unrestrictive funds from membership fees, contributions from community members, crowdfunding, social enterprises and local private philanthropy. Where alternative sources of funding do not exist, international donors can help associations to establish the tools and the environment needed for them to start.
- Explore other forms of material support, including contributions in the form of land or housing, to support core strength and sustainability of local organizations.
- Pay the full indirect cost of project grants.
- Engage the grantee partner to better understand their programs or expenses needs rather than proscribing solutions or restricting grants to certain programs that are of the donor's choosing.
- Commit to equitable partnerships that promote anti-colonial, anti-racist, inclusive and feminist principles that contribute to shifting the power to local civil society organizations, in particular those that represent and are led by people belonging to marginalized or historically discriminated groups and populations.
- Ensure that avenues are available through which small and community-based organizations may access funding, including simplifying application and reporting requirements, and developing more relevant monitoring and evaluation methods.
- Break the presumption of an inherent risk in working with local and community-based organizations, and instead endorse local organizations' own assessment and definition of risks and mitigation measures as these are likely to be the most efficient solutions.
- Ensure local grantees can communicate with donor staff and submit reports in multiple languages and define benchmarks or "indicators" of success for themselves. Avoid the use jargon and complex tools.
- When using intermediaries to reach and provide funding to a larger set of local organizations, ensure agreements not only fully cover all the costs (both direct and indirect) of activities carried out by local partners but also transfer the benefits of multi-year and flexible funding to local partners, including funding to local partners' institutional building needs.
- Track and report how much funding directly reaches local civil society organizations, including those that represent and are led by people belonging to marginalized or historically discriminated groups and populations.

*Ford Foundation's Weaving Resilience initiative sends funding directly to innovative leaders in the Global South and centers operations and decision-making within the regions most affected by closing civic space. This allows the people with the greatest local expertise to drive bold solutions and build supportive networks that spread impact to other communities.*

*The Wilde Ganzen Foundation "Change the Game Academy" is an initiative co-created with CESE (Brazil), the Kenya Community Development Foundation (Kenya), and Smile Foundation (India) that seeks to strengthen the capacities of civil society organizations to effectively raise local funds and mobilize other forms of domestic support.*

*Through the Bulgarian Fund for Women, close to 2.8 million will be invested in civil society sustainability within a three-year-long partnership initiative between Bulgarian Fund for Women (BFW), Bulgarian Centre for Not-for-Profit Law (BCNL) and Impact Drive Foundation (IDF), supported by the European Commission. It aims at strengthening and developing the local non-governmental sector via strategic and long-term funding and capacity-building based on studies of the specific needs of small and local CSOs in Bulgaria that work for social change, the defense of human rights, democracy, the rule of law and European values.*

*Ghana's fundraising software, Yen Somu Bi (translates as "Let's lend a helping hand"), a giving platform developed in 2022, allows local civil society organizations and citizens interested in philanthropy to mount campaigns that appeal to different philanthropic individuals and entities.*

**62. Donors should adopt, when appropriate, specific measures to facilitate and support access to funding for associations operating in restrictive environments. Illustrative actions donors should consider taking:**

- Seek to understand the nature of the existing state of civic space and undue restrictions to association's access funding. Engage in periodic consultations and dialogue with a broad representation of civil society organizations in order to understand the adverse effects of restrictions on receiving and using funds and devise ways to overcome them.
- Conduct risk assessments and put contingency plans in place.
- Set, change and reallocate their funding priorities and methods, along with reporting requirements, with due regard to restrictions facing civil society organizations.
- Increase their financial and political support to civil society operating in restrictive environments, including funding for rapid emergency assistance, safe houses in the country and legal defense as well as long-term resiliency support, taking into account the specific protection needs and rights of marginalized groups and populations. Provide funding to build institutional strength and cover expenses associated with navigating restrictive environments, including legal and financial services.
- Develop or support assistance, and rehabilitation programs for relocated or exiled civil society actors. This support should help exiled civil society actors find durable solutions to the situations in which they find themselves, including immigration solutions, and to continue their activities in their host country.
- Provide support to associations and relocated or exiled civil society actors to set up satellite offices in neighboring countries to sustain their work.
- Enhance coordination with other donors and develop stronger funding schemes to support civil society actors under threat.
- When appropriate, explore innovative mechanisms to navigate restrictive environments, such as channeling funds through neighboring country associations.
- Advocate and issue solidarity statements in support of associations facing severe restrictive environments.
- Continuously work to ensure holistic understandings of the safety and security needs of funding recipients.
- Ensure communications are only on secure platforms or via encrypted email when funding sensitive human rights work.

*Lifeline Resiliency Grants provides rapid response resiliency grants provide support to at-risk CSOs to proactively avoid or mitigate the threats they face and help them continue to work in high-risk environments. These grants are highly flexible and support a range of activities including digital or physical security training; technical training on how to respond to restrictive legislation; building peer-to-peer support networks, or establishing temporary collaborative space to help civil society actors return to work.*

### **C. Multilateral entities**

**63. Multilateral entities should create and maintain an enabling environment for civil society and ensure their measures promote and protect associations' right to access resources. Illustrative actions multilateral entities should take:**

- Implement thorough and consistent policies that emphasize the importance of civil society organizations to the promotion of global governance and recognize that associations' right to seek, receive and use resources is an inherent component of the right to freedom of association.
- Meaningfully engage with a broad representation of civil society organizations when adopting rules, policies and programmes that may affect their right to access

resources. Refrain from the adoption of any policies that would restrict this right and civic space as a whole.

- Continue to call on States that use and pass repressive laws and policies to restrict the environment for civil society through consistent public statements and bilateral engagements to reform these measures consistent with their human rights obligations.
- In line with the provisions of Human Rights Council resolutions on cooperation with the United Nations, its representatives and mechanism in the field of human rights<sup>59</sup>, adopt measures to prevent and condemn all acts of reprisals against those engaging or seeking to engage with their institutions, including ensuring that heads of multilateral institutions publicly denounce each and every instance of reprisals.
- Introduce an independent grant system to help facilitate the attendance and participation of smaller, local civil society groups at key meetings and gatherings. When carrying out consultations, ensure to cover the full cost of civil society participants.
- The Financial Action Task Force and its member States should integrate human rights law and standards, particularly the right of associations to seek, receive and use funding, within all discussions, evaluations and standard-setting on countering terrorism and its financing. In particular, the Task Force must ensure, through its standards, methodology, guidance and training, that the application and enforcement of recommendation 8 does not de facto undermine binding international human rights norms.
- Other multilateral agencies and political entities, including the Security Council's Counter-Terrorism Committee Executive Directorate and the Global Counter-Terrorism Forum, should ensure that their efforts to combat the financing of terrorism are consistent with their human rights obligations.

*The Financial Action Task Force (FATF) has including civil society participation at meetings, an online platform for submissions, and public comment periods on proposed changes to amendments or guidance materials. The FATF has also facilitated direct input from civil society organizations to the assessors reviewing a country's implementation of FATF Standards and continues to publish the findings of these assessments.<sup>183</sup> Some FATF-style regional bodies have followed suit: GAFILAT, for instance, collaborated with the Global NPO Coalition on FATF and now provides civil society leaders formal space during its plenary meetings.*

## D. Banks and financial institutions

64. **Banks and financial institutions should adhere to their human rights obligations to respect the right to freedom of association and exercise human rights due diligence when designing and implementing policies and practices that affect civil society organizations' access to resources. Illustrative actions banks (private and public development) and financial institutions should take:**

- Refrain from automatically treating civil society organizations as high-risk in policies and practices and allow such organizations to benefit from the use of new and innovative technologies and sources of funding such as crowdfunding platforms.
- Seek to understand civil society customers, and incorporate their feedback as to how they may mitigate the harmful effects of de-risking procedures.
- Enhance the transparency of compliance policies and supporting guidance documentation and integrate mandatory human rights due diligence processes. Ensure such policies and guidelines are consistent with ensuring financial inclusion of civil society organizations.

<sup>59</sup> A/HRC/1/12, A/HRC/42/30 and A/HRC/45/36.

- Facilitate regular and reciprocal exchanges among banks and civil society organizations to increase the understanding of banks of the civil society sector and vice versa and to increase the effectiveness of measures to counter terrorist financing and mitigate unintended consequences. This should include engaging directly with humanitarian and human rights organizations on bank de-risking to facilitate funding for their protected activities, particularly in complex conflict environments.
- Clearly communicate to clients and investees that banks are expected to undertake effective stakeholder engagement as part of their human rights due diligence, which includes risk assessment. Indicate that engagement with affected and potentially affected people and human rights defenders is key to understanding risks and addressing them effectively, especially when civic space is restricted in a country.
- Incorporate due process safeguards and human rights guidance and establish clear and easily accessible complaints mechanisms to increase transparency and accountability in de-risking cases, in line with, inter alia, the privacy rights requirements protected under international human rights law. Such mechanisms should also provide remedy or redress where appropriate, including in the form of renewed or enhanced banking access or compensation.
- Provide clear and concise justification for refusals of service to civil society organizations, such as refusals to open an account, refusals to make a payment or the withdrawal of banking services. Provide general guidance on the reasons why these actions occur.
- Prohibit disclosure of information to public or financial institutions in countries with serious violations of human rights.
- Establish human rights roles or teams within financial institutions to embed the observation of fundamental rights in operations.

*In the Netherlands, due to the CFT/AML regulation, NPOs face numerous issues that affected their access to financial services (inability to open or maintain bank account, suspended accounts, etc.). These challenges were widely voiced by the CSO sector. In parallel, banks faced growing challenge of experiencing high fines which led to decrease of their risk appetite, and inability to respect all the rules as set up by the Dutch bank regulator. This led the bank regulator to shift its vision from rules based to risk-based approach, by creating and publishing the Risk-Based Industry Baseline which is specific to certain topics and industries. In addition, the bank regulator, together with the Dutch Banking association organizes a working group which includes representative of Ministry of Finance, 3 biggest Dutch banks, self-regulatory authority of NPOs and several NPOs representing the sector. This group holds a session every 2-3 weeks with the aim to create the risk baselines that the NPO sector, the regulator, and banks support. In addition, there is a second working group organized by Ministry of Finance, Ministry of Foreign Affairs, and Dutch NGO Human Security Collective, which has broader representation of institutions (including Ministry of Foreign Affairs, and larger, smaller organizations-representatives, as well as representatives of religious organizations and lawyers (on case-by-case basis)). Over 4 years, the group meets every 3-4 months to discuss a broad range of issues related to financial access (e.g., sanctions, payment service providers blocking, updating other work group is doing, payments, etc.).*

*The Dutch bank ABN AMRO is part of the working groups and paves the way for other banks to support NPOs by recognizing de-risking as one of the most salient human rights issues, and dedicating resources for staff, and processes to ensure NPOs can access financial services. One of the recent good practices of the bank is the specially dedicated NPO portal on the ABN AMRO website. The portal was created in collaboration with NPOs with the aim to inform and help NPOs on CFT/AML regulations and what it means for them; how banks conduct CFT/AML risk assessments and what measures NPOs might need to put in place to mitigate potential risks.*

*A global network of multilateral and national public development banks, Finance in Common, gathered in Abidjan, Ivory Coast, for their 2022 Summit. At its conclusion, multiple banks produced and endorsed the first-ever Public Development Banks Statement on Human*

*Rights and Human Rights Based Approach that commits the banks to “enhance clients’ dialogue with human rights civil society organizations” and to “promote the advancement and realization of human rights, including in the framing of their strategies, and implementation of their activities.”*

## **E. Civil society organizations**

**65. Civil society organizations should continue to engage, monitor and report on laws, regulations, policies and practices affecting their right to seek, receive and use resources. Illustrative actions civil society organizations could take:**

- Engage directly with States, donors and other key stakeholders in the process of development of laws, regulations, policies and practices affecting associations’ right to access resources. Specially, engage in national terrorist financing risk assessments or perform shadow risk assessments of the non-profit sector.<sup>60</sup>
- Consider enhancing cooperation with private sector stakeholders, in particular the banking community
- Support the participation of fellow actors who are less aware of/proficient in procedures governing the participation within multilateral institutions, in particular local civil society organizations, grass-roots groups, spontaneous social movements and civil society organizations dealing with marginalized groups; Support other civil society organizations in building CFT capacity and engaging with host States and the multilateral counter-terrorism architecture to mitigate negative impacts on NPOs.
- Continue to report on human rights violations and abuses against civil society organizations’ right to access resources. In particular, continue monitor and report on the impact of CFT measures on civil society’s right to access resources.
- Consider and use this set of Guidelines when analyzing and reporting on violations of the rights to freedom of association.

*The Global NPO Coalition on FATF is a loose network of diverse nonprofit organizations (NPOs) set up in 2014 to ensure that civil society is effectively engaged in the debate on anti-money-laundering and combatting the financing of terrorism. The Coalition advocates for improvement in the quality and effectiveness of FATF Mutual Evaluations with sustained outreach to the NPO sector, and the effective, risk-based implementation of FATF Recommendations affecting NPOs, particularly Recommendation 8 (R8). The Coalition has established a constructive relationship with the FATF Secretariat for the exchange of ideas, enabling transparent engagement.*

**66. Civil society organizations should work together to establish independent self-governance standards that promote open, transparent, accountable and democratic structures, mission, policies and activities, including fundraising. Illustrative actions civil society organizations should take:**

- Develop, set and maintain effective self-governance standards and mechanisms through transparent and participatory processes.
- Adhere to high standards of transparency, good governance and financial accounting that meet recognized professional and ethical standards and ensure proper stewardship of all revenue sources.
- Commit to ethical fundraising standards and ensure all donations further the organization’s mission.

<sup>60</sup> UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, Position Paper on the Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures (2022), available at: <https://fatfplatform.org/assets/2022-06-13-SRCTHR-CFT-Position-Paper.pdf>



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*Accountable Now (Formerly the International Non-Governmental Organizations (INGO) Accountability Charter) is a global platform supporting social sector organizations in being transparent, responsive to stakeholders and focused on delivering impact. The platform encompasses a diverse group of development, humanitarian, environmental, rights-based and advocacy organizations and networks.*

*Nigeria Network of NGOs has a code of conduct that its over 3,300 members voluntarily subscribed to at the point of registration helping to lay down strong cultural practices among its membership. A peer-review initiative among its members exists which sees member organizations in the same area visiting each other on an on-the-spot assessment using a nonprofit assessment checklist developed by the Network. Findings from the exercise are communicated to the Network secretariat where identified gaps are addressed through one-on-one mentoring and coaching with the members involved.<sup>61</sup>*

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<sup>61</sup> Nigeria Network of NGOs, Civil Society Regulatory Frameworks in Nigeria (2022): <https://nnngo.org/wp-content/uploads/2022/05/CIVIL-SOCIETY-REGULATORY-FRAMEWORKS-IN-NIGERIA.pdf>.